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American Conference Institute's 21st National Conference on



CONSUMER FINANCE CLASS ACTIONS & LITIGATION



Expert strategies for in-house and outside counsel on navigating class actions, litigation, and government enforcement actions in the consumer finance industry

January 29-30, 2015 | New York Marriott Downtown | New York, NY

Hear directly from the frontline on federal and state regulatory and enforcement priorities:

Donna Murphy
Director of Community and Consumer Law
Office of the Comptroller of the Currency

Bryan Greene
General Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Dept. of Housing and Urban
Development

Richard K. Hayes
Deputy Chief, Civil Division and Chief,
Affirmative Civil Enforcement
United States Attorney's Office, E.D.N.Y.

Laura Levine
Deputy Bureau Chief, Consumer Frauds
and Protection
New York State Attorney General's Office

Joseph Borg
Director
Alabama Securities Commission

Glenn Kaplan
Chief, Insurance & Financial Services Division
Office of the Massachusetts Attorney General

Richard L. Bischoff
Assistant Attorney General, Consumer
Protection and Public Health Division
Office of the Attorney General of Texas

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Our distinguished faculty will provide you with key insights and strategic advice for:

- The CFPB's enhanced oversight of the industry, its impact on the litigation landscape, and rulemaking updates
- Federal and state initiatives: new priorities, enhanced enforcement, aggressive investigation
- Consumer finance class action litigation and settlement trends, & new and emerging procedural considerations
- Preparing for and managing the coming wave of residential mortgage litigation and fair lending claims
- Claims and defenses involving background check, credit dispute investigation, and debt collection litigation under the FCRA and FDCPA
- TCPA: FCC involvement, recent settlements and strategies for defending claims
- SCRA: 6% cap, protections against default, case law, government enforcement and more
- Heightened scrutiny of nonbank 'larger participants,' including student loan lenders, auto lenders, debt collection agencies and payday lenders
- The borrower's perspective: insights from the plaintiffs' bar and consumer advocates

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Consumer financial services companies are facing unprecedented enforcement scrutiny and mounting litigation, and there is no sign of change coming anytime soon. That is why it is essential that in-house and outside counsel have a mastery of new class action trends, emerging theories of liability, the latest enforcement actions, and the most effective defense and settlement strategies.

It is with this in mind that **American Conference Institute** has developed its **21st National Conference on Consumer Finance Class Actions & Litigation**. We have assembled an unparalleled faculty of federal and state regulatory and enforcement officials, senior in-house counsel, renowned federal and state judges, and leading outside counsel who will provide you with expert advice, critical insights, and comprehensive updates on:

- CFPB enhanced **oversight** and heightened **scrutiny** of the industry: recent enforcement actions, preparing for investigations and examinations and looking ahead to rulemaking updates
- Expanded use of Dodd-Frank UDAAP provisions: enforcement and examination by CFPB and State AGs
- **Fair Lending**: ramped up DOJ and CFPB enforcement and the “Disparate Impact” theory of discrimination as a litigation game changer
- **Residential Mortgages**: RESPA qualified written request claims, allegations arising under Reg X and Reg Z amendments, TILA rescission, and more
- Recent **mass action developments** and **emerging trends** in class action claims theories
- A focus on **class action settlements**: guidance in dealing with the **approval process** and strategies to achieve a successful outcome
- CFPB interest and potential crackdown on **consumer arbitration agreements/clauses** and class action arbitration waivers in the consumer context
- The **borrower’s perspective**: insights from the plaintiffs’ bar and consumer advocates
- Claims and defenses involving **background check, credit dispute investigation, and debt collection litigation** under the FCRA and FDCPA
- TCPA: what you need to know about the industry’s **most active statute, FCC involvement**, recent settlements and strategies for defeating TCPA litigation
- SCRA: **6% interest rate cap** on obligations, protections against **default judgments, auto repossessions, and foreclosures**, recent case law updates and overview of **government enforcement actions**
- **Student loans and auto loans**: rise in enforcement and litigation by the CFPB
- The latest on **enhanced government scrutiny over payday loans/deposit advance loans** and efforts to stop fraud by cutting off access to bank payment-processing services

