

Consumer Financial Services: What to Expect in 2018

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By: Hinshaw Consumer Crossroads

The year of 2017 was highly volatile for the consumer financial services industry and featured significant court rulings, regulatory changes, and other developments.

With a new year upon us, the *Consumer Crossroads* blog wanted to ask some of our Hinshaw financial services attorneys about what we might expect in 2018. Here they are, specifically prognosticating trends in FCRA litigation, reverse mortgages, student loan regulatory and litigation, CFPB developments, cryptocurrencies, TCPA litigation, lost promissory notes, federal regulatory conduct, and local government responses to the foreclosure crisis.

Ellen Silverman - *New York/Minneapolis*

An increase in FCRA litigation, particularly in the areas of identity theft, credit reporting related to Chapter 13 bankruptcies, and proper use of Compliance Condition Codes.

Maura McKelvey - *Boston/Providence*

In light of HUD's October 2017 reduction to the principal limit for reverse mortgages and increase to mortgage insurance premiums, fewer defaults are expected, but perhaps increased litigation related to fees and costs associated with obtaining a reverse mortgage in the more competitive market.

Vaishali Rao - *Chicago*

Student Loans (Regulatory): At least 2 more states will likely continue a trend of passing student loan servicing licensing laws. Relatedly, there will likely be a dispute over whether the Higher Education Act preempts those state laws with respect to federal loans. In addition, there should be continued injections of private loan dollars in the marketplace.

CFPB: While there is likely to be another year of speculation as to the Director's role and the Bureau's functions, particularly interesting will be: (1) specific enforcement actions or rulemaking that are concretely (and legally) altered or rescinded; (2) court decisions (including potentially the SCOTUS *Lucia* case) that address fundamental Constitutional questions, which will transcend administration changes.

Dennis Lueck - *New York/Los Angeles*

A recent spike in student loan litigation (typically, TCPA and FCRA claims) as the number of defaulting borrowers continues to increase. Also, for the U.S. Court of Appeals for the D.C. Circuit to issue its opinion in *ACA International v. FCC*, the consolidated appeal of the FCC's 2015 Omnibus Declaratory Ruling interpreting the TCPA.

Justin Fabella - *Boston*

Financial institutions offering more investment products involving cryptocurrencies and digital coins including a bitcoin exchange-traded fund and other derivative products. However, the increased interest by investors and institutions will likely come with increased regulation. The increased regulation should cause more volatility of cryptocurrencies and digital coins and a further uptick in regulation and litigation. 2018 may bring the first digital currency related initial public offering.

Barbara Fernandez - *Miami*

A continued increase in TCPA litigation against not only debt collection agencies, but all companies using some form of automation to contact consumers. 2018 may be the year the DC Circuit Court of Appeals issues its opinion regarding the FCC's 2015 TCPA Omnibus Ruling and perhaps resolve the issue of TCPA exposure when companies unknowingly call a wrong number.

Alan Kaufman - *New York*

Watching the legal landscape with regard to how strictly courts require compliance with specific requirements even in the face of what otherwise may be a valid foreclosure action, including issues relating to lost notes and strict compliance with the terms of the mortgage.

Justin Penn - *Chicago/Los Angeles*

After an active year of judicial appointments in the Federal Courts, there may be an effect on the scope of federal regulatory conduct or modifications/abrogations of law in federal court rulings.

Sam Bodurtha - *Boston/Providence*

Cities and towns' ongoing efforts to repair and abate code violations on property still in distress following the rescission and foreclosure crisis. Will towns and cities continue to look to mortgagees and lenders for repairs? Will they pursue alternative remedies such as receiverships? Will house flippers and investors return to these neighborhoods in an improving economy and undertake repairs?

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Topics

Student Loans, CFPB, Mortgage Loans, TCPA, Foreclosure, Mortgage, FCRA, Reverse Mortgage, Cryptocurrency