



Hold On To Your Hats!

# Surviving the Rollercoaster of Regulatory Change

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**A**S COMPLIANCE OFFICERS, we have long joked about all the hats that we must wear. Recently the “regulatory change management” hat has taken on more prominence. We all recognize that our industry is in a time of unprecedented regulatory change. The last two years have been a challenging ride, with ups and downs. With the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the next several years are expected to put more excitement in our compliance rollercoaster ride with compressed time frames, new and revised rules, required Congressional studies, and new approaches to examinations. There may be times when we feel like we are in freefall. But putting the right regulatory change framework in place will lay the rails to stay on track to ensure successful compliance.

There are many effective approaches to managing regulatory change. Whether your financial institution manages the process within a centralized enterprise compliance function, in a decentralized line-of-business (LOB) manner, or by using some combination of the two, you should include some common components in your program to ensure success. Following are the four critical elements:

- **Identification**—becoming aware of relevant new and changed rules, regulations, and guidance.
- **Impact analysis**—assessing regulatory changes and determining how they will impact each line of business.
  - **Implementation**—managing projects or tasks to effectively design controls to ensure compliance with the regulatory changes.
  - **Integration**—ensuring immediate compliance testing and incorporating it into ongoing processes.

#### **Identification of Regulatory Developments: the Curves Keep Coming**

Staying abreast of regulatory changes is critical to an effective regulatory change management program. You will be well served to think through a strategy of exactly what you want to capture. Give consideration to the types of publications, which agencies, and what areas

(e.g., consumer protection, information technology, safety and soundness, trust, etc.) should be included.

No doubt you will want to capture final rules! But are you also interested in summarizing proposed rules, interagency guidance, international rulings, examination procedure updates, and agency-specific transmittals? Will you track safety and soundness issuances, or just consumer protection? A likely reality is that there will be so many changes and updates coming so quickly that many a financial institution will have to strategize about the approach that will best meet its needs with a reasonable amount of resources that the bank can devote to the process. Perhaps it isn't feasible to document all proposed rules in the same amount of detail as final rules, but is it feasible to include at least a notation of the proposal, its comment date deadline, and a link? You might want to consider maintaining a running log of all issuances with a defined minimum amount of detail included.

You can easily use an Excel spreadsheet for this purpose (refer to Exhibit 1). In this example, the “category” column denotes the affected line of business. “General banking” or “S&S” can be used to capture issuances that have more of a safety and soundness impact versus consumer protection. The “status” column is used to denote the type of issuance by category (e.g., final rule, proposed rule, agency guidance, or examination procedure update). By including a link to the source document in the “summary” column, you ensure that anyone on your distribution list can easily get more detail when he or she needs it.

Within the same spreadsheet, it is helpful to include a tab with the final rules described in more detail. In addition to a summary and link, you may also want to maintain a status column, as well as risk indicators for the impact. This type

