Definition of a "Mortgage Application"

By: Rob Chrisman | Thu, Aug 1 2013, 9:57 AM

"Do you ever hear about Freddie or Fannie doing anything illegal with regard to foreclosures?" Wow - that question is way above my pay grade! And I am no judge, jury, or attorney. It did remind me, however, of a story a couple months ago in the L.A. Times about kickbacks. For any other information, you'll have to sniff around yourself.

I was having what I thought was a pleasant conversation with my 18-yr old daughter when she exclaimed, "Why aren't you listening to me?" I told her that I was listening to her, and she retorted, "No, you're only waiting to interrupt. My teacher told us that people can speak at 250 words a minute, but can listen at 1,000 words per minute, so most of listening is spent waiting to speak." At that point I didn't have an answer for her, so I decided to have a beer and ponder how long it would take someone to read a set of disclosures to a borrower who couldn't read them. Or read an application to a blind borrower. How about figure out what constitutes an application in the eyes of the law?

Ask any loan processor, or government regulator, to come up with **"an elevator speech"** explanation of what a **mortgage application** is, and it would be nearly impossible. One would think that in its far-reaching wisdom, the government (including the CFPB), or the myriad of agencies, or the mortgage industry itself, would have come up with a simple definition of what an application is, what it can trigger, and what it signifies. Hey, if you can't explain it to your grandmother, you don't understand it, right? As I understand it, commonly accepted practice is that six pieces of information are required before it is considered an app, but the precise definition of a completed application is different under RESPA, HMDA and Reg B, and so on.

Some banks, and non-banks, believe that their originators cannot pull a credit report until they actually have completed an application. Others suggest that LOs be allowed to pull credit prior to quoting prices or during pre-application counseling. A quick search shows that "official" language or interpretation exists from RESPA, HMDA and Reg B, various legal firms specializing in residential mortgage origination, and pieces that describe the difference between the definition of application for HMDA, RESPA, Reg B, C, Z, and Fair Credit. And through it all, lenders continue to be on both sides of the "the **credit report does not constitute an application** element for Reg Z/RESPA disclosure requirements, but it does for Reg B if the application is declined" fence. As mentioned, some require a complete application before running credit, others do not, and others require an authorization to run credit but may or may not consider it an official application. And what lender wants to tie up resources arguing with an investor years down the road about whether or not a disclosure was sent or signed before or after a certain date?

Barbara Werth, with Mortgage Training Today (barb@mttoday.co), notes that many of the Federal Laws have different definitions on when an application is created. Real Estate Settlement and Procedures Act (RESPA) Regulation X, for example say THIS (it's in here somewhere!) and THIS. An **application for RESPA means** the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the following: borrower's name, borrower's monthly income, borrower's social security number to obtain a credit report, property address, estimate of value of the property, and loan amount. Once you have these six pieces you have created an application per RESPA. An application may either be in writing or electronically submitted, including a written record of an oral application. We know that once this happens, there are required disclosures (Good Faith Estimate -GFE, HUD Booklet for purchase loans, Servicing Disclosure) and Recommended Disclosures (Required Provider Disclosure, Shoppable Provider Disclosure, for example. These disclosures are required within 3 business days after the receipt of the last of the 6 pieces of information, per the application definition. Per RESPA, a lender is not required to provide these forms if the loan is denied within the 3 day period, or if the borrower withdraws the loan. In these cases you have to provide the Credit Denial, Termination or Change Form, within 3 business days of the receipt of the 6 pieces of information. And no, I am not going to get into the Change of Circumstance Form, or the additional RESPA disclosures.

But what about the **Truth-in-Lending Act (TILA) Regulation Z**? It turns out that the definition of application for TILA will follow the application definition of RESPA. The Truth-in-Lending should be dated the same as the GFE, on the date the MLO receives the last of the 6 pieces of information. The Truth-in-Lending must be provided to the borrower no later than 3 business days from the date on the TIL Disclosure, and this is required even if the loan is denied in the first 3 days if the Truth-in-Lending was prepared specific to the borrower. You cannot close on the loan for a minimum of 7 business days from the date the initial disclosure is provided. This means that before a borrower can close on a transaction, the borrower must receive the initial Good Faith Estimate (GFE) and initial Truth-in-Lending (TIL) statement disclosing the initial Annual Percentage Rate (APR) **7 business days prior to closing**. And compliance folks and processors, often worth their weight in gold, know all the ins and outs of the Right of Rescission Notice with a refinance of an owner occupied 1-4 unit, the Adjustable Rate Mortgage (ARM) Disclosures at initial application, the Consumer Handbook on Adjustable Rate Mortgages (CHARM) Booklet, balloon disclosures, prepayment penalty disclosures, and so on.

