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STATE OF THE INDUSTRY

SPECIAL REPORT

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ABOUT US

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EDITOR'S NOTE

Building from a position of strength

Dear Readers,

Who saw THAT coming? With the industry girding for a slowdown in the housing market, looking to find ways to remain profitable as margins grew thinner and thinner, suddenly, interest rates dropped, refinances soared, and the origination market in 2019 found itself at its best level in a dozen years.

As one executive told us, leaner companies which were flooded with unexpectedly strong revenues should be in a position of strength, strategically managing when and how to deploy additional capital in 2020.

The 2020 State of the Industry special report from October Research, LLC, will help you decide when and where those right strategic decisions will come for your business.

In the title industry, the focus is on technology — not simply in improving efficiencies but also in working on eClosing and remote notary transactions to benefit consumers in the transaction. Appraisers are looking to navigate new waters, as increased thresholds for requiring appraisals, approved by banking and credit union regulators in 2019, could mean fewer full appraisal orders for the industry in 2020.

Lenders who are busier than they've been in a decade originating purchase and refinance transactions are also wary of their compliance concerns giving shifting priorities from their federal regulators. On top of all of these concerns, of course, is the future of the Consumer Financial Protection Bureau, and how the Supreme Court will decide both its constitutional structure and its remedy, should it be required.

Peering into the crystal ball is never so clear — as 2019 demonstrated — but having the expert insight on the biggest topics to come will provide you with the confidence and strength to build in 2020 from a position of strength. We thank you for your interest and look forward to remaining your primary source for market intelligence and insight in the coming year.

Sincerely,

Chris Freeman
Editorial Director

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Low rates should spur strong carryover in 2020

By Chris Freeman — *Editorial Director*

After a year which ended with lenders desperate to make money on mortgages, 2019 was a strong and healthy surprise for all involved.

The unexpected drop in mortgage rates fueled a refinancing boom that is expected to drive overall originations to their highest level in 12 years.

So what can 2020 be for an encore? Top housing economists seem to agree that the market momentum will continue through the first half of 2020 before slowing down where forecasts originally expected 2019 to be.

> "Refi activity is so strong that it will spill over to the first quarter of the first half of 2020."
>
> **Mike Fratantoni**, Chief Economist, Mortgage Bankers Association

"Refi activity is so strong that it will spill over to the first quarter of the first half of 2020, but the second half will look more like 2018," Mortgage Bankers Association (MBA) Chief Economist **Mike Fratantoni** said. "Refi volume falling off, and lenders chasing a smaller number of loans."

MBA expects that mortgage originations will finish 2019 at $2.06 trillion, the highest mark since recording $2.31 trillion in 2017. The forecast is for that to fall slightly to $1.89 trillion in 2020.

Those forecasts are mirrored by Fannie Mae, which expects $2.059 trillion in 2019 and $1.869 trillion in 2020 originations.

"As we forecasted, housing supported the larger economy in the third quarter, and we expect it to continue to play a productive role through the first half of 2020," Fannie Mae Senior Vice President and Chief Economist **Doug Duncan** said. "With mortgage rates normalizing, we expect a decline in refinance activity in 2020, with the refinance share of originations dropping from a projected 37 percent in 2019 to 31 percent. Of course, the housing market as a whole remains constrained by the persistent supply and affordability issues, which is particularly unfortunate given the current strength of consumer demand for reasonably priced homes."

A consensus forecast of 14 economists from the first National Association of Realtors (NAR) Real Estate Forecast Summit found that housing starts for single-family and multi-family housing would be flat at 1.31 million in 2020 from 2019, with a slight rise to 1.37 million expected in 2021.

At the heart of all the forecasts is the expectation that the Federal Reserve will not take action on interest

BY THE NUMBERS

Originations Forecast

2020	2021
MBA: $1.89 trillion	MBA: $1.74 trillion
Fannie $1.87 trillion	Fannie $1.83 trillion

Mortgage Rate Forecast

2020	2021
MBA: 3.7%	MBA: 3.8%
Fannie 3.6%	Fannie 3.5%

Housing Starts Forecast

2020	2021
MBA: 1.30 million	MBA: 1.43 million
NAR consensus: 1.31 million	NAR consensus: 1.37 million

rates in 2020, keeping mortgage rates bound to its current range around 4 percent. MBA is looking at mortgage rates averaging 3.9 percent for the year, Fannie Mae sees it at 3.6 percent, and the NAR consensus economists forecast a 3.8 percent rate.

"Consumer spending is likely to continue driving the expansion forward, and with the passage of the budget act and a reprieve in trade tensions, we've revised upward our forecast for full-year 2020 growth," Duncan said.

"We also continue to expect the Fed to cut interest rates only one more time in the foreseeable future, in early 2020, as a hedge against the sizeable downside risks and to counteract muted inflation."

Fratantoni said he expects the Fed to remain on the sidelines through 2020 and into 2021, and that the next move likely would be a rate hike "as the economy has recovered."

Yet there are risks next year. Fratantoni said the experience lenders have had of rates moving 10 basis points one way or the other based on a tweet, or Brexit, or events in the Middle East might not stop.

"That level of elevated volatility we see continuing because all these things are still out there. Nothing seems yet to be resolved," he said.

That shows in MBA's economic forecast, which expects the economic growth to slow to just 0.9 percent in the first half of 2020, raising the risk that something unexpected could trigger a recession.

"Because the overall level of growth we expect is going to be lower next year, it wouldn't take much to push the economy into a recession," Fratantoni said.

"If you're starting from 0.9 it doesn't take much of a shock on any of these U.S. or international events we mentioned."

Fratantoni also said there was a 40 percent to 50 percent chance that growth is lower than forecast, particularly in the first half of 2020.

"There's more weight on the downside than the upside," he explained.

Still, purchase originations are expected to grow by 1.6 percent. And Fannie Mae expects total home sales to grow by 1.1 percent in 2020.

"So much is already in the pipeline," Fratantoni said.

Title companies, underwriters making process faster, safer

By Mark Lowery — *Editor, The Title Report*

Many title companies and underwriters saw a decline in transaction volumes in 2019. Still, low inventory levels and historically high home prices drove revenues upward.

Many bottom lines of title companies and underwriters also were aided by relatively low interest rates that spurred a spike in refinances. In 2018, the industry generated its highest premium volume since 2006. Early indications are that the industry is on pace to match or surpass last year's stellar performance.

No one can predict the housing market with absolute certainty, but most analysts and economists don't foresee anything in the immediate future that threatens to derail the industry's momentum.

"Looking ahead to the first quarter of 2020, mortgage rates are expected to stabilize at the current level of 3.7 percent. With historically low rates and a still-strong labor market fueling demand against limited inventory of homes for sale, I expect price appreciation to accelerate," First American Deputy Chief Economist **Odeta Kushi** said.

