The Compliance Corner

Keeping You Informed of Industry Changes

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Frequently Asked Questions (FAQs) are a good way to learn how regulations and guidelines should be implemented. In this issue we will provide regulatory and underwriting guidance through recent questions posed to the Consumer Federal Protection Bureau (CFPB) about the upcoming RESPA-TILA Integrated Disclosures rule. In addition, we will cover some of the most frequent underwriting questions answered by Fannie Mae. Recent FHA, Fannie Mae and Freddie Mac updates will also be covered.

TILA-RESPA Integrated Disclosures Rule FAQs

The CFPB staff and the Federal Reserve co-hosted a webinar on August 28, 2014 dealing with the final TILA-RESPA Integrated Disclosures Rule. This rule will be effective for applications received on or after August 1, 2015. This is the second in a planned series of webinars to help the mortgage industry prepare for the new rule. The first was held June 17, 2014. The next is tentatively scheduled for October 1, 2014.

During the recent webinar on August 28th, there were a wide range of questions regarding the Loan Estimate and the Closing Disclosures. In this Compliance Corner issue we will share a couple of the questions and answers and also directions to hearing the first two webinars.

Question: The definition of application does not include loan term or product type. What if a consumer submits the six elements listed in the rule, but does not specify the type of product or term?

Answer: An application is defined as the submission of six pieces of information: (1) the consumer’s name, (2) the consumer’s income, (3) the consumer’s Social Security Number to obtain a credit report, (4) the property address, (5) an estimate of the value of the property, and (6) the amount of the mortgage loan sought.

The obligation to provide consumers with a Loan Estimate is silent regarding any assumptions a creditor may make about loan features such as product type or term. Accordingly, provided that the disclosures in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the creditor at the time the Loan Estimate is issued, a creditor has discretion with respect to what product, term, or other features it uses to issue a Loan Estimate.

A creditor is also not required to provide multiple Loan Estimates for every product it offers, but can do so if it chooses.

Compliance Corner Note: The definition of an application for the TILA-RESPA Integrated Disclosures Rule is different than the definition of an application for
ECOA Regulation B compliance. Lenders’ policies must define what constitutes a “complete application”. ECOA requires a lender to take action within 30 days of an application. Actions are approve, deny, withdrawal or issue a Notice of Incomplete (NOI) application.

**Question:** Does the 7-day waiting period before consummation that applies to Loan Estimates apply to revised disclosures?

**Answer:** No. The 7-day waiting period is a TILA statutory provision that applies to the initial Loan Estimate that is provided after receipt of an application. The 7-day waiting period does not apply to revised Loan Estimates.

However, the latest that a revised Loan Estimate may be received by a consumer is 4 business days before consummation. If a creditor will rely on the mailing rule, under which a consumer is deemed to receive a Loan Estimate 3 business days after delivery by any method other than personal delivery, the creditor would need to send the revised Loan Estimate at least 7 business days before consummation.

Access to the recorded FAQ webinars may be found on the CFPB’s regulatory implementation website at: [http://www.consumerfinance.gov/regulatory-implementation/tila-respa/](http://www.consumerfinance.gov/regulatory-implementation/tila-respa/).

**Impact on Indecomm’s Clients**

The TILA-RESPA Integrated Disclosures Rule will have a profound impact on the mortgage industry. Industry participants have a responsibility to learn as much as possible about the pending changes and how the new rule will impact the day-to-day relationships with customers and business processes. Industry systems providers are working diligently to adjust to the changes.

August 1, 2015 will be here before you know it and Indecomm-Mortgage U is helping our clients prepare for the big changes. Our Operations Health Check services and our compliance training programs are readying clients for the changes. If you wish to learn more about how Indecomm-Mortgage U can better prepare a company for the TILA-RESPA Integrated Disclosures Rule, please contact Lisa Bloomburg at Lisa.Bloomburg@indecomm.net or 800-278-0200.

**Conventional Underwriting FAQs**

Fannie Mae recently published a list of underwriting FAQs, which they will update periodically. The FAQ document also provides links to their Selling Guide and other reference resources. Sample FAQs follow:

**Question:** Does Fannie Mae require a minimum down payment?

**Answer:** A minimum borrower contribution is not required for a one-unit principal residence. All or a portion of the funds needed to complete the transaction may come from a gift.

**Question:** Can an account that is being reported as disputed on the credit report be ignored if the loan casefile receives an Approved/Eligible recommendation from DU?

**Answer:** When DU issues a message stating that DU identified a disputed tradeline and the tradeline was not included in the credit risk assessment, the lender must follow the requirements specified in the message. If DU does not issue the disputed tradeline message, no further action is necessary.

For a full list of the recent FAQs, click on this link: [https://www.fanniemae.com/content/faq/underwriting-faqs.pdf](https://www.fanniemae.com/content/faq/underwriting-faqs.pdf).

**Impact on Indecomm’s Clients**

Fannie Mae's FAQs provide good insights into the credit challenges underwriters are facing today. Underwriters and associates that perform underwriting-related audits, are encouraged to read the FAQs and employ them as needed for an internal training sessions or as part of a team meeting. If a company uses new hire assessments for underwriters, pulling a few questions from Fannie Mae's underwriting FAQs can be helpful.

