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## **State of the Industry & How to Tune Up Your Counseling Agency**

**Association of Independent Consumer Credit  
Counseling Agencies (AICCCA)**

**19<sup>th</sup> Annual Conference**

**July 19, 2012, 10:45 am – 11:30 am ET  
Four Seasons Hotel, Washington, DC**

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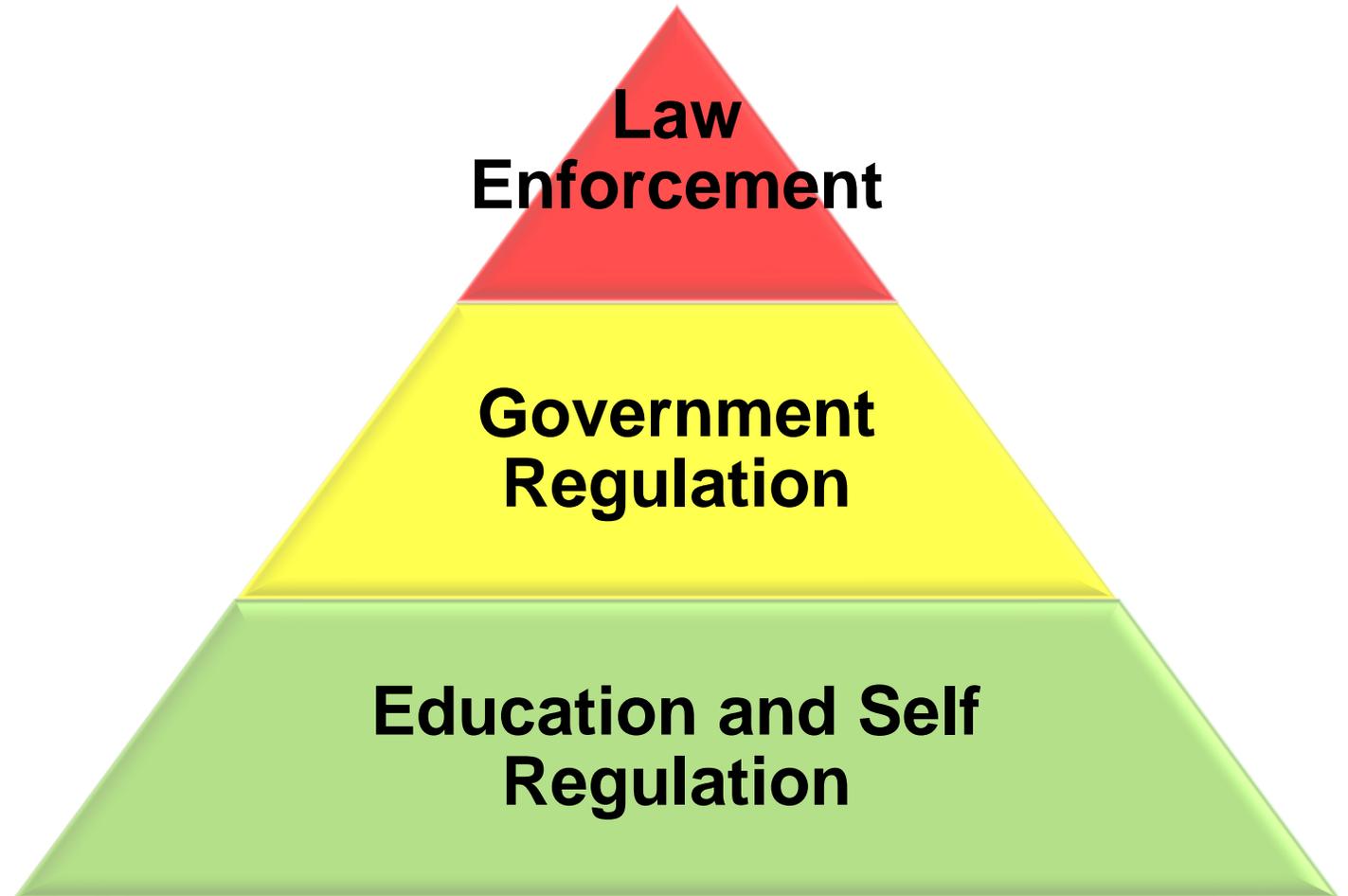


