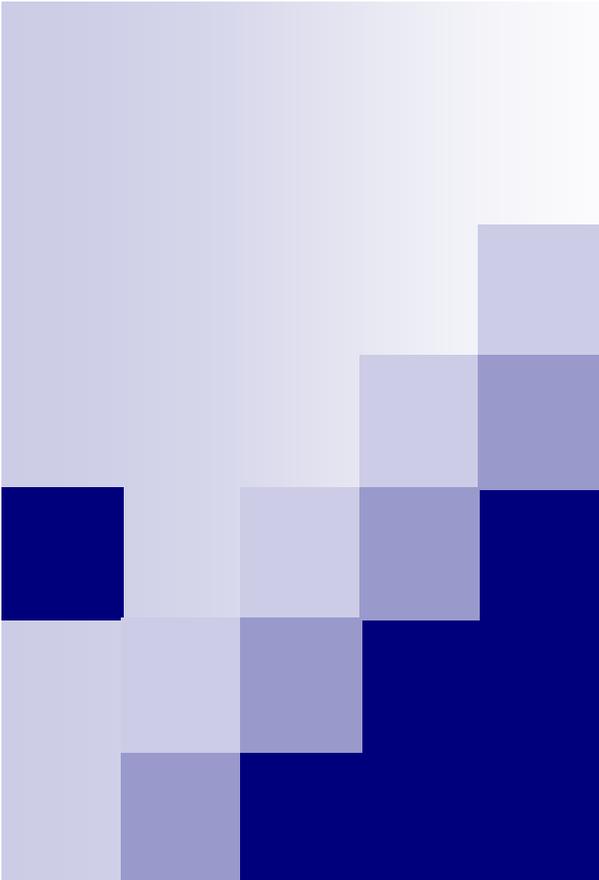


AEA CONFERENCE 2018

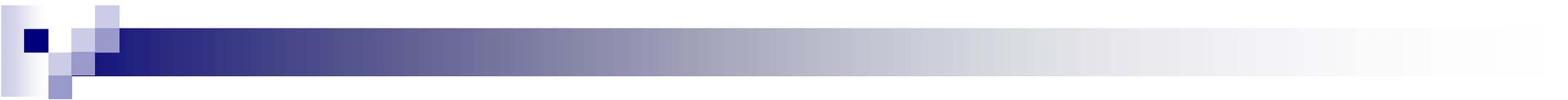
American Escrow Association
The National Scene, Presented by

Art Davis, Washington DC Representative



*Overview of the Year
to Date:
8/1/17-5/18/18*

DC Activity and Related Work,
Regulatory, Legislative and
Courts-plus much more



Assessing the year so far:

- ❖ Multiple major developments have occurred throughout this year—a unique year compared to the past—such as major tax legislation—a really big bill followed by another smaller bill; CFPB rulemaking and looking to reinvent itself; a major court decision under RESPA; difficulty of getting nominees to key posts in the Administration confirmed; and numerous legislative efforts at Dodd-Frank Reform.



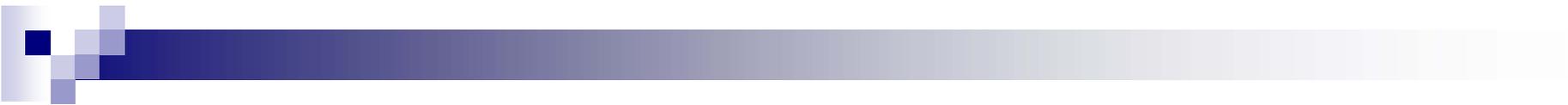
Quick Summary of Major Items

- ❖ Tax Reform in December 2017 and technical fixes to that plus some other provisions in February 2018—mostly applicable to 2018 forward.
- ❖ CFPB Rulemaking in April 2018 to complete TRID technical rules and clarify the use of a CD to re-baseline for tolerance analysis.
- ❖ PHH case finally answered with a decision in January 2018 upholding CFPB single-director structure but also invalidating the CFPB penalty against the lender and upheld the AEA position on relying on existing RESPA guidance—note PHH let the May 1, 2018 deadline for appealing the structure part of the decision pass without filing an appeal to the Supreme Court so that case will not go further.



Quick Summary of Major Items

- ❖ CFPB Director Cordray resigns his position early in late November 2017 and attempts to appoint his own replacement but President Trump appoints an interim Director—Mr. Mulvaney and the Court has upheld that appointment.
- ❖ Mr. Mulvaney looks at reinventing the CFPB for a better balance between their actions and approaches to benefit consumers while respecting the rights of business parties (covered persons).
- ❖ In doing this CFPB issues 12 RFIs seeking public input on how they can improve and reinvent themselves with due dates for the various submissions between 4/26/18 and 7/16/18.
- ❖ HUD still does not have a confirmed head of FHA. IRS had Acting Top Officials.



