



American Conference Institute's 18th National Forum on

RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

*Expert strategies for in-house and outside counsel on navigating litigation hurdles
and preparing for new and emerging government enforcement initiatives*

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September 17-18, 2015 | Dallas Marriott City Center | Dallas, TX

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U.S. Dist. Ct., E.D. Mich.



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U.S. Bankr. Ct., S.D. Tex.



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U.S. Bankr. Ct., E.D.N.Y.



Hon. Michael B. Kaplan
U.S. Bankr. Ct., D.N.J.



Hon. F.A. Gossett
U.S. Dist. Ct., D. Neb.



Hon. Ramy Djerassi
Pa. Ct. Common Pleas



Hon. John M. Younge
Pa. Ct. Common Pleas



Hon. Jose M. Rodriguez
Eleventh Judicial Circuit Court, Fla.



Hon. Jack Tuter
Seventeenth Judicial Circuit Court, Fla.



Hon. Richard Kramer
Calif. Super. Ct.

In-House insights from industry experts, including:

Jon Hubbard
Troutman Sanders LLP

Lisa Bojko Lyle
Statebridge Company, LLC

William Dobi
PennyMac

Howard Lindenberg (invited)
Freddie Mac

Raymond Snytsheuev
Impac Holdings

Walter Buzzetta
MERSCORP Holdings, Inc.

Karyn Caldwell
United Shore Financial Services

Tina Green
Bank of America

Howard Buell, Jr.
Supreme Lending

Jason T. Whitcomb
Citibank N.A.

Charles E. Katz
Northwest Trustee Services, Inc.

Eric Selk
HOPE NOW Alliance

Paige M. Fitzgerald
U.S. Bank

Patrick Smith
PNC Bank

Felice Kesselring
First American Mortgage Solutions

Sessions include:

- The CFPB's far reaching impact on the residential mortgage industry, led by a recent former enforcement attorney and a recent former senior counsel with the Bureau
- TILA-RESPA integrated disclosure and implementation efforts
- State survey and specific nuances and developments in hotbed jurisdictions
- Enhancing your oversight and control over service providers, third-party vendors and brokers in an environment of heightened regulatory expectations
- The borrower's perspective: insights from the plaintiff's bar and consumer advocates
- Latest fair lending issues, including whether disparate impact claims are cognizable under the Fair Housing Act
- Mortgage servicing challenges: fallout from the servicing rules, issues arising from mortgage servicing transfers, and more
- Spotlight on class actions: new trends in certification motions, commonality, predominance, ascertainability and adequacy; the latest on early resolution and settlement strategy; and recent CAFA and removal developments
- Establishing standing, defending against the latest claims relating to MERS, overcoming contested foreclosures, and responding to borrower counterclaims and stall tactics
- Continued regulatory and enforcement focus on loss mitigation, loan modification and HAMP

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Stites & Harbison, PLLC

Alston & Bird LLP

The residential mortgage industry's leading in-house and outside counsel are meeting in Dallas on September 17-18, 2015. Attend to benchmark your current strategies, learn the latest government enforcement and regulatory priorities, and get judicial insights from top federal and state judges.

Revamped agenda for ACI's 18th Residential Mortgage Litigation and Regulatory Enforcement conference includes sessions on:

- The CFPB's far reaching impact on the residential mortgage industry
- A focus on TILA/RESPA: benchmarking your recent TRID compliance and implementation efforts
- Federal and state government insights on the residential mortgage regulatory climate
- State by state survey: specific nuances and developments in hotbed jurisdictions
- Enhancing your oversight and control over service providers, third-party vendors and brokers in an environment of heightened regulatory expectations
- The borrower's perspective: insights from the plaintiff's bar and consumer advocates
- Fair lending report: the Supreme Court's landmark decision on the use of the Disparate Impact rule in the fair lending context
- Mortgage servicing challenges: fallout from the January 2014 servicing rules, issues arising from mortgage servicing transfers, and more
- Spotlight on class actions: new trends in certification motions, commonality, predominance, ascertainability and adequacy; the latest on early resolution and settlement strategy; and recent CAFA and removal developments
- Establishing standing, defending against persisting claims relating to MERS, overcoming contested foreclosures, and responding to borrower counterclaims and stall tactics
- Continued regulatory and enforcement focus on loss Mitigation, loan modification and HAMP

