

Dodd-Frank Act Puts Focus on

Information Governance



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As a result of the Dodd-Frank Act, many organizations should consider revising their current business and compliance practices to satisfy regulatory reporting requirements.

Major financial reform legislation that was signed into law in 2010 will profoundly impact organizations' records and information management practices for years to come. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was created "to promote the financial stability of the United States by improving accountability and transparency in the financial system; to end [the creation of large firms that have such an impact on the nation's financial stability that they are] 'too big to fail'; to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes."

As a result of Dodd-Frank, the Securities and Exchange Commission

(SEC), the Commodity Futures Trading Commission, and the Federal Reserve will create more than 200 new rules. Dodd-Frank also established new agencies, including the Financial Stability Oversight Council, which defines jurisdiction of bank holding companies and non-bank financial companies and provides recommendations on setting prudential standards on reporting and disclosure, and the Consumer Financial Protection Bureau. These two agencies alone will create 80 new financial oversight and disclosure rules.

Implementing the act's reforms will take years because many of its significant provisions have extended implementation periods and delayed effective dates. In addition, financial regulators will continue making rules for the next six to 18 months.

Dodd-Frank to Reduce 'Systemic Risk'

One of the major sections of Dodd-Frank is meant to provide better oversight of systemic risk (a risk that affects the entire financial market), and, for that purpose, it established the Financial Stability Oversight Council mentioned above. The council includes 15 members from the Federal Reserve, U.S. Department of the Treasury, U.S. Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, SEC, the Consumer Financial Protection Bureau, and the Office of Financial Research.

It also re-instates the "Volcker rule," which requires banking companies to implement a robust compliance regime and measure compliance effectiveness by performing quantitative analysis to detect potentially impermissible proprietary trading. While most of the impact of Dodd-Frank will be felt by financial services firms, any organization doing business in the financial, capital, and credit markets will also be affected. (See sidebar "Organizations Affected by Dodd-Frank.")

Compliance with Dodd-Frank can be accomplished only by organizations

that implement the appropriate management, business tools, and technology.

Focus Is on Information Governance

Dodd-Frank increases the focus on recordkeeping for all business documentation, making it essential for organizations to invest in establishing information governance programs, which include recordkeeping policies, practices, and technology tools to improve control of their ever-growing enterprise content (e.g., e-mail, files, source code, and customer account information). Those who do so will be in the best position to adapt quickly to the new rules and regulations.

Dodd-Frank Demands ECM Capabilities

It is important that enterprise content be measured based on lines of business (broker/dealer, hedge fund, commercial bank) and volume of transactions to apply SEC and Financial Industry Regulatory Agency (FINRA) supervision rules developed by SEC and FINRA. These rules, such as FINRA 10-06, FINRA 3010, and FINRA 3110 are required to meet regulatory needs, and they complement the Dodd-Frank rules on good recordkeeping.

For financial advisors to be able to report on FINRA and SEC rules, it is essential for organizations to have workflow functionality that automates standard business processes. Enterprise content management (ECM) tools provide comprehensive automation capabilities for monitoring system activity, auditing, and dashboard reporting capability, all of which make regulatory compliance simpler.

Reporting Oversight

ECM tools are essential to producing the comprehensive reporting demanded by Dodd-Frank and regulatory agencies. Without these basic capabilities, businesses are lim-

ited to manual processes and workarounds, which are error prone and, from a regulatory point of view, increase business risk.

ECM tools allow recurring reporting oversight that is system-generated and reflects transaction details, which enables firms to better control trades they execute. Strong recordkeeping rules that are aligned with business processes facilitate document retrieval and expedite internal and external audits. They also help make the reporting process more transparent and informative, ensuring accurate disclosure.

Enterprise Content Control

Today's recordkeeping tools offer capabilities that enable businesses to go paperless and provide efficient mechanisms and powerful search features that allow electronic content located in disparate locations across the enterprise (e.g., e-mail, files, source code, and customer account information) to be managed, located, and produced on demand. Even though these tools enable quick access, they also provide security and control over that access and safeguard customers' sensitive information.

Data Loss Prevention

Events like the November 2010 WikiLeaks case that exposed sensitive U.S. government cables to the entire world, emphasize the importance of guarding sensitive information, whatever industry sector an organization is in.

A WikiLeaks scenario can be averted by installing good data loss prevention tools. These tools use in-depth search algorithms to monitor who accesses specific information. They alert appropriate authorities if someone is trying to download intellectual property, allowing suitable action to be taken before the data is leaked or used for malicious intent.

