

## **Monday, July 22**

### **General Session 1**

Monday, July 22

9:00 - 10:30 a.m.

Broadmoor Hall B

### **The CFPB: Where Are We Today**

*The session will provide an overview of the current body of work of the CFPB and how it affects Mortgage Servicers and Attorney firms. Our interactive session will include but not limited to:*

- a. CFPB Audits: Hear from Servicers and Attorneys as to how they are handling and preparing for the audits*
- b. A discussion of the CFPB Complaint data base. What type of Complaints are being file, how are servicers responding to the complaints and what proactive steps are being taken to reduce the number of the Complaints being submitted*
- c. The CFPB Amicus Brief Program: A discussion of Hot Issues for the CFPB*
- d. An update on the CFPB's Mortgage Servicing Rules. What to expect and do before the January 2014 implementation.*
- e. What is next for the CFPB and its effect on the industry*

**Moderator:** Al Hochheiser, Esq., Managing Shareholder Bankruptcy, Weltman, Weinberg & Reis, Co., LPA

**Speakers:** Lisa Lee, Shareholder, KML; Rick Sharga, Executive Vice President, Auction.com; Jeanne Fairweather, Bankruptcy Manager, NYCB Mortgage Company, LLC; David E. Kokoszka, Analyst, M&T Bank

**Alan C. Hochheiser, Esq.**

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Alan Hochheiser is the Managing Partner of the Bankruptcy Unit of WWR and practices in both the

Consumer and Commercial Bankruptcy Groups. He is also involved in the firm's Real Estate Default Group. Based in the Brooklyn Heights office, Alan's responsibilities include managing the attorneys and employees in his unit, creating new bankruptcy programs for clients and marketing. Alan received a B.A. cum laude from the State University of New York at Albany in 1985 and a J.D. from the Case Western Reserve University School of Law in 1988. A member of the Ohio State and Cleveland Metropolitan Bar Associations, Alan is licensed in Ohio and is admitted to practice before the U.S. District Court (Northern District of Ohio, Western District of Pennsylvania) and the Sixth Circuit Court of Appeals. Alan is currently a member of the American Bankruptcy Institute (Consumer Committee member), Commercial Law League of America, National Association of Chapter 13 Trustees (Creditors Auxiliary member), National Association of Bankruptcy Trustees (Associate Member), Fannie Mae Retained Attorney Network, Northern Ohio Credit Association and Phi Delta Phi. He is a frequent lecturer and has been published in CUES Credit Union Management. His community involvement includes volunteering with the ARMDI (Vice President), Fairmount Temple (Board Member and past Brotherhood President) and the Montifiore-Fairmount Temple Mitzvah Corp.

**Licenses:**

Ohio (1989)

U.S. District Court (Northern District of Ohio) (1989)

U.S. District Court (Western District of Pennsylvania)  
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Sixth Circuit Court of Appeals (1989)

**Education:**B.A. cum laude, State University of New York at Albany  
(1985)J.D., Case Western Reserve University School of Law  
(1988)**Vertical:**

Bankruptcy

**Practice Groups:**

Consumer Bankruptcy Group

Commercial Bankruptcy Group

Integrated Real Estate Default Group

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**Bar Associations:**

Ohio State Bar Association

Cleveland Metropolitan Bar Association

**Affiliations/Memberships:**American Bankruptcy Institute (Consumer Committee  
Member)

Commercial Law League of America

Fannie Mae Retained Attorney Network

National Association of Bankruptcy Trustees (Associate  
Member)National Association of Chapter 13 Trustees (Creditors  
Auxiliary Member)

Northern Ohio Credit Association

Phi Delta Phi

**Certifications & Appointments:**

Martindale-Hubbell AV Peer Review Rated Attorney

**Publications:**

CUES Credit Union Management

**Community Involvement:**

ARMDI-Cleveland (Vice President)

Montifiore-Fairmount Temple Mitzvah Corp (Volunteer)

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Lisa A. Lee is a shareholder with KML Law Group, P.C., and has been practicing in the creditor's rights field representing mortgage lenders for 16 years. Ms. Lee was born and raised in the Philadelphia area, and has lived most of her life there. She graduated from Villanova University (BA, Political Science, 1991) and Villanova University School of Law (JD, 1996) where she was a Research Assistant to Professor Arnold B. Cohen.

Prior to attending law school, Ms. Lee was employed by Dominion Bancshares Mortgage Corp. (which merged into First Union Mortgage Corp. during her employment) first as a Foreclosure and Bankruptcy Processor, then, after a promotion, as Foreclosure Workflow Coordinator.

