Johnston Thomas and The Mortgage Collaborative's 2nd Annual Regulatory Round-Up: Invaluable Tips for Maintaining Compliance in 2021 and Beyond

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Johnston Thomas is a full suite boutique law firm, which amongst other practices such as real estate and commercial litigation, has a nationally recognized Mortgage Banking Group ("MBG"). With an experienced team of mortgage banking lawyers (including senior litigation attorneys, former in-house General Counsel and in-house Compliance Counsel from a well-known bank and mortgage company, etc.), certified fraud examiner(s) and forensic underwriter(s), and an extremely competent support staff, all of whom are dedicated to aggressively and competently serving the needs of our valued clientele, Johnston Thomas' MBG is known all across the country for the experience and results that it brings to the areas of regulatory compliance, mortgage banking litigation, and a broad range of mitigation services.

Amongst the many legal services Johnston Thomas offers the mortgage banking industry (e.g., brokers, lenders, servicers, vendors and more), such include, but are in no way limited to, as follows:

- Mortgage Repurchase and Make-Whole Indemnification Litigation and Mitigation (e.g., Secondary Market Investors, Agencies, Bankruptcy Trustees, etc.);
- Mortgage Industry Litigation (e.g., Servicer and Sub-Servicer Disputes, 3rd Party Fraud Recovery, CPL and Title Policy Actions, Appraiser E&O Claims, Loan Officer Actions, LOS Disputes, etc.);
- Mortgage Repurchase and Make-Whole Alternative Dispute Resolution (e.g., Arbitration, Mediation, etc.);
- Regulatory Compliance, Administrative and Business Services (e.g., Mock Audits, LO Compensation, MSAs, Licensing, CA Dep't of Business Oversight, HUD Review Board, etc.); and
- Transactional Matters (e.g., Drafting and Negotiating Broker and Correspondent Loan Purchase Agreements, Mergers & Acquisitions, etc.).

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James W. Brody, Esq.

As the Chairman of the Mortgage Banking Practice Group, Mr. Brody actively manages all the complex mortgage banking litigation, mitigation, and compliance matters for Johnston Thomas and its diverse clientele.

Being one of the founding and managing attorneys for his prior mortgage banking firm, as well as having practiced law for close to 20 years, with nearly 15 of those years being spent in the mortgage banking industry, Mr. Brody has been instrumental in the firm's development and in its continued success.

Mr. Brody has successfully resolved hundreds of mitigation and litigation cases that involve complex mortgage fraud schemes, as well as large-scale repurchase and/or make-whole disputes, in connection with loans that were securitized and/or sold to third parties (e.g., Lehman Bros., Aurora, FNMA, Freddie Mac, ResCap, RMBS Trusts, CitiMortgage, JPMorgan Chase, and more).

Mr. Brody's experience centers on those legal issues that arise during and through loan originations, loan purchase sales, loan securitizations, foreclosures, bankruptcies, and repurchase and indemnification claims.

Tom Gallucci

As SVP of Business Development at The Mortgage Collaborative, Tom manages TMC's preferred partner network comprised of over 65+ best-in-class third-party organizations including **Johnston-Thomas**, that span the entire like cycle of the mortgage origination process and support the needs of TMC's lender member organizations. Tom also leads the charge in prospecting potential additions to TMC's preferred partner network.

Additionally, Tom oversees the execution of TMC's educational networking platform, TMConnect, and TMC's events and co-marketing initiatives. Tom and TMC's business development team strive to create enhanced visibility for our preferred partners through TMC based engagements and strategic initiatives.

Tom brings 15-years of experience in the financial services industry with the last eight years specifically in mortgage. Tom can be reached by e-mail at tgallucci@mtgcoop.com and by phone at 216-256-3953.

The MORTGAGE COLLABORATIVE

For our members, by our members.

Our Philosophy

CREATE
An experience driven by and focused on our members

FOSTER
An environment of collaboration

ENCOURAGE
Openness and a family-centric pay it forward culture

For our members, by our members.

Direct Benefits of Membership

1) Access to TMC Benchmark, our network's monthly data benchmarking tool
2) Virtual educational and networking events through our TMConnect platform
3) Access to like industry professionals through TMC Working Groups
4) Bi-Annual Lender Member Conferences (March /September)
5) Bi-Annual Collaboration Labs (June/Dec)
6) Collectively negotiated discounts and incentives with 65+ best-in-class preferred partner companies

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TMC Benchmark

Do you know how your organization stacks up against your peers?

