

COMMUNICATE
COLLABORATE
CO-EXIST
COMPLIANCE

THEFOURTHC

A monthly publication of the compliance department of WFG National Title Insurance Company

Volume 2 | Issue 12 | February 2015



Welcome to TheFourthC WFG's Monthly Compliance Newsletter

As the housing finance industry prepares itself for the most far-reaching forms changes since RESPA 1974 – and every settlement services company is focused on implementing the new rules affecting how real estate transactions are closed - it is an ideal time to take a look at the instructions that govern our role in the real estate transaction. As a title insurance and settlement services company WFG is a third-party beneficiary to the contract between the seller and buyer. WFG is also subject to the terms of written closing instructions it receives and accepts from lenders. The relationship between the lender and settlement services company is controlled by these written, approved and signed escrow/closing instructions, which layout the parties' respective role, responsibilities, duties and liabilities.

In the midst of all the changes currently underway to software systems, processes and forms it is an ideal time to remind everyone that our role in the real estate transaction is governed by closing and escrow instructions. Additionally, it's a good time to take a fresh look at lender instructions and make sure we understand what's in them and what responsibility we are taking on. This month in *TheFourthC*, Deborah Everett has written the feature article on "Why Complying with the Lender's Closing Instructions is Crucial to the Real Estate Transaction." Deborah's article includes a reminder to carefully read the lender's instructions. Sometimes they include terms that may be unacceptable such as when they attempt to hold the settlement agent responsible for finding and correcting not only its mistakes, but the lender's mistakes as well. I know you will find Deborah's article informative and instructive.

Inside this issue, you will also learn "What's NEW in WFG Scholar," and the difference between Policy and

Procedure Acknowledgements (PP Ack) and WFG's courses. We continue to roll out courses to prepare you for August 1st, with a three-part learning series on the new Closing Disclosure form that will replace the HUD-1 Settlement Statement and the final Truth in Lending forms.

Stay tuned . . . coming in the March issue of *TheFourthC*, we will feature an article on *Complying with Security of NPPI in Facilities*. As we move, remodel and expand our facilities, we need to be mindful of our security requirements under the new CFPB rule.

Interested in a particular compliance or audit topic? Or, writing an article for *TheFourthC*? We are always looking for ideas for new articles and new contributors. If you have an idea for a future article or want to write an article, please contact us at compliance@wfgnationaltitle.com.

August 1st is less than six months away, and we hope that *TheFourthC*, *Fast Facts*, *WFG Scholar* and the WFG Policies and Procedures are helping you with your preparation!

Donald A. O'Neill
Executive Vice President & Chief Compliance Officer
WFG National Title Insurance Company



Why Complying With the Lender's Closing Instructions is so Crucial in the Real Estate Transaction

Lender's Instructions are the bane of every closer and the delight of every auditor. Why? Every closer (or escrow officer) struggles to read and absorb every detail contained in the 3 – 30 pages of lender's instruction that a closer receives, typically right before or during a closing. Auditors follow behind a closing with the time to thoroughly review the same instructions without the pressure of the closing. Unfortunately, a thorough review of a lender's instructions can be a frightening experience.

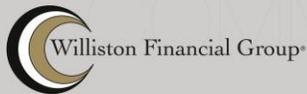
Lender's instructions contain several critical pieces of information. First, these instructions define the types of coverage required by the lender. It is the authority for determining what endorsements should be provided and charged for. In fact, most auditors will cite a closer for any coverage that was requested and not provided **OR** for any coverage provided, but not requested by the lender. Second, these instructions frequently contain funding requirements that must be satisfied before the loan is funded. **Failure to read and understand these details can lead to delays in funding or a complete failure of closing.**

Finally, the most frightening aspect of many lenders' instructions is the liability it may attempt to impose on either the closer or the title company that is completed outside the scope of the relationship of settlement agent or title company. Most lenders require a closer to execute the closing instructions and, by doing so, closers can expose themselves to personal liability for any breach of representation or warranty contained in those instruction, even though the

representation or warranty is outside the scope of the relationship of a settlement agent or title company. Unfortunately, only the State of Texas provides protection for a closer when faced with a challenging set of lender's instructions. **Everyone else must protect themselves and WFG from any potential hidden or unexpected liability.**

The key to effectively managing lender's instructions is to become familiar with as many of your lenders standard instructions as possible. I kept a marked up set of each of the major lenders instructions on my desk so I could quickly review for critical information. However, with the new closing disclosure pending on the horizon, lender's "standard" instructions will be changing too frequently for any of us to rely on our existing knowledge or marked up copies. We will have to read each set of instructions carefully! Although we know that Wells Fargo and Bank of America has decided to prepare the closing disclosure, other lenders may request us to perform that service which could expose WFG to additional liability under other laws and regulations (TILA, for example). Most importantly, do not hesitate to escalate any questions or concerns that you may have regarding a provision in the lender's instructions. It is better to seek guidance regarding any questionable provision than to face some unknown future liability based on haste.

