



# Dodd-Frank's Sweeping Reform: The Impact of the CFPB on Community Banks

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## Overview

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- DFA implementation update
- CFPB update
- Discussion of the CFPB's impact on community bank compliance

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## DFA reform: Where are we?

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- By the numbers:
  - 400 rulemakings required
    - 64 finalized
    - 133 proposed
    - 203 to come
- So only approximately 15% of the way through rulemakings
- But already 2,129 pages of official rules and guidance; 3,396 pages of proposed rules have been published

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## Where are we?

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- By objectives:
  - Better assess systemic risk
    - FSOC created
    - Non-bank SIFs undesignated
    - OFR slow start, no nominee
  - End too big to fail
    - Heightened standards in the works
    - Higher capital underway
    - Living wills finalized, but contingent resolution plans and orderly liquidation in early stages

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## Where are we?

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- By objectives:
  - Regulate the OTC derivatives market
    - Plethora of proposals – nothing on market structure final
  - Better protect consumers/level the playing field
    - CFPB formed, but no director → no non-bank supervision

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## So....

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- Story not yet written
- Final rules, so far, not generally relevant to primary objectives
- Many deadlines missed
- Agencies extending comment periods
- In sum, Financial Crisis → Regulatory Crisis
  - Growing recognition that the uncertainty caused by the regulatory environment is a factor stalling any robust recovery

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## CFPB Update

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## The Promise of the CFPB

- One rule writer and one set of rules
- A level playing field
- Administration assurances:
  - Where possible, streamline, and simplify rules; will not merely layer new rules on top of old, outdated rules
  - Rules will be empirically based
  - Rule-writers will be mindful of the innovation necessary for economic growth

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## The Director Debacle

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- Recall that a Presidentially appointed/Senate confirmed Director possesses all Bureau authority
- Subtitle F (§ 1066) authorizes the Secretary of the Treasury to exercise interim authority
  - Appointment of Elizabeth Warren (and now Raj Date) as Assistant to the President/Special Advisor to the Secretary of the Treasury
- Nomination of Richard Cordray

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## CFPB authority without a confirmed Director

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- According to the Treasury and Fed IGs, the CFPB can:
  - Examine banks and their affiliates  $\geq$  \$10 billion
  - Prescribe rules, draft guidance, and issue orders (i.e., initiate enforcement actions) related to the enumerated consumer financial laws
  - Prescribe rules, issue guidelines and conduct a study under the enumerated laws that transferred from the FTC and HUD

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## New powers on hold (without a confirmed director)

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- Non-bank supervision
  - enforcement?
  - Also cannot require reports from non-banks
- Prohibit unfair, deceptive, or abusive acts or practices under subtitle C
- Prescribe rules and require model disclosures
- Prescribe rules governing consumer rights to access transaction information

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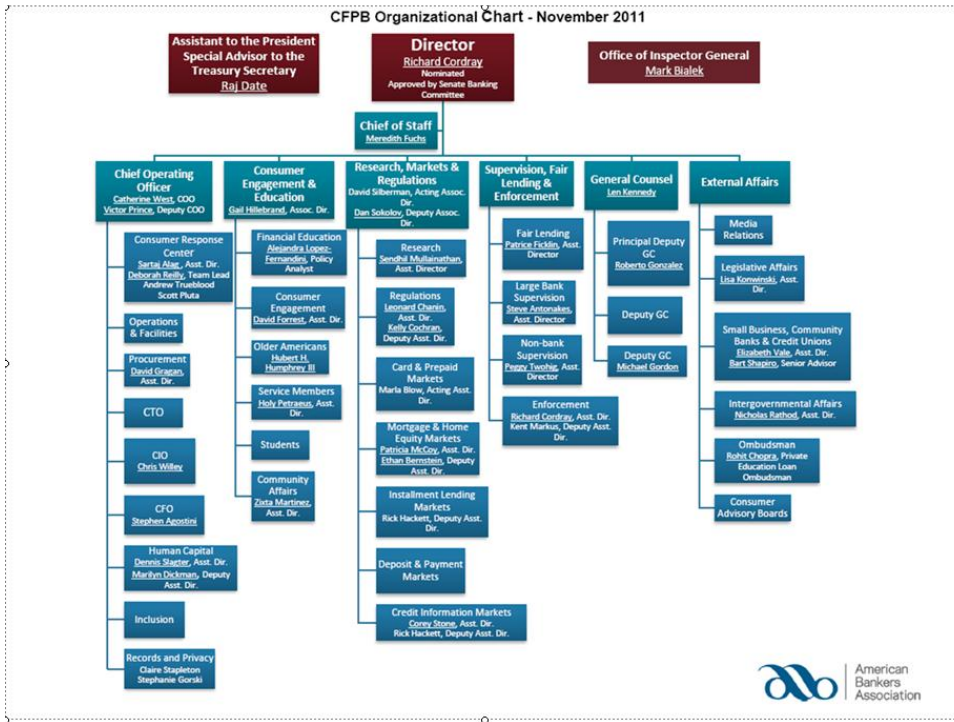
## Status of CFPB “stand up”

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- FY2011 expenditures \$134 million, expected to increase to \$329 million in 2010, and is authorized by DFA to eventually exceed \$500 million.
- 700 employees have been hired to date, staffing expected to be increased to 1225 in 2012

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To this -



But does it really reflect a change?



