

D.C. OUTLOOK: The Bureau & The Burden

ABA's Compliance Team scopes out hot spots

This article is an online companion to the January 2013 ABA Banking Journal cover story, "The Road Ahead." To read that article and other online articles in the report, please [click here](#).

By Steve Cocheo, executive editor and digital content manager

For many bankers, and especially those whose banks are not directly examined by it, the Consumer Financial Protection Bureau has been a somewhat monolithic, symbolic organization-embodiment of all that they dislike about the Dodd-Frank Act, yet still something of an abstraction because it is so new.

For Richard Riese, senior vice-president, and his staff at the ABA Center for Regulatory Compliance, CFPB is no abstraction. These compliance experts regularly work, in meticulous detail, with staffers at the fledgling regulator, especially as the regulators draft and revise the many regulations the bureau has taken over, or is creating from scratch. The center, which comes under Wayne Abernathy, executive vice-president, financial institutions policy and regulatory affairs, is among several ABA groups that work with CFPB. ABA BJ recently interviewed center experts in a special roundtable.

Riese, Abernathy, and the others have seen evolution at CFPB, as staff settles into the job, early arrivals depart, and all hands grow more knowledgeable, one way or another, about the companies they regulate.

"The relationship with the industry has improved," says Nessa Feddis, vice-president and senior counsel. "The attitude there has improved. The bureau has lots of good people working over there, and some imaginative people who bring on a fresh look at some things."

Keep up with Bureau
with ABA Center's cfpBureau Watch

The ABA Center for Regulatory Compliance maintains a special page concerning developments at the Consumer Financial Protection Bureau, cfpBureau Watch.

Among the handy items there is an interactive Bureau organization chart. The org chart includes links right in the boxes to relevant announcements concerning those parts of the organization.

Visit cfpBureau Watch

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CFPB remains a very political and public relations-driven organization, Feddis points out, but staff increasingly is not simply taking the input of consumerists as gospel: "There were a couple of occasions when they did that, but they seem to be moving away from it."

Making banking's points

ABA staff has worked hard to put industry viewpoints before CFPB, and so too have bankers. Last year ABA Chairman Matt Williams invited CFPB's David Silberman to come out to his small Nebraska bank to see how a community bank operated and how it handled overdraft services. Later in the year Silberman, now CFPB associate director, did so. ABA Chief Operating Officer Mike Hunter says this experiment will be the basis of future banker interactions with regulators. Such visits need to be smart with respect to showing how things work within a bank, and how the bank is responsive to the needs and interest of the customer, Hunter notes.

Interaction with the industry, and the benefits of same, have not necessarily come willingly for CFPB staffers, but this is a work in progress. Riese points to the development of the remittance rule-governing international cash transfers-as an example of how CFPB is evolving.

"They were bound and determined to dig in their heels and stick to their implementation date, which they saw as set in concrete," says Riese. Working with staffers such as Rob Rowe, vice-president and senior counsel, Riese says ABA "had a number of "jackhammer" meetings where we kept going back, for more meetings, and writing more letters, to keep pressing our points."

The association had to prove itself, says Riese, and brought in data that illustrated that the original final rule was virtually unworkable for banks. Remittances aren't terribly profitable, and rather than struggle to comply, banks planned to quit the business.

ABA Center's Steven Kenneally, vice-president, found bureau staff "dismissive" of banking's position nearly to the end. "They reversed themselves when it finally became clear that they were going to get embarrassed because so many banks were going to stop offering the service."

Perhaps, as Feddis says, what banking faces is a process where an organization that knows relatively little about how banks function will gradually build respect for and gain understanding from one that does.

Rowe believes the remittance rule discussions taught the bureau something key for the future: "Consumer groups may be asking for things that are not in the best interests of consumers. There are many situations where they are discovering that there are certain things banks can do and certain things they can't, and that both have to be factored into the equation. And the bureau is now recognizing that even if a consumer group says something is the best thing for consumers, it should be tested against reality."

Bottom line: On Dec. 21, CFPB proposed revisions to its "final" rule on remittances. "The proposed revisions are narrow in focus and intended to preserve the new consumer protections while facilitating compliance with the rule," CFPB stated. The Feb. 7 effective date was postponed.

Fair-lending expansion

With the Obama Administration installed for four more years, bankers can expect to see the aggressive pursuit of fair-lending continue-and grow in scope.

"We've heard a lot of behind-the-scenes talk about examination of auto lending," says Riese. "I believe you'll see some kind of enforcement action there." Based on what he's hearing, Riese believes the focuses are on alleged discrimination against women and Hispanics.

The lens appears to be on both direct and indirect auto credit, according to Riese. And Rick Freer, the ABA center's senior director for examinations and compliance programs, says that large banks have indicated that CFPB has been requesting "tremendous amounts of data" on auto lending during examinations.

In these "data driven" times, to crib from CFPB's mantra, and with fair-lending cases being statistically based, numbers matter more than ever. Rob Rowe reminds bankers that CFPB will be fleshing out Home Mortgage Disclosure Act data with 13 new data points. The Dodd-Frank Act requires this rule and Rowe says a proposal is expected sometime in the first two quarters of this year.

Nessa Feddis warns that CFPB will be looking into credit bureau data issues, and that "that's something that banks should be aware of because they probably don't focus on it as much as they might."

Adds Riese: "Although CFPB may primarily be looking at nonbanks and the reporting agencies, there's clearly an interface of banks with those entities, as reporters and when data requires correction. So some issues will upstream to banks, creating challenges for them."

