



Servicing in the New Privacy Sensitive and Data Protection World

2007 MBA National Mortgage Servicing
Conference

San Diego, CA

Feb 22, 2007

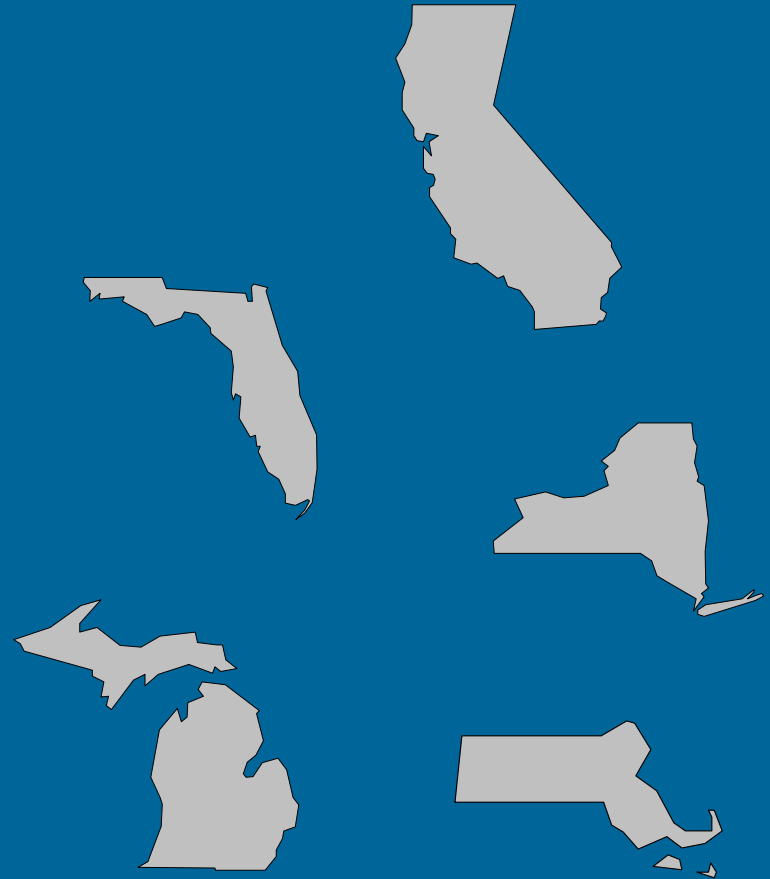
Subject Agenda



- US Supreme Court decision
- Escalating Preemption Battle
- State Laws
- Federal Laws
- Proposed FTC Rule
- Government Agency Expectations
- Standardized Privacy Notices language
- Data Sharing Restrictions
- Budgeting for Privacy
- Customer Experience
- Privacy Law Impact on Cross-Marketing Efforts
- Industry Best Practices
- Questions & Answers



VS



Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

Supreme Court Update

Watters v. Wachovia Bank

- ***What are the basics?***

A national bank, which is regulated under Federal law, owns a mortgage subsidiary, which is created under Michigan corporate law. Is the mortgage subsidiary subject to oversight from Michigan?

- ***What is the argument that Michigan's state laws are preempted by federal law?***

The OCC, by administrative rule, limited visitorial powers over mortgage subsidiaries of national banks to the OCC.

- ***If the Michigan laws are upheld, what would be the impact for state chartered mortgage subsidiaries of national banks?***

Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

Supreme Court Update

Watters v. Wachovia Bank



- Legal Questions Presented:
- 1.) Is the OCC's determination regarding visitorial powers entitled to judicial deference?
- 2.) Does the OCC's determination violate the Tenth Amendment to the United States Constitution?



Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

State Law Overview: Security Breach Notification



- 35 states have enacted Security Breach Notification laws.
 - Companies and/or state and local governments must disclose to consumers security breaches involving personal information.
 - Often, the notification timeframe provided in the statute is “the most expedient time possible, and without unreasonable delay”

Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

State Law Overview: Security Breach Notification

- **35 States have these laws:**

**ARIZONA
ARKANSAS
CALIFORNIA
COLORADO
CONNECTICUT
DELAWARE
FLORIDA
GEORGIA
HAWAII
IDAHO
ILLINOIS
INDIANA
KANSAS
LOUISIANA
MAINE**

**MICHIGAN
MINNESOTA
MONTANA
NEBRASKA
NEVADA
NEW HAMPSHIRE
NEW JERSEY
NEW YORK
NORTH CAROLINA
NORTH DAKOTA
OHIO
OKLAHOMA
PENNSYLVANIA
RHODE ISLAND
TENNESSEE**

**TEXAS
UTAH
VERMONT
WASHINGTON
WISCONSIN**

**Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com**

State Law Overview: Credit Freeze Legislation

- **Since 2005, most states have either enacted, or considered, Credit Freeze legislation**
- **Credit Freeze laws permit a consumer to provide a written request to a credit rating agency and prevent the disclosure of the consumer's credit data without his or her authorization**



Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

State Law Overview: Mortgage Trigger Leads

- ***Connecticut legislation would prohibit the use of Mortgage Trigger Leads.***
- ***Would prohibit any first mortgage broker or mortgage lender, as well as any second mortgage broker or mortgage lender, from using a “mortgage trigger lead” in connection with the solicitation of an application for a loan or a line of credit to be secured by a lien on residential real property.***



Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

State Data Breach & Credit Freeze laws

- www.pirg.org/consumer/credit/statelaws.htm
- www.ncsl.org/programs/lis/cip/priv/breachlaws.htm

Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

Federal Legislative Overview: 4 Important Bills Introduced in 2007



- ***Prevention of Fraudulent Access to Phone Records Act***
- ***Data Accountability and Trust Act***

- ***Social Security Number Protection Act***
- ***Personal Data Privacy & Security Act of 2007***

Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com



Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

Proposed FTC Rule



- Will regulate the sharing of a consumer's "eligibility information" among affiliates.

Requires:

- ❑ Clear & Conspicuous notice to consumers
- ❑ Provision of Opt Out to consumer
- ❑ ***OPEN ISSUE:*** What is "eligibility information"?

Chrys D. Lemon
McIntyre Law Firm, PLLC
cdl@mcintyrelf.com

Government Agency Expectations



- The importance of data security – identity theft
- Existing federal data security laws – the alphabet soup: GLBA Safeguards Rule, FCRA, FTCA, HIPPA, DLPA, FACTA Disposal Rule
- FTC Role
 - education
 - regulation
 - law enforcement
- Identity Theft Task Force



Government Agency Expectations



- The Zen of data security
 - no “one size fits all” answer
 - A culture of security
 - data security as a process
 - breach does not equal violation
 - must have reasonable and appropriate measures to protect sensitive consumer information

Government Agency Expectations



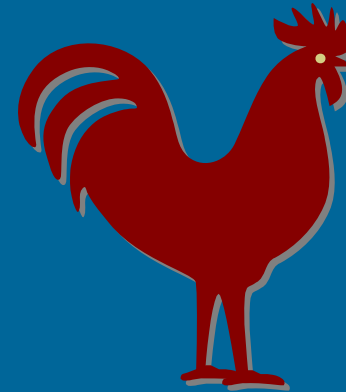
- Lessons to be learned
 - if you make a claim, it needs to be accurate
 - be aware of common security threats
 - protect your data – physical/electronic security
 - know with whom you are sharing information and monitor them.
- Service providers
 - don't collect/retain information you don't need
 - proper disposal
 - restrict access to those who need it. Taking data off-site
 - train your employees
 - create a plan and review it regularly

Standardized Language for Privacy



Notices

- Gramm-Leach-Bliley Act financial privacy notices
- As useful as “socks on a rooster”
- Inter-agency notice simplification project



Data Sharing Restrictions



- Privacy policies
- GLBA sharing rules
- Fair Credit Reporting Act “permissible purpose” rules
- Affiliate Marketing Rule
- SSN restrictions

Information Resource

- www.ftc.gov

Balancing Risk & Reality

Lisa R. Patania
February 22, 2005



What & Why

"In the financial services industry, acquiring and retaining customers basically depends on how well you service them, and how much they trust your organization with their money. Information security is critical to delivering the best service you can deliver, while reinforcing the perception of trust."