CFPB-Part 1 TRID Final Rule

- ❖ Published on the CFPB website 4/26/18;
- ❖ Published in the Federal Register 5/2/2018, and can be cited as: **83 FR 19159** (19 pages);
- ❖ Becomes Effective 6/1/2018;
- ❖ Fixes So-called Black Hole;
- ❖ Does so by allowing lender to remain in “good faith” on their estimated disclosure if followed up by an updated and timely delivered original CD OR revised CD;



CFPB-Part 1 TRID Final Rule

More specifically new rule reads—

19(e)(4)(i) General Rule 1. Three-business-day requirement. Section 1026.19(e)(4)(i) provides that, subject to the requirements of §1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to §1026.19(e)(3)(iv) for the purpose of determining good faith under §1026.19(e)(3)(i) and (ii), **the creditor shall provide a revised version of the disclosures required under §1026.19(e)(1)(i) or the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under §1026.19(e)(3)(iv)(A) through (F) has occurred.**



CFPB-Part 1 TRID Final Rule

Existing (until 6/1/18) rule reads—

General rule. Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, **the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.**



CFPB-Part 1 TRID Final Rule

In Summary change is from—

.....the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.

TO

.....the creditor shall provide a revised version of the disclosures required under §1026.19(e)(1)(i) or the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under §1026.19(e)(3)(iv)(A) through (F) has occurred.



CFPB-Part 1 TRID Final Rule

As a reminder, §1026.19(e)(3)(iv)(A) through (F) includes:

(A) Changed circumstance affecting settlement charges. Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, “changed circumstance” means:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
- Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or
- New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under paragraph (e)(1)(i) of this section.



CFPB-Part 1 TRID Final Rule

As a reminder, §1026.19(e)(3)(iv)(A) through (F) includes:

(B) Changed circumstance affecting eligibility. The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance, as defined under paragraph (e)(3)(iv)(A) of this section, affected the consumer's creditworthiness or the value of the security for the loan.

(C) Revisions requested by the consumer. The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.



CFPB-Part 1 TRID Final Rule

As a reminder, §1026.19(e)(3)(iv)(A) through (F) includes:

(D) Interest rate dependent charges. The points or lender credits change because the interest rate was not locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. No later than three business days after the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.



CFPB-Part 1 TRID Final Rule

As a reminder, §1026.19(e)(3)(iv)(A) through (F) includes:

(E) Expiration. The consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) Delayed settlement date on a construction loan. In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.....



CFPB-Part 1 TRID Final Rule

Illustrative Examples for Discussion of the Application of the clarified Rule for using the CD AND Additional Examples of a cost that can be estimated (early) high or lower and the impact of this clarification---



CFPB Part 2—Reinventing Itself?

- ❖ Request begun in 2018 through “Calls for Evidence” or RFI’s:
- ❖ Discussion of those on which AEA comments will occur and a brief description of each—importance of the public record on the future of the agency.
- ❖ List of RFIs with due dates---
- ❖ 1. Bureau Civil Investigative Demands and Associated Processes due 4/26/18—AEA Comments submitted.



CFPB Part 2—Reinventing Itself?

- ❖ List of RFIs with due dates---
- ❖ 2. Bureau Rules of Practice for Adjudication Proceedings due 5/7/18—NO AEA Comments.
- ❖ 3. Bureau Enforcement Processes due 5/14/18—AEA Comments.
- ❖ 4. Bureau's Supervision Program due 5/21/18—AEA Will Not Comment.



CFPB Part 2—Reinventing Itself?

- ❖ List of RFIs with due dates---
- ❖ 5. Bureau External Engagements due 5/29/18—AEA Will Comment.
- ❖ 6. Bureau Public Reporting Practices of Consumer Complaint Information due 6/4/18--AEA Will Comment.
- ❖ 7. Bureau Rulemaking Processes due 6/7/18—AEA Will Comment.



CFPB Part 2—Reinventing Itself?

- ❖ List of RFIs with due dates---
- ❖ 8. Bureau's Adopted Regulations and New Rulemaking Authorities due 6/19/18—AEA Will Comment.
- ❖ 9. Bureau's Inherited Regulations and Inherited Rulemaking Authorities due 6/15/18--AEA Will Comment.
- ❖ 10. Bureau Guidance and Implementation Support due 7/2/18—AEA Will Comment.



CFPB Part 2—Reinventing Itself?

