

California Ramps Up Its Consumer Financial Protection Laws: What You Need to Know, with Special Guests Richard Cordray and Bret Ladine

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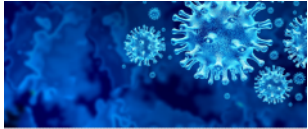
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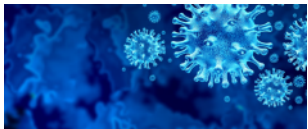
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Coronavirus Disease 2019 (COVID-19) Resource Center

Ballard Spahr attorneys are closely monitoring federal and state government guidance and situation updates—and we stand ready to help clients navigate the related business concerns. [Visit here](#)



Banking and Consumer Financial Services COVID-19 Resource Center

Ballard Spahr’s Consumer Financial Services, Banking & Financial Institutions, and Mortgage Banking Groups are closely monitoring regulatory developments in connection with the coronavirus (COVID-19) crisis. To provide one location where members of the banking and consumer financial services industries can access federal regulatory guidance and other information that relates to issues of particular concern. [Visit here](#)

Upcoming Webinars

Title	Date
HUD's Final Rule on Disparate Impact	October 7
What Would A Blue Wave Mean For Consumer Financial Services Policy?	October 12

Register for **upcoming webinars** at www.ballardspahr.com or by e-mailing questions@ballardspahr.com.

Request materials from **past webinars** by e-mailing questions@ballardspahr.com.

Consumer Finance Monitor, *the podcast*

Season Three

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Your Presenters



ALAN KAPLINSKY



**CHRISTOPHER
WILLIS**



**RICHARD
CORDRAY**



**BRET
LADINE**



**STEFANIE
JACKMAN**



**MICHAEL
GUERRERO**



**HEATHER
KLEIN**

CCFPL: Applicability

- DFPI
- CCFPL
 - “Covered person”
 - “Service provider”
- Exemptions
 - Licensees of another state agency acting under such authority
 - Certain DFPI licensees
 - Banks, credit unions, etc.

CCFPL: DFPI Authority

- Rulemaking
 - Complaints, registration requirements, UDAAP, disclosures and clarifications regarding credit cost limitations
- Supervision/Oversight
 - Annual or special reports and examinations
- Enforcement
 - Substantial enforcement tools and civil penalties
 - Generally, four-year statute of limitations

CCFPL: DFPI a mini-CFPB?

- The effectiveness of the CFPB was predicated not only on its authority and oversight mechanisms, but by its *resources*
- The CFPB had enough staff to investigate and pursue numerous issues concurrently, and therefore could take action on a very broad basis
- The DFPI has been given additional resources as part of the legislation, and we should see activity in direct proportion to those resources

SB 908

- Applies to creditors, third-party agencies, and debt buyers:
 - “Persons” attempting to collect debts from California residents OR
 - “Persons” located in California collecting debts from anyone
 - “Person” defined as “a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity”
- Exempts:
 - Depository institutions
 - Licensees under California’s Financing Law, Residential Mortgage Lending Act, and Real Estate Law
 - A trustee performing acts in connection with a nonjudicial foreclosure
 - Debt collection regulated by the Student Loan Servicing Act
 - Persons subject to the Rental-Purchase Act

SB 908

- Commissioner authorized to begin adopting regulations on 1/1/21; enforcement to commence 1/1/22
 - Will be able to collect so long as apply before enforcement date
- No branch licensing requirements
- Affiliates can share one license; Commissioner to define what constitutes an affiliate
- Preempts local licensing requirements
- Must include license number in written collection communications in 12 point font
- Creates a 7-member Debt Collection Advisory Committee; at least one member shall represent consumers

SB 908

- Licensing requires submitting any application subject to penalty of perjury, payment of an application fee, and submitting to a criminal background check
- Commissioner has authority to:
 - Require at least annual reporting and payment of an annual fee (likely to be managed through the NMLS)
 - Require a surety bond
 - Exam licensees
 - Investigate complaints and engage in enforcement activities
 - Require payment of refunds, restitution, disgorgement, and damages
 - Share information with other federal and state regulators

Student Borrower Bill of Rights (AB 376)

- New Title 1.6C.10 in Civil Code
- Establishes Student Loan Ombudsman position
- Gives Commissioner market monitoring authority
- Law applies more broadly than servicer licensing law
 - Exemptions for debt collectors collecting on defaulted student loans only
 - Partial exemptions for FFELP guaranty agencies and postsecondary educational institutions
 - No exemption for depository institutions other than federal credit unions

Bill of Rights: Selected Protections

- Treatment of military borrowers, borrowers working in public service, older borrowers, and borrowers with disabilities is singled out, as is handling of IDR applications
- Borrower telephone calls that request specific information or report an account error and cannot be resolved in single call (“qualified requests”) are treated like qualified written requests
- Caps late fees at 6% of amount past due; must be reasonable and proportional to total costs incurred as result of late payment
- Adds prohibition on abusive servicing practices
- Plus: provisions on payment processing, servicing transfers, payment application, service provider oversight, and more

Bill of Rights: Enforcement

- Private right of action (individual and class)
 - Violations of Title and applicable federal student loan servicing laws and regulations are actionable
 - \$500 minimum award for actual damages
 - \$1,500 minimum award for treble damages
 - Attorney's fees & punitive damages are available
 - No cap on class action recovery
 - Requires notice to servicer and opportunity to cure alleged violations before bringing action for damages or injunctive relief
 - No damages for unintentional violations due to bona fide error
- Public enforcement by Commissioner

THANK YOU FOR JOINING US!

