



You Should Fear the **CFPB**

BY JOHN LISTON

There is no easy way around the uniform disclosures that will hit the mortgage industry next year.

Many in the industry compare the Consumer Financial Protection Bureau (CFPB) to the boogeyman. However, that is not an altogether accurate point of comparison at all. The term boogeyman is defined as “a mythical creature in many cultures used by adults or older children to frighten bad children into good behavior. This monster has no specific appearance, and perceptions about it can vary drastically from household to household within the same community; in many cases, he has no set appearance in the mind of an adult or child, but is simply a non-specific embodiment of terror.”

The comparison doesn't hold up because the CFPB is not a "mythical creature," the CFPB is very real. Where the comparison does hold up is that for many in the mortgage industry today, the CFPB does represent "the embodiment of terror." But is that an accurate way to view the CFPB? Do lenders have reason to fear the CFPB? I think it is clear that the actions of the CFPB thus far are enough to warrant fear of the CFPB and non-compliance.

Why do I say this? Back in July of 2012, the CFPB announced its first public enforcement action with an order requiring Capital One Bank (U.S.A.), N.A. to refund approximately \$140 million to two million customers and pay an additional \$25 million penalty. This action results from a CFPB examination that identified deceptive marketing tactics used by Capital One's vendors to pressure or mislead consumers into paying for "add-on products" such as payment protection and credit monitoring when they activated their credit cards.

More recently, on April 9, 2014, the CFPB ordered Bank of America, N.A. and FIA Card Services, N.A. to provide an estimated \$727 million in relief to consumers harmed by practices related to credit card add-on products.

Roughly 1.4 million consumers were affected by Bank of America's deceptive marketing of their add-on products, according to the CFPB. Bank of America also illegally charged approximately 1.9 million consumer accounts for credit monitoring and credit reporting services that they were not receiving. Bank of



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America will pay a \$20 million civil money penalty to the CFPB.

Also, in June of last year, U.S. Ban-

corp (USB) and a partner company were ordered to repay about \$6.5 million to resolve CFPB claims that they misled military-service members who participated in an auto lending program.

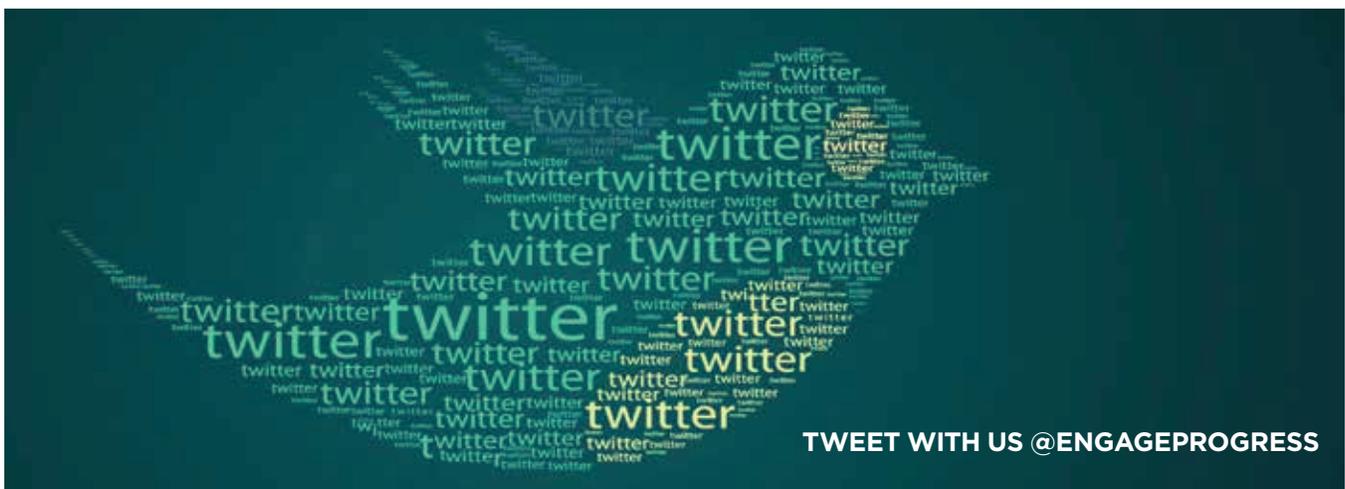
The two companies "failed to properly disclose costs associated with repaying auto loans" made to service members under U.S. Bancorp's Military Installment Loans and Educational Services program, said CFPB Director Richard Cordray.