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- In-house counsel from:
 - Banks
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 - Loan servicers and purchasers
 - Credit card issuers
 - Payday lenders
 - Collection agencies
- Defense attorneys specializing in:
 - Consumer credit and finance
 - Financial services
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7:20 Registration and Continental Breakfast

8:00 Co-Chairs' Opening Remarks



Thomas M. Hefferon
Goodwin Procter LLP



Scott M. Pearson
Seyfarth Shaw LLP

8:05 In-House Roundtables: How Corporate Counsel are Managing Consumer Finance Claims/Class Actions, Compliance Challenges, and Enforcement Actions, Selecting and Working with Outside Counsel to Enhance the Client-Attorney Relationship, and Achieving Efficiencies with Reduced Budgets and Smaller Staffs

Panel 1 | 8:05 – 9:15

Panel 2 | 9:15 – 10:25

Scott Murphy
Senior Counsel, Consumer Lending and Corporate
Regulatory Division
Wells Fargo & Co. Law Department

Robert Hardman
VP & Assistant General Counsel
JP Morgan Chase & Co.

Lisa Kolman Fleischer
General Counsel
Sallie Mae Bank

Rachel Mulchaey
Director and Counsel, Law Department
Comenity LLC, an Alliance Data Company

Thomas D. Graber
Vice President, Deputy General Counsel,
Chief Litigation Counsel
Core Logic

Bryan Dempsey
Vice President and Corporate Counsel
Bayview Loan Servicing

Kevin S. Willen
Senior Vice President, Managing Director, Regulatory
Services DC & Irvine
U.S. Bancorp

Bernadette Miragliotta
Senior Litigation Counsel, General Counsel's Office
American Express

Brian Blake
Counsel
MERSCORP Holdings, Inc.

Patrick G. Broderick
Vice President, Assistant General Counsel
Ocwen Financial Corporation

Joseph T. Green
General Counsel
TCF Financial Corporation

John G. Short
EVP, Chief Compliance Officer & Governmental Affairs
Fortegra Financial Corporation

Panel 1 Moderator:



Michael Ferachi
McGlinchey Stafford, PLLC

Panel 2 Moderator:



Robert T. Mowrey
Locke Lord LLP

- Assessing the chief concerns of corporate counsel
- Considerations when selecting outside counsel: Insights on banks' selection process for the panel of defense counsel
- Perspectives on the trend of pairing down the number of law firms with which a company engages
- How in-house counsel are working to enhance their relationships with outside counsel
- In-house counsel expectations of outside counsel
- Advising outside counsel on how to better support in-house counsel
- Top 5 issues that in-house counsel wants their outside counsel to be thinking about
- How are their corporate law departments organized and what issues are unique to their companies?: How these unique issues affect the litigation that they face and their case management strategies
- In-house and outside counsel perspectives on best practices after receiving a letter threatening litigation: Minimizing the costs and managing the logistics of document retention in this situation; How long potentially relevant documentation should be held on to; What do other corporate and outside counsel suggest/do in these situations?
- Strategies corporate counsel use to manage litigation
- How does managing and defending a large-scale case or class action differ from managing and defending a smaller case?

- Lessons learned from past litigation: Minimizing your exposure to future litigation and better managing future litigation
- Escalated complaints: Managing escalated complaints so as to avoid litigation
- How financial institutions are adapting to new and emerging regulations and case law: What changes have been implemented and with what success?
- What does corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies in the wake of Dodd-Frank?
- Managing and responding to government enforcement actions, investigations, and demands: What have corporate counsel experienced so far?: Lessons learned, pitfalls to avoid, and best practices going forward
- Top 5 concerns of in-house counsel now and in the near-term
- Management of third-party relationships and vendor oversight: Impact of the CFPB
- Assessing creative and effective ways for corporate counsel to manage the fees defense counsel charge for class action work
- The rise of the alternative fee arrangement: is it succeeding or fizzling out?