"Historically low rates increase house-buying power, aiding potential buyers pursuing the dream of homeownership."

Kushi told *The Title Report* that she expects existing-home sales to rise in early 2020. She said the housing shortage may get worse as fewer homeowners are willing to sell because they are locked into favorable interest rates.

"The performance of the 2020 housing market will depend on whether rising purchasing power, driven by increasing income and low mortgage rates, can outpace house price appreciation," Kushi said.

Redfin, meanwhile, is predicting the housing market will be more competitive in 2020, as bidding wars heat up thanks to low mortgage rates and a lack of homes for sale. The real estate brokerage also predicts that 30-year fixed mortgage rates will stabilize at 3.8 percent in 2020.

"In 2020, buyers will have fewer homes to choose from than they have in five years. But the return of bidding wars is good news for sellers who may have been holding out this year as the market stabilized," Redfin Chief Economist **Daryl Fairweather** said.

"The competition and faster price growth will tempt more homeowners and builders to list homes, which will help improve the balance between supply and demand by the end of the year."

What's next for title agents and underwriters?

Regardless of 2020's housing market, experts expect title companies and underwriters to continue devising strategies and processes to make the home-buying process more convenient, safer and faster, including integrations and applications of technologies that eventually will change the way the industry conducts business.

Consider:

First American Financial Corp. recently launched a mobile-first title and escrow company that it said provides a re-imagined closing experience for buyers, sellers and their real estate agents. The new company combines its title and settlement expertise with the innovative approach of an agile startup to provide a digital real estate closing experience from start to finish.

States Title recently received a patent for a machine-learning solution it created. The company said its machine intelligence technology will replace 80 percent of the manual workflow-related time and activities, significantly reducing time-to-close for lenders.

Fidelity National Financial launched a digital-closing platform for consumers closing in its title operations, or through its integrations. Developed in partnership with Black Knight, Inc., Fidelity said its closing platform supports both hybrid and fully digital closing options and is integrated with Fidelity's title production systems.

First American last year launched a shared Blockchain system designed to increase efficiency, reduce risk and improve the title production process. The system is intended to facilitate the exchange of prior title insurance policies between underwriters that contribute to the system. Old Republic Title Insurance Group, the nation's third-largest title insurance underwriter, has committed to be the first to participate in the Blockchain.

It's not just technology adoption. Title companies and underwriters continue to pursue relationships with other industry participants that will drive business to the closing table.

Back in July, Realogy Holdings Corp., parent company of Title Resources Group (TRG), and Amazon announced a homebuying program designed to simplify the process of purchasing a home and then settling into it. Turnkey, a partnership between the two companies, steers prospective homebuyers to Realogy's agents, including at Better Homes and Gardens Real Estate, Century 21, Coldwell Banker, ERA and Sotheby's International Realty, and then provides those customers with Amazon's Home Services and smart home products upon closing.

"We're excited about a partner like that that everybody knows that has a dynamic leader like [Amazon CEO **Jeff] Bezos** who is really out there trying to do different things for different people," TRG President and CEO **Scott McCall** told *The Title Report*. "That has great cache to it."

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Scott McCall,
President and CEO, TRG

Making the process safer

Even as title companies and underwriters are enjoying one of their most prosperous years, the specter of wire fraud remains prominent. However, many in the industry have adopted technology to protect consumers and are part of educational efforts to alert real estate partners of the threat.

According to the FBI, there were 11,300 identified victims of real estate wire fraud in 2018 who lost a combined $149 million. Between 2017 and 2018, the FBI reported a 166 percent increase in the amount of money lost because of real estate fraud.

The title industry has taken notice. Formed by the American Land Title Association earlier this year, The Coalition to Stop Real Estate Wire Fraud provides education about the growing threat of these scams and offers tips to help consumers protect their money during the home-buying process.

"Unfortunately, there is a much larger, darker underbelly of real estate wire fraud scams that simply go unreported," CertifID co-founder and CEO **Tom Cronkright** said. "This is due to a number of reasons, but in the end, it makes it difficult to recover funds and provide accurate reporting on the size and scope of the problem. All industry participants need to be doing more to protect consumers and the integrity of real estate transactions."

CertifID in October announced it had partnered with the coalition, joining industry giants such as the American Escrow Association, Fidelity, Stewart, NATIC, SoftPro, Qualia, SafeChain and Redfin.

"The best line of defense is an educated and active consumer who is aware of the problem and on the lookout for signs of fraud, and the coalition is working to make this a reality," Conkright said.

Technology, compliance continue to intertwine in 2020

By Andrea Golby — *Editor, The Legal Description*

Privacy legislation and regulation coming out of the European Union, California and New York, among others, has caused a stir across numerous industries across the country, and the title and settlement industry has not been left out.

If what we saw in 2019 is any indication, we can expect more focus on consumer privacy in 2020.

"Privacy issues are impacting many industries, not just title and settlement," said **Frank Pellegrini**, president and CEO, Prairie Title Services Inc. "We will see growing concern and more instances of state and federal laws and regulations in this arena. These movements are further influenced by consumer wariness over the collection and use of data and how their private data will be impacted."

Land Title Guarantee Co. Vice President **Diane Evans** said work in California and New York is just the tip of the iceberg in how the safety and security of consumers' data is managed.

"How we create policies and procedures around those various laws and regulations is going to be a huge challenge for our industry," Evans said. "Large or small, it may be one of the most expensive engagements we've had since TRID. I think even right now, everybody is trying to meet that standard, but I don't think anybody knows exactly what the standard is. We have seen and reviews the laws but everybody is trying to figure out what do I have to do to meet that standard."

James Lamphere, vice president, Title & Escrow, HomeServices of America, noted that implementing the California Consumer Privacy Act (CCPA), which took effect Jan. 1, will be the focus for much of the first part of the year.

"It will be interesting to see if more states pursue CCPA-style privacy regulations," he said. "It will also be interesting to see if California voters pursue a ballot initiative that could throw the industry a curve ball creating a conflict between complying with our data collection requirements and compliance with new regulations."

Although the laws on the books have carve outs for smaller businesses such as title and escrow agencies, the larger companies they work with, such as national mortgage lenders, might be looking to their industry partners to help protect consumers' information.

"In some states we've seen some exemptions for smaller entities," said **Charles Cain**, executive vice president-agency development, WFG National Title Insurance Co. "That being said, national mortgage lenders, in particular, are going to be looking to their vendors, their settlement providers, as to what steps they have taken to ensure the privacy of the data that is retained by the settlement service providers. Sometimes the data is provided by the mortgage lender themselves but still the settlement service provider [must share] what steps they are to take to ensure it.