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In-House Counsel from

- Mortgage lenders
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7:15 Registration and Continental Breakfast

8:00 **Co-Chairs' Opening Remarks**

Andrew Stutzman
Partner
Stradley Ronon Stevens & Young LLP

Rachel Dollar
Partner
Smith Dollar PC

8:05 **In-House Perspectives on Strategies for Managing Litigation and Compliance in an Increased Regulatory Enforcement Environment**

Jason T. Whitcomb
Assistant General Counsel
Citibank N.A.

Howard Lindenberg (invited)
Managing Associate General Counsel
Freddie Mac

Karyn Caldwell
VP, Deputy General Counsel
United Shore Financial Services

Raymond Snytsheuwel
Attorney
Impac Holdings

Lisa Bojko Lyle
Corporate Counsel
Statebridge Company, LLC

William Dobi
Assistant General Counsel
PennyMac

Paige M. Fitzgerald
Senior Corporate Counsel
U.S. Bank

Daniel L. Montenaro, Esq.
Chief Compliance Officer
iQor

Eric Selk
Executive Director
HOPE NOW Alliance

Harold Buell, Jr.
Chief Legal Officer
Supreme Lending

Moderator:

Robert Mowrey
Partner
Locke Lord LLP

- How are lenders and servicers adapting to new and emerging regulations and case law? What changes have they made?
 - o Responding to regulators guidances' and enforcement actions vs. formal rulemaking
 - o The federal government's total regulatory surveillance over the industry: how the cost effects smaller shops
- What does corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies?

- Where are lenders and servicers turning for guidance?
 - o Developing best practices
- Managing and responding to enforcement actions
 - o Tools that are available when facing an enforcement action
 - o Responding to the action
 - o Filing a motion to quash a subpoena
 - o Jurisdiction hurdles when dealing with multiple state and federal agencies
 - o Assessing the role of state attorneys general versus the role of the CFPB and other federal agencies
- Adapting your litigation strategies and settlement calculations to account for new trends
- Dealing with overzealous discovery requests in litigation and regulatory inquiries
- Managing and defending against claims arising from TILA, HAMP, and RESPA
- Lender-placed insurance claims
- Top 5 concerns of in-house counsel now and in the near-term
- Identifying and minimizing exposure to risk
- Foreclosure mediation
 - o Best practices for maximizing the effectiveness of these programs
- Lessons learned from past litigation
 - o Minimizing your exposure to future litigation and better managing future litigation
- 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 corporate counsel are responding to internal budgetary pressures
- Exploring the use of alternative fee agreements with outside counsel
- Internal and external cost-cutting
 - o What has worked and what has not
- In-house staffing solutions for stretched legal departments
- Volume of litigation—declining or is it being outsourced?

9:40 Morning Coffee Break

9:50 **The CFPB's Far Reaching Impact on the Residential Mortgage Industry: How the Mortgage Servicing Standards Continue to Affect the Industry Almost Two Years Later, HMDA Rulemaking, and the Bureau's Top Trending Areas for Enforcement, Examinations, Investigations, and Administrative Actions (UDAAP, Loan Origination)**

Jenny Lee
Of Counsel
DLA Piper
(former Enforcement Attorney with the Consumer Financial Protection Bureau)