- Corporate counsel insights into innovative billing arrangements that law firms have implemented: Successes and failures of such arrangements
- How corporate counsel are responding to internal budgetary pressures
- How capital requirements have impacted legal budgets
- Internal and external cost-cutting: What has worked and what has not
- In-house staffing solutions for stretched legal departments

10:25 Networking and Refreshment Break

10:35 CFPB Enhanced Oversight and Heightened Scrutiny of the Industry: Evaluating Lessons Learned from Recent Enforcement Actions, Preparing for Investigations and Examinations and Looking Ahead to Rulemaking Updates



Christi Lawson
Foley & Lardner LLP



Donald S. Maurice
Maurice & Needleman, P.C.

Gerald S. Sachs
Paul Hastings LLP
Former Senior Counsel for Policy and Strategy of the CFPB's Office of Enforcement

- Assessing recent enforcement actions and investigations undertaken by the CFPB: Lessons learned; Trends in enforcement actions; Which market sectors are receiving enhanced scrutiny and why?; Pursuit of mortgage reinsurance cases
- Anticipating the types of claims that the CFPB will be pursuing in the near-term: Bulletin relating to mortgage servicing transfers: Which CFPB actions will lead to piggybacking private actions?
- Preparing for and responding to CFPB investigations
- Responding to CIDs (Civil Investigative Demands)
- Where the CFPB is likely headed in the coming months: Trends in examinations and investigations; What to expect
- Assessing coordination efforts between the CFPB and other federal and state agencies, including state AGs
- Rulemaking updates: Recent enforcement actions claiming 'disparate impact'
- Impact of the CFPB's consumer complaints database on consumer finance litigation: How have plaintiffs' counsel responded?; How financial institutions can use the database to anticipate and prepare for the next wave of litigation and develop proactive compliance strategies to minimize risk
- Assessing the CFPB's adjudication procedures
- Attorney-client privilege and the CFPB

11:35 Expanded Use of Dodd-Frank UDAAP Provisions: Enforcement and Examination by CFPB and State AGs, Recent Federal and State Cases, State Authority under § 1042, Officer and Manager Liability as a "Related Person," and More



Andrew Stutzman
Stradley Ronon Stevens & Young, LLP



Sanjay Ibrahim
Parker Ibrahim & Berg LLC

- UDAAP enforcement actions
- How to deal with the overlap in State and Federal jurisdiction
 - State AG's and the CFPB
- The CFPB's focus on UDAAP

- What practices has the CFPB targeted?
- States' authority under § 1042
- Recent case law
- Assessing the definition of 'abusive' practices
 - Potential pitfalls for financial institutions
 - What types of products or aspects of origination and servicing may be 'abusive'?
 - Lessons learned from recent enforcement actions
- Addressing potential UDAAP concerns
- Minimizing exposure to UDAAP issues

12:15 Networking Luncheon for Speakers and Attendees

1:15 Fair Lending: Ramped Up Enforcement; DOJ and CFPB Involvement; "Disparate Impact" Theory of Discrimination as a Litigation Game Changer; Defending and Managing the Latest Predatory and Abusive Lending Claims Including Discriminatory Pricing/Steering; and the Latest Settlement Orders, Themes and Implications



Thomas M. Hefferon
Goodwin Procter LLP



Frank Hirsch
Alston & Bird LLP

- Assessing the status of 'disparate impact' in lending litigation and enforcement
- Evolving definitions of "fair lending"
- Recent litigation developments: allegations of discriminatory pricing or steering
- Fair lending settlement orders, themes and implications: negotiating successful resolutions
- Interplay between UDAAP and fair lending
- Fair Housing Act as the basis for disparate impact claims
- DI claims in cases where lenders choose only QM safe harbor or QRM loans because of liability and financing imperatives (reputational, PR and monetary risk)
- Assessing recent discrimination cases and actions, and defending against the latest claims alleging fair lending violations
- How state and federal agencies are approaching fair lending issues
- Preparing for enhanced scrutiny of fair lending issues by the CFPB and DOJ
- Evaluating and assessing recent and emerging CFPB and DOJ enforcement actions


2:05 Residential Mortgages: RESPA Qualified Written Request Claims, Emerging Mortgage Servicing Allegations Arising Under Reg X and Reg Z Amendments, TILA Rescission, New Loan Modification Litigation Risks Arising Out of CFPB's Mortgage Servicing Rules, MERS and County Fee Litigation, Foreclosure Trends, Evolving Theories of Recovery for HAMP, and Claims Involving Lender Placed Insurance and Option ARMs




Bryan Greene
General Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Dept. of Housing and Urban Development



Victoria R. Collado
Burke, Warren, MacKay & Serritella, P.C.


