January 2018

State of the INDUSTRY

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OCTOBER RESEARCH LLC

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EDITOR'S NOTE

What awaits your business in 2018?

Dear Readers,

With new leadership and a new tone expected to dominate the industry, 2017 was set up to be a year of profound change for industry participants. Yet for most of the calendar year, business continued as it had the year before.

Homes were sold, transactions were conducted, rules were complied with and consumers were left happy. There were a few less refinances, a few more originations, and far less disruption that many feared.

Then came November. And Thanksgiving. And a struggle for leadership at the Consumer Financial Protection Bureau, putting the final five weeks of 2017 through more twists and turns than many experienced in the first 47.

Change is coming, and has come. New leadership has been or soon will be installed at federal financial regulators, with new interests and desires for oversight of your businesses. The theme of the year appears to be easing regulatory burdens – a long overdue effort, many in our industries would agree. How that happens, however, may be slightly different for each of you.

The 2018 State of the Industry report from October Research, LLC, provides an opportunity for you to hear from top experts in your field about the year ahead – the challenges that may arise, the trending topics that will affect your business and your bottom line, and insight on how to make the best out of the new year.

We thank you for your interest and hope that you have the opportunity to share the best market intelligence in the industry with your peers.

Sincerely,

Chris Freeman
Editorial Director

October Research

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Forecasts see slow growth, potential for more

By Chris Freeman — *Editorial Director*

Housing affordability and inventory have been two major concerns in 2017, and those are expected to weigh on the market in 2018, according to projections from the Mortgage Bankers Association (MBA), the National Association of Realtors (NAR) and Fannie Mae.

MBA expects to see $1.2 trillion in purchase mortgage originations during 2018, a 7.3 percent increase from 2017, helping the overall market dip just slightly from $1.69 trillion in 2017 to $1.6 trillion forecast in 2018.

MBA forecasts a significant drop again in 2018 in refinances with expected increases in interest rates. MBA's forecast calls for a 28.3 percent drop in refinance originations in 2018 to $430 billion.

NAR estimates that existing-home sales will finish 2017 at a pace of 5.47 million – the best since 2006 (6.47 million), but only a modest improvement (0.4 percent) from 2016 (5.45 million). In 2018, sales are forecast to expand 3.7 percent to 5.67 million, while the national median existing-home price is expected to rise to around 5.5 percent this year and next year.

Single-family housing starts are forecast by NAR to jump 9.4 percent to 950,000 next year, but that level is still below the 50-year average of around 1.2 million starts. New single-family home sales are likely to total 606,000 this year and rise to around 690,000 in 2018.

Affordability and inventory are behind the numbers, the associations said.

"The housing market has been hamstrung by insufficient supply, with inventories of homes remarkably low given the home price growth we have experienced," MBA Chief Economist **Michael Fratantoni** said. "The job market remains strong, demographic trends are quite favorable, mortgage credit is becoming more available to qualified borrowers, and home prices should continue to rise. All the pieces are in place for stronger growth in 2018 and beyond."

NAR Chief Economist **Lawrence Yun** pointed to home prices as the key to next year's market.

"Despite considerable demand all year, pending sales have lost a step in recent months because low supply is pushing prices higher and making homebuying less affordable in several parts of the country," he said.

Meanwhile, Fannie Mae's forecast on the origination side is slightly stronger than MBA's. Fannie forecasts a $1.71 trillion market in 2018, with $1.17 trillion in purchase originations and $536 billion in refinances.

Fannie expects total home sales to rise 1.7 percent in 2018 to 6.2 million, with existing home sales up 1.2 percent to 5.55 million – slightly below NAR's expectations. The median home price is expected to climb 5.3 percent in 2018 after an expected 6 percent jump in 2017.

"Recent data showed a stronger pickup in domestic demand than anticipated, leading us to increase our growth forecast for the final quarter of this year and coming quarters," Fannie Mae Chief Economist **Doug Duncan** said. "We also revised higher our 2018 growth forecast to 2.0 percent. Tax cuts, if enacted, present upside risk to our growth forecast for next year but could also lead to more aggressive Fed action. Housing still remains a drag on the economy, as shortages of labor and available lots, coupled with rising building material prices, further complicate existing inventory, affordability, and sales challenges."

According to Yun, the biggest impediment to sales right now and into next year is the massive shortage of supply in relation to overall demand. The lagging pace of new home construction in recent years is further creating a logjam in housing turnover. Without enough new homes on the market, homeowners are staying put for a longer period of time before selling, typically 10 years, which is keeping inventory low and hurting affordability.

"The lack of inventory has pushed up home prices by 48 percent from the low point in 2011, while wage growth over the same period has been only 15 percent," Yun said. "Despite improving confidence this year from renters that now is a good time to buy a home, the inability for them to do so is causing them to miss out on the significant wealth gains that homeowners have benefitted from through rising home values."

National Association of Home Builders Chief Economist **Robert Dietz** said there were a variety of reasons for lags in homebuilding, including an aging workforce that is causing a shortage of construction workers, low lot availability, steadily rising costs of building materials and land, and the difficulties builders are having in obtaining construction loans.

"It's more expensive to build homes and it's having an effect on supply," he said. "Over the last five years, the total effect of building codes, land use, environmental laws and other rules have caused regulatory costs to rise 29 percent."

There are signs that might be turning around, Dietz said, citing growing builder confidence in the year since **Donald Trump** won the presidential election, and the pace of single-family housing starts inching toward normal levels.

"There's also been the start of a shift to building smaller homes and townhomes," he said. "I'm bullish on townhouses over the next few years. They are the perfect bridge from renting to homeownership for first-time buyers."

Part of the optimism for the market moving forward is the expected increase in first-time homebuyers when housing prices slow their increase and affordability comes in line.

Jessica Lautz, managing director of survey research and communications at NAR, said supply constraints at the lower end of the market are a big part of the reason why first-time buyers made up only 34 percent of sales over the past year

LOOKING AHEAD AT HOUSING

2018 FORECAST

SINGLE-FAMILY HOUSING STARTS

Fannie Mae: 905,000, up 8.1%
NAHB: 911,000, up 7.9%
NAR: 950,000, up 9.4%

TOTAL HOME SALES

Fannie Mae: 6.201 million, up 5.3%
NAHB: 5.501 million, flat

EXISTING HOME SALES

NAR: 5.67 million, up 3.7%
Fannie Mae: 5.55 million, up 1.2%
NAHB: 4.845 million, down 0.7%

MEDIAN EXISTING HOME PRICES

Fannie Mae: $259,000, up 5.3%

TOTAL ORIGINATIONS

MBA: $1.6 trillion, down 5.3%
Fannie Mae: $1.71 trillion, down 5.3%

PURCHASE ORIGINATIONS

MBA: $1.2 trillion, up 7.3%
Fannie Mae: $1.173 trillion, up 3.5%

SOURCES: **Fannie Mae, Mortgage Bankers Association, National Association of Home Builders, National Association of Realtors** and have lagged the historical average of 39 percent for several years.

