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Institute

Fifth National



*Avoiding Exposure to Regulatory and Civil Actions for*

# PREDATORY LENDING

November 13 and 14, 2003

The Bellagio, Las Vegas

## Get first hand updates from

- DOJ
- The Fed
- HUD
- OTS
- Nevada
- New Mexico
- New Jersey
- New York

## Learn from these industry leaders

- Ameriquest
- Bank of America
- Bank One
- Budget Finance
- Central Pacific Mortgage
- GreenPoint
- Irwin Home Equity
- New Century Financial
- Option One Mortgage
- Wells Fargo Home Mortgage

Senior consumer lending executives, leading outside counsel and Federal and State regulators will give you up-to-the minute information and practical advice on:

- The impact federal preemption will have on your compliance program
- Winning policies and procedures to avoid allegations of predatory practices
- Proactive measures to prevent your company from acquiring "predatory" loans
- Selling your loans: assignee liability in the secondary market
- A guidebook to states' anti-predatory lending initiatives
- Federal and state enforcement officials' views on the predatory lending landscape
- What can be done to change public perception of the industry
- Comparative analysis of automated compliance solutions

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## Do you have the practical information you need to keep your lending program in compliance with ever-evolving anti-predatory lending requirements?

Federal agency regulations, state legislative rules, municipal ordinances and now federal legislation...anti-predatory lending laws continue to proliferate. No longer just a subprime issue, the explosion of these mandates has created a Rubik's cube of lending and reporting requirements, with over 150 separate and distinct governing regimes nationwide.

While the goals of the legislation are unassailable, the methods employed by governing bodies have resulted in a complex maze of conflicting standards and competing definitions. Moreover, with local jurisdictions in the fray and no clear rule on federal or state preemption, it is sometimes easier to completely withdraw from a market rather than risk non-compliance with conflicting policies in this regulatory minefield.

Simply keeping abreast of the myriad legislation and regulation alone is a full-time challenge. Taking steps to ensure full compliance is an arduous task even for the largest and most sophisticated consumer lenders.

**American Conference Institute** has developed this **Fifth National Conference on Avoiding Exposure to Regulatory and Civil Actions for Predatory Lending** to provide everyone involved in consumer lending, including general counsel, compliance directors, regulatory attorneys and mortgage brokers, with a thorough, up-to-date understanding of the ever-changing legal and regulatory landscape.

This conference brings together key federal regulators from the **DOJ, HUD, OTS** and the **Federal Reserve Board**, state regulators from **Nevada, New Mexico, New York and New Jersey**, and industry representatives from **Ameriquest, Bank of America, Bank One, Budget Finance, Central Pacific Mortgage, GreenPoint, Irwin Home Equity, New Century Financial, Option One Mortgage** and **Wells Fargo Home Mortgage**. These knowledgeable insiders will address:

- The latest on federal preemption and challenges to local and state ordinances
- How state enforcement officials are addressing potential violations
- Developments in federal enforcement actions against "predatory" practices
- What you can do to minimize your exposure to administrative or civil actions
- The procedures industry leaders have in place to ensure full compliance
- What can be done to challenge the validity of predatory lending laws
- An update on litigation in the subprime market and how you can avoid being targeted by plaintiffs' counsel
- How to comply with competing provisions

This is your opportunity to network with colleagues from across the country who are grappling with similar issues and to get answers to your most pressing questions from the experts. Be sure to reserve your spot at this dynamic event by registering early. Call **1-888-ACI-2480**, fax your registration to **1-877-927-1563** or register online at **[www.americanconference.com](http://www.americanconference.com)**.

## WHO SHOULD ATTEND

- In-house Counsel
- Directors/Managers of Compliance
- Regulatory Counsel
- Mortgage Brokers
- Attorneys Acting for Consumer Lenders

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This conference has been approved in accordance with the requirements of the **New York State Continuing Legal Education Board** for a maximum of 15 credit hours.