Ms. Lee is licensed in Pennsylvania and New Jersey, and is a member of the Eastern and Middle Federal Districts of Pennsylvania. She has written articles that have been published in the NACTT newsletter, and in several industry newsletters and publications. She has also spoken on various mortgage foreclosure topics on panels at industry conferences, on webinars and on panels at continuing legal education courses sponsored by the Pennsylvania Sheriff's Association and Allegheny County Bar Association, and is a member of the ALFN's Legal Services Federal Legislative Issues Sub-Committee.

**Rick Sharga**

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Rick is an Executive Vice President at Auction.com. Rick is one of the nation's most frequently-quoted sources on foreclosure, mortgage and real estate trends, and has appeared on NBC Nightly News, CNN, CBS, NBC, ABC, CNBC, FOX and NPR. Rick is a member of the Board of Directors of REOMAC and the President of the Technology Council of Southern California.

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Jeanne is the Residential Loan Administration Compliance Implementation Manager and Bankruptcy Manager at NYCB Mortgage Company, LLC, a wholly owned subsidiary of New York Community Bank, located in Cleveland, Ohio. Throughout Jeanne's 35+ years in the default risk management field she held management positions in all specialties of the debt resolution arena from front-end collections through REO and Recovery, as well as support servicing. She also has extensive management experience in loan repurchases and remediation. Her primary concentrations have been in contract enforcement, document interpretation, and staff and process management.

**David E. Kokoszka**

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David has 10 years of compliance experience with approximately 5 years in default compliance experience.

# CFPB Rules: Regulations Important to Your Business

*Presented by the ALFN Federal Consumer Lending Statutes and Legislative Issues & Solutions Committees. Today's discussion will include briefings on the following:*

- An overview of the CFPB's Annual Report
- Mortgage Servicing Rules Update
- Escrow Requirements
- CFPB Complaint Database
- CFPB Examinations
- Future of the CFPB and the Mortgage Industry

# CFPB'S Rulemaking Procedure

➤ **Legal Authority:**

- Section 1022(b) of the Dodd-Frank Act

➤ **Summary (Effective December 28, 2012):**

- 12 CFR Part 1074, 77 FR 76353
- The Consumer Financial Protection Bureau published a “PROCEDURE RELATED TO RULEMAKING” in the Federal Register concerning when the Agency will consider its rules to be issued.
- Although most federal agencies consider publication in the Federal Register as public notice for rulemaking, the CFPB considers posting on its website ([www.consumerfinance.gov](http://www.consumerfinance.gov)) as constituting "issuance" for its rules.
- The Bureau's rules are deemed issued upon the earlier of:  
(1) When the final rule is posted on the Bureau's website, *or*  
(2) When the final rule is published in the Federal Register
- *Explanation:* A “commitment to using modern technology” and that delaying issuance until the rule is published in the Federal Register is not in the public interest.



# Mortgage Servicing Rules

On January 17, 2013 the CFPB announced their mortgage servicing rules. The rules will go into effect in January 2014. The goal of the CFPB is to provide additional protection to Consumers. Please note that these rules do not apply to servicers that service fewer than 5,000 mortgages and service only mortgage loans that they own.



# Mortgage Servicing Rules

The major areas that are covered through these new rules pertain to periodic billing statements, forced place insurance, prompt payment crediting and the providing of payoff statements, general servicing policies procedures and requirements as well as early intervention with delinquent borrowers. The rules also provide enhanced loss mitigation procedures. Lastly the rules provide for specific rules for payment change notices on ARM accounts. The entire rule can be found at the Consumer Financial Protection Bureau website at [www.consumerfinance.gov](http://www.consumerfinance.gov).

# Mortgage Servicing Rules

## Interest Rate Adjustments

Creditors, Assignees, and Services will now be required to provide a Consumer who has an adjustable rate mortgage with a notice between 210 and 240 days prior to the first payment due after the first rate adjustment. The documentation must contain estimates of the new rate and the new payment. You must also provide a notice between 60 and 120 days before a payment at a new level is due when a rate adjustment causes a payment change. One requirement that will not need to be noticed is changes caused by a change in the interest rate but not the payment.



# Mortgage Servicing Rules

## **Forced place insurance**

Servicers will now be required to send the borrower at least 45 days before charging a borrower for forced place insurance coverage and a second reminder must be sent no earlier than 30 days after the first notice and at least 15 days before charging the borrower for forced placed insurance. Please note, that the rule also provides where the borrower has an escrow account for the payment of Hazard Insurance Premiums the servicer is prohibited from obtaining forced place insurance where the servicer can continue the borrowers home owner insurance even if the servicer needs to advance funds to the borrowers escrow account to do so.

# Mortgage Servicing Rules

## Loss Mitigation Procedures

Under the provision for Loss Mitigation, the servicer is required to acknowledge in writing the receipt of an application from a borrower within five days whether or not the application is complete. If the application is lacking information the servicer must provide the Debtor with a description of the information necessary to complete the application. In situations where a loss mitigation application is received more than 37 days prior to a foreclosure sale, the servicer is required to evaluate the loss mitigation application within 30 days. The servicer must provide the borrower with a written decision as to the loss mitigation request. If the request for a loan modification or other loss mitigation options is denied, the servicer must provide the borrower, in writing, an explanation of the reasons for denying any loan modification or other loss mitigation options. The borrower then may appeal a denial of the loan modification program so long as that application was received 90 days prior to a scheduled foreclosure sale.

