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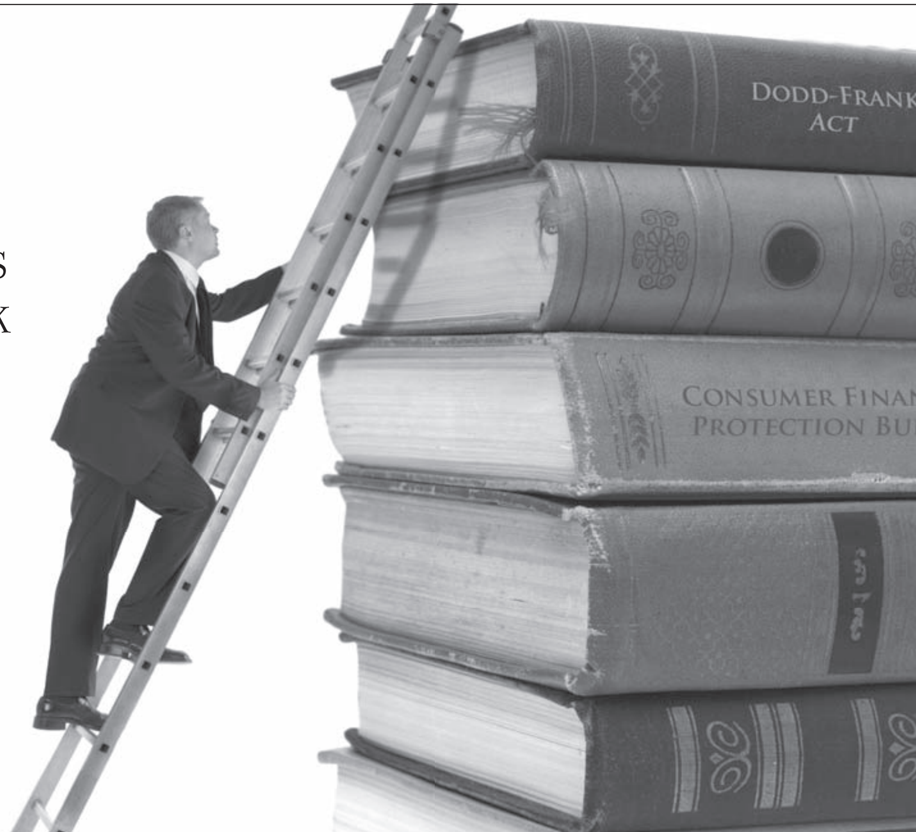
FINANCE REFORM

Dodd-Frank rules



DEREK MORROW | STAFF

Local institutions brace for financial reform's new requirements, deadlines and paperwork

BY SHANNON CLINTON | CONTRIBUTOR

The latest, shortest version of the Dodd-Frank Wall Street Reform and Consumer Protection Act is already 2-1/2 inches thick or 680 pages – and counting. That's since President Barack Obama signed the act into law in July 2010.

By the time the pen goes down on writing the rules, Paul Compton, partner with Bradley Arant Boult Cummings LLP, estimated the act could easily encompass another 5,000 pages.

The Dodd-Frank act represents the most sweeping financial reform passed in the U.S. since the Great Depression. The act's rules are expected to affect nearly every aspect of the nation's financial services industry.

Compton said the rules are coming with a grab bag of dates, some effective immediately, others this summer and some may have extensions. They will address multiple areas of finance related to the financial debacle of the late 2000s recession or Great Recession.

The act was passed " ... to revamp the regulation of 'too big to fail' institutions and to address perceived abuses in mortgage origination and sale activity," he said.

The biggest impact will come in mortgage originations, in underwriting and required documentation, he said. Banks of certain asset sizes will also be under the direct and broad examination authority of the newly formed Consumer Financial Protection Bureau.

The CFPB, a new division of the Federal Reserve, is considered the centerpiece of the financial rules overhaul. The bureau is charged with writing and enforcing new rules that target abusive business practices such as mortgage lending and credit card issuance.

"I actually think the notion that a lot of unregulated entities are now going to be regulated is welcomed," Compton said. "Commercial banks, for a long time, I think they felt they were on an unlevel playing field."

Of the rules released to date, some address how bank deposit insurance premiums will be calculated, he said. Larger banks will likely pay higher premiums.

Paul Rogers, area president of Aliant Bank, said a major change will be in capital standards for banks. Those affected will include bank holding companies and large non-bank financial companies that must adhere to similar capital and leverage rules as banks, which should provide more stable forms of capital. The act also should help banks build reserves to better weather difficult financial times.

"Our take on that is it certainly is important to have a safe lending environment and protect the financial system," Rogers said.

However, he's also concerned about the additional cost expected with compliance.

Changes also could include system changes and upgrades, revised agreements and documents, more staffing and training. But Rogers said the goal is to implement them cost-effectively to avoid negatively impacting customers.

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Duane Donner, managing partner with Founders Investment Banking LLC, is taking a wait-and-see attitude on potential impact since many of the rules are still being drafted, but he does expect his clients to be affected.

Donner said there are sure to be new licensing requirements for private equity groups and others he assists in getting capital or preparing to sell their company.

John Scott Jr., partner with Starnes Davis Florie LLP, said the act sets the stage for establishing rules for banks and depositing institutions, and even car dealerships that provide on-site financing and will be treated as lenders. Other examples include businesses selling or issuing any stored value cards like gift cards, as well as student or payday loan lenders, entities providing consumer credit reports, as well as various residential mortgage lenders, brokers and service providers.

"Of course, it remains to be seen what the specific requirements or regulations for these various businesses and activities will be until the regulations are issued by the CFPB," Scott said.

What's of more concern is how much more time-consuming paperwork will be created with additional disclosure requirements, said Scott, who represents small banks, mortgage brokers and lenders.

While he said there were some abusive practices in credit services, the law will likely create more work for all instead of the troubled few.

"You end up creating more cost for the good businesses, the businesses that operated fully and fairly in compliance with the law," Scott said.

Before Dodd-Frank reform, a "shadow banking system" existed with hedge funds and investment banks not subject to governmental scrutiny, said Ken Simon, securities enforcement attorney with Christian & Small LLP. Simon represents clients on enforcement matters with the U.S. Securities Exchange Commission and self-regulatory organizations like the Financial Industry Regulatory Authority.

With a goal of more transparency and less risk, the new CFPB will ensure that consumers are adequately protected when considering financial products for sale or investment, he said, by giving existing entities like the Securities and Exchange Commission and the Commodity Futures Trading Commission more authority to require certain financial institutions like investment banks to provide more information about their operations.

The act also created the Financial Stability Oversight Council to monitor financial institutions and the financial system, Simon said, and it can issue rules and regulations to ensure risks to the economy are dealt with appropriately. For instance, the council can order large financial institutions to divest themselves of investments and securities that are seen as too risky.

The act will also end big bailouts of financial institutions, he said, as the system will safeguard against them not getting into massive financial trouble in the first place.

According to Simon, "The whole 'too big to fail' is being tossed out on its head."

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