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Alan S. Kaplinsky

SPEAKER

- Practice Leader of the Consumer Financial Services Group at Ballard Spahr, which was just named by *Law360* as one of five top banking law practice groups of 2017.
- Devotes his practice to counseling financial institutions with respect to bank regulatory and transactional matters and defending them in individual and class action lawsuits (including CFPB investigations and government enforcement matters)
- First President of the American College of Consumer Financial Services Lawyers and the recipient of the College's 2016 Lifetime Achievement Award
- Former Chair of the American Bar Association Committee on Consumer Financial Services of the Business Law Section
- Co-Chair of the Practising Law Institute's Annual Consumer Financial Services Institute, now on its 24th year
- Has been named as a tier one banking and consumer financial services lawyer in the 2006 through 2019 editions of *Chambers USA*
- Has been named in *The Best Lawyers in America* under financial services regulation law and banking and finance litigation from 2007 to 2019
- Recipient of the *National Law Review's* Go-To-Thought Leadership Award in Consumer Finance, 2018
- Recipient of the National Law Journal's 2015 Litigation Trailblazers Award for pioneering the use of class action waivers in consumer arbitration provisions

Christopher J. Willis

SPEAKER

- Practice Leader of the Consumer Financial Services Group and Vice-Chair of the Consumer Financial Services Group at Ballard Spahr.
- He devotes his practice to assisting financial services institutions facing state and federal government investigations and examinations, counseling them on compliance issues including UDAP/UDAAP, credit reporting, debt collection and fair lending, and defending them in individual and class action lawsuits brought by consumers and enforcement actions brought by government agencies
- Assists clients in designing new products and processes, including product structure, advertising, online application flows, underwriting, and collection and loss mitigation strategies
- American College of Consumer Financial Services Lawyers, Fellow
- American Bar Association, Consumer Financial Services Committee, Chair of the Subcommittee on Fair Access to Services
- *Chambers USA: America's Leading Lawyers for Business*, financial services regulation: consumer finance (litigation), national ranking, 2014-2020 (currently Band 1)

Richard Cordray

SPEAKER

- Richard Cordray is a lawyer and former public official who is the author of the recently-published book, “Watchdog” (2020)
- Previously, Cordray served as the first Director of the Consumer Financial Protection Bureau (CFPB) from 2012 to 2017
- In 2008, he received a Financial Services Champion award from the SBA and a Government Service Award from NeighborWorks America
- In 2005, he was named “County Leader of the Year” by *American City & County Magazine*
- Prior to his appointment to lead the CFPB, Cordray variously served as Ohio’s Attorney General, Solicitor General, and Treasurer
- Cordray was the Democratic nominee for Governor of Ohio in 2018

Bret Ladine

SPEAKER

- Bret Ladine was appointed by California Governor Gavin Newsom in 2020 as General Counsel at the Department of Business Oversight after serving as Acting General Counsel since 2019 and Assistant General Counsel since 2016
- He provides legal advice related to the state's regulation of financial institutions, financial services, and securities, with a focus on emerging policy issues
- Previously, Ladine was a securities litigator at Hogan Lovells and Wilson Sonsini Goodrich & Rosati
- Prior to becoming an attorney, he was the communications director for Congressman Dennis Cardoza
- He received his J.D. from the University of Virginia School of Law and B.A. from Yale University.

Stefanie H. Jackman

SPEAKER

- Stefanie H. Jackman is the leader of Ballard Spahr’s Debt Collection Team and a member of the firm’s Fair Lending and Blockchain Technology and Cryptocurrency Teams
- She devotes her practice to assisting financial services institutions facing state and federal government investigations and examinations, counseling them on complex compliance issues, as well as defending them in individual and class action lawsuits
- Stefanie represents clients across the financial services industry, including banks and nonbanks, mortgage banking lenders and servicers, debt collectors and buyers, third-party service providers, medical revenue cycle service providers, credit and prepaid card companies, and auto lenders
- She regularly advises her clients on issues arising under an array of federal and state consumer financial laws, including UDAP/UDAAP statutes, FDCPA, FCRA, TCPA, EFTA, SCRA, and TILA
- Recognized as one of the “Top 25 Attorneys in Collections” and “Top 25 Women in Collections” by *Collection Advisor*

Michael R. Guerrero

SPEAKER

- Michael R. Guerrero's practice is focused on helping consumer-oriented companies, merchants, and lenders comply with state and federal telemarketing, consumer protection, lending, and payments laws.
- He has helped early-stage startup companies design and implement consumer finance products and he frequently counsels large, national financial service providers on matters that relate to all stages of the product lifecycle, from origination to repossession and disposition
- Michael currently serves as co-chair of the California Lawyers Association's Consumer Financial Services Committee
- Recognized in *The Best Lawyers in America* "Ones to Watch," – Communications Law (Los Angeles), 2021

Heather S. Klein

SPEAKER

- Heather S. Klein is a member of the firm's Consumer Financial Services, Mortgage Banking, and Higher Education Groups as well as its Marketplace Lending Task Force, Fair Lending Task Force, Fintech and Payments Team, and Debt Collection Team
- Heather's practice emphasizes counseling companies on innovative and traditional financing programs, including issues relating to fair lending, credit reporting, marketing, payments, servicing, debt collection, electronic contracting, vendor management, and unfair, deceptive or abusive acts or practices
- She specializes in advising investors, schools, servicers, and originators on income share agreements
- Her work includes assisting clients with federal and state regulatory examinations and investigations, supporting the development of new financial products and services, drafting customer-facing disclosures and agreements, and advising on state licensing
- Heather currently serves as co-vice chair of the Truth in Lending Subcommittee of the American Bar Association's Consumer Financial Services Committee