

babc

# **A Look Behind The Compliance Headlines**

May 28, 2015

Presented by Haydn Richards



BRADLEY ARANT  
BOULT CUMMINGS  
LLP

[babc.com](http://babc.com)

# Agenda

---

- **CFPB – Approach to Regulation**
- **CFPB – Hot Mortgage Topics**
- **Genuine Title, LLC et al.**
- **New Day Financial, LLC**
- **American Preferred Lending, Flagship Financial Group, RMK Financial**
- **TRID Overview**
- **Questions Raised by Audience Members**

# CFPB – Approach to Regulation

---

- **Compliance by Fiat**
  - Testing to the Examination Manual.
  - CFPB intentionally makes the Examination Manual available for review.
    - “No surprises.”
  - Examinations are evaluating compliance with laws, regulations – and compliance guidelines.
    - Best Practices?
  - UDAAP increasingly being utilized by CFPB in examination results.

# CFPB – Approach to Regulation

---

- Why should a UDAAP citation occur when a practice is otherwise in compliance with laws and regulations?
- CFPB generally imposes incredibly high standards.
  - Will only have tighter standards over time.
- Mission of the CFPB is to protect against consumer harm.
  - Practical consequence is an emphasis upon making consumers whole when CFPB perception is an injury has occurred.

# CFPB – Approach to Regulation

---

- Even if violations are modest, as the number of violations that are encountered over a series of business units increase, the greater likelihood for the CFPB to demand corrective action.
- **Proposed Action, Response Requested.**
  - “PARR Letter”
  - A PARR Letter can be issued during or subsequent to a CFPB field examination.
  - Provide examinee the ability to provide additional information.

# CFPB – Approach to Regulation

---

- Provide examinee the ability to provide additional information.
  - Goal for licensee is to avoid administrative action.
  - Insufficient or incomplete responses can result in public enforcement actions.

# CFPB – Hot Mortgage Topics

---

- **Hot Topics for the CFPB and Mortgage**
  - Servicing! Servicing! Servicing!
    - All aspects of loss mitigation.
    - Servicing transfers
    - Compliance with CFPB Servicing Rules
  - Advertising & MSAs

babc

# Q&A Opportunity



BRADLEY ARANT  
BOULT CUMMINGS  
LLP

[babc.com](http://babc.com)

# **Genuine Title, LLC, et al.**

---

- **Genuine Title provided things of value to mortgage loan originators in exchange for referrals of business.**
  - Provided marketing services to MLOs in exchange for referrals.
  - Genuine Title paid funds to MLOs for referrals of settlement service business.
- **J.P. Morgan Chase Bank, N.A. & Wells Fargo Bank, N.A. entered into Consent Orders.**

# New Day Financial, LLC

---

- **Allegations included:**
  - Deceptive advertising because New Day failed to disclose it paid a Veterans organization for its endorsement.
  - Making payments to third parties in exchange for the referral of business.
- **Stipulation and Consent Order:**
  - Required development of compliance plan.
  - Civil Money Penalty of \$2,000,000.
  - Imposed certain recordkeeping provisions.

babc

# Q&A Opportunity



BRADLEY ARANT  
BOULT CUMMINGS  
LLP

[babc.com](http://babc.com)

# American Preferred Lending, Flagship Financial Group, RMK Financial

---

- **CFPB separately alleges advertising violations of Regulation N – the Mortgage Acts and Practices Rule.**
  - CFPB alleges each company wrongfully suggested an affiliation with the U.S. government in direct mail advertisements.
    - In the Flagship matter, the CFPB contended that the Flagship name was not abundantly clear and that the company falsely claimed it was FHA-approved when it was not.

# American Preferred Lending, Flagship Financial Group, RMK Financial

---

- In American Preferred Lending, the CFPB alleged that the company sent advertisements featuring an FHA-approved lender logo and a reference to a web address, [FHAdept.us](http://FHAdept.us).
  - The CFPB argued that these actions suggested that the company violated Regulation N by suggesting an affiliation with the U.S. government.
- In RMK Financial, the CFPB alleged improper conduct because the company sent out advertisements with VA logos and which suggested a VA endorsement.

babc

# Q&A Opportunity



BRADLEY ARANT  
BOULT CUMMINGS  
LLP

[babc.com](http://babc.com)

# TILA/RESPA Integrated Disclosure (TRID)

---

- **Loan Estimate (LE)**
  - Application now is set to the six factors that historically have been associated with an application.
  - Removal of 7<sup>th</sup> factor that was part of the more recent RESPA reform.
- **MDIA Applicability to RESPA Disclosures**
  - Cannot close loan until expiration of 7 business days from date LE is provided.
- **Closing Disclosure (CD)**

# TILA/RESPA Integrated Disclosure (TRID)

---

## ■ Questions from the Audience

- How are lenders approaching the .125% tolerance relating to the APR included on the CD?
- What approach should be taken for loan files that are out of compliance? Can we deny or withdraw the application?
- When a CD is sent and there is a change, how should redisclosure occur?

# TILA/RESPA Integrated Disclosure (TRID)

---

- **Questions from the Audience**
  - Will the CFPB extend the August 1, 2015 deadline?
  - Will the CFPB extend lenience with respect to the August 1, 2015 deadline?
  - What are the consequences for making mistakes on loan files due to TRID violations on and after August 1, 2015?

# Miscellaneous Topics

---

## ■ Questions from the Audience

- What are your thoughts on the permissibility of MSAs?
- What areas are attracting the highest volume of attention from the CFPB?
  - Does this correlate to enforcement activity?
- Will the CFPB ever be more transparent?
- How can technology be channeled to make compliance efforts more effective?

---

**Haydn Richards**  
**Bradley Arant Boult Cummings LLP**  
**1615 L Street, N.W., Suite 1350**  
**Washington, DC 20036**

**[hrichards@babco.com](mailto:hrichards@babco.com)**

**(202) 719-8217**