- ❖ List of RFIs with due dates---
- ❖ **11.** Bureau Financial Education Programs due 7/9/18—
AEA Will Comment.
- ❖ **12.** Bureau's Consumer Complaint and Inquiry Handling Processes due 7/16/18--AEA Will Comment.
- ❖ Comments on Other Changes at CFPB—April 2018
Business Plan.



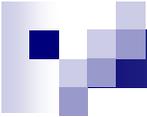
CFPB Part 3—PHH Case

- ❖ Case of major consequence—decided DC Circuit January 2018:
- ❖ Two key takeaways:
 - ❖ Single Director Structure of CFPB upheld –so bank lost on this but did not appeal by 5/1/18 so no further case action on that issue.
 - ❖ Large CFPB fine against the bank overturned including under due process arguments and CFPB lost on their claim they could retroactively change policy under RESPA enforcement—so bank won on this and the point of AEA participating in an amicus brief was vindicated as well so a win for AEA.



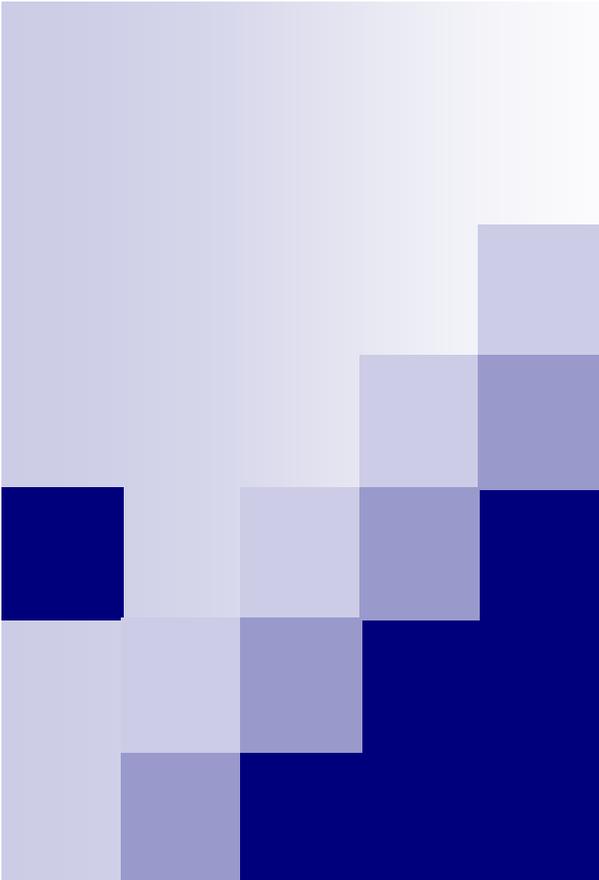
CFPB Part 4– Dodd Frank Changes Being Considered by Congress

- ❖ A variety of bills are being moved through Congress:
- ❖ The Bipartisan Senate bill S2155 has moved its way through the Congress.
- ❖ That leaves numerous (as in over 100) bills either completed in the House or on their way to completion there that could be combined into an Omnibus DFA fix bill for consideration later in the year, likely in a lame duck Congress.



CFPB Part 4– Dodd Frank Changes Being Considered by Congress

- ❖ That second category would include the AEA sponsored Seller Financer improvement act, HR 5287 –the PARITY Act of 2018. Current formal sponsors at the Financial Services Committee level are Steve Pearce NM and Denny Heck WA. A hearing has been held and markup scheduled for June in all likelihood.
- ❖ *This has a very good chance at passage and would be the first time a Bill sponsored by AEA, as the sole trade association sponsor, becomes law. It would remove legal and regulatory risk under TILA for small self-directed IRA and other investors in properties who self-finance the sale when removed from their holdings.*

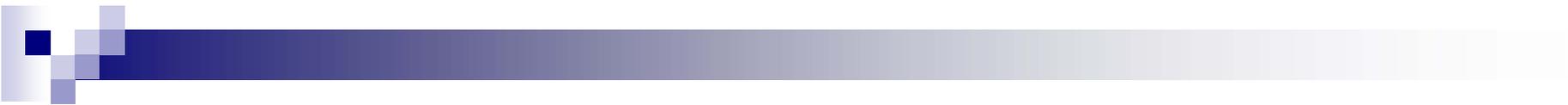


*Tax Law
Developments*



TAX LAW—2017

- ❖ TAX CUTS AND JOBS ACT of 2017
- ❖ AEA activity: working vigorously with others to maintain the real estate related tax benefits already in place—tax free exchanges, deduction of mortgage interest and property taxes, avoidance of tax on principal residence sales and others.
- ❖ Main area of uncertainty is some of new section 199A—the 20% special deduction for pass-thrus. Primarily a business owner issue.