TMC Benchmark is a monthly data benchmarking tool that generates highly visual and interactive data analytics dashboards for our members, impacting the way they make business decisions.

- More than 100 TMC lender members using the tool
- Measures the 50 most important metrics in running a mortgage operation, as decided by our lender members
- Manual entry of data takes 20 minutes, automated options also available
- Submission window open from the 5th-19th of every month, dashboards delivered to members by the 25th of each month
- FREE as part of your TMC membership

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TMConnect

Stay educated on and out in front of emerging industry trends through the TMConnect platform.

- Daily educational and lender networking sessions on the real-time issues most pressing to our members.
- Shared experiences with third-party providers
- Focused on emerging trends and issues
- All sessions completely free as part of membership to all employees of TMC lender member companies

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TMC Working Groups

Networking groups for like industry professionals

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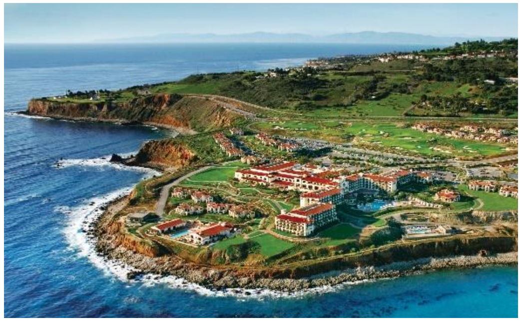
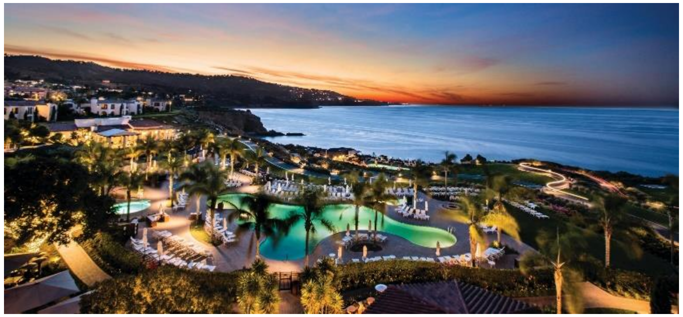
Bi-Annual Member Conferences





- Like everything we do, our conference experience is **driven completely by our lender members** - locations, content, format, agenda
- **Highly interactive** – very granular content, a mix of breakout sessions, workshops, and whiteboard sessions led by our members on the issues of the greatest importance to them
- The goal of every conference – **to have all members walk away stronger** … armed with ideas, strategies, relationships, and intelligence they can implement into their operation upon return.

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Collaboration Labs

THE ColLABoration

- **Over 80 member companies** participated in 2020.
- We form Lab groups consisting of the key decision maker(s) from 6-15 TMC Lender Member **companies of similar size and scope that don't directly compete with one another.**
- All participants sign a mutual NDA and submit a series of **data metrics and key performance indicators**.
- The Labs themselves are a day-and-a-half of **very intentional "deep dive" networking sessions** where all aspects of running a business and experiences with third parties are discussed, with the metrics as the backdrop.

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Preferred Partner Network

- 65+ best-in-class third party providers to the mortgage industry
- Management of partner network is driven by our members actual business experiences with the providers
- 1-3 providers in each space lenders enlist the services of third parties
- Each partnership features collectively negotiated discounts and/or incentives available only to TMC members
- Vast majority of members are receiving annual returns from partner network that exceed their membership fee

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AGENDA

I. Cares Act
II. Consumer Privacy
III. Audit Preparedness State Mini-CFPB's
IV. Loan Originator Compensation
V. UDAAP
VI. Fair Lending
VII. QM Changes
VIII. URLA (1003) Update
IX. MSA Bulletin Rescission

Part I:

The Cares Act

The Act Defined

- "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act".

- Passed on March 27, 2020

- Aimed at providing support to individuals *and* businesses impacted by the virus.

