DISCLOSURES SHOULD BE CONSIDERED AN UNFAIR OR DECEPTIVE PRACTICE

Does UDAAP begin at the Capitol Building?

* * *

Recently, a colleague asked me for some help in coming up with a list of concrete, real-life examples of practices that could be considered unfair, deceptive, or abusive under Section 5 of the Federal Trade Commission Act (UDAAP).

Hmm. There's the usual, standard suspects like bait-and-switch advertising; providing misleading information; high pressure sales tactics; omitting key information; repeatedly refinancing a loan to increase fees with no real benefit to the borrower; and offering loan products that have features like negative amortization and prepayment penalties.

One new item that I say needs to be added to that list is excessive disclosures--providing more information to a consumer than the consumer can effectively use.

But, this is not something that lenders have any control over.

This is a problem created by Congress and the regulatory agencies.

Drowning in disclosures

We've come to the point where there are so many disclosures for a financial transaction (loan, deposit, etc.) that a consumer can't help but be overwhelmed and confused.

If a consumer did opt to read all of the disclosures for a home mortgage transaction, for example, a loan closing would take, in my estimation, at least half a day, and that's assuming the consumer understood the documents and had no questions nor needed no explanations.

Hopefully, the consumer wouldn't ask why there are fees disclosed on the estimate of closing costs that he/she won't have to pay because they are paid by someone else, but have to be disclosed on the form anyway.

The disclosure overload is an unfair and deceptive practice.

Overwhelming "help"

When there is a big job to tackle, it can easily be overwhelming. When there is too much information thrown at you, it can be overwhelming. Financial transaction disclosures have reached that overwhelming threshold.

The mountain of disclosures is too much for anyone, even the most sophisticated consumer of financial services, to effectively use. But, the regulators' and legislators' solution to any consumer concern is to throw more disclosures at it in hopes of solving the problem.

The reasoning is that information is the key to good decisionmaking by consumers.

If some is good, more is better.

But, more is not better. More is detrimental to good decisionmaking by consumers.

Seeking a solution

Currently there is an effort being launched to redesign the mortgage loan shopping disclosures. Current suggestions have cut the one-page early Truth in Lending disclosure plus the three-page Good Faith Estimate down to two total pages. That's a 50% savings. There is still a lot of information on those two pages, and this savings in pages does not affect the disclosures that are required with the application, immediately prior to and at loan closing, and throughout the term of the loan.

But that's only a net one-page reduction.

To really attack the unfair and deceptive practice of excessive disclosures, our legislators and regulators need to:

- • Put a moratorium on any new disclosures
- • Eliminate unnecessary disclosures
- • Shorten or reduce existing disclosures

Redesigning a form to make it easier to read is not enough.

Maybe the best solution is to pass a new law that requires consumers to read all disclosures in connection with a financial transaction.

Or, better yet, require all legislators to read all of the disclosures that they create through laws they enact.

About Nancy Derr-Castiglione

“Lucy and Nancy’s Common Sense Compliance” is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

Previously, Nancy held compliance positions with Bank One Corporation and with United Banks of Colorado.

In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine. She can be reached at nancycastiglione@comcast.net