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## GETTING READY FOR THE NEW CONSUMER BUREAU

Bureau now law, here's how to start figuring it out

There is no question about it: Things will be different. There is always a price to pay when Congress gives attention to the banking industry and the Dodd-Frank Wall Street Reform and Consumer Protection Act is no exception. A major price is the creation of the Bureau of Consumer Financial Protection. But the new agency won't entirely be starting out from scratch.

Many consumer financial protection regulations—and agencies' staffs—will be moved to the new bureau, so there will be a great deal of change and adjustment over the next several years. A good part of the change, from the viewpoint of the compliance officer, will be the removal of responsibility for the Real Estate Settlement Procedures Act from the Department of Housing and Urban Development and placing it in the new bureau.

Update: Bureau takes over consumer regulation July 2011. Read Federal Register notice [here](#)

The new bureau will be an unusual type of entity: independent, but not exactly; part of the Federal Reserve, but not exactly; and a supervisor, but not exactly. The agency will sit under the umbrella of the Federal Reserve—physically, though with complete independence—and be funded by the Fed. The Fed makes money through market activities and turns in the surplus to Treasury. Part of the proceeds will be used to fund the Bureau, rather than going to Treasury.

The new law specifies the independence of the new bureau but placement within the Federal Reserve does carry implications.

Simply being at the Fed encourages the new entity to adopt or adapt to Fed culture. There is much positive to be said about that, if some of that culture "takes." Fed culture tends to support a deliberative approach, resulting in more carefully reasoned regulations than an activist approach would.

Staffing: More than a routine issue

The Fed will also have influence by sheer numbers. The Fed's current consumer financial protection staff, comprised of attorneys and examiners, is significantly larger than other agencies'. Moreover, the Fed's staff has been and is responsible for most regulations that will be transferred. If the entire Division of Consumer and Community Affairs (DCCA) moves to the bureau, former Fed staff will outnumber transferred staff—most notably

HUD.

A total transfer of consumer financial protection staff is not likely to happen, however. The banking agencies clearly stated during the legislative process that they will continue to enforce consumer protection laws even if the new bureau has primary responsibility. The banking agencies consider that ensuring compliance with all federal laws and regulations is an essential element of their supervisory responsibilities. The agencies will therefore want to retain experienced consumer compliance staff. The key question will be who stays and who moves to the new bureau. Adding to the interesting confusion here is the question of who will decide how the new bureau is to be staffed. The agencies may choose who goes and who stays, or the new bureau may make the choices. This depends on how the employment and staffing is established. It is in the industry's interest to have as much of the new bureau staffed by current Federal Reserve personnel as possible. This would provide maximum consistency and continuity for regulatory developments.

#### Enforcement vs. Supervision

The new bureau will also be an interesting mix of supervisory and enforcement staffs.

The responsibility of the bank regulatory agencies is to supervise banks, thrifts, and credit unions. Supervision places emphasis on doing business in a safe, sound, and compliant manner. It places a priority on keeping the supervised institution open and functioning. When enforcement issues arise, they are considered in the context of this priority. Egregious business practices lead to decisive action that may remove management or even close the institution. But a violation of laws such as Truth in Lending or a poor performance under CRA do not usually lead to such drastic action. The goal of the supervisory regulator is to keep the bank functioning and to redirect its performance.

Enforcement agencies, on the other hand, such as HUD and the Federal Trade Commission, have a totally different relationship with the entities they regulate.

In fact, they don't actually regulate them, as a supervised institution understands that term. An enforcement agency enforces a violation of law. The impact of that enforcement action is not within their purview. As a result, enforcement actions may seem out-of-proportion to the size of the institution. There is another significant difference between supervision and enforcement.

Supervision is steady. Examiners come in on a fairly regular schedule and review the entire operations of the bank. Enforcement is based on a totally different concept: find it and enforce it. The finding process is based on testing, surveys, or consumer complaints. The impact can be fairly random. The idea is to take enforcement action (meaning, "sue") against one or a few businesses and let that serve as an example to the others. The flaw in this approach is that, instead of being intimidated into complying, the non-targets of the action realize that they are now safe from investigation. The particular violation targeted in the enforcement actions is set aside and the enforcement agency is looking for a new issue to target. An enforcement-based effort does not result in consistency throughout the industry. Supervision does a much better job. The new bureau will have, at least in theory, the ability to examine. The question is whether it will use this for true supervision or simply use it to troll for violations on which to base an enforcement action.

What will guide the Bureau's policy?

The question of how the bureau uses its authority to examine depends on several issues, including:

1. The experience level of examiners transferred to the bureau will play a large role in determining how effectively the examining staff is trained and used. Banks will also be affected in their supervisory examinations by which examiners remain with their supervisory agency.

2. The use to which exams are put will have a significant impact on the effectiveness of the bureau in ensuring compliance in all of the industries it regulates. Regular examinations are far more effective than targeted actions but following a regular schedule requires adequate staff.

3. The bank examination authority of the bureau is limited to the larger banks (in the "ordinary" course of business). Conducting an examination in a complex institution could be an interesting challenge for a relatively inexperienced examiner. [Under the Dodd-Frank Act, all banking institutions—and certain nonbank financial providers—will be covered by the new bureau's rules, regulations, and guidelines. However, in the routine course of things, depository institutions over \$10 billion in assets will be subject to direct examination by the Bureau, and those under that size will not.]

Surviving the "first winter";

So what is the best way to manage compliance while this bureau is being organized? Remember that your compliance examiner—and perhaps even your safety and soundness examiner—are facing the same changes and uncertainty. In facing the future, you are having the same experiences as they are. So stay in close contact with your entire exam team. Not only will this help you position your institution for what is coming, it will be seen as a positive approach by your examiners—who also aren't sure what will be happening.

The electronic version of this article available at: <http://www.nxtbook.com/nxtbooks/sb/ababj0910/index.php?startid=42>

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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](mailto:lucygriffin@earthlink.net)

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