## Agenda

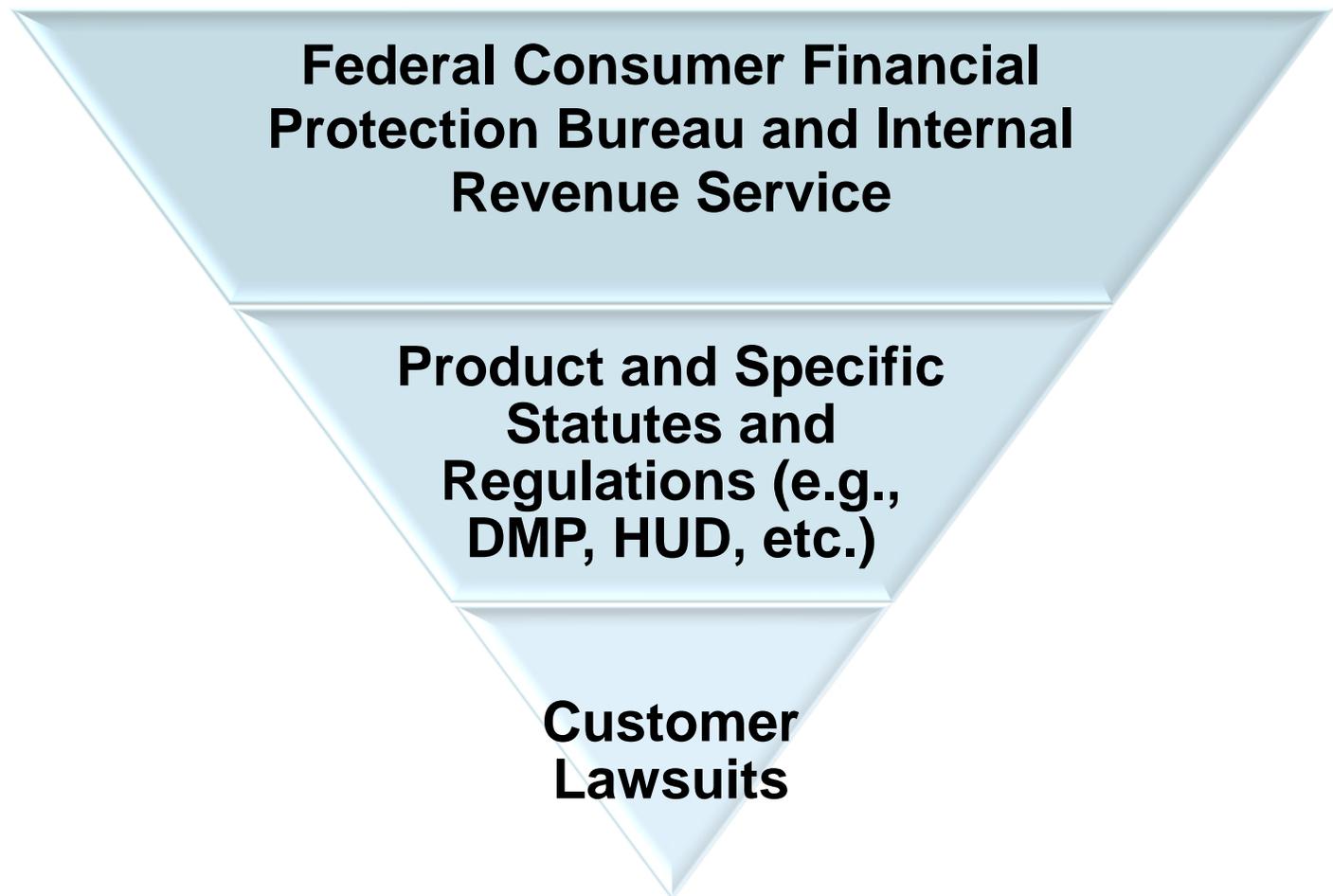
- **Introduction**
- **CFPB 1<sup>st</sup> Anniversary**
- **What to Watch for in the Months Ahead at the CFPB?**
- **Investigations and Enforcement**
- **Tune Up Your Credit Counseling Agency**
- **Question and Answers**



