The Dodd-Frank Wall Street Reform, Consumer Protection Act and Vendor Management

PRESENTED BY:

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Agenda

Reverse Logic Presentation (Built upon Feb 2015 EBA presentation)

- Results - Impact to Lender Environmental Risk Management
- Overview of Regs - Lender Vendor Manager
- Detailed view of Regs - Legal Counsel (*how* we got here).

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25-Feb Webinar - What did we cover

- *Resource Links* – reference Handout
- Overview of how Vendor Management has changed
- Why such regulatory scrutiny over Vendor Management
- Dodd Frank Focus shift
  - Better Regulatory Controls over Lenders
  - Better Lender Controls over Vendors
  - Bank Board of Directors are held accountable to Monitor and Manage Risk
- Dodd Frank has teeth – Power to levy huge fines.

What did we cover (contd)

- Evaluate your list, **you are** responsible for their performance
- Vendor Profile is changing
- Sheepdog Effect (finite capacity to Monitor and Manage)
  - Lean towards bigger firms, greater geographic coverage and capabilities
  - Less smaller firms

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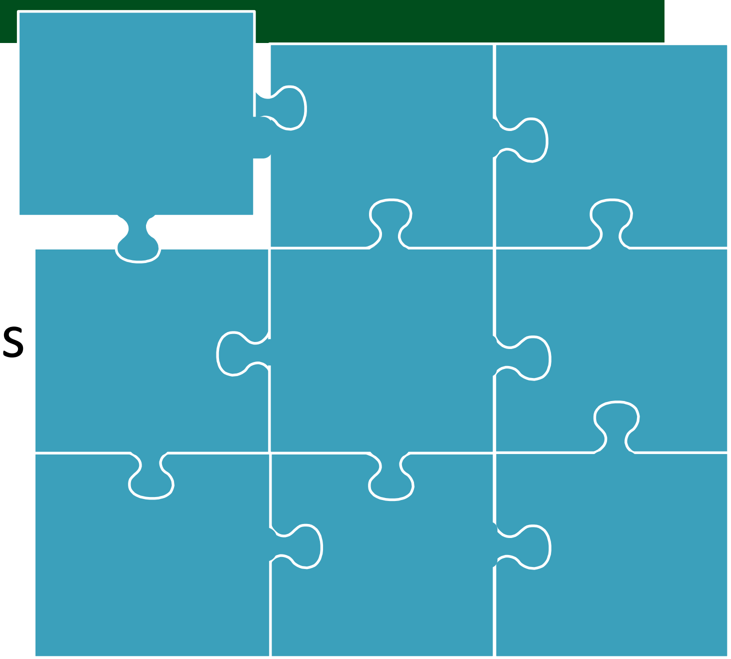
Cornerstone of a Program



- More secure contracts
- Higher Insurance Coverages
- Dedicated LOB Vendor Manager
- Formal Training, Process & Procedures
- Written Onboarding Processes
- Intense Tracking
  - Quality Ratings and Feedback loop
  - Financial Statement Evaluation
  - Insurance Certificates
  - Code of Conduct Certification
- LOB Responsible to Corporate Oversight

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Performance

Responsible for Vendor Performance

- Establish Performance Guidelines
- Monitoring
- Probation Process
- Corrective Action Plans or Off Boarding

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The Dodd-Frank Wall Street Reform, Consumer Protection Act and Vendor Management

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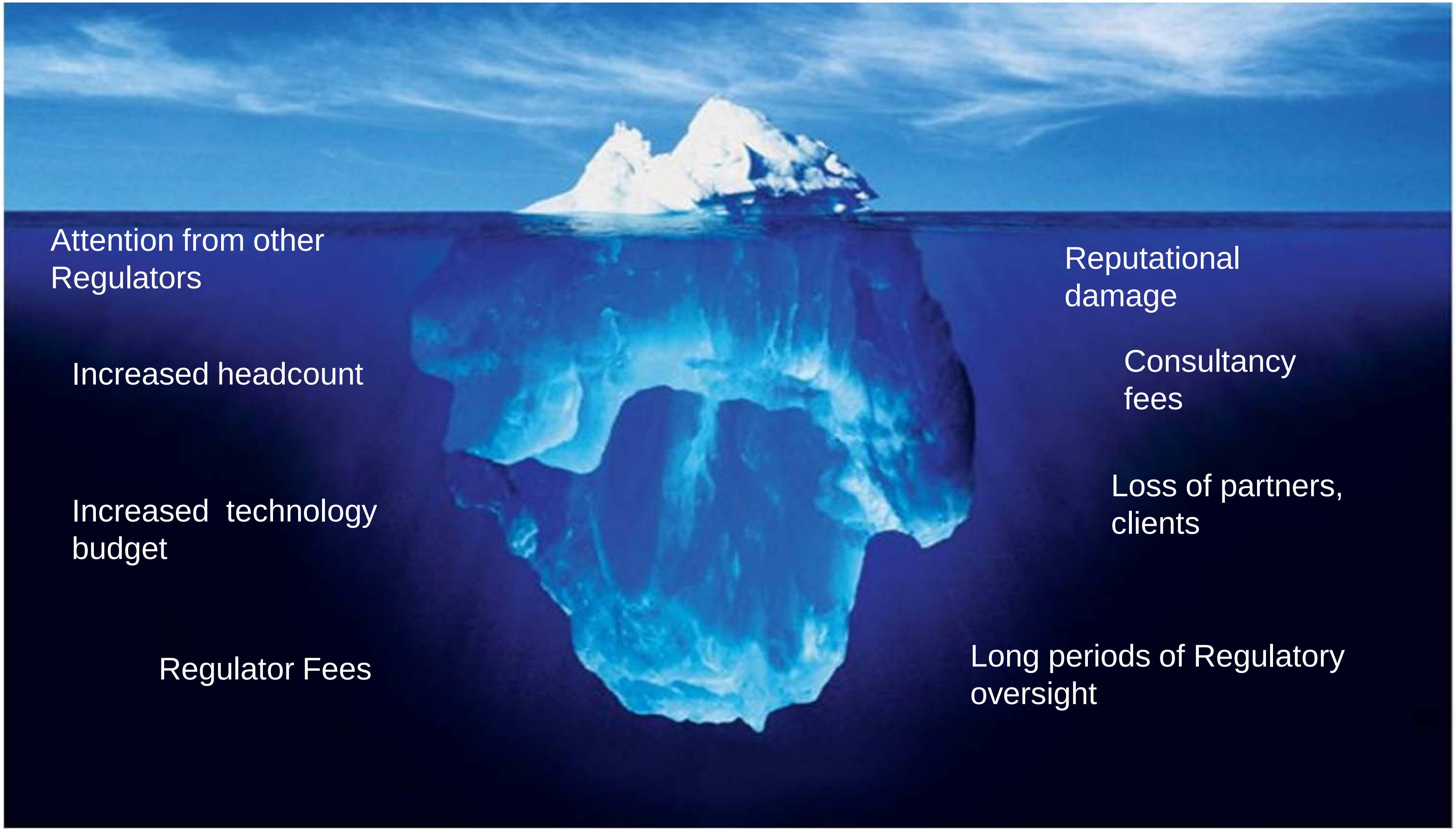
Following the regulations is the easy part…