Source Works 07/2003



Bank of America



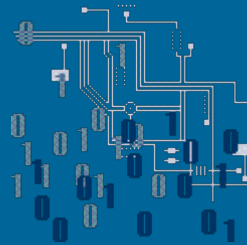
Who & How

“Good Guys” and “Bad Guys”
Regulators, Fraudsters, Identity Theft, Competitors, Vendor/Suppliers



Workspace Environment

- Physical security
- Paper intensive



Virtual Environment

- Encryption
- System access controls



Voice Environment

- Authentication routines
- Password protection



Associate awareness & education
Policies and procedures
Effective assessment and monitoring controls



Budgeting

Pay now

- Foundational
 - ❑ Policy & Procedures
 - ❑ Training program
 - ❑ Monitoring controls
- Technology solutions
 - ❑ Encryption tools



Pay later

- Litigation
- Brand erosion
- Breach calculator
 - ❑ Incident Costs (marketing, investigations etc.)
 - ❑ Personnel costs
 - ❑ Customer Credit Monitoring
 - ❑ Legal damages
 - ❑ Lost Revenue



Customer Experience

- Know your customer
 - Authentication routines
 - Opt out programs
- Privacy a “Driver of Delight”
 - Build trust
 - Simple language – avoid jargon

Privacy Compliant Cross-Marketing



- Optional Product Marketing (OPM) can generate per loan revenues of \$2, \$6, or even \$14+.
- OPM can easily reach six figures for the smaller servicer and well exceed seven figures for the mid-large-sized shops.

SERVICING MANAGEMENT

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The Risks And Rewards Of Privacy-Compliant Product Marketing

Privacy compliance and marketing initiatives might seem incompatible, but both can be successfully achieved on the same path.

BY GREG GENUA

Per privacy-compliant optional product marketing can help solve problems such as decreasing net profit margins, increased risk and high costs to service. It can also help servicers fund important strategic initiatives and prepare for the next refinancing wave.

The current restrictive regulatory environment can seem overwhelming. But what for servicers know is that optional product marketing (OPM) can generate per loan revenues of \$2, \$6 or even \$14 and higher to fund their critical objectives without significantly increasing their risk.

The highly profitable annual revenues from OPM can easily reach six figures for smaller servicers and exceed seven figures for mid- and large-sized shops. Servicers can no longer afford to give minimal attention to OPM or ignore its impact on their balance sheets.

While the privacy vs. marketing issue has a long history and can present a fair amount of conflict, it is not insurmountable. One essential requirement is that the servicing industry self-educates and thoroughly understands both sides of the equation.

Greg Genua is a certified information privacy professional with over a decade of experience in the mortgage banking industry. He is an independent consultant and can be reached at greg@genua.com or (916) 453-2567.

Results from recent surveys of executives and managers regarding privacy-security issues are alarming and reflect deep concerns that need to be addressed. Key findings and conclusions show a high awareness of risks and associated costs. However, corporate executives and industry leaders express minimal confidence that widespread organizational compliance is adequate.

Privacy background

The mortgage industry's experience with privacy began in the 1970s. It evolved with more onerous privacy-related regulations, such as the Gramm-Leach-Bliley Act (GLBA), the USA Patriot Act and the Fair and Accurate Credit Transactions (FACT) Act. As if that were not enough, as of March 2006, there were 22 proposed federal bills and 842 proposed state bills related to privacy and data security.

It has been six years since GLBA was enacted. It appears that our industry still doesn't appreciate, or has underestimated, the full scope and impact that privacy has on their operations and total risk exposure. Given the heightened public awareness and investor sensitivity, the consequences of any privacy-security breach are immediate and quantifiable. There is an average 2% to 4% corresponding stock decline immedi-

ately following a company's announcement of such a breach. Non-compliance has ramifications that include financial risk (corporate and personal) and, in extreme cases, incarceration.

Equally important, servicers have yet to capitalize on OPM to the fullest extent possible and gain the reward of exponential revenue growth. Despite the obvious, it does not appear that either privacy or OPM has been assigned the appropriate priority. This is evidenced by a general deficiency among companies to establish executive-level positions for privacy or marketing.

If corporations operated without a chief executive officer or chief financial officer, those companies would be viewed as suspect by investors and Wall Street, and their own boards of directors would force change.

The same opinion is developing about companies that lack executive leadership for corporate-wide privacy and marketing initiatives. These new positions should fully monitor and manage privacy and marketing, as well as be accountable for the profit and loss profiles of these separate entities, business units or departments.