# The Consumer Protection Pyramid

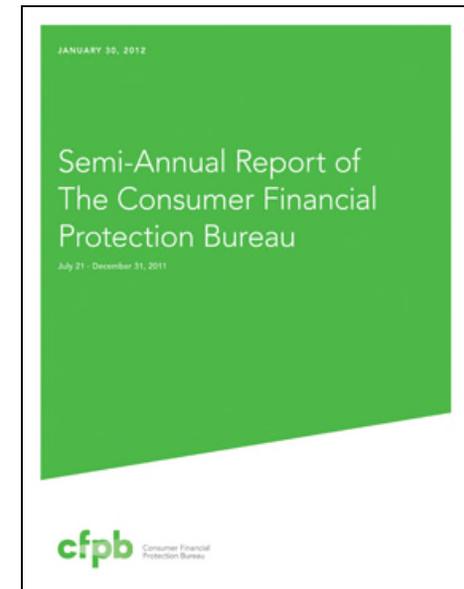


# The Credit Counseling Regulatory Pyramid

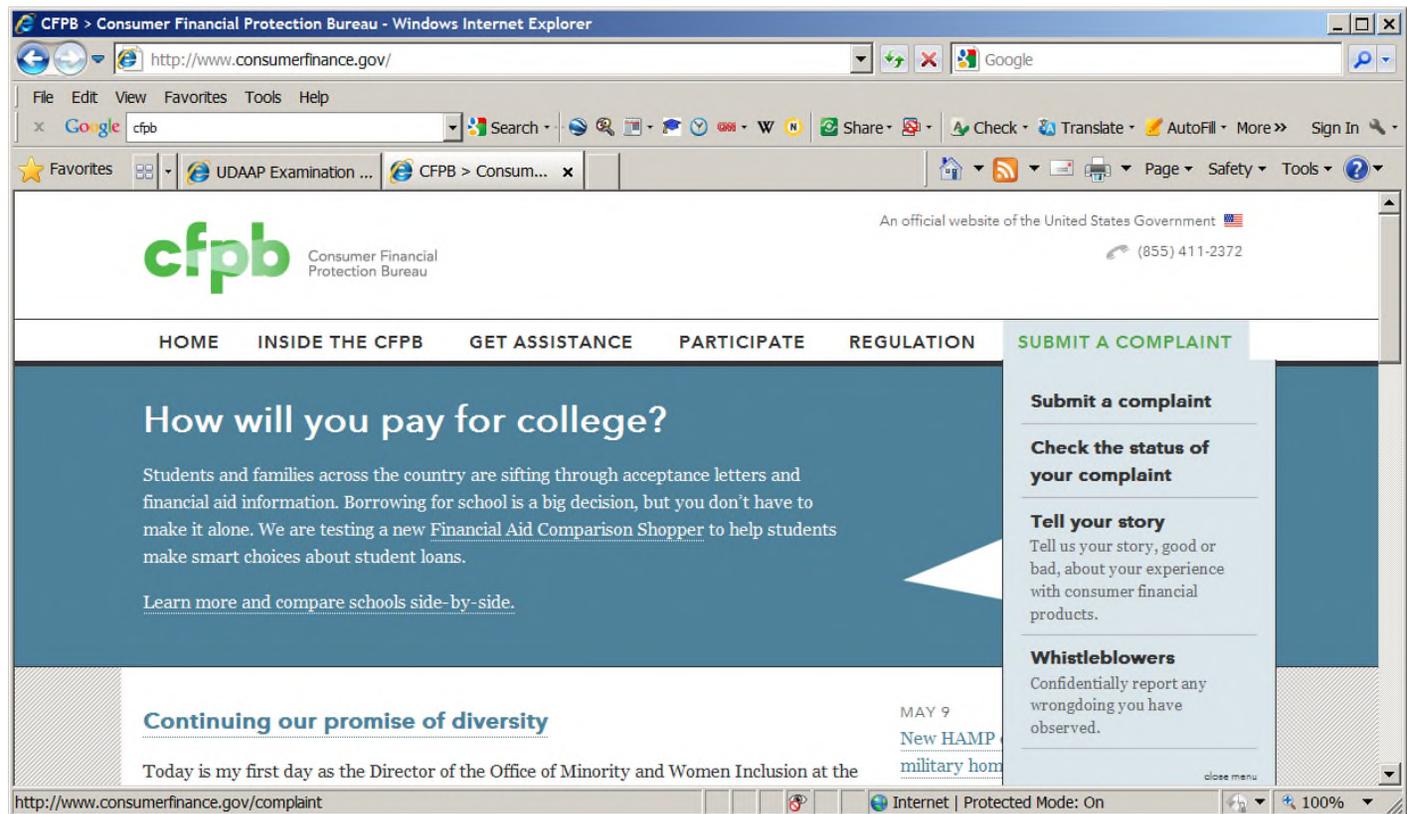


# What to Watch For in the Months Ahead at the CFPB

- Next CFPB Semi-Annual Report expected by end of July
- CFPB 1<sup>st</sup> Anniversary July 21, 2012
- Regulatory Rulemakings and Reports to Congress
- Examinations of supervised entities
- Voluntary disclosures of  
Non-public CFPB Investigations
- Announcements of settlements  
or enforcement actions



# CFPB and Consumer Complaints



# CFPB Investigations and Enforcement



# Who's subject to a potential CFPB Investigation?

*The CFPB authorizes the Bureau to conduct investigations to ascertain whether any person is or has been engaged in conduct that, if proved, would constitute a violation of any provision of Federal consumer financial law.*

- Banks and credit unions
- All mortgage related businesses
- Small dollar lenders
- Private student lenders
- Debt collectors
- Consumer reporting
- Consumer credit and related activities
- Money transmitting, check cashing, and related activities
- Prepaid cards
- Debt relief services
- Financial advisors
- Service Providers
- And more...



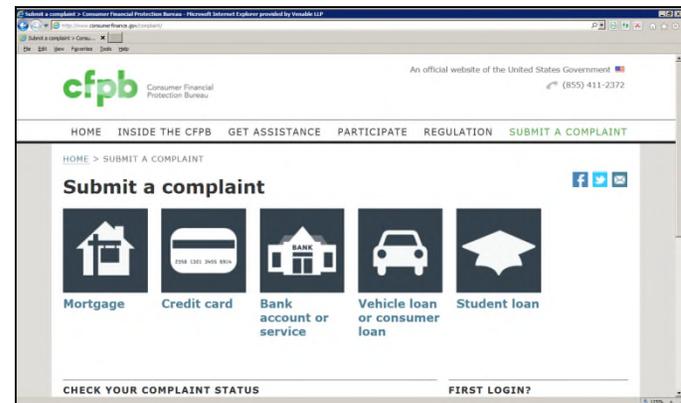
# CFPB Investigation and Enforcement Authority

- CFPB may investigate, issue subpoenas and civil investigative demands, and compel testimony
- CFPB may conduct hearings and adjudications to enforce compliance, including issuing cease-and-desist orders
- CFPB may initiate actions for civil penalties or an injunction
  - Penalties up to \$1M per day for knowing violations