"Also too, if there is a requirement to give notice to consumers as to that private information that is being held, what steps did they take to make sure they are complying with the appropriate law," he continued. "We'll see more states adopt similar legislation, I think, as we move forward in this election year. So it will become a bigger issue in terms of discussion. We'll see more and more states look to this in regard to privacy. I think it's a matter of knowing what it is that is going to happen in one particular state, but also too what will our customers require of us?"

Cain also said the push from consumers themselves will have an effect on future planning.

"What will consumers require, perhaps independently of any law passed," Cain said. "When they ask the question, then every title agent does have to have some clear policy about what they do to be sure that that policy is in compliance with any state law that applies to them, likewise any federal law that applies, so that they can explain to consumers and lenders in particular what happens to the data when it hits our archive."

Juliana Tu, escrow manager, Viva Escrow! Inc. and 2019 president of the California Escrow Association (CEA), affirmed that outlook.

"One lender is already asking all their vendors to sign a privacy security agreement, even if the vendor does not fall under one of the three criteria outlined in the law," she said. "This agreement asks for cyber liability insurance of a minimum of $500,000. It looks like a return to the vetting days, when the lending industry was trying to enforce their demands on settlement agents in order for the settlement agents to receive business from them. I don't know if these lenders have approached settlement vendors outside of California or are we being targeted because of this CCPA law?

"The big title companies and settlement companies who fall into one or more of the three criteria have been gearing up and designing their ways to provide the disclosures required. What we don't know yet is if the consumers will be taking advantage of the new disclosure world come 2020 and demand to opt-out from allowing their NPPI to be used.

"I would like to be able to say that irrespective of the CCPA coming up in 2020, most settlement agents are aware of the need to comply with consumer privacy rules before this time as required under the Gramm Leach Bliley Act, but I am afraid that is not the case," Tu added. "In California there are many small, real estate broker owned settlement departments/companies who work out of a desk in the real estate company and who employ settlement staff who are not knowledgeable. They are governed under a different government entity and a different set of government regulations, which are very lax and non-effective. It is a concern for our industry and one that my organization has been trying to address for many decades. How do we bring them into the fold and give them the education they need to serve their clients better?"

"How we create policies and procedures around those various laws and regulations is going to be a huge challenge for our industry. Large or small, it may be one of the most expensive engagements we've had since TRID."

Diane Evans,
Vice President,
Land Title Guarantee Co.

RON impact slow and steady

By the end of 2019, almost half of the states had enacted remote online notarization (RON) legislation. Some have begun implementation while others will finish drafting regulations in 2020. This will be a big focus in states that have enacted legislation, but will be implementing the legislation during the course of the year.

"Where legislation has passed in regard to remote online notary transactions, that is going to be a big topic," Cain said. "How is that going to work? What will lenders require? Are there certain platforms that lenders will require agents to use? How will the workflow function in the title or settlement agent's office? It's not going to apply everywhere, because some states have not passed any sort of enabling legislation in regard to it, but about half the states will have some activity or some enabling legislation by the end of 2020, maybe more than half the states."

He noted that there is an increasing number of RON closings, but he does not see eClosings becoming the majority of transactions for a few more years.

"It's not going to be every transaction," Cain said. "This is not a tsunami, but it will be a noticeable wave, especially in regard to hybrid eClosings, where some documentation may be paper but most of it may be electronic. We'll see that become the majority number of transactions, I think, in the next three to four years."

Evans agreed, noting, "Clearly it's a developing process and I think the opportunities right now are being primarily exercised when somebody has a change of plans where they can't attend closing or it's not convenient for them. It's more an opportunity of convenience right now.

"I think that we are still seeing people want to sit down with an expert and have them explain the documents they are executing and review the process and be face-to-face in person rather than an online process," she continued. "And I think that there is an opportunity for more people to understand the technology and feel comfortable with it and decide that is what they want to do."

Evans said data privacy also would have a huge impact on eClosings and RON transactions.

"I think that consumers are becoming more and more aware and concerned about who has access to their information," Evans stated. "I think there will be a pause about what happens? How does this work? Who is really looking at my loan application and who has access to the documents? Where do they go after closing? Many of those things remain unanswered at this point in time."

Lamphere said MISMO's recently released industry standards might increase the acceptance of RON transactions, but agreed with Evans that the transactions will be used for more unique situations in the short term.

"It seems to me RON will continue to be used as an emergency solution for the foreseeable future though," he said. "Most surveys indicate sellers and buyers have a preference for closing in person rather than remotely. That makes sense to me, given the nature of the transaction."

Particular states will have specific challenges as they move forward with RON. Tu noted that the RON subcommittee of CEA recognizes RON will be part of the future, but has some concerns.

"RON is not that easy in California, given the extremely strict and regimented notarial laws that we now have," Tu said. "Our legislative bill, AB 199, has been extended into a two-year bill into 2020 and we are struggling with the author on what will be acceptable on the revisions to the bill. California's Secretary of State is having a hard time also. Last time around the money factor of revamping the computer system (something like $25 million) was a huge issue for them and it will probably continue to be so. CEA has been working with our members for input. For instance, can the lenders designate which RON platform can be used, and if so, how can we keep a sequential journal if we are notarizing on different platforms? What about data security? If the platforms keep the notary data, what happens if they get hacked or, heaven forbid, they go under?

"My personal feeling is that for those states who rushed to get RON passed, they might not have dug deeply enough into inherent issues," she continued. "But for California, with the huge volume that we do for consumers all over the country and world, it is a huge concern. Ultimately, I think a bill of some sort will come out in January, but it will be a big fight thereafter. The road from here to the end will be tough. And even if we pass RON, our county recorders have to get in line by allowing such electronic document recordation. That's another piece to the construct that has to be put in place."

AI ramping up

The use of audio-visual technology and the ability to close loans remotely isn't the only way technology will continue changing the industry in 2020.

"I am excited about, but also worry about, the advancement of many new technologies," Pellegrini said. "In particular, artificial intelligence will be aggressively probed to provide efficiencies and faster processing. My concern is that technologies like this may not only replace the human element, but may drive our industry into more actuarially based underwriting and threaten protections under mono-line insurance laws.

"I think we'll have a lot of challenges in lender technology integrations," Cain added. "I think a lot of lenders have already moved to use artificial intelligence as much as possible, especially the loan application process. In order for title and settlement agents to work with a lot of lenders, they need to know what sort of technology changes or integrations those lenders will be looking to do in 2020. And I think it's not just the large banks and large non-bank mortgage lenders, but it could often be community lenders, whether they are mortgage lenders or banks or credit unions. I think that is going to be a big issue, as lenders try to drive the cost out of the origination of a mortgage."

Evans noted that the increase in technological advances will mean continued disruption and change for the industry.

"I think there are lots of new technologies and platforms that are attempting to change the way real estate transactions are done," she said. "And I guess not all of them are going to be the right solution, I don't think. I think there will be elements of many of them that help and do make a difference, but I think there are some that we'll find that just simply don't work or that may cause things to be more difficult than what they anticipate.

