



Are You Prepared for an Examination?

Tuesday, July 19, 2022

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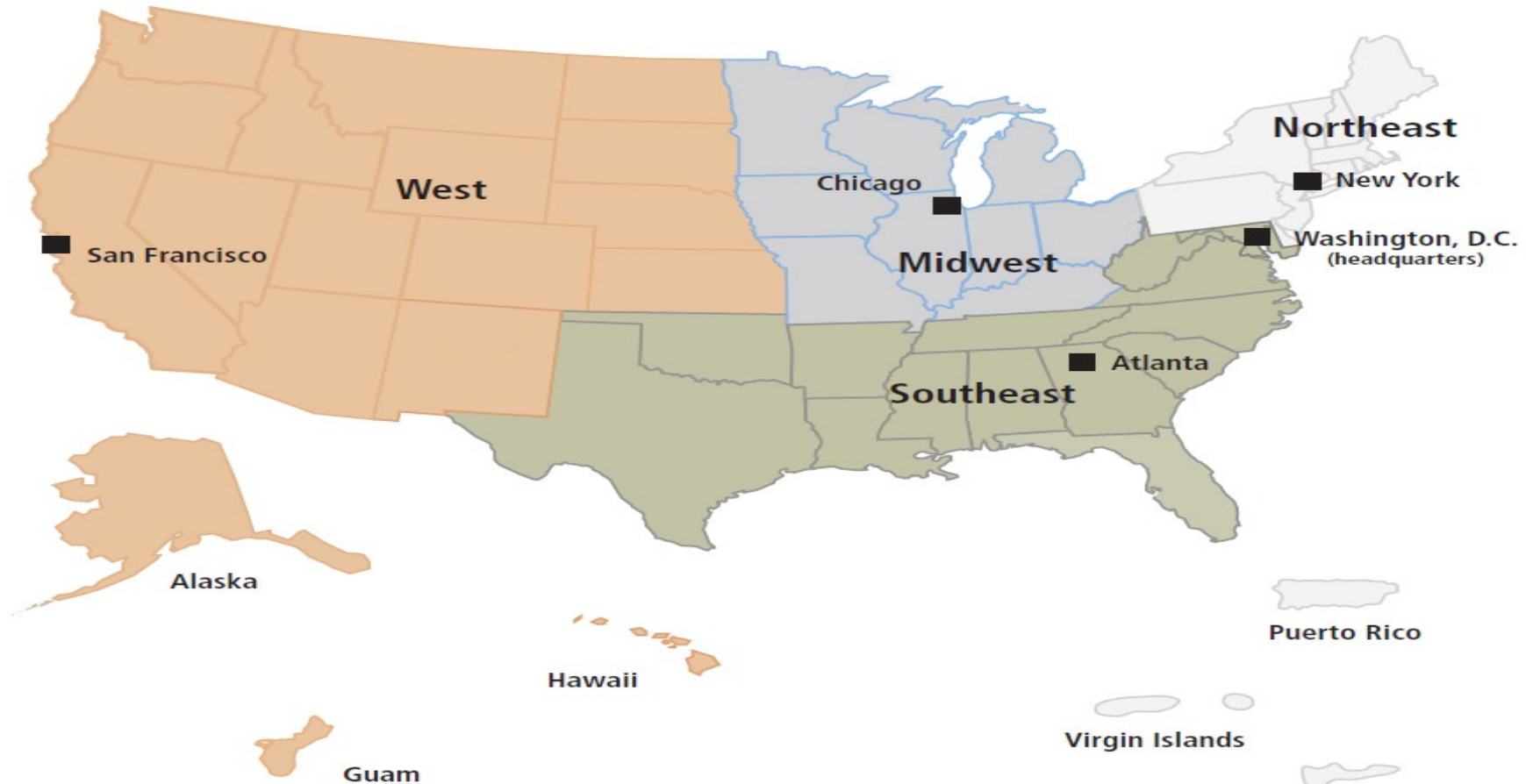
Venable LLP



Today's Session

- Introduction
- Examination Overview and Objectives
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CFPB Regional Offices



Examination Scheduling

Non-depository consumer financial services companies are identified for examination on the:

- basis of risks to consumers, including
- consideration of the company's asset size,
- volume of consumer financial transactions,
- extent of state oversight, and other factors determined relevant by CFPB.