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Dodd-Frank Act

"assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction."

- From Title III of the Dodd-Frank Act

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The OCC

The OCC regulates over 2,000 national banks and Federal savings associations plus about 50 federal branches and agencies of foreign banks in the United States

- They range from large complex banks with global footprints to local community banks.
- They regulate all banking vendors.
- The banks manage their vendors accordingly

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The Consumer Financial Protection Bureau's vision

- **A consumer finance marketplace…**
- *where **customers** can see prices and risks up front and where they can easily make product comparisons;*
- *in which **no one** can build a business model around unfair, deceptive, or abusive practices;*
- *that **works for** American consumers, responsible providers and the economy as a whole.*

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The Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau ("CFPB" or "Bureau") was established under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). To create a single point of accountability in the federal government for consumer financial protection, the Dodd-Frank Act consolidated many of the consumer financial protection authorities previously shared by seven federal agencies into the CFPB and provided the Bureau with additional authorities to:

- Conduct rulemaking, supervision and enforcement with respect to the Federal consumer financial laws;
- Handle consumer complaints and inquiries;
- Promote financial education;
- Research consumer behavior; and,
- Monitor financial markets for risks to consumers.

The Dodd-Frank Wall Street Reform, Consumer Protection Act and Vendor Management – General Overview

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The Dodd-Frank Wall Street Reform and Consumer Protection Act

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Snell & Wilmer L.L.P.
LAW OFFICES

Character comes through.

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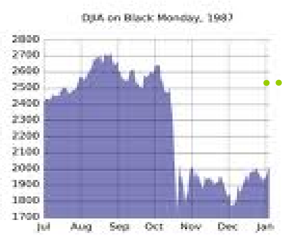
AGENDA

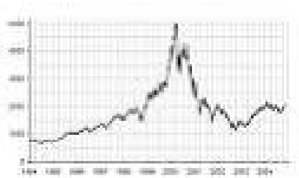
- **Quick Background of Dodd-Frank Act**
- **Consumer Financial Protection Bureau**
- **SAFE Act Update**
- **Some Vendor Management Impacts and Best Practices**

How did we get here? A Brief History of U.S. Banking Regulation Reform

’29 Stock Market Crash and Great Depression; New Deal Reforms

Savings and Loan Crisis; 1987 – “Black Monday” Market Crash





Dot Com Crash - 2000

- **1863** National Bank Act – Chartering of National Banks; National Currency
- **1913** Federal Reserve Act – Establishes the Federal Reserve System
- **1927** McFadden Pepper Act – Prohibited Interstate Banking
- **1933** **Bank Act of 1933 (Glass – Steagall) – Establishes FDIC; Separates banking and investment banking**
- **1956** Bank Holding Company Act
- **1956** Bank Merger Act
- **1980** Depository Institutions Deregulation and Monetary Control Act of 1980
- **1982** Garn – St. Germain Depository Institutions Act of 1982 – Deregulation of Thrifts
- **1989** Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)
- **1991** FDIC Improvement Act
- **1994** Riegle-Neal Interstate Banking & Branching Efficiency Act
- **1999** **Gramm-Leach-Bliley Financial Modernization Act**
- **2002** Sarbanes – Oxley Accounting Standards Act of 2002
- **2004** Check 21
- **2006** FDIC Insurance Reform Act
- **2008** Emergency Economic Stabilization Act
- **2010** **Dodd-Frank Wall St. Reform and Consumer Protection Act**

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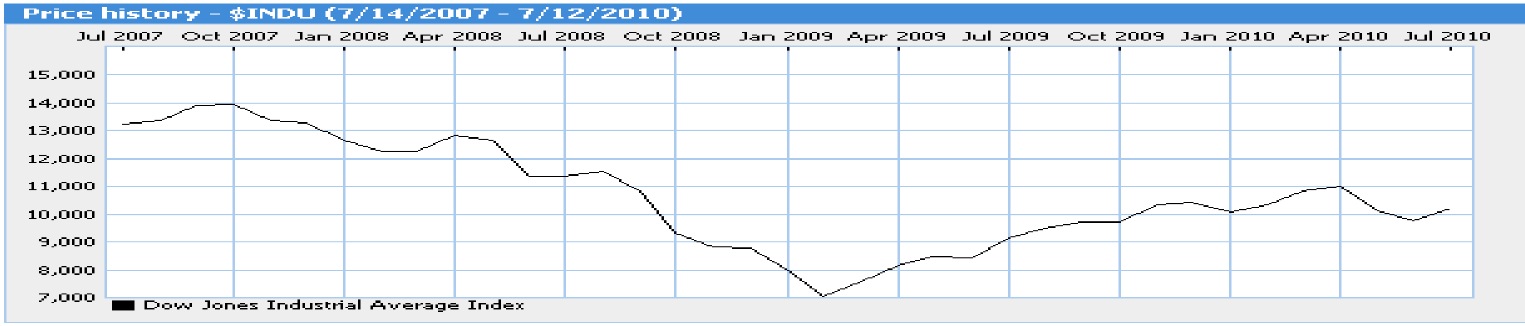
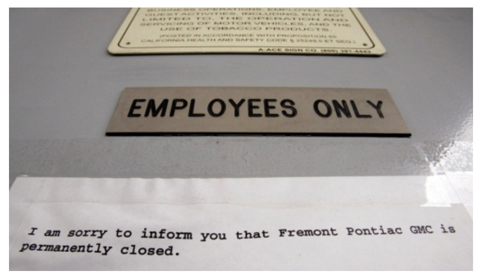
How Did We Get Here? 2007–2010: Lead-up to a new regulatory environment