Regulators continue examinations

With all of these new ways of doing business continuing to integrate into the industry, and a federal regulator whose focus continues to move away from regulation by enforcement, state regulators will continue to have an interest in the title industry.

"I think certainly state regulators of our industry have more interest in us than they ever have before," Cain said. He noted that although he doesn't know what they may be thinking about in 2020, a lot of state regulators are looking into things such as companies' filed, regulated or promulgated rates in their states, questioning their appropriateness.

"We are also seeing state regulators looking at what are the core services being provided by the title agent to ensure that they are actually earning their money under the regulatory scheme of the state," he continued. "And we are also seeing a lot of state regulators beginning to take a look at affiliated businesses and taking a second look to be sure that the affiliated business agencies in their state meet the appropriate Section 8 requirements, the RESPA requirements, anything that may still be eligible under the old 10-point sham test or any standard the state may opt to use in regard to an affiliated business.

"I think we'll see state regulators continue to be an area of greater activity," Cain stated.

"I think that is something everybody needs to be aware of, and in those states where it may not be the department of insurance, but may be the Supreme Court in the state or the bar association, I think that the supreme courts, the regulators and the attorneys are going to look to those same sort of things as to privacy of data, cybersecurity and wire fraud protection in particular. So attorneys are not immune from this. They are right there with the lay person, who in other jurisdictions are doing closings."

Evans said the changes in the regulatory landscape on all of these fronts will determine what acquisitions happen in 2020 and beyond.

"There will continue to be some acquisitions by underwriters and large agents of smaller agents in certain markets," she said. "But I do say certain markets because I do think people are going to be very thoughtful of what fits in their strategic plan, what fits as far as growing market share."

CFPB constitutionality, TRID lookback key issues in 2020

By Tracey Read— ***Editor, RESPA News***

In 2019, new Consumer Financial Protection Bureau (CFPB) Director **Kathy Kraninger** spent her first full year at the agency's helm with plenty on her plate.

On one hand, she made strides on her promise to create clear rules the industry could understand and follow. For instance, the CFPB issued new written guidance to clarify TRID and promote mortgage firms' compliance with the rule and changed its civil investigative demand (CID) policy to ensure the bureau provides more information about potentially wrongful conduct under investigation.

On the other hand, she continued to face accusations of lax enforcement, even toward bad actors.

But Kraninger's new stance on the bureau itself, along with possible changes to TRID and no end in sight to the housing shortage and home affordability problem, are likely to make 2020 an even more interesting year for the industry.

A number of lawsuits involving the CFPB have ground to a halt ever since the U.S. Supreme Court chose a case to decide the bureau's constitutionality.

Seila Law, an Orange County, Calif., law firm appealing a CID request, had petitioned the Supreme Court to rule on a lawsuit that makes an argument for abolishing the bureau and every regulation enacted by it.

The high court granted the request in October, and oral arguments are scheduled for March 3.

After the Department of Justice (DOJ) reversed its previous stance that the CFPB's structure is unconstitutional, Kraninger announced she agrees that the for-cause removal provision of the Consumer Financial Protection Act is unconstitutional.

The CFPB had defended the constitutionality of the provision in the appellate courts, which agreed with the bureau's prior position that the for-cause removal protection is constitutional.

Seila and the single-director CFPB are arguing that the Supreme Court's precedent upholding limitations on the president's authority to remove agency heads should be limited to multi-member agencies.

The court has appointed Kirkland & Ellis LLP partner **Paul Clement** to argue in support of the CFPB's structure as amicus curiae. Clement was appointed after the court denied the House of Representatives' motion to deny Seila Law's petition or alternatively, allow them to argue for the bureau.

CFPB constitutionality question

Legal experts told *RESPA News* the constitutionality question is among the top priorities the industry will have in the new year.

"The major issue for 2020 will be the Supreme Court's review of the constitutionality of the CFPB's structure and for-cause removal of the director," said **Francis X. Riley III**, partner at Saul Ewing Arnstein & Lehr. "It is my opinion that SCOTUS' conservative majority will find that the structure and for-cause requirement for removal violate the separation of powers. But, the court will find that those can be fixed, and the CFPB can move on to do what it has been doing. But the more fundamental question is how the court will address prior decisions and pending actions that were undertaken in an unconstitutional context. I don't believe any of the justices want to unwind those, so they will have to find a basis to say, notwithstanding the ruling that the actions remain legitimate."

Joseph Reilly, senior counsel at McGuireWoods and the principal author of the leading treatise on CFPB mortgage origination rules, said he believes the Supreme Court will agree with language in then-Judge **Brett Kavanaugh**'s opinion in the *PHH v. CFPB* case stating the for-cause removal provision can be stricken without causing "great tumult."

"I think the Supreme Court will find this provision is unconstitutional — that the CFPB director must be made removable at the will of the president — but I don't think the practical significance is going to be especially great."

Joseph Reilly, Senior Counsel, McGuireWoods

PHH Corp. — which appealed a $109 million judgment for alleged RESPA violations under then-CFPB Director **Richard Cordray** — was the first to argue the bureau is unconstitutional.

"The three-judge panel that originally decided the case did find the for-cause removal provision was unconstitutional and the CFPB director thereafter would be removable at the pleasure of the president, but even that court went on to consider the merits of the CFPB's enforcement action," Reilly said. "It didn't say the CFPB was going to have to start its enforcement actions against *PHH* all over because the bureau had been led by an unconstitutionally protected director. And I think that's probably how things are going to play out in the Supreme Court. I think the Supreme Court will find this provision is unconstitutional — that the CFPB director must be made removable at the will of the president — but I don't think the practical significance is going to be especially great."

In the meantime, Reilly said he believes that any company getting a subpoena is going to object to it and make the same constitutional argument that *PHH* made and that Seila Law is making, knowing the CFPB is not going to oppose it.

"But the CFPB will argue that in spite of the constitutional flaw, it can still operate," he added. "I think the CFPB has a good argument, though the outcome of that clash is not certain."

Richard Horn, partner at Garris Horn PLLC and the former CFPB senior official who led the original TRID rule, said many in the industry were shocked that Kraninger decided to change sides on the constitutionality issue.

"Literally, just in August, the bureau had made a filing in the RD Legal case in the Second Circuit arguing pretty strongly that their structure was constitutional," Horn said. "The fact that she changed her mind in about a month is very surprising. It's not illegal to change your mind, and she may have made the right decision to, but that's a pretty quick turnaround.

