

# **BRODY | GAPP LLP**

*Clarity in Compliance. Confidence in Litigation.*

## **Mortgage Bankers AI Governance Guide**

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### **To Our Colleagues in the Mortgage Industry,**

The “Mortgage Bankers AI Governance Guide” was originally prepared for an industry panel on AI governance in mortgage lending. Although it isn’t meant to cover every AI compliance issue in mortgage banking, these topics are relevant far beyond one conference. Rather, these topics involve a current operational and legal reality that is reshaping how lenders of every size need to think about governance, vendor oversight, fair lending compliance, and much more.

We’re distributing these materials widely because they’re designed for practical use, not just for reference. Each handout breaks down complex regulatory requirements into straightforward frameworks that your compliance, operations, and secondary market teams can apply directly to your current technology setup. Unsurprisingly, lenders that develop their AI governance structures within the next six months will be much better prepared than those who wait for regulatory changes to force action. Of course, given the world’s rapid technological change and the turbulence it’s causing, we strongly recommend that you conduct your own detailed examination of these issues and/or consult legal counsel for advice that is specifically tailored to your organizations.

Now, attached hereto, please find three (3) practice-ready resources. Each was built to be used directly — not filed and forgotten. Here is what you are holding and what to do with each one.

## WHAT'S IN THIS PACKET

### 01 AI Governance Survival Guide for Mortgage Lenders

**What it is:** A practical framework for enterprise AI governance built around the five phases every lender needs: pre-deployment risk assessment, deployment controls, ongoing monitoring, human-in-the-loop protocols, and vendor oversight.

**Why it matters right now:** Freddie Mac Bulletin 2025-16 is not a future requirement. It became effective March 3, 2026, as an enterprise-wide Seller/Servicer Agreement obligation. Every IMB, credit union, depository, mortgage broker, and fintech approved to sell or service Freddie Mac loans is now subject to it, including for vendor-embedded AI tools. State-level AI governance is expanding rapidly: Texas's TRAIGA is operative as of January 1, 2026; Colorado's omnibus AI law takes effect June 30, 2026; Illinois enacted AI-specific employment requirements effective January 1, 2026. Additional jurisdictions are in motion.

**How to use it:** Start with the five regulator questions on page one. If any of them produce an honest answer of 'I don't know,' that gap needs to close before your next examination.

### 02 AI Vendor Due Diligence Toolkit

**What it is:** A structured due diligence framework covering the five questions every AI vendor must answer before you deploy their tool, six red-flag statements to watch for with suggested responses, and a ten-item contract checklist.

**Why it matters right now:** ECOA and the Fair Housing Act do not recognize a vendor's compliance representations as a defense. The institution remains accountable for the fair lending performance of every tool it deploys, regardless of who built it. That accountability requires contractual teeth — and most current AI vendor agreements do not have them. Freddie Mac's updated Guide requirements make those audit rights and notification obligations explicit and binding for all approved Sellers/Servicers.

**How to use it:** Pull this out before your next vendor renewal or new AI deployment discussion. The contract checklist belongs in your procurement workflow, not sitting on a shelf.

### 03 Fair Lending AI Risk Map

**What it is:** A use-case-level risk mapping across ten AI applications common in mortgage — income verification, AUS overlays, risk-based pricing, fraud detection, marketing segmentation, and more — each mapped to its specific risk type, how the exposure materializes, and what controls address it.

**Why it matters right now:** Fair lending AI risk does not announce itself. Proxy risk, data bias, and model opacity can each produce discriminatory outcomes at scale without a single person ever deciding to discriminate. The tools are often good-faith selections. The risk is architectural.

**How to use it:** Walk your compliance, operations, and secondary market teams through the use cases that apply to your current technology stack. Use the controls column as a gap analysis checklist.

## WHAT LENDERS ARE ACTUALLY DEALING WITH RIGHT NOW

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### 1 *AI Governance & Fair Lending — The Infrastructure Gap*

The Freddie Mac mandate is the visible trigger, but the underlying exposure is broader. Most lenders have deployed AI or ML tools — in underwriting, pricing, fraud detection, or marketing — without governance infrastructure that would survive examination. Pre-deployment fair lending testing is often absent. Vendor contracts rarely contain the audit rights and notification obligations that Freddie Mac § 1302.8 and ECOA-grounded examination frameworks now require. And adverse action reason generation for AI-touched decisions is, in many institutions, legally insufficient. This is not a future problem. Texas TRAIGA is operative now; Colorado’s omnibus AI law takes effect June 30, 2026; Illinois enacted AI-specific employment requirements effective January 1, 2026 — and more states are moving. The lenders who are quietly building governance infrastructure right now are the ones who will be prepared — and the ones whose competitors will not be.

