CFPB, MISMO and Electronic Processing; Lenders Liable for Buybacks After Shutting Down?

By: Rob Chrisman | Wed, Mar 19 2014, 9:53 AM

"Well the midnight gang's assembled and picked a rendezvous for the night, they'll meet 'neath that giant Exxon sign that brings this fair city light." Mr. Springsteen was not talking about banks, but they continue to be the ones **rendezvousing**. (The latest coming from Texas: Meridian Bank Texas ($267mm in assets) announced it will acquire State Bank and Trust Co. ($195mm) for an undisclosed sum.) Not only have no new banks been formed in many years, but the FDIC tells us that the 6 largest banks in the USA held $9.7 trillion of assets as of 12/31/13, 66% of the $14.72 trillion of assets in the entire banking industry. Talk about too big to fail!

Compliance and technology are the name of the game, and Rachel Bell with Bicoastal Consulting writes, "The CFPB has been very involved with MISMO and is interested in using the mortgage standards. My concern was that if the examination and enforcement end did not issue or enforce electronic best practices then the banks would not have any motivation to embrace new processes. I am working to have both ends of the CFPB deliver a consistent message. In fact, I recently had a very encouraging chat with an individual at the CFPB that I wanted to share. I had reached out in an effort to discuss the recent **originator examination updates** that included the requirement for an examiner to look for fraud in income and asset documentation. My comment was why look for fraud (good luck in electronic documents) when you can use authoritative source data (IRS, bank records, employer records) directly."

Ms. Bell's note continued. "The conversation expanded into the general use of electronic processes for better compliance and audit transparency (electronic origination including eSign etc...). Whenever a consumer prints, signs and uploads a disclosure or supporting document we are left with a 'black hole' in the audit trail. The comment from CFPB regarding electronic processes and using source data as best practice was 'that's **just common sense**' and 'no one wants to deal with paper'. While he acknowledged the need to serve all consumers either electronic or paper it was clear CFPB does understand the value of electronic processes. While not yet ready to issue a best practice doctrine, the CFPB did state they would encourage banks with issues to embrace electronic processes and give examples of banks that are doing it right. After 10+ years of working on paperless, eSign and eMortgage initiatives it is refreshing to have a regulator who 'gets it'."

Ms. Bell is referring to **Module 4 - Underwriting, Appraisals, and Loan Originators, page 23,** "UNDERWRITING: Ability-to-Repay mortgages. 1. Determine whether the lender meets the requirement to consider ATR for consumer-purpose, closed-end loans secured by a dwelling, and whether the lender verified and maintains a record of the information it relied on. Please refer to the TILA examination procedures for Section 1026.25(c)(3) Records related to certain requirements for mortgage loans and to Minimum Standards for Transactions Secured by a Dwelling - Section 1026.43, and Ability to Repay - Section 1026.43(c), regarding TILA, 12 CFR 1026.43(c),for more information." And page 24, "7. Review the loan file to determine whether loan documentation, including income documentation, has been altered or forged. Any indications of fraud should be handled in accordance with CFPB internal consultation procedures, and examiners should refer them to other authorities as appropriate."

Here is a note, not unlike many others I have received, from an owner of a small mortgage company in the South. "I, like many other small mortgage lenders, cannot afford a $300,000 a year compliance department and all the risk of repurchases. So after several decades in this business, and over 20 of owning my own company, I am **going to close my company** and nearly all my staff will go to work for a regional bank. But I am worried about the long term risk on closed loans after I shutter this business. I find it very hard to believe if I close the company and take all money out that they will come after me personally. Fortunately the bulk of our loans have been sold to the same bank that will be employing us, so my risk is not 100%. But I have sold to some of the aggregators in the past 10 years, and am wondering if I am going to be liable for buybacks."

