



# MORTGAGE BANKERS ASSOCIATION OF ALABAMA

**What's on the horizon for 2017?**

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*Presented by:*

*J. David Dresher*

*Jason R. Bushby*

# Agenda

- TRID
- NEW SERVICING RULES
- CRA UPDATE
- CRYSTAL BALL

# TRID ISSUES – 2017

YOU HOPED NOT, BUT UNDOUBTEDLY KNEW,  
WE WOULD HAVE TO MENTION

**T R I D!**

# TRID ISSUES - 2017

**CFPB proposed extensive amendments to TRID (aka KBYO) on August 15, 2016, with comments period through October 18, 2016**

- Extraordinary number of comments.
- New amendments still not final.
- Concerns that a number of significant areas of uncertainty/risk were not fully addressed or resolved.

# TRID ISSUES - 2017

## Good-Faith Compliance Standard:

- “Diagnostic” exam approach.
- Credit for efforts to implement by 10-3-15.
- How long will this continue?
  - Rule is now more than one year in effect
  - But, lots of uncertainties, and CFPB has not issued binding interpretations or finalized the amendments it proposed last Summer.

# TRID ISSUES - 2017

## Liability for Errors / Cures:

- Will any of the amendment’s proposals avoid liability for existing loans? Retroactive protection? MBA is pushing hard for this.
- Amendments proposed nothing new as far as “curing” errors. Focus of amendments is to “facilitate compliance” by Lenders, not to establish new protection for errors.
- So, you have the very limited curative provisions built into TRID, plus the general provisions of TILA for correcting errors (not a good “fit” as this now incorporates RESPA’s closing costs).

# TRID ISSUES - 2017

## Black Hole:

- Inability in certain cases to provide updated Closing Disclosure after a Closing Disclosure was provided. Seems to be unintended, but it clearly exists under Rule and Commentary.
- New Amendment modifies timing, so permissibly may deliver corrected Closing Disclosure if either (a) fewer than four business days remain before required timing for Closing Disclosure delivery or (b) the Closing Disclosure has already been provided.
  - Problem has been that existing rule seems to permit only for (a) and not (b)

# SERVICING RULES - Timeline

November  
20, 2014

- CFPB issues proposed rule and opens comment period

March 16,  
2015

- Comment period on proposal closes
- To date, CFPB has received and posted 200 comments

April 26,  
2016

- Report summarizing testing of bankruptcy periodic statement forms is published in the Federal Register and reopens comment period

May 26,  
2016

- Comment period on report and testing method/results closes
- To date, CFPB has received and posted 20 comments

August 4,  
2016

- CFPB releases final amendments to existing rules in Regulations X and Z, along with interpretive rule on FDCPA compliance



# SERVICING RULES - Summary

Amendments primarily cover nine topics:

1. Successors in interest
2. Requests for information
3. Definition of delinquency
4. Force-placed insurance
5. Early intervention
6. Loss mitigation
7. Periodic billing statements
8. Prompt payment crediting
9. Small servicers

Effective date:

- April 19, 2018 – (18 months) for provisions related to:
  - Successors in interest; and
  - Periodic billing statements for borrowers in bankruptcy
- October 19, 2017 – (12 months) for all other provisions
- No early implementation safe harbor

# SERVICING RULES - Successors in Interest

- Expands on Regulation X's current policy and procedure requirement regarding facilitating communication with the successor in interest to a deceased borrower
- Formalizes unofficial guidance from CFPB Bulletin 2013-02
- Three components:
  - Expanded definition of “successor in interest”
  - Detailed procedural requirements for confirming successors in interest; and
  - Broad requirement to treat confirmed successors in interest as borrowers for purposes of servicing rules
- Will require significant 50-state research in real property law, contract law, estate law, and family law

# SERVICING RULES - Loss Mitigation

- Revises existing early intervention exemption for borrowers in bankruptcy and borrowers that have submitted a cease communication request under the FDCPA
- Replaces the “one bite at the apple” requirement for duplicative loss mitigation applications
- Adds notice requirement and specific parameters for short-term repayment plans
- Revises the “reasonable date” that must be in an incomplete application acknowledgment letter
- Clarifies servicers’ document collection obligations, but adds prohibition on relying solely upon a borrower’s stated preference for a loss mitigation option
- Adds requirement for notice of complete application
- Clarifies how to handle evaluations where information out of the borrower’s control is required but missing
- Adds complex procedural requirements and dual tracking protections for applications in-flight at the time of transfer

# SERVICING RULES - Periodic Billing Statements

- Removes existing exemption for borrowers in bankruptcy
  - Periodic billing statements will generally be required notwithstanding a consumer's bankruptcy, subject to certain limited exemptions
- Modifies the statement content requirements depending on the type of bankruptcy
- Provides sample forms for borrowers in a Chapter 7 or 11 bankruptcy, and for borrowers in a Chapter 12 or 13 case
- Clarifies how statements for borrowers whose accounts have been accelerated may be populated
- Allows servicers to cease sending statements to accounts that have been charged off provided that one last modified statement is sent after charge-off
- Clarifies how to populate statements when an account is on a trial or permanent modification

# SERVICING RULES - Next Steps

- Servicers should:
  - Begin implementation efforts as soon as possible
  - Analyze and digest 2016 final rule
  - Educate impacted business units
  - Determine technology needs and ensure sufficient time is afforded to make necessary system enhancements
  - Determine which provisions can be implemented early and develop rolling implementation schedule
  - Develop implementation plan that ensures compliance by the applicable effective dates
  - Identify areas where additional clarity is needed, and can be obtained, from the CFPB
  - Conduct research necessary to implement, and comply with, successor in interest requirements

## CRA Update

This is expected to be a significant examination focus for regulators in 2017.

