



A Balancing Act With Compliance Regulation

Compliance has been a top concern for mortgage professionals for the past several years. From implementation and technological difficulties to being left in a state of uncertainty—how can the industry keep focus on the core mission of serving the housing market and making the American Dream more accessible?

By Nicole Casperson

As 2018 sets in motion, government regulatory requirements are completely changing the pace and manner in which the mortgage industry does business. Mortgage professionals attempt to develop the best strategies and tactics to comply with the regulatory environment, but apprehensions come to mind.

Implementing the right plans to properly tackle specific regulations might not be what's difficult, but rather the sheer volume of regulations, quick change of pace, and ambiguity are what creates challenges.

For example, in a call center environment a loan originator is required to: Read a recording script based on state call-recording laws; ask for permission to pull credit by the Fair Credit Reporting Act (FCRA); properly disclose to a consumer why they're asking for their race, ethnicity, and gender by the Home Mortgage Disclosure Act (HMDA); and adequately disclose the terms of hundreds of products under the unfair, deceptive, or abusive acts and practices (UDAAP) regulations enacted under the Dodd-Frank

Act of 2010.

These regulatory requirements must be executed perfectly at a time when the reality of a consumer filing a complaint for missing even one of these requirements has become part of the job. Given these increasing pressures, mortgage professionals are justifiably cautious of compliance hurdles. Should the industry be concerned the focus over compliance is getting in the way of serving the consumer?

In the Name of Compliance

The scope of compliance laws and regulations facing companies has been increasing over the last 15 to 20 years. Since the 2008 financial crisis, in particular, the industry has seen greatly expanded regulatory oversight, including requirements emerging from the Dodd-Frank Act as well as the Consumer Financial Protection Bureau (CFPB).

In the past, a typical compliance staff was made up of generalists who managed compliance with all legal and regulatory requirements, according to

Carol Wambeke, SVP and Chief Compliance Officer for Freddie Mac. With the proliferation of new legal obligations, compliance professionals have had to develop specific areas of compliance expertise, such as consumer protection, information, privacy, and anti-money laundering.

As a result, following the Great Recession, the availability of funds from government and private investors also reduced dramatically. According to **Peter Macdonald**, General Counsel, loanDepot, this also greatly limited the ability of lenders to extend loans to borrowers, even if they might have been creditworthy.

"To that end, mortgage professionals have an ever-present fear of being regulated out of business," said Macdonald. "Loans are harder to make today than they were 10 years ago. With every new regulation that is implemented, that difficulty only increases."

Part of that is by design. No one wants to go back to the pre-2007 lending practices, which contributed to the financial meltdown by putting consumers into homes they couldn't afford.

The challenge is finding the

right balance of compliance regulation to ensure that bad actors don't lead the industry down the path that led to the Great Recession, while still allowing mortgage professionals to lend.

While mortgage professionals strive to ensure their production staff follows all laws and regulations, in many ways they face a daunting task in striving to adhere to so much in the name of compliance—they must be mortgage and compliance professionals at the same time.

"As the volume and scope of compliance requirements have grown, compliance professionals have had to specialize in specific areas," said Wambeke.

In addition to the increasing volume and scope of regulatory requirements, the pace of change also is a challenge, said **Karen Sabatowski**, EVP, Chief Compliance Officer of Flagstar Bank. As things come so fast and furious, it's challenging to have adequate time and resources to implement changes required by updated or new regulations.

New rules require extensive review of processes and products in order to implement changes





effectively. It takes significant project management, funding, and human capital commitment from all stakeholders.

“To minimize the impact, the entire institution must buy into the idea of effective project management that runs from well before until well after an effective date,” said Sabatowski. “Resource allocation given competing priorities must always be considered.”

Cautious of Hurdles

Congress enacted the Home Mortgage Disclosure Act (HMDA) in 1975 and the Federal Reserve Board’s Regulation C implemented it. On July 21, 2011, the rule-writing authority of Regulation C was transferred to the CFPB.

According to the CFPB, HMDA data is important because it helps show whether lenders are serving the housing needs of their communities, as they give public officials information that helps them make decisions and policies, and they shed light on lending patterns that could be discriminatory.

The HMDA is the big “new” compliance challenge that professionals in the mortgage industry are struggling with—even though the Office of the Comptroller of the Currency (OCC) and the CFPB have announced they won’t enforce penalties for data errors in 2018 and 2019, and that they intend to open rulemaking to reassess the regulations as a whole.

Michael Cremata, Senior Counsel and Director of Compliance at ClosingCorp, said lenders are still required to collect and report HMDA data as of Jan. 1, 2018. And, if material data errors are discovered, lenders may be required to resubmit.

“So, it’s not as if the CFPB and OCC have done away with HMDA altogether,” said Cremata. “The stakes may not be as high for noncompliance, and perhaps that’s allowed lenders to sleep a bit easier at night, but the requirements themselves have not changed. The operational challenge presented by HMDA is as great as ever.”

Richard Horn of Richard Horn Legal, PLLC is a former CFPB Senior Counsel and Special Advisor who led the rule integrating the mortgage disclosures under the Truth in Lending Act and the Real Estate Settlement Procedures Act into the TILA-RESPA integrated disclosures.

