



American
Bankers
Association®

How Banks are Handling New Compliance and Supervisory Challenges

New England Consumer Advisory Group
November 15, 2011
Boston, Massachusetts





Bureau of Consumer Financial Protection

- When did the changes happen? **July 20, 2011**
- What authority does the new agency have?
- Which banks can it supervise?
- How does the Bureau fit with other regulators?
- Where is it focusing?
- Follow Developments on ABA's DFA Tracker at <http://regreformtracker.aba.com/> under "Building the Bureau"



A Level Playing Field? Really?

- Not Covered:
 - Sellers of non-financial goods, i.e., merchants and retailers, unless credit exceeds the value of the goods or the seller regularly extends credit subject to finance charges
 - **Real estate brokers**
 - Manufactured home retailers
 - Accountants and tax preparers
 - Attorneys
 - **Activities regulated by a state insurance regulator**
 - Offerors of employee benefit and compensation plans
 - Activities regulated by the SEC, CFTC, or FCA
 - Auto dealers
 - Activities relating to charitable contributions



Exclusive Rulemaking Authority

CFPB List of Identification of Enforceable Rules and Orders

- Published in the *Federal Register* on July 21, 2011
 - <http://www.federalregister.gov/articles/2011/07/21/2011-18426/identification-of-enforceable-rules-and-orders>
- Also comments on Bureau’s acceptance of official commentary, guidance, and policy statements by agencies
- “The CFPB will seek over time to improve the clarity and uniformity of guidance regarding the laws it will administer.”



Exclusive Rulemaking Authority

- The enumerated federal consumer financial laws to be transferred to the CFPB :
 - Alternative Mortgage Transactions Parity Act of 1982
 - Consumer Leasing Act of 1976
 - Electronic Fund Transfer Act
 - Equal Credit Opportunity Act
 - Fair Credit Billing Act
 - Fair Credit Reporting Act, subject to some exclusions
 - Home Owners Protection Act
 - Fair Debt Collection Practices Act
 - Certain privacy provisions of Gramm-Leach-Bliley Act
 - Home Mortgage Disclosure Act
 - Home Ownership and Equity Protection Act of 1994
 - Real Estate Settlement Procedures Act
 - S.A.F.E. Mortgage Licensing Act
 - Truth-in-Lending Act

Not Flood Insurance, FHA, CRA or SCRA





One rule-writer and one rule? REALLY?

- Promise was single rule-maker and one rule
- Simplicity in supervision and examination
- Overdrafts:
 - Safety and soundness allows other agencies to insert themselves
 - 3 “rules” so far
- Ability to repay credit cards
 - OCC interpreting Credit CARD Act
 - Inconsistent with Bureau’s Regulation Z



Supervision and Enforcement – Depository Institutions

- Depositories with Assets over \$10 billion
 - Bureau has exclusive supervisory and enforcement authority
 - Conflicts between the Bureau and prudential regulator will be resolved in favor of the Bureau
- Depositories with Assets under \$10 billion
 - Prudential regulators retain supervision and enforcement authority
 - Bureau may participate in examination on a “sampling basis,” may recommend that the prudential regulator take action, and may require reports



Prudential Regulators and Consumer Protection

- CFPB
 - Supervises 111 institutions and 62 affiliates
- FDIC
 - Retains direct supervisory authority for **1798** state non-member banks and thrifts
- OCC
 - Retains direct supervisory authority for **2045** national banks and thrifts
- Federal Reserve
 - Retains direct supervisory authority for **820** state member banks and **5262** bank and thrift holding companies



Other New Bureau Powers on Hold

- Supervision of non-banks
- Use of UDAAP
- Model Disclosures (and trial disclosures)
- Consumer rights to access information
- New procedures for responding to consumer complaints and inquiries *

* Have implemented credit card complaint process, plans for mortgage complaint process



Oversight Council Review of Rules

- A Bureau regulation *may* be stayed or set aside by the vote of **two-thirds** of the Financial Stability Oversight Council
- Requires a determination that the rule would put the safety and soundness or the stability of the banking system at risk



Status of Director position

Cordray nominated, approved by Senate Banking Committee

44 Republicans of Senate Banking Committee:

No approval of director unless changes to structure of bureau to ensure accountability:

- Commission rather than individual director
- Congressional appropriations process
- Greater involvement of other regulators



Stated Goals

- “[M]ake market for consumer financial products and services work in a fair, transparent, and competitive manner.”

Elizabeth Warren

- Specifically:
 - Simplified, understandable disclosures
 - Fair treatment
 - Level playing field



Rulemaking considerations

- Costs and burdens
 - Community bank perspective
 - May be two-tiered regulations, one for large institutions and another for small institutions*
 - Coordination with other agencies
 - Data-driven analysis enhanced by technology
 - Technology
- * Statement of Richard Cordray at Senate Banking Committee nomination hearing, September 6, 2011



RESPA/TILA Disclosure Reform

- By July 21, 2012, if not before.
- “...[I]n order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Board [i.e., Bureau] may exempt or modify disclosure requirements for any mortgage loans if it determines that such exemption or modification is in the interest of consumers and in the public interest.”



RESPA/TILA Disclosure Reform

- DFA requirement to propose revised TILA/RESPA disclosure one year after Act
- Know Before You Owe
 - Multiple online requests for comment
 - “Iterative” process
 - Limits of statutes



Consumer Response (Complaint) Function

- Phase-in : First—Credit card complaints only
 - Large issuers predominate
 - Sub-\$10 Billion referred to prudential regulators
- All other complaints handled by prudential regulators whatever size institution
- No mediation, but unresolved complaints will be “investigated.”
- Mortgage complaints: potentially by year-end



Interim Final Rules

1. Procedures for investigations
2. Adjudication procedures
3. Disclosures of Records and Information
 - FOIA
 - Confidential information: consumer complaints
investigative information and supervisory information
4. State notification



Planning for the Future: Early Priorities

- **MORTGAGE**
- Servicemember rights (facilitating SCRA enforcement)
- Rules necessary for data collection:
 - Expansion of HMDA data collection elements
 - New small business loan data collection
- Credit card disclosures to enhance decision process
- Checking account disclosures
- Fair lending
- Overdraft protection programs, direct deposit advances
- Debt collection and settlement practices
- Credit bureaus
- Servicing practices, modifications and foreclosure



UDAAP- the new core of consumer protection

- **U**nfair, **D**eceptive or **A**busive **A**cts or **P**ractices
- “Unfair” and “deceptive” standards parallel FTC Act
- “Abusive” is an act or practice that:
 - Materially interferes with a consumer’s ability to understand a term or condition of a product or service
 - Takes unreasonable advantage of:
 - A consumer’s lack of understanding of the material risks, costs, or conditions of the product,
 - The consumer’s inability to protect his interests in selecting or using a product, or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.



One more thought from the Secretary

“Don’t wait for Washington to draft every rule before you start changing how you do business.”

Secretary Geithner, NYU remarks. August 2, 2010



Other New CFPB Powers

- Model Disclosures
 - Any rule requiring disclosures may include a model form
 - The model form will be:
 - Optional
 - Clear and conspicuous and use plain language
 - In a clear format and design
 - **Validated through consumer testing**
 - Opportunity for trial disclosures
 - Use of a model disclosure will confer a safe harbor
 - **One year after the Transfer Date, the Bureau must propose a single, integrated mortgage disclosure**



QUESTIONS? COMMENTS?