Examinations will be coordinated with State and prudential regulators as applicable.

Supervised entities are generally notified in advance of an upcoming examination.

CFPB Exams are Confidential

- The CFPB considers all supervisory information, including examination reports and ratings, highly confidential.
- Requirements for the handling of supervisory information not only by CFPB employees, but also by supervised institutions are described in its regulation on the Disclosure of Records and Information.

11484 Federal Register / Vol. 78, No. 32 / Friday, February 15, 2013 / Rules and Regulations

BUREAU OF CONSUMER FINANCIAL PROTECTION
12 CFR Part 1070
(Docket No. CFPB-2011-0003)
RIN 3170-AA01

Disclosure of Records and Information
AGENCY: Bureau of Consumer Financial Protection.
ACTION: Final rule.

SUMMARY: This final rule establishes procedures for the public to obtain information from the Bureau of Consumer Financial Protection, under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. This final rule also establishes the Bureau's rule regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

DATES: This final rule is effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, 202-435-7275.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, codified at 12 U.S.C. 5301 et seq.) (the Dodd-Frank Act). Title X of the Dodd-Frank Act created the Bureau of Consumer Financial Protection (the Bureau or the CFPB). Pursuant to the provisions of the Dodd-Frank Act, the Bureau began to exercise its authority to regulate the offering and provision of consumer financial products and services under Federal consumer financial law on July 21, 2011.¹

In order to establish procedures to facilitate public interaction with the Bureau, the Bureau published an interim final rule on July 28, 2011, 76 FR 45371 (Jul. 28, 2011), and solicited public comment on that rule. The Bureau is issuing this final rule in response to these comments as well as to clarify and correct certain aspects of the interim final rule.

¹ Pursuant to section 1062 of the Dodd-Frank Act, 12 U.S.C. 5382, the Secretary of the Treasury designated July 21, 2011 as the "transfer date" on which various provisions of Title X of the Dodd-Frank Act became effective. 75 FR 37232.

II. Summary of the Final Rule

The final rule consists of five subparts:

Subpart A of the final rule consists largely of definitions of terms that are used throughout the remainder of the part.

Subpart B of the final rule implements the Freedom of Information Act, 5 U.S.C. 552 (the FOIA). The FOIA grants the public an enforceable right to obtain access to or copies of Federal agency records unless disclosure of those records, or information contained within them, is exempt from disclosure pursuant to one or more statutory exemptions and exclusions. The FOIA also requires Federal agencies to routinely publish in the **Federal Register**, or make available to the public, certain information concerning their organizational structures, policies and procedures, final opinions and orders, and records that have or are likely to become the objects of frequent FOIA requests. The regulations in this subpart implement the FOIA as required or authorized by various provisions of the statute.

The Bureau modeled its FOIA rule upon regulations promulgated by the other Federal agencies, including the U.S. Department of the Treasury. In drafting the rule, the Bureau sought the input of the Department of Justice and the National Archives and Records Administration's Office of Government Information Services, which is responsible for promoting best practices among Federal agencies as to their FOIA regulations and practices.

Subpart C of the final rule sets forth procedures for serving the Bureau and its employees with copies of documents in connection with legal proceedings, such as summonses, complaints, subpoenas, and other litigation-related requests or demands for the Bureau's records or official information. Subpart C also describes the Bureau's procedures for considering such requests or demands for official information. These regulations (which are sometimes referred to as *Touhy* regulations) are modeled after similar regulations of other Federal agencies.

Subpart D of the rule pertains to the protection and disclosure of confidential information that the Bureau generates and receives during the course of its work. Various provisions of the Dodd-Frank Act require the Bureau to promulgate regulations providing for the confidentiality of certain types of information and protecting such information from public disclosure. Other provisions of the Dodd-Frank Act, however, require or authorize the Bureau to share information, under certain circumstances, with other Federal and State agencies to the extent that they share jurisdiction with the Bureau as to the supervision of financial institutions, the enforcement of consumer financial protection laws, or the investigation and resolution of consumer complaints regarding financial institutions or consumer financial products and services. In implementing these provisions, the Bureau has sought to provide the maximum protection for confidential information, while ensuring its ability to share or disclose information to the extent necessary to achieve its mission.