LEHMAN BROTHERS

BEAR STEARNS

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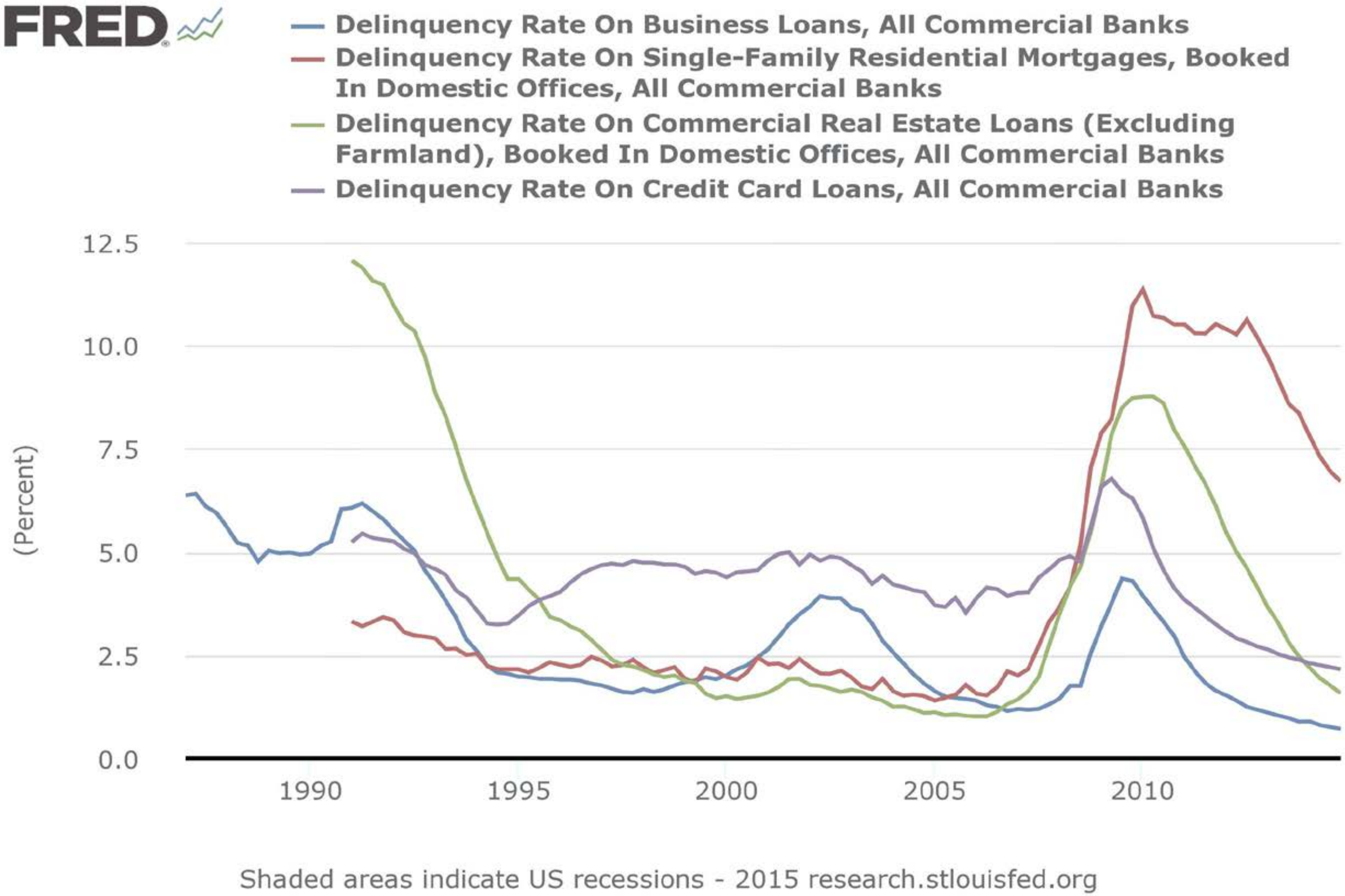
Dodd-Frank Wall Street Reform and Consumer Protection Act



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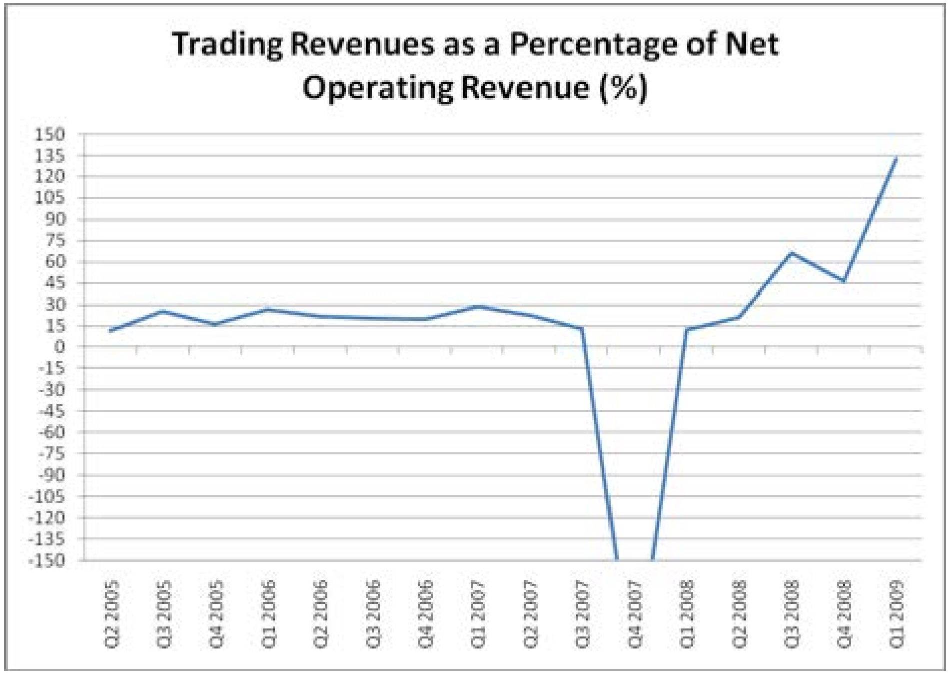
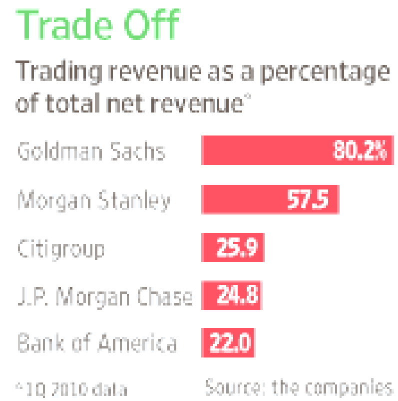
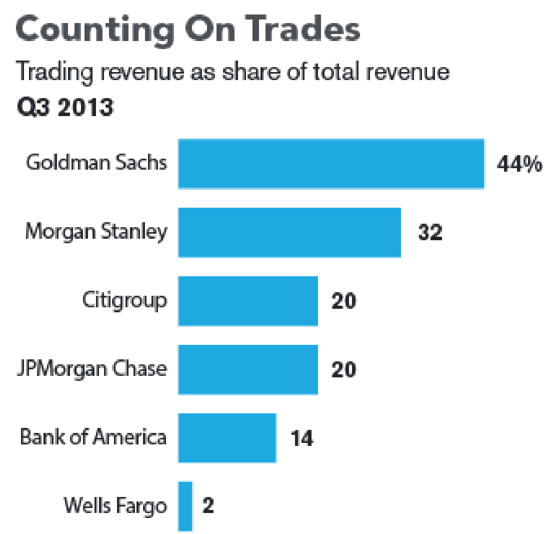
Dodd-Frank Wall Street Reform and Consumer Protection Act