## EXHIBIT 1: Summary of Proposed Rules as of Month, Day, Year

Count	Material? Y or N	Category	Subject & Description	Summary	Important Dates	Impacted LOBs/ Areas/ Products
1	Y	Consumer Protection	Reg. Z (Truth in Lending Act): Proposed rules to protect credit card users from costly practices	The FRB proposed a rule amending Reg. Z (Truth in Lending) to protect credit card users from unreasonable late payment and other penalty fees and to require credit card issuers to reconsider increases in interest rates. Some of the provisions: prohibiting credit card issuers from charging penalty fees, late payment fees, and fees for exceeding the credit limit that exceed the dollar amount associated with the consumer's violation of the account terms; banning inactivity fees; preventing issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms; requiring credit card issuers to inform consumers of the reasons for increases in rates; require issuers that have increased rates since January 1, 2009, to evaluate whether the reasons for the increase have changed and, if appropriate, to reduce the rate.	Comment deadline: 4/14/10	BC
2	Y	Consumer Protection	Reg. E: Final interim rule published for gift card disclosures	The Federal Reserve Board announced its approval of an interim final rule implementing recent legislation modifying the effective date of certain disclosure requirements applicable to gift cards under the Credit Card Accountability Responsibility and Disclosure Act of 2009. For gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010, the legislation and interim final rule delay the August 22, 2010, effective date of these disclosures until January 31, 2011, provided that several conditions are met. The interim final rule is effective August 22, 2010. The board is, however, seeking public comment on the interim final rule.	9/16/2010	BC, CL
3	Y	Consumer Protection	Reg. Z (open-end home equity lines of credit)	The Fed has proposed amendments that will affect the origination and servicing of HELOCs by revising the disclosures required at application; require additional disclosures within three business days after application with additional account-specific details of the loan plan; require changes to periodic statements including additional account-specific details; and new timing requirements for change in terms notices. The amendment also provides additional guidance and restrictions related to HELOC account suspension/reinstatement practices.	Comments were due by 12/23/10.	ML, CL, Cml, Ops
			FRB 100816.5	Board Notice Requesting Comments		
4	Y	Consumer Protection	Regulatory reform bill "Restoring American Financial Stability Act of 2010" (H.R. 4173) Specific requirements are listed separately below:	This sweeping legislation responds to the national financial crisis and will have broad impact on traditional banks and Wall Street banks. It will create a new regulatory agency focused exclusively on consumer protection and expand the scope of regulatory authority. The specific sections that focus on consumer protections are listed separately below.	This bill was signed into law July 21, 2010.	All LOBs
5	Y	Consumer Protection	Regulatory reform bill HMDA amendments Section 1092	Expands HMDA reporting requirements to the following additional data: credit score, parcel number, universal loan identifier, unique identifier as identified by the SAFE Act, channel (retail, broker, etc.), term in months, presence of contractual terms other than fully amortized, introductory APR period in months, value of property, term in months for any prepayment penalty, total points and fees, age.	TBD	ML, CL, Cml, PB
6	Y	Consumer Protection	Regulatory Reform Bill Small Business Loan Data Reporting Section 1072	New requirements for reporting loan application data on small business loans; similar to HMDA requirements. The additional data includes whether the business is woman- or minority-owned, the amount of credit applied for, the type of action taken, census tract location of the business, gross annual revenue of the business, and the race and ethnicity of the principal owner.	TBD	Cml, BC, PB

### Legend

BC = Bankcard  
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## EXHIBIT 2: Impact Analysis

Impact Analysis Discussion Item	Responsibility
Summarize the regulatory requirement ■ Include a link to the source document for easy access to more detail. ■ Separately detail the effective date for quick reference	Enterprise compliance
Identify affected line(s) of business.	LOB compliance
Describe the impact including advantages and disadvantages to the bank.	LOB
Clearly articulate inherent risk and controls that exist or need to be implemented.	LOB and LOB compliance
Identify the level of impact (e.g., system enhancements, disclosure revisions, procedure updates, and training).	LOB and LOB compliance
Identify needed resources	LOG, LOB compliance, and IT
Identify next steps (including roles and responsibilities)	Enterprise compliance

of reporting is more fully described later. After a rule has been implemented, move it to a third tab to capture closed projects.

### Impact Analysis: Point of No Return

The final rule has been published. A thousand things go through your head: What is required from a regulatory perspective? What lines of business are affected? Does the final rule create a substantive change or simply a tweaking of procedures? Will a formal project plan be required? How much time until the effective date?

Conducting an impact analysis is critical for all final rules. It may also be helpful to apply the process to substantive proposed rules and significant regulatory guidance issuances.

It is helpful to establish a memo template to assess and communicate business impact. Given that the development of the document will be a collaborative effort, define roles and responsibilities up front. Exhibit 2 contains an example of the topics you should include in the impact analysis, as well as a possible division of tasks between groups.

As each area works through the business impact phase, it is important to be aware of the industry's current experiences and struggles. Insight can be gained through networking with peers to understand their interpretation and application, watching the news, reading articles, staying abreast of enforcement action activity, and participating in trade organization discussions. Such awareness will help compliance, legal, IT, and LOB management think beyond the strict reading of the regulation at hand and capture context regarding the intent of the change.

It is also recommended that you assign initial risk ratings to various categories to help you gauge risk during implementation. Key categories to consider include the following:

**Regulation risk:** Are the changes material or complex, requiring significant analysis and interpretation and thereby indicating high risk? Are they moderate in complexity, indicating moderate risk? Or, are they relatively straightforward, low-impact changes more indicative of low regulatory risk?

