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Gavel to Gavel: Creative compliance

By: Tom C. Vincent II Guest Columnist February 18, 2015 0

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The Dodd-Frank Wall Street Reform and Consumer Protection Act, together with subsequent Consumer Financial Protection Bureau regulations, has established a responsibility for lenders to determine and document a borrower's ability to repay a loan. While lenders had been making this determination for decades, this new definition set consistent ATR standards for lenders and resulted in the creation of two categories of mortgages, so-called qualified and nonqualified mortgages.

Qualified mortgages, requiring a particular type of ATR and specific restrictions on mortgage terms, afford lenders some protection with respect to their ATR responsibilities. With nonqualified mortgages, lenders may still be liable for failing to make an appropriate ATR determination.

As a result of these changes, many community banks have limited their mortgage lending to qualified mortgages. For one bank, however, qualified only wasn't an option. Because the strategic risk in not offering such a product outweighed the legal risk in offering one, the bank developed and offered the product, but only after putting a few key elements in place to ensure compliance.

Recognizing the need for across-the-bank involvement, management and compliance worked together to engage all necessary and effected constituencies. Business line officers and management provided customer needs, back-office operations highlighted booking and accounting issues, credit highlighted underwriting requirements and legal and compliance ensured appropriate disclosures, monitoring and exception processes.

To ensure all new mortgage requirement revisions were incorporated completely and timely, the nonqualified mortgage development process was integrated with the bank's regulatory surveillance committee. That integration also provided representatives of the bank's major internal and external business lines with current information on the product, to avoid miscommunication with existing customers and missed opportunities with new ones.

The risk of exposure to the new product was initially limited by allocating a fixed amount of the bank's mortgage portfolio to that product. Increasing that exposure was anticipated as were necessary adjustments to the monitoring and review processes to accommodate any increase in volume.

While the above example is specific to a mortgage product, any new product, service or regulatory change can be similarly implemented. With everyone at the table, properly informed and prepared for the future, community banks need not just look over their shoulder, but also down the road for new opportunities.

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