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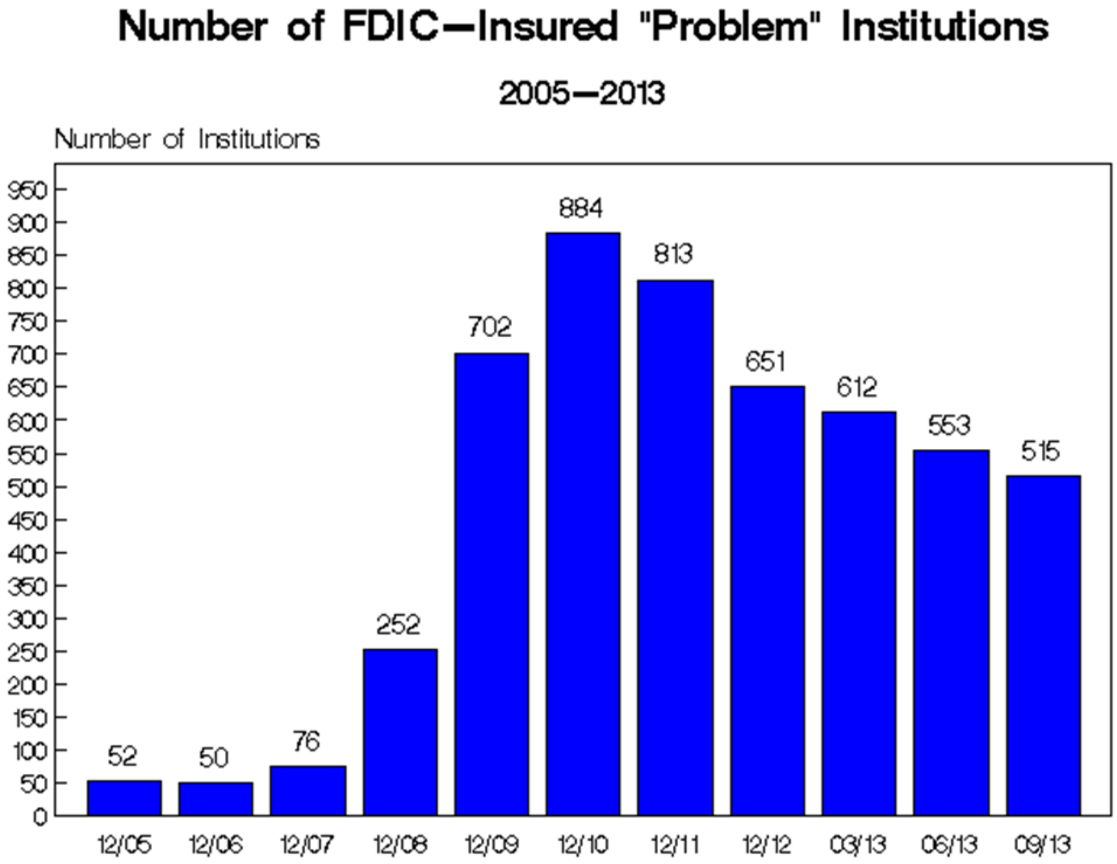
How Did We Get Here? 2007–2010: Lead-up to a new regulatory environment



Source: The Problem Banklist (www.problembanklist.com)