R. Colgate Selden
Counsel
Alston & Bird LLP
(former Senior Counsel with the Consumer Financial Protection Bureau)

Jason R. Bushby
Partner
Bradley Arant Boult Cummings LLP

Robert Driscoll
Partner
McGlinchey Stafford

- How the servicing rules have impacted the industry so far
 - Lessons learned and pitfalls to avoid
 - Best practices for ensuring compliance
 - Litigation risks arising from the new rules
 - Practical compliance tips
 - Litigation to date
 - Claims arising from prohibition of ‘dual tracking’
- CFPB examinations – what to expect
 - What are examiners looking for?
 - Practical guidance on how best to prepare
 - Enforcement and litigation risks arising from an examination
- CFPB enforcement actions
 - Status and assessment of recent enforcement cases
 - How companies are responding
 - What to expect going forward
- Proposed rulemaking on HMDA reporting requirements
 - Expansion of the reporting requirements: 37 new data fields for each borrower
- Changes to the QWR provisions
- Trending areas for enforcement actions- UDAAP and Loan Originator Compensation
- The CFPB and UDAAP: why UDAAP violations should be of paramount concern to lenders and servicers
- Which acts and practices put lenders and servicers at greatest risk for UDAAP violations?
- Assessing the definition of ‘abusive’ practices
 - Potential pitfalls for the mortgage industry
 - What aspects of origination and servicing may be ‘abusive?’
 - Lessons learned from recent enforcement actions
- Addressing potential UDAAP concerns
 - Minimizing exposure to UDAAP issues
- Loan Origination issues
 - Weaknesses in compliance management systems

11:10 **A Focus on TILA/RESPA: Benchmarking your Recent TRID Compliance and Implementation Efforts; Areas of Concern and Ambiguity Within the New Rule; Plus a Review of RESPA and TILA’s Other Provisions and Recent Caselaw**

Christy A. Ames
Member
Stites & Harbison, PLLC

Felice Kesselring
Vice President, Strategic Initiatives
First American Mortgage Solutions

Marsha L. Williams
Chair, National Mortgage Compliance Practice Group
Middleberg Riddle Group

H. Keith Thomerson
Partner
Hinshaw & Culbertson LLP

- TRID effective date: August 1, 2015
- TRID breakdown:
 - Loan Estimate
 - Loan Estimate Triggers
 - Loan Estimate Timing
 - Who Prepares the Loan Estimate
 - Loan Estimate Contents
 - Construction Loans
 - Closing Disclosure

- Closing Disclosure Timing/ Who Provides the Closing Disclosure/ Closing Disclosure Contents
- Restrictions on Increases in Closing Costs
- Inclusive Finance Charge/APR Dropped
- Recordkeeping
- Measures taken for timely compliance
- Costs associated with compliance
- Opinions on consumer friendliness
- Situations not addressed by the regulation that still require additional guidance
- The scope and effect of TILA and RESPA’s liability provisions given the integration of the two sets of disclosures
- Restrained enforcement liability/grace period until the end of 2015?
- Avoiding RESPA kickbacks (Sec. 8), especially in the social media age
- RESA (Reg. X) litigation
 - QWR litigation
- TILA rescission: recent landmark Supreme Court Case *Jesinoski v. Countrywide Home Loans, Inc., et al.*

12:20 **Networking Luncheon for Speakers and Attendees**

1:20 **Government Insights on the Current State of the Industry: Navigating the Regulatory and Enforcement Landscape Going Forward, How to Prepare for and Respond to Examinations and Supervision in a Multi-Agency Environment, and the Latest Federal and State Collaboration**

Richard K. Hayes
Deputy Chief, Civil Division
United States Attorney’s Office, Eastern District of New York

Christopher Tuite
Assistant U.S. Attorney
U.S. Attorney’s Office, Middle District of Florida

James E. Elliott
Assistant Regional Director, Southwest Region
Federal Trade Commission

Andrew Dougherty
Assistant Attorney General
Illinois Attorney General’s Office

Jedd Bellman
Assistant Commissioner
Office of the Maryland Commissioner of Financial Regulation

Karyn Tierney, J.D.
Deputy Commissioner
Arkansas Securities Department

Thomas James
Senior Assistant Attorney General
Office of the Illinois Attorney General

Moderator:

Holly Pierson
Owner, Managing Partner
Pierson Law LLC

2:50 **State Survey and Specific Nuances and Developments in Hotbed Jurisdictions: Homeowners Bill of Rights, Statute of Limitations Issues in Foreclosure Litigation, HOA Liens in Super-Priority States, and More**

Charles E. Katz
Senior Counsel
Northwest Trustee Services, Inc.

