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TitleTRACK

What is vendor vetting, and why do we need it?

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Vendor vetting — what is it and why do we need it? Or do we need it? I'm sure some of you are scratching your head about now. This is the newest and latest service affecting service providers of supervised banks and nonbanks. In particular this includes mortgage lending service providers, i.e. title companies and agents, bank attorneys, settlement companies and closers, among others.

This all started with the Consumer Financial Protection Bureau and its Bulletin 2012-03, issued to supervised banks and nonbanks, which deals with the requirement that these institutions ensure that their business arrangements with service providers do not present unwarranted risks to consumers. To avoid regulatory violations and related consumer harm the CFPB is advising these institutions to, among other things:

- Conduct due diligence on their service providers to verify the ability to comply with consumer financial laws;
- Review service provider's policies, procedures, internal controls and training materials;
- Including in contracts language to provide clear expectations about compliance, as well as enforceable consequences for violations;
- Establishing on-going monitoring; and
- Taking prompt action to address problems identified, including, if warranted, termination of the relationship.

To make things more disconcerting for the regulated institutions, the CFPB filed a Stipulation and Consent Order in July dealing with violations of consumer financial laws by a servicer provider of Capital One Bank.

In brief, the service provider was a credit card call center contracted by Capital One Bank. The CFPB found a number of violations by the call center and an action was brought against Capital One for these violations as a consequence of failing to properly oversee their service provider. The result was a requirement for Capital One to provide monetary relief to credit card holders and a $25 million civil penalty, among other requirements.

There are several other settlements with other credit card companies all arising from violations of consumer financial laws by service providers. All resulted in significant penalties and can be found on the CFPB website at www.consumerfinance.gov.

Obviously the CFPB intends to hold the regulated institutions accountable for the actions of their service providers. Since the bulletin issued by the CFPB is general in nature, banks are grappling with how to properly and effectively monitor their service providers.

In stepped Secure Settlements, Inc., the most visible to date of the vetting companies. Secure Settlements was established, not in response to the CFPB's bulletin, but in response to a perceived gap in the regulation of real estate settlements in northern New Jersey, and with an eye toward supplying additional or better insurance than that provided by Closing Protection Letters issued by title insurance underwriters.

After not getting much traction in this arena, Secure Settlements has seemed to gain a foot hold in the vetting of title agents as service providers to the mortgage banking industry.

Secure Settlements's process will include not just title agency vetting, but more importantly, employee vetting. The process would include background check, credit check, title license check and verifying appropriate insurance coverage, among other things. In addition, it would include ongoing monitoring of this information so that if there is a change the lender would know about it and be able to address any issues immediately.

The bad news is the anticipated cost of $299 per individual vetted. Secure Settlements has already signed on several warehouse banks. These warehouse banks are in essence telling their customer banks that they won't fund their loans unless their service providers are vetted by Secure Settlements. To complicate matters even more, Secure Settlements is not the only company providing this type of service, and there are bound to be more.

How many different companies will you need to be vetted by in order to maintain your current business? And, ultimately, is all of this really necessary? Isn't this already being done now by the title underwriters? These questions and more are what are currently on the mind of title and settlement agents nationwide. One thing is clear though, this will not only lead to more costs for service providers, but increased costs for the consumer as well.

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There are other alternatives to these vetting companies. One involves discussions between the largest national title underwriters and largest national mortgage lenders. After many proposals and discussions among this group, the most promising is a 10 best practices standard that title underwriters and agents would agree to abide by. In return the lenders would agree to the use of these underwriters and their approved agents, relying on the underwriters' approval and auditing processes.

Keep in mind that this is a work in progress and discussions could lead in a different direction. In addition, most of the major underwriters have already taken steps to assure their lender customers that many agents have been well qualified and regularly audited to ensure their compliance with rules and regulations as well as their competence.

So where does this leave everyone? It's hard to say unless, and until, the CFPB comes out with more definitive regulations for the banks to follow. The best advice for now is to work with the American Land Title Association, the National Association of Independent Land Title Agents, your state Land Title Association or other industry trade groups to make sure that the CFPB hears your opinion.

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