

NCSL Fall Forum 2012

Dodd-Frank: The Implementation Continues

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- Discuss context of Dodd-Frank:
 - Enormous federal regulatory change on horizon
 - Massive implementation to follow
 - Need to avoid inconsistency and unintended consequences
 - Need to work toward complementary efforts

- Pre-Dodd Frank belief States needed tough laws to fill federal vacuum
- That has changed -
 - Dodd-Frank empowered CFPB as tough new consumer-focused regulator with vast powers to make and enforce rules
 - Numerous major CFPB rules are pending
 - Other Federal regulators are omnipresent
 - Inconsistency and overburden of regulations now concerns
- CFPB needs complementary help, i.e., on supervisory front

1. Conducting financial education programs;
2. Collecting, investigating and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to functioning of consumer financial products and services markets to identify risks;
4. Subject to sections 1024 –1026, supervising and examining covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations;
5. Issuing rules, orders and guidance implementing federal consumer financial law; and
6. Performing necessary and useful support activities to facilitate functions of CFPB

Also other authorities, UDAP, disclosure and RESPA-TILA combination, to name few

1. Alternative Mortgage Transaction Parity Act of 1982
2. Consumer Leasing Act
3. Electronic Fund Transfer Act
4. Equal Credit Opportunity Act
5. Fair Credit Billing Act
6. Fair Credit Reporting Act
7. Home Owners Protection Act
8. Fair Debt Collection Practices Act
9. Subsections of the Federal Deposit Insurance Act
10. Sections of the Gramm-Leach Bliley Act
11. Home Mortgage Disclosure Act
12. Home Ownership and Equity Protection Act
13. Real Estate Settlement Procedures Act
14. S.A.F.E. Mortgage Licensing Act
15. Truth in Lending
16. Truth in Savings Act
17. Sec. 626 of the Omnibus Appropriations Act
18. Interstate Land Sales Full Disclosure Act

19. Most of Title XIV of Dodd-Frank

The Big Picture - Coming Before January 21, 2013

An Onslaught of Rules



- **ATR/QM Rule** - Ability to Repay/Qualified Mortgage; Issued May, 2011, originally to come out in final 4/12 - Rule before January 21, 2013, implementation date unknown
- **HOEPA Rule** - High Cost Mortgage Loans (Reg Z) issued July 9, 2012, Comments submitted September 9 – Rule before January 21, 2013, implementation date unknown
- **Loan Officer Compensation Rule** - Mortgage Originator Standards (Reg Z) issued August 17, 2012, Comments due October 16, 2012 – Rule before January 21, 2013, implementation date unknown
- **Servicing Rule** - Mortgage Servicing (Regulation X; Reg Z) issued August 10, 2012, Comments due October 9, 2012 – Rule before January 21, 2013, implementation date unknown
- **Escrow Rule** - Requirements for Escrow Accounts (Reg Z) Rule before January 21, 2013, implementation date unknown
- **ECOA Appraisal Disclosure Rule** – Final rule before January 21, 2013, implementation date unknown
- **Appraisals for High Risk Mortgages Rule**– Final rule before January 21, 2013, implementation date unknown

And by the Middle of Next Year, or Sooner, Even More

- **HUD Disparate Impact Rule** - Final rule issuance date and implementation date unknown
- **QRM rule** - Six rule makers (not including CFPB) Final rule to be published after QM. Effective date unknown
- **RESPA-TILA Integration Rule** - TILA/RESPA Mortgage Disclosure Integration (Regulation X; Reg Z) Proposed rule issued July 9, 2012, First comments due and submitted September 7, 2012, Second (main set) due November 6, 2012. Final rule and effective date unknown
- **Basel III Rule**- Three rule makers (FRB, OCC & FDIC) Issued June 7, Comments due October 22, 2012. Final Rule, effective date, unknown
- **HMDA Pre-Rule** - Home Mortgage Disclosure Act (Reg C) Proposal and final rule dates unknown
- **Loan Originator Anti-Steering Rule** – Proposal and final rule dates unknown

- 8 Different Regulations – 6 week period this Summer
 - RESPA/TILA
 - HOEPA
 - National Servicing Standards
 - Loan Officer Compensation
 - Appraisal Disclosures
 - Appraisals on High Cost Mortgages
 - Re-opened QM
 - Basel III
- 7 will be finalized – 6 week period this Winter
- Implemented in next years

- Rules adopted by CFPB will apply to applicable consumer financial products and services.
- CFPB is supervising and examining lenders today
- Direct authority over:
 - Non-bank financial companies
 - Depository institutions with assets over \$10 billion
 - Depository institutions with assets under \$10 billion - CFPB will work through prudential regulator
- Very broad enforcement powers

- New rules present many challenges to availability and affordability of credit
- Danger of conflict and confusion
- At same time, consumer will have several new protections
- Markets need time to adjust
- Coordination is needed to ensure CFPB and rules of other federal regulators are consistent and do not unduly add to burden
- Coordination and consistency also needed among 50 state mortgage regulators
- Cooperation is needed among federal and state regulators:
 - State regulators have an appropriate role amid CFPB activity: supervise and enforce
 - Identify gaps in the system – don't know what they are yet – don't duplicate supervision

Why is inconsistency a concern?

- Lack of common standards:
 - Disproportionately increases costs for small and independent lenders;
 - Constrains consumer choice and increase costs for credit-worthy borrowers;
 - Drives lending and employment into large, federally-regulated, institutions; and,
 - Leads to loss of community-based lending and local employment.

- Already unlevel playing field between federal and state lenders and among state regulatory regimes after SAFE Act in 2008.

- Areas where states can contribute to greater efficiencies and common standards for the mortgage industry:
 - Consistent licensing under SAFE; and,
 - Consistent lending and servicing standards

- Time to wait for dust to settle on new federal rules
- Monitor implementation
- Complement supervision and enforcement
- Avoid additional, undue burden