**Line-of-business (LOB) implementation risk:** Is the LOB placed in a high risk category due to the impact from required changes to forms, disclosures, policies/procedures, or training? Is the regulatory change considered low risk due to minimal changes

that will be required? Or is it somewhere in the middle?

**Information technology (IT) risk:** Is IT risk high due to significant programming or system updates? Perhaps IT changes are expected, but the full impact can't yet be quantified. Or, risk could be low with few, if any, IT changes required.

**Time risk:** High risk would indicate that significant concerns exist that the regulatory change will not be (or has not been) implemented by the effective date. Moderate risk recognizes that a significant amount of work remains to be completed to ensure full implementation by the effective date. Low risk signals that all stakeholders are on target for implementation by the effective date with no significant concerns identified.

**Overall risk:** This category is a subjective assessment based upon your estimate of total risk after considering the impact of the other four categories and any mitigating circumstances.

Obviously, you can define more risk categories that may be appropriate for your institution. Using this type of regulatory change risk assessment provides a useful reporting tool for executive management that quickly summarizes the bank's risk position for any given regulation, and also the bank's position, as a whole, in managing all regulatory changes (refer to Exhibit 3: Regulatory Change Dashboard on page 12). As referenced earlier, this dashboard can also be easily used as the "final rules" tab of your regulatory log (discussed in the identification section of this article).

### Implementation: Where the Wheels Hit the Track

It is important to recognize that not every change will require the same degree of formality in implementation. That is to say, not every change will require a full-blown project plan with several levels of oversight and working groups. Using the risk assessment approach discussed in the impact section will help you make appropriate determinations given the risk level of the change. That being said, for each regulatory change, you will still want to maintain a minimum amount of documentation. These records demonstrate a thoughtful analysis of the change implementation and appropriate sign-off that the change was



## EXHIBIT 3: Regulatory Change Dashboard—Summary of Recent and Upcoming Regulatory Changes That Have Been Finalized

Count	Project Manager or lead	Subject & Description	Summary	Important Dates	Impacted LOBs/ Areas/ Products	Risk Impact				
						Reg.	LOB	IT	Time	Overall
1	Jane Doe	Reg. Z: Final rules to protect borrowers from unfair lending practices arising from LO compensation practices	The Federal Reserve Board on Monday announced final rules to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices. The new rules apply to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders. Under the final rule, a loan originator may not receive compensation that is based on the interest rate or other loan terms. The final rule also prohibits a loan originator who receives compensation directly from the consumer from also receiving compensation from the lender or another party. Additionally, the final rule prohibits loan originators from directing or "steering" a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the originator's compensation.	Effective 4/1/11	ML, CL, Cml					
2	John Doe	Regulatory reform bill *Repeal Reg. Q	The prohibition on payments of interest on demand deposit accounts for businesses is repealed, effective one year after the enactment of the act.	Effective: 7/21/11	TM, BB, R					
6	Jane Doe	SAFE Act: Final rule for requirements for registration of mortgage loan originators	The SAFE Act requires residential mortgage loan originators who are employees of agency-regulated institutions to be registered with the Nationwide Mortgage Licensing System and Registry. The act generally prohibits employees of agency-regulated institutions from originating residential mortgage loans unless they register with the registry. The agencies, at a minimum, must ensure that the registry is furnished with information concerning the mortgage loan originator's identity, including fingerprints for submission to the FBI and any other relevant governmental agency for a state and national criminal history background check, and personal history and experience, including authorization for the registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.	Final rule effective: 10/1/10. Registry effective as early as 1/28/11 with another six months to register all MLOs	ML, PB, R, CL					
16	Jane Doe	Reasonable contract or arrangement under Section 408(b)(2): Fee disclosure	The regulation enhances disclosure to plan fiduciaries by requiring that contracts between certain service providers and plans provide for specific and detailed information. The proposal requires that all services furnished to a plan and all compensation, direct and indirect, to be received by the service provider be disclosed in writing. The proposal also requires the disclosure of possible conflicts of interest of the service provider that may affect the performance of plan services.	Effective 7/16/11	IA					

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#### Regulation Risk

- Material and/or complex changes that require significant analysis and interpretation
- Moderate complexity to regulatory changes.
- Straightforward, low-impact changes.