"The other thing is that her decision is not that the CFPB should be struck entirely. She thinks the CFPB should continue to have legal authority, but just that the director should be removable at will. For example, at the same time she is saying the CFPB's structure is unconstitutional, Director Kraninger has been opposing every single petition to modify or set aside a CID. She's been essentially rejecting every single petition. She's really giving the enforcement office a lot of leeway to pursue investigations, which is one of the most powerful authorities the CFPB has, and it automatically costs the recipient a lot of money and headaches to respond to a CID. So although the CFPB director is allowing the CFPB to wield its substantial authorities against the public in spite of its structure being unconstitutional, nobody really knows what remedy the Supreme Court is going to impose.

"The good money is on the court severing the for-cause provision, but there is the remote possibility that the Supreme Court finds that the CFPB in its entirety is void because it is unconstitutionally structured. That's what the district court judge in the RD Legal case found, so there are judges out there making that finding. And with the CFPB's authorities being vastly more onerous on the public than the other similarly structured agencies, it might be the right call. So it's possible that could be the decision by the Supreme Court. That would mean the CFPB's actions themselves are unconstitutional. I think people will be making this argument in current legal actions, but until we see where the Supreme Court lands, there's no certainty on what the result will be."

Sorry, TRID haters

Another upcoming issue for 2020 is what the bureau decides to do with its TRID assessment report that is due — five years after the effective date of the rule. In November, the CFPB announced it is seeking public comment on "recommendations for modifying, expanding, or eliminating the TRID rule, among other questions."

However, Horn said the request for information (RFI) does not mean the CFPB is planning to modify or eliminate the TRID rule — only that the bureau is complying with its Dodd-Frank Act obligations to seek comment on whether it should modify or eliminate the rules it is assessing.

"I encourage the industry to provide substantial comments to the CFPB on all concerns about the rule to ensure the CFPB has the most information possible to both inform its assessment and consider future rulemakings to modify the TRID rule," Horn said in a recent Garris Horn blog post. "I doubt they would completely eliminate the rule — sorry TRID haters!"

RESPRO President and Executive Director **Ken Trepeta** said it will be interesting to see how the TRID lookback will play out.

"The consumer groups could really panic over this, thinking they're going to get rid of TRID," Trepeta said. "I actually think they will find very quickly that the industry is not as keen on that as they would presume."

Trepeta said he will suggest TRID tweaks such as fixing the disclosure of owner's title insurance, giving people the ability to waive the three-day waiting period and streamlining the disclosures to eliminate pointless materials and confusing elements.

"Now that industry has spent all this money implementing it, to undo it or make a major change to it is just another costly thing," he said. "So I get the feeling I'm not going to be writing a comment letter that says, 'You should get rid of the rule.' I think the thing that surprised people is that they even included the idea of scrapping the rule completely.

"When this rule came out as a proposal so many years ago, I think the entire industry would have said, 'Don't bother. HUD just did this!' But now that it's been implemented and people have worked out glitches, who wants to revisit this in detail? So I think it's just going to be a bunch of tweaks."

Trepeta noted that Sen. **Elizabeth Warren**'s original idea with TRID was an easy, one-page disclosure combining the Good Faith Estimate with the initial TILA disclosure.

"It was not intended to be this massive combination of these two laws and what it turned out to be — which is an abject lesson in bureaucracy and how it works sometimes," Trepeta added. "Instead of a one-page, easy-to-read shopping tool, you get this menagerie, and it doesn't save consumers any money. But would it save them any money to impose another billion dollars in implementation costs for another major change? Probably not. We all appreciate the bureau's effort to solicit and potentially make changes.

"In an ideal world, if there was no implementation cost, I would go back to stripping out a lot of the junk that was added to the Closing Disclosure and do a Good Faith Estimate that combines the most important features of Truth in Lending and call it a day. But at this point, it's probably too expensive to do that."

Riley agreed.

"The TRID lookback is, of course, a good idea," Riley said. "It allows the CFPB to gather industry comments and insight on what works and what does not work. I do not believe the bureau has any appetite to scrap TRID entirely, especially since no one in the industry wants that given the amount of hours and dollars invested in getting it right.

"From my perspective, addressing QM (Qualified Mortgage) loan requirements and the patch is much more important and should be taken up. But given that 2020 is an election year, there will be way more hollering about what is wrong with the process than there will be ideas on ways to remedy the problems."

Real estate issues to watch

Riley said another issue the industry should be watching closely this year is what will happen with lawsuits accusing the National Association of Realtors (NAR) and the four largest national real estate broker franchisors of violating federal antitrust laws by conspiring to require home sellers to pay inflated buyer broker commissions.

Plaintiff **Christopher Moehrl** sued NAR, Realogy Holdings Corp., HomeServices of America, Inc., Re/Max Holdings, Inc. and Keller Williams Realty Inc. in an Illinois federal court in March on behalf of sellers who paid a broker commission in the last four years related to the sale of residential real estate listed on one of 20 MLS systems across the country. Several "copycat" suits then followed.

"Far from the typical title and mortgage issues, I think that the NAR antitrust litigation over offering commission split to buyers' agents, and NAR's approval of pocket-listing prohibition, the latter being challenged by Compass, are really intriguing conflicts," Riley said. "For the latter, imagine you own and want to sell a multi-million dollar property, but don't want the world to know about it. Under the anti-pocket listing rule, if the seller engages a brokerage that is a member of a local MLS, the rule requires that brokerage to list that property on the MLS within 24 hours of getting the listing engagement. This seems to curtail consumer choice as to manner of selling and commission structure."

Trepeta predicts iBuyer programs will be an important topic of conversation throughout 2020, as various players in the settlement services industry try to refine them.

"Some of the initial thoughts were that these iBuyer things were really going to be like a bait and switch — that the buyers were just going to cherry-pick the best homes, the ones they could easily sell, and that they were going to low-ball everyone," he said. "It turns out they're really making an effort to find the right prices and they're not low-balling people. People thought it would be like, 'Your house is a little bit older, it's not in a high demand area so you're not probably eligible for this iBuyer, but I could hook you up with a great real estate agent who could help you out.' That's what I think people thought would happen. And instead, they're buying a lot more of these houses than people thought.

"The issue now becomes refining pricing and earning a profit while maintaining demand for the program."

Trepeta said he also is concerned about the continued underproduction of new homes — particularly in high-demand areas — combined with a lack of effort to revitalize neighborhoods.

"Economists say there should be at least a million-and-a-half new units being developed a year, and we haven't hit those numbers ever in the last decade," he added. "For example, in San Francisco, it's a fortune to buy a house. But what are they doing in Oakland, which is right there, and parts of Oakland are a disaster. Revitalization should be a bigger part of the focus.

"Housing prices are going to continue to rise, and there will be a continued lack of inventory, and hopefully it will be addressed. The affordability issue and the supply issue is a big deal."

How will 2019 standards changes affect appraisers in 2020?