*Deborah P. Everett
Senior Vice-President and Compliance Counsel
WFG National Title Insurance Company*



Policies & Procedures

Policies and Procedures

A summary of new and revised WFG Policies and Procedures that were issued in January, 2015 are:

New

→ [WFG Marketing Inman Services Policy and Procedure v1.0](#)

Revised

→ [WFG Privacy Policy and Procedure v1.2](#)

CFPB
Final Rule
[click](#)

FAST FACTS

Closing
Disclosure
Form
[click](#)

Turn to The FourthC Fast Facts each month for continued information from The Dodd-Frank Wall Street Reform and Consumer Protection Act, the final CFPB rule on the Integrated Mortgage Disclosures, and updated information from CFPB.

Do NDAs (Non-Disclosure Agreements) with our vendors, or vice versa, restrict us or our third-party vendors from disclosing information to CFPB?

No – CFPB recently issued [CFPB Compliance Bulletin 2015-1](#), which reminds financial institutions, and others that they supervise, about the proper treatment of confidential supervisory information. This also includes examination reports and any information derived from or related to those reports, as well as any communications between CFPB and a supervised institution. The reminder applies as well to other government agency's communication that is related to CFPB's supervision of the institution.

The announcement also states that it "includes any other documents prepared by, on behalf of, or for the use of CFPB or any other government agency in the exercise of supervisory authority over the institution. The institution's response(s) to CFPB or any other regulatory agency would be included."

The motive for the bulletin, per CFPB, is that many of CFPB's supervised institutions are new to the world of federal regulatory oversight and may not be familiar with the standards of confidential supervisory information that banks, credit unions, and savings associations are generally accustomed to.

Another topic that CFPB highlighted in the recent bulletin goes beyond the normal scope of the examination report and related information that is contained in non-disclosure agreements. The Bureau stressed that a supervised financial institution that has entered into an NDA with a third party could risk violating the law if the institution attempts to use an NDA as the basis for failing to provide information sought pursuant to supervisory authority.

Definition of CSI "confidential supervisory information" means:

- Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;
- Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any supervision information derived from such documents;

- Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB's supervision of the institution;
- Any information provided to the CFPB by a financial institution to enable CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 § U.S.C. 5481, or is subject to the CFPB's supervisory authority; and/or
- Information that is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(8).



What's New in WFG Scholar?

Courses:

We have recently released *WFG's Journey to Understanding the New Closing Disclosure Form* course, which is covered in three courses due to its length and content. We cover pages 1 and 2 in the first course, page 3 in the second course, and pages 4 and 5 in the third course. These courses are mandatory for our escrow, compliance and accounting/finance employees, and available in the course library if other employees would like to take them.

The new Closing Disclosure form will take the place of the current HUD-1 Settlement Statement and the final Truth in Lending forms on loans that are initiated on and after August 1, 2015. If you have not completed *WFG's Journey to Understanding the New Integrated Disclosures – Course 1*, we suggest that you take that course first before reviewing the Closing Disclosure courses. We are currently working on the new Loan Estimate form course, and it will be released soon.

Also, coming soon is a course on Bankruptcy.

Employees have 30 days in which to complete **courses** in WFG Scholar. There is a 7-day reminder that goes out before the learner is delinquent.



Policy and Procedure Acknowledgements

Why: Due to CFPB and our lender customer requirements, we need to track which employees receive corporate-wide P&P's. Along with this, we also must have employees acknowledge that they received, reviewed and will adhere to the P&P's that pertain to their job duties. At this time, the only software we have available to track this type of information is through our WFG Scholar program.

When: We have started to build short P&P acknowledgements in the system, and will release **groups of six** P&P's to the current employees every two weeks starting **February 1st**. Some P&P's will be sent to all employees, where only those affecting certain job duties will be assigned to those specific teams that are built in Scholar.

New-hires: There is a group of nine P&P's that go out to every new-hire when they join our company. The new-hire employee will now be imported into Scholar within their first three days of employment. These first nine P&P's will now be distributed to them through Scholar. You will no longer need to retrieve the paper copy acknowledgement that you previously sent to HR for their files. This will now be tracked through Scholar. We will be ready to implement this process on **March 1st**, as there are a few IT P&P's in this grouping that are currently being revised.

How long will this take our employees: Depending on the length of the P&P, it should take five minutes or less for the employee to read the P&P and check mark the acknowledgement box that they have received, read and understand the P&P.

How many days do employees have to complete this task in Scholar: Employees are given 14 days to complete this task in Scholar, with a three-day reminder email prior to the due date.

Revisions and updates to P&Ps: Every P&P has to be reviewed and updated on an annual basis, but there are times when procedures change prior to the annual review. When this happens, a P&P goes through a revision process, and an updated one is released. We will have to create a new P&P acknowledgement that is sent to the same group that received the first P&P Acknowledgement.

Questions: If you should have any questions on the P&P's, you can always reach out to Don O'Neill, Deborah Everett or Lee Ann Fenske.

Scholar Reminder: I would like to take this opportunity to remind you that there are certain "courses" that have to be taken on an annual basis. You may have already noticed that the *Privacy and Security for Real Estate Settlement Services Companies* have come back onto the learner's to-do list. There are others, that due to CFPB related regulations will come back onto the learner's to-do list. This would include the *Consumer Complaint Course; Forgery, Fraud Prevention and UDAAP Course, Records Management, and Responsible Use of Social Media Course.*



WFG Compliance Program

The WFG Compliance Program incorporates the latest industry best practices, as well as CFPB's most recent guidance for third party settlement services providers.

[Check out all the new information on our website](#)