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Lawyers say they feel swamped by Dodd-Frank's many requirements

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When Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010, it leveled a severe blow to Patrick Daugherty's free time.

He set out to read the entire bill. All 2,319 pages of it.

"I just started reading Saturday morning over breakfast and kept going through lunch and through dinner," said Daugherty, a partner at Foley & Lardner LLP. "I got about halfway through and finished the next day."

While reading, he said he found a bill containing a "laundry list of activist agenda items" that didn't always cut to the core of preventing another financial crisis.

"Many of these provisions have proven to be distractions," Daugherty said.

The distractions, rules like reporting a company's possible financial support of conflict minerals in Africa, took up a lot of time for his law firm and also for financial regulators, Dougherty said.

The implementation of Dodd-Frank, now two years later, doesn't seem close to finished, law firm data shows. Lawyers said the reason for that stems from the onerous requirements the lengthy bill put on resource-strapped regulators.

Law firms capitalized on the regulators' slog by setting up teams of lawyers dedicated to learning about and keeping track of Dodd-Frank. They counseled clients on the regulators' progress through face-to-face meetings, e-mail alerts, telephone seminars and, in some cases, new software programs.

For lawyers that deal with financial regulators, the bill sometimes meant a change for their practice's focus as regulators shifted priorities and

resources to keep up with Dodd-Frank's mandates.

While time can prove to be money for a law firm, it proved to be something regulators could not get enough of when faced with "mission impossible": Writing the 400 rules the bill required, said Margaret E. Tahyar, a New York partner at Davis, Polk & Wardwell LLP. The law firm collects and reports data on Dodd-Frank.

The bill, thought up by disparate groups of lobbyists, lawmakers and regulators, takes so much time to implement because nobody thought about how all the different requirements, and their deadlines, would interact, Tahyar said.

"There was a huge underestimation in terms of the time it would take to put in place a brand new regulatory structure," Tahyar said.

To put a number to it, as of March, regulators missed 70 percent of the deadlines Congress imposed on them to write the 400 rules required by Dodd-Frank, Davis, Polk reports.

Davis, Polk "became the unofficial scorekeeper" of Dodd-Frank's progress, Tahyar said.

Associates counted the number of actual questions in the bill. In one section known as the Volcker Rule, which seeks to stop banks from making speculative trades with their own money, they found 1,347 questions asked in 298 pages, Tahyar said.

"The clients read the questions themselves and basically said, 'That's crazy,'" Tahyar said.

The firm set up an Internet-based program that tracks the rules written by regulators through daily e-mail alerts and stores them in a database, Tahyar said. It costs \$7,000 a month for a subscription and the firm sold about 30 subscriptions since the first version launched



(From left to right) Foley & Lardner LLP partners Kathryn M. Trkla, Patrick Daugherty and Lisa L. Tharpe work with their clients on the Dodd-Frank Wall Street Reform and Consumer Protection Act. *Natalie Battaglia*

about five days after the bill passed, she said.

Brian V. Breheny, a Washington D.C.-based partner at Skadden, Arps, Slate, Meagher & Flom LLP who worked for the Securities and Exchange Commission (SEC) at the time of Dodd-Frank's passage, said the legislation meant more work for the SEC at a time when it received the same or less funding and staffing.

In response, the SEC shifted the work of many employees. For example, after Dodd-Frank's passage five lawyers moved from elsewhere in the SEC to assist the five-person panel that makes rule-making decisions, Breheny said.

"When you take someone out of a group and bring them elsewhere, if the SEC can't rehire, then that group goes without two lawyers for however long someone's out doing rule-making," Breheny said. "Sometimes it's difficult to get

everything done."

Lisa L. Tharpe, a partner at Foley & Lardner, said her practice shifted along with the SEC.

Tharpe splits her time between litigation and dealing with SEC and other regulators, she said.

Because the SEC "was all-consuming with reorganization," she said she saw very few enforcement actions from the commission and focused her time on litigation.

Kathryn M. Trkla, a Foley & Lardner partner, said she spends 95 percent of her time counseling clients on the derivatives market changes resulting from Dodd-Frank.

"I have been ... consistently very busy," Trkla said. "Which, with what law firms have been going through, is actually a good thing."

Trkla said she expects to be busy with Dodd-Frank work for years to come because of the

drastic changes in the derivatives market.

Lawyers that write about the bill said they expect the same.

The bill turned many lawyers into authors of analyses and updates of regulators' progress.

William J. Sweet Jr., a Washington, D.C.,-based partner at Skadden, said the lawyers that write about the bill for his firm scrapped their plans to track the time they spent on it. It got out of hand, he said.

J. Paul Forrester, a partner at Mayer, Brown LLP, said his firm's 80-person Global Financial Market Initiative, born in the wake of the financial crisis as a way to inform clients of upcoming regulatory changes, took up "literally thousands and thousands of hours."

That number continues to rise. The initiative's 30-minute recorded seminars on regulation including Dodd-Frank received 25 percent more listeners in 2011

than the year prior, Forrester said.

"Our own expectation is ... we've got at least another 12 or 18 months of significant effort and activity to follow," Forrester said.

In a testament to longevity, Forrester said the teleconference model will outlast the work his firm's lawyers do on Dodd-Frank.

"We'll rebrand it and call it boardroom briefing, or something like that," Forrester said.

Lawyers from other firms, Kirkland & Ellis LLP, for example, spent time writing to regulators when they requested comment on new rules.

Kirkland & Ellis partners James H.M. Sprayregen and Stephen E. Hessler wrote to the Federal Reserve about the portion of Dodd-Frank that creates a new way to wind down "systemically important" financial institutions.

Their paper says the "orderly

liquidation authority" pales in its efficacy compared to the current bankruptcy code.

The paper also touched on a point that some lawyers said might send finalized rules into litigation: Challenges that a host of regulators' studies contain errors in their assessment of the cost of some of Dodd-Frank's rules could nullify the underlying rules, lawyers said.

Congress asked regulators to conduct 87 studies about the potential impact of the new regulations, says Davis, Polk. Many of those studies looked at the financial or economic impact of the regulation.

A court ruled one such SEC study did not adequately quantify the cost of a rule that gives shareholders more access to public company boards, the court ruling says.

As a result of what it deemed an inadequate study, the court threw out the "proxy access"

rule.

"I think the court ... determined the SEC didn't make much of an effort in its study," Skadden's Sweet said. "They viewed it as a pro forma effort. The court didn't so much suggest that their exercise was incorrect as they just didn't think they had done the exercise."

Lawyers said litigation challenging the accuracy of regulators' studies on the cost-benefit analysis of some of Dodd-Frank's rules seems likely to continue.

For example, a Tulane University report says an SEC study vastly underestimates the total cost to implement a rule that requires them to report whether or not their operations support the conflict mineral trade in Africa.

The SEC study says this rule will cost \$71.2 million.

The Tulane report says it will cost about 100 times that figure: \$7.9 billion.