With low inventory pushing prices upward, successful buyers have needed higher household incomes and in the past year made smaller downpayments. Additionally, the time a home was on the market before fell to a new survey low this year of three weeks.

"The month's supply of homes continues to be way under a balanced market of six months, home prices have risen year-over-year for 67 straight months and multiple offers on listings for sale are a common occurrence," Lautz said.

"Without enough listings on the market, affordability is decreasing and buyers are increasingly saying finding the right home is their top struggle."

As affordability and inventory come back to normalized levels, broader economic measures appear to support strong housing markets in the future.

Fratantoni said the MBA projection for economic growth is relatively stable, at 2 percent in 2018, 1.9 percent in 2019 and 1.8 percent in 2018.

"We still expect long run growth potential in the U.S. to be somewhat lower, as productivity gains have been persistently slow," he said.

Yun expects GDP growth to come in around 2.2 percent for the year and to expand to 2.7 percent overall in 2018, as long as job growth remains solid and residential construction picks up. Fannie looks for 2.4 percent GDP growth in 2017 and 2 percent growth in 2018.

All systems are go for 2018, experts say

By Mark Lowery — Editor, *The Title Report*

As the industry awaits the final numbers from 2017, the question many are asking isn't whether last year was a successful one — by almost every measure it was. Rather, the question some are asking is whether 2017 was as successful as 2016, when the $14.3 billion in title insurance premiums generated was the highest volume since 2006.

The industry transitioned from refinances to purchases during 2017 because of rising interest rates. Although that transition decreased transaction volume, low home inventories throughout the country helped drive home prices to new peaks as millennials joined the market in droves and increased demand for homes.

Many industry experts believe those market trends will continue for now — and that 2018 is also likely to see more adoption of technology and more cybersecurity issues.

"Twenty-seventeen was really hallmarked by a transition away from refinances more toward purchase market. But also, within that purchase market, there's some very strong dynamics that are pushing up prices," First American Senior Vice President and Chief Economist **Mark Fleming** told *The Title Report*. "While maybe there are fewer widgets being done, the value of the widgets is higher. That, we expect, will largely continue in 2018."

Favorable market conditions continue

Fleming said the industry can expect to see an increasing percentage of purchases and a continuing decrease in refinances.

He said home prices also are likely to continue appreciating.

"Most everyone agrees that interest rates will go up in the next year — or at least they won't go down. That shift will further drive [the market] to purchase. But the purchase market is really being helped by a strong, demographically driven demand — millennials aging into homeownership. Yes, they do it later than other generations, but they're doing it. So there's a long tail wind of positive demographic demand set against significant supply restrictions," fleming said.

Those conditions bode well for title insurers, title agents and others involved in the real estate process.

"Coming off two years of strong growth, we anticipate a stable market for title premiums in 2018. Several factors that could affect the rate of growth next year include low inventory of homes for sale, continued credit tightening and the impact of potential changes to the federal tax system," **Don Casey**, president and CEO of Realogy's Title Resource Group, told *The Title Report*.

"Refinance activity is forecasted to decline further in 2018, but we believe household formation and low inventory levels will continue to drive the demand for housing, and home prices will continue to appreciate in most markets, which, in turn, should keep title premiums growing in a positive direction," Casey said.

At AmTrust Title Insurance Co., executives also are expecting growth during 2018.

"Obviously interest rates affect the industry as anything that would slow down purchasing and/or financing of real estate will have an effect on volume. This year's figures are directly related to robust sales, in a seller's market (low inventory)," AmTrust Senior Executive Vice President **Steven Napolitano** said.

"This indicates that the low interest rates are driving people to buy — and the prices are high because there is low inventory. Low interest rates also drive activity in the commercial market – which is where the highest premiums are charged."

"As for AmTrust, I'm sure that every player in the title industry is concerned about interest rates, increasing regulatory/compliance requirements, and the overall market, as we are a heavily regulated industry that is driven by market conditions," Napolitano added. "Having said that, we have reputation and experience behind us – which will drive our continued growth."

Will rising home prices end the party?

Through September, nationwide home prices had peaked for 65 consecutive months, according to Black Knight's Home Price Index (HPI). That included new home price peaks in Boston ($464K); Charlotte, N.C. ($229K); Columbus, Ohio ($201K); Dallas ($262K); Los Angeles ($656K); Nashville ($265K); New York ($473K); San Diego ($584K); San Francisco ($851K); San Jose, Calif. ($1,031K), and Seattle ($472K). Black Knight said the national-level HPI in September reached $282,000.

Sticker shock aside, First American's Fleming said the industry should not be concerned about the price of homes, at least not yet. "The actual level of home prices isn't really important. It's the level of prices relative to what you can afford to borrow given your income," Fleming said. "If we see all of these people buying homes, then clearly it's affordable."

Fleming said purchasing power has increased more than two and a half times since 2000. "In real purchasing power, housing prices are less expensive in most parts of the country than they were in 2000," he said. "And far, far away from the house price peak."

"Coming off two years of strong growth, we anticipate a stable market for title premiums in 2018."

Don Casey
President and CEO
Title Resource Group

And housing demand is not likely to decrease because of the increasing number of millennials entering the market. According to a study by the National Association of Realtors (NAR), millennials represent the largest share of homebuyers and are more likely to view purchasing a home as a good investment than other generations.

Protecting a 'target-rich' environment

Even as market conditions point to continued momentum, the title industry does face threats. None is more serious than cybersecurity breaches. According to the Miami Herald, nearly $1 billion in real estate purchase funds was diverted or attempted to be diverted during fiscal year 2017. That figure was $19 million in fiscal year 2016.

"You have a target-rich environment, and that target-rich environment is comprised of small, medium and large businesses that many times have not fortified their organizations and, oh by the way, happen to have a boatload of money that's being transferred through their accounts. Combine those things and you have a perfect storm," Aprio Partner-in-Charge, Advisory Services **Lee Fields** told *The Title Report*.

Fields said 2018 is likely to see title-industry participants increase focus on training and certifications to thwart breaches and to demonstrate to business partners they are serious about protecting sensitive information. "If you really look and see what's going on out in the marketplace right now, everybody's aware of [data breaches], but there are very few folks that are talking about practical approaches, taking a holistic view of risk management within their own four walls and then outside of the four walls of their organization,"Fields said.

American Land Title Association President **Steven G. Day** told *The Title Report* that one of the association's priorities for 2018 is increasing education efforts to combat cyberfraud. He said cyberfraud "has the potential to be the greatest risk to our industry that we've ever seen."