Organizations that operate globally or outsource officers must contend with the contrasting privacy laws in Europe, Canada and the Asia Pacific

to continually in-expenses while re-service - all while evidence of consumer organizations the blanket policy making.

In fact, it is still go servicers to balance with OPM to 50% or even 200% revenues per loan. Projections exclude relative collection hazard insurance to risk.

The core business, annual revenues \$6 per loan for OPM spurs. For conducting regular revenues can be in \$4 per loan. Initial we can occur with \$4. When developed revenues will offset a associated with nature, resource consulting fees, revenue potential, whether net gain income, sub-projects or used as the cost to service, being treatment is, able differences on about realizing fees is warranted. Making OPM incur-out having the appropriate licenses. In most cases (charter or regulatory) will not be from having to mortgage general, or departments of

to take insurance form of flat fees or account basis, poses both the financial institution and increase productivity to risk, provides only marginal protection and leads companies down a very slippery slope. Costs associated with getting licensed are

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Greg S. Genua – Certified Information Privacy Professional (CIPP)

Privacy Compliant Cross-Marketing



- Key Drivers: Cost to service, cost by function, portfolio characteristics, average # of loans serviced, average loan balance & age, churn, billing communications, etc.

Figure 1 Prime Servicing Net Profits at New Study Highs in 2005

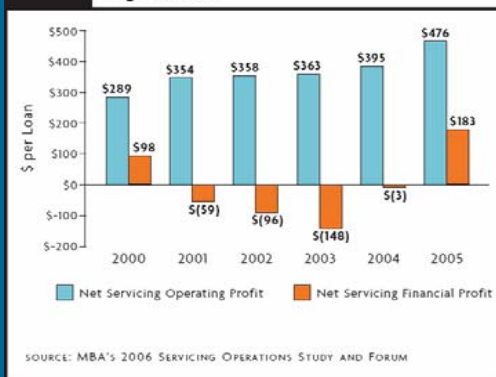


Figure 4 2005 Peer Groups and Portfolio Profiles

	Prime Small/Medium	Prime Large	Prime Mega	Hybrid Subset	Subprime
Average Number of Loans Serviced	34,601	383,551	2,974,571	268,927	259,649
Average Loan Balance	119,381	145,249	143,979	160,078	138,492
Portfolio Characteristics:					
Average FICO*	697	714	715	698	640
Average Default Rate	3.18%	4.26%	4.03%	5.70%	12.76%
% ARM/HELOC/IO	20%	34%	17%	55%	48%
Average Loan Age:					
% Less than 24 Months	34%	55%	40%	67%	83%
% Greater than 24 months	66%	45%	60%	33%	15%
Churn:					
Loans/Added Portfolio (%)	32%	44%	25%	65%	77%
Loans Subtracted/Portfolio (%)	29%	37%	21%	54%	52%

SOURCE: MBA'S 2006 SERVICING OPERATIONS STUDY AND FORUM

Figure 6 2005 Direct Servicing Expense by Function

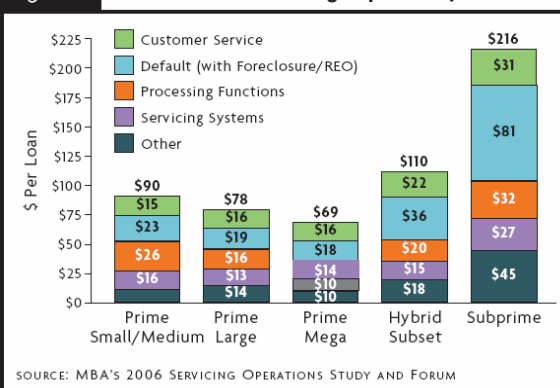


Figure 7 2005 Customer Service Details

	Small/Medium	Large	Mega	Hybrid Subset	Subprime
Expense:					
Direct Expenses (\$ per Loan)	\$14.86	\$16.03	\$16.24	\$21.59	\$30.92
Direct Expense (\$ per Inquiry)	\$7.70	\$5.27	\$4.89	\$6.09	\$5.55
Workload:					
Customer Inquiries per Loan	2.9	3.5	4.2	4.0	6.2
% Inquiries Handled via IVR	15%	44%	41%	44%	44%
% Companies Conducting Outgoing Calls	29%	56%	25%	38%	33%
Companies with Outsourcing	14%	44%	50%	33%	31%
Billing Communications:					
Monthly Billing Statement	36%	66%	47%	80%	87%
Coupons	52%	26%	33%	10%	8%
Other	12%	8%	21%	11%	5%
Total	100%	100%	100%	100%	100%