It doesn't end there. The CFPB fined Walpole, Mass.-based Mortgage Master \$425,000 after its examiners discovered significant data errors in its 2011 HMDA report. The errors involved 21,000 loan applications processed in 2011. The Massachusetts Division of Banks also reviewed Mortgage Master's HMDA reporting and found significant errors.

So, when lenders compare the boogeyman to the CFPB, the comparison might not be 100% correct, but the past actions of the CFPB to penalize lenders for non-compliance to the point where the agency was investigating one lender for over a year, is a real cause for concern. Lenders don't want to get caught in the crosshairs of the CFPB.

Today many lenders are scrambling as they try to come up with a strategy to comply with the new integrated disclosure rule set to go into effect in August of next year. This new rules changes mainstay mortgage documents in a very dramatic way and will represent a huge departure from what most mortgage lenders consider to be business as usual today.

If we go back in time a bit, the CFPB began a lengthy "Know Before You



Owe” initiative to gather industry and consumer feedback. In the end, a 1,100-page Preliminary Rule was published in July 2012. Our efforts in developing a solution for our PowerLender LOS began to focus on finding the best way to ensure compliance for our lender clients. In November 2013 a 1,888-page Final Rule was issued. In a nutshell, the CFPB is now requiring lenders to implement the Loan Estimate and Closing Disclosure documents by August 1, 2015.

What does that mean exactly? The Loan Estimate replaces the Good Faith Estimate and the initial Truth-In-Lending disclosure, and the Closing Disclosure replaces the HUD Settlement Statement and the final Truth-In-Lending disclosure. The data requirements have not changed greatly, but the presentation has changed dramatically.

We determined very early on that the Loan Estimate and Closing Disclosure differ from the documents they replace because there is not a single version of the pre-printed document boilerplate. Instead, there are literally thousands of variations of what is normally considered to be pre-printed information. The integrated disclosures “boilerplates” have over 2,000 variations due to loan properties. These include purchase/refinance, fixed/ARM, 1-4 projected payments columns, payment frequency, signatures, etc.

In lay terms, this means that the traditional doc prep approach that relies on boilerplate forms won’t be able to comply. It’s that simple. To prepare these documents correctly, we believe that every loan origination system (LOS) that hopes to be in business after August



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2015 has to formulate a strategy to create these documents dynamically. In our

case, PowerLender LOS users will update PowerLender setup with a MISMO version 3.3 XML map that expresses the data, which will complete any of the document variations dynamically.

It’s important that LOS vendors, not doc preps, use MISMO version 3.3 because on March 11, 2014, Fannie Mae and Freddie Mac, under the direction of the Federal Housing Finance Agency released a new Uniform Closing Dataset (UCD) specification. The UCD is a new dataset to support the CFPB Closing Disclosure document. The UCD data set is a strict subset of the MISMO v3.3 data set, which expresses the data required to complete the Closing Disclosure.

So, because the GSEs intend, at some future time, to begin to collect the Uniform Closing Dataset data, and because that data set is useful in producing both the Loan Estimate and Closing Disclosure, we have decided that PowerLender will use the UCD data set to prepare the Loan Estimate and Closing Disclosure documents. In so doing, PowerLender users will already be ready to produce the UCD when the time comes.

All of this may seem very technical, but in the end it boils down to dollars and cents. For U.S. Deputy Attorney General Paul McNulty put it this way when he said, “If you think compliance is expensive — try non-compliance.”

Many LOS vendors invested a lot of money in the January QM changes. Several see these changes coming down the pike next year as a doc prep issue. That’s the wrong attitude. A proactive LOS will have the wherewithal to make sure that its lenders are compliant without solely relying on an outside vendor for support.

How do you do that? The proactive LOS that wants to not only prepare its lenders for these new rules, but also wants to ensure that their lenders are prepared for future change will deliver a dynamic document engine that uses the latest MISMO standards. There is no easy way around this for the LOS vendor that is truly committed to mortgage lending. There is no band-aid that can be placed on top of an old wound or in many cases an old LOS, which will magically make that wound heal and ensure ironclad compliance for lenders come August of next year. ❖

ABOUT THE AUTHOR

John Liston is a part owner of ASC, and directs the development of the PowerLender LOS. He joined ASC in 1979, after working as a journalist. He has been a vital part of the development and maintenance of ASC’s Loan Origination Systems for more than 35 years. John is a strong advocate of open source software and standards-based software architecture. He is ASC’s primary representative to MISMO, and chairs MISMO’s Business Rules Exchange Workgroup. John holds a BA in Economics from Northwestern University, and an MS in Journalism from The Ohio State University.