**FHA Updates**

There are a few FHA updates which are worthy of sharing with you in this Compliance Corner issue:

1. In response to the CFPB’s concerns about the long term practice of charging interest through the end of the month when a borrower pays off
their mortgage, the practice will cease effective January 21, 2015. The final rule was published in the Federal Register August 26, 2014. The CFPB found the practice is equivalent to a pre-payment penalty which is not Qualified Mortgage (QM) compliant

2. Effective October 1, 2014 FHA servicers will no longer be permitted to terminate FHA mortgage insurance on a mortgage without the borrower's consent to voluntary termination of FHA mortgage insurance. More details regarding this requirement may be found in Mortgagee letter 2014-13: http://portal.hud.gov/hudportal/documents/huddoc?id=14-13ml.pdf

3. Mortgagee Letter 2014-17 extended the temporary approval provisions for FHA condominium projects until August 31, 2016. They were originally scheduled to expire August 31, 2014. The extension will allow the FHA to consider appropriate changes that may be needed for condo approval guidelines. The temporary approval provisions may be found in Mortgagee Letter 2012-18: http://portal.hud.gov/hudportal/documents/huddoc?id=12-18ml.pdf

Impact on Indecomm’s Clients

The ban on charging interest through the end of a month for FHA loans which are being paid off is a win-win for consumers and lenders. Consumers will save money and lenders will not feel the pressure to schedule refinances of FHA loans at the end of the month. In addition, borrowers save even more by closing rate-reduction refinances early in the month.

Servicers of FHA mortgages will no longer be able to cancel FHA insurance to avoid a claim and take their own loss mitigation course of action without the borrower’s consent. The likelihood that an informed borrower will give consent is unlikely.

The condo approval provisions extension means that there is no change in the current rules for now. This extension allows lenders more time to weigh-in on the many challenges of originating FHA loans in condominium projects, and the unintended consequences in serving the FHA programs’ target demographics.

Fannie Mae and Freddie Mac Updates

Fannie Mae Selling Guide Announcement SEL-2014-11 covered various topics. The key topics include:

• Suspended Counterparty Program (SCP): The Federal Housing Finance Agency (FHFA) established SCP. Under the program, FHFA may suspend an individual or an entity from doing business with Fannie Mae or Freddie Mac. Lenders and servicers must check the SCP list to ensure they are not doing business with a suspended entity or individuals, or have employees on the SCP list.

As part of a lender’s hiring process, a lender must have a procedure for checking employees involved in the origination process against the U.S. General Services (GSA) Excluded Parties List (EPL), the HUD Limited Denial Participation List (LDP), and the FHFA's SCP list.

If a lender has a third-party origination (TPO) channel, the lender must confirm the TPO has a documented procedure for checking their potential employees against the lists.

A third-party origination is defined as any mortgage that is completely or partially originated, processed, underwritten, packaged or closed by a third-party originator, that is, an entity other than the lender that sells the mortgage to Fannie Mae or Freddie Mac. Mortgages originated and/or funded by the lender’s parent, affiliate or subsidiary are not considered to be a third-party origination. Fannie Mae clarifies that those lenders which contract with entities such as a mortgage insurance company to help underwrite
mortgage originations are not considered third-parties. The guidelines do not specifically address business process organizations such as Indecomm, which provide processing, underwriting and closing services.

The FHFA is in the early stages of building the SCP list and the list may be accessed on FHFA's website at: http://www.fhfa.gov/SupervisionRegulation/LegalDocuments/Pages/SuspendedCounterpartyProgram.aspx

- **Disputed tradelines clarification**: If the DU does not issue the disputed message, the lender is not required to investigate further. However, for manually underwritten loans with multiple disputed tradelines or a mortgage tradeline dispute, the lender should obtain correspondence directly from the borrower regarding the dispute and consider the dispute reasons in the borrower's overall credit evaluation.

A full overview of Fannie Mae's changes and underwriting clarifications may be found by reading announcement SEL-2014-11 at: https://www.fanniemae.com/content/announcement/sel1411.pdf.

Freddie Mac recently announced LP enhancements scheduled for release October 19, 2014. The enhancements will focus on liabilities used in the calculation of the debt-to-income (DTI) ratio. The changes will apply to conventional as well as FHA and VA programs.

Users will be able to better define liabilities to be paid off prior to closing, obligations to be excluded and the months left to pay. LP will deliver clearer feedback messages and remove generic messages.


**Impact on Indecomm’s Clients**

Lenders need to ensure that their human resources departments have added the FHFA's SCP list scrub to their pre-hire screening process. Lenders with third-party production channels need to update their approval and annual due diligence processes. In addition, lenders must update the contractual agreements for counter parties to attest to a hiring procedure which includes checking GSAs EPL, HUD's LDP lists, and FHFA's SCP.

Underwriters should already be aware of Fannie Mae’s clarifications regarding DU and disputed tradelines’ requirements. But if this guideline has not been shared with your underwriting team you should consider reviewing it during a team meeting and checked it against any internal or investor credit overlays. If LP is your preferred system, a comprehensive review of the pending LP enhancements should be conducted.

It is critical for mortgage professionals to be life-long learners and stay up to date with new regulations and industry updates in order to achieve peak performance. One of the greatest men of the 20th Century and a life-long learner was Winston Churchill. He suffered many setbacks during his life and experienced many successes too. Winston Churchill once said: “Success is not final, failure is not fatal: it is the courage to continue that counts.”