

GETTING READY TO NAIL DODD-FRANK MORTGAGE CHANGES BEFORE YOU GET NAILED

Don't wait for the regs—start talking to H.R., Legal, Operations now!

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Watch for Lucy Griffin's September ABA Banking Journal magazine special article in "Compliance Clinic" about the new Bureau of Consumer Financial Protection, "New Cop On The Banking Beat." If you're not on the bank routing list, catch it in our Digital Magazine at www.ababj.com in mid-September.

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If you are feeling exhausted from all the recent changes in regulations, you can finally look forward to ... more exhaustion.

Title XIV of the Dodd-Frank Act is the Mortgage Reform and Anti-Predatory Lending Act. This mortgage reform act addresses all of the known predatory lending practices, and even addresses a few that haven't been put into practice yet.

Some of the practices addressed in the mortgage reform act reiterate recent legislative actions and regulations. For example, one provision of the act basically repeats the requirement of the S.A.F.E. Act—with a few modifications.

Other provisions of the mortgage reform act are new. The most notable—and potentially wide-reaching—provision is the prohibition of compensation based on point spreads or rates charged on loans.

Don't wait for the Bureau! Pain is just around the corner

Regulations dealing with these issues will be coming your way for the next several years. The real onslaught will begin when the Bureau of Consumer Financial Protection is established. But don't think for a minute that you can sit back and wait until then. Several agencies—most notably the Federal Reserve—have the authority to get regulations underway immediately. The revisions to Regulation Z addressing real estate-secured loans are in process and we could see a final version any day.

It is time right now to plan ahead, consider how to address or respond to these issues, and to have a time-line in mind. All of your plans, including the time line, can change based on how regulations evolve, but you will be ahead of the process if you plan ahead-and be prepared to revise those plans.

Multi-functional approach helps: Start with H.R.

Working on coming changes will involve several departments and business lines within your bank.

First, the S.A.F.E. Act is coming. The final rule has been published and will take effect 180 days after the agencies announce that the registry is ready. Preparation for this should be in process, and your partner should be Human Resources.

While you have H.R. working with you, bring up the topic of the coming compensation changes. If your bank pays commissions based on anything other than the loan amount, the system will need to be restructured. Again, get ahead of the game by working on compensation structures. If your lenders are all on salary or commissions based on loan amount, it is still important to look around to see what is changing and how it may impact your lenders.

There are other things to work on with H.R.

Hiring procedures should take into account the history of an individual applicant which will be available on the registry. While H.R. is paying attention to the registry issues, you might as well go for broke and discuss the qualifications for the job of loan officer and the process of hiring them. And, of course, put in a good word for considering the compliance performance of each loan officer during their performance reviews. This is an opportunity to get compliance built into the personnel management process.

Training is another area where H.R. may be involved. In addition to revision of loan policies with regard to loan steering, price negotiations, and homeowner counseling, any changes to these practices will have to be covered in training for lenders. If HR manages training (or has a bigger training budget than you do) it is time to get them working on new training.

Send in the lawyers

There is also work to be done with Legal. Several provisions in the mortgage reform act call for changes to notes and mortgages. The act prohibits clauses such as mandatory arbitration and waiver of consumer protections granted under

state laws.

(Now, lawyers can be very proud of the documents they produce, so go about this gently.)

When regulations come out, this won't be a choice. Instead, present this to your legal eagles as a way to be ahead of the game.

The biggest area to be working on is the design and delivery of mortgage products. The nature of the changes will involve much more than revisions to disclosures and the disclosure process. The changes will require careful attention to product design and delivery.

Many of these changes reach into the substance and features of the product, rather than merely requiring you to disclose those features. Some of the new rules will restrict terms or loan features that you can offer, while others will affect loan underwriting and product design.

Start with the definition of "Qualified Mortgage."

This will involve categorizing mortgage products by rate spread, total points and fees, and amortization. The definition will become the pivot point for loans that are plain vanilla and loans that will be subject to additional rules. All product design should start from this definition point.

Loan features such as prepayment penalties and features prohibited under Section 32 and higher-priced mortgage loans should become a part of product design. Anyone planning a new product or even a new promotion of a product needs to consider these prohibitions and triggers.

Disclosures will also be revised-although we know that is coming anyway. The reform act adds a few disclosures to the current list. The good news is that the Bureau is directed to develop a format that provides both TILA and RESPA information. There would be one disclosure, rather than the TIL and the GFE that you currently provide.

Getting the credit part right

Underwriting is back, accompanied by documentation.

This you can put in place without waiting for regulations. It is fairly clear. Low-doc and no-doc loans are a thing of the past. If you are still making them, stop now. Also establish systems and minimum requirements for documentation. Lenders can't stop with simply collecting information. They will have to demonstrate that they have evaluated it.

Then there is the prepayment problem. You may need to include Legal as well as Lending for this.

The act restricts when and how prepayment penalties may be charged and prohibits prepayment penalties on high-rate, adjustable rate and non-qualified loans. And if you do include a prepayment penalty on any mortgage product, you must also offer a mortgage product with no prepayment penalty. There is a lot of room for regulators to decide how this should work.

Don't leave out Operations

You will also need to be working with Operations.

Unless you provide coupon booklets for payment, you will have to be ready to generate a monthly statement for mortgage loans. The statements will have to include all the information that a consumer might find useful at any given time: principal remaining, rate, rate adjustment date, and more.

And not to be left out ... homeownership counseling

Finally, there is the question of home-ownership counseling.

This will be mandatory for first-time home buyers and for high-cost mortgages.

You don't have to do the counseling. Refer clients to HUD-certified counselors. But you will have to verify that the

counseling has occurred.

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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.

- 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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