#### LOB Risk

- Significant impact to LOB forms, disclosures, policies, procedures, and/or training. LOB may be slow to respond to significance. Escalation may be necessary.
- Moderate impact to LOB forms, disclosures, policies, procedures, and/or training.
- Minimal impact to LOB forms, disclosures, policies, procedures, and/or training.

#### IT Risk

- Significant IT changes are necessary. Project may not be appropriately prioritized. Project may need to be escalated.
- Moderate IT changes are necessary. Full IT impact may not be known and/or project may not have been prioritized yet.
- Straightforward, low-impact changes.

#### Time Risk

- Significant concerns exist that it will not be (or has not been) implemented by effective date.
- Significant amount of work remains to be completed by ensure full implementation by effective date.
- On target for implementation by effective date with no significant concerns.

#### Overall Risk

- Estimate of total risk after considering the impact of the other four categories (i.e., regulation, LOB, IT, and time) and mitigating factors
- High
  - Moderate
  - Low

successfully implemented.

The impact analysis leads naturally into defining the level of project management (i.e., formal, heavily documented process) or task management (i.e., relying on less-formal coordination with fewer groups involved) that will be required to ensure effective and timely implementation. Regardless of whether you will utilize a formally trained project management office resource for project management definition and workflow or be a one-man or -woman show coordinating the implementation process primarily via e-mail and one-on-one meetings, you should always consider the following elements:

- Who is the executive sponsor and who are the stakeholders? The executive sponsor will lend credibility to the process, while the stakeholders provide the accountability. Stakeholders might include compliance, legal, IT, bank protection, credit, and operational risk.
- What are the roles and responsibilities of the stakeholders? Providing definition early on establishes accountability and decreases confusion regarding required tasks.
- Clearly describe what has to be done and why, including risks of noncompliance.
- Describe any assumptions such as relying on a third-party vendor for “xyz.” Describe any constraints that exist with regard to resources, systems, or vendors. For example, it is known that the current vendor will not be updating systems by the effective date and an internal solution will be needed.
- Describe what success looks like.
- Outline deliverables and milestones to track your progress.
- Establish the communication plan. Will there be weekly status reporting that flows up from working groups to a steering committee? Or will e-mail updates solicited by the task manager be sufficient?
- Define what type of sign-off will be required at each stage. Do members of senior management need to acknowledge that they are aware of the change and have identified the impact to their business? Will sign-off be required for milestones? Will changes require documentation? Who will provide the final sign-off that the change was implemented successfully (e.g., compliance, LOB management, or both)?

Finally, as you move through the implementation phase, you will want to make sure you continue to update the risk ratings on your regulatory change dashboard. It is not likely that the regulation risk will change over time. The inherent risk of the regulation is static. However, with the other categories you may see movement to green as the project approaches final implementation well within established time frames. On the other hand, you could also see a category of risk increase if prioritization within IT or the LOB is not appropriate or needs to be escalated.

### **Integration: Step to the Front of the Line**

Integration involves two parts: immediate testing and ongoing

monitoring. The immediate testing is a bridge between implementation and integration. The implementation process likely included some testing prior to final launch. However, no matter how well you tested it during development, it is critical to test compliance as quickly as possible after the regulatory change has gone live. In all cases, regardless of the significance of the change, the final testing should be documented and acknowledged by a senior manager. This ensures that there is no misunderstanding between groups that something was believed to have been done, but didn't actually get completed.

When you are certain initial compliance has been achieved, consider how ongoing compliance risk will be addressed. As is the case with any testing program, it is important to ensure that the basic elements of roles, responsibilities, frequency, reporting, and escalation are appropriately considered. Will this regulatory change need to be incorporated into the bank's testing/monitoring/quality control program? Will it be incorporated into the compliance department's annual risk assessment? Will internal audit include it as part of its audit plan? What frequency of testing is sufficient? Is there a possibility that additional agency interpretations are likely and will impact earlier decisions? If so, is there a need to maintain continued oversight by a steering committee?

### **Keeping It All in Perspective**

While all regulatory changes may be created equally through the legislative process, the impact on the financial institution and the effort to implement various changes are not always equal. With the number of expected changes coming from the Dodd-Frank Act, it will be important to be strategic in how you balance resources and processes to design the best approach for effective regulatory change management. Spending time on the front end and creating a framework that defines roles and responsibilities around identification, impact analysis, implementation, and integration will help to ensure that your bank does not get bogged down in process over function. ■

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