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Thursday, November 13, 2003

**7:30 Registration Opens  
Continental Breakfast **

**8:30 Chair's Opening Remarks**

**Wright Andrews, Jr., Partner**  
Butera & Andrews (Washington, DC)

**Wright is "always a pleasure!"**

*Sharon Fleeman, Compliance Manager  
Countrywide Financial Corp., April 2003*

**8:45 The Impact of Federal Preemption on  
Predatory Lending Compliance Programs**

**Jim Gazdecki, Vice President**  
Government Relations

**Donald C. Lampe, Partner, Womble Carlyle  
Sandridge & Rice, PLLC (Greensboro, NC)**

**John A. Courson, President & CEO**  
Central Pacific Mortgage (Folsom, CA)  
Chairman, Mortgage Bankers Association of America

*Will federal preemption be the panacea its promoters envision, or will it merely provide yet another layer of rules for consumer lenders? In this session, industry experts Jim Gazdecki, John A. Courson and Don Lampe, all actively involved in the preemption struggle, will assess the current status of preemption and discuss what it means for your financial institution.*

- Federal preemption of state/local initiatives
- The latest proposed and passed Congressional reforms
- Legislative action in the works
- Status of attacks by state legislators, cities and federal agencies on preemption
- OTS's attempt to narrow scope of available preemption in regulatory rulemaking process
- Will litigation follow?
- Counter-initiatives: where do they stand?

**10:00 Federal Enforcement Update**

**Jim Angus, Acting Deputy Assistant Attorney  
General, Housing and Enforcement Section**  
U.S. Department of Justice (Washington, DC)

**Robert Cook, Special Counsel**  
Division of Consumer and Community Affairs  
Federal Reserve Board (Washington, DC)

**Bryan Greene, Director of Policy and Program  
Evaluation Office of Fair Housing and Equal  
Opportunity, Department of Housing and  
Urban Development (Washington, DC)**

**Mariana Rexroth, Senior Compliance Examiner**  
Office of Thrift Supervision  
West Region (San Francisco, CA)

**Moderator:**

**Michael Benoit, Partner**  
Hudson Cook, LLP (Linthicum, MD)

*In this interactive session, federal officials will discuss their departments' views on predatory lending regulation and enforcement efforts. With ample time for Q &A, this*

*session will provide conference delegates with a goldmine of first-hand information on the latest fair lending regulatory and enforcement initiatives.*

- Agency positions on preemption
- What are the newest regulatory protections?
- Current enforcement activities
- The impact of recent settlements (Household, Citibank, Midwest Mortgage and others)
- The Fed's final rules increasing and HMDA requirements
- The Equal Credit Opportunity Act and discriminatory pricing

**Mike Benoit is an "excellent moderator"**

*April 2002*

**11:30 Coffee Break **

**11:45 The Latest Regulatory Initiatives by  
States and Local Districts — What  
Your Company Needs to Do Now**

**Thereze G. Franzén, Partner**  
Franzén & Salzano (Atlanta, GA)

**Michael Knudsen, President**  
Knudsen & Associates (Sacramento, CA)

- New state law initiatives
  - trends in provisions
- Licensing statutes
  - prohibitions against yield-spread premiums
  - amendments to regulations and statutes
  - availability of credit
  - how are laws being interpreted in states with mature legislation?
- Local initiatives
  - conflicts with state constitutions/state laws
  - state preemption provisions
- How lenders can impact local law
- Is there a need to adhere to local legislation?
- "Debarment" vs. private rights of action and administrative enforcement
- Direct regulation vs. exercise of spending power

**12:45 Networking Lunch **

**2:00 Update on Enforcement of  
State Fair Lending Provisions**

**Alvin Narin, Assistant Counsel**  
New York State Banking Department (New York, NY)

**H. Robert Tillman, Director (invited)**  
Division of Banking, New Jersey Department  
of Banking and Finance (Trenton, NJ)

**TBA, Nevada Division of Financial Institutions**  
(Carson City, NV)

**William J. Verant, Director, New Mexico**  
Financial Institutions Division (Santa Fe, NM)

- Where do state officials see the line between sub-prime and predatory lending?
- What are state officials doing to address difficulties with complying with vague and undefined terms?
- What are the latest enforcement actions underway?
- Where are enforcement initiatives heading?