Jon H. Patterson
Partner
Bradley Arant Boult Cummings LLP

Michael Goldberg
Managing Partner, San Antonio Office
PIB Law

Donald S. Maurice
Partner
Maurice Wutscher LLP

Moderator:

Tina Green
SVP, Assistant General Counsel
Bank of America

- Which states are driving the litigation nationwide?
- Homeowner's Bill of Rights: First in California then Minnesota and Nevada, now Virginia
 - Which states will follow next?
- *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, the right of a homeowner's association to foreclose, best practices with respect to super-priority lien statutes and title insurance issues with respect to these statutes
- How active states implicate other states' litigation
- State by state statute of limitations issues in foreclosure law
 - Texas and Florida particularly active
 - Implications of recent Florida 3rd district court of appeal decision in *Deutsche Bank Trust Company Americas, v. Harry Beauvais, et al*

4:05 **Afternoon Break**

4:15 **Mortgage Servicing Challenges: Fallout from the Servicing Rules, Issues Arising from Mortgage Servicing Transfers, Litigation and Enforcement Concerns, Servicer Liability Under the FDCPA and the FCRA, Determining and Implementing Best Practices, Defending Against Class Actions and New and Innovative Borrower Claims, and More**

Jon Hubbard
Of Counsel
Troutman Sanders LLP

Rachel Dollar
Partner
Smith Dollar PC

Michelle Canter
Partner
LotsteinLegal PLLC

Kara Czanik
Litigation Partner
Graydon Head & Ritchey LLP

- Fallout from the servicing rules
 - Enforcement issues
 - Compliance hurdles and how best to overcome them
- Types of claims arising from the rules
 - Claims springing forth from prohibition of 'dual tracking'
- Mortgage Servicing Transfer Issues
 - CFPB bulletin
 - Admissibility of prior servicer records as evidence
- Defending against claims relating to loan servicing
 - Debt collection practices claims
 - Credit reporting claims and the FCRA
 - Escrow issues
 - RESPA issues
 - Fair lending issues
- Class action issues arising from loan servicing
- What can originators learn from recent litigation involving servicers?
- Servicer liability under the FDCPA
- Assessing when a mortgage servicer may be considered a debt collector
- Servicer liability for lack of disclosure
 - Viability of good faith defense
 - Sufficient evidence to show adequate disclosure
 - Conducting due diligence of servicing compliance
- Loss mitigation programs

5:20 **Enhancing Your Oversight and Control Over Service Providers, Third-Party Vendors and Brokers in an Environment of Heightened Regulatory Expectations: Selection, Monitoring, Risk Management, Periodic Review, Contracts, Dealing with Non-Compliant SPs and Exit Strategy**

Patrick L. Smith
MISG VP/Senior Manager Mortgage Investigative Services
Group Enterprise Fraud Management
PNC Bank

Francis X. Riley
Partner
Saul Ewing LLP

James W. Brody
Managing Member
American Mortgage Law Group, P.C.

- Impact of enhanced regulatory scrutiny and oversight
- CFPB initiatives
 - Power to supervise "related persons" and "material service providers"
 - To what extent are banks liable for lending done through a third-party relationship?
- OCC activity
- Implementing best practices to manage and mitigate the risk of outsourcing
- Third-party vendor products and fees
- Liability for the actions of mortgage brokers
- Contracting with ethical third parties
- Making the decision to work with a third-party entity
 - Assessing the decrease in servicing costs vs. the increased risks of litigation and reputational damage

6:20 **Conference Adjourns**

7:30 Continental Breakfast

8:00 **Views from the Bench: Judicial Perspectives on the Latest Plaintiff Theories, Emerging Defense Strategies, Lender-Placed Insurance Litigation, Bankruptcy and Foreclosure Litigation, Heightened Scrutiny of Lenders and Servicers, Case Management, E-Discovery, and More**

Hon. Fernando J. Gaitan, Jr.
U.S. Dist. Ct., W.D. Mo.