By Mike Holzheimer — *Editor, Valuation Review*

With each passing year, sentiments continue to vary amongst selected members of the appraisal profession. There seems to be a clean split right down the middle as to how appraisers feel about their chosen career. Are conditions improving for the appraiser to succeed and enjoy a thriving business, or is the environment still riddled with confusion and concern as to where the industry is going?

In fact, we discovered recently that many in the valuation profession can't even agree on the term to describe the group comprising appraisers — is it an industry or a profession? All of the questions cannot be answered in one article of a special report, and every concern won't be addressed to the maximum of solutions offered. Instead, many experts and veterans from the world of appraising will offer commentary and opinions as to what the New Year might present.

There are those of the belief that many steps were taken in 2019 to address whether or not new and young appraisers can prosper financially, and can veteran appraisers stay in the game long enough to happily arrive at the finish line known as retirement.

In short, are the continued regulations, policies and adopted or proposed legislature giving appraisers both hope and confidence for the next 12 months? Do appraisers feel appreciated?

Many we asked addressed some positive aspects of the appraisal profession that they felt were evident during this past year.

"The U.S. House passed two bills in September, both supported by the Appraisal Institute (AI), that helped residential appraisers," AI President-Elect **Jefferson L. Sherman** said. "The Appraisal Reform Act (H.R. 3619) requires full consumer disclosure of appraisal management company fees, separating them from the appraisal fee in the homebuyer's Closing Disclosure Form.

"The Homebuyer Assistance Act of 2019 (H.R. 2852) would allow state-licensed appraisers to perform appraisals for mortgages insured by the Federal Housing Administration," Sherman added. "During his testimony last June at a Capitol Hill hearing, Appraisal Institute 2019 President **Stephen Wagner** told the House Financial Services Committee's Housing, Community Development and Insurance Subcommittee that the Appraisal Institute supports passage of both bills."

Metro-West Appraisals Chief Operating Officer **Brandon Boudreau** spoke to some positives he saw during 2019, including the removal of some requirements that "do not lend any more credibility to an appraisal report" — for example, the 1004MC and lenders not requiring original comparable photos. The Appraiser Qualifications Board (AQB) changing its requirements on the level of education and time required to become an appraiser were good moves, Boudreau said, while technology focusing on making the entire process more efficient were positives.

The company executive, though, also saw areas of concern.

"Appraiser waivers, whenever you introduce new sales into a market that were not properly vetted by a third party, then you put all consumers at risk by artificially increasing market values," Boudreau said. "There should be more regulation required for property inspectors. For years, appraisers had to have extensive background checks because they were 'entering' the borrower's house. That is rather contradicting since we now have third-party inspectors 'entering' houses without any background checks, or even licensing required by the state.

"The appraisers are continuously being asked to make less and less money. Not only are clients trying to drive the cost of appraisals down, but now appraisers are being asked to complete desktops for $75 in place of a full fee for an assignment," Boudreau added. "This industry will not be worth it for any appraiser to go through the required licensing and training for the limited monetary gains. If the appraisal industry continues to shift towards this bifurcated process, you will see more and more leave the industry, and industry consolidation has made it very top heavy, making residential appraising fall under an oligarchy structure."

There were some troubling areas AI noted, as far as what transpired over the past year.

Sherman pointed out the ongoing trend toward alternatives to appraisals — the gold standard of real estate valuation — remains "disturbing." He said last year, appraisers saw federal regulatory agencies raise the commercial and residential appraisal threshold levels, appraisal waivers approved for the state of North Dakota, and the continued acceptance of hybrid appraisals and AVMs in lieu of appraisals.

AI will continue to work with state and federal legislative and regulatory bodies, the GSEs, standard setters and other stakeholders to help ensure that appraisals remain the primary, preferred source of real estate valuation, Sherman said.

Topics associated with training, the aging of the profession and technology remain a focus for 2020.

"Continued development of technologies that will drive efficiency for the practitioner can be expected," said **William Fall**, veteran appraiser and CEO of the William Fall Group. "Appraisers need to be more open to adoption of new techniques and tools.

"The first exposure draft of PAREA (Practical Applications of Real Estate Appraisal) was very well-received, with feedback by stakeholders being something that needs to happen soon," Fall added. "Development and implementation should occur throughout 2020. We will have better prepared credentialed appraisers as a result. This will help maintain the appraisal as being the gold standard among industry participants."

Sherman addressed implementation, and whether or not such methods are working in the appraiser's favor.

"The Appraisal Institute worked with the GSEs in 2019 on two important projects that will continue into 2020," Sherman said. "AI and Freddie Mac co-developed and delivered education to help appraisers value manufactured homes, and AI served as co-lead with Fannie Mae on the Appraiser Diversity Pipeline Initiative, promoting appraisal careers and fostering diversity in the valuation profession. The Appraisal Institute also created a Women's Initiative Committee in 2019 to foster the growth and participation of all individuals in the profession, including women, by providing networking, educational and other opportunities.

"Artificial intelligence, automated valuation models and Blockchain will remain in the forefront of technological changes affecting appraisers," the AI president-elect added. "The Appraisal Institute last August debuted a four-hour classroom seminar 'Artificial Intelligence, AVMs, and Blockchain,' that helps valuation professionals understand the components of artificial intelligence, including the Internet, Big Data, machine learning and the Internet of things."

Boudreau stated that until there is a form that's universal, not requiring appraisers to work off each client's individual app or form to complete the assignment, then technology implementations moving forward will have "zero benefit," he said.

"As far as significant technology changes in 2020, I believe it will be more of the same as it was in 2019," Boudreau said. "There will be more clients releasing their own bifurcated appraisals, requiring an appraiser to complete assignments on the clients' proprietary form, moving appraisers away from their trusted software to having to operate on several different platforms. We do believe more lenders will move towards geo-based assignments and consumer-based pre-scheduling of inspections."

One other area appraisers will need to keep an eye on and deal with in 2020 is the new California legislation, Assembly Bill 5. Sherman believes it's apparent the new California law will have broad impact on the real estate valuation profession, simply due to the state's size — about 13 percent of all U.S. appraisers are in California.

"At this point, however, the law's specific effects are unclear," Sherman said. "The Appraisal Institute is working closely with its chapters in California to determine, among other factors, the effect on appraisers providing services to appraisal firms, as well as the impact on appraisers who may currently work as independent contractors for one or more appraisal management companies."

> "We do believe more lenders will move towards geo-based assignments and consumer-based pre-scheduling of inspections."
>
> **Brandon Boudreau**,
> Chief Operating Officer,
> Metro-West Appraisals

Boudreau believes AB 5 will have no impact.

"Appraisers will be asked to register under a business entity; therefore, the law will not apply," he said.

"As with any of these laws, there is always a lot of noise around them from what we have seen form the state boards is they are never enforced. That being said, many large AMCs are now requiring their independent contractors carve out 30 hours of availability for automated scheduling. How does that not violate the employment/contractor definitions?"