SOURCE: MBA'S 2006 SERVICING OPERATIONS STUDY AND FORUM

Privacy Compliant Cross-Marketing



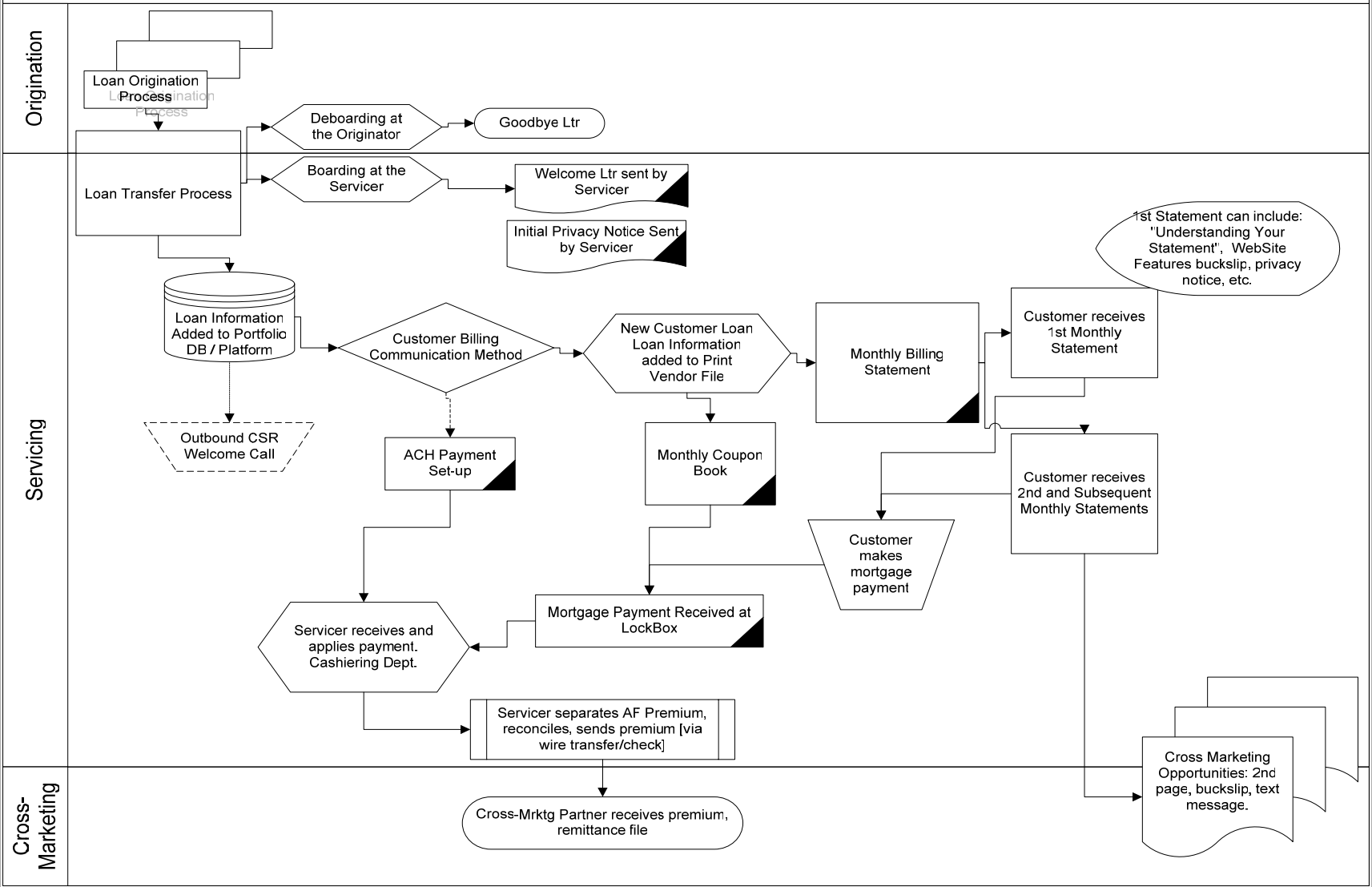
If Strategic Marketing Partner [SMP] can't