TAX LAW—2017

- ❖ Section 199A is intended to equalize tax treatment of income from the pass throughs with the fact new regular corporate rate is 21% --flat. In the meantime individual rates go up to 37% at the highest. The 20% deduction (on the individual tax return) will mitigate the result of a successful business year taxed to the individual rather than the 21% cost to a corporate entity. The provision applies to the “qualified business income” of partnerships, limited liability companies, S corporations, trusts, estates, and sole proprietorships.



TAX LAW—2017

- ❖ Section 199A--Treasury was granted special regulatory authority to provide for anti-abuse rules and other interpretative guidance beyond the statute. Even expedited guidance will take some time for them to issue.
- ❖ It is not completely clear if certain service activities are “specified service” businesses which have a limit, above which the deduction is denied. Married filing joint limit is \$415,000—For example on a joint return, if taxable income is \$450,000 of which \$300,000 is from a specified service business that is an S corporation-- No Deduction!



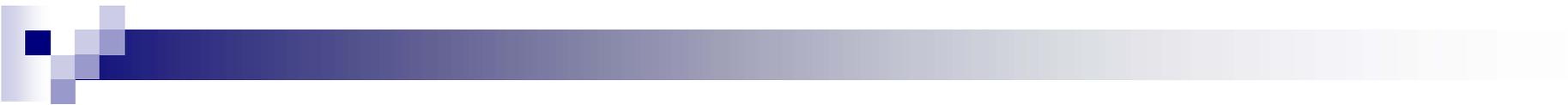
TAX LAW—2018

- ❖ Bipartisan Budget Act of 2018—enacted February 2018.
- ❖ California Wildfire relief—allows retirement plan distributions without penalty—for anyone whose principal home was damaged from 10/8/17 to 12/31/17 in a Presidentially declared CA wildfire disaster area. Can pay tax based on a 3-year spread.
- ❖ Also employee retention tax credit. 40% credit of up to \$6000 in qualified wages.
- ❖ Similarly, charitable contribution limits lifted for that time period.



TAX LAW—2018

- ❖ Bipartisan Budget Act of 2018—enacted February 2018.
- ❖ Personal casualty loss-related beneficial special rules added.
- ❖ Same for earned income and child tax credits.
- ❖ Extended exclusion from income for discharge of qualified principal residence debt, thus retroactively reinstating for 2017 what had expired at the end of 2016.



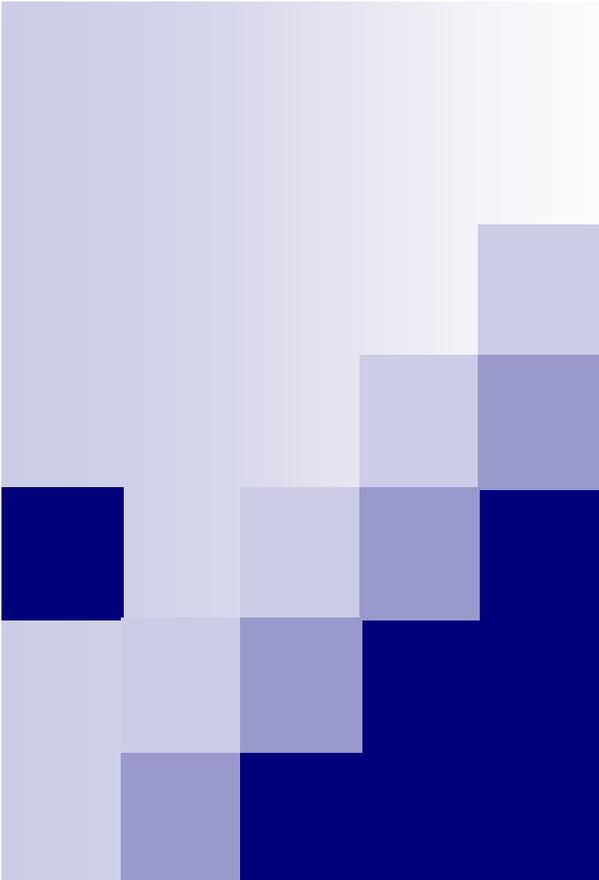
TAX LAW—2018

- ❖ Bipartisan Budget Act of 2018—enacted February 2018.
- ❖ Same retroactive fix for mortgage insurance premiums as qualified residence interest.
- ❖ Other expired provisions also extended—in general extenders are for 2017 only, but some extended energy credits done through 2021.
- ❖ Added new “simple” Form 1040SR for seniors with SS benefits and retirement distributions, etc.