The Act Defined

- Includes:
  - Direct Payments to certain US taxpayers,
  - Expanded unemployment benefits,
  - Payroll tax for businesses,
  - Use of retirement funds,
  - 401(k) loan limit increase,
  - RMDS suspension for IRAs and 401(k)s,
  - Charity provisions,
  - Small business relief,
  - Net Operating losses,
  - Excess loss limitations,
  - Interest Expense Limitation,
  - Large corporation relief,
  - Hospitals and health care support,
  - Coronavirus testing
  - State and Local government appropriations
  - Agriculture department appropriations

The Act Defined

- Financial Services Relief
  - Student Loans
    - Suspended payments on *federal* student loans until 9/30/2020
  - Mortgages
    - Suspension of evictions and foreclosures
    - Forbearance options for up to 12 months
    - Limitation on negative credit bureau reporting

GSE Guidance

- Fannie Mae and Freddie Mac have websites dedicated to COVID-19 relief and guidance
- Originations:
  - Appraisals: Expanded the type of appraisals accepted
  - VOE/VOI: Expanded types of VOE/VOI accepted
- Servicing:
  - Hardship: Clarified that COVID-19 is an eligible hardship under *existing* guidelines
  - Suspension of negative credit reporting
  - Relief available regardless of owner occupied, 2nd home or investment

Mortgage Forbearance

- FHA, Fannie Mae, Freddie Mac, Ginnie Mae Forbearance relief

- Forbearance Confusion
  - Repayment requirements
  - Lender EPD / EPO obligations

Mortgage Forbearance

- The Act provides that all debt obligations subject to a forbearance agreement should be treated as current

- All federally backed mortgage loans are subject to forbearance

Mortgage Forbearance

- A Federally backed Mortgage Loan is defined in Section 4022(a)(2)

- A federally backed Mortgage Loan is:
  - insured by the Federal Housing Administration (FHA)
  - insured under section 255 of the National Housing Act
  - guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992
  - guaranteed or insured by the Department of Veterans Affairs (VA)
  - Guaranteed, insured, or made by the Department of Agriculture, or
  - purchased or securitized by Fannie Mae or Freddie Mac.

Mortgage Forbearance

- The Forbearance Conundrum
  - What happens if the borrower asks for Forbearance before the loan is sold on the Secondary Market?

- Investor Requirements / CARES Requirements
  - Is lender subject to EPD if loan goes into forbearance?

Business Continuity and Disaster Recovery

- Business Continuity Plans ("BCP") should be in full deployment by this time
  - Continuously monitor and revise/iterate as needed to respond to issues as they arise

- Auditor Reviews
  - FFEIC guidance
  - Minimum Requirements

Business Continuity and Disaster Recovery

- Pandemic Planning
  - Preventive Program
  - Document Strategy
  - Comprehensive Framework
  - Testing Program
  - Oversight Program

- Separate State Requirements

- Security & Privacy – Continue to Monitor!

Part II:

Consumer Privacy

Consumer Privacy

- Federal laws on consumer data privacy and data security cover various industries and individuals.

- Financial institutions are governed by the Gramm-Leach-Bliley Act (GLBA).

- Over 50 different non-federal data breach laws in the U.S.

- California Consumer Privacy Act (CCPA) – new 'gold standard.'

- Is there a legitimate business purpose for retaining the information?

Part III:

Audit Preparedness

State CFPBs

- New York
- Massachusetts
- New Jersey
- Pennsylvania
- California
  - "Mini CFPB" Regulation

Audit Prep

- A review of vendors, internal procedures, and activities in general is also essential to an organization having a high level of audit preparedness.
- If your organization is proactive, much of what is needed already exists in the environment. If not, now is the time to get ready for the audit and ensure that your organization is always “audit ready.”

Audit Preparation Elements

1. Begin preparing before the audit even begins
2. Start with a policy management program that includes comprehensive consumer coverage
3. Make sure your procedures and department level activity is aligned with your policies
4. Understanding your consumer data and flow of information is critical
5. Be effective at coordination, information gathering and explanation

Vendor Management and Oversight

- Regulatory auditors are acting on behalf of the consumer.
- Examination manuals emphasize inspecting a firm's practices.
- Legal responsibility for vendors that fail to implement consumer protection requirements can fall on the Lender.
- Policy framework can demonstrate your organization's commitment to protect consumer interests.

Effective Vendor Risk Management

- Risk review based on size, scope, complexity, important and potential harm to the consumer.
- Initial and on-going due diligence reviews.
- Ensure proper oversight and training of employees.
- Comprehensive contract with established SLAs.
- Periodic internal reporting on vendor performance – “vendor scorecard”.