The 2016 presidential election certainly had an impact on the appraisal profession. And although it is impossible to predict who occupies the White House and the parties in Washington for the next four years, Sherman had a few thoughts as to what the industry will look at.

"The trend toward deregulation under the current administration — such as federal regulators' increases of appraisal threshold levels — certainly could affect appraisers," he said.

"The Appraisal Institute's Washington office staff and volunteer leadership are deeply engaged in the nation's capital and in state capitals, working closely with legislators, regulators and other policymakers in representing appraisers' interests.

"Regardless of who wins the November 2020 elections, the Appraisal Institute remains well-positioned to advocate for appraisers on a wide variety of issues," Sherman added.

"And while it depends on who wins the election, the unraveling of regulations since 2016 appears to not have been a good thing for appraisers," Boudreau said.

"Though the economy has been booming and that has been good for stakeholders, a Trump re-election would likely mean more of the same. But if he loses the election, I would expect more protective regulations for appraisers and housing industry in general."

Keeping the pedal down on compliance

By Robert Rozboril — *Editor, Dodd Frank Update*

With less enforcement activity and what some have referred to as a more "business-friendly" regulatory environment, an outside observer could be forgiven for assuming that companies might be pulling back on their compliance operations. An insider perspective reveals that is not necessarily the case.

Conversations with a handful of compliance experts and the chief executive of one of the largest mortgage banks in the country reveal that compliance remains a top priority across the financial industry and companies are willing to pay for the peace of mind that comes with maintaining the tools necessary stay compliant.

They also offered their expectations for certain regulatory developments that may or may not pan out in 2020.

As a bank executive who keeps close tabs on the ever-changing regulatory environment, Flagstar Bank President and CEO **Alessandro DiNello** said his business decisions generally are not influenced by changing leadership at the CFPB or other federal agencies.

"The director has a tremendous amount of power at the CFPB — more than I think the director should have and more than even, I think, she thinks she should have — and the problem with that is that this approach that I'm describing is only going to be there as long as she's there," DiNello said. "Then when the next director comes in, because they have so much power, they can do whatever they want."

With that in mind, DiNello has no intention of allowing a change in CFPB leadership impact his bank's decision-making regarding its policies and business practices.

"As a bank, we're not changing anything we do here because we have a different director — not a bit," DiNello said. "Everything that we did when (Richard) Cordray was the director, we are doing exactly the same today from a risk and compliance point-of-view. We're much, much better at self-identifying issues that may require consumer reimbursement than we once were. So nothing's changed in terms of what we're doing but I think what's changed is the regulatory approach is a little more pragmatic than what we saw before."

Ron Haynie, senior vice president of mortgage finance policy for the Independent Community Bankers of America (ICBA), and **Rhonda Thomas-Whitley**, vice president and regulatory counsel at ICBA, explained why companies feel a sense of urgency to maintain the level of compliance efficacy spurred by the adoption of the Dodd-Frank Act.

They noted that the fear of a potential whipsaw effect that coincides with the next change in leadership at the CFPB remains very real as long as the bureau is governed by a single director instead of a commission. Additionally, they noted that there still is a heavy focus on compliance among the prudential regulators at the Federal Reserve, the Federal Deposit Insurance Corp. (FDIC) and the Office of the Comptroller of the Currency (OCC).

"The regulators in charge now are very focused on compliance," Haynie said. "Compliance continues to be one of the biggest costs to institutions and that's not likely to change. In fact, rather than cutting compliance staff, many banks are actually adding to those departments."

Statistics compiled by global information services provider Wolters Kluwer support Haynie's assertion. The company's 2019 Compliance Indicator Survey, published in December, which tracks how compliance concerns impact business decisions at financial institutions, showed that concerns about compliance have increased year-over-year.

"It's important to acknowledge that the industry has made a lot of progress to strengthen their compliance management programs," Wolters Kluwer Senior Advisor of Regulatory Strategy **Tim Burniston** said. "But there is still concern once a program is in place and working effectively about keeping it that way."

The task of maintaining a compliance program in tip-top shape only has become more costly as high-level compliance talent has become a highly coveted commodity, Burniston explained.

"Finding and keeping good compliance has been increasing difficult," he said. "Good compliance people are at a premium and have become more mobile within the industry. This makes it harder for smaller banks and credit unions to afford to keep their compliance programs at peak operating levels."

Survey respondents also reported the highest level of confidence in their ability to meet compliance obligations in the survey's seven-year history — a stat that aligns with perspectives shared by Haynie and Thomas-Whitley.

The two ICBA experts also credited the implementation of several regulatory relief provisions in S. 2155 with "right-sizing" many regulations and "bringing things back toward the center."

More certainty from CFPB, but will it last?

DiNello has spoken with Kraninger twice since she took office — once as chairman of the Mid-Sized Bank Coalition and in a private meeting focused on Flagstar's mortgage business activities. The second meeting took place, he said, because Flagstar is high on the bureau's radar for its role as a major mortgage originator.

He came away from those meetings with an appreciation for the effort Kraninger has put forth to get to know industry stakeholders through her listening tour, as well as for the difficult situation she walked into at the CFPB.

"It's a hard job. Most of the people that work there were hired under Cordray's regime," DiNello explained. "That regime's emphasis — and I don't think Cordray would disagree — clearly was on enforcement. That was his approach. Supervision was a vehicle for enforcement."

> "I can tell you that based on the examinations that [Flagstar's] had for originations and servicing, they are not taking their foot off the pedal relative to being very, very strong in their oversight of consumer protection."
>
> **Alessandro DiNello**, President and CEO, Flagstar Bank

With that in mind, DiNello respects Kraninger's efforts to shift the bureau's focus from enforcement to supervision in her first year —an approach more in line with other federal regulators.

"That process is not easy, especially given that it was born to be an enforcement agency and now she's trying to change it into more of a supervision agency that uses enforcement when appropriate," DiNello said.

Given Flagstar's status as one of the country's largest mortgage originators, DiNello has had a prime perspective to observe how the shift in the CFPB's leadership has impacted its examination practices as well.

"I can tell you that based on the examinations that [Flagstar's] had for originations and servicing, they are not taking their foot off the pedal relative to being very, very strong in their oversight of consumer protection," he said. "I would say the examination reports are more tilted toward enforcement as compared to other agencies, but I think that it's changing some and I think for the better, without any compromise to consumer oversight."

Haynie also said the industry has more regulatory certainty than it did under Cordray as a result of Kraninger's leadership style.

"She approaches this with the mindset of 'Let's make sure everyone knows the rules of the road and that we're going to hold them accountable to those rules' and that's fine," Haynie said, "whereas, under Cordray, the mentality seemed to be 'Figure it out and we'll tell you when you screw up. And we're watching.' So it's a much different climate."