# Update to Loss Mitigation Rules

- On June 17, 2013, the CFPB published proposed amendments to several final rules, including the Loss Mitigation Rules under Regulation X's mortgage servicing provisions. The period during which to comment regarding the proposed amendments ends July 22, 2013

-The proposed amendments to the Rules and comments, if adopted, will serve to change and/or clarify:

- the content and timing of notices sent to borrowers in connection with loss mitigation applications, offers of loss mitigation options, and appeals

- the procedures and timelines servicers must adhere to when loss mitigation applications are submitted during the foreclosure process but prior to foreclosure sale

- The servicer's options in offering short term forbearance relief (2 months) to borrower based on an incomplete loss mitigation application

# Update to Loss Mitigation Rules Cont'd

-The proposed amendments to the Rules and comments, if adopted, will also serve to change and/or clarify:

- The content of the servicer's notice regarding the denial of a trial or permanent modification

- What servicer actions are prohibited during the pre-foreclosure review period (the first 120 days of the borrower's delinquency or the period during which a complete loss mitigation application is being evaluated, whichever is longer)

- That the pre-foreclosure review period prohibitions are not applicable when the default is non-monetary (such as a violation of the due on sale clause), or when the servicer is joining the foreclosure action of a subordinate lienholder

- That the notice of the determination of an appeal must include the exact time frame during which the borrower must accept or reject an included offer of loss mitigation

# CFPB Escrow Changes: #1

- Issued 1/10/2013, Effective 6/1/2013
- Amends Regulation Z of Truth in Lending Act
- Extends lenders' requirement to maintain escrow accounts from 1 to 5 years after origination, for high priced 1<sup>st</sup> lien mortgages

# CFPB Escrow Changes #2

- Exemption for small creditors in rural or underserved areas
  - > 50% 1<sup>st</sup> lien loans in these areas
  - Asset size <\$5 billion
  - Originated < 500 1<sup>st</sup> lien mortgages in past year
  - Does not normally maintain escrow accounts
  - EXCEPT: if anticipated loan sold to nonexempt lenders



# CFPB Escrow Changes #2-continued

- CFPB issued amendment 4/13/2013
- Defined rural and underserved counties
- USDA- rural counties
- Home Mortgage Disclosure Act (HMDA)- no > 2 creditors > 5 loans

# CFPB Escrow Changes #3

- Expanded existing exemption for condos and other properties with master insurance in place
- PUDs may qualify
- Property taxes must still be escrowed

# CFPB Escrow Changes

- Escrow account cannot be cancelled until debt is terminated or borrower requests after 5 years
- Does not apply to HELOCs, construction/bridge loans or reverse mortgages

# Consumer Complaint Database

- <http://www.consumerfinance.gov/complaintdatabase/>
- As of 7/8/13, the database contained 123,036 complaints
- Of those, 65,365 were related to mortgages (53%)
- The database includes the type of mortgage product, the issue raised in the complaint, the zip code of the complainant, the method by which the complaint was submitted, the date of submission, the identity of the company against whom the complaint was lodged, whether there was a timely response, whether there was relief afforded to the consumer with the response, and whether the consumer further disputed the issue
- Some examples of issues: “loan modification, collection, foreclosure” and “loan servicing, payments, escrow account”
- The database is searchable, can be sorted by any data point, and is updated every night

# CFPB Examinations

- <http://www.consumerfinance.gov/guidance/supervision/manual/>
- The CFPB Supervision and Examination Manual was updated in October, 2012 and includes descriptions of areas that are examined and the procedures for those examinations
- This manual is an internal guide for supervisory staff of the CFPB
- The examination procedures include lists of the information that the supervisory staff should gather from the examinee, and how to analyze that information
- June 25, 2013 Bulletin 2013-06 regarding Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation and Cooperation
- Earlier this month, the CFPB also published the 2013 CFPB Dodd-Frank Mortgage Rules Readiness Guide which is available only online and will be updated periodically by the CFPB

# Future of the CFPB and the Mortgage Industry

- The CFPB and the Fair Debt Collections Practice Act
- Creditors collecting their own debt will be subject to similar provisions
- CFPB will enforce penalties for violations
- The effect of Credit Reporting on the Mortgage Industry.



# Conclusion

If you have any further questions that were not addressed in this presentation, or want to contact one of our speakers, please email Matt Bartel, COO of ALFN, at [mbartel@alfn.org](mailto:mbartel@alfn.org). Thank you for your attention.

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