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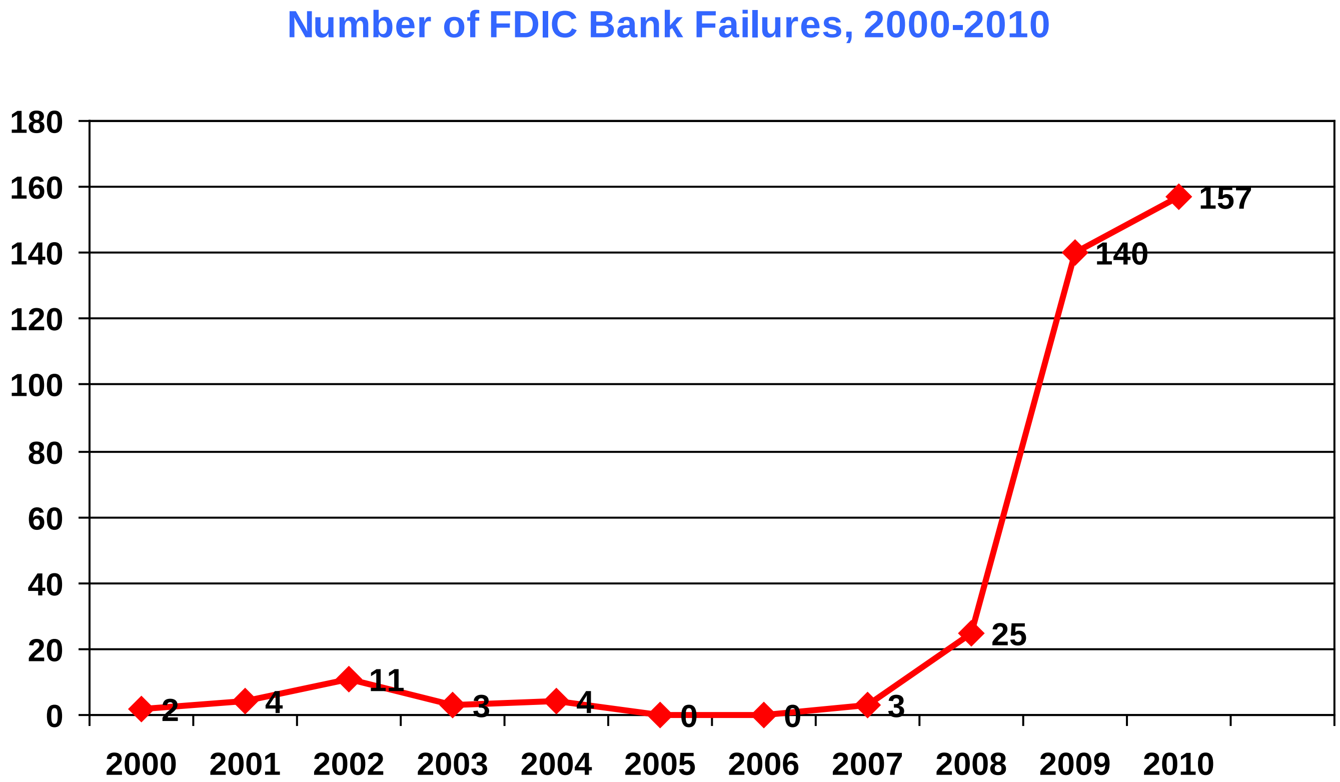
How Did We Get Here? 2007–2010: Lead-up to a new regulatory environment



Source: FDIC (www.fdic.gov)

Also, 51 bank failures to date in 2011.

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Legislative progress?

All previous bank laws combined

Dodd-Frank

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Dodd-Frank Wall Street Reform and Consumer Protection Act

HOUSE OF REPRESENTATIVES
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111TH CONGRESS 2nD Session | HOUSE OF REPRESENTATIVES | REPORT 111–517

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

JUNE 29, 2010.—Ordered to be printed

Mr. FRANK, from the committee of conference, submitted the following

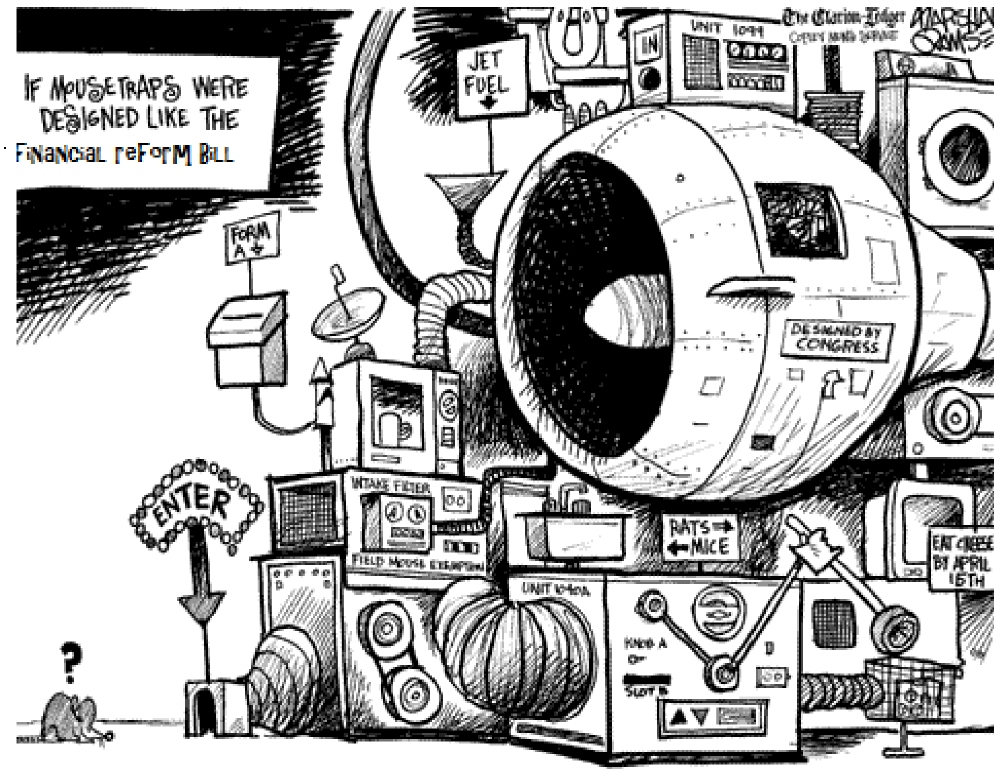
CONFERENCE REPORT

[To accompany H. R. 4173]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4173), to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:



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Dodd-Frank Wall Street Reform and Consumer Protection Act

Legislative History:

- Outcome of Congressional and Executive efforts beginning in Fall 2008 during height of financial crisis.
- House passed “Wall Street Reform and Consumer Protection Act of 2009” (H.R. 4173) December 2009.
- Senate passed “Restoring American Financial Stability Act of 2010” May 2010.
- Conference Committee then reconciled two bills into the “Dodd-Frank Wall Street Reform and Consumer Protection Act”
  - Approved by the House on June 30, 2010.
  - Approved 60 – 39 by Senate on July 15, 2010
- President Obama signed into law July 21, 2010 at Ronald Reagan Building ceremony.

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Consumer Financial Protection Act

1. Consumer Financial Protection Act of 2010 ("CFPA") is Title X of the Dodd-Frank Act.

2. The CFPA attempts to strengthen protections for consumers in financial transactions, and, among other things, creates the Bureau of Consumer Financial Protection to oversee the rules for virtually all federal consumer finance laws.

Consumer Financial Protection Bureau

1. Bureau of Consumer Financial Protection ("CFPB") is housed within the Federal Reserve System and is funded by it.

2. CFPB's purpose is to regulate the offering and provision of consumer financial products and services under the federal consumer financial laws.

