Non-QM Exec Vacates; Legal Explanation of the Importance of Vendor Management

By: Rob Chrisman | Fri, Jun 12 2015, 10:45 AM

Every once in a while someone will ask me about mortgage origination numbers, like does anyone count the number of loans made? Sure - read through the HMDA data - it is a great opportunity to plunge into the data.

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MORTGAGE INDUSTRY CONTINUES TO BEAR BRUNT OF CFPB REGULATORY BURDENS

In recent years, mortgage industry players have had to quickly adapt to the evolving regulatory environment. The latest scramble for mortgage lenders includes the downstream effects of pending rule changes related to disclosures required in implementing regulations of the Truth-in-Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"), set to take effect on August 1. **A critical factor to** successful implementation of this historic set of rule changes is coordinating with various vendors to address new timing and information requirements for Loan Estimates and Closing Disclosures. Undoubtedly, these rule changes are creating project management nightmares for mortgage professionals growing weary of the regulatory onslaught of revised regulations and enforcement actions. Despite the relative speed with which many companies have adapted to various rule changes since the CFPB came online, managing service providers through the changes continues to test the strength of the deep mortgage lender relationships in place in the industry for decades.

Synchronizing TRID-related changes with third party mainstays throughout the origination and closing processes has required extensive planning with mortgage brokers, software vendors, title companies and closing agents, all of whom play a significant role in ensuring that Loan Estimates and Closing Disclosures (and any revisions thereto) are delivered to borrowers in an accurate and timely fashion. Importantly, as the CFPB has made clear repeatedly in stating its vendor management expectations, the mortgage lender will bear primary responsibility for **any failure to comply with the new TRID rules**, regardless of whether such failures are the result of vendor missteps.

While many will sweat through the summer months in hopes of a flawless transition, TRID represents just the latest vendor management test for an industry that has already perspired through plenty. Legal and compliance personnel should take note of recent guidance and enforcement actions which raise vendor management issues specific to the mortgage industry, including oversight of (i) mortgage servicers, (ii) mortgage advertising companies, and (iii) relationships between loan officers and title companies.

Amongst the most difficult adjustments companies have had to make has been increased oversight of **mortgage servicers**, which continues to consume considerable compliance resources and expense. In particular, regulators are focused on ensuring that servicers (i) have instituted policies and procedures consistent with new regulations and guidance, and (ii) comply with collections and credit reporting requirements:

Under the revisions to Regulation X that took effect in January 2014, the CFPB may now cite an institution for failure to maintain policies and procedures reasonably designed to, among other things, facilitate (i) ready access to accurate and current documents and information reflecting actions taken by service providers, and (ii) periodic reviews of service providers. See 12 C.F.R. § 1024.38(b)(3). The Bureau explained at the time it proposed § 1024.38(b)(3), that the new regulation was designed to address evaluations of mortgage servicer practices that had found that some major servicers **"did not properly structure**, carefully conduct, or prudently manage their third-party vendor relationships," citing deficiencies in monitoring foreclosure law firms and default management service providers as key examples. Going forward, the CFPB expects that servicers seeking to demonstrate that their policies and procedures are reasonably designed to achieve these objectives will demonstrate that, in fact, the servicer has been able to use its information to oversee its service providers effectively.

The compliance burdens on servicers are also evident in the latest CFPB guidance on mortgage servicing transfers. Bulletin 2014-01, Compliance Bulletin and Policy Guidance: Mortgage Servicing Transfers, was issued August 19, 2014, and outlines a number of CFPB **expectations of servicers** in connection with the transfer of mortgage servicing rights, including potentially preparing and submitting informational plans to the Bureau describing how the servicers will be managing the related risks to consumers. In this regard, a primary focus of Bulletin 2014-01 is signaling that the CFPB is committed to enforcing the new servicing transfer rules under RESPA, which, requires servicers to, among other things, maintain policies and procedures that are reasonably designed to achieve

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the objectives of facilitating the transfer of information during mortgage servicing transfers and of properly evaluating loss mitigation applications.

It should come as no surprise that one of the primary vendor management implications of the evolving regulatory requirements described above is that ongoing compliance will likely require significantly more dedication of financial and human resources in order for most mortgage servicers to comply. However, **the cost of non-compliance can be substantially more devastating**. Consider the troubles of one of the largest nonbank servicers that entered into a $2 billion settlement with the CFPB, authorities in 49 states, and the District of Columbia under a joint enforcement action in December 2013 over allegations related to charging customers unauthorized fees, misleading customers about alternatives to foreclosure, denying loan modifications for eligible homeowners, and sending robo-signed documents through the courts during the foreclosure process. Just one year later, in December 2014, the same servicer entered into a $150 million settlement with the New York Department of Financial Services in connection with allegations of mishandling foreclosures, abusing delinquent borrowers, and failing to maintain adequate systems for servicing hundreds of billions of dollars in mortgages. In each consent order, the failure to maintain reasonable policies and procedures and engage in appropriate vendor oversight was highlighted as a finding by the regulators.

In addition to ensuring that mortgage servicers are implementing adequate policies and procedures with respect to vendor oversight, federal agencies have also been attentive to **debt collection** and credit reporting practices of mortgage servicers. A joint enforcement action by the FTC and CFPB in April of this year was critical of the servicer, in part, for allegedly (i) threatening arrest and imprisonment to consumers that were behind on payments and placing collection calls outside of the daily call window permitted under the Fair Debt Collections Practices Act (15 U.S.C. 1692 et seq.), and (ii) furnishing inaccurate credit information to consumer reporting agencies in violation of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) even after consumers indicated that they had reported the inaccuracies to the servicer. The servicer agreed to a $63 million settlement with the FTC and CFPB to resolve the matter.