Others also are taking notice. Last year, New York became the first state to require banks, insurance companies, and other financial services regulated by that state to have a cybersecurity program designed to protect consumers' private data; a written policy or policies that are approved by the board or a senior officer; a chief information security officer to help protect data and systems. Covered entities also are required to report cybersecurity events to the state through its online portal."The title industry typically adopts when there is a compliance issue that has to be satisfied. Short of compliance, you'll certainly have some folks who take the bull by the horns and want to be ahead of the curve, and then you'll have a lot of folks that really don't want to do anything until they have to do it," Fields said. "I don't think cybersecurity is going to be any different."

Some in the industry, especially larger operations, have made cybersecurity a priority. Fields cited CEO **Aaron Davis** of Florida Title Agency Network and Partner **Jaime Kosofsky** of the law firm Brady & Kosofsky as examples of executives who are ahead of the curve regarding cybersecurity.

But Fields said cybersecurity is a cost issue for some mom-and-pop operations. "[They] realize that one torpedo can sink their ship, but they're betting on that fact that that torpedo is not going to be targeting their ship," Fields said. "It's a business decision. Every business owner must determine how important they look at digital risk management for their organization."

Fields compares the situation with what automakers went through with mandated safety features such as airbags and anti-lock brakes. Adopting those safety features also increased the price of cars. "Every time you do that, you've got to pass that cost along, somehow," he said. "The title agents really can't raise their prices. But they are incurring more costs because they are easy targets."

He said hoping that your company isn't targeted isn't a good strategy. "I tell companies to understand what your risks are," Fields said. "Get risk assessments of your policies, processes and people. But step one is to at least understand what your risks are."

More embracing technology adoption

Traditionally, the title industry has not been known for adopting technology advances. However, that is changing. Consolidation throughout the industry has seen an increase in the pace of technology adoption, ranging from integrations, the electronic sharing of information and eClosings. Additionally, regulatory compliance demands have forced many to automate processes.

Technology adoption also is being driven by millennials. Although studies show they crave personal interaction as other generations have, they also demand the flexibility of conducting business faster and online. Meanwhile, lenders such as Quicken Loans are racing toward a process that can be completed totally online.

Many in the industry are starting to view technology and automation not so much as a threat to jobs, but as a way to free up employees to concentrate on tasks that require a human touch.

"The rate of technological adoption is accelerating very quickly in the title industry. As title companies transition to software that increases efficiency, bottlenecks are increasingly developing on the lender and appraiser side of the transaction which may limit the benefits of the title company's increased efficiency if their advancements aren't matched," Qualia CEO **Nate Baker** told *The Title Report*.

"It's an exciting time for the real estate industry in general from a technology perspective. Previously intractable problems are budging because they are being worked on from dozens of angles. Technology is playing a bigger role, especially as companies focus more on improving the consumer experience," Baker said. "Blend, Ellie Mae and Qualia are great examples of brands that have really zeroed in on improving the consumer experience through technology this year."

Baker said the increasing adoption of technology inevitably will cause problems for some in the industry. He said one area of concern is the consolidation of lead sources. "As the strength of these players increase, a large percentage of the profits in the real estate industry will continue to move into the lead gen platforms," he said. "That could have a chilling effect on lenders, Realtors, title companies, and other service providers that rely on lead generation platforms for business."

Watching for state, federal actions impacting title industry

By Andrea Golby — Editor, *The Legal Description*

Although 2017 began fairly quietly, it is certainly ending with a bang. From the New York Department of Financial Services' new title insurance regulations to continued wire fraud threats to the consent order against Meridian Title to the uncertainty that erupted after Consumer Financial Protection Bureau (CFPB) Director **Richard Cordray** announced his resignation, the last few months of the year left the industry with questions to be answered in 2018.

Watching CFPB's leadership

A tug of war began for control of the CFPB as Cordray left office Nov. 24, with both acting director **Mick Mulvaney** and Deputy Director **Leandra English** each believing they were Cordray's rightful successor. Although the question of who is acting director has been answered for the moment, English's lawsuit against Mulvaney and President **Donald Trump** is ongoing.

There is a lot of speculation about how long Mulvaney will be in office before Trump appoints a permanent head of the bureau. There is also speculation that there could be a renewed desire to establish a commission to run the CFPB, rather than a single director.

"With Cordray stepping down, and also with Rep. **Jeb Hensarling** stating that he is not going to run for re-election, I think what you are going to have is a last push to have some major changes to the CFPB," said **David Townsend**, president and CEO, Agents National Title Insurance Co. "You don't have the impediment of Cordray as director anymore, and you don't have the chairman of the House Financial Services Committee not running for re-election. I think it's ripe for pushing some legislation through with a little sense of urgency."

We do know that, for now, Mulvaney issued a 30-day freeze on all hiring and a 30-day halt to all rules, regulation and guidance. There also would be a 30-day freeze to any distributions from the approximately $50 million in the Civil Penalty Fund. That doesn't mean that the bureau will not continue its efforts.

"I guess we have some clarity now that Mulvaney is going to be acting director," said **Charles Cain**, EVP-Agency Development, WFG National Title. "I think that the work of the bureau and the enforcement actions will continue. That being said, he's also said he's going to put a freeze on civil money penalties until he can review those. There is a hiring freeze, and rulemaking is going to be held off. Whether he stays on the job is a source of speculation, whether he's going to be the permanent guy or he's just holding it until they can settle on somebody else."

"I think that Cordray's departure will probably mean that the bureau will have greater clarity in its mission under new leadership," said **Deborah Baily**, senior partner, Gilroy Bailey, Trumble LLC. "I think the issue of consumer protection is not out of style. It's very much in vogue and will be in 2018. They are doing good work and it's just going to be with a clearer vision for the future. I'm optimistic on that front."

Look for state action

Altough some action is anticipated to continue on the federal level, such as FinCEN's Geographic Targeting orders requiring U.S. title insurance companies to identify the natural persons behind shell companies used to pay for high-end residential real estate in seven metropolitan areas, and industry members are hopeful that Congress will pass the TRID Improvement Act of 2017, H.R. 3978, introduced by Rep. **French Hill** (R-Ark.), which amends RESPA to require the Consumer Financial Protection Bureau (CFPB) to allow the calculation of the discounted rate title insurance companies may provide to consumers when they purchase a lenders and owners title insurance policy simultaneously, many industry members are looking at state regulators and legislators to see what actions they will take that impact our industry.

"I think what you'll see is some of the states might step up with increased regulations of their own," said **Nancy Silberberg**, president, Altus Escrow Inc. and the Escrow Institute of California. "I think that is one of the effects that could happen with [Cordray] stepping down early. I think it is going to be interesting to watch the states to see what they do based upon the actions or inaction at the CFPB."

