BANKING AND COMPLIANCE

Catherine Petrusz
Self-Help
Durham, NC

1) EARLY BANKING AND STATUTES

a) The Free Banking Era
b) 1863: National Bank Act
   i) Created a national bank charter
   ii) Established a uniform currency
   iii) Established the OCC
c) 1913: Federal Reserve Act
   i) Created a central bank, the "fed" (aka, the Federal Reserve System)
   ii) Lender of Last Resort
   iii) Discount Window

2) BANK RUNS

a) Bailey Building and Loan: James Stewart, left, Thomas Mitchell, right, and Donna Reed appear in the 1946 movie "It's A Wonderful Life," as George and Mary Bailey, managing a bank run with the cash they had hoped to spend on their honeymoon cash. (AP photo)

3) BANKING LAWS FOLLOWING THE GREAT DEPRESSION

a) 1933: Federal Deposit Insurance Corporation Act
   i) FDIC
   ii) Deposit Insurance
b) 1934: National Credit Union Act
   i) Purpose: to make credit available to more Americans and promote thrift through a national system of nonprofit, cooperative credit unions
   ii) Enabled credit unions to be organized throughout the United States under charters approved by the federal government
   iii) The source of authority for all federally chartered credit unions and governs the coverage and terms of insured accounts at all federally insured credit unions.

iv) Structure and duties of NCUA
v) NCUSIF (National Credit Union Share Insurance Fund)

4) BANKING REGULATORS

a) OCC (1863)
b) FRB (1913)
c) FDIC (1933)
d) NCUA (1934)
e) OTS (1989 – 2011) ***R.I.P.***
f) CFPB (2010)
g) State Banking and Credit Union Regulators
   i) North Carolina Commissioner of Banks
   ii) North Carolina Credit Union Division
      (1) Example: Self-Help Credit Union is a state-chartered credit union; NCCUD is its primary regulatory and NCUA is its secondary regulator. NCUA has authority to jointly examine and regulate SHCU because, although it is a state chartered credit union, it is federally insured and participates in the National Share Insurance Deposit Fund.

5) COMPLIANCE AND THE BANK SECRECY ACT

a) **Bank Secrecy Act**: "BSA" refers not to one statute but a series of laws designed to prevent money laundering and terrorist financing
   i) 1970: **Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act**
      (1) Response to money laundering by organized criminals making currency deposits of illicit profits; requires all financial institutions to report cash transactions totaling over $10,000 in one day using the "Currency Transaction Report"
   ii) 1986: **Money Laundering Control Act**
      (1) Response to structuring. Requires financial institutions to report known or suspected suspicious activity, or attempts to structure deposits in order to avoid a currency transaction report.
   iii) 2001: **Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act**
      (1) The "USA PATRIOT Act" is a response to the 9/11 terrorist attack; requires financial institutions to maintain a detailed "customer identification program" (CIP); also referred to as "know your customer" (KYC) programs
   iv) Office of Foreign Asset Control
      (1) OFAC is a division of the OFAC is a division of the U.S. Treasury Department which administers and enforces economic and trade sanctions against targeted foreign countries and their agents, terrorism sponsoring agencies and organizations, and international narcotics traffickers. OFAC maintains a list of "**specially designated nationals**" and prohibits transactions with anyone on that list. Anyone can search the SDN list on the Treasury Department website: http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

6) C.A.M.E.L.S.

a) Examiners assign CAMELS ratings to financial institutions after each regulatory exam. CAMELS are highly confidential, and not even shared internally to most of the staff within a bank or credit union. They reflect the safety and soundness of a financial institution and are an analysis of (a) capital adequacy; (b) asset quality; (c) management; (d) earnings; (e) liquidity and (d) sensitivity to market risk.
b) Regulators conduct bank examinations to "ensure public confidence in the banking system and to protect the Deposit Insurance Fund. Maintaining public confidence in the banking system is essential because customer deposits are a primary funding source that depository institutions use

to meet fundamental objectives such as providing financial services. Safeguarding the integrity of the Deposit Insurance Fund is necessary to protect customers' deposits and resolve failed banks." (FDIC Risk Management Manual of Examination Policies. 1.1-2 (August 2016), available at https://www.fdic.gov/regulations/safety/manual/)

c) **Capital Adequacy**: The purpose of capital is to "absorbs losses, promotes public confidence, helps restrict excessive asset growth, and provides protection to depositors and the deposit insurance funds." (*Id*. at 2.1-2)

d) **Asset Quality** is a critical area in determining the overall condition of a financial institution; the main factors are the quality of the loan portfolio and credit administration. (*Id*. at 3.1-2)

e) **Management**: Examiners assess the quality of a financial institution's management by evaluating the independence and oversight of the Board of Directors, effective of officers, conflict of interest policies, insider transactions, etc.

