COMMENTARY

The CFPB and an End to 'Unwarranted Regulatory Burdens'?

By Clinton R. Rockwell, Esq. and Jonathan W. Cannon, Esq.
BuckleySandler LLP

On July 21, 2011, the Consumer Financial Protection Bureau officially became the regulator of record for a majority of institutions in the consumer financial services industry.

Much has been made of the CFPB's sweeping, unprecedented powers to protect consumers from "unfair, deceptive, or abusive" acts and practices.

Many in the industry fear that, under the CFPB, the pendulum may swing too far in the direction of consumer protection, thus depriving banks and other financial institutions of the ability to remain competitive.

But the CFPB has another important task that can serve to aid financial institutions by counterbalancing consumer-protection activity. According to the Dodd-Frank Act, the CFPB is charged with reducing "unwarranted regulatory burdens" by identifying and addressing "outdated, unnecessary, or unduly burdensome regulations."

> The CFPB represents an unprecedented opportunity for regulators to end their turf wars and provide the lending industry with some much-needed clarity

Thus, in addition to providing a consumer champion in the federal government, the CFPB represents an unprecedented opportunity for regulators to end their turf wars and provide the lending industry with some much-needed clarity, consistency, and cohesion in the supervision and regulation of the consumer-credit industry.

What kind of regulatory inconsistency has the industry faced as a result of the hodgepodge of federal regulators who have not always been able to work together?

For example, the term "application" means different things under the Real Estate Settlement Procedures Act (RESPA), the Equal Credit Opportunity Act (ECOA), the Truth in Lending Act (TILA), and the Home Mortgage Disclosure Act (HMDA). Thus the receipt of a certain amount of information from a consumer may trigger obligations under one statutory scheme but not another.

The term "loan originator" means different things under RESPA, TILA and the SAFE Act, meaning that an employee may act as a loan originator for one purpose (such as licensing) but not for another (such as loan originator compensation restrictions).

While RESPA permits essentially unlimited reductions in fees and costs to the consumer, TILA's loan originator compensation rules limit the ability to provide certain discounts to consumers, even if in the consumers' best interests.

This potential reduction in "unwarranted regulatory burdens" does not mean, of course, that regulatory burdens will magically be eased in the coming months.

The Dodd-Frank Act calls for dozens of regulations and interpretations to be written, and it will take time, skill, and patience to streamline the regulatory burden. But the CFPB's structure invites a much broader and holistic view of industry regulation.

While previously, the responsibility for interpreting and implementing particular statutory schemes was balkanized among different federal regulators (e.g., RESPA was under HUD's authority, TILA was under the Federal Reserve Board's authority), the authority for all of laws under the CFPB's jurisdiction will be under one roof.

Further, it appears that, while the CFPB will have subject-matter experts on its staff, the CFPB will not establish separate offices for different statutory schemes. By necessity, nevertheless, the CFPB will likely maintain subject-matter experts.

For instance, the CFPB inherits HUD's authority to determine if a state's laws are compliant with the SAFE Act, and an expert will be required to provide that analysis.

In needing to understand all of the laws applicable to financial institutions — along with all of those laws' redundancies and incompatibilities — the CFPB will have to act like one of the institutions it regulates. Industry legal and compliance experts have struggled for years to implement the myriad of statutes, rules, and interpretations, as promulgated by a wide range of agencies, applicable to the industry.

While we do not expect to see results overnight, we do expect a consistent, cohesive regulatory framework to arise from the CFPB.

Clinton R. Rockwell heads **BuckleySandler LLP's** Los Angeles office and advises a variety of financial services clients, including banks, mortgage companies, secondary market loan purchasers, commercial lenders, and securities broker-dealers, regarding regulatory, licensing, compliance and transactional matters. He can be reached at crockwell@buckleysandler.com.

Jonathan W. Cannon, an associate at **BuckleySandler LLP**, works with financial institutions, financial services companies, mortgage companies, banks, securities broker-dealers, and other financial services providers regarding federal and state regulation. He can be reached at jcannon@buckleysandler.com.