  - No exemplary or punitive damages
- Criminal referrals to DOJ
- Whistleblower protection
- State attorneys general may also enforce the CFPA with notice to the CFPB
- May enforce rules issued by the FTC to the extent such rules apply to a covered a person or service provider
- No express private right of action under the CFPA



# CFPB Investigation Triggers\*

- Violation of Federal Consumer financial law
- Risk to consumers
- Consumer complaints to the CFPB and third-parties
- Government agency referrals and complaints
- Whistleblower complaint (e.g., employee or ex-employee)
- Media coverage
- Targeted market
- Low history of supervision (pre-CFPB to present)



\* Non-exhaustive list

## Consumer Protection Working Group: CFPB Coordination with Other Federal and State Enforcement Agencies

- Announced in January 2012 (after State of the Union Address)
- Unit within the Financial Fraud Enforcement Task Force that was created in late 2009, and is led by the DOJ
- CFPB, FTC, DOJ, DoE Inspector General, state AGs, and more are participating



**STOPFRAUD**.GOV  
FINANCIAL FRAUD ENFORCEMENT TASK FORCE

“The newly-created group will work across federal law enforcement and regulatory agencies, and with state and local partners, to strengthen efforts to address consumer-related fraud, including schemes targeting vulnerable populations, such as the unemployed, those in need of payday loans, and those suffering from the burden of high credit card and other debt. The new working group will also focus on scams that exploit prospective students, active-duty military personnel and veterans.” DOJ Press Release (Feb. 10, 2012)