According to Horn, despite the CFPB’s recent announcement, “if lenders take their foot off the gas at this point, they might not identify issues until it’s very difficult to correct the data. And the 2018 data, violations and all, will not disap-

Board Member, Treliant, LLC.

The filing of the expanded HMDA data and its expected public release will become a resource for community organizations and consumer watchdog groups.

Additionally, these challenges provide further complexity for originating loans. Concerns about following all regulations correctly distract a mortgage professional from purely helping their consumers and their specific needs—paralyzing a mortgage professional from doing intuitively the best thing at the moment, for fear of

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—Carol Wambeke, SVP and Chief Compliance Officer, Freddie Mac

pear after it’s reported, in whatever form the CFPB ends up requiring.”

All that being said, the CFPB’s recent announcement indicated that it plans to look at revising the HMDA rule, including the scope and new discretionary data points. This uncertainty does complicate matters.

“Lenders may want to consider planning to comment on any future proposal, considering that the bureau’s new leadership is likely to be more understanding regarding compliance difficulties and burdens than its previous leadership,” Horn advised.

The fair lending implications associated with the new HMDA rules are enormous, according to **Edward Kramer**, Senior Advisory

compliance implications.

“These regulations, although implemented with the consumer in mind, can trigger consumer suspicions and make them turned off on the mortgage application experience as a whole,” said Macdonald. “Mortgage professionals spend an inordinate amount of their time with consumers trying to overcome these suspicions instead of trying to determine how best to suit consumers’ needs.”

Don’t Look Down

The other topic among regulatory concerns is the CFPB’s TILA/RESPA Integrated Disclosure (TRID), which is designed to provide more clarity

to consumers who have traditionally been underwhelmed with the process of closing a mortgage loan—and the lack of regulatory clarity on TRID 2.0 is still creating challenges.

John Vong, President of ComplianceEase, shared his point of view when it comes to implementing the TRID rule. “While TRID 2.0 went into effect last year, compliance isn’t mandatory until Oct. 1, 2018. This unique situation can raise questions as to what approach lenders, and their compliance partners, should take,” he said.

In addition, **Donna Clayton**, SVP & Chief Compliance Officer at LenderLive, said the lack of regulatory clarity on TRID 2.0 presents the industry with the potential for the continuation of numerous interpretations and the potential for a federal or state regulator to cite findings as a TRID violation.

Clayton expressed four main issues for mortgage professionals working to comply with these regulations—title insurance, “the black hole,” sharing of the closing disclosure (CD), and clarification of “good faith” efforts.

“The revised rule did not address the odd method of disclosing split title insurance or procedures to avoid liability,” said Clayton. “The CFPB said it would not address or change the regulatory text or commentary regarding the simultaneous issuance of title insurance.”

Therefore, the loan estimate must disclose the full amount, but does not need to disclose the owner’s title insurance premium (OTIP) and lender’s title premium (LTP) at the discounted amount, according to Clayton. As a result, there is still confusion as to how the LTP must be disclosed.

Second, TRID 2.0 did not initially address the changes in fees between delivery and closing (a.k.a. “the black hole”). However, shortly after the 2017 rule was published, the CFPB issued a separate proposal to address “the black hole.” It removes the current four-day business limit before closing to reset tolerances with



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both the initial and corrected CD.

The third is that TRID 2.0 did not expressly authorize sharing of CDs between seller and borrower. They simply stated that if the method of sharing complies with the requirements under the Gramm-Leach-Bliley Act (GLBA) and Regulation P, as well as other state and federal laws, then it is in compliance with the rule. Many lenders have elected not to prepare the seller's CD because of potential liability and expect the settlement agent to prepare it.

Finally, the CFPB remained silent on extending the period in which compliance with the original TRID rule is satisfied by "good faith" efforts to comply. What this translates to is future examinations could mandate "hard core" compliance with requirements of the original rule.

Adapt—Or Fall Off

Given the current state of regulatory uncertainty, implementing regulatory compliance is certainly a task. According to Kramer, in this state, it is vital for companies to continue their current compliance programs since in most cases the changes they implemented over the past few years are valuable from a compliance, risk and business perspective.

"For many, however, this may be a hard decision, but cutting back now when in three years the regulatory environment may swing back in a different direction could be a costly decision," said Kramer.

Maintaining perspective and focus is also at the forefront for mortgage professionals implementing the best strategies within their companies. "In the compliance world, we tend to be very reactionary, sort of always jumping from one major initiative to another," said Cremata. "One year, it's data privacy. Then, it's TRID. For the last couple years, it's been HMDA."

And, of course, to some extent, this can't be helped. Regulators keep passing new regulations, and often mortgage professionals have no choice but to focus virtually all of their efforts on solving for

those regulations if they want to be remotely compliant by the time they become effective.

"But I think that, in constantly jumping from fire to fire, we have a tendency to sometimes lose perspective," said Cremata. "And we forget that, when we solved for those earlier initiatives, we didn't always come up with perfect solutions."

