


27th National Forum on

RESIDENTIAL MORTGAGE

REGULATORY ENFORCEMENT & LITIGATION

November 17-18, 2020 (Central Time)  Virtual Conference



Featured Speaker:



John C. Fleming
General Counsel
Texas Mortgage Bankers Association

Senior Government Officials:



Jedd Bellman
Assistant Commissioner for Non-Depository Supervision,
Office of the Commissioner of Financial Regulation
Maryland Department of Labor

Christopher B. Mulvihill
Deputy Superintendent, Consumer Protection
& Financial Enforcement Division
New York State Department of Financial Services

DISTINGUISHED IN-HOUSE FACULTY:

David Altman
Executive Vice
President and Chief
Corporate Counsel
Freedom Mortgage



Justin T. Bradley
Associate General
Counsel
Shellpoint Mortgage
Servicing



Kim Andres
Assistant General
Counsel
Citi



Jeffrey Jamison
Associate General
Counsel – Litigation,
Senior Vice President
BMO Harris Bank



R. Christopher Baker
General Counsel
Nations Lending

Jeffrey W. Kibbey
Vice President,
Mortgage and
Corporate Compliance
Zillow Group

James Bloss
Compliance Risk
Management and
Governance Manager
Colonial Savings, F.A.



Graham H. Kidner
Associate General
Counsel
Fannie Mae

Jason Miller
General Counsel
Select Portfolio
Servicing, Inc.



Joseph L. Mooney
Vice President,
Senior Legal Counsel
– Litigation and
Regulatory Enforcement
HSBC



Lance L. Morley
Assistant General
Counsel
LendingTree



Wendy Beth Oliver
General Counsel, Chief
Compliance Officer
Heracles



Amy S. Ooi
Vice President,
Associate General
Counsel
Caliber Home Loans,
Inc.



Lynde Selden
General Counsel
Plaza Home Mortgage

2020 Program Highlights:

- » How to Effectively Prepare for CARES Act and Other COVID-Era Legislation's Impact on Lenders and Servicers
- » Anticipated Litigation Relating to Forbearance Programs and Expiration
- » Managing Disputes with Bankrupt Debtors Amid a Likely Increase in Defaults
- » The Complexities of Mortgage Origination in the Pandemic and Beyond
- » Navigating Fraud and Fair Lending Challenges in the COVID-19 Context

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“ Is the U.S. mortgage industry about to fall off a cliff? ”

- Mortgage Professional America, July 29, 2020.

“ 32% of U.S. households missed their July housing payments ”

- CNBC, July 8, 2020.

“ Foreclosure threat grows as COVID-19 surges, Fed says ”

- HousingWire, July 6, 2020.

The COVID-19 pandemic has overwhelmed every aspect of the mortgage business. Lenders face challenges in mitigating risk in the origination process while continuing to ensure fair lending practices. For loans in forbearance, the industry anticipates disputes over the equitable administration of government programs and over the appropriateness of loss mitigation measures once forbearances expire. At the same time, servicers are up against important restrictions on collection activity while seeking to meet investor demands for payment.

The industry is confronting the biggest blow since 2008. That is why it is more important than ever for litigators to attend American Conference Institute's **27th Annual National Forum on Residential Mortgage Regulatory Enforcement & Litigation**—your one-stop shop for intelligence on defending against the surge of actions on the horizon.

Program highlights include:

- ▶ Direct insights from state regulatory bodies on enforcement activity to expect in the aftermath of the pandemic
- ▶ Best practices for servicers on navigating debt collection restrictions and managing liquidity challenges
- ▶ In-depth analysis of credit reporting requirements and how to mitigate liability under CARES amendments to the FCRA

This forum is your opportunity to gain essential intelligence from an elite speaker line-up of in-house counsel, regulators, and law firm experts. Partake in this interactive virtual experience, engage in dialogue with the key industry players, and get your most pressing questions answered. All from the comfort and safety of your home office.

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Amy S. Ooi
Vice President,
Associate General Counsel
Caliber Home Loans, Inc.
(Coppell, TX)



Nanci L. Weissgold
Partner
Alston & Bird LLP (Washington, DC)

Speakers:

David Altman
Executive Vice President
and Chief Corporate Counsel
Freedom Mortgage (New York, NY)



Kim Andres
Assistant General Counsel
Citi (Irving, TX)



R. Christopher Baker
General Counsel
Nations Lending
(Independence, OH)



Jedd Bellman
Assistant Commissioner
for Non-Depository Supervision,
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Maryland Department of Labor
(Baltimore, MD)



David M. Bizar
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John C. Fleming
General Counsel
Texas Mortgage Bankers Association (Austin, TX)



