Bank Regulatory Law

Course 2032

John Heasley

May 21

Handout in Class

2019 Session
COMMUNITY BANKING IN
THE DODD - FRANK ERA

May 21, 2019

John M. Heasley
Texas Bankers Association

Louisiana State University
Graduate School of Banking
THE SUBPRIME CRISIS

Causes:

- Borrowers – NINJA
  - 1976 18% Down Payment
  - 2005–2006 50% No Down, Payment median 2%
- Federal Housing Policy/Tax Incentives
- Lenders – Nonbanks and Banks
- Securitizers (Prosecutions?)
- Rating Agencies
- Federal Reserve
  - monetary policy
  - regulatory policy
- GSEs/1992
### CASUALTIES

- 3 million foreclosures
- 20% of homeowners owed more on mortgages than homes are worth
- Hundreds of mortgage bank and broker closures/bankruptcies
- 550 small and medium size bank failures

### CASUALTIES

Countrywide/Bank of America

**Bear Stearns**

- 2007 $20 billion
- March 2008 $236 million
- $30 billion Fed assistance
- Fed as lender of 1st or last resort?
- Bankruptcy as an option?

**Lehman**

**Wachovia**

**WAMU**
COST

- $187 Billion - GSE
- $700 Billion - TARP
- Federal Reserve – $3.7 Trillion in Treasury Securities and Agency MBS

SIZE AND COMPOSITION OF SOMA DOMESTIC SECURITIES HOLDINGS

Billions of U.S. dollars

Source: Federal Reserve Bank of New York.

Notes: Figures are weekly averages of daily figures. They include unsettled holdings.
BANK & THRIFT FAILURES SINCE 2008

Headquarters of Bank & Thrift Failures since 2008

Percent of bank failures since January 1, 2008:
- 18.0% in Georgia
- 14.1% in Florida
- 11.3% in Illinois
- 9.2% in California

DODD-FRANK REQUIRES APPROXIMATELY:
240 REGULATIONS
70 STUDIES

Major Financial Legislation:
Number of Pages

Source: OCC
Caught in the web
Who can do what to whom

Financial agencies:
- OIG
- NRO
- OEC with new powers
- Affected parties
- Can request information
- Has authority to examine

GFAC/FinCEN

Office of the Comptroller of the Currency
Federal Reserve
Office of Financial Research
FDIC

Source: JPMorgan Chase

The Economist, February 18, 2012

Chris Dodd
Barney Frank
**TITLE I – FINANCIAL STABILITY**

- Financial Stability Oversight Council ("FSOC") – Sec. Treasury is Chairman
- 10 Voting Members, 5 Non-voting Members

**"ENDS TOO BIG TO FAIL BAILOUTS"**

**FINANCIAL STABILITY OVERSIGHT COUNCIL (FSOC)**

<table>
<thead>
<tr>
<th>· Treas. Sec. (Chair)</th>
<th>· FHFA</th>
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<tbody>
<tr>
<td>· Fed</td>
<td>· NCUA</td>
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<tr>
<td>· OCC</td>
<td>· Insurance Expert</td>
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<tr>
<td>· CFPB</td>
<td>· 5 Non Voting Federal and State Agencies</td>
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<td>· SEC</td>
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<td>· FDIC</td>
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<td>· CFTC</td>
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STRESS TESTS

Leverage

SIFI Challenge

NONBANK RESOLUTION AUTHORITY – TITLE II

· Additional resolution authority for the FDIC

· New FDIC Office of Complex Financial Institutions to oversee banks over $100 billion and designated systemic nonbank financial companies
• Stakeholders in large financial entities will have no assurance of any protections under the Bankruptcy Code

• Once placed in receivership results all bankruptcy filings vacated

• Challenge to FDIC receivership results in a 24 hour review by a federal court

• No stay pending judicial review.

• Any individual disclosing information about the receivership or the court proceedings faces felony criminal charges.