Dodd-Frank provides an additional incentive for compliance officials,

Organizations Affected by Dodd-Frank

Any organization doing business in the financial, capital, and credit markets will be affected by Dodd-Frank. Non-financial industries that participate in these markets include:

- Energy companies (e.g., supermajors, independent oil and gas, and refining and marketing)
- Electric and natural gas utilities
- Chemical
- Mining and mineral
- Airlines
- Agribusiness
- Consumer products

record managers, and security personnel to build trust among employees and prevent intellectual property from leaking: it includes a whistleblower bounty program that pays whistleblowers 10% to 30% for cases that result in returns of more than \$1 million, incenting employees to report security breaches to the government rather than to the organization so corrective action can be taken. Organizations can meet this challenge by:

- Creating security provisions to protect enterprise content without hampering business functions
- Giving due diligence to supervision, monitoring internally and externally shared enterprise content and conducting random checks
- Defining steps to mitigate risks, outlining worst-case and what-if scenarios

Management Tools Are Also Required

Implementing management tools, such as the Generally Accepted Recordkeeping Principles® (GARP®), is an important consideration in today's volatile financial market because they help organizations evaluate their cur-

rent risk state specific to records, disclosures, compliance, and supervision rules, as well as provide a roadmap to mitigate the risk.

The eight GARP® principles (see www.arma.org/garp) provide a robust information governance framework against which organizations can evaluate their recordkeeping practices to determine their exposure and risks – under Dodd-Frank, as well as under other regulations like the Sarbanes-Oxley Act.

As an example, Dodd-Frank’s “Title VII – Wall Street Transparency and Accountability” emphasizes the principles of accountability and transparency for recordkeeping:

The Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [Federal Reserve’s], shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

Transparency and accountability are also two of the GARP® principles. By comparing itself to the characteristics shown as typical for organizations at each of the five levels of maturity in the GARP® Information Governance Maturity Model (see www.arma.org/garp), an organization can assess how transparent and accountable its recordkeeping is. The five levels are condensed and paraphrased below:

- 1) **Sub-Standard** – Recordkeeping concerns are either not addressed or are addressed in an *ad hoc* manner.
- 2) **In Development** – The organization is beginning to recognize the impact recordkeeping has.
- 3) **Essential** – The organization is addressing the essential or minimum requirements to meet its legal and regulatory requirements.

Using GARP® to Assess Compliance

Using GARP® as a basis, an organization can identify gaps between its actual and desired state of compliance and develop a roadmap for remediation.

Step One: Identify the key stakeholders:

- **Compliance** – Compliance with legal and regulatory requirements is a key driver for the information governance program, and these staff members have the best handle on what those requirements are.
- **Legal** – Legal staff understand the organization’s litigation profile and can provide insight into the types of litigation the company is most subject to. This will allow the relevant records to be identified and ensure that the information governance infrastructure addresses them appropriately.
- **Information technology** – IT staff can contribute information about the technology infrastructure, including the capabilities and limitations of its software and hardware.
- **Risk management** – Risk assessments have an important recordkeeping component, including documentation of the risks and actions taken to mitigate them.
- **Business unit line managers** – These managers are on the front lines of business unit activities that create records needed for conducting business and making decisions.

Step Two: Gather existing information, including:

- **Policies and procedures** – These include retention schedules and other documentation related to records disposition, legal holds, information privacy/protection, and Internet/social networking usage.
- **Data maps** – These identify what information is created/used by the organization, where it is located, and who manages it.
- **Functional workflows** – These describe how information is created internally or received and how it flows throughout the normal business processes.

Step Three: Measure against GARP® to identify gaps between current and desired practices.

- Use the GARP® Information Governance Maturity Model to get an objective baseline of your information governance program’s maturity relative to the GARP® principles.
- In addition, consider using the new GARP® Assessment to evaluate a department, a division, or the organization as a whole relative to 100 information governance attributes.
- The GARP® Assessment can quantify information governance shortcomings to management, prove qualitative return on investment from program improvements, or establish benchmarks against which it can monitor improvement through repeated assessments.

Step Four: Prioritize gaps to be addressed.

- Determine the organization’s risks related to its state of maturity (or immaturity). Common risks are data loss, privacy violations, and unlawful or unauthorized destruction of records.
- Determine which gaps pose the greatest risks, and prioritize the order in which they should be addressed.
- The prioritization process must include a cost/benefit analysis and take into consideration organizational developments and activities to determine the most critical functional areas.

Step Five: Develop roadmap to reach the desired state.

- Determine what actions must be taken to close each gap in priority order.
- Identify resources and timelines.

Step Six: Measure progress against deliverables.

Implement continual improvement by regularly reassessing to measure improvements and validate that they are having the desired effect.

