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What the Consumer Finance Protection Bureau has in store for our industry

June 21, 2012 - Spotlights

Thinking about what the Consumer Finance Protection Bureau (CFPB) has in store for our industry reminds me of what it was like to work on my father's old wooden sailboat. As soon as we got finished with everything it was time to start all over again.

As most industry professionals know by now, the near future holds a new challenge in the form of an all-new five-page combined Settlement Statement and Truth-in-Lending disclosure.

We've been following developments at the CFPB and checking out the prototype settlement statements. The CFPB's plan is to replace the current four required disclosure forms (the preliminary TIL, the GFE, the final TIL and the HUD-1) with two integrated forms (called the Loan Estimate and the Settlement Disclosure). The CFPB expects these changes to reduce the burden of coordinating and producing disclosures under the sometimes conflicting current Regulations X (RESPA) and Z (TILA).

Many of the difficulties in dealing with the 2008 RESPA rule changes were inevitable considering HUD's method of revision - simply grafting new requirements on to the existing HUD-1. The absence of guidance and lack of clarity in the rules caused much uncertainty. Remember the 65 pages of Frequently Asked Questions six months later? From our perspective, numerous software revisions were needed to meet varying lender interpretations and requirements for the use of the new HUD-1. It's a positive sign that the CFPB is re-thinking the organization and layout of the new forms, and testing them with mortgage borrowers in select markets.

The CFPB will soon be proposing amendments to Regulations X and Z to effect these changes. The Dodd-Frank Act requires the agency to propose the new Loan Estimate and Settlement Disclosure forms and rules by July 21st. The CFPB is currently at the Small Business Review Panel stage, where it is gathering comments on possible rule changes and their impact on small businesses. The proposed forms and rules may end up being final, but either way we're expecting to have final forms and rules by the end of the year. It's likely there will be a one-year implementation period after that.

A significant issue with the CFPB's proposed combined Settlement Disclosure is that the TIL has traditionally been the lender's responsibility, while the RESPA disclosure has been prepared by the settlement agent. There are various proposals under consideration for how to deal with the logistics of producing a combined form. It's clear, however, that there will be a need for even greater coordination between lender and settlement agent in the preparation of the disclosure documents.

We went to great lengths for the 2008 revision to make sure our new HUD-1 software would not allow users to commit RESPA rule violations through improper use of the form. Perhaps the most valuable lesson we learned from that episode, however, is that during times of change and uncertainty, software should be very flexible in terms of how it can be used. Regardless of how clear the new rules are, there are sure to be lots of questions and differences in understanding as the

industry adapts to the new forms.

There is no question that this change will be a major challenge for the settlement services industry - probably even greater than last time. Software programs will require wholesale revision. Users and support personnel will need to be brought up to speed on their use. From our perspective, we know that our clients will rely on us not only for the software but to provide training, documentation and ongoing support during the transition period and into the future.

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