This is obviously a serious issue plaguing many lenders who are leaving the business due to volume, margins, and costs, **further concentrating** lending in fewer and fewer institutions. Given the legal nature of the question, I passed it along to attorney Brian Levy with Katten & Temple, LLC (blevy@kattentemple.com) who replied, "You are not alone in asking these questions (or in your frustration with compliance costs). As a mortgage banking attorney who often deals with repurchase issues (and compliance), the question of liability for repurchase after a corporation or other entity is dissolved and/or liquidated comes up occasionally. In each instance this is a question of individual state law and the actual facts and circumstances around the potential for additional claims. Under most states' laws, you **cannot escape** a known or even reasonably likely liability of a company by 'closing shop' and taking your money out. Some state laws may even require you to notify creditors and potential creditors prior to liquidation. Whether a third party creditor might sue an owner (or Director) personally for an unpaid liability is uncertain, but depends on things such as the amounts involved, what was known, whether there was an attempt to defraud creditors, breach of duty, conflict of interest, and the perceived likelihood of success and collection by the creditor. Again, since this is largely a matter of state law that isn't just focused on mortgage lending, I strongly suggest that you consult with an attorney licensed in your state that is familiar with debtor/creditor and business issues generally."

Let's turn to some recent lender and investor news - it just doesn't stop.

ClearVision Funding has recently expanded its government product offering to include VA manual UW, USDA, and FHA as low as 560 FICO.

Plaza Home Mortgage is hosting complimentary live seminars in Austin on March 26th and Houston on March 27th: Successful Selling to the Realtor Market with Dennis Black. During each comprehensive 3-hour seminar, discover how to get 5-10 quality Realtor relationships for 2014. This course will cover 5 key areas to a successful sales strategy. To register for either session, contact Plaza's Dallas Regional Center at 866-736-5821.

Peoples Bank and Trust Co., founded over a hundred years ago in 1906, announced its continued expansion through lending in local communities. In 2013, Peoples Bank decided to take on a more national footprint - by forming a company that would process loans for brokers and lending companies across the nation. In order to meet this objective, an entity called Peoples Privo Processing was formed. This entity utilizes cutting edge technology and tools and a smart workforce to effect paperless processing that helps customers close loans faster. In talking about this new initiative, Ben Branson, CEO of the bank said, "We have put together a team that can do a great job for our clients. We ourselves faced some challenges with our processing prior to 2013, and finally figured out the secret recipe to close loans faster. We then figured we would utilize our expertise to help other companies close their loans faster." Peoples Privo Processing is based out of Ryan, Oklahoma, and can handle files in all fifty states.

WesLend has updated its Conforming DU and LP guidelines for modified/restructured loans to require four years' seasoning, re-established credit, a minimum FICO of 680, and at least 10% down. This option is not available for a property that is currently owned by the borrower. For modified WesLend Direct and WesLend AJ modified/restructured loans, two years' seasoning is required and the LTV must be 80% or below. The VA guidelines for cash-out refinances have also been updated to lower the minimum FICO from 640 to 620.

First Community Mortgage has expanded its hours to allow certain products to be locked overnight on normal business days. Eligible programs include Conforming Fixed, Lender-Paid Mortgage Insurance, FHA Fixed, and VA Fixed. Loans may be priced over the weekend but locking will be limited to the business week.

Effective immediately, **Sun West** is now allowing FHA Streamline refinance loans and locks to be submitted through its Sunsoft platform with odd amortization terms from 16 to 29 years.

Shifting over to the markets, rates improved slightly Tuesday. Yesterday we learned that Housing Starts in the U.S. were little changed in February, about as expected, after declining less than previously estimated a month earlier, indicating the home-building industry is stabilizing after bad winter weather curbed construction. Most attributed the Housing Starts news to the weather, but suggested that the increase in building permits is a good sign leading into the spring home buying season. The most important takeaway from this report is the bump up in single family homes - a sector that is dire need of an increase in inventory. We also had the Consumer Price Index, little changed in January and pretty much as expected.

This morning we've already had the MBA applications numbers (down about 1% last week), but the focus will be more on the closing announcement from the Federal Reserve Open Market Committee. We can all expect a shift from a quantitative approach to forward guidance to a qualitative one, and another cut (taper) of $10 billion to the monthly asset purchases. Specifically in MBS, outright purchases are expected to decline to $25 billion in April from $30 billion in March. Combined with paydowns, MBS buying should decline from the $2.3 billion per day area to just over $2 billion in the first half of April as a result. And with another $5 billion predicted in May, daily average buying is predicted to drop to roughly $1.75 billion in the first half of May.

For numbers, the yield on the 10-yr closed Tuesday at 2.68%, and this morning it is nearly unchanged as are agency MBS prices.

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