The CFPB has also taken direct aim at **deceptive mortgage advertisements** in 2015, particularly those that imply an affiliation with programs offered by the U.S. government. The Bureau has announced a handful of enforcement actions during the first half of the year, including a simultaneous announcement in February against three private mortgage lenders that sent mailings simulating notices from the U.S. government despite the fact that none of the companies had any connection to a government agency. In bringing these actions, the CFPB made note of the customary practice of mortgage brokers and mortgage lenders to hire marketing companies to produce advertisements for mortgage credit products:

In the two matters that resulted in consent orders (n.b., the third matter is still pending), the CFPB compelled the companies to (i) pay a civil monetary penalty for which they could not seek indemnification from any of the marketing companies that assisted with producing the advertisements, and (ii) carefully review henceforth any proposed marketing materials prepared by such marketing companies for compliance specifically with the Mortgage Acts and Practices Rule (Regulation N, 12 C.F.R. § 1014.3(n)), and the Dodd-Frank Act, which generally prohibits unfair, deceptive, and abusive acts and practices (12 U.S.C. §§ 5531(a), 5536(a)(1)(B)).

In terms of vendor management, a key takeaway from these enforcement actions is that the CFPB expects mortgage lenders to take the **same precautions** with mortgage advertising companies as they are required to do with any other service provider that interacts with customers, inclusive of appropriate due diligence and oversight. Treating mortgage advertising companies as service providers has taken some in the industry by surprise as such companies have generally been viewed as marketing partners rather than service providers for mortgage brokers and lenders, and often receive a marketing fee for any advertisement that yields a new origination. Note also that the general expansion of third parties that qualify as "service providers" under Dodd-Frank is in keeping with various CFPB enforcement actions taken against ancillary and add-on product providers in the credit card and auto finance industries.

Another area of focus for the CFPB has been **referrals made by loan officers to title companies in exchange for cash and marketing services**:

In April of this year, the CFPB joined forces with Maryland Attorney General to take action against several loan officers for their alleged participation in steering title insurance and closing services to a title company in exchange for the loan officers' receipt of marketing services and cash from the title company. The consent orders, in addition to outlining RESPA violations which prohibit the giving of a "fee, kickback, or thing of value" in exchange for a referral of business related to a real estate settlement service (12 U.S.C. § 2607(a)), barred each of the loan officers from the mortgage industry for a period of two or five years, depending on the severity of their respective missteps. The April announcements were follow-on enforcement actions to ones that the CFPB had announced in January against two large banks stemming from allegations that the banks' loan officers had participated in similar schemes with the same (now defunct) title company.

The potential for RESPA violations presents another compliance challenge for mortgage lenders to increase their oversight of not only third party title companies, but also the lender's own loan officers that may be engaged, wittingly or unwittingly, in potentially illegal

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activity. **In addition** to enhanced RESPA training for loan officers and title companies, mortgage lenders may need to increase their monitoring and auditing activities of interactions between loan officers and title companies to further mitigate the risk of RESPA violations.

Mortgage servicing transfers, the hiring of marketing companies to produce advertisements for mortgage credit products and oversight of third party title companies and/or a lender's own loan officers are all in the spotlight. With this increased focus on vendors and various critical third parties in advance of the TRID-related changes, it is critically important, now more than ever, for companies to review and revise their service provider contracts in an effort to have better visibility and control over the end-to-end process of loan origination.

Something is clicking in the economy... no? Yesterday we learned that Retail Sales for May were +1.2%, Import Prices were +1.3%, Initial Jobless Claims were below 300k for the 14th straight month. NAR was also out saying 2015 could be the best year in housing since 2006. So why wouldn't rates go up? Well, the IMF is butting heads with Athens: stalled negotiations between Greece and its creditors caused a flight to quality in our country. So after our 10-yr benchmark T-note approaching 2.50% we find ourselves back down to 2.38%.

Friday we'll have the Producer Price Index for May (expected +.4%) and the preliminary June Consumer Sentiment (expected higher). Will it really matter when the focus is once again on Europe and specifically Greece?

Jobs and Announcements

Speaking of great opportunities that count, American Pacific Mortgage Corp. is looking to fill the position of Accounting Manager. This position is responsible for closing the books and managing the day-to-day accounting operations for this retail mortgage banker. The position is located in Rocklin, just north of Sacramento. APMC is a top independent mortgage banker, which originated over $5 billion in 2014. APMC has always had a strong focus on purchase business and serving its originators with over 200 branch locations and 1,850 employees. The ideal candidate will have over 10 years of accounting experience, including at least 5 years of accounting management experience in mortgage banking. For additional information about this opportunity or to submit a resume please contact Dan Santich.

On the wholesale production side, Carrington Mortgage is expanding its footprint in the Pacific Northwest, Northern California, Utah and Colorado and is currently looking for Account Executives to join its growing team! Please contact Beatriz Hernandez (949- 517-7043) or Denise Kent (949- 517-7260) for confidential inquiries.

On the flip side, Paul Muolo of Inside Mortgage Finance reported that "Jeff Lemieux, vice president at Bayview Asset Management, has left the buyer of non-QM mortgages, saying the origination of these non-agency loans is extremely weak across the industry. In an interview with IMFnews, Lemieux said 'nothing's happening' in the non-QM market when it comes to production volumes and openly questioned some of the numbers being thrown about by lenders operating in the space. '**Whatever they are telling you** they're doing in non-QM originations, **just cut the number in half**,' he said bluntly...'The consumer is resistant to the pricing.' He said that even though credit-impaired consumers have a hard time getting a loan, they feel they deserve a 4 percent rate after seeing advertisements on television.

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