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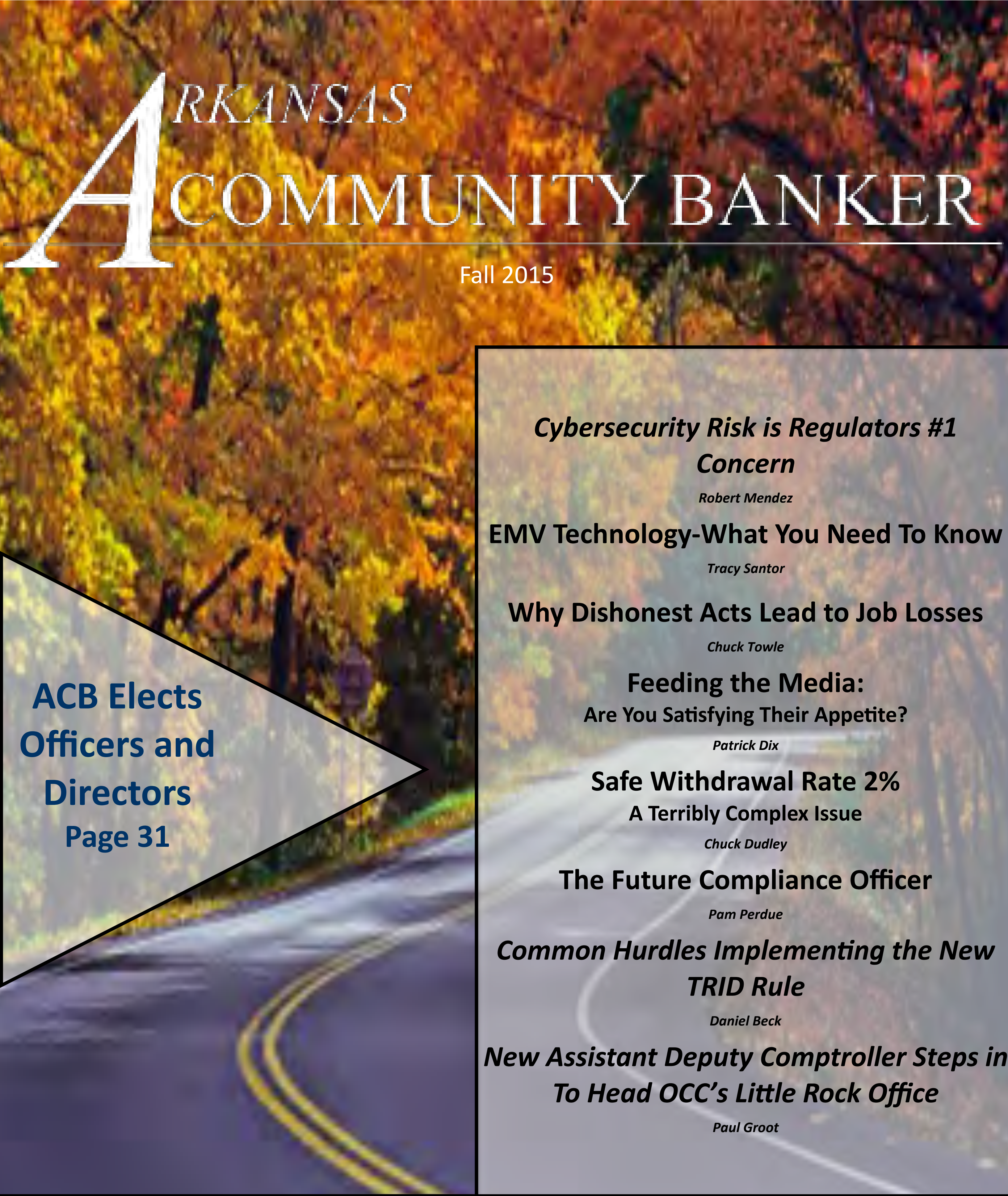

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Common Hurdles Implementing the New TRID Rule

As you are well aware, the third of October marked the deadline for implementation of the new TILA-RESPA Integrated Disclosure (TRID) Rule. Lenders, title companies and real estate brokers are handling the implementation quite well, but there are a few common issues that have persisted in the brief time since the rule has taken effect.

Closing Disclosure v. Settlement Statement

The TRID Rule requires separate form Closing Disclosures (CD) to be delivered to the borrower no later than three days before consummation of the transaction and to the seller on the day of consummation. Because the borrower and seller receive separate disclosures, they can be difficult to draft. Each has information that the other does not – it is like looking at two puzzles with missing pieces. To remedy this, some title companies are just sending lenders the settlement information on an old HUD-1 settlement statement for ease of use to convert that information onto the CDs. Others are using the new ALTA's universal settlement statement as part of the overall closing. While the ALTA settlement statement may be helpful and necessary to give proper directions for disbursement, it cannot be a substitute for the CDs. If the ALTA settlement statement is used, the lender and the agents involved need to be prepared to fully explain each document that is being presented to the borrower and the seller because many are confused by the settlement statement since it does not match the CD that either the borrower or the seller receives.

Common Changes to the Closing Disclosure

Another common question for lenders and agents is "when may a CD be revised without requiring a new three day notice period?" There are only three changes that would require a new three day notice period: (1) the disclosed APR becomes inaccurate, (2) the loan product changes, and (3) a prepayment penalty is added. Other changes may be made to the CD if they are disclosed on or prior to consummation, provided that the borrower has the right to inspect the CD during the business day before consummation. Most of the changes occurring after the CD has been delivered but before the consummation are adjustments between the borrower and the seller on the real estate contract, such as repairs, which occur at the last minute.

Even though not enough time has passed for many lenders or agents to have experience with this requirement, it is important to remember that the TRID Rule does provide that if the CD becomes inaccurate as a result to a change in circumstances after consummation, and that change in circumstance alters the amounts actually paid from the amounts disclosed in the CD, a new CD must be issued within 30 days of discovering the change in circumstances. This applies to the borrower and the seller, depending on which disclosure was inaccurate. The rule also requires that new disclosures for non-numerical clerical errors and document refunds for tolerance violations be provided no later than 60 days after consummation.

Technology Issues

Many lenders are having problems with their systems inputting data into the LE and the CD. This has been a common problem and CFPB Director Richard Cordray, speaking to members of the Mortgage Bankers Association, stated his concerns of the failure of some technology vendors:

> Quite frankly, I have been disturbed by reports I have been hearing about the vendors on whom so many of you rely. Some vendors performed poorly in getting their work done in a timely manner, and they unfairly put many of you on the spot with changes at the last minute or even past the due date. It may well be that all of the financial regulators, including the Consumer Bureau, need to devote greater attention to the unsatisfactory performance of these vendors and how they are affecting the financial marketplace.

One can hope that if errors in the LE or CD are made due to faulty technology the CFPB will be lenient in the early stages of implementation of the new TRID Rule. However, if a lender is aware of a problem with the technology, it needs to have a plan to deal with the problem until it is fixed. Most of the lenders I've spoken with who are having problems with technology vendors have been diligent in catching any errors. However, if the technology is not improved, there will be an increased risk that such errors are missed going forward as loan applications increase.

Conclusion

The majority of the industry implementing the new TRID Rule has been successful in this early transition. While challenges are occurring, lenders and agents have been diligent in identifying and solving those challenges, even if the pace of closings have been slower than normal. The biggest challenges now, and going forward, will be to remain diligent in catching and fixing the problems that arise and communicating the rule to borrowers and sellers who do not have experience with this process.

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