### 2 *GSE Repurchase Demands & Make-Whole Exposure*

Repurchase and make-whole demands from Fannie Mae and Freddie Mac have not subsided. The volume of demands arising from 2020–2022 originations — where underwriting was compressed, remote, and often AI-assisted — continues to flow through the system. Many IMBs are now receiving claims on loans that were sold years ago, often involving document sufficiency, income verification methodology, and underwriting exception documentation. These demands are not self-executing. They require a disciplined response: factual investigation, loan file reconstruction, regulatory framework analysis, and in many cases, direct negotiation or formal dispute with the agency. Institutions that treat repurchase demands as routine accounts payable problems rather than legal disputes leave material money on the table.

### 3 *LO Compensation — Regulatory Uncertainty in a Shifting Landscape*

The CFPB’s Spring 2025 Regulatory Agenda includes a pre-rule item (RIN 3170-AB46) expressly contemplating rescission of all or part of the discretionary provisions of Regulation Z’s loan originator compensation requirements — including the prohibition on dual compensation and certain incentive-based structures. The underlying TILA prohibitions cannot be changed by the Bureau alone, but the interpretive and enforcement posture is shifting. At the same time, state regulators are independently active on compensation practices. Lenders who restructured compensation plans in 2024 or are considering doing so in 2026 are operating in a framework where the federal floor is uncertain and the state overlay is expanding. Getting this right requires both the regulatory analysis and the operational implementation — and getting it wrong creates both regulatory exposure and litigation risk.

## 4

### *LO Poaching, Trade Secrets & Restrictive Covenants Litigation*

The mortgage hiring market has remained active despite volume compression, and with it, the litigation arising from LO departures. Raiding cases — whether brought by the departing lender or the receiving institution — have grown in complexity as digital evidence has become both easier to obtain and harder to explain. State-specific restrictive covenant enforcement has shifted materially in California, Minnesota, and several other states. Temporary restraining orders remain a viable first-strike tool in the right circumstances. And the damages calculations in these cases — lost pipeline, customer relationship value, branch contribution margin — require both legal and financial sophistication to establish or defend. This is a domain where having counsel who has been on both sides of the table, repeatedly, makes a measurable difference.

## 5

### *State Enforcement — Federal Pullback Creates a New Risk Profile*

The CFPB's significantly reduced enforcement capacity under the current administration is not a compliance holiday. It is a redistribution of enforcement risk. State attorney generals — in New York, California, Michigan, and others — have moved aggressively to fill the enforcement void. New York enacted the FAIR Business Practices Act (effective February 17, 2026) expressly in response to federal regulatory retreat, giving the AG new UDAAP authority modeled on federal consumer protection standards. Former CFPB Director Rohit Chopra joined the Democratic Attorneys General Association as senior advisor, and coordinated multi-state enforcement strategies targeting UDAAP, fair lending, AI decisioning, and fee practices are now operational. State financial regulators are conducting examinations with the same substantive frameworks that federal examiners used — and in some states, with heightened scrutiny on issues where federal enforcement has receded. For multi-state lenders, the compliance posture that managed federal examination risk may not be calibrated correctly for the new state-dominant enforcement landscape. Institutions that deferred compliance upgrades in anticipation of a lighter federal touch carry compounding state-level risk on that deferral.

## **ABOUT BRODY | GAPP LLP**

We are a national mortgage banking law firm — 100+ years of combined experience — built from the inside out. Our founding partners are not generalists who cover mortgage from a distance. They are former general counsel, former chief compliance officers, former chief operating officers, and career mortgage litigators. Most have sat in the same or similar seat that our clients sit in, which is why our advice tends to be practical, operationally grounded, and calibrated to what actually matters — in litigation or at the negotiating table.

Our clients are independent mortgage banks, credit unions, depositories, mortgage brokers, and fintechs. Many do not have in-house general counsel. We function as their legal infrastructure — the first call when something breaks, and the steady voice that helps prevent things from breaking in the first place. When the work requires high-stakes litigation, we bring it.

**JAMES W. BRODY, ESQ. | *Founding & Managing Partner***

James has litigated hundreds of complex mortgage matters for major institutions nationwide, lectures for numerous industry and governmental organizations, and consulted/quoted by numerous publications that include the New York Times, Wall Street Journal, HousingWire, National Mortgage Professional, and more.

Mr. Brody's work spans GSE repurchase disputes — including representing dozens of companies sued by Lehman Brothers on repurchase claims in the U.S. Bankruptcy Court for the Southern District of New York — large-scale loan officer poaching and trade secret litigation, regulatory examination defense across more than a dozen states, employment litigation, TCPA class actions, and servicing disputes.

Clients call on Mr. Brody for 'bet the company' matters where the margin for error is extremely low. He is particularly recognized for his work in GSE disputes, LO transition litigation, and CFPB and state examination defense.