3. The Director of the CFPB is appointed by the President with the "advice and consent" of the Senate.
   - Director serves for a term of 5 years.
   - Director can only be removed by the President for "cause" (i.e., neglect of duty or malfeasance).

Powers of the CFPB

1. The CFPB has almost exclusive authority to issue and implement rules and regulations regarding federal consumer finance laws.

2. The only exception being that the Federal Trade Commission retains its authority to implement the Federal Trade Commission Act.

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Federal Consumer Finance Laws

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act of 1976
- Electronic Funds Transfer Act
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act
- Home Owners Protection Act of 1998
- Fair Debt Collection Practices Act
- Portions of the Federal Deposit Insurance Act
- Portions of the Gramm-Leach-Bliley Act
- Home Mortgage Disclosure Act
- Home Ownership and Equity Protection Act of 1994
- Real Estate Settlement Procedures Act of 1974
- Truth in Lending Act
- Truth in Savings Act
- Interstate Land Sales Full Disclosure Act

Federal Agencies Transferring Rule-Making Authority Relating to Consumer Finance Laws

- Federal Reserve
- Comptroller of the Currency
- Office of Thrift Supervision
- FDIC
- Federal Trade Commission (FTC will still have some authority under the Federal Trade Commission Act)
- National Credit Union Administration
- Dept. of Housing and Urban Development

Cordray Confirmation

Confirmation of Richard Cordray occurred July 16, 2013.

Recent CFPB Activities:

- Payday Loans. The CFPB has released proposals for a future payday loan rulemaking that will have a far-reaching impact on the $46 billion payday loan industry and on other markets. Under its proposals, the CFPB is offering industry participants a choice of options for compliance that could demonstrate an intent to frame future deliberations in a manner that is both advantageous to consumers yet fair to industry participants. The proposed rulemaking is likely to occur under the CFPB's unfairness or abusiveness authority and may also shed further light on the ways the CFPB will expand its use of that authority for payday lenders and other financial services companies.
- CFPB Uncovers Problems in Credit Reporting. The CFPB found that more than 26 million consumers are effectively "credit invisible" because they have no credit record and another 19 million are "unscored" because they have an insufficient or stale credit history. But it's unclear how the CFPB plans to tackle the issue.

Regulatory Developments

- Key matters being addressed:
  - Transfer of Information. In November 2013, the CFPB released the Advanced Notice of Proposed Rulemaking (ANPR) where the Bureau considered using its "rulemaking authority to develop requirements related to the transfer of specified information or documents as part of the … the placement of a debt with a third-party collector" (Pg. 26). According to the CFPB, filing a legal action and dismissing upon receipt of an Answer due to failure to obtain documentation to support claims is false and misleading, therefore it violates section 1692e.
  - Focusing on Small Debt Collectors. In recent Bureau and FTC enforcement actions, the defendants' were relatively small. They were payday lenders, a school, a law firm, automobile lenders, and retail-installment lenders (Pg.22-31).
  - Consistent Violations. For the most part, all of the enforcement actions list the same FDCPA violations. Debt collectors disclosed the existence of debt to third parties, called consumers at work when not permitted, and falsely threatened consumers with litigation or arrest.

Regulatory Developments (cont'd)

- Over Disclosure. In almost every enforcement action, the debt collectors systemically disclosed consumers' debts to their friends, family, co-workers, and bosses to coerce payment. Included were service members, which are part of a high risk population of consumers. For example, Freedom Furniture reached out to service members' commanding officers to discuss their debts without consent to do so.
- Timing. In March 2014, the Seventh Circuit held that "a time-limited settlement demand in a consumer dunning letter seeking to recover on a time-barred debt could violate the FDCPA, even absent an explicit threat of litigation" (Pg. 36-37). The Bureau noted that several courts had previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA. The Seventh Circuit expand this logic to time-limited settlement offers as they could "plausibly mislead a consumer to believe a debt is enforceable in court, even if the offer is unaccompanied by any clearly implied threat of litigation" (Pg. 37).

S.A.F.E. Mortgage Licensing Regulation

1. Generally requires state licensing and national registration of persons acting as mortgage loan originators with respect to residential mortgage loans.
2. Two CFPB Regulations – Substantially the same as HUD Reg's effective 6/30/2011.
   - Reg G 12 CFR Section 1007 – Implements licensing and registration requirements for mortgage loan originators employed by banks and certain other regulated financial institutions.
   - Reg H 12 CFR Section 1008 – Sets the minimum standards that states must meet in licensing mortgage loan originators and provides the requirements that CFPB will apply if it determines that a state has not provided a licensing and registration system that meets the minimum standards.

S.A.F.E. Mortgage Licensing Regulation (Cont'd)

- Standards and Exemptions under Reg H
  - A loan originator is a person who habitually and repeatedly takes residential mortgage loan applications for compensation or gain.
  - States must prohibit individuals from being mortgage loan originators unless:
    - The person has registered as a loan originator and obtains a unique identifier from the NMLSR
  - States are permitted to exempt:
    - Real estate brokerage activities.
    - Persons engaged in extension of credit involving timeshare plans.
    - Certain clerical and support activities.
    - Employees of covered financial institutions (covered under Reg G).
    - Employees of a federal, state or local governmental agency or housing finance authority.

S.A.F.E. Mortgage Licensing Regulation (Cont'd)

- Employees of bona fide nonprofit organization that acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower. To qualify for this exemption a state supervisory authority that opts not to require licensing must determine under criteria and processes established by the state that the organization:
  - Is a 501(c)(3).
  - Provides affordable housing or home-ownership education.
  - Conducts charitable and public purposes.
  - Receives funding and revenue in a manner that does not incentivize employees to act other than in the best interests of the homeowners.
  - Does not provide incentive compensation.
  - Provides or arranges loans that are on favorable terms and similar to governmental affordable housing services.
  - State supervisor must periodically re-examine the organization for ongoing compliance.

S.A.F.E. Mortgage Licensing Regulation (Cont'd)

- Standards for licensing and renewal also are established, including background requirements and education standards.
- Sets certain standards for supervisory authority powers.
- Provides process for determining that state requirements do not meet S.A.F.E. Act requirements.
- The CFPB has backup authority to establish the licensing system for a state that doesn't comply.