Bryan A. Fratkin
Partner
McGuireWoods LLP
(Richmond, VA)



Nikhil V. Gore
Partner
Covington & Burling LLP
(Washington, DC)



Richard E. Gottlieb
Practice Leader,
Consumer Financial Services
Manatt, Phelps & Phillips, LLP
(Chicago, IL)



Eric M. Hurwitz
Co-Chair, Financial Services
Litigation
Stradley Ronon Stevens & Young, LLP (Cherry Hill, NJ)



Jeffrey Jamison
Associate General Counsel –
Litigation, Senior Vice President
BMO Harris Bank (Chicago, IL)



Kim H. Israel
Member
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(Jacksonville, FL)



Steven M. Kaplan
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Jeffrey W. Kibbey
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Jason Miller
General Counsel
Select Portfolio Servicing, Inc.
(Salt Lake City, UT)



Joseph L. Mooney
Vice President, Senior Legal
Counsel – Litigation and
Regulatory Enforcement
HSBC (Buffalo, NY)



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**New York State Department of
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Managing Member, Nashville Office
McGlinchey Stafford (Nashville, TN)



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Co-Chair,
Consumer Financial Services
Saul Ewing Arnstein & Lehr LLP
(Princeton, NJ)



Lynde Selden
General Counsel
Plaza Home Mortgage
(San Diego, CA)



Joy Harmon Sperling
Partner
Day Pitney LLP (Parsippany, NJ)



Adam M. Swanson
Partner
McCarter & English LLP
(New York, NY)



9:00

Opening Remarks from the Conference Co-Chairs

Amy S. Ooi, Vice President, Associate General Counsel, **Caliber Home Loans, Inc. (Coppell, TX)**

Nanci L. Weissgold, Partner, **Alston & Bird LLP (Washington, DC)**

9:15

How to Adapt to New Legislative and Regulatory Demands in the Pandemic: Lenders' and Servicers' Perspectives

MODERATOR: Kristine E. Kruger, Senior Counsel, **Perkins Coie LLP (Seattle, WA)**

R. Christopher Baker, General Counsel, **Nations Lending (Independence, OH)**

James Bloss, Compliance Risk Management and Governance Manager, **Colonial Savings, F.A. (Fort Worth, TX)**

Jeffrey W. Kibbey, Vice President, Mortgage and Corporate Compliance, **Zillow Group (Seattle, WA)**

Jason Miller, General Counsel, **Select Portfolio Servicing, Inc. (Salt Lake City, UT)**

In this interactive roundtable discussion, a distinguished group of in-house counsel will speak on compliance and litigation challenges in the COVID-19 context and how they will continue to navigate the aftermath of the pandemic.

10:15

State and Federal Enforcement Activity in the COVID-19 Context and Beyond: Key Actions Taken in the Past Year, Pandemic-Induced Priorities, and What to Expect in the Months Ahead

Jedd Bellman, Assistant Commissioner for Non-Depository Supervision, Office of the Commissioner of Financial Regulation, **Maryland Department of Labor (Baltimore, MD)**

Christopher B. Mulvihill, Deputy Superintendent, Consumer Protection & Financial Enforcement Division, **New York State Department of Financial Services (New York, NY)**

With a decrease in federal enforcement under the Trump administration, state regulators and Attorneys General have ramped up their investigation of mortgage companies and other consumer loan providers. New demands on lenders and servicers in the context of the pandemic are only intensifying scrutiny of their practices by state authorities, and new federal legislation opens the door for new kinds of enforcement actions. This session will address:

- A synthesis of key pre-COVID trends in enforcement across the country and recent priorities set out by state regulators
- What kinds of actions relating to COVID-era regulations are likely to arise in the following year
- Recent guidance from the CFPB and what to expect in the event of a change in administration in January

11:15 Break

11:45

Anticipating Disputes Relating to Forbearance Programs: How to Interpret Consumers' Statutory Rights and Appropriately Disclose Terms

Jason R. Bushby, Partner, **Bradley Arant Boult Cummings LLP (Birmingham, AL)**

John C. Fleming, General Counsel, **Texas Mortgage Bankers Association (Austin, TX)**

Maura K. McKelvey, Partner, **Hinshaw & Culbertson LLP (Boston, MA)**

The CARES Act, analogous state legislation, and government investors have set out varying expectations for in a range of forbearance programs aimed at easing the impact of the pandemic on homeowners. The industry is encountering inevitable ambiguities in navigating the intricacies of these programs, creating fertile ground for disputes over non-compliance. This panel will cover:

- Potential litigation relating to violation of forbearance rights in managing mortgage relief
- Disputes over improper disclosures to borrowers of loan terms and additional costs associated with forbearance
- To what extent borrowers already in litigation with their servicer can take advantage of forbearance programs
- Restrictions and requirements to grant additional forbearances after an initial forbearance period

12:45 | Lunch Break

1:30

How to Navigate Debt Collection Restrictions, Manage Liquidity Challenges, and Reconcile Opposing Demands from Consumers and Investors as a Servicer

Lance L. Morley, Assistant General Counsel, **LendingTree (Charlotte, NC)**

Joy Harmon Sperling, Partner, **Day Pitney LLP (Parsippany, NJ)**

Nanci L. Weissgold, Partner, **Alston & Bird LLP (Washington, DC)**

While government programs have offered significant relief to borrowers, servicers continue to face pressure from regulators and investors alike – maintaining the liquidity needed to pay to investors while contending with decreased payments from borrowers. This panel will address:

- Navigating limits to debt collection and circumstances under which restrictions would not apply
- Common servicing pitfalls in emergency situations and potential litigation following the coronavirus crisis
- Anticipated enforcement actions over aggressive collection efforts during the pandemic
- Challenges specific to non-federally backed, private-label mortgages that may be subjected to more stringent demands from investors

2:30 | Break

3:00

What Servicers Can Expect as Forbearances Expire: Defending Against Litigation and Enforcement Over Inadequate Loss Mitigation Measures and Preparing for a Possible Foreclosure Crisis

David M. Bizar, Partner, **Seyfarth Shaw LLP (Boston, MA)**

Kim H. Israel, Member, **McGlinchey Stafford (Jacksonville, FL)**

Graham H. Kidner, Associate General Counsel, **Fannie Mae (Statesville, NC)**



DAY 2 > Wednesday, November 18, 2020 (Central Time)

As homeowners continue to be unable to meet their obligations in the pandemic and beyond, servicers must contend with important challenges in preventing potential foreclosures. In light of new consumer protection frameworks and increased regulatory scrutiny of industry practices in an emergency situation, much is at stake in how these loss mitigation measures are carried out. This session will address:

- Barriers to loan modification as borrowers remain unemployed
- New guidance issued by the CFPB and state regulators
- Broader implications for the industry as forbearances turn into defaults

4:00

How to Manage Disputes with Bankrupt Debtors Amid a Likely Increase in Defaults and New Debtor Protections Under CARES Amendments to the Bankruptcy Act

 Kim Andres, Assistant General Counsel, **Citi (Irving, TX)**

Adam M. Swanson, Partner, **McCarter & English LLP (New York, NY)**


With forbearance programs ending and continued mass unemployment inevitably leading to higher default rates, the pandemic is expected to produce a surge in bankruptcies and related litigation. Moreover, changes to the bankruptcy code have created further challenges for creditors dealing with bankrupt debtors. This session will address:

- The provisions of the new legislation relating to definition of income, duration of bankruptcy plans, second moratoriums, and payment deferments
- How the courts are assisting debtors with repaying amounts not paid during forbearance
- Practical changes to bankruptcy court procedures and navigating them as a creditor
- Deterring bankruptcy-related enforcement actions following the pandemic

5:00 | Co-Chairs' Closing Remarks, Conference Adjourns

9:00


Opening Remarks from the Co-Chairs

 Amy S. Ooi, Vice President, Associate General Counsel, **Caliber Home Loans, Inc. (Coppell, TX)**

Nanci L. Weissgold, Partner, **Alston & Bird LLP (Washington, DC)**

9:15

In-House Perspectives on How to Effectively Work with External Counsel to Optimize Resources and Outcomes

 **MODERATOR:** Shaun Ramey, Managing Member, Nashville Office, **McGlinchey Stafford (Nashville, TN)**

David Altman, Executive Vice President and Chief Corporate Counsel, **Freedom Mortgage (New York, NY)**

Justin T. Bradley, Associate General Counsel, **Shellpoint Mortgage Servicing (Greenville, SC)**

Joseph L. Mooney, Vice President, Senior Legal Counsel – Litigation and Regulatory Enforcement, **HSBC (Buffalo, NY)**

Lynde Selden, General Counsel, **Plaza Home Mortgage (San Diego, CA)**

An esteemed panel of in-house counsel will discuss how to build a productive relationship with outside counsel in a context of limited resources and increasing challenges in mitigating liability.