Hon. George C. Steeh
U.S. Dist. Ct., E.D. Mich.

Hon. Craig A. Gargotta
U.S. Bankr. Ct., W.D. Texas

Hon. Richard Schmidt
U.S. Bankr. Ct., S.D. Tex.

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Hon. Michael B. Kaplan
U.S. Bankr. Ct., D.N.J.

Hon. F.A. Gossett
U.S. Dist. Ct., D. Neb.

Hon. Ramy Djerassi
Pa. Ct. Common Pleas

Hon. John M. Younge
Pa. Ct. Common Pleas

Hon. Jose M. Rodriguez
Eleventh Judicial Circuit Court, Fla.

Hon. Jack Tuter
Seventeenth Judicial Circuit Court, Fla.

Hon. Richard Kramer
Calif. Super. Ct.

Moderator:

Andrew K. Stutzman
Partner
Stradley Ronon Stevens & Young LLP

10:00 Morning Coffee Break

10:10 **Fair Lending Report: Disparate Impact Claims and the Fair Housing Act; Increased Enforcement by Regulators Including the CFPB; Using UDAAP Where Other Statutes or Regulations Fail; The Latest Litigation Strategies and Recent Themes and Issues**

Fred Rivera
Partner
Perkins Coie LLP

Elizabeth L. McKeen
Partner
O'Melveny & Myers LLP

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

David Stein
Of Counsel
Bricker & Eckler LLP

- Landmark Supreme Court case law on the Disparate Impact Rule
 - Recent decision on *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*
 - What will the effects of the decision look like?
- How state and federal agencies are approaching fair lending issues
- CFPB's HMDA data serving as basis for fair lending claims
- Impact of the CFPB on fair lending litigation
 - CFPB initiatives and enforcement efforts relating to discriminatory lending and 'disparate impact'
- Defending against the latest claims alleging fair lending violations
 - Early interviews and information gathering
 - Data analysis
- UDAAP in Fair Lending
 - Use when unable to prevail ECOA/FHA Disparate Impact
 - Preventing such claims
- Disparate impact in the age of the Qualified Mortgage
 - Assessing the likelihood that lenders who underwrite QM loans will face fair lending claims because loans meeting the QM standards may result in a disparate impact on certain demographic groups
- New and emerging allegations of discriminatory practices and how to defend against them
- Assessing the evolving definition of and uncertainty relating to fair lending
- Impact of recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations concerns
- Settlement considerations and strategies

11:15 **The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates**

Joseph J. Siprut
Founder, Managing Partner
Siprut PC

Theodore O. Bartholow, III
Partner
Armstrong Kellett Bartholow P.C.

Moderator:

Jeff Pilgrim
Partner
Pilgrim Christakis LLP

In this session, you will hear from leading plaintiffs' attorneys and consumer advocates on claims trends, foreclosure 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 residential mortgage landscape. Highlights of this session will include:

- How borrowers' counsel are approaching litigation arising from alleged foreclosure documentation errors
- Emerging theories of liability
- How the plaintiffs' bar is continuing to adapt to CAFA
- Consumer advocate perspectives on MERS
 - Long term viability of MERS
- How the industry can best work with borrowers to pursue loan modifications and avoid foreclosures and litigation
- Recent litigation against property preservation companies

12:05 **Spotlight on Class Actions: New Trends in Certification Motions, Commonality, Predominance, Ascertainability and Adequacy; the Latest on Early Resolution and Settlement Strategy; and Recent CAFA and Removal Developments**