Vendor Management - Generally

- While some third-party vendors may correctly understand that the Bank Service Company Act may apply directly to them, they should also recognize that the Dodd-Frank Act, in addition to creating the Consumer Finance Protection Bureau (CFPB), has also granted the CFPB jurisdiction over "any person that provides a material service to a [bank or nonbank] in connection with offering or provision by the [bank or nonbank] of a consumer financial product or service." CFPB Bulletin 2012-13.

Vendor Management – Generally

- Since the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the CFPB the ability to supervise your company's vendors in the same manner as a bank regulator, the CFPB may also bring a direct enforcement action against your company's vendors.
- If it finds that the vendor violated federal laws dealing with consumer protection because your company did not have adequate oversight, the CFPB can:
  - equire your company to improve your vendor management program;
  - bring an enforcement action directly against your vendor; and
  - bring an enforcement action against your company if you are found to have knowingly or reck-lessly provided substantial assistance to the vendor in a practice deemed to be an unfair, deceptive or abusive act.

Vendor Management – Payment Processor Relationships

FDIC Guidance on Payment Processor Relationships

- The Federal Deposit Insurance Corporation (FDIC) issued a Financial Institution Letter containing revised guidance on payment processor relationships on January 31, 2012. The letter discusses potential risks, risk mitigation, due diligence, underwriting and ongoing monitoring in the context of payment processors. Emphasized in the guidance is a warning that financial institutions that fail to adequately manage payment processor or merchant relationships may be viewed as facilitating these parties' fraudulent or unlawful activity and therefore may be liable for such fraudulent or unlawful activity.

Vendor Management – Service Providers

- The CFPB issued its first bulletin related to third-party vendors on April 13, 2012, which provided guidance on compliance with federal consumer financial laws for banks' and nonbanks' relationships with service providers.
- A "service provider" is defined expansively in Dodd-Frank § 1002(26) as "any person that provides a material service to a covered person in connection with the offering or provision by such person of a consumer financial product or service." Service providers are subject to the
- CFPB's supervisory and enforcement authority, which includes on-site examination of operations and new authority to police unfair, deceptive or abusive acts or practices. Next, the CFPB recognized that while banks and nonbanks have legitimate business reasons to outsource functions to service providers, the resulting relationships do not absolve banks and nonbanks of responsibility for complying with federal consumer financial laws.
- Violations of federal consumer financial laws by service providers can result in legal responsibility for both the service provider and the bank or nonbank.

CFPB Bulletin – 2012-03

CFPB Bulletin 2012-03
Date: April 12, 2012
Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. § 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. § 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. §§ 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. § 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." (12 U.S.C. § 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. § 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the supervised bank or nonbank as well as with the supervised service provider.

B. The CFPB's Supervisory Authority Over Service Providers

Title X authorizes the CFPB to examine and obtain reports from supervised banks and nonbanks for compliance with Federal consumer financial law and for other related purposes and also to exercise its enforcement authority when violations of the law are identified. Title X also grants the CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site. [1] The CFPB will exercise the full extent of its supervision authority over supervised service providers, including its authority to examine for compliance with Title X's prohibition on unfair, deceptive, or abusive acts or practices. The CFPB will also exercise its enforcement authority against supervised service providers as appropriate. [2]

C. The CFPB's Expectations

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. The CFPB will apply these expectations consistently, regardless of whether it is a supervised bank or nonbank that has the relationship with a service provider.

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive,

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[1] *See, e.g.*, subsections 1024(c), 1025(d), and 1026(e), and sections 1053 and 1054 of the Dodd-Frank Act, 12 U.S.C. §§ 5514(c), 5515(d), 5516(e), 5563, and 5564.

[2] *See* 12 U.S.C. §§ 5531(a), 5536.

CFPB Bulletin – 2012-03

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

Vendor Management – Marketing of Credit Card Add-on Products

- The CFPB issued a bulletin advising financial institutions on their federal consumer financial law compliance obligations surrounding credit card add-on products. CFPB Bulletin 2012-06, issued July 18, 2012, emphasizes that institutions must take steps to ensure that they market and sell add-on products in a manner that minimizes the potential for statutory and regulatory violations and related consumer harm.
- Examples of violations include failing to adequately disclose important product terms and conditions, enrolling consumers in programs without consent to do so, billing for services not performed and generally using misleading marketing and sales practices.

Vendor Management – Third-Party Risk Management Principles

- To address their concerns, regulators have issued guidance to financial institutions providing a framework for managing risks related to third-party business relationships. The guidance provides general risk management principles which are expected to be adapted to the individual risk profile of the bank or nonbank.
- In general, the board of directors and senior management retain accountability and, therefore, must scale these principles according to the magnitude and criticality of the third-party provided product or services.
- In addition, the CFPB has determined that financial institutions under its supervision may be held responsible for the actions of the companies with which they contract; and expects that supervised financial institutions have an effective process for managing the risks of service provider relationships.
- Financial institutions need to ensure that business arrangements with service providers do not present unwarranted risks to consumers.

Vendor Management – Risk Management

	Risk Assessment	Third-Party Due Diligence	Contracting	Continued Oversight
Key activities in a vendor risk management program	• Develop a risk assessment framework that stratifies vendors based on their risk to the organization and consistency with overall strategic objectives	• Prior to on-boarding a new vendor, conduct a thorough assessment of the vendor's capability to deliver the services expected in line with the organization's Expectations	• Execute contracts that minimize the risk of nonperformance and confirm the appropriate scope of those contracts	• Review vendors on a regular basis to reconfirm the organization's understanding of the risk the vendor poses and the performance management process
Consumer protection focus	• Identification of consumer-facing and consumer- impacting vendors • Clear articulation of applicable laws to each product, and at each stage of the product life cycle • Mapping of vendors and laws and regulations that are applicable to them	• Assessing vendors prior to them commencing work to determine whether they increase the risk of consumer harm factoring in the inherent risk of consumer harm given the products and services that will be outsourced and the control environment currently in place	• Incorporating terms into the contract to allow the client to assess the control environment in place at the vendor on an ongoing Basis	• Identification of regulatory changes and incorporation of those into the assessment questions used to review a vendor • Obtaining information from the vendor to allow the client to assess the control environment as part of the assessment

Vendor Management – Enforcement Actions

- **Capital One Bank (U.S.A.), N.A. –**
- The CFPB announced its first public enforcement action on July 18, 2012, after it found that Capital One Bank (U.S.A.), N.A.'s vendors utilized deceptive marketing tactics that pressured and misled consumers into paying for add-on products when they activated their credit cards. Consumers with low credit scores or credit limits were directed to a third-party call center and offered add-ons through high-pressure marketing tactics. Some of the products included payment protection, credit monitoring, access to credit education specialists and daily monitoring and notification of credit accounts. During the marketing of these add-ons, consumers were misled about their benefits, deceived about their nature, misled about eligibility, misinformed about costs and enrolled without giving consent. In response, the CFPB ordered Capital One to end its deceptive marketing practices, pay approximately $140 million to an estimated two million consumers and pay a $25 million civil penalty.