 *Eric J. Simonson*
McGlinchey Stafford, PLLC

 *H. Keith Thomerson*
Hinshaw & Culbertson LLP

- Updates on recent actions and case law
- Recent activity under RESPA
- TILA recession
- Assessing the CFPB's one year old mortgage servicing rules and the industry's response: Potential for lenders/servicers to face increased liability under the new rules; How have servicers complied with the new rules to date?; Compliance challenges related to the new dual tracking restrictions; What holes or gaps are there in the new rules?; Lessons learned and pitfalls to avoid; Best practices for ensuring compliance going forward
- Litigation arising from the new servicing rules: Mitigating your exposure to such litigation; Impact of the rules on damage calculations
- Trends in mortgage servicing and related litigation
- National qualification and screening standards for all loan originators
- Protecting Tenants at Foreclosure Act (PTFA): Will this act result in a private right of action for borrowers, allowing them to bring claims?
- Best practices and lessons learned from prior foreclosure documentation errors
- Auditing completed foreclosures and conducting foreclosure look-backs
- Attorney fees and related foreclosure filings
- Defending against claims arising from loan servicing
- Managing and defending against class actions arising from lender-placed insurance
- New and emerging claims relating to standing in contested foreclosure cases
- GSE transfer tax litigation
- MERS litigation developments: Recording fee class actions
- Handling borrower counterclaims in contested foreclosures
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- New developments relating to loss mitigation
- Litigation challenges relating to mortgage origination
- Loan modifications and foreclosure: Defending against counterclaims arising from loan modifications and HAMP; Assessing the *Wigod* decision
- Responding to challenges to foreclosures in non-judicial foreclosure states

3:20 **Afternoon Break**

3:30 **Recent Mass Action Developments and Emerging Trends in Class Action Claim Theories**


 *Jennifer Gray*
Greenberg Traurig LLP


 *Hunter Eley*
Doll Amir & Eley LLP

- Current trends in issue certification: Cases attacking certification; Use of preemptive strikes
- Strategies in dealing with competing class actions
- What's trending in the aftermath of *Wal-Mart*, *Amgen*, and *Comcast*

- Class actions and experts
- Class notice issues
- CAFA developments: *Knowles*, *AU Optonics*, *Dart Cherokee Basin Operating Co. v Owens*
- Removability


4:20 **A Focus on Class Action Settlements: Guidance in Dealing with the Approval Process and Strategies to Achieve a Successful Outcome**

 *Ted Frank*
Center for Class Action Fairness

 *Danielle J. Gould*
Burke, Warren, MacKay & Serritella, P.C.

- Settlement trends and strategy
- Recent noteworthy settlements
- Heightened scrutiny of all aspects Rule 23: Notice, attorney's fees and the approval process
- Class action settlements for preliminary and final approval: Interplay of professional objectors
- Cy Pres distributions: What notice is needed?; Potential pitfalls and issues

5:10 **Consumer Arbitration Agreements/Clauses and Class Action Arbitration Waivers in the Consumer Context: CFPB Interest and Potential Crackdown, Post-*Concepcion* Update, and Notable Recent State Case Law**

 *Matthew W.H. Wessler*
Public Justice, P.C.

 *E. Hutchinson Robbins*
Miles & Stockbridge, P.C.

 *Matthew P. Previn*
BuckleySandler LLP

- CFPB's interest in the use of arbitration agreements and clauses: Study under Section 1028 of Dodd-Frank; Potential ban or limit of use; How to adapt to this potential change
- Implications of *AT&T Mobility v. Concepcion* and *American Express v. Italian Colors* for consumer arbitration agreements and the potential impact of the CFPB's arbitration study
- Where are we on Arbitration Clauses?
- The status of class action waivers and arbitration in the wake of *Concepcion*
- The treatment of *AT&T v. Concepcion* by lower courts and emerging legal issues
- How are the lower courts applying *Concepcion*?
- Defeating plaintiffs' theories as to why *Concepcion* and its progeny should not apply to a particular case
- Implications of *Iskanian v. CLS Transportation*: Enforceability of arbitration agreements with mandatory class waivers; Exceptions; FAA Preemption of state law