# Compliance with Federal Consumer Financial Laws

- **Consumer Financial Protection Act:** Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)
- **Other Federal Consumer financial laws**
  - Lending (*e.g.*, TILA, RESPA, ECOA, FCRA, SAFE Act, FDCPA, MARS Rule, etc.)
  - Deposits (*e.g.*, EFTA)
  - Privacy (GLBA)
  - Telemarketing (Telemarketing Sales Rule)



# Key Steps to Responding to a CFPB Investigation

## Step 1: Review the CID –

A review of the CID, among many things, will identify the purpose of the investigation, the assigned staff enforcement attorneys, the production deadline (*e.g.*, 30 days from issuance), the definitions, instructions, and interrogatory and document requests.



# Early Investigations are Broad in Scope: Typical Areas of Focus

- Governance, Management, and Employee Information
- Acts and practices (transactional level data);
- Compliance Management Systems;
- Policies and procedures;
- Training;
- Monitoring;
- Consumer complaints
- Compliance with enforcement actions; and
- Corrective action



# Key Steps to Responding to a CFPB Investigation (cont'd)

## Step 2: Establish a Response Team –

- Document Collection
- Ensure compliance with legal obligations
- Assess whether responsive information is privileged
- Take proper steps to preserve responsive materials (e.g., implementation of a document preservation policy)
- In addition, a recipient of a CID will need to decide whether public disclosure is required pursuant to other applicable legal and regulatory obligations.



## Key Steps to Responding to a CFPB Investigation (cont'd)

### Step 3: Assess the CID for Possible Modification Requests –

- Determine the scope and timing of the CID response and whether any modifications are needed.
- The scope of the Bureau's authority in issuing the CID also needs to be determined.



# Key Steps to Responding to a CFPB Investigation (cont'd)

## Step 4: Meet and Confer with Bureau Enforcement Attorneys –

- Within 10 days after receipt of the CID.
- Be prepared, flexible, and knowledgeable.



# Key Steps to Responding to a CFPB Investigation (cont'd)

## Step 5: Petition to Modify or Set Aside the CID –

- May file a petition to modify or set aside an information request if the request is filed within 20 days of receipt of the CID unless an extension is granted by the head of the Office of Enforcement.



## Key Steps to Responding to a CFPB Investigation (cont'd)

### Step 6: Address Electronically Stored Information –

- The identification, collection, review, and processing of electronically stored information, such as emails, poses certain challenges on most businesses.
- The burden and cost continues to increase as the amount of electronically stored information that the average organization or custodian regularly maintains continues to rise.



## Key Steps to Responding to a CFPB Investigation (cont'd)

### Step 7: Production Considerations -

- The CID instructions will cover specifics regarding production formats and logistics.
- Material that is withheld based on asserting a privilege is required to be identified on a privilege log.



## Key Steps to Responding to a CFPB Investigation (cont'd)

### Step 8: Consider Appropriate Follow-up -

- Client Focused
  - Compliance Audit and Corrective Steps
  - Coordination related to non-CFPB investigations
  - Market Specific Focus
- Advocate to the Bureau
  - White Papers (Tell your side of the story)
  - Presentations / Meetings
  - Introduction to the Market



# Practical Tips to Survive an Investigation

## Understand Inherent Risk

- Nature and structure of products
- Consumers to whom products are marketed
- Marketing methods
- Ongoing customer relationship
- Complexity of organization
- Other factors
  - Legal and regulatory landscape
    - Company specific
    - Market specific

## Take Steps to Control and Mitigate Risk

- Board of directors and management
- Authority and accountability for compliance
- Compliance risk management program and oversight
- Product system development and modification
- Training
- Complaint management
- Other factors
  - Service Provider Relationships