The Bureau recognizes that much of the information that it will generate and obtain during the course of its activities will be commercially, competitively, and personally sensitive in nature, and generally warrants heightened protection. The need for greater protection for these categories of information is reflected in the substantive law of privilege and in various statutes, including the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a (the Privacy Act), that provide for the protection of such information from disclosure.

Notwithstanding these concerns, there are instances in which the disclosure of confidential information will be necessary or appropriate for the Bureau to accomplish its statutory mission, such as the investigation and resolution of consumer complaints or the enforcement of Federal consumer financial laws. Disclosures may also serve the public interest where Federal and State agencies share elements of the Bureau's mission and where, by sharing information, they can do their jobs more effectively.

The regulations in subpart D balance these competing concerns by generally prohibiting the Bureau and its employees from disclosing confidential information to non-employees, and even in certain cases to its employees, except in limited circumstances. Even where the Bureau permits disclosures of confidential information, the Bureau imposes strict limits upon the further use and dissemination of disclosed information.

Where appropriate, the Bureau has based the regulations in this subpart upon regulations of the other Federal financial regulatory agencies that provide for the confidentiality and disclosure of certain information generated or received in the course of supervising, investigating, or pursuing enforcement actions against financial institutions.

CFPB Exams May Lead to Enforcement

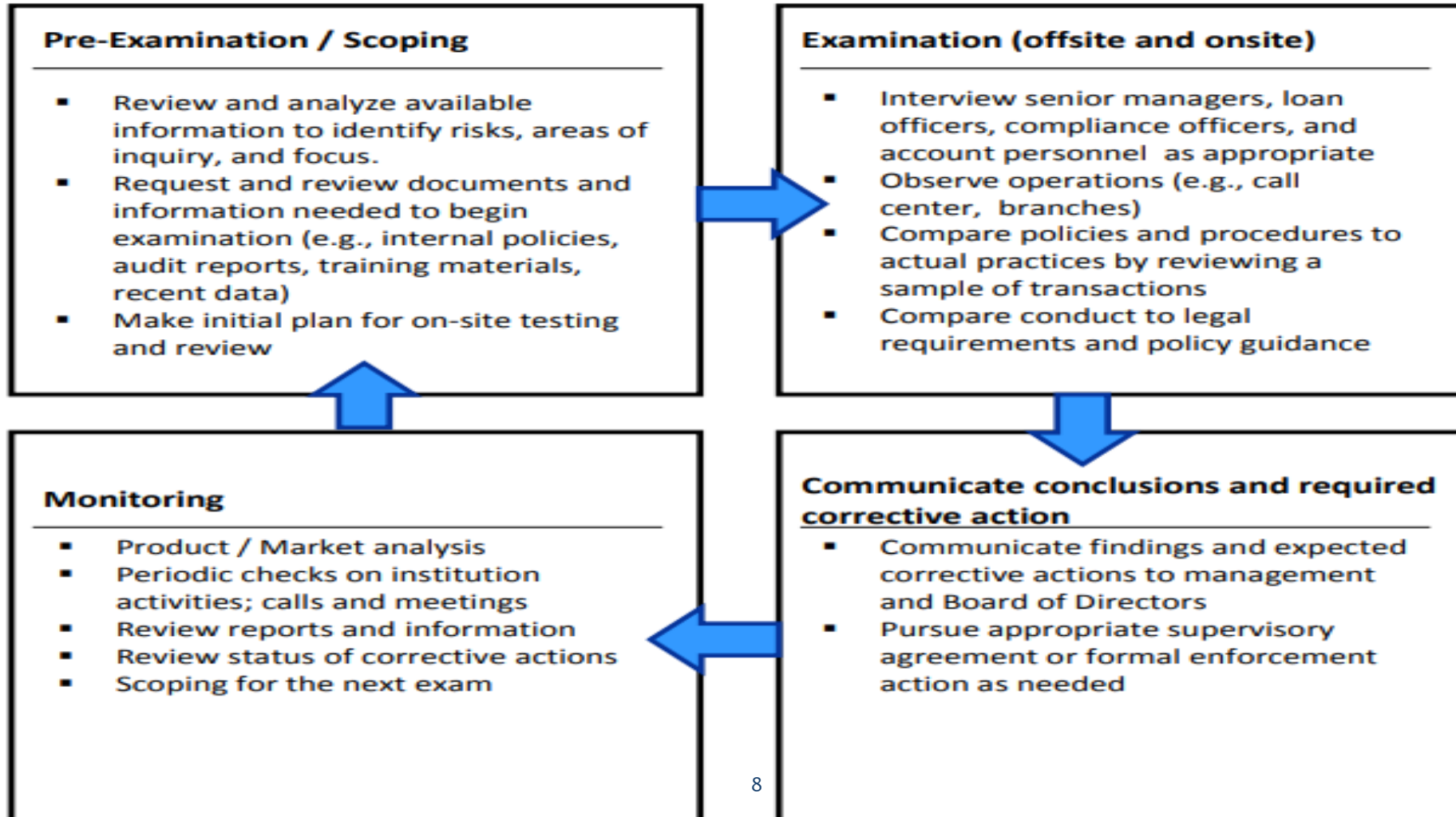
- CFPB is authorized to conduct investigations to determine whether any person is, or has, engaged in conduct that violates Federal consumer financial law.
- Investigations may be conducted jointly with other regulators, and may include subpoenas or civil investigative demands for testimony, responses to written questions, documents, or other materials.
- CFPB may bring administrative enforcement proceedings or civil actions in Federal district court.
- The Bureau can obtain “any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law,” including, but not limited to:
 - Rescission or reformation of contracts.
 - Refund of money or return of real property.
 - Restitution.
 - Disgorgement or compensation for unjust enrichment.
 - Payment of damages or other monetary relief.
 - Public notification regarding the violation.
 - Limits on the activities or functions of the person against whom the action is brought.
 - Civil monetary penalties (which can go either to victims or to financial education).
- CFPB has no criminal enforcement authority. The CFPB is required by the CFPA to refer evidence of criminal findings to the Department of Justice (DOJ) for further review and action.