Scott M. Pearson
Partner
Ballard Spahr LLP

Anthony Sharett
Partner
Baker Hostetler

Jonathan R. Marshall
Partner
Bailey & Glasser LLP

Christopher Chorba
Partner
Gibson, Dunn & Crutcher LLP

- Heightened standards of commonality and predominance
- Class definition and ascertainability; superiority/adequacy
- CAFA developments
- Removability
- Current trends in issue certification
- Rule 23
- Use of experts
- Recent settlement trends and strategies
- Settlements for preliminary and final approval
- Class Notice Issues
- Release scope
- Attorney's fees

1:10 **Networking Luncheon for Speakers and Attendees**

2:10 **Establishing Standing, Defending Against Persisting Claims Relating to MERS, Overcoming Contested Foreclosures, and Responding to Borrower Counterclaims and Stall Tactics**

Walter Buzzetta
Counsel
MERSCORP Holdings, Inc.

Jeffery D. Weiserman
Managing Partner, General Counsel
Trott Law, P.C.

Michael Cavallaro
Partner
Lindquist & Vennum LLP

- Conditions precedent to foreclosure
- Assessing borrower attacks on standing
 - o New and emerging claims
 - o How to combat and defeat standing attacks
- Update on MERS litigation
 - o *Robinson v. AHMSI*: 9th circuit case
 - o *Bank of America, N.A. v. Greenleaf*: Maine Supreme Court Case, limits scope of MERS' ability to assign mortgages
 - o Borrower claims
 - o Qui tam cases
 - o County recorder/AG litigation
- MERS interest as mortgagee or beneficiary
- Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages
- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- Loss mitigation
- Litigation challenges relating to mortgage origination

- Loan modifications and foreclosure
 - o Defending against counterclaims arising from loan modifications and HAMP
- Foreclosure mediation programs
- Responding to challenges to foreclosures in non-judicial foreclosure states

3:05 **Continued Regulatory and Enforcement Focus on Loss Mitigation, Loan Modification and HAMP: CFPB and State Loss Mitigation Rules; New Loan Mod Litigation Risks (Including in Conjunction With Evolving Theories of Recovery for HAMP); Modifications and REO; Continuity of Loss Mitigation for "In-Flight" Loan Mods, and More**

Geoffrey K. Milne
Partner
Hunt Leibert Jacobson, PC

Ari Charlip
Partner
Dickinson Wright

- Loan modification litigation and HAMP
- Complying with the requirements for a permanent modification: 30-day trial period
- Borrower claims and effective defenses
- The rise in HAMP-related False Claims Act litigation
- Mortgage fraud considerations in relation to HAMP

3:50 **The Current Wave of Lender-Placed Insurance Litigation and Enforcement: Government Action and Investigation by CFPB and Other Federal Regulators, Private Lawsuits, Trends of Claims Surviving Early Stages of Litigation, Classwide Settlement Features, Dealing With Problematic Captive Insurance Companies, and How to Walk the Line Between Business Realities and Litigation/Enforcement**

Philip R. Stein
Partner
Bilzin Sumberg Baena Price & Axelrod

Rik Tozzi
Partner
Burr & Forman

- Assessing recent claims alleging that banks engaged in deceptive practices relating to lender-placed insurance: Potential violations of TILA, RICO, and other consumer protection laws; Possible collusion among lenders and insurance companies
- Results of state investigations: NY, CA, IL; NYSDFS regulation of lender-placed insurance
- How lenders can defend against and mitigate operational and reputational risks

4:35 **Conference Ends**

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You must notify us by email at least 48 hrs in advance if you wish to send a substitute participant. Delegates may not "share" a pass between multiple attendees without prior authorization. If you are unable to find a substitute, please notify **American Conference Institute (ACI)** in writing up to 10 days prior to the conference date and a credit voucher valid for 1 year will be issued to you for the full amount paid, redeemable against any other **ACI** conference. If you prefer, you may request a refund of fees paid less a 25% service charge. No credits or refunds will be given for cancellations received after 10 days prior to the conference date. **ACI** reserves the right to cancel any conference it deems necessary and will not be responsible for airfare, hotel or other costs incurred by registrants. No liability is assumed by **ACI** for changes in program date, content, speakers, or venue.

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Registration Fee

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