- 4 **Proactive** – Information governance considerations are integrated into the organization’s business decisions on a routine basis.
- 5) **Transformational** – Information governance is integrated into the overall corporate infrastructure and business processes to such an extent that compliance with program requirements is routine.

Disclose to Go Beyond Dodd-Frank

Complying with reporting requirements (e.g., transactional reporting, as well as management reporting in dashboard form) for measuring key performance indicators are also needed to ensure transparency within an organization, build trust, and show accountability with regulatory bodies. These reporting tools, which show the organization’s general health, help management take corrective steps and lower risks.

An April 2011 *Knowledge@Wharton* article reporting the results of a Dodd-Frank-related survey of middle to top corporate management it conducted jointly with the Enhanced Business Reporting Consortium (EBRC) underscores the need for this type of reporting – beyond those required by Dodd-Frank.

Enhanced Disclosures: KPIs and More

Some 66% of survey respondents said financial statements do not adequately meet the needs of users; about half said more enhanced disclosures than those included in Dodd-Frank, including key performance indicators, value drivers, and intellectual assets, are “important” or “very important” to provide more transparency and prevent future crises. (See Figure 1.)

Disclosing this type of information not only helps build transparency, it demonstrates good intentions to mitigate risk and simplify compliance.

Enhanced Corporate Governance Disclosures

The survey results also indicate that enhanced corporate governance

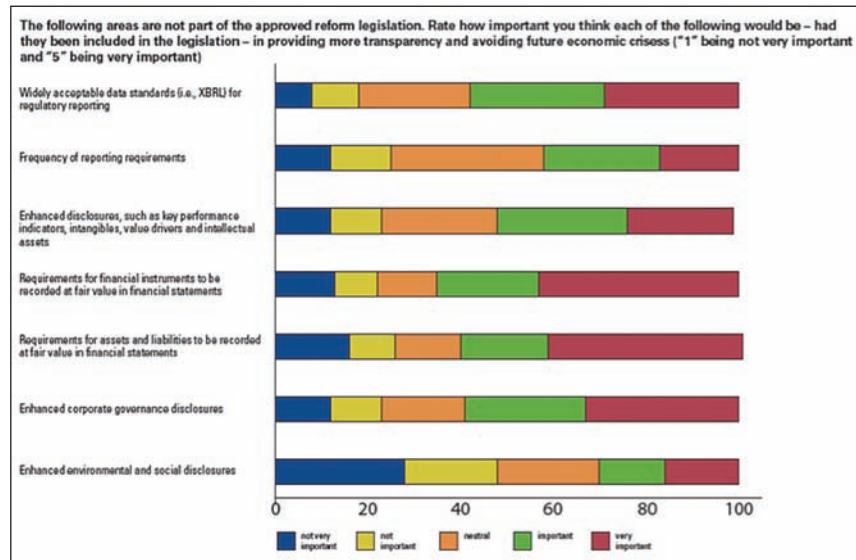


Figure 1: Importance of Measures for Providing Transparency and Avoiding Future Economic Crises

Source: *Knowledge@Wharton*. “Knowledge at Wharton/EBRC Survey: After the Crisis, Executives Believe the Dodd-Frank Act Is a Tame Tiger,” April 2011. Used with permission.

disclosures beyond those required in Dodd-Frank are “important” to “very important” to the majority of respondents. These disclosures relate to executive compensation (e.g., chief executive officer and rank and file employee comparisons, prohibition of excessive executive compensation arrangements, and executive claw-back provisions in case of statement provisions).

Various regulatory entities require these types of disclosures be available on demand, so they must be documented, recorded for efficient record-keeping and retrieval, and kept current. If they are not, the organization may be subjected to higher risks and questions regarding the executive board’s workings in relation to corporate governance rules. Chain of custody and the data integrity of the disclosures are also very important for any e-discovery event or litigation hold.

Enhanced Social Disclosures

Survey respondents also said enhanced social disclosure beyond that required by Dodd-Frank is important. The social disclosure rule, which is a new addition to Dodd-Frank, states

that all payments be disclosed that are made on an annual basis to foreign governments in connection with commercial development of certain national resources in foreign countries.

Again, using GARP® as a management tool can help organizations identify gaps between the current and the desired state of transparency and develop a go-forward strategy for all disclosures based on efficient and effective recordkeeping to be better aligned with Dodd-Frank.

Prepare for Rules Yet-to-Come

There are still many uncertainties about what compliance with Dodd-Frank will eventually require, but those organizations that proactively invest in establishing information governance policies, procedures, and technology to improve the efficiency of their compliance programs will be in the best shape to adapt quickly to the new rules and regulations and manage the risks associated with doing business in this environment. **END**

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