10:15

Meeting Credit Reporting Requirements in the Context of the Pandemic and How to Mitigate Liability Under CARES Amendments to the FCRA

 Bryan A. Fratkin, Partner, **McGuireWoods LLP (Richmond, VA)**

Steven M. Kaplan, Practice Co-Leader, Financial Services Regulatory and Enforcement, **Mayer Brown (Washington, DC)**


The consumer lending industry saw a pre-COVID uptick in credit reporting disputes, with actions under the FCRA leading over any other statute. Complexities in credit reporting in the pandemic will only exacerbate this trend further. Compliance challenges and disputes resulting from retroactive CARES Act provisions preceding the enactment of the statute. This panel will speak on:

- Ambiguities in the CFPB's guidance on credit reporting borrowers in forbearance
- Expected state enforcement over violations of federal or state reporting acts due to delays in credit reporting
- Challenges in reporting for mortgages discharged in bankruptcy

11:15 | Break

11:45

Navigating the Complexities of Mortgage Origination in the Pandemic and Beyond

 **MODERATOR:** Richard E. Gottlieb, Practice Leader, Consumer Financial Services, **Manatt, Phelps & Phillips, LLP (Chicago, IL)**

Jeffrey Jamison, Associate General Counsel – Litigation, Senior Vice President, **BMO Harris Bank (Chicago, IL)**

Wendy Beth Oliver, General Counsel, Chief Compliance Officer, **Heracles (Milwaukie, OR)**

Joshua C. Prever, Partner, **Holland & Knight LLP (Fort Lauderdale, FL)**


- How to overcome challenges in maintaining the range of services needed to support origination—such as appraisal, title insurance, and home inspection
- Developments in remote online notarization
- Pandemic-related fair lending and other access to credit considerations
- Resolving disputes between lenders, borrowers, and private-label market investors seeking buybacks for loans in forbearance
- CFPB and other agency initiatives to facilitate lending during the pandemic
- The impact of the pandemic on non-bank mortgage lending

12:45 | Lunch Break



1:30

Spotlight on Fraud: Responding to Regulatory Scrutiny Over Aggressive Marketing Campaigns, Force Placed Insurance, and Deception in COVID-Related Relief

 Nikhil V. Gore, Partner, **Covington & Burling LLP** (Washington, DC)


Michael Y. Kieval, Member, **Weiner Brodsky Kider PC** (Washington, DC)

- What can be learned from recent enforcement actions over fraudulent advertising in a low interest rate environment
- Insights into Attorney General actions under consumer fraud statutes in various states, including over insurance forced on borrowers
- Detecting the potential for fraud in forbearance requests, buybacks, repurchase indemnification, and handling of funds issued under relief bills
- Trends in CFPB actions over abusive home lending since its \$1 billion fine of Wells Fargo in 2018
- Developments in antitrust claims under RESPA alleging price fixing
- Regulatory scrutiny and litigation relating to inadequate controls to deter cyber fraud and protect client data
- Detecting fraud on the part of borrowers failing to disclose liabilities, falsifying assets, or having questionable sources of funds, and compliance challenges in lending money mistakenly

2:30 | Break

3:00

Fair Lending Compliance and Defense Strategies: Challenges in Underwriting, Redlining, and Equitably Implementing Relief Programs

 Chava Brandriss, Partner, **Davis Wright Tremaine LLP** (Washington, DC)

Austin K. Brown, Counsel, **Skadden, Arps, Slate, Meagher & Flom LLP** (Washington, DC)

Francis X. Riley III, Co-Chair, Consumer Financial Services, **Saul Ewing Arnstein & Lehr LLP** (Princeton, NJ)

- Pre- and post-COVID enforcement relating to pricing and underwriting under the *Equal Credit Opportunity Act* and the *Civil Rights Act*
- Recent actions over inequitable treatment of non-citizens in lending practices
- Trends in discrimination complaints filed with the Department of Housing and Urban Development and the various civil rights commissions at the state level
- Regulatory scrutiny over alleged redlining evidenced in marketing efforts, distribution of offices among communities, and demographics of loan officers
- Fair lending consistency in implementing forbearance programs and other loss mitigation efforts and possible misapplication to certain categories of borrowers

4:00

Lessons Learned from Recent TCPA Settlements, Ongoing Ambiguities Over the Definition of an Auto Dialer, and What Servicers Can do to Mitigate Liability

 Eric M. Hurwitz, Co-Chair, Financial Services Litigation, **Stradley Ronon Stevens & Young, LLP** (Cherry Hill, NJ)

- Trends in TCPA case law and class actions settlements over the past year and implications for mortgage servicers
- Interpreting the exception for auto dialers and the status of the law on how an auto dialer is defined
- Analyzing the June Supreme Court decision upholding the constitutionality of the statute
- Collection in the context of the pandemic and TCPA liability pitfalls for servicers in an emergency situation
- Notable ongoing cases to be decided in the coming months and what is at stake for the industry

5:00 | Co-Chairs' Closing Remarks, Conference Concludes

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