- define process(es)
- provide track record
- demonstrate compliance
- explain requirements

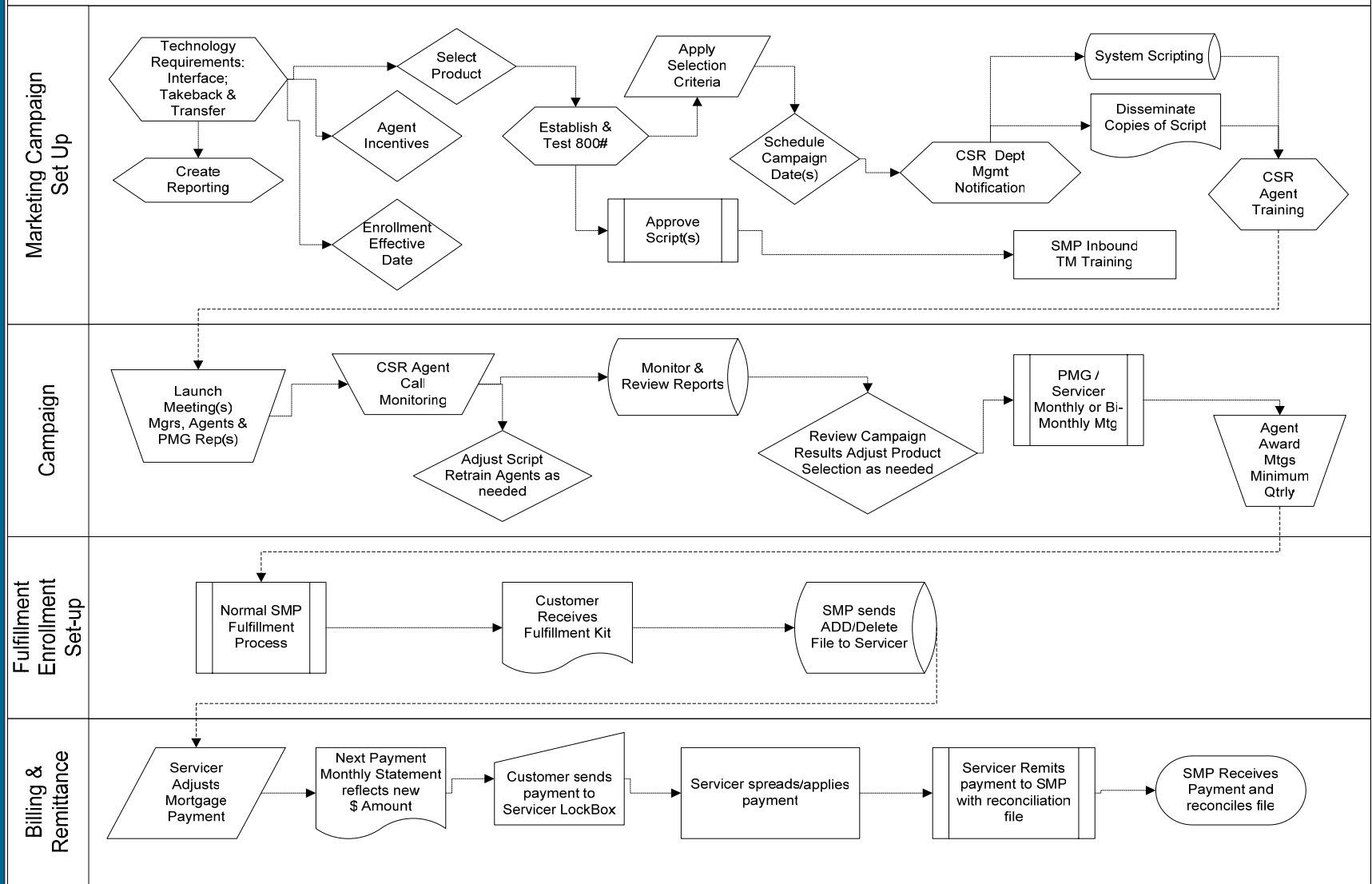
Then SMP can't

- Provide necessary protections

Loan Servicing Basics



CSR Agent Transfer Basics: Cross Marketing in Mortgage Servicing



Best Practices

- Internal Awareness
 - Current legal requirements
 - Associate/employee training
 - Effective monitoring & control process