## Status of bank supervisory program

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- Supervision will focus on “risk to consumers” over the “life-cycle of a product”
- Supervision will be coordinated out of one of the Bureau’s four regional offices:
  - New York, Washington, DC, Chicago and San Francisco
  - Regional Directors have not been officially announced

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## Status of bank supervisory program

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- There will be one exam staff, trained to examine banks and non-bank covered persons.
- October 13, 2011, the Bureau posted its *CFPB Supervision and Examination Manual, 1.0*
- Simultaneously posted *Mortgage Servicing Exam Procedures* and announced that reviews of mortgage servicing practices will be a priority in most examinations.

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## Status of bank supervisory program

- 80% of the institutions the CFPB supervises will be subject to point in time exams of 6 weeks to 3 months duration
- The largest 20% will be subject to continuous supervision
- Readiness to begin examinations varies widely.

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From this -

## Cop on the Financial Protection Beat



### A cop on the beat

The CFPB will also be a cop on the beat to patrol the consumer financial services markets. Financial companies that break the laws will be held accountable. That's fair to customers, and it is fair to the lenders who play by the rules and work to provide real value for their customers.



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## Status of Enforcement Program

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- To date, 60 enforcement lawyers have been hired; Bureau intends to **double** that number
- All signs point to robust fair lending examination and enforcement and UDAAP enforcement after a director is confirmed

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## Status of Enforcement Program

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- July, 2011 the Bureau published four interim final rules establishing the procedures for investigations and administrative enforcement proceedings as well as rules on confidentiality and coordination with state officials.
- November, 2011 announced intention to provide an “early warning notice” at the conclusion of investigations that the Bureau believes will result in an enforcement action

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## Status of Enforcement Program

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The Bureau will work with state and federal partners to bring enforcement actions:

- Signed MOU with JAG offices of the 4 branches of the armed forces to share complaint information and to coordinate with CFPB enforcement teams to take action against financial providers who break the law and harm servicemembers.
  
- Joint Statement of Principles signed with the National Association of Attorneys General governing how the parties will “work together to advance their shared goals of protecting consumer from unlawful practices.”

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## Consumer Response System Status

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- DFA directs the Bureau to facilitate the collection, monitoring and response to consumer complaints.
- July 21, 2011 launch of initial phase - accepting only credit card complaints
  - Intends to accept mortgage-related complaints by December 1, 2011
- Announced plans to propose for comment its data sharing policy by the end of November and an initial report to Congress

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## Division of Consumer Education and Engagement – status

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- DFA creates three new offices charged with improving financial literacy:
  - Office of Financial Education
  - Office of Servicemember Affairs and
  - Office of Financial Protection for Older Americans
- Date's assertion that in time, the education mission will be a primary focus of the Bureau

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## Office of Servicemember Affairs

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- DFA did not transfer the SCRA to the CFPB but it did establish an Office of Servicemember Affairs
- Mission:
  - Educate and empower military families on financial matters
  - Identify and monitor consumer complaints submitted by servicemembers to spot new trends and to coordinate enforcement

**Servicemembers: a new protected class?**

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## Resources on SCRA compliance

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- ABA FAQs on SCRA and bank compliance obligations

<http://www.aba.com/aba/documents/Compliance/StaffAnalysis/SASCRA2012.pdf>

- OCC updated SCRA exam procedures

<http://www.occ.gov/publications/publications-by-type/other-publications-reports/scra.pdf>

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## Bureau rule making priorities

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- Remittance proposal initiated by the Federal Reserve
  - Final rule due January 21, 2012
- The “Know Before You Owe” project to simplify mortgage disclosures,
  - Rule to be *proposed* by July 21, 2012
  - CFPB will convene a SBREFA Panel prior to proposing amendments to the RESPA/TILA regulations
- Mortgage rules required by Title XIV and initially proposed by the Federal Reserve (ability to repay, appraisals, higher priced mortgages)
  - Ability to repay by first quarter 2012?

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## Other rule making priorities – 2013?

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“Scoping” DFA’s new data collection requirements of §1071:

- New HMDA data points
- New small business loan data collection obligations
- No compliance obligations until after rules are written

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## Other Bureau priorities

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### Student loan disclosures

- October 25, 2011, the Bureau and the Department of Education launched a new “Know Before You Owe” project to create a “financial aid shopping sheet” to enable consumers to understand the type and amount of aid they qualify for and to compare aid packages offered by different educational institutions.