The CFPB's consent order against Meridian Title and New York's new regulations regarding affiliated businesses and title insurance rates in particular could give states some pause.

"I think that in '18 we will see state regulators become more engaged," Cain said. "This is a year-over-year issue, but [they will be] more engaged with our industry and more questioning of our industry about what we charge and how we charge it. I think that the Meridian settlement is going to create some questions in the minds of regulators about exactly how the title industry works. And I believe we will see increased enforcement and inquiries from state regulators about title insurance in 2018."

"My prediction for 2018 is that you have a closer examination of the split issue between agent/underwriter, and how underwriters recapture losses when there is a loss claim," Bailey said. "I think that that whole relationship will beef up. I'm going to look to New York as the model for what may be coming our way. So if I were a big underwriter, in 2018 I would continue looking at how am I marketing, and I think for agents, how am I disclosing that relationship. I don't think that is going to change."

Cain said that activity will be predominantly in areas where lay agents make up most of the industry.

"I think certainly the mid-Atlantic states — we've already seen New York, Pennsylvania, Maryland, become more activist. New Jersey has another bill pending to try to kill off affiliated business arrangements," he said. "I think we'll see the Great Lake states become more activist in this regard, only because some of them have not been terribly activist and because they do administer pretty large marketplaces."

"I think the attorneys general, with their own potential regulatory enforcement, are always looming out there," said **Monica Gilroy**, managing partner, Gilroy Bailey Trumble LLC.

Townsend said the action is going to be very localized.

"It's going to be very localized based on the needs of the state and its own environment," he said. "As far as the enforcement environment in each state, I think it's going to be dependent on how activist the department of insurance wants to get. I think it's going to be state-by-state as far as what is the culture like in the state? Are people getting along? Are there consumer complaints?"

He also said he believes there are going to be a lot of state regulations affecting federal programs and "filling in gaps where some federal programs are affecting the states." He gave the example of the PACE program, and the fact that California just adopted legislation providing more consumer protections for Californians who get PACE loans.

"I think that the Meridian settlement is going to create some questions in the minds of regulators about exactly how the title industry works. And I believe we will see increased enforcement and inquiries from state regulators about title insurance in 2018."

Charles Cain
EVP-Agency Development
WFG National Title

Remote notarization bills moving forward

Last year numerous states began looking into eNotarizations and, specifically, remote eNotarizations. With the growing desire from the mortgage industry and consumers for eClosings to be more prevalent, it is expected that more states will introduce and pass legislation allowing for this.

"2017 was a very active year for online notary legislation," said **Cynthia Blair**, of Blair Cato Pickren Casterline LLC. "Lots of states began to debate it, look into it. Texas and Nevada passed legislation and are now beginning the process of rulemaking for the implementation of the laws.

"We expect 2018 to continue to be a hot year for online notary," Blair continued. "In fact, we expect that the pace of the bills is going to increase in 2018."

Cain noted that many states are waiting to see what regulations Texas and Nevada come up with. Both of them are working on regulations to implement recently adopted legislation.

"We'll see more states create eNotarizaton where they don't currently have it. eNotarization will happen and I think we will see a push in a number of states for remote eNotarization, whether it is interstate or intrastate," he said. "The lending industry, which would like to see remote electronic notarization, is very hopeful that whatever rules they come up with in Texas will allow them to use Texas as a nexus site for remote electronic notarization elsewhere."

Altough the industry is happy to move, there are things that will need to be thought through and areas industry members hopes are covered in any upcoming legislation.

"The big question will be remote notarization. What are the processes? Will the secondary market buy these notes?" Cain said. "What are our concerns? The concern of everyone I've talked to, including our own senior underwriters, is the courts that sit in law and equity — the bankruptcy courts, the state family and probate courts. It's these courts which could decide that an eNotarization might be challengable from the standpoint of fraud or coercion. Will they be upheld in those types of courts? Recently I was talking to several underwriting attorneys from other underwriters about reverse mortgages. What happens if your reverse mortgage is enotarized and then grandma passes and her six kids are unhappy because they never knew about the reverse mortgage and it had been signed by eNotarization. There we may have a state probate court that overturns eNotarizations as ineffective.

"The conference was great. The quality of content was excellent. The expo area was very well attended. Plenty of (opportunities) to network. Very organized and the staff was very friendly and helpful. Well attended."

\- NS3 Attendee

"It is a great place to get lots of industry professionals in one place at a time where they are interested in hearing about new opportunities."

\- NS3 Attendee

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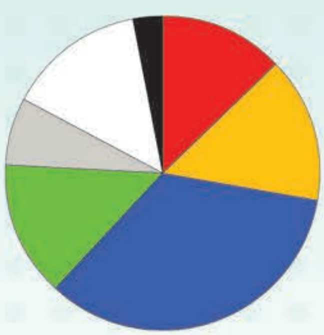
WHO ATTENDS NS3?

Titles of NS3 Attendees



- 13% CEO / CFO / COO / CCO / CIO
- 15% President / Owner
- 34% EVP / SVP / VP
- 14% Director
- 7% Attorney / Counsel
- 14% Manager
- 3% Other

Title Agents
Title Attorneys
Underwriters
Mortgage Lenders
National & Community Banks
Homebuilders
Realtors
Federal & State Regulators
Mortgage Loan Officers
Compliance Attorneys
Law Firms
Title & Mortgage Solution Providers
Notary Agents
Escrow Agents
Appraisers
Trade Associations
Risk Management Firms
Consultants
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"[eNotarization] is something that the industry has to work through and come to grips with in terms of what are the underwriting standards to be utilized," he continued. "I think we are going to come up with them because the lending industry wants this, consumers want this."

Blair said that the American Land Title Association and Mortgage Bankers Association are working together to create model legislation "to try to get as many states as possible to utilize what would be a uniform or model legislation."

"There are some laws that do not provide for things like two factor authentication or some other type of identity verification and adequate record retention," she said. "From our standpoint, we want to make sure that any document that is notarized online instead of face to face will have the same enforceability, receive the same certainty, provide the same effective, constructive notice, under any state law as to what would be a traditional, wet signed, notarized document. We want to make sure that the legislation provides for those same certainties and enforceabilities as the current traditional ways of notarizing documents."

Cybersecurity remains priority

Cybersecurity will continue to be a top priority, as the threat to the industry is anticipated to grow.

"We will continue to see threats to the industry as to wire fraud and cybersecurity breaches," Cain said. "That is not going to let up. I think it will become worse. I think we are going to see a lot more attempts and a lot more success because the criminals who do this are becoming more sophisticated. It's coming to the attention of organized criminal activity that there is a lot of money here. It's not a matter of stealing $10-, $15- or $20,000, but there are hundreds of thousands, perhaps millions of dollars."

