

10 Years On, Dodd-Frank's Compliance Overhaul Here To Stay

By **Al Barbarino**

Law360 (July 14, 2020, 9:33 PM EDT) -- The Dodd-Frank Act's wide-ranging, complex and controversial set of regulations resulted in massive investments into compliance departments, creating a robust regulatory framework that attorneys say will remain ingrained in the financial system despite efforts to roll back the rules.

Upon the 10th anniversary of Dodd-Frank's enactment, attorneys reflected on the law that aimed to reform the segments of the financial sector at the heart of the 2008 crisis, noting that it helped transform bank compliance departments into complex, independent entities infused with new technologies and highly-trained personnel.

"Dodd-Frank was a sea change for compliance departments," said Donald Waack, a partner with Morgan Lewis & Bockius LLP who focuses on financial regulations. "The elevation of compliance as a significant feature of every financial institution has created lasting changes."

Named after its sponsors, former Sen. Christopher J. Dodd, D-Conn., and Rep. Barney Frank, D-Mass., the Dodd-Frank Act was enacted on July 21, 2010. It established the Consumer Financial Protection Bureau and tasked other agencies with writing rules and enforcing the statutes mapped out across the act's original 848 pages, as well as hundreds of pages of subsequent rules and regulations.

Ten years in, financial firms' compliance departments are a far cry from their pre-2010 state, attorneys say.

"What you saw pre-Dodd-Frank was very thinly-staffed compliance groups which shortly after the act's implementation began growing in size and complexity," said Jeffrey Taft, a partner in Mayer Brown LLP's financial services regulatory and enforcement group.

Research conducted last year by the Baker Institute, a public policy think tank based out of Rice University, estimated that banks' total expenses increased by more than \$50 billion per year on average following Dodd-Frank's passage due to salary expenses and additional auditing, consulting and legal costs.

"This single act created more regulations than all other legislation under the Obama administration," wrote Thomas L. Hogan, a fellow in the Baker Institute's Center for Public Finance, noting that the number of banking regulatory restrictions grew from about 29,000 in 2009 to nearly 54,000 in 2016.

Taft and Matthew Bisanz, a senior associate also in Mayer Brown's financial services group, noted that Dodd-Frank required investments in new technologies, automated systems and personnel that were particularly daunting from a compliance perspective in the first three to five years after the act's rollout.

Bisanz recalled an in-house team in 2014 working with a large bank on the implementation of the Volcker Rule, which is considered among the most laborious of the rules for banks and fund managers.

Named after former Federal Reserve Chairman Paul Volcker, the rule prohibited banks from certain investments tied to private equity and hedge funds, restricted certain proprietary trading, and established risk retention requirements including that sponsors retain a 5% ownership interest — or so-called skin in the game — on the securitizations that they offered.

"There were about four lawyers on this team who spent two weeks working around the clock, drafting 60-some Volcker compliance manuals for every different trading desk of the bank," Bisanz said.

He noted that Dodd-Frank encouraged the development of compliance departments that were separate from legal departments.

"It reflected a general perception that the legal department should provide legal advice ... while the compliance department should implement and monitor controls," he said.

But, he added, "One overarching challenge for banks and their compliance departments has been managing the volume, complexity and range of requirements."

As a result, banks have often standardized compliance frameworks, potentially leading them to offer fewer products due to the cost and complexity of executing "one-off" transactions, Bisanz said.

Kari K. Hall, a Buckley LLP partner who counsels financial services firms on regulatory and compliance matters, noted that Dodd-Frank requires in-depth expertise of numerous regulatory changes and the content management systems, or CMS, used to monitor them.

"Compliance people go through a heightened level of training, and that goes back to the CFPB's expectation that they have expert understanding of the CMS program and how it works ... and I think compliance professionals have really embraced that," said Hall, who often works with clients on CFPB compliance.

Hall said her start in retail banking with a midsize regional bank in the late 1990s presented a stark contrast to life after Dodd-Frank.

"We had one compliance person who was focused on retail policies and procedures, and when she needed help, those of us in retail administration would just jump in," she said. "That doesn't happen today."

