2016 ABA Issue Summary

Dodd-Frank Act

Contact: Jeff Sigmund, ABA Public Relations (202) 663-5439 or jsigmund@aba.com

The Dodd-Frank Act represents the biggest re-write of financial regulations in decades.

- The legislation contains several provisions supported by the industry and aimed at preventing a repeat of the financial crisis. These include:
  - A new process for winding down systemically important institutions –in others words ending "too big to fail."
  - Creating a systemic risk oversight council to stop a potential contagion before it happens.
- The bill also contains many unrelated provisions that restrict the ability of traditional banks to serve their local communities.
- While bankers support many Dodd-Frank reforms, including federal supervision of the shadow banking industry, the process took a "while we're at it" approach, lumping draconian, ill-considered and sometimes unrelated reforms that put banks in an operational straightjacket.

Dodd-Frank has had an impact on banks of all sizes and has made it more difficult for them to meet their customers' needs.

- **Excessive Rules and Regulatory Red Tape.** Regulators have issued more than 23,000 Federal Register pages of proposed or final rules affecting banks with many more still to come – for a grand total of more than 240 rules. While only half of Dodd-Frank's costly regulations have even been implemented, consumers, community banks and the economy have already been saddled with the consequences. ABA has created the Dodd-Frank Tracker (http://regreformtracker.aba.com/) to provide current information on the progress of Dodd-Frank Act implementation.
- **Dodd-Frank has been a case study in the law of unintended consequences.** The Volcker Rule is a primary example; instead of only applying to the largest banks, it was written to apply to everyone – including community banks that pose no systemic risk. Five different regulatory agencies are involved in the Volcker Rule, creating further chaos and uncertainty. *When everyone is in charge, no one is in charge.*
- **Dodd-Frank has had an impact on lending.** Regulations coming out of Washington have made it more difficult for people to qualify for a mortgage, which is holding back the housing recovery. Commonsense changes - including allowing loans banks keep in their portfolios to be considered QM loans – would increase access to mortgage credit.
- **Community Banks are disappearing.** Over the last decade, 1,500 community banks have disappeared. Today, it is not unusual to hear bankers—from strong, healthy banks—say they are ready to sell to larger banks because the regulatory burden has become too much to manage. Each bank that disappears from the community makes that community poorer.
- **Harming America's Ability to Compete Internationally.** Dodd-Frank's onslaught of new regulation has steadily pushed business into the arms of less-regulated shadow banks, harming our banks' ability to compete internationally. The U.S. only has one of the world's ten largest banks.

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- **The bottom line - every law can be improved, and Dodd-Frank is no exception**. Sometimes there are drafting errors. Sometimes a good idea in theory turns out to be unworkable after a closer look in the light of day. As an industry, we must continue to work with members of Congress on both sides of the aisle to advance bipartisan proposals that would remove many of the statutory and regulatory barriers that constrain banks' ability to serve their customers and meet the needs of their local communities.

The industry remains concerned about how certain Dodd-Frank rules affect bank customers.

- The "Durbin Amendment," which put a cap on fees banks can charge retailers to process debit transactions, has made it harder for banks to provide free checking to their customers.

- The number and complexity of the new rules make it difficult for banks to make business plans for the future, particularly in reaching out to new customers. As a result, many banks are forced to tread water, which is detrimental to the broader economy.

- Regulations coming out of Washington have made it more difficult for people to qualify for a mortgage. Qualified mortgages continue to put bankers in a box, limiting credit availability in a manner that has held back the housing recovery and harmed consumers.

Below is a bulleted summary of the major provisions of the Act.

Systemic Supervision

- The Act established the Financial Stability Oversight Council (FSOC), comprised of 15 members, including all financial regulators and chaired by the Treasury Secretary.
    - Duties include identifying potential systemic threats/institutions, subjecting those institutions to enhanced supervision, and directing the regulators to take action to address identified risks.
    - FSOC is also tasked with providing policy guidance to FDIC for resolution of systemically important firms, and giving guidance to the Office of Financial Research.

- The Federal Reserve has been given new authority to impose heightened prudential requirements on large bank holding companies (BHCs) and significant non-banks.
    - Large BHCs are defined as having total consolidated assets of $50 billion or more.
    - FSOC can vote to add other BHCs and non-banks to the list.
    - Heightened requirements include additional capital and liquidity standards.

- Financial firm concentration limits: a merger or acquisition cannot result in a firm holding more than 10 percent of financial industry liabilities or 10 percent of U.S. insured deposits.

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  - Exceptions allowed (with Fed approval) for acquisition of endangered firms, or in cases involving FDIC assistance.