**Federal Regulators**

**State Regulators**

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- Factors that trigger enforcement actions
  - how actions originate
  - criteria for pursuing actions
- What are common factors in pending enforcement actions?
- The best ways to negotiate with state officials after the commencement of an enforcement action
- How to get the best outcome when your company is targeted by state officials
- Do states implement legislation based on other state initiatives?

**3:30 Refreshment Break**

**3:45 New Frontiers in Litigation: How the Latest Lawsuits Should Change Your Compliance Programs**

**Tom Allen, Partner, Reed Smith (Pittsburgh, PA)**

- The impact of the Fairbanks litigation
- The newest theories of liability/recovery advanced by plaintiffs
- What defenses have been most effective?
- Litigation strategies-plaintiff and defendant
- Common litigation pitfalls
- Consequences of litigation
- Defending against Attorney General enforcement actions
- The latest RESPA and yield-spread premium litigation
- Update on attempts to impose liability on assignees

**Tom gave an "excellent presentation"**

*April 2002*

**4:45 Conference Adjourns for Day One**

**Friday, November 14, 2003**

**7:30 Continental Breakfast**

**8:30 Chair's Opening Remarks**

**8:40 "Net Benefit" and "Borrower's Ability to Repay": Making the Abstract Concrete**

**Andrea Lee Negroni, Partner  
Goodwin Procter (Washington, DC)**

*"Net benefit" and "borrower's ability to repay" are common terms in fair lending legislation and regulation. While they are common, however, these terms are far from clear. Andrea Lee Negroni will provide an in-depth analysis of the meaning of these terms, including a comparison of how they have been defined by various entities.*

- Why do legislators and regulators use terms like "net benefit to the borrower?"
- What laws require lenders to provide "tangible net benefits" to the borrower?
- How can lenders define and document tangible net benefits and ability to repay a loan?

- Risk of failure to document benefits of the loan and appropriate underwriting
- How are courts interpreting "net benefits"?
- Dealing with exceptions — how should a lender address unique circumstances?

**Lee has "fantastic insight"**

*Elisa Mills, Senior Corporate Counsel  
The Provident Bank, April 2003*

**9:30 Preventing Exposure to Predatory Practices: A Practical and Legal Guide**

**Joseph Lynyak, Partner  
Reed Smith (Los Angeles)**

**Eric Malchodi, Senior Vice President  
Risk Management**

**Wells Fargo Home Mortgage (Minneapolis)**

- Monitoring for "high cost" loan provisions and conditions
- Determining your organization's business path
  - search and tracking provisions
  - satisfying thresholds and triggers
- Implementing a taskforce: organizational impacts
  - relaying information to the field
  - compliance training programs
  - implementing an organizational audit program
- Keeping up with regulatory changes: compliance resources and websites
  - traps in overlapping regulation
- Where are the safe harbors?
- Dealing with a "credit counselor requirement"
  - voluntary vs. mandatory requirement
  - where do you need certification?
- Dealing with a pre-approval requirement: agency or credit counselor
  - what does pre-approval mean in business and liability terms?
- Tools to guard against predatory lending
- Meeting CRA obligations without violating local and state laws
- Complying with unclear standards

**Joe is "very sharp and knowledgeable"**

*April 2002*

**10:30 Coffee Break**

**10:45 Automated Compliance Solutions: Are They the Answer?**

**Heather Schwartz, Vice President  
Product Management, PCi Corporation (Boston, MA)**

**Tim Green, CEO, Mavent (Irvine, CA)**

**Jason Roth, Vice President  
ComplianceEase (Burlingame, CA)**

**Moderator:**

**Donald C. Lampe, Partner, Womble Carlyle Sandridge & Rice, PLLC (Greensboro, NC)**

*In this interactive session, leading vendors of compliance software will engage in discussion and demonstration of the relative strengths and weaknesses of their products. Aided by audience input, veteran predatory lending expert Don Lampe will compare and*

**Vendor Showcase**

contrast the products as well as discuss the advantages and disadvantages of using compliance software — and examine the limitations of this method of compliance. This is a unique opportunity to compare and contrast the latest products and gain insight from others who have used these and competing products.