Part IV:

Loan Originator Compensation

LO Compensation Rule - Review

- Prohibits compensation based on loan terms, or a proxy for loan terms, other than loan amount.

- Defining "Proxy of a Loan Term"
  - Consistently varies with a term or terms of the transaction over a significant number of transactions.
  - LO has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction.

- Prohibits compensation from both the consumer and another person.

LO Compensation Rule – "Safe Harbor"

Compensation paid or received based on the below "Safe Harbor" methods will be deemed to not be based on a transaction term or proxy for a transaction term:

- LO's overall volume – either total dollar amount of credit extended or total number of transactions originated;
- Long term performance of the LO's loans;
- Hourly pay rate based on actual number of hours worked;
- Loans made to new customers versus existing customers;
- A "flat-fee" structure paid for every loan originated;
- The percentage of the LO's applications that close;
- Quality of the LO's files submitted to the creditor.

LO Compensation Rule
Permissible v. Non-Permissible Structures

Permissible	Non-Permissible

▪ Plans that vary by Loan Officer
▪ Toggle between Borrower and Lender Paid
▪ Plans that provide for a minimum and maximum compensation per transaction
  ▪ 1.25% of loan amount, with minimum of $1,000 and maximum of $5,500 earned per loan
▪ Sign-on bonuses as well as initial guarantees
▪ "Pick a Plan" structures
▪ Periodic plan changes
  ▪ Prospective only; changes no more frequently than quarterly
	▪ Varying compensation by loan product
	  ▪ E.g. FHA v. Conv.; CRA v. Non-CRA
	▪ Sliding scale percentages by buckets
	  ▪ E.g. 1% for loans > $250,000, 1.5% for loans $150,000 to $250,000, 2.5% for loans < $150,000
	▪ Varying compensation based on Sold v. Retained/Portfolio
	▪ Compensation Pools based on profits

LO Compensation Rule
The "Gray" Areas

The following plan elements may be permissible in certain circumstances, but extra caution is warranted before implementing:

- Varying compensation by state: This is not expressly prohibited, but can raise concerns regarding Fair Lending and Proxies, depending how its implemented.
- Reducing compensation to cover fees or cures: It is permissible to reduce compensation to cover rate lock extension fees or tolerance violation in very specific situations that are a result of unforeseen changes.

The following plan elements are questionable practices that should be avoided as a best practice:

- EPO/EPD/Quality clawback: Compensation should be set in advance, and these clawback provisions can violate state employment and wage laws.
- Paying differently for Purchase v. Refinance: Rule does not provide an express carve out, may be considered a proxy for a term, or bundle of terms.

Loan Originator Compensation.... Not Again, But More

- Fair Labor Standards Act (FLSA) .

- January 1, 2020, the DOL fulfilled its promise to rethink the thresholds applicable to an employer's obligation to pay overtime.
  - Raised the standard salary level requirements
  - Raised the compensation requirement for highly compensated employees

- Exemptions.

Loan Originator Compensation…. Not Again, But More

- Outside sales employee exemption.
  - Must have the primary duty of making sales, or obtaining orders or contracts for services or the use of facilities
  - Must customarily and regularly perform his or her primary duty away from the employer's place of business for more than half of the working time

Part V:

UDAAP

What About UDAAP ?

Unfair Deceptive Abusive Acts or Practices

- Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd- Frank Act), all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) in violation of the Act.

- Often UDAAP is a tool the CFPB uses when it finds an unsavory practice that does not fit neatly into its other rules.

Part VI:

Fair Lending

Fair Lending - Overview

- Fair Lending is governed by multiple federal regulations which prohibit unlawful discrimination, including the following:

Equal Credit Opportunity Act		Fair Housing Act	
▪ Race	▪ Religion	▪ Race or color	▪ National Origin
▪ National Origin	▪ Sex	▪ Religion	▪ Sex
▪ Marital Status	▪ Age	▪ Familial Status	▪ Handicap
▪ Income derived from any public assistance program			
▪ Exercising rights under the Consumer Credit Protection Act			

- The Home Mortgage Disclosure Act ("HMDA") requires lenders to disclose information about applicants, including race, ethnicity, gender.
- Many states have added protected classes to their anti-discrimination laws, such as sexual orientation.
- Fair Lending violations can be unintentional, resulting in disparate treatment or impact.