Although the industry is constantly being forced to shift

originating loans. The best tool for the job of auditing for regulatory compliance is an independent automated regulatory compliance platform. According to Vong, the hardest part for companies implementing regulatory compliance may be making that connection.

Genevieve Walser-Jolly, Attorney, Severson & Werson, PC, called the cost to properly implement regulatory compliance an investment. As an attorney

front end. Factoring this into their business model versus playing catch-up down the road can save a lender exponentially."

Finding Your Footing

Most business people are so focused on their day-to-day operations that they don't have a lot of time to think about regulatory changes coming down the pike. However, Wambeke urges professionals to pay attention as their compliance department serves as the early warning system. "It's our job to be sure the businesses build compliance into their processes and dedicate sufficient resources to evaluating and managing their ongoing compliance risks," Wambeke said. "It's important to create a culture that embraces change because change is constant—and it isn't limited to regulatory change. We've got to keep up with the industry and be prepared for disruption."

Regulatory compliance is a way of life in the mortgage industry, and ultimately, in order to best serve the consumer and provide more opportunities for the American Dream of homeownership across the nation, it is vital for service providers to continue to help the industry address the uncertain regulatory environment to the best of their abilities and be ready to adjust to serve the industry with whatever comes next.

"The pace of change may slow down from administration to administration, but it always comes back," said Macdonald. "Successful organizations are those that look to regulatory compliance as an opportunity, not a burden."

Regulatory changes provide an opportunity for mortgage companies to re-examine their mortgage origination processes. Those organizations that approach regulatory compliance with this attitude will find gains in all facets of their business every time they implement a new regulatory change.

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its primary focus to the "next big thing," it is important to still always be thinking about what can be done to improve all aspects of the compliance workflow.

Implementing any new regulation requires a significant amount of cost, time, and resources. Lenders may be inclined to think that one system, such as their loan origination system (LOS) or document generation system, is sufficient for regulatory compliance auditing in order to trim some of these costs.

However, the honest answer is that these providers, as well as lenders, are in the business of

who has vast experience handling cases for lenders and servicers struggling in this sector, she suggests that one of the best things reverse mortgage lenders can do is focus on their advertising.

"It is far more cost efficient to evaluate advertisements upfront. Reverse mortgage lenders need to be aware of both state and federal laws. They should also strive to comply with industry best practices. These steps give lenders the best shot at avoiding enforcement actions by regulators. Walser-Jolly said. "It's an investment those companies should be aware of and be willing to make on the



the lines of business is a significant challenge,” said **Kevin Brungardt**, CEO RoundPoint Mortgage. “To accomplish this, you need the right tone from the leadership of the organization, the right people, and the right processes.”

Utilizing technology is also a fundamental way for companies to constantly adapt. In late 2016, the CFPB warned that technologies used in the industry were antiquated and contributed to many of the existing issues, according to **Jacqueline Comeau**, EVP, Compliance & Enterprise, Firm Solutions.

“The CFPB echoed their original concerns again in 2018. To add to the complexity of this issue, we have not seen a reduction in legal and regulatory activity,” said Comeau. “Innovative technology solutions are required in the industry for both servicers and law firms to remain compliant and competitive in today’s landscape.”

The vast majority of mortgage companies rely on an off-the-shelf loan origination system to take and fulfill their mortgage applications. Macdonald believes these off-the-shelf programs are great at achieving minimum compliance requirements, but should mortgage professionals really settle for minimum compliance?

To make regulatory compliance easy and seamless, technology resources are needed. As Steve Jobs once said, “simple can be harder than complex.” It is up to the professionals to make regulatory compliance simple—that is extremely difficult to do without customized or proprietary technology.

Technology response needs to be nimble, agile and flexible. This requires ensuring that both lender and technology providers have a mutual understanding of the critical core components needed and that the providers have the capability to develop scalable tools and workflow processes.

Companies beginning their own internal monitoring as early as possible will provide lenders the opportunity to see if there are any signs of disparate treatment of

protected classes.

“This will provide the opportunity to make the necessary corrections affecting the consumer,” said Kramer. “If the institution is unable to build its own decisions and pricing regression models, it should consider outside vendors for help.”

Sara Millard, General Counsel and EVP at Arch MI, advised that when working with a third-party vendor, it is all about balance and finding the right standards.

“There is currently a void of industry standards as it relates to third-party vendor management that needs to be filled,” Millard said. “That standard must not be static, since the risks are not static, but should still drive more uniformity than currently exists. Uniformity will allow companies to streamline their processes and then maybe spend fewer internal resources having to deal with the lack of uniformity.”

Companies’ operation expenses become a part of the insurance premiums that they then charge—creating real costs that will rise, and that’s true with all compliance costs. Ultimately the costs have to be absorbed somewhere, and that tends to be passed on to the consumer.

“I think the key is balance,” said Millard. “So that you can meet all of your priorities, commercial and regulatory included. And in order to achieve that balance you have to monitor, track for new regulations and try to get as long of a lead time as possible to absorb any potential operational impacts, in order to comply with whatever new requirement comes down the pike.” **M**



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