## 12:00 Networking Lunch

## 1:15 Practical Compliance Strategies: How to Manage the Regulation Patchwork

**Adam J. Bass, Senior Executive Vice President**  
Ameriquest Mortgage Company (Orange, CA)

**Michael Lipsitz, Senior Vice President**  
and Associate General Counsel  
Bank One Corporation (Chicago, IL)

**James Manion, Executive Vice President and General Counsel,**  
GreenPoint Financial (New York, NY)

**Terry Theologides, General Counsel**  
New Century Financial Corp. (Irvine, CA)

- Overview of company and trade group best practices
- Update on developments in Treasury's Best Practices initiative
- Should Best Practices focus on products or processes?
- Dealing with the multiple indices that are mushrooming in proposed state and local legislation
- How are others dealing with state law quagmire of new regulation?
- Identifying and working with differences
- Borrower credits as an alternative to yield spread premiums
- The case for prepayment penalties
- Integrating Best Practices throughout the organization
- How to modify Best Practices for lenders with drastically different products, business models and resources
- Can and should an enforcement regime be tied to a lender's compliance with Best Practices?

**"All were timely and useful — good show!"**

*April 2003*

## 2:30 Refreshment Break

## 2:45 Assignee Liability: Real World Advice on Predatory Lending and the Secondary Market

**James Mann, Counsel**  
Wilmer Cutler & Pickering (New York, NY)

**Raymond Chenault, Assistant General Counsel**  
Bank of America (San Francisco, CA)

- Exposure through acquiring loans originated by other lenders
- How increased targeting on purchasers/ securitizers will impact secondary market
- Impact on private securitizations
- What obligation exists to investigate the originator's practices and data?
  - what investigation should you make?
- Adapting your underwriting standards to flag problems in originations

- Do you have any obligation to audit your loan portfolio to determine to what extent it is fully in compliance with existing laws?
- Erring on the side of non-origination
- What are the investor restrictions regarding predatory lending law exposure?
  - Section 32 loans
  - loans with state or local limits on points, APRs
- Warranty requirements from investors and purchasers concerning origination practices
- What are the new reporting obligations?
- Void vs. voidable loans under law
- Fannie and Freddie's anti-predatory lending initiatives
- What loans won't secondary purchasers buy?
- Why rating agencies' views are important

## 3:45 Challenging Predatory Lending Laws and Changing Public Perception

**Wright Andrews, Jr., Partner**  
Butera & Andrews (Washington, DC)

**N. Mitchell Feinstein, Chairman of the Board**  
Budget Finance Company (Los Angeles, CA)

**Brendan Kenneally, Associate Director**  
Government Relations, Irwin Home Equity  
(San Ramon, CA)

- Are there bases to successfully challenge the validity of predatory lending laws?
- Effectively working with segments of the industry that have different interests or goals
- The potential for purely risk-based pricing that takes into account risks under local laws and probable enforcement outcomes
- Is there a trend effect on FHA and VA loans?
- How effective is consumer education?
- Alternatives to existing and proposed regulatory language and provisions that would achieve consumer advocates' goals
- Evidence of market consequences of anti-predatory lending laws
- Solutions through "Comprehensive Mortgage Reform"
- What are the lessons learned on where the industry went wrong?
- Is there a benefit to the explosion of rules?
- How to change public perception and lessen impact on the market
- The need for a pro-consumer stance; promoting open and fair access to credit
- Ex-nomination
- Getting the message out
  - the role of attorneys
  - compliance professionals
  - working with government relations

## 4:45 Closing Remarks/Conference Ends

**"Everybody was fabulous! I really enjoyed the conference"**

*April 2002*

**"Overall a great gathering — very informative"**

*April 2002*

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\$1699 per person. The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

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