With the growing threat, it is also anticipated that more regulation on the issue will be introduced. New York seemed to pave the way when its cybersecurity regulations went into effect March 1, 2017. The National Association of Insurance Commissioners (NAIC) also has taken up the issue, introducing model legislation for states to consider.

"From the regulatory perspective, what we'll see is a lot more movement on the issue of data security," Bailey said. "I know the NAIC on Oct. 24 passed model legislation. Prior to that passing, New York was the only state that had enacted legislation. So we'll probably see some movement among several of the states to enact something dealing with data security and that is going to affect us.

"And I think the big thing will be what NPI is? And how do you really secure it? And probably, when an event is considered a breach? Because right now what is NPI and a breach is so broad. I think that they will probably need to restrict the definition of a breach. If you look, for example, at the Uber issue, email addresses, phone numbers, does that rise to the level of a breach where social security numbers and that other truly sensitive type of information are compromised?

"I think fintech is going to push us more in the direction of Europe, cutting down on the wires and having alternative ways of funding," she continued. "I'm not sure we may not be able to regulate our way out of this issue. There is technology to help us, find a new ways of doing what we do. To me, that is pretty exciting. I'm not sure how quickly the technology will come online, but we are just going to have to find a new way to move money because if fraudsters can skim billions in many cases without setting foot in the U.S. under our current system, let us concede that is just not a good model for us. So just like we dropped the chip in the credit card to address fraud, we are going to have to have a new way of moving money from Point A to Point B."

Push for QM, other mortgage changes a top priority

By Chris Freeman — *Editorial Director*

If 2017 was set to be an uncertain year for RESPA compliance, 2018 might be even more in question.

As January 2017 dawned, the constitutional fate of the Consumer Financial Protection Bureau (CFPB) was in serious doubt following the three-judge appellate panel's decision in *PHH Corp. v. CFPB.* Director **Richard Cordray** was thought to be one of the first firings coming from President **Donald Trump**. And the immediate future of regulation and interpretation of RESPA would be unclear until a new director was named.

As 2018 dawns, *PHH* remains unresolved by the *en banc* appellate court. Cordray lasted until Thanksgiving weekend, and by naming **Leandra English** the agency's deputy director, the CFPB found itself with two people claiming to be acting director and a court case to resolve the issue that likely will extend deep into 2018.

The pace of enforcements could depend on who is in charge. Acting director **Mick Mulvaney**, appointed by Trump, said he was reviewing 125 open investigations, 28 cases in litigation and 14 open matters awaiting settlement or lawsuit. Published reports would indicate one of those open actions awaiting settlement or lawsuit is a co-marketing case against Zillow. Are there more potentially RESPA-related cases in that stage, and what appetite does the CFPB have in pursuing those cases before a full-time director is confirmed by the Senate?

RESPA News talked to three experts, RESPRO President and Executive Director **Ken Trepeta**, Weiner Brodsky Kider Managing Partner **Mitch Kider** and Franzen and Salzano, P.C. Founding Partner **Loretta Salzano**, to get an idea of the biggest issues awaiting the industry in 2018.

Kider and Salzano both agreed that the first priority for industry compliance will be the new Home Mortgage Disclosure Act (HMDA) rules set to take effect at the start of the year.

"First and most pressing, absent immediate intervention by acting director Mulvaney or Congress, the new HMDA rule will go into effect Jan. 1," Kider said. "The HMDA rule calls for immense changes to how lenders gather and report demographic information of loan applicants. Initially, lenders should be prepared for significant implementation costs related to updating legacy systems and business processes. Then, once this broad data set is reported to the public, on or before March 1, 2019, lenders should be prepared for newfound litigation risk, including fair lending actions."

The implications of data collection are a priority for Salzano.

"The increased HMDA reporting will make attention to fair lending more important than ever," she said. "Because of the value of protecting test results, that likely will mean more work for compliance attorneys. Of course, both compliance attorneys and officers work on appropriate policies, training, remediation, exam responses and understanding the data to tell the story, so there will be much to do."

"The increased HMDA reporting will make attention to fair lending more important than ever. Because of the value of protecting test results, that likely will mean more work for compliance attorneys."

Loretta Salzano
Founding Partner
Franzen and Salzano, P.C.

Trepeta said getting changes made to guidance and interpretation will be the main work for RESPRO in the coming year.

"RESPRO's priority will be getting fixes to the Qualified Mortgage rule, TRID, and to ensure that RESPA once again means what it says," he said, adding that other industry priorities might be the accurate disclosure of title insurance – which RESPRO supports – as well as HMDA and TRID changes.

Kider said that changes to qualified mortgages that Trepeta mentioned could come in a five-year review currently underway of the ability to repay rule.

"As part of its review, the CFPB will consider the utility of the GSE 'patch,' which deems mortgage loans that meet GSE eligibility requirements eligible for the Qualified Mortgage safe harbor," Kider said. "The GSE patch is set to expire in January 2021. However, as the CFPB solicits additional comments on this issue, compliance professionals and industry advocates should be proactive in suggesting viable approaches to any modifications to the ATR rule and the patch."

How quickly action and changes will take place, though, will depend on the speed in which the Trump administration is able to name a new permanent director to the CFPB, all three agree.

"It is important to have a permanent director to set a more balanced agenda for the CFPB," Trepeta said.

"My perception is that is the only way to real change and certainty for the industry," Salzano added.

The process of Senate confirmation of a new director is not expected to be quick. Kider said that could mean Mulvaney doing more in his time as acting director – but that still might not be met with cheers.

"Acting director Mick Mulvaney, whose tenure may linger on for months pending the confirmation of a permanent director, has already signaled a change in course," Kider said. "On his first day in office, acting director Mulvaney instituted a temporary hiring and rulemaking freeze, and initiated a review of all planned enforcement actions, which will undoubtedly impact the CFPB's rulemaking and enforcement functions. But until a permanent director is confirmed, the industry will be cautious, and rightfully so, to rely on any guidance from acting director Mulvaney, particularly while the legality of his appointment is still being challenged in the courts. If a director is not confirmed in 2018, a year in which control over the Senate may flip, the president may find his hands tied."

If a new director can be named, though, among the first things that compliance experts hope to see is a change in the way guidance and regulation is issued and enforced.

"If regulation by enforcement and regulation and enforcement decrease, we expect to see the industry grow with new marketing initiatives and products," Salzano said. "This, too, will require the support to compliance attorneys and officers to vet and establish appropriate guardrails for such new initiatives."

"At a minimum I would expect guidance for sure," Trepeta said. "QM, TRID, and HMDA are all ripe for commonsense reforms that benefit consumers and stakeholders alike."

In addition, Kider said new bureau leadership could investigate ways to reverse and alter previously promulgated rules.