**RONALD GAPP, ESQ. | *Founding Partner***

Ron brings the perspective of someone who has run the institution, not just advised it. As former Chief Operating Officer and General Counsel of Axia Home Loans — a nationwide multi-channel lender — he managed the legal and operational infrastructure from the inside. A HousingWire Rising Star, he now advises clients on licensing, M&A, regulatory audits, and operational risk, bringing a level of institutional fluency that pure outside counsel rarely provides.

**ASHLEY JUMPP, ESQ. | *Founding Partner***

Ashley focuses on compliance design, enforcement defense, and internal governance — the architecture of a compliance program that performs under pressure. Her work spans policy and procedure development, RESPA and MSA structuring, loan originator compensation frameworks, and regulatory audit preparation and response. She brings a business lawyer's fluency to compliance work, which means her frameworks are built to be implemented, not just documented.

**SCOTT HARKLESS, ESQ. | *Founding Partner***

Scott brings over 20 years of distinguished executive leadership — General Counsel and/or senior sales roles at Countrywide, Bank of America, Merrill Lynch, American Advisors Group, Cardinal Financial, and OneTrust Home Loans. His experience uniquely positions him to advise on reverse mortgage lending, joint ventures/strategic alliances, real estate finance, complex regulatory compliance, and litigation.

## WHAT WE DO

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The range of matters we handle for mortgage lenders, credit unions, brokers, and fintechs spans the full legal lifecycle of a mortgage institution — from the compliance infrastructure that keeps things running smoothly, to the litigation that gets called when they do not.

<b>REGULATORY COMPLIANCE</b>	Licensing and NMLS management across all states · CFPB and state regulatory examination preparation and defense · Policy and procedure development and audit · Fair lending frameworks and HMDA analysis · RESPA and MSA structuring and compliance · Loan originator compensation design and regulatory review · AI governance programs (Freddie Mac § 1302.8 and beyond) · Data privacy compliance (HBPA, CCPA, state patchwork)
<b>GSE &amp; INVESTOR DISPUTES</b>	Fannie Mae and Freddie Mac repurchase and make-whole demand response and negotiation · Loan file forensic analysis and defense strategy · Investor audit response · Indemnification claim defense · Early repurchase demand triage frameworks
<b>EMPLOYMENT &amp; BUSINESS TORTS</b>	Loan originator and branch team departure and raiding litigation (prosecution and defense) · Trade secret misappropriation · Unfair competition and breach of fiduciary duty · Temporary restraining orders and preliminary injunctions · Non-solicitation and restrictive covenant analysis and enforcement · FLSA and state wage-and-hour defense · Wrongful termination and retaliation defense
<b>MORTGAGE LITIGATION</b>	Commercial and contract disputes · Lender liability defense · Fraud and misrepresentation claims · NPI/data breach response and litigation · Partner and vendor disputes · Complex multi-party and multi-jurisdictional litigation · TRO and injunctive relief
<b>CORPORATE &amp; STRATEGIC</b>	Outsourced general counsel services · IMB mergers, acquisitions, and restructurings (including GSE approval transfer licensing continuity, and human capital retention strategy) · Reverse mortgage compliance and strategic advisory · Strategic alliance and JV structuring · Enterprise risk management frameworks

## HOW WE WORK

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Brody | Gapp LLP was built on a specific thesis: that independent mortgage banks, credit unions, and regional lenders deserve access to the same depth of legal and strategic counsel that large depositories retain — without the overhead structures and billing economics that put that caliber of representation out of reach for most. We are a partner-led firm. The attorney whose name is on your calendar is the attorney working your matter.

Our current docket reflects the breadth of the practice. We are actively representing lenders in complex GSE repurchase disputes, defending multiple institutions in state regulatory examinations across the country, serving as lead counsel in large-scale loan officer transition and trade secret matters nationwide, and advising on several significant M&A transactions involving the transfer of GSE approvals and servicing portfolios. We take on the work that requires it to be done right — and we are structured to do it at rates that reflect institutional efficiency, not institutional overhead.

If any of the materials in this packet raise questions you want to work through with someone who has handled these issues operationally and in the real world, we would be glad to have that conversation. No engagement required to start.

The legal challenges facing this industry right now are not simple, but they are also not novel — at least not to people who have spent careers inside them. What most lenders need is not more information. They have plenty of that. What they need is someone who can help them separate what actually matters from the noise, identify where the real exposure sits, and build practical systems that hold up under pressure. That is what we do.

*Best regards,*

**James W. Brody, Esq.**

*Founding & Managing Partner*

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## **BRODY | GAPP LLP**

**National Mortgage Banking Regulatory Compliance and Litigation Practice**

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***General information only — not jurisdiction-specific legal advice. This material does not establish an attorney-client relationship. Consult counsel for your specific circumstances.***