Warning: ECOA/pattern or practice

- The Equal Credit Opportunity Act (ECOA) requires the CFPB to refer matters to DOJ whenever the CFPB “has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of Section 1691(a)” of ECOA, which states ECOA’s basic prohibitions against discrimination.
- In matters that do not involve a pattern or practice of discouragement or denial, the CFPB may refer the matter to the DOJ whenever the agency has reason to believe that one or more creditors has violated Section 1691(a).
- CFPB HQ handles referral of appropriate matters to DOJ.



Living with Supervision and Examination



Preparing and Review Paradigm

- **Board and Management Oversight** - Board and management oversight factors are evaluated commensurate with the institution's size, complexity, and risk profile. Compliance expectations extend to third-party relationships.
- **Compliance Program** - Compliance Program factors should be evaluated commensurate with the institution's size, complexity, and risk profile. Compliance expectations extend to third-party relationships.
- **Violations of Law and Consumer Harm**

Examination Reports and Supervisory Letters

- **Matters Requiring Attention (MRAs):** MRAs are used by the Bureau to communicate to an institution's Board of Directors, senior management, or both, specific goals to be accomplished in order to correct violations of Federal consumer financial law, remediate harmed consumers, and address related weaknesses in the CMS that the examiners found are directly related to violations of Federal consumer financial law.
 - MRAs include timeframes for periodic reporting of efforts taken to address these matters, as well as expected timeframes for implementation.
- **Supervisory Recommendations (SRs):** SRs are used by the Bureau to recommend actions for management to consider taking if it chooses to address the Bureau's supervisory concerns related to CMS. SRs are used when the Bureau has not identified a violation of Federal consumer financial law, but has observed weaknesses in CMS.
 - SRs do not include provisions for periodic reporting or expected timelines for implementation. However, the Bureau will review through monitoring the steps institutions have taken to address SRs, including any information that institutions may provide regarding actions taken.
- **Neither MRAs nor SRs are legally enforceable.** The Bureau will, however, consider an institution's response in addressing identified violations of Federal consumer financial law, weaknesses in CMS, or other noted concerns when assessing an institution's Compliance rating, or otherwise considering the risks that an institution poses to consumers and to markets. These risk considerations may be used by the Bureau when prioritizing future supervisory work or assessing the need for potential enforcement action.

Supervisory Appeals Process

cfpb Consumer Financial
Protection Bureau