

Regulatory Compliance Issues

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Third Party Oversight of the Valuation Process

Collateral Risk Network
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Consumer Finance Protection Bureau

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- The Consumer Financial Protection Bureau (“CFPB”) 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. The CFPB’s exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.
- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law

The Dodd/Frank Act - April 1, 2011

Third Party Oversight

- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

Interagency Appraisal and Evaluation Guidelines - December 10, 2010

Third Party Arrangements

- The institution is accountable for ensuring that any services performed by a third party, both affiliated and unaffiliated entities, comply with applicable laws and regulations and are consistent with supervisory guidance
 - The institution should have internal controls for identifying, monitoring, and managing the risks associated with using a third party arrangement for valuation services including compliance, legal, reputational, and operational risks.
 - The institution should have a written contract that clearly defines the expectations and obligations of both the financial institution and the third party.

The Dodd/Frank Act - April 1, 2011

Appraisal Independence

- No covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.
 - Penalties for violations
 - Up to \$10,000/day for first violation
 - Up to \$20,000/day for subsequent violations
 - Expands on pre-existing appraisal independence requirements in TILA (Reg Z)
 - Retains provisions of appraisal independence from the HVCC

The Dodd/Frank Act - April 1, 2011

Customary & Reasonable Fees

Presumption #1 - Recent rates paid for appraisal services

The amount of compensation is reasonably related to *recent rates*” paid within the past twelve months or appraisal services performed in the geographic market of the property. The creditor or its agent must identify recent rates and make any adjustments necessary to account

for the 6 specific factors, *Type of property, Scope of work, Fee appraiser qualifications, membership in professional appraisal organization, Fee appraiser experience and Professional record, Fee appraiser work quality*

The Dodd/Frank Act - April 1, 2011

Customary & Reasonable Fees

Presumption #2 - Fees by objective 3rd party sources

A creditor and its agent are also presumed to comply if the creditor or its agent establishes a fee by relying on rates in the geographic market of the property being appraised established by objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms.

To qualify for this presumption of compliance must exclude compensation paid to fee appraisers for appraisals ordered by appraisal management companies

The Dodd/Frank Act - April 1, 2011

Mandatory Reporting

Must ensure compliance with USPAP and Other Applicable Laws

- Mandatory reporting of violations of USPAP and other applicable state and federal laws
- Must report violations to state licensing and certifying agency
- Reporting requirements apply to AMC's, banks, mortgage brokers, real estate brokers and settlement service providers
- Fraud, negligence, misleading appraisals, incompetence, poor performance inferior quality, etc.

Interagency Appraisal and Evaluation Guidelines - December 10, 2010

Selection of Appraisers

Select, evaluate and monitor the performance of appraisers and persons who perform evaluations and ensure that:

- The person selected is competent to complete the assignment and is capable of rendering an unbiased opinion
- Periodic reviews are conducted on the work performed by appraisers
- Institution or its agent must directly select and engage appraisers and/or persons who perform evaluations.
- Borrower or Loan Production personnel may not select a person to perform an appraisal or have involvement in the development of the approved appraiser list

Interagency Appraisal and Evaluation Guidelines - December 10, 2010

Reviewing Appraisals

All appraisals received by the bank must conform to generally accepted appraisal standards (USPAP)

- Depth of Review - Should institute a risk-focused approach to appraisal review
- Reviewer Qualifications - Should be capable to assess whether valuation methods, assumptions and data sources are appropriate and well supported
- Resolution of Deficiencies - Should have policies and procedures for resolving any inaccuracies or weaknesses in an appraisal or evaluation identified through the review process
- Documentation of the Review - Should document the compliance review, which may be in checklist or narrative format.

Questions???

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