• Judicial review of the liquidation is limited and no court can have jurisdiction over seized assets. No Court of Claims.

• Constitutional challenge
"NO TAXPAYER FUNDED BAILOUTS"

- FSOC can override
- Regulators always blink

"Discourage Excessive Growth and Complexity"

- One U.S. bank is in 71 countries
- How much jurisdiction does the U.S. have over Asian and European affiliates?
- The lesson of 2008 is to get interconnected.

"Funeral Plans"

- Will they work in a panic?

- Have we created a new, permanent class of lobbyists for systemically important institutions?

- Would an enhanced, structured bankruptcy process be better?
"THE PRETENSE OF KNOWLEDGE"

(The conceit that planners know enough about complex markets to dictate how they operate.)

Fight against the "belief that we possess the knowledge and the power which enable us to shape the processes of society entirely to our liking, knowledge which in fact we do not possess." - Freidrich Hayek

TOO BIG TO FAIL?

<table>
<thead>
<tr>
<th>Bank of America</th>
<th>2007</th>
<th>2012</th>
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<tbody>
<tr>
<td>JPMorgan Chase</td>
<td>43% GDP</td>
<td>56% GDP</td>
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<tr>
<td>Citi</td>
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<tr>
<td>Wells Fargo</td>
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<td>Goldman-Sachs</td>
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DFA: SECTION 121

Bernie Sanders  Neel Kashkari

“ENHANCING SAFETY AND SOUNDNESS - TITLE III”

- Permanent $250,000 deposit insurance coverage
- Repeal of Reg Q for business accounts
- Office of the Minority and Women Inclusion (OMWI)
- Change in assessment base for insurance from total insured deposits to total assets
- FDIC reserve ratio raised from 1.25% to 2.0%
- Merger of OTS into OCC
TITLE VI – IMPROVEMENTS TO REGULATION OF BANKS AND HOLDING COMPANIES

“Volcker Rule” – Prohibition and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds – Sec. 619

CONSUMER FINANCIAL PROTECTION BUREAU – TITLE X

“Independent Head”

“Independent Budget”

“Independent Rule Writing”

“Examination and Enforcement”

“Able to Act Without Congressional Lawmaking”
CFPB

- Effective July 21, 2011.

- Director Richard Cordray – Constitutional Challenge

- $143 million first year budget and up to 12% of Fed earnings.
- Current budget of $617 million.

- Total jurisdiction over 18 consumer protection and fair lending laws.

- Limited judicial oversight.

- $10 billion “carve out” in name only.
· Could rival the IRS in size and scope. Currently has over 2,000 employees.

· Can prohibit products and set prices for all consumer and potentially all small business loans. (HMDA)

· Constitutional challenge to CFPB.

· 2016 Election

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**TITLE X – CONSUMER FINANCIAL PROTECTION BUREAU**

· Independent agency within the Fed

· Administers 18 Federal consumer protection laws
  · Republished as Bureau rules – very little changes

· Funded by the Fed – outside of appropriations

· Richard Cordray – Recess Appointment January 5, 2012/Now permanent

· “One of the most important agencies for people that there is . . .”
  · President Barack Obama, January 6, 2012 during a visit to the Bureau one day after recess appointment

· Bills to change funding, structure, etc. have been filed

· Focus on complaints, but also “Tell us your story”
TITLE X – CONSUMER FINANCIAL PROTECTION BUREAU

- Payday Loans
- Overdraft Protection
- Unfair, Deceptive and Abusive Acts or Practices – UDAAP Examination procedures
- QM
- Small Business Lending

TITLE X – DEBIT CARD INTERCHANGE FEES/DURBIN AMENDMENT

- Fed Final Rule – Debit Card Interchange Fees and Routing – Sec. 1075
- Merchants pay ~ 45 percent less on debit interchange vs. prior to Dodd-Frank
- Merchants sued Federal Reserve over rule and lost
CFPB BULLETIN 2012-04 – (APRIL 18, 2012)