"Acting director Mulvaney or any permanent director could also engage in affirmative rulemaking to rescind or dilute controversial rules already promulgated by the CFPB under Cordray's leadership," he said. "It is important to note that, absent legislative action, many other rules promulgated by the CFPB over the past six years are mandated by acts of Congress, and so will remain effective and presumably will be enforced."

Besides the bureau, two other areas could have an impact on RESPA and mortgage compliance in 2018.

The first is Congress, which has a number of statutory changes moving through the House and Senate to alter portions of the Dodd-Frank Act, TRID and HMDA.

"We have regulatory reform legislation that has moved through the House, such as the Choice Act, which includes many reforms CFPB could have instituted on their own such as fixes to the QM rule," Trepeta said. "The CFPB under different leadership could abrogate the need for legislation in many cases. Larger reforms, such as changing the CFPB structure, are likely to be just as contentious as before."

Although Congress recently repealed the bureau's arbitration rule, and the House has introduced a bill to do so with payday lending, Kider said the legislative focus on issues such as tax and welfare reform could leave little appetite for Congress to undertake any comprehensive consumer finance legislation.

"On the other hand, several members of Congress, including Sens. **Bob Corker** (R-Tenn.) and **Jeff Flake** (R-Ariz.), each of whom sit on the Senate Banking Committee, are not running for re-election and will not be constrained by the usual demands of a reelection campaign," Kider said. "They may also seek to leave a legacy. Many will recall that the Dodd-Frank Act is named for two senators, **Barney Frank** and **Chris Dodd**, who did not intend to seek reelection after the act's passage.

"In any event, depending on the language of any proposed legislation, the industry may have reason to support any proposed bills or to retrench in opposition."

The other area is in the courts, and PHH, which Salzano called "my most anticipated ruling."

"A decision by the D.C. Circuit could resolve the current dispute over the permissibility of unpaid referrals in connection with the provision of real estate settlement services," said Kider, who represents PHH in the matter.

"The key RESPA issue on appeal is whether referrals are compensable so long as the compensation takes the form of payments that bear a reasonable relationship to the market value of goods or services actually provided. As many in the mortgage industry are aware, the outcome of this case could have a transformative effect on marketing services arrangements and virtually all other referral arrangements relating to real estate settlement services."

Kider said another case to watch would be *Lucia v. SEC*. That case was heard by the *en banc* D.C. Circuit Court of Appeals the same day it heard arguments in PHH in May 2017, and that case is awaiting a decision on appeal to the Supreme Court.

"The primary issue in *Lucia*, which is pending on a petition for review by the Supreme Court, is whether the Securities and Exchange Commission's administrative law judges (ALJs) are 'officers' for purposes of the Appointments Clause of the Constitution. If the ALJs are officers, then they and the administrative process through which they were appointed are unconstitutional.

"Notably, the Trump Administration has recently reversed course in a brief filed with the Supreme Court, agreeing that the SEC's judges were appointed in violation of the Constitution. The outcome of this case could carry broad implications for administrative adjudications and enforcement actions of various Executive Branch agencies, including the SEC and CFPB."

Where is appraisal profession going in 2018?

By Mike Holzheimer — Editor, *Valuation Review*

Progress is a sign people look to when it comes to seeing steady improvement in what a particular product should be delivering to the customer, a steady display of knowledge, skills and working habits from the employee, or consistency when it comes to seeing a businesses' overall climate becoming more stable over a specific course of time enabling the company to produce positive results.

In the appraisal industry, the wheels of progression seem to turn at a very slow pace. In fact, depending upon who you talk to from the valuation profession, slow may be a generous term as it pertains to the number of assignments received, the fees paid for those assignments, and the relentless amount of expectations and burdens being placed upon the appraiser from regulators.

Valuation Review talked to appraisal organizations and industry leaders to give us their thoughts on whether or not appraisers feel the industry is improving and if 2018 will provide a beacon of optimism for those assigned to determining values to properties.

Appraisers continue to feel the heat when it comes to dealing with the fact that faster times, in relationship to completing an appraisal assignment, is today's new mantra – replacing the thought of taking one's time and doing all of the proper research to get the assignment done right. Some appraisers, by way of comments made in our Voice of the Appraiser survey, believe that in order to merely get the assignment done so another job can be accepted in a timely fashion, appraisers aren't even confirming data they receive as it relates to the property they are evaluating.

The idea of AMCs and the perceived unrealistic demands they put on the appraiser further delaying that progress the industry hopes to see remains a constant stumbling block, with no end in sight.

In our survey, one appraiser said: "AMCs treat appraisers like we are machines. We mean nothing to them. When I have called to explain a request for a fee increase, or for an increase in time to complete a complex assignment, a couple of AMC representatives told me that they have about 50 other appraisers that are in line to take that order I'm doing if I won't do it for the terms as defined. That's a pretty lousy way to be treated."

What should be done to alleviate some of these attitudes throughout the industry?

"The Appraisal Institute (AI) hopes and expects that next year Congress will take up the issue of appraisal regulatory modernization. Appraisers are being crushed by a stack of growing, outdated rules and regulations that haven't changed in more than 25 years – although the market certainly has changed," AI President and acting CEO **Jim Amorin** told us. "An antiquated regulatory structure and layers of federal rules and regulations add costs and offer protection that is duplicative and unnecessary. The current regulatory structure discourages technological advancements and imposes unnecessary burdens and costs throughout the system.

> "Being able to document market influences on a market level basis will be important. Evidence-based judgment will be expected."
>
> **William Fall**
> **CEO**
> **William Fall Group**

"We at the Appraisal Institute see appraisal modernization being considered by Congress as an opportunity to fix a broken system. Modernization options Congress is looking at would preserve or increase consumer and governmental protection while addressing many of the flaws in the current regulatory bureaucracy," Amorin added. "And those modernization options would be consistent with the original intent of appraisal regulation in support of the consumer and the appraiser."

Technology also may play a pivotal role in the coming year, something that appraisers still were reluctant to embrace in 2017. One veteran believes that will change.

"I see a lot of progress occurring for mobile appraising applications. Better ease of use and continued improvement in productivity," William Fall Group CEO **William Fall** said. "Clearly, there is a continued need to be familiar with understanding large data sets. Being able to document market influences on a market level basis will be important.

Evidence-based judgment will be expected."

AI continues to expand its body of knowledge yearly with the production of textbooks, publications, Guide Notes, online and classroom education sessions, webinars and other forms of communication to ensure appraisers can continue to develop their skills and can adapt to a changing market while meeting client demand.

"Next year topics such as 'big box' commercial valuation and the valuation of green and high-performance residential and commercial properties may prove particularly relevant," Amorin said. "As the nation's largest professional association of appraisers, the Appraisal Institute has developed or is developing guidance on those and many other topics – as we have for more than 85 years."