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## Other Bureau priorities

- Short-term consumer credit products, including overdraft, direct deposit advance, payday lending
- Mortgage servicing rules – interagency?
- Review of existing regulations to identify outdated, duplicative, or burdensome regulations that do not appear to protect consumers effectively

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## DFA-Mandated Regulatory Changes

*Effective on or after the Transfer Date*



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(A full size chart is attached)

Major Final Rules Changes Post-Signing of the Dodd-Frank Act (July 21, 2010)	Effective Date	Implemented at your bank?
Regulation II (Durbin Amendment) standards for debit card interchange fees & prohibition against network exclusivity arrangements and routing restrictions.	October 1, 2011	
Allowance for upward adjustment of no more than 1 cent to an issuer's debit card interchange fee if the issuer develops certain controls to achieve the fraud-prevention standards set out in the interim final rule.	October 1, 2011	
Regulation V (Fair Credit Reporting) revised risk-based pricing notices content to add related model forms that reflect the new credit score disclosure requirements. Also revised model notices in Regulation B (Equal Credit Opportunity) to align.	August 15, 2011	
Increased Regulation Z and Regulation M Coverage Threshold to \$50,000. Note: The threshold will be adjusted annually based upon the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (will be \$51,800 for 2012).	July 21, 2011	
Funds Availability (Reg. CC) Changes: make \$200 (up from \$100) of the day's deposits available by the next business day after the day of deposit. Note: The amount will be raised every 5 years based on the rate of inflation.	July 21, 2011	
Repeal of Reg. Q allows interest-bearing checking accounts for consumer or commercial customers.	July 21, 2011	
Appraisal Rules including: Prohibitions against coercion, mischaracterizations, conflicts of interest; Requires reporting appraiser misconduct; Allows reasonable and customary fees.	April 1, 2011	
Escrow Requirements (Regulation Z) increases the APR threshold for first-lien, jumbo mortgage loans (HPMLs) to require an escrow account for property taxes and insurance for at least one year from 1.5 to 2.5 percentage points above the average prime offer rate (APOR) as of the date the rate is set.	April 1, 2011	
Rules under Regulation Z to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices.	April 1, 2011	
Rules requiring residential mortgage loan originators who are employees of national and state banks, savings associations, Farm Credit System institutions, credit unions, and certain of their subsidiaries (agency-regulated institutions) to meet the registration requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).	January 31, 2011	
Regulation Z Rules regarding consumer notification of mortgage loan sales or transfers.	January 1, 2011	
Disclosure rules for closed-end mortgage loans under Regulation Z (Truth in Lending) to require lenders to disclose how borrowers' regular mortgage payments can change over time.	October 25, 2010	
Deferred Escrow Requirements (Regulation Z) for Higher Priced Mortgage loans for Manufactured Housing.	October 1, 2010	

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## CFPB impact on community bank compliance

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## Remember...

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- CFPB
  - Supervises 111 institutions and 62 affiliates
- FDIC
  - Retains direct supervisory authority for 1798 state non-member banks and thrifts
- OCC
  - Retains direct supervisory authority for 2045 national banks and thrifts
- Federal Reserve
  - Retains direct supervisory authority for 820 state member banks and 5262 bank and thrift holding companies

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## Impact on community banks

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- Compliance with consumer compliance laws and regulations as a baseline
  - “Show me where it says I can’t do that” is dead
- The emphasis on UDAP – “fairness,” and once a Director has been confirmed, the new “abusive” standard – means that transparency, although clearly required, will not be enough.

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## Preparing for the future

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- Establish a “top down” commitment to compliance and fairness
  - Each line of business must own responsibility for the expanded expectations for compliance
  - Train front line staff to articulate the value of a product, the reason for a fee
- Embrace “trusted provider” status, but also push for recognition of the “responsible consumer’s” role

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## Preparing for the future

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- Mine bank complaints to ensure that the bank understands and addresses consumer dissatisfaction
  - Define complaints broadly
  - Identify trends before your regulator does
- Ask if there is reason for concern about the practices of any of the bank’s vendors?

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## Preparing for the future

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- Ask have we done to ensure that we have no **fair lending issues** at our institution?
  - Evaluate lending performance and penetration into LMI areas. Examine marketing, outreach to these communities
  - Evaluate HMDA data. Be prepared to “tell your story”
  - Examine lending policies, procedures and rate sheets
  - Provide clear standards for underwriting and pricing (interest rates, fees, and points).
  - Monitor files to ensure that the reason for any discrepancy from standard pricing has been clearly documented
  - Consider emerging protected classes – servicemembers, the elderly, students

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## Questions

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### Questions?

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Thank You

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## Implementation Checklist

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