- FDIC given immediate systemic resolution authority to place BHCs and significant non-firms into FDIC-operated receivership.
  - Triggered by approval of Treasury and various agencies relevant to the firm.
  - Any losses from the unwinding to be paid for by fees assessed by FDIC on all systemically significant firms.

- Office of Financial Research established and given authority, including subpoena authority, to ask for any information it considers necessary to evaluate systemic risk issues.

Increased Bank Supervision

- The Act created the position of Federal Reserve Board Vice Chairman for Supervision.

- Collins Amendment requires that capital requirements for BHCs be at least as strict as those for depository institutions – banks, thrifts and BHCs are subject to the same minimum capital rules.
  - BHCs over $500 million may not count newly issued trust-preferred securities as capital.
  - BHCs over $15 billion must phase-out existing trust-preferred securities from capital.

- OTS Eliminated / Merged with OCC
  - S & L holding company supervision reallocated to the Fed.
  - Federal savings institution supervision reallocated to OCC.
  - State savings institution supervision reallocated to FDIC.
  - Thrift charter preserved, new charters can be issued by OCC.

- Source of Strength Requirement – after July 21, 2011, all financial holding companies are required to meet well-capitalized and well-managed tests.
  - S & L holding companies must meet the tests to engage in financial activities otherwise only permitted for financial holding companies.
  - Test required for interstate mergers and/or acquisitions.

- Charter conversions prohibited – where there is a pending enforcement order or memorandum of understanding.

- Insider lending restrictions – expanded to include derivative, repos and reverse repos, and securities lending/borrowing, beginning July 21, 2012.

- Interest on business checking – Banks are now permitted to pay interest on business checking accounts.

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Consumer Financial Protection Bureau (CFPB)

- The Act established the CFPB as an independent body within the Fed.
- CFPB assumed responsibility for most consumer protection laws, but not the Community Reinvestment Act (CRA).
- For more detailed information, please see the CFPB section of ABA's Communications Guide.

Limits on Bank Investment and Related Activities

- Volcker Rule
  - Prohibits banks and their affiliates from engaging in proprietary trading, with some exceptions for certain types of assets and certain categories of transactions.
  - For more detailed information, please see the Volcker Rule section of ABA's Communications Guide.
- SEC's Municipal Advisors Rule
  - Banks that provide municipalities with traditional banking services, which are already subject to oversight by primary regulators, are now subject to additional registration and oversight burden by the SEC.
  - The compliance cost of duplicative regulation makes serving local municipalities unattractive for community banks.
  - The SEC's final rule — which took effect on January 14, 2014 — is more narrow but still affects many banks and bank employees.
- Derivatives
  - Are now included in national bank lending limit
  - Are now applied to state bank lending limits
- Swaps
  - SEC/CFTC now has joint authority to regulate swaps markets, including swap data reporting requirements, registration of swaps clearing organizations, swap execution facilities, and designated contract markets.
- Asset Backed Securities (ABS)
  - SEC filing exemption for ABS held by fewer than 300 persons repealed.
  - SEC issued rules requiring ABS issuers to conduct a review of underlying ABS assets, and proposed rules setting risk retention requirements for ABS classes other than mortgages.

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Stricter Regulation of Mortgages

- The Act significantly increased the regulation of mortgage lending by banks and nonbanks.

- Most mortgage provisions will be under CFPB jurisdiction, but many of the regulations are to be developed by the Federal Reserve or other agencies.
  - 18 months after OCC-OTS Transfer Date, the Fed published regulations on a variety of mortgage origination topics, including steering consumers, discrimination, abusive or unfair lending practices, predatory lending.

  - 18 months after OCC-OTS Transfer Date, the Fed published rules setting minimum standards for mortgage underwriting. A "qualified mortgage" safe harbor is created for mortgages meeting these standards.

  - Mortgage creditors are now required to establish escrow accounts, with some exceptions, effective by Federal Reserve Board rule 18 months after OCC-OTS Transfer Date.

  - Bank regulators and the SEC have issued final rules setting five percent risk retention requirements for mortgage-backed securities; rules become effective one year after publication. Bank regulators, HUD, and FHFA have defined "qualified residential mortgages," exempt from risk retention requirements.

- New definition established for "high cost mortgages," imposing significant restrictions on mortgages caught by the definition.

Deposit Insurance

- The Act made the increase in deposit insurance to $250k per account permanent and immediately effective.

- Transaction accounts (defined as non-interest bearing) were given unlimited deposit insurance through Dec. 31, 2012.

- The deposit insurance assessment base has been changed from deposits to total assets.

- FDIC is charged with revising its Deposit Insurance Fund recapitalization plan to include a new minimum DIF ratio of 1.35 percent to be reached by 2020.

Interchange and Debit Card Processing

- For information about the interchange provisions of the Dodd-Frank Act, please see the Interchange section of ABA's Communications Guide.

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