Appraisers find themselves worrying about many issues expressing concerns that deal with any number of valuation issues. Fall spoke to some of those burdens weighing heavy on the minds of appraisers.

"The increasing regulatory requirements appraisers face is a concern," he said. "The clients holding their vendors to the same standards that are required of them. Our clients report that the 2017 market is off from 2016 by about 20 percent (to) 30 percent. Refis have clearly dropped, and many markets struggle with sufficient supply to satisfy growing demand. This is particularly challenging in the first-time homebuyer segment. The concern regarding personal identity theft is also increasing."

Amorin stresses AI has consistently noted that over-regulation of the real estate valuation profession is a serious issue.

"Additionally, Freddie Mac's and Fannie Mae's appraisal waivers – especially for first-purchase loans – threaten to take work away from many appraisers and threaten consumers. The Appraisal Institute sees the GSEs' waivers as yet another example of alternative products being used in place of appraisals, which remain the gold standard for real estate valuation and risk mitigation," Amorin said.

According to AI research, the number of licensed U.S. appraisers continues to shrink about 3 percent annually for the past five years. As of Dec. 31, 2016, there were 73,731 active real estate appraisers in the U.S., and there's every reason to expect that number to be lower at the end of 2017. Broader analysis suggests that declines may continue for the next five to 10 years due to retirements, fewer new people entering the profession, economic factors, government regulation and greater use of data analysis technologies.

"Appraisers continue to play an important role in risk mitigation, but many challenges – such as government regulation and competition from data analysis technologies – still face the profession. Despite those challenges, the Appraisal Institute likes to point out that being an appraiser offers a rare combination of benefits, including a flexible work schedule, the potential for high income, low costs to start a business and the opportunity to solve complex and challenging problems," Amorin said.

George Harrison, Columbia Institute founder and past president, also spoke on what he foresees may take place within the appraisal profession over the next year, in particular, the future for appraisal trainees.

"I think that we will see much more use of trainees, associates, interns, etc. — whatever we call them — in gathering a lot of data," he said. "This will make the appraisal move more quickly, and permit the appraiser to process more appraisals, though sharing the fee. Hopefully, appraising will become more professional and more productive."

Harrison believes that the term trainee is misleading, saying "it puts the trainee who has virtually completed all the requirements for a license in the same level as one who has just entered into trainee status. The term was unfortunate."

The retiring appraisal executive also indicated that changes probably will happen state by state, and, if that state is doing something in an easier or more compliant way, other states may follow suit and adopt similar practices.

"As more information is passed around and shared, we elevate the appraisal practice," Harrison said.

Amorin and Fall looked into the future as well as for what may be in store for appraisers in 2018.

"The Appraisal Institute hopes that 2018 will bring modernization to the current appraisal regulatory structure. We see appraisal regulatory modernization being considered by Congress as an opportunity to fix a broken system," Amorin said."

"I believe the AQB (Appraiser Qualifications Board) will reframe some options to gain experience for new entries to the field," Fall said. "Not everyone will be happy about the alternatives, given much of the feedback received on prior exposure drafts being very self-serving. Nonetheless, unless change is quickly adopted our profession will further spiral toward a field where other valuation options prove more desirable to the marketplace."

History, controversy set the stage for 2018

By Robert Rozboril — Editor, *Dodd Frank Update*

Some might characterize the final months of 2017 as the grand finale of a year rife with controversy.

As many of the historic events that took place have set the table for what the financial industry has to look forward to in 2018, *Dodd Frank Update* spoke with the heads of trade associations representing banks and credit unions, as well as a top compliance technology servicing company about what they anticipate this year.

Consumer Bankers Association (CBA) President and CEO **Richard Hunt** said that the financial industry would do well to prepare for a long court battle over whether **Mick Mulvaney** or **Leandra English** is the rightful acting director of the Consumer Financial Protection Bureau (CFPB). The kicker is by the time that matter is settled, the Senate already may have confirmed a permanent leader for the bureau.

"I think there will be a confirmed director before the court system plays itself out," Hunt said. "The lawyers are telling me it's going to be months before this irons out, assuming everybody continues to appeal the verdicts. And, sooner or later, Donald Trump will get to appoint a permanent CFPB director."

Long-term uncertainty regarding the bureau's leadership is almost certain to impact the financial industry, specifically in relation to examinations, enforcement actions and new product development.

"All of those things will come to a halt, and that's just bad for consumers," Hunt said. "Now, there need to be some changes at the CFPB because they've gone overboard too many times, and we need to right-size the agency in both the number of people there and their mentality. We need to bring a more balanced approach to regulation. We need people who have some consumer protection experience and banking experience at the bureau. This should be a wake-up call to the CFPB to be moderate in their issues and to be more substantive in their issues, and stop being political."

Working to improve the bureau as much as possible is a high priority to Hunt because, in his view, people who talk about eliminating the bureau or repealing Dodd-Frank are living in a "fantasy land."

"We need certainty and stability in the marketplace," Hunt said. "I've talked to several people at the CFPB … who have said they are caught in a political game they do not wish to be part of. If the CFPB were structured as a bipartisan commission, as originally intended, we could have avoided this circus."

Hunt and CBA have been among the most ardent proponents of establishing a commission to run the bureau, often asserting that it would be the most effective way to mitigate the role partisan politics plays in steering the CFPB.

"We've been saying that for six years now and my mother always told me, 'Don't say I told you so,' so I've been typing it instead of saying it," Hunt said. "Of course we need a five-person bipartisan commission because right now only one person dictates the results of an examination, of an enforcement action and of all the rules. One person. If you have five people sitting at the table hashing out differences and being more moderate I think that would be better for everybody."

He offered an example of how people with typically dissimilar viewpoints, which a bipartisan commission would contain, can find common ground on certain issues.

"I was listening to **Sheila Bair**, former chair of the FDIC (Federal Deposit Insurance Corp.), the other day and she said that the one thing that the commission provides is prevention against wide swings of the pendulum. You have to have moderate positions for an agency to work under a commission. Now, she and I don't always agree, to say the least. But for her to say that as a person who's had experience in a commission leadership structure spoke volumes, I thought."

Credit Union National Association (CUNA) Chief Advocacy Officer **Ryan Donovan** said he thinks the bureau's shift from a single-director structure to a commission is inevitable, though it could be some time before it comes to fruition.

"The CFPB is a pretty partisan, divisive entity," Donovan said. "Democrats love it. Republicans hate it. Having our first Republican head of the bureau, I think, will change a lot of the dynamics of the bureau going forward. In terms of where we'd like to see the CFPB end up, we continue to support the notion that there ought to be a commission at the CFPB rather than a single director. It may take two, four, six years. I'm not sure."

Donovan noted the bipartisan support that the commission concept has received since the bureau's formation, adding that the arguments for a commission are "common sense and everybody knows it."