Vendor Management – Enforcement Actions

- **Capital One Bank (U.S.A.), N.A. –**
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Vendor Management – Enforcement Actions

- **Discover Bank –**
- On September 24, 2012, the CFPB announced that it was taking a joint enforcement action along with the FDIC against Discover Bank. As in the Capital One enforcement action, the FDIC and CFPB found that deceptive telemarketing and sales tactics were used to mislead consumers into paying for credit card add-on products. The deceptive tactics included telemarketing scripts that contained language likely to mislead consumers about whether they were actually purchasing add-ons and the downplaying of products' key terms by sales representatives who spoke rapidly when disclosing these terms. Based on these deceptive practices, the regulators found that consumers were (i) misled about the fact that there was a charge for products, (ii) misled about whether they had purchased the products, (iii) enrolled in programs without their consent and (iv) not provided with material information about the eligibility requirements for certain benefits. Pursuant to its enforcement powers, the CFPB entered into a consent order with Discover under which Discover agreed to institute changes to its telemarketing practices, pay $200 million in restitution to more than 3.5 million consumers who were charged for add-on products and pay a combined $14 million civil penalty to the U.S. Treasury and the CFPB's civil penalty fund.

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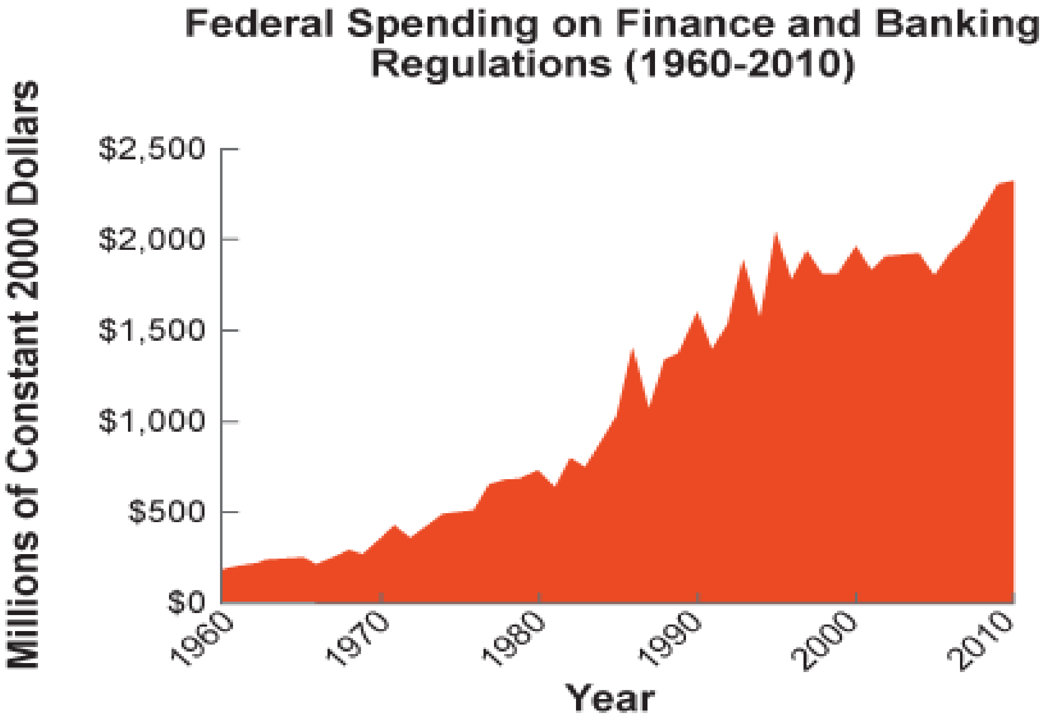
Vendor Management – Enforcement Actions

- **American Express** –
- The CFPB completed a third enforcement action on October 1, 2012, when it ordered AMEX to pay $85 million to consumers who were harmed by what if found to be illegal credit card practices. This action resulted from a multi-part federal investigation after a routine examination of an American Express subsidiary found violations of consumer protection laws. The CFPB also found that many of the same violations occurred at other American Express subsidiary entities. The violations spanned almost a decade, from 2003 to 2012, and occurred at every stage of the consumer experience. American Express subsidiaries deceived consumers on the terms of signup bonuses, charged unlawful late fees, unlawfully discriminated against new applicants on the basis of age, failed to report consumer disputes to consumer reporting agencies and misled consumers about debt collection. As a result of its continuing, comprehensive violations of consumer protection laws, American Express agreed to end its illegal credit card practices, repay an estimated $85 million to approximately 250,000 consumers and pay a civil monetary penalty of $27.5 million.

Vendor Management – Enforcement Actions

- **First Bank of Delaware –**
- On November 19, 2012, the FDIC and the Financial Crimes Enforcement Network announced the assessment of civil money penalties against First Bank of Delaware (FBOD) for violations of the Bank Secrecy Act (BSA) and anti-money laundering (AML) laws and regulations. FBOD also settled civil claims brought by the Department of Justice. All penalties were satisfied by a $15 million payment to the U.S. Treasury and a $500,000 account established to pay consumer claims arising from FBOD's misconduct. The penalties stemmed from FBOD's failure to implement an effective BSA/AML compliance program. Specifically, the bank failed to adequately oversee third-party payment processor relationships and related products and services. As a result, FBOD originated withdrawal transactions on behalf of fraudulent merchants and caused money to be taken from the bank accounts of consumers while it knew or should have known that authorizations for the withdrawals had been obtained by fraud.

Dodd-Frank Wall Street Reform and Consumer Protection Act



Source: Weidenbaum Center, Washington University and Mercatus Center, George Mason University. Author's calculations derived from appendices to the budget of the United States and related documents, various fiscal years.

Expect increase in regulatory fees and spending.

Environmental Bankers Association