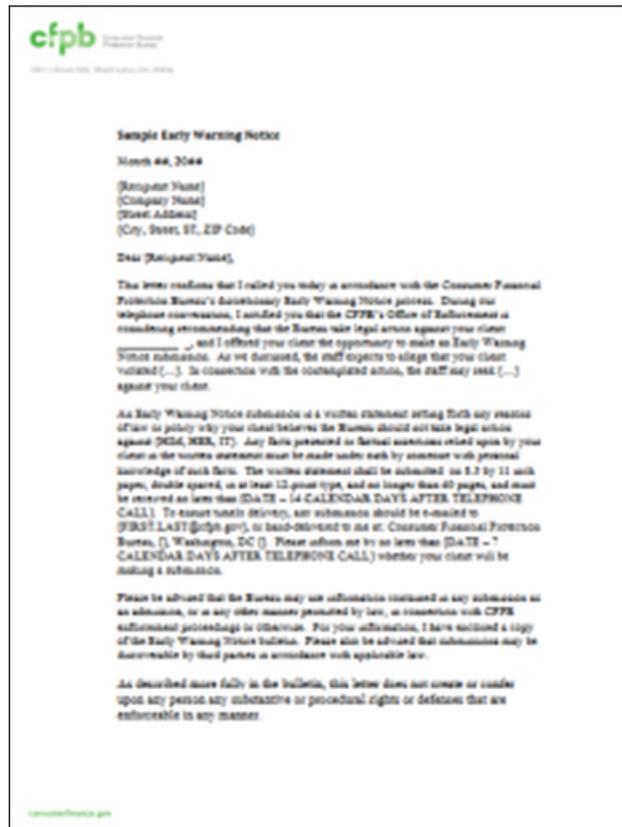
# CFPB and Service Providers

Under the CFPB, “Service Providers” may be liable for acts and practices that violate the law or assist others in doing so. The CFPB recommends that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers. According to the CFPB, these steps include:

1. Due Diligence;
2. Requesting and reviewing the service provider’s policies, procedures, internal controls, and training materials;
3. Appropriate contract provisions;
4. Internal controls and on-going monitoring; and
5. Taking prompt action to fully address any problems identified through the monitoring process.



# CFPB Early Warning Notice of Potential Enforcement



- The *Early Warning Notice* is not required by law, but CFPB believes it will promote even-handed enforcement of consumer financial laws.
- The decision to give notice in particular cases is discretionary and will depend on factors such as whether prompt action is needed.