- Not just the largest banks
- Not just in other parts of country
- “Penalty Box” – Tied up for years?

# CRA UPDATE

## Primer – CFPB’s Fair Lending Enforcement

- Most recent CFPB Consent Orders are first to allege **redlining**.
- Issued after Supreme Court’s *Inclusive Communities* decision
  - Recognized, but limited, **disparate impact** under Fair Housing Act.
- “Redlining” is traditionally considered **disparate treatment**
  - Practice to deny or avoid providing credit services because of racial demographics of consumer’s neighborhood (DOJ).
  - Illegally deny fair access to credit to residents in minority neighborhoods by avoiding and discouraging them (CFPB).

# CRA UPDATE

## Overview of CFPB Consent Orders on Fair Lending

- Lessons from several recent CRA cases involving banks
- Observing shift in fair lending approach
  - CFPB's expanding policy views
  - Use of Mystery Shoppers



# CRA UPDATE

- Complaints do not state theory of liability
  - Heavy reliance on statistical analysis of application data
  - No harmed consumers are identified and no causal link stated
- Compared applications received from bank vs. peers
  - Ignored bank's average approval rate (higher than normal)
  - Ignored substantial loan purchase activity in census tracts
- Focus on high-Black/Hispanic areas may suggest evaluation of activity in those areas is required to achieve compliance

# CRA UPDATE

## CMS Weaknesses

- CFPB believes “the lower the quality of an institution’s fair lending CMS, the higher the fair lending risk to consumers”.
- Need robust Policies and Procedures
  - CFPB concluded that CMS was not sufficient to address issues.
- No written P&Ps to monitor for fair lending compliance.
  - A general policy statement is not going to help when the CFPB comes to examine you.
- Need adequate compliance and fair lending staff.

# CRA UPDATES

## Compliance Takeaways

- CFPB Theory and Theme
  - Primary focus on applications received compared to peers
  - Heavy reliance on statistical analysis
  - Discretionary Underwriting and Pricing
- Inadequate Monitoring
- Marketing strategy and branch locations

# CRYSTAL BALL

## CFPB

- PHH case on unconstitutionality of Director Cordray (Can he be removed from office?)
- Regulation by Enforcement Orders – Will CFPB continue to implement its policies in this way, or return to more traditional use of Policy Statements, official regulatory interpretations, or amendments to regulations?

# CRYSTAL BALL

New President on January 19, But:

- Will Cordray resign, be removed or modify his views?
- Likely to take a substantial amount of time to change rules.
- Cancel TRID? How (it is statutory and regulatory)?
- If so, what would replace it?
- What about cost to go back to “old rules”, after spending money for years to train personnel and adapt procedures and document assembly to TRID? (Be careful what you ask for!)
- Similar concerns with other mortgage regulations.

# CRYSTAL BALL

Examinations and  
Enforcement Activities – Much of this is in process

What can be modified? Will it really change in 2017  
(or 2018)?

# Meet Your Speakers:



## **J. David Drescher**

Partner

Direct 205.521.8605

[ddrescher@bradley.com](mailto:ddrescher@bradley.com)

Dave Drescher represents banks, mortgage companies, finance companies and other lenders. He helps lenders in developing contracts, disclosures and security documents. Dave has counseled clients on federal and state-law regulatory and compliance issues affecting mortgage lenders for almost 35 years, in areas such as TILA, RESPA, TRID, ECOA, Fair Lending, Federal and GSE Appraiser Independence Requirements, Flood Insurance, Licensing, Interest Rates and permissible charges.



## **Jason R. Bushby**

Partner

Direct 205.521.8086

[jbushby@bradley.com](mailto:jbushby@bradley.com)

Jason provides regulatory compliance, enforcement, and litigation assistance to a range of financial services clients across the country. Jason assists clients as they bring their operations into compliance with various obligations imposed on them by the Consumer Financial Protection Bureau (CFPB), including the Mortgage Servicing Final Rules in Regulations X and Z and the TILA-RESPA Integrated Disclosure Rule. He also advises clients on compliance matters related to a host of federal and state regulations, including TILA, RESPA, FCRA, and the Equal Credit Opportunity Act (ECOA). Jason has advised some of the nation's largest financial institutions in all aspects of their CFPB examinations and has represented financial services clients in civil litigation throughout the country.

**Thank You**

**Bradley**