Dodd-Frank's regulators have also shifted their focus considerably, keeping compliance professionals on their toes, she noted.

For instance, mortgages faced scrutiny early on with regulations such as Dodd Frank's Title XIV, which requires disclosures to borrowers regarding their obligations and risks, Hall said.

Unfair, Deceptive or Abusive Acts or Practices rules were another heavy lift for compliance departments, she added. Policing these rules called for checks and balances to prevent a range of consumer lending and mortgage-related abuses thought to have played a role in the financial crisis.

"As we roll forward, we have seen changes to the regulations as things get normalized in one area and the bureau turns its attention to the next area," Hall said. "You really need that deep level of understanding of the laws and regulations and how they pertain to your organization."

Dodd-Frank has affected "nearly every segment of the financial services industry, but in different ways and degrees," Bisanz said.

For example, he said, derivatives market participants now have to contend with Title VII, which implemented a comprehensive regulatory framework for the swaps market, while consumer lenders now operate under the watchful eye of the CFPB.

Critics — including President Donald Trump, who in 2017 said he planned to do a "big number" on the act — have characterized Dodd-Frank as overly complex and burdensome.

Concerns persist that some of the rules have hurt smaller firms. The Baker Institute study showed that "smaller banks were disproportionately affected by larger increases in salary and non-salary expenses."

This has led to efforts to chip away at the rules for smaller institutions. For instance, the Economic Growth, Regulatory Relief and Consumer Protection Act, signed by Trump in May 2018 and finalized last year, largely scrapped the Volcker Rule requirements for banks with less than \$10 billion in total consolidated assets.

But while some components of the act have been tweaked, attorneys noted that the massive compliance changes Dodd-Frank ushered in remain largely intact and are unlikely to be rolled back.

"A lot of that calibration is freeing up smaller institutions that present less systemic risk than the largest institutions," said Waack of Morgan Lewis. "[But] the largest [global banks] continue to be subject to an immense framework of regulatory and compliance obligations, and I think that's a permanent feature of conducting a large-scale financial business."

Looking back to the original enactment of Dodd-Frank, Taft of Mayer Brown said "the pendulum swung in a way that was very heavy-handed.

"While there's been some lessening of the complexity, I don't think there's been any sort of reduction in the cost of compliance or the maintenance of compliance personnel," Taft said.

But Taft said the broader compliance changes Dodd-Frank brought about have proven effective, helping put banks in a better position to handle the economic volatility caused by COVID-19.

"Banks have not really been adversely affected [by the pandemic] — at least at this point — largely because of Dodd-Frank," he said.

Others agreed while there may be further modifications to fine-tune the act, large rollbacks aren't likely.

David J. Harris, a partner with Dechert LLP who advises financial institutions on regulatory matters, called Dodd-Frank "a complicated piece of legislation that in my view was not well thought out."

"Conceptually it remains very complicated, but it has been improved," he said. "The unintended consequences have been softened and it works better, but no one would say it has become an easy process from a compliance perspective."

Harris said he doesn't see any major reversals of Dodd-Frank happening. However, he said he could see some additional "tightening" in the event of another Trump term, or a "layering on of additional requirements" in a Democratic administration, presumably under Joe Biden.

But "compliance is going to remain at the forefront no matter what happens in the election," Taft said.

Aaron Klein, a fellow in economic studies and policy director of the Center on Regulation and Markets at the Brookings Institution who helped craft the act as a member of the U.S. Department of the Treasury's financial regulatory reform team, said Dodd-Frank has shown its resilience over time. He characterized the tweaks to the rules as part of the natural push and pull of evolving economic markets.

Without Dodd-Frank, banks would have not have been as well-capitalized to weather the effects of another downturn, he said.

"There were people saying that when Dodd-Frank was passed this was going to be the end of banking," he said. "Everybody was saying, 'Dodd-Frank has ended creativity, innovation and profitability in banking,' all of which has proven false."

--Editing by Alanna Weissman and Emily Kokoll.