6:00 **Conference Adjourns**


Cocktail Reception
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Day Two: Friday, January 30, 2015


7:30 Continental Breakfast

8:00 Views from the Bench: Judicial Perspectives on Class Certification, Arbitration, the Evolution of the Law, Settlement Considerations, the Latest Plaintiff Theories, Emerging Defense Strategies, E-Discovery, Bankruptcy and Foreclosure Litigation, Asset Valuation Issues, MERS and Questions of Loan Ownership, and More


 *Hon. Ruben Castillo*
U.S. Dist. Ct., N.D. Ill.


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 *Hon. Richard Kramer*
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Moderator:

 *Stuart M. Richter*
Katten Muchin Rosenman LLP


9:45 Networking and Refreshment Break

9:55 Speakers from Federal and State Agencies on the Latest Regulatory, Supervision, Investigation and Enforcement Initiatives, Examination Procedures, and Attorneys General Lawsuits Against Financial Services Companies

 *Donna Murphy*
Director of Community and Consumer Law
Office of the Comptroller of the Currency

Richard K. Hayes
Deputy Chief, Civil Division and Chief, Affirmative Civil Enforcement
United States Attorney's Office for the Eastern District of New York


Laura Levine
Deputy Bureau Chief, Consumer Frauds and Protection
New York State Attorney General's Office

 *Joseph Borg*
Director
Alabama Securities Commission


Glenn Kaplan
Chief, Insurance & Financial Services Division
Office of the Massachusetts Attorney General

Richard L. Bischoff
Assistant Attorney General, Consumer Protection
and Public Health Division
Office of the Attorney General of Texas

Moderator:

 *Scott M. Pearson*
Seyfarth Shaw LLP

11:30 The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates

 *James C. Sturdevant*
The Sturdevant Law Firm


 *David S. Stellings*
Lief Cabraser Heimann & Bernstein, LLP


Moderator:

 *Jeffrey Pilgrim*
Pilgrim Christakis LLP

In this session, you will hear from leading plaintiff attorneys and consumer advocates on claims trends and current litigation, where cases are headed in the coming months, and how lenders and servicers can work with borrowers to minimize the need for litigation. You will obtain key insights into the types of actions plaintiffs' counsel are focusing on and how to prepare for and respond to new and innovative claims, as well as how consumer advocates view the current consumer finance landscape.

12:20 The Telephone Consumer Protection Act (TCPA): What You Need to Know about the Industry's Most Active Statute, FCC Involvement, Recent Settlements and Strategies for Defeating TCPA Litigation

 *Debra Bernard*
Perkins Coie LLP


 *Eric Jon Taylor*
Parker, Hudson, Rainer & Dobbs LLP


- Definition of ATDS under the Statute
- FCC involvement: Position on an industry association's petition requesting clarification of and revisions to rules governing the TCPA
- Determining what constitutes a 'predictive dialer' for purposes of the TCPA
- Trends in TCPA litigation: Key court decisions
- Evolving issues relating to consent and revocation of consent under the TCPA: What constitutes consent and what is acceptable as revocation of consent?; Impact on liability
- Defending against the new wave of TCPA claims and class actions: Illegal call recording, text messaging, robo-dialing, cell phone calls, fax blasts, and trade line litigation: Assessing the latest plaintiff strategies

- Mims v. Arrow Financial: Federal jurisdiction for TCPA claims
- Ensuring compliance with the TCPA in the absence of regulatory guidance: Minimizing the risk of violations
- Certification issues relating to TCPA class actions
- Recent settlements and their effect on the filing of future suits

1:05 Networking Luncheon for Speakers and Attendees


2:05 Claims and Defenses Involving Background Check, Credit Dispute Investigation, and Debt Collection Litigation Under the FCRA and FDCPA; and CFPB Action and Examination in the Credit Dispute and Debt Collection Context Including Collection Litigation Post-CFPB ANPR and Survey