TAX LAW—Continued Work on 1099-S Box 5 for foreign transferors:

- ❖ Meeting with IRS in March 2018 was productive.
- ❖ IRS has not yet submitted 2018 proposed collection requirements to OMB for clearance of the next form.
- ❖ Opportunity remains to change the certifications and box description for this year and next. Apparently box description intended to be explanatory and not prescriptive.
- ❖ Expect this to be wrapped up Summer 2018.



*Other Items of
Activity or Interest*



MISMO – UCI and Other Topics

- ❖ Managed by Others for AEA and Escrow.
- ❖ Access to Proceedings for any interested person is significant through MISMO website. Actually open access except face to face meetings.
- ❖ Template drafts will be key documents to review.



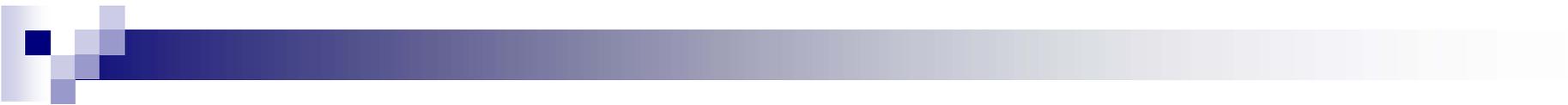
ADDITIONAL AMICUS BRIEF— Spokeo

- ❖ AEA Participated--Filed on behalf of a Supreme Court request on a matter AEA previously supported for grant of cert. to consider further the constitutional requirement of showing an injury in fact for a plaintiff to proceed on a non-economic “harm” caused by a failure of a person person to follow a federal disclosure or other requirement. Limits class action lawsuits.
- ❖ Court did not grant cert. at the time but the possibility remains in the next Term.



FINCEN DEVELOPMENTS —

- ❖ FinCEN issued an advisory in 2017 urging others in real estate to file voluntary (liability-free) suspicious activity reports where warranted.
- ❖ Also updated its GTO requirements twice this fiscal year. First for Russian sanctions law including wired funds and second for extension of that same set of requirements. Now in May a new secret order.



JOINT TRADES MEETINGS IN DC—

- ❖ Addressing Wire Fraud:
- ❖ Consideration of government policy changes-
- ❖ Wire best form of transfer?
- ❖ Speeding up Fed system--
<https://fedpaymentsimprovement.org/>
- ❖ Is Regulation J up to date?
- ❖ Should tougher sentencing guidelines be considered?



SUPPORT FOR ALTA TRID BILL—

- ❖ Changes disclosure computations for title insurance premiums so consistent with actual charge.
- ❖ Passed House— not added to S2155 — similar previous discussion may be part of an omnibus bill or could be added on Floor by unanimous consent.



BLOGS and Other Useful Materials—

- ❖ Foley and Lardner--
- ❖ Ballard Spahr—
- ❖ RESPRO Guides, such as RESPA Guide to Referral Fees “Dos and Don’ts for Salespersons.”



NEW IRS PROCEDURES—

- ❖ Taxpayer Contact changed requirements—
 - ❖ Requirement for personal information of a company employee when verifying taxpayer identity
 - AEA Advisory Issued—"any employee contacting the IRS as a third party contact should be prepared to provide their own birth date and social security number to proceed. If that is a problem your company should work around it while more advocacy occurs." IRS not likely to budge.



REMOTE E-NOTARY—

❖ MBA-ALTA MODEL BILL AND RESOURCE PAGE

❖ ON MBAs WEBSITE:

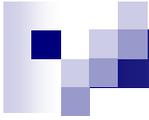
- MBA-ALTA Background Memorandum on the Model Bill
- MBA-ALTA Model Bill Section-By-Section Description
- MBA-ALTA Model Bill
- MBA Remote Online Notarization Issue Brief
- Suggested Talking Points on MBA-ALTA Model Bill
- Sample Support Letter to State Legislators
- Frequently Asked Questions on MBA-ALTA Model Bill
- Frequently Used Legal Acronyms of Key Laws and Model Bills
- MISMO Remote Online Notarization Development Working Group



PRESENTATION BY AEA—

- Money Laundering in Real Estate:
- How is it done? How can we stop it?
- Please join us for a day long conference, held at GMU's Schar School of Policy and
- Government to learn about Money Laundering Through Real Estate (MLRE)—

- What is MLRE? What is the impact?
- Is it a problem in the metro area? What can we do about it?
- What more do we need to learn?
- Speakers will include experts from the real estate sector, law enforcement, banks, government, associations, NGOs and academia.
- Date: Friday, March 23rd, 2018, 9:00 - 5:00pm



Questions?