"I think that's the direction that we're headed and I have confidence in that because, at various points in time, both Democrats and Republicans have supported the notion of a commission," he said. "Sen. **Elizabeth Warren** (D-Mass.) and **Barack Obama** supported the idea of a commission when they first proposed the CFPB. They walked away from it when it was politically convenient for them to do so because they had the power and a single director was more efficient to them. Similarly, Republicans supported a commission until it was politically convenient for them not to support a commission when they got the administration and had Congress."

Are the times a-changing?

Hunt said the blame for the sizable role partisan politics have played in shaping the bureau and the tumultuous leadership transition in the wake of Cordray's resignation falls on the shoulders of both policymakers and many within the agency itself. He noted that there is significant support for a CFPB commission that likely has only grown stronger since Cordray stepped down and attempted to put English in line to become acting director by appointing her deputy director on his way out the door.

"**Richard Cordray**, in his last hour of action, did more to move the needle towards a commission than anything anyone else has done in that last six years," he said. "I should give him a consulting fee. I know there are at least eight Democrats who support a commission. They're just worried about the politics. And they can make up any kind of excuse why not to have a commission but I'd just tell them that while a commission may not be perfect, it would be far better than what we have today."

Moving the needle toward change is one thing, however, there is good reason to remain skeptical about the prospect of Congress passing legislation to facilitate significant shifts in the bureau's structure or the regulatory system as a whole in 2018.

Since Trump's election, Hunt said he's listened to many Republicans, who previously supported a commission, reason that they would rather see the bureau's leadership structure stay untouched now that someone who shares their political views is in charge.

"They're saying, 'Let's just use this opportunity to tear the place down,' " he said.

"And that's not what we in the banking industry are pushing. We're playing not just for the next election cycle but for the next 20 years. We need certainty and stability."

The bipartisan Economic Growth, Regulatory Relief and Consumer Protection (EGRRCP) Act, which proposes to implement right-sized regulation for smaller financial institutions and institute consumer protections for veterans, senior citizens and fraud victims, gained support from many in the industry when it was introduced in November.

Hunt has expressed tepid support for the bill, dubbing it "bank reform lite," while also acknowledging that he thinks it represents Congress's best chance for passing a regulatory relief bill in the near future.

"I think if eight or nine Democrats hold tight that it's got a very good chance of passage," Hunt said, adding that he is less optimistic about the prospect of other regulatory relief legislation finding the votes necessary to affect change in 2018.

Getting the ball rolling

Donovan is more optimistic regarding the prospect of future regulatory relief, noting that the Senate Banking Committee struck him as having a sense of urgency about getting the bill passed, which gives him hope for more regulatory relief legislation in 2018.

"The first thing I'd say is success begets success. If this legislative effort is successful, I would encourage us and those in Congress to try to do a little bit more," Donovan said.

"The bill that's before us, I think is modest in terms of our hopes and dreams but an important first step and it looks like it's coming together in the right way, so that's good."

Donovan also recognizes the fact that mid-term congressional elections are on the horizon later in the year, and there is a good chance the Senate Banking Committee's time will be devoted to consideration of multiple presidential nominees.

"There could be some momentum building," he said. "The flip side of that coin is as we get closer to the (midterm congressional) election, it gets harder to do everything. That's why I think that sense of urgency is well-placed."

The outcome of the Senate bill likely will play a large role in determining CUNA's agenda in 2018, Donovan said. He noted that the business of confirming potential nominees also could prove to be a hurdle to regulatory relief efforts. “If that happens in 2018, that is going to obviously occupy a big part of the agenda for the Senate Banking Committee,” Donovan said.

“Similar to that, at the National Credit Union Administration (NCUA), which is a three-person board, we currently have a vacancy and a board member who is operating on an expired term. We would expect, and we would hope, that the president would nominate two people to fill those slots so the NCUA has got a full board.”

Lessons from the past

Taking a lesson from the passage of Dodd-Frank, Hunt noted the possibility that the EGRRCP Act could change substantially before reaching the Senate floor.

“Dodd-Frank, when it came out of the House, had a commission in it (for the CFPB),” he said. “It was only when it got to the Senate that they decided not to support a commission.”

Hunt also pointed out that some senators have said that, although they did not support Dodd-Frank without a provision establishing a CFPB commission, they voted for it anyway. He said that is one of the prime reasons many people are tired of “D.C. talk.”

Hunt reflected on a time when partisanship did not define the financial regulatory system, when banking regulation passed by unanimous or nearly unanimous margins. But those days are gone.

“In those days, the adults were all at the regulatory agencies,” he said.

“Hopefully those days will return eventually. And I do think, with all the Trump appointees, at the OCC (Office of the Comptroller of the Currency) and at the FDIC, I think we’ll have regulatory coordination, which is something we have not had in the past 10 years. It’s absurd that we have two regulators at a bank at the same time, looking at the same issues.”

He said that it is important to have people of opposing viewpoints working together to lead the bureau and not let it become mired in politics.

> “This should be a wake-up call to the CFPB to be moderate in their issues and to be more substantive in their issues, and stop being political.”
>
> **Richard Hunt**
> **President and CEO**
> **Consumer Bankers Association**

States stepping in

If the state of the CFPB’s leadership remains in a state of uncertainty, ComplianceEase President and founder **John Vong** said that state regulators may step up to try to fill the void. He noted the wide range of matters that are on regulators’ plates, some that go beyond regulatory compliance.

“The states will be more active if they see that the federal regulator is just not tough enough in protecting consumers,” Vong said. “For somebody to be successful as head of the CFPB, they must have vast knowledge of the financial services industry, and particularly, how the rules are going to help protect consumers. This is especially important nowadays with all the new financial technology (fintech) providers and startups emerging on the non-bank side. On the traditional bank side, the new CFPB chief will also have to focus on how to provide additional protection for consumers in terms of guarding against data leaks and other issues. It’s not just regulatory compliance and consumer compliance, it’s also taking into account the new worlds of digital mortgage and digital banking.”

He noted that compliance experts should be on the lookout for changes in consumer protection laws in states such as Texas and others on the East Coast, which frequently make updates to existing rules.

“Right now, the states and the CFPB are coordinating on exams,” Vong said. “The states will be stepping up and doing more going forward. At our [ComplianceEase] summit, **Chuck Cross,** SVP, Consumer Protection and Non-Depository Supervision for the Conference of State Bank Supervisors (CSBS), said that their members’ aggregate volume of examinations and supervisions on mortgage companies and transactions are higher than the CFPB’s, and that pace will pick up if they see a slowdown at the federal level.”

Vong said he hopes that the CFPB, under new leadership, will take into account some of the feedback it has received from the industry, such as assessing the impact of its policies and providing greater clarification to its regulations.