• Methods of proving ECOA violations:
  • Overt evidence of discrimination
  • Evidence of disparate treatment
  • Evidence of disparate impact
  • New focus on small business lending

RURAL LENDERS EXEMPTION

• No escrow accounts required if:
  • More than ½ of mortgages made in “rural” or “underserved” areas;
    Bank has less than $2 billion in assets;
  • Bank has originated 500 or fewer first lien mortgages during the preceding years; and
  • Bank has not escrowed any HPML between 4/1/10 and 6/1/2013.
"RURAL " COUNTY:

Neither in a MSA or a micropolitan statistical area (10,000 to 49,999 people) adjacent to a MSA.

"UNDERSERVED" COUNTY:

HMDA data must show no more that 2 lenders extend mortgage transactions secured by a first lien 5 or more times in that county.
QUALIFIED MORTGAGE
(SAFE HARBOR)

4 Ways to Comply:

1. General Ability to Repay (ATR)
2. Originating “Qualified Mortgage”
3. Originating Rural Balloon-Payment QM
4. Refinancing a “non-standard mortgage” into a
   “standard mortgage”

8 FACTORS FOR ATR:

1. Current or reasonably expected income or assets
2. Current employment status
3. Monthly payment
4. Monthly payment on any simultaneous loan
5. Monthly payment for mortgage related obligations
6. Current debt obligations, alimony, child support
7. Monthly debt – to – income ratio
8. Credit history
ORIGINATING “QUALIFIED MORTGAGE”

Mortgage must:
1. Provide regular periodic payment
2. Not include “toxic” features
3. Not have total points and fees exceed 3% for loans exceeding $100,000
4. Other monthly payments must be taken into account
5. Creditor must verify consumer income/assets and current debt obligations

RURAL BALLOON – PAYMENT QMS

- Balloon payment mortgages can be QMs if originated and held in portfolio by small lenders in rural or underserved areas
- Balloon lenders must originate 50% of their mortgages in rural or underserved counties, be less than $2 billion in assets, and originated less than 500 mortgages annually.
Our goal is to make the Compliance Officer’s job easier and more efficient while eliminating the need for additional part-time employees. Compliance Alliance was not designed to replace a compliance officer, but to be the extra set of hands in your compliance department.

Tools and Resources Included in Membership:

- Calculators
- Calendar
- Cheat Sheets
- Check Lists
- Cliff Notes
- Flowcharts
- Handouts
- Matrices
- Policies
- Procedures
- Risk Assessments
- Signage
- Training Tools
- Worksheets
- Enforcement Actions
- Forms
- Newsletters
- Regulatory Guidance
- Reviews (Advertising, New Product, Policies, Procedures, Disclosures)
- Webinar Archive
- Hotline (Available by phone, email or live chat)

S.2155 – ECONOMIC GROWTH, REGULATORY RELIEF & CONSUMER PROTECTION ACT

§101: QM in Portfolio
- < $10 billion
- Use own underwriting standards
- Limits remain on negative am. and interest only

§104: HMDA Relief
- < 500 mortgages
- Report under pre-2018 rules

§201: Capital Simplification
- < $10 billion
- Agencies must establish leverage ratio of 8% to 10%
- Exemptions from RBC
- Rule-making required

§214: High Volatility
Commercial Real Estate
- Only ADC loans with increased risk subject to higher risk weight
- Excludes loans where cash flow supports debt service
S.2155 – ECONOMIC GROWTH, REGULATORY RELIEF & CONSUMER PROTECTION ACT

Other Provisions

- 18 month exam cycle raised from $1 billion to $3 billion
- Reciprocal deposits exempted from FDIC brokered deposit restrictions
- CFPB required to apply ATR to PACE loans
- SIFI threshold raised from $50 billion to $250 billion
WHAT YOU CAN DO

- Recognize that federal legislative and regulatory policies are harming community banks.
- Inform yourself.
- Engage in the political process.