HW focus

HOUSINGWIRE'S CONCENTRATED LOOK AT INDUSTRY ISSUES
SEPTEMBER 2013 › **LEGAL AND COMPLIANCE**

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Calming nerves

CFPB compliance, ECOA appraisal rule and the possible fallout

By Brandon Boudreau

RECENTLY I ATTENDED a conference where a representative of a top-10 lender privately stated that their institution outsources its appraisal compliance to alleviate risk. Apparently, this executive has missed the spirit behind the existence of the now omnipresent Consumer Financial Protection Bureau and what lender regulatory obligations really are.

"The Consumer Financial Protection Bureau ... expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm," reads a CFPB bulletin.

"The mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm."

Simply retaining appraisal management companies, or AMCs, to shoulder the management of your appraisal process does not seem to be enough when CFPB examiners come knocking. It is the responsibility of the lender to ensure any third parties acting on behalf of the lenders are operating in full compliance.

The CFPB has also been very proactive in outlining exactly what their expectations are in regards to loan applications after the rules take effect. Financial institutions should have documented proof that the service provider selected has a track record of compliance. They should also have a copy of the service provider's policies, protocols and onboarding materials, and subsequently retain a contractor's process and in-house controls to prevent noncompliance.

In addition, how the service provider communicates and secures consumer information must be disclosed and on hand. Having documentation proving full assessment of your service provider is of critical importance in today's advancing regulatory environment.

With more states coming on board with their own AMC laws and regulations, lenders are diversifying their vendors to spread risk in the event their selected AMCs fall out of compliance: If a lender is using one AMC in Texas and that AMC is suspended in Texas for noncompliance, essentially the lender would have to stop lending in Texas until they engaged a new AMC or their current AMC gets back into state compliance.

Equal Credit Opportunity Act appraisal rule

This rule implements a Dodd-Frank amendment to the Equal Credit Opportunity Act. It requires creditors to provide a copy of all written appraisals and valuations developed in connection with an application for a loan secured by a first lien on a residential structure containing one to four units with certain "higher-priced mortgage loans."

A higher-priced mortgage loan is one that has a higher interest rate than certain average rates in the market. A new index covering this, named the Average Prime Offer Rate table, is published by the Federal Reserve Board.

Recently, this has been met with resistance from the American Bankers Association and the Mortgage Bankers Association. They cited timing requirements as unsuited for business credit. In addition, lender platforms for such loans are not designed from a technological standpoint to trigger the Truth in Lending Act and Real Estate Settlement Procedures Act disclosures based on application date.

While the ABA and the MBA make a very strong case for this business credit exemption, one issue that is not being discussed is what will happen when consumers receive these written appraisals. The intention of the rule is to protect consumers from overborrowing and that accurate valuations are being used when determining loan approvals and accompanying rates.

The rule basically states that qualifying loans must have a licensed or certified appraiser complete an interior inspection of the property and that the report is supplied to the consumer three days prior to the loan closing. This must also be supplied at no cost to the consumer.

But this does not mean the consumer gets appraisals free of charge, but that the dissemination of the appraisals supplied three days prior cannot be charged. Unless, of course, it is a "flipped" home: Then, the lender must pay for a second interior-inspected appraisal at no charge to the consumer.

It is common for financial institutions to order multiple valuations when making a lending decision. With the huge surge of technology-based products (automated valuation models, intelligent valuation models) or cheaper alternative products (broker price opinions, desktop- or appraiser-assisted hybrids), it is fair to assume that the consumer is going to receive multiple valuations with most likely different results.

There is industry-wide anxiety around this and how it may bog down the system with follow-up questions or erroneous complaints to regulators.

Another issue to consider is that the standard government-sponsored enterprise appraisal form and report being delivered by your everyday appraiser is not written for your everyday consumer to understand.

The Uniform Appraisal Dataset has certainly helped fragmented appraisal professionals come to a better reporting consensus, but the concern is that a consumer will be delivered a report that is really being written for someone else with more appraisal familiarity.

Clearly defining the appraisal process the financial institution enacts and having knowledgeable people on staff to help answer questions should go a long way to calm consumer nerves so close to their closing date. ■

Brandon Boudreau's current responsibilities include overseeing daily operations for Metro-West Appraisal and its 200-plus employees in 50 metropolitan markets across the nation.