But wait - there's more! You're not ready to start lending yet! The **Equal Credit Opportunity Act (ECOA) Regulation B** says a **completed**

application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested. This is including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral. The creditor shall exercise reasonable diligence in obtaining such information, and a creditor shall take a written application. The ECOA Notice must be given to the borrower at the time of loan application per the ECOA definition. An Approval Letter goes out, provided for purchase or refinance loans, or Credit Denial, Termination, or Change be provided for all actions besides loan approvals. Of course the Approval, Credit Denial, Termination or Change form must be provided within the time limits listed in the notification section.

We're not done yet - wouldn't it be nice if all of this was simplified into one set of regulations? We have the **Home Mortgage Disclosure Act (HMDA) Regulation C**. Here an applications means an **oral or written request for a home purchase loan**, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested. Ms. Werth points out that this is per your company's policy. Preapproval programs fall under this regulation: a request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than: conditions that require the identification of a suitable property; conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as receipt of clear title or a flood certification). Compliance folks know that HMDA is dealt with on the loan application Part X of the Uniform Residential Loan Application (URLA) Form #1003, in the Government monitoring section, and that the lender must provide the borrower with the loan application to provide the disclosure. This disclosure must be given to the borrower at the time of the loan application, and thus must be given when an application is created per company's definition.

We're still not done yet. The **Fair Credit Reporting Act (FCRA) Regulation V** chimes in with **its definition of an application**: an application is created when information relating to a credit report and/or score is used in connection with an application for a residential mortgage loan. On-the-ball LOs know that there exists a Fair Credit Reporting Disclosure form that must be given to the borrower whenever credit is run. The initial notice and opt-out requirement states that you may not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes to the consumer, unless: It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer; the consumer is provided a reasonable opportunity and a reasonable and simple method to "opt out," or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and the consumer has not opted out. The notice must be provided by an affiliate that has previously had a pre-existing business relationship with the consumer; or as part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has previously had a preexisting business relationship with the consumer. (An easy example is when the lender owns a title company and a mortgage company.) The election of a consumer to opt out must be effective for a period of at least 5 years (the "opt-out period") beginning when the consumer's opt-out election is received and implemented.

Let's not forget the **Fair and Accurate Credit Transactions Act (FACTA)**. Here an **application for FACTA is created when** information relating to a credit score is used in connection with an application for a residential mortgage loan. Upon the request of a borrower for a credit score, the lender shall supply to the borrower a statement including: the credit score of the of the borrower that was used in the credit report, an explanation of the credit scores' role in the lender's decision, and the consumer reporting agency's name must be disclosed. The credit score disclosure also must show the top four factors that adversely affected the score, in order of importance. In addition, if the number of inquiries adversely affected the credit score, a consumer reporting agency must conspicuously state that the number of inquiries was a factor, even if it was not among the top four. (This is why it is important that you can verify that you have permission from the borrower to run their credit. If a borrower sees a listing that the number of inquiries adversely affected their score and you do not have documentation you had permission to run the credit, you would be in violation; the disclosure must be provided to the Borrower when the credit report is run.

Okay, last one (that I know of). We have the **Privacy of Consumer Financial Information Regulation P** (formerly known as Gramm, Leach, Bliley Act). **Here an application is created whenever** non-public personal information is received from a borrower for the purposes of applying for credit. There is a Privacy Disclosure (describes the conditions under which the lender may disclose nonpublic personal information about consumers to nonaffiliated third parties, and provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure). The originating lender provides the Initial Privacy Disclosure, but the servicing lender provides the Annual Privacy Disclosure. There is also a Nonaffiliate Sharing Opt-Out Notice, which is reported to be the same notice as the Affiliated Sharing Opt-Out Notice referenced in FACTA.

Kids, don't try any of that at home! It is **no wonder** that QC folks, at the lender and at the investor or agency level, are finding some reoccurring problems during the mortgage origination application process. Supposedly the number one compliance problem in the origination and retail side takes place during the initial 1003 Application, with incomplete borrower information, liabilities not lining up properly against the credit report, no HMDA data, and missing signatures. And I am sure that the borrower's love all these forms, right? And read each one? Sure thing. Thanks again to Barb for helping with this little write-up, as I am no compliance expert - if you want to reach her and learn more about her training classes, or have questions about the links, send an e-mail to barb@mttoday.co.

The markets? Yesterday the Federal Reserve said it will maintain its $85 billion in monthly bond purchases and persistently low inflation could hamper the expansion. In other words, the Federal Reserve's Federal Open Market Committee reaffirmed its highly accommodative policy and provided no additional information about the timing of the eventual unwind of its asset purchase program (QE3). And then overnight, in Europe, central banks left rates unchanged. I will save you all the blather, and after a nice improvement yesterday afternoon rates are about unchanged this morning, and the 10-yr is sitting at 2.59%.

For any HR director trying to bring in younger workers into the company, this is a must-see.

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