- Testing Outsourcing Vendors

Panelists Information

Greg S. Genua, CIPP, LUTCF
Independent Consultant
4329 S. Chestnut Ave
Broken Arrow, OK 74011
Telephone: (918) 451-2247
Fax: (918) 455-3236
greg@genua.us



- Greg has been in the Financial Services Industry over 18 years. He has served on the National MBA Servicing Conference Planning Committee for the last 11 years, coordinating, moderating and speaking at various industry events and facilitating Servicing Manager's Workshop sessions.
- His areas of expertise include Revenue Growth through Ancillary Income and Optional Product Marketing, Privacy Compliance, Strategic Planning, Product and Business Development, Multi-Channel Distribution Methods, Performance Benchmarking, Fiscal Management and Controls, Operational Process Mapping and Improvement, Vendor Relationship Management and Contract Negotiations.
- Greg is a Certified Information Privacy Professional (CIPP), holds insurance licenses in 5 states, and is near completion on his Masters Degree in Business Administration.

Chrys D. Lemon, Attorney, Partner
McINTYRE LAW FIRM, PLLC
Attorneys and Counselors at Law
Madison Office Building
1155 15th Street, N.W.
Suite 1101
Washington, D.C. 20005
Telephone (202) 659-3900
FAX (202) 659-5763
cdl@mcintyrelf.com



- Mr. Lemon is a partner in McIntyre Law Firm, PLLC, practicing primarily in the financial services area. His firm counsels financial institutions and insurance firms on how to structure bank-insurance and debt protection marketing programs to comply with federal and state law, including requirements regarding financial privacy, consumer protection, licensing and telemarketing. He is a co-author of The Federal and State Regulation of Debt Cancellation Contracts and Debt Suspension Agreements (2005) and is Chairman of the Subcommittee on Insurance and Debt Protection Services of the American Bar Association's Banking Law Committee.
- Mr. Lemon received a B.S. in Economics from the United States Air Force Academy in 1980, a law degree from American University, and a master of laws in Taxation from Georgetown University Law Center. Before practicing law, Mr. Lemon was a pilot in the United States Air Force, instructing student pilots in the T-38 jet trainer, and worked as an analyst in the Office of the Secretary of Defense. He is admitted to practice law in Maryland, Virginia and the District of Columbia.

Panelists Information

Lisa Patania, Business Operations Executive
Consumer Real Estate
Bank of America.
NC1-014-12-33
200 S. College Street, 12th Floor
Charlotte, NC 28255
Tel: 704-387-8275
Fax: 704-388-6545
Lisa.R.Patania@bankofamerica.com



- Lisa Patania is the Business Operations Executive for Consumer Real Estate at Bank of America. In this role Patania oversees Consumer Real Estate's Business Operations Team. She is responsible for customer delight, executive relations as well as operations risk management which include Customer Information Protection, AML, fraud, Line of Business Self Assessment and the Quality Assurance review process.
- Patania joined the company in 1984 as Personal Banker. With over 20 years of experience she has lead and executed process improvements toward increased revenues, client satisfaction and shareholder value.
- Lisa's experiences have enabled her to become a leader at delivering integrated solutions within and across business lines.

Joel Winston, Associate Director
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave. NW, NJ-3119
Washington, DC 20580
(202) 326-3153
jwinston@ftc.gov



- Joel Winston is Associate Director of the Division of Privacy and Identity Protection of the Federal Trade Commission's Bureau of Consumer Protection. That Division has responsibility over consumer privacy and data security issues, identity theft, and credit reporting matters, among other things. Mr. Winston is currently serving on the federal government's Identity Theft Task Force, which was created by President Bush in March 2006.
- Prior to his current position, Mr. Winston was Associate Director of the FTC's Division of Financial Practices and, previous to that, Assistant Director in the FTC's Division of Advertising Practices.
- Mr. Winston is a frequent speaker and provides guidance and advice to the business and legal communities on consumer protection issues. He received his undergraduate and law degrees from the University of Michigan.