 *David K. Stein, Esq.*
Bricker & Eckler LLP

 *John R. Chiles*
Burr & Forman LLP

- Impact of CFPB rulemaking on debt collection litigation relating to FCRA and FDPCA: Survey for ANPR
- Impact of recent actions taken by the CFPB and the FTC relating to the FCRA: Enforcement initiatives; How the CFPB and FTC are working together to enforce the FCRA
- Trends in FCRA litigation
- Best practices for defending against FCRA claims and class actions
- Managing and defending against FCRA class actions arising from employee background screenings
- Minimizing the risk of exposure to FCRA claims: Providing notice to avoid FCRA violations
- State claims and FCRA preemption
- How the CFPB and FTC are working together to enforce the FDCPA: Filing of joint amicus brief in 9th circuit FDPCA case
- Trends in FDCPA litigation
- Defending against the new wave of FDCPA claims
- Minimizing the risk of exposure to FDCPA claims
- Preparing for the FTC's increased focus on potential FDCPA violations
- Preparing for and managing actions taken by state attorneys general and federal and state regulatory agencies relating to debt collection practices
- How debt collectors have adapted their internal compliance and auditing policies and procedures to minimize future litigation
- Understanding and making use of statistics and data related to debt collection litigation
- Strategies for calculating damages based on net worth
- Assessing the risks associated with sales of debt by creditors: Pitfalls and risks of debt sale agreements
- How clients are working with debt collectors to ensure proper oversight
- Chain of title issues: Class actions alleging unlawful patterns or practices

2:55 What Every Creditor Needs To Know About the SCRA, Including the 6% Interest Rate Cap on Obligations, and Protections Against Default Judgments, Auto Repossessions, and Foreclosures; Recent Case Law Updates and Overview of Government Enforcement Actions


 *Todd M. Hill*
Director of Government Affairs
Housing Policy Council of the Financial Services Roundtable


 *Bryan A. Frarkin*
McGuireWoods LLP

- Recent case law
- GAO report on mortgage protections
- Obama administration's partnering with mortgage servicers to enhance protections under the act
- Developments in eligibility requirements
- OCC's increasing supervisory and enforcement focus
- State SCRA statutes: State remedies for violation of the Federal SCRA

3:45 Afternoon Break

3:50 Student Loans and Auto Loans: The Rise in Enforcement and Litigation by the CFPB, Disparate Impact Claims and Scrutiny of Fair Lending Issues, and Private Litigation

 *Therese G. Franzén*
Franzén and Salzano, P.C.

 *James M. Milano*
Weiner Brodsky Kider PC

 *Nicholas P. Mooney II*
Spilman Thomas & Battle, PLLC

- The CFPB's recent enforcement activity and expected civil litigation against student lenders: Analysis of the types of claims that have been made against mortgage lenders that are now morphing over into student lending
- UDAAP authority
- Disparate impact claims
- Private litigation claims: Student loan servicing; Collection activities of student loan servicers; Advertising and marketing practices; Fair-lending claims: disparate impact theory and facially neutral school-based underwriting and pricing criteria
- Evaluating the CFPB's enhanced scrutiny of the auto lending industry: DOJ and CFPB's filing of joint case on indirect auto lending program
- Recent settlements: Effect and progeny of 'Ally' settlement
- How dealerships and lenders are responding to the crackdown: Enhanced compliance efforts; Compensation plans vs. dealer reserve
- Analysis of participation/markup claims

4:45 The Latest on Enhanced Government Scrutiny Over Payday Loans/Deposit Advance Loans and Efforts to Stop Fraud by Cutting Off Access to Bank Payment-Processing Services: "Operation Chokepoint," New Regulation, CFPB/FDIC/OCC Involvement, the Outlook for Access to Credit, and More

 *Donn A. Randall*
Bulkeley, Richardson and Gelinas, LLP

- The Regulators' interest in payday lenders and deposit advance loans
 - 'Operation Choke Point'
 - The DOJ's activity
 - The CFPB's position
 - FDIC and OCC involvement
- Dealing with usury issues with these types of loans
- Reducing the risk of predatory lending
- Possible negative effects of shutting out payday lenders

5:20 Conference Ends



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