f) **Earnings**: From a bank regulator's standpoint, the essential purpose of bank earnings, both current and accumulated, is to absorb losses and augment capital. Earnings is the initial safeguard against the risks of engaging in the banking business, and represents the first line of defense against capital depletion resulting from shrinkage in asset value. (*Id*. at 5.1-1)

g) **Liquidity** refers to the availability of liquid assets to meet short-term obligations. The most liquid asset is cash; and for financial institutions its member and customer deposits are its main short-term obligations. "Liquidity reflects a financial institution's ability to fund assets and meet financial obligations. Liquidity is essential in all banks to meet customer withdrawals, compensate for balance sheet fluctuations, and provide funds for growth. Funds management involves estimating liquidity requirements and meeting those needs in a cost-effective way. Effective funds management requires financial institutions to estimate and plan for liquidity demands over various periods and to consider how funding requirements may evolve under various scenarios, including adverse conditions. Banks must maintain sufficient levels of cash, liquid assets, and prospective borrowing lines to meet expected and contingent liquidity demands. Liquidity risk reflects the possibility an institution will be unable to obtain funds, such as customer deposits or borrowed funds, at a reasonable price or within a necessary period to meet its financial obligations." (*Id*. at 6.1-2)

h) **Sensitivity To Market Risk** "reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or capital." (*Id.* at 7.1-1)

7) LIQUIDITY CRISES AND BANK RUNS DURING THE GREAT RECESSION: A FEW EXAMPLES

a) Office of Thrift Supervision

i) **Washington Mutual** was liquidated by OTS on September 25, 2008 and acquired by JPMorgan Chase on that day. "WaMu became an OTS-regulated institution on December 27, 1988 and grew through acquisitions between 1996 and 2002 to become the largest savings association supervised by the agency. As of June 30, 2008, WaMu had more than 43,000 employees, more than 2,200 branch offices in 15 states and $188.3 billion in deposits. "The housing market downturn had a significant impact on the performance of WaMu's mortgage portfolio and led to three straight quarters of losses totaling $6.1 billion," noted OTS Director John Reich. Pressure on WaMu intensified in the last three months as market conditions worsened. *An outflow of deposits began on September 15, 2008, totaling $16.7 billion. With insufficient liquidity to meet its obligations, WaMu was in an unsafe and unsound condition to transact business*." (OTS Press Release 08-046 - Washington Mutual Acquired by JPMorgan Chase, Thursday, Sept. 25, 2008, available at https://www.occ.gov/static/news-issuances/ots/press-releases/ots-pr-2008-46.pdf)

ii) **IndyMac**: was liquidated by OTS in July 2008. "The OTS has determined that the current institution, IndyMac Bank, is unlikely to be able to meet continued depositors' demands in the normal course of business and is therefore in an unsafe and unsound condition. The immediate cause of the closing was a deposit run that began and continued after the public release of a June 26 letter to the OTS and the FDIC from Senator Charles Schumer of New York. The letter expressed concerns about IndyMac's viability. In the following 11 business days, depositors withdrew more than $1.3 billion from their accounts." (OTS Press Release 08-029 - OTS Closes IndyMac Bank and Transfers Operations to FDIC, Friday, July 11, 2008, available at https://www.occ.gov/static/news-issuances/ots/press-releases/ots-pr-2008-29.pdf)

iii) AIG, Countrywide and others

iv) R.I.P. OTS

b) North Carolina Commissioner of Banks

i) NC State Chartered Bank Failures from 2009 – 2016: 7

c) Georgia Department of Banking and Finance

i) GA State Chartered Bank Failures from 2009 – 2016: 79

8) DODD–FRANK

a) The Dodd–Frank Wall Street Reform and Consumer Protection Act was signed into federal law by President Barack Obama on July 21, 2010

b) Title X, known as the Consumer Financial Protection Act of 2010, establishes the Consumer Financial Protection Bureau (CFPB or Bureau) as an independent agency within the Board of Governors of the Federal Reserve System (Federal Reserve). The CFPB regulates the offering and provision of consumer financial products and services under federal consumer financial laws.