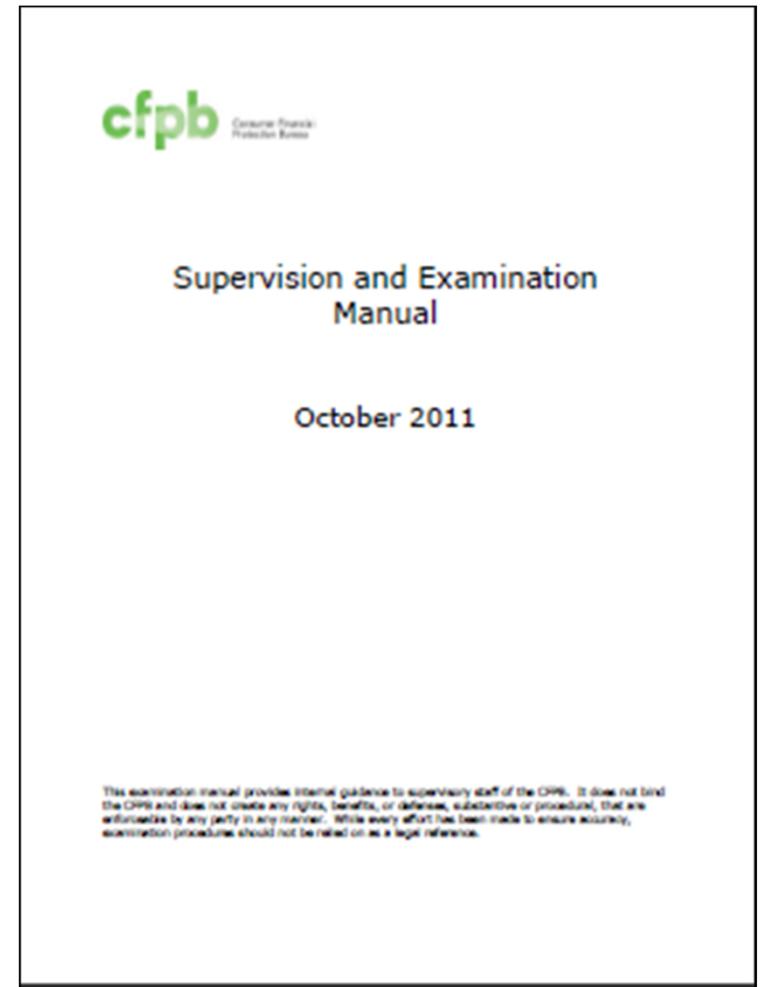


# Tune Up Your Credit Counseling Agency's Compliance System



# CFPB Supervision and Examination Manual

- The [first part](#) describes the supervision and examination process.
- The [second part](#) contains examination procedures, including both general instructions and procedures for determining compliance with specific regulations.
- The [third part](#) presents templates for documenting information about supervised entities and the examination process, including examination reports.



## CFPB Expectations

- Marketing materials, including direct mail promotions, telemarketing scripts, internet and print ads, radio recordings, and television commercials, reflect the actual terms and conditions of the product and are not deceptive or misleading to consumers;
- Employee incentive or compensation programs tied to the sale and marketing of add-on products require adherence to institution-specific program guidelines and do not create incentives for employees to provide inaccurate information about the products;



## CFPB Expectations (cont'd)

- Scripts and manuals used by the institution's telemarketing and customer service centers:
  - Direct representatives to accurately state the terms and conditions of the various products, including material limitations on eligibility for benefits;
  - Prohibit enrolling consumers in programs without clear affirmative consent to purchase, obtained after the consumer has been informed of the terms and conditions;
  - Provide clear guidance as to the wording and appropriate use of rebuttal language and any limits on the number of times that the representative may attempt to rebut the consumer's request for additional information or to decline the product; and
  - Where applicable, make clear to consumers that the purchase of add-on products is not required as a condition of obtaining a particular product or service, unless there is such a requirement.
  
- To the maximum extent practicable representatives do not deviate from approved scripts; and
  
- Cancellation requests are handled in a manner that is consistent with the product's actual terms and conditions and that does not mislead the consumer.



# CFPB Expectations: Compliance Management System

- **Written policies and procedures** governing each product and service designed to ensure compliance with prohibitions against deceptive acts and practices, applicable Federal and state consumer financial protection laws and regulations;
- A system of periodic **Quality Assurance** reviews, the scope of which includes, but is not limited to, reviews of training materials and scripts, as well as real-time monitoring and recording of telemarketing and customer service calls in their entirety, consistent with applicable laws;
- **Independent audits** of the products and services, which address the items listed above and consider whether these programs present elevated risk of harming consumers;
- **Oversight of any affiliates or third-party service providers** that perform marketing or other functions related to products and services so that these third-parties are held to the same standard, including audits, quality assurance reviews, training, and compensation structure;
- An appropriate channel for receiving, investigating, and properly resolving **consumer complaints**; and
- A **comprehensive training** program for employees involved in the marketing, sale, and operation of each product and service.



## UDAAP Checklist

- To initially identify potential areas of UDAAP concerns, the CFPB will obtain and review copies of the following to the extent relevant to the examination/investigation:
  - Training materials.
  - Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements, and periodic and account statements.
  - Procedure manuals and written policies, including those for servicing and collections.
  - Minutes of the meetings of the Board of Directors and of management committees, including those related to compliance.
  - Internal control monitoring and auditing materials.
  - Compensation arrangements, including incentive programs for employees and third parties.
  - Documentation related to new product development, including relevant meeting minutes of Board of Directors, and of compliance and new product committees.
  - Marketing programs, advertisements, and other promotional material in all forms of media (including print, radio, television, telephone, Internet, or social media advertising).
  - Scripts and recorded calls for telemarketing and collections.
  - Organizational charts, including those related to affiliate relationships and work processes.
  - Agreements with affiliates and third parties that interact with consumers on behalf of the entity.
  - Consumer complaint files.
  - Documentation related to software development and testing, as applicable.
  - Management Policies and Procedures
  - Transaction testing
  - Interviews with consumers



## What are those opportunities you are always talking about?

1. Student Loans
2. Senior Services
3. Non-foreclosure housing counseling services
4. Anywhere holistic counseling can help
5. Anywhere tailored counseling can help



## QUESTIONS AND DISCUSSION

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