Many industry stakeholders expected Kraninger's leadership approach to closely mirror that of former acting director **Mick Mulvaney**, given that he was her boss at the Office of Management and Budget. Instead, DiNello characterized the approach taken by Kraninger as balance between that of Cordray, who frequently noted his belief in regulation by enforcement, and Mulvaney, who DiNello noted "was pretty clear in his desire to completely change the approach that the CFPB was taking."

"I think Kathy has found a middle ground there that has been satisfying to those companies she regulates without diminishing the protection to the consumer," he said.

Thomas-Whitley said she views Kraninger as a "thoughtful" and "reasonable" leader who is carving out her own unique legacy at the CFPB, much the way Cordray and Mulvaney did during their tenures.

"For me, it's not a matter of comparing her to Mulvaney and Cordray," **Thomas Whitley** said. "They both had opportunities to come in with their own styles and goals to put their own stamp on the CFPB and she is doing the same."

One respect in which Kraninger is similar to Mulvaney is in her commitment to following the Dodd-Frank Act statute, she said.

"By adhering to just the statute without creating standards that go beyond it, she is making the regulatory climate easier for the industry to adhere to," Thomas-Whitley said.

Regulatory initiatives

Under the leadership of President **Donald Trump** administration officials, the CFPB has introduced initiatives intended to spur more experimentation with new technological innovations and alternative credit models by promising safe harbors against enforcement actions for companies that follow a specific set of criteria. Such initiatives include the CFPB's No-Action Letter (NAL) Policy, Trial Disclosure Program (TDP) Policy and Compliance Assistance Sandbox (CAS).

"I don't see institutions really anxious to jump on these initiatives coming from regulators," Thomas-Whitley said. "That might be because they are wary of the fact that the regulatory climate could change again in a few years."

That is not to say that mortgage companies are not taking initiative to implement new technology or explore alternative credit models. For example, DiNello explained that Flagstar is intently examining the possible benefits of certain special financing options that consider factors beyond a borrower's income — a method he believes the CFPB should consider when devising a replacement to its Qualified Mortgage (QM) patch.

What's in store for QM?

With the QM patch set to expire in January 2021, many in the mortgage industry are hoping the bureau can have a replacement ready to go before that happens. The idea that a permanent solution must be found eventually is widely shared but the specifics of what that solution should look like vary drastically.

DiNello said he is not anticipating a QM replacement being ready in time to take the place of the patch but is grateful that the bureau plans to extend the current patch as needed.

"I'd say it's about 50/50, a toss of the coin, whether there'll be a replacement ready or not," he said, noting that could change as the expiration date draws nearer and the CFPB faces more pressure to get something in place.

DiNello noted that the Federal Housing Finance Agency does not strike him as particularly concerned about the pending QM patch expiration, and neither is he.

"I'm not concerned that it will in some way significantly impact the availability of credit — at least from Flagstar," DiNello said. "I think that lenders, like us, are going to be prepared. It's not something I'm losing sleep over."

Haynie noted that ICBA strongly believes a replacement is needed sooner rather than later and that it should come with some degree of flexibility, rather than being tied to a set maximum debt-to-income (DTI) ratio.

"When we wrote to the CFPB, we urged them not to let the patch just expire but to make meaningful change and to get a permanent solution in place," Haynie said. "When 40 percent of loans are getting QM approval (using the patch), you can't just rip that away."

He noted that ICBA has advocated for a range of acceptable DTI levels in which loans with DTI ratios of up to 45 percent would qualify for QM status, rather than 43 percent as the patch calls for. ICBA also recommended that loans with DTIs between 45 percent and 50 percent be eligible for QM status but their eligibility would be rebuttable, and loans with a DTI over 50 percent generally would not be considered QM. ICBA recommended the CFPB modify Appendix Q of the QM rule to include certain compensating factors that lenders could use to justify higher DTI ratios, which is how lenders underwrite loans manually.

DiNello also said he does not think the replacement should be a one-size-fits-all solution. He would prefer to see a policy that sets the maximum acceptable DTI ratio requirements for QM loans to be commensurate with a borrower's individual financial situation.

"I think QM eligibility should be measured in some other way that considers, perhaps, some sliding scale for DTI," DiNello said.

"You could argue that it should lower or higher than 43 percent for some people depending on their income level."

The future of mergers

The merger of the BB&T and SunTrust — the largest bank merger since the enactment of the Dodd-Frank Act — highlights how regulatory oversight of such large-scale acquisitions has changed. DiNello observed that leaders at the Fed, FDIC and OCC seem less inclined to delay the process any time it receives negative feedback on a particular merger.

"I think what you see is that the process been more streamlined and efficient than they used to be," he said. "And a lot of it has to do with the way that regulators are dealing with comments from community groups. I think they're looking at the comments with a more critical eye these days."

In the past, mergers often were delayed while regulators looked into concerns raised by such groups, many of which were raised simply to delay the process and to get institutions involved to agree to certain terms drafted by those groups, DiNello stated. Now, he believes regulators are being more efficient by only taking into account concerns raised appropriately by groups that have "a legitimate beef."

The need for efficiency is among the reasons the companies gave for entering into the merger, with SunTrust stating in a February press release that "[t]he expected benefits of the transaction include a pro forma efficiency ratio of 51 percent."

"We're in a different world here, post-crisis," DiNello said. "Capital levels at banks have to carry make it much more difficult to get a return on equity that are considered satisfactory in the investment community. That's why you're seeing these kinds of mergers. SunTrust and BB&T are very similar-sized organizations so none of their shareholders are getting any big benefit because of the acquisition, but they feel like, as one institution, they're going to be able to be more efficient. And because of that efficiency, they're going to be able to more readily achieve an acceptable return on capital."

Haynie said he was "surprised" at how quickly the BB&T-SunTrust transaction passed regulatory hurdles compared with other large-bank mergers in years past. However, he has not seen or heard evidence of mergers closing more quickly among smaller institutions, which account for the vast majority of all bank mergers.

What about CRA reform?

A matter which DiNello does expect to see the same amount of efficiency out of the banking regulators, but just as much attention from community groups and politicians, is Community Reinvestment Act (CRA) reform. With that in mind, coupled with the Fed's hesitance to "get on board" with the FDIC and OCC in committing to working on a proposal, he expects that the notice-and-comment period is likely to drag out for months after a proposal is introduced.

"This, to me, seems like it has to be an interagency rule," he said. "I think it's going to be a very elongated comment period and consideration period after the comment period closes, which gives the Fed a lot of time to either get on board or decide to do their own thing, which I can't imagine they will do."

Comptroller **Joseph Otting** has expressed optimism about the prospect of getting an interagency CRA proposal issued early in 2020, despite question marks regarding the Fed's pending support.

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