9) COMPLIANCE AND CONSUMER PROTECTION

a) The Compliance Function in Financial Institutions

i) Advice

ii) Guidance and Education

iii) Identification, measurement and assessment of compliance risk

iv) Monitoring, testing and reporting

v) Statutory responsibilities and liaison

vi) Compliance program

b) Federal Regulation: Title 12 of the Code of Federal Regulations, Banks and Banking

Part	Sections	Agency Regulations
I	1-199	COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY
II	200-299	FEDERAL RESERVE SYSTEM
III	300-399	FEDERAL DEPOSIT INSURANCE CORPORATION
IV	400-499	EXPORT-IMPORT BANK OF THE UNITED STATES
V	500-599	OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY
VI	600-699	FARM CREDIT ADMINISTRATION
VII	700-799	NATIONAL CREDIT UNION ADMINISTRATION
VIII	800-899	FEDERAL FINANCING BANK
IX	900-999	FEDERAL HOUSING FINANCE BOARD
X	1000-1099	BUREAU OF CONSUMER FINANCIAL PROTECTION
XI	1100-1199	FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL
XII	1200-1299	FEDERAL HOUSING FINANCE AGENCY
XIII	1300-1399	FINANCIAL STABILITY OVERSIGHT COUNCIL
XIV	1400-1499	FARM CREDIT SYSTEM INSURANCE CORPORATION
XV	1500-1599	DEPARTMENT OF THE TREASURY
XVI	1600-1699	OFFICE OF FINANCIAL RESEARCH, DEPARTMENT OF TREASURY
XVII	1700-1799	OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
XVIII	1800-1899	COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, DEPARTMENT OF THE TREASURY

c) Federal Regulation: Regulations Applicable to Credit Unions and Agencies with Regulatory Authority for the Regulations or Oversight

Reg	12 C.F.R.	NAME	CFPB	FED	NCUA
A	Part 201	Extensions of Credit by Federal Reserve Banks		X	
B	Part 1002	Equal Credit Opportunity Act	X		
C	Part 1003	Home Mortgage Disclosure	X		
D	Part 204	Reserve Requirements of Depository Institutions		X	
E	Part 1005	Electronic Fund Transfers	X		
F	Part 1006	Fair Debt Collection Practices Act	X		
G	Part 1007	S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators	X		
H	Part 1008	S.A.F.E. Mortgage Licensing Act—State Compliance and Bureau Registration System	X		
I	Part 1009	Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance	X		
J	Part 210	Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire		X	
M	Part 1013	Consumer Leasing	X		
N	Part 1014	Mortgage Acts and Practices—Advertising	X		
O	Part 1015	Mortgage Assistance Relief Services	X		
P	Part 1016	Privacy of Consumer Financial Information	X		
S	Part 219	Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records		X	
U	Part 221	Credit by Bankers and Persons other than Broker Dealers for the Purpose of Purchasing or Carrying Margin Stock		x	
V	Part 1022	Fair Credit Reporting	X		
X	Part 1024	Real Estate Settlement Procedures Act	X		
Z	Part 1026	Truth in Lending	X		
AA	Part 227	Unfair or Deceptive Acts or Practices		X	
CC	Part 229	Availability of Funds and Collection of Checks		X	
DD	Part 1030	Truth in Savings	X		
GG	Part 233	Prohibition on Funding of Unlawful Internet Gambling		X	
II	Part 235	Debit Card Interchange Fees and Routing		X	

(Carolinas Credit Union League InfoSight, Federal Regulations List, Last Reviewed: October, 2012)

10) CURRENT EVENTS

a) OCC Special Purpose National Bank Charter for FinTech
   i) No charters issued yet
   ii) Raises concerns among consumer advocates
b) PHH Corp. v. CFPB, No. 15-1177 (D.C. Cir.).
   i) The CFPB has a single director, appointed by the President for a five-year term. The Director may be removed by Congress only for cause.
   ii) In PHH Corporation v. CPFB, D.C. Circuit Court held that the removal-for-cause rule is unconstitutional
   iii) CFPB petitioned the court for a re-hearing
   iv) February 16, 2017: United States Court of Appeals for the DC Circuit granted CFPB a rehearing Respondent Consumer Financial Protection Bureau’s (CFPB) petition for rehearing
   v) May 24, 2017: D.C. Circuit *en banc* will rehear the case