
SUPPORT FOR COMPLIANCE FROM THE TOP

Why ABA Chairman Art Johnson wants compliance officers—and all bankers—to weigh in with Washington.

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ABA Chairman Arthur Johnson was the luncheon keynote speaker at ABA's Regulatory Compliance Conference. Johnson is the Chairman and CEO of United Bank of Michigan in Grand Rapids and has worked hard in the past year to help bankers shape the financial reform legislation. This has been no easy job during a year when "bank" has been a four-letter word.

In his presentation to the compliance audience, Johnson gave a clear directive to his listeners that applies to all bankers: "It is incumbent on us to do what we can to shape the new regulations." This is not a time to sit back and let things happen. His speech was a call to action.

This is a message that applies to more than the landmark legislation. It applies to the many, many regulations that will be needed to implement it. And to the growing number of regulatory changes and wholesale new adoptions that bankers face as the industry continues to evolve.

Compliance expertise is "vital";

Too many bankers use the approach that waiting to deal with a new regulation until it is finalized saves work time. Sure, reading the final version takes much less time than reading all the proposals, the analyses of comments, and then also reading the final. But it commits the fatal error.

That error? Failure to participate in the rulemaking process. Failure to participate can result in bad or ineffective regulations.

Johnson urged the audience—and all banking compliance professionals—to get involved in shaping new rules.

“Your expertise is vital,” he said.

Can the message be any clearer?

Separating the ideal from the doable

As regulations are written, the primary work is done by agency staff working in Washington, D.C. Sometimes examiners with field experience are called in to help. But most of the work is done by—and shaped by—regulation writers who have never worked in a financial institution.

The result—too often—is a regulation that is interesting and even positive, in theory, but that simply doesn’t work in practice.

“Product design” by regulators is cramped and delivery can be awkward.

Current regulations are already full of examples of this disconnect.

Take this one: the requirement to explain the APR before giving the interest rate, even though the interest rate is actually what the customer asked about.

Or take this one: the requirement to give the affiliated business arrangement notice before answering the customer's request for advice on potential service providers.

What may be good in theory is downright awkward or even dysfunctional in practice.

It doesn't have to always be this way.

Why rule-writers fail at their task

Art Johnson's message is important. Practical input is a necessary element for good rule-writing.

Consider what the rule-writing staff actually knows about how banks operate.

Examiners have been in the back rooms at many banks and have observed and reviewed the processes necessary to deliver and manage products.

But the people writing the rules, unless they started as field examiners, may have only seen banks from the lobby. They have seen tellers, customer service reps, and perhaps even a branch manager or two.

But they haven't seen the screen that tellers work with or worked with the operating system. They haven't studied or used the automated tools available in the branch.

As a result, the rules they fashion are not necessarily based in practical realities, but on pure theory of consumer protection.

You can't just gripe—specify!

Information about how things actually work is vital to development of a regulation that is effective in implementation. Comments, whether to Congress or to regulatory agencies, are much more important than simply saying "Yay!" or "No way!" Comments that only do that are not terribly helpful. The comments that make a difference describe how something is currently done, how it could be done, and how the proposed rule could achieve its goal more effectively.

Here's an example.

ABA's Compliance Executive Committee gave agency staff information and ideas when Regulation DD was being written for the first time. Attorneys working on the regulation believed that statements would be clearer and easier to understand if the regulation required separate statements for every account. Members of the committee told Fed staff that their customers had asked for—and preferred—combined statements. Thus, bankers were able to prevent a giant step backwards.

It is always helpful to provide explanations and alternatives in comments. Sometimes it can be helpful to provide information about how product decisions are made or who has authority to take and approve loan applications. For purposes of implementation, information about budgets and staff size can influence a rule.

Seeing both sides can help make comments most productive.

When working in a bank, it is too easy to see an issue solely from the bank's point of view. The difficulties and complications a proposed rule presents seem obvious. Bankers need to remember that others—especially consumers—have a different perspective and different information and assumptions. They comment. Banker comments are necessary to provide a balance of information for regulators.

A comment letter from an individual banker can be very powerful. The compliance manager who describes training and monitoring within a limited budget conveys important perspective to the regulation writers. The lender or CSR can describe the questions their customers ask and the information they want. If loan officers had spoken up years ago, perhaps we wouldn't have to quote the APR to a consumer who wants to know what the interest rate is.

The power of mass

There is more to this than simply being heard. Bankers must be heard in greater numbers.

ABA works hard to present banker issues and concerns with Congress and the regulatory agencies, ABA staff cannot do the job alone.

As Johnson put it, "We have to be more than one voice per bank. We need more than 8000 voices; we need hundreds of thousands of voices."

Quantity is important as is quality.

In spite of all the current negative talk about banks and banking, Johnson is a strong believer in the importance of banks and banking:

“What we do matters. It matters to banks, to customers, and to communities.”

This is not the time to back down and wait to see what is left when Congress and regulators are finished. It is a time to participate, to take action.

So don’t leave Art Johnson doing all the work. Watch what is going on. Read. Comment. Discuss.

And find any way you can to participate. Committed as he is, Johnson cannot do all this alone.

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About Lucy Griffin

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

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Lucy, a Certified Regulatory Compliance Manager, has over 30 years experience in compliance. She began as a regulator, including stints with the Federal Reserve Board, the Federal Trade Commission, and the Federal Home Loan Bank Board. For many years she managed the ABA Compliance Division. Since 1993 she has served as a compliance consultant as president of Compliance Resources, Inc., Reston, Va. She is also editor of Compliance Action newsletter and senior advisor with Paragon Compliance Group, a compliance training firm.

In addition to serving as a Contributing Editor of ABA Banking Journal, Lucy serves on the faculty of ABA's National

Compliance Schools board. For more than a decade she developed and administered the case study at ABA's National Graduate School of Compliance Management. She can be reached at lucygriffin@earthlink.net

- Community Bank Compliance Officers: Be sure to check out our other compliance blog, "AML, Fraud, and Other Things." BSA expert John Byrne blogs on money-laundering and related matters with a definite point of view. Check it out

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- For ABA Member Banks Only: Get regular compliance news updates with ABA's Compliance Source E-Letter

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