UDAAP's expanding reach

The Dodd-Frank expansion of UDAP into UDAAP-Unfair, Deceptive or Abusive Acts or Practices-is "a shot in the arm" for the evolution of the concept, Riese says.

The message has been read by bankers who have been paying attention, says Riese. "Clearly, this is something more than just what's going on at CFPB. No matter who your regulator is, bankers have got to evaluate their products and delivery of those products throughout the life of the transaction-as the customer experiences them."

Deposit account challenges

Beyond the remittance rule discussed earlier, a prime matter at CFPB concerns overdrafts and related issues. On overdrafts specifically, Riese and his team don't see any additional clarity coming until towards the end of 2013, with CFPB still studying the matter. ABA continues to develop research in this area, to draw on as CFPB's work progresses.

Meanwhile, in a time when erstwhile payday lenders are calling their products "liquidity loans," says Virginia O'Neill, vice-president and senior counsel in the center, bank alternatives like deposit advance programs continue to get significant scrutiny and are viewed skeptically by regulators pushing for small-dollar loans..

Riese acknowledged a rumor that CFPB will include ceilings on overdraft fees as part of its regulation on overdrafts. "I absolutely think that that is a false rumor-I don't know where that's going," says Riese. "However, I believe CFPB is very focused on check payment order. That's because they think that's a natural way of reducing the incidence of overdraft fees, thereby reducing the total fee paid by people who would otherwise get assessed in a large-to-small system than in a small-to-large system."

Riese says this ties into CFPB's focus on fairness. "CFPB feels payment order is something that consumers can't control," he explains, adding that "the reality is that banks don't control presentment order-and that is as much the problem." CFPB needs to find a way to address its concerns," says Riese, "without putting technology into a straightjacket." O'Neill believes no rule or guidance will be in effect before 2014.

Compliance exams

While these areas are priorities, there's plenty more banks have to comply with. Given the sheer volume, says Riese, "You're bound to run into an examiner who's picked on something obscure, or picked on something more current than when the institution had set its priorities."

While much attention has been on CFPB's compliance exams, Rick Freer, who came to ABA having spent a career at the Comptroller's Office, advises national community banks to take a close look at OCC's compliance exams.

For years, says Freer, OCC didn't spend time on compliance processes at community banks. Now, however, "they are looking for even the smallest banks to have some sort of system in place," says Freer. "That's something a lot of national banks have never really experienced before."

Community bankers complain about higher compliance spending, but Riese suggests examiners will have no sympathy.

"They don't come in with an expectation of the compliance budget you have-they don't give a damn," says Riese. "They want whatever it takes to get the job done-even though there may be tension between the compliance examiner and the safety-and-soundness examiner."

Riese says he'd like member banks to tell him more about interaction between the two types of exams and the examiners carrying them out. •

Flood insurance surprises could hurt Sandy victims

Something of a sleeper has been pending since July 6, 2012, in the flood insurance area. That's when the Biggert-Waters Flood Insurance Reform and Modernization Act was signed. Many questions regarding effective dates and regulatory implementation have yet to be resolved.

Of particular significance are pending increases to flood insurance premiums to reflect full flood risk of an insured building and the phase-out of many federal flood insurance subsidies.

"No one has connected the dots between the increased premiums, the loss of grandfathering, and bank safety-and-soundness concerns," explains Virginia O'Neill, senior counsel. And, coming on the heels of Hurricane Sandy, this is of immediate interest in the Northeast.

In brief, the problem here is one of critical information not feeding back into the post-storm cleanup.

First, Biggert-Waters will phase out existing subsidies for second homes, commercial properties, and "severe repetitive loss properties." Subsidies will be phased out at a rate of 25% per year until insurance premiums reflect the full flood risk of an insured building. In addition, for all property types, subsidies will be eliminated immediately upon a change of ownership or a policy lapse.

Second, Biggert-Waters will end "grandfathering." Previously, premiums could be calculated using the latest flood map requirements or the map in place at the time of construction, whichever was in the owner's advantage. Once rated by zone and elevation, those map conditions could be used to calculate future premiums, even if the zone or base flood elevation was changed in a later map. Beginning in 2014, all buildings will be rated using the latest maps. When the maps change, the rate increases will be phased in at each policy renewal, over the next five years at a rate of 20% per year. To illustrate the potential impact, the Federal Emergency Management Agency (FEMA) explains that a homeowner currently paying \$1,500 a year for a \$250,000 policy might find himself owing \$9,500 or more

once the new premium charges fully phase in.

“We are concerned that a lot of people who may already be struggling to pay their mortgage will be in trouble,” says O’Neill. Eventually, she adds, just about everyone’s going to start seeing increases, and nobody seems to recognize and to begin planning for this.

For hurricane victims, the news is worse. They and their builders and lenders may be making plans to rebuild to current flood map requirements without realizing that FEMA is in the process of re-mapping the New Jersey and New York coasts. That means that they are building anew to dated information. As explained above, when the new maps are adopted, nonconforming construction will be subject to severe premium hikes.

“Let’s say you are rebuilding now, and don’t realize that you should be building on pylons,” says O’Neill. “You’re going to be really angry at your bank for not knowing that.” Even before maps are adopted by local communities, FEMA is making “advisory base flood elevation maps” available to the public that can be used as construction guidance. “We hope that bankers can help get the message out to affected customers that they should look for the new maps and build to their specifications.”

ABA members can learn more at www.aba.com/Solutions/Compliance/Mem/Pages/BWA.aspx

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