Effective Fair Lending Programs

An effective Fair Lending program should be tailored to the size and complexity of the lender's operation, and can consist of:

- Comprehensive Fair Lending training for all staff.
- Published clear underwriting guidelines that ensure consistent eligibility criteria for all applicants.
- "Two To Say No" second review of underwriting denials.
- Complaint tracking and monitoring.
- Established monitoring program:
  - Pricing and Underwriting exception reviews
  - Credit QC monitoring, including loan declinations
  - Matched Pair analysis
- Whistleblower hotline or confidential reporting mechanism.

Fair Lending - Enforcement

On March 19, 2019, the OCC and Citibank N.A. entered into a Consent Order over violations of the Fair Housing Act related to its Relationship Loan Pricing (RLP) program:

- Borrowers with qualifying relationship with Citibank were eligible to receive a credit to closing costs or an interest rate reduction.
- These credits were not equally offered to all customers, adversely impacting some customers based on race, color, national origin, or sex.
- Multiple internal control failures were identified: (1) inadequate periodic reviews of the program; (2) inadequate training of staff; and (3) did not require all customers to be informed of the discounts available.
- Citibank self-identified and self-reported the failures to the OCC in 2015.
- The OCC determined the conduct violated the Fair Housing Act, 42 U.S.C. Section 3601-19.
- The OCC assessed a $25 Million civil money penalty against Citibank.

Part VII:

QM Changes & Non-QM Products

QM Changes

- The Amended General QM Rule
- Seasoned QM
- Effective March 1, 2021

Non-QM Products – Overview

- The Non-QM secondary market has experienced a significant expansion recently.

- Non-QM loans *do not* provide the Safe Harbor for compliance with the Ability-to-Repay (ATR) rule that QM loans do.

- Non-QM loans are not necessarily “sub-prime” or “high risk” products.

- Non-QM product characteristics can vary widely – from higher DTI ratios to Interest Only options to Bank Statement qualification.

Non-QM Products – Risks & Compliance

- Selling Non-QM products on the secondary market subjects the lender to Repurchase Risk that may be different than QM loans.

- Disclosure requirements can vary depending on product specifics and state by state regulations.

- Enhanced training is recommended for all staff
  - Train LOs on the product waterfalls to prevent steering borrowers to higher cost products
  - Underwriters may not be accustomed to assessing risk on Non-QM loans

- Regulators tend to focus on Non-QM products during Exams.

Part VIII:

URLA (1003)

URLA (1003)

- March 9, 2020:
  - Start of Tests between Vendors and GSEs

- June 1, 2020:
  - Start of Limited Production pilot for select Lenders/Vendors [must demonstrate partner readiness and be pre-approved by Fannie Mae and/or Freddie Mac]

- September 1, 2020:
  - Start of Open Use Period [formerly referred to as Optional Use period]

- November 1, 2020: Start of Required Use

URLA (1003)

- URLA compliance could become more challenging
- Changes increase risk
- Lenders should prepare, prepare, prepare
  - Leading Technology firms already have changes in process
  - Lenders should speak to their vendors
  - Lenders should evaluate their processes and procedures for training opportunities in critical departments, such as processing and underwriting.

URLA (1003)

- 5 things to think about:

1. Internal policy and procedural changes
2. Borrower experience
3. Investors, processors, underwriting
4. Secondary market consideration
5. Timelines

Part IX:

CFPB Changes & MSA Bulletin Rescission

CFPB Changes

- Compliance Bulletin 2015-05 was rescinded

"provid[ing] clearer rules of the road for RESPA marketing service agreements"

- Prior Administration

On June 29, 2020, the Supreme Court of the United States ("Supreme Court") ruled that the single-director leadership structure of the Consumer Financial Protection Bureau ("CFPB" or "Bureau") violates the separation of powers of the US Constitution.

- Current Administration

Competitive Disadvantage

- Against Lenders that Bend the Rules
  - Educate your staff and stay abreast of enforcement actions (it helps when the staff understands why these rules exist and can then buy into the idea of compliance)
  - Create and actually implement policy and procedures
  - Provide transparency on compensation process
  - Self audit
  - Measure more – and then compensate based on those measurements
    - Quality Submissions
    - Compliance benchmarks
    - Any objective criterion other than profit

QUESTIONS & ANSWERS

At the conclusion of this webinar please submit your questions directly to the moderator, at jbrody@johnstonthomas.com.

Johnston Thomas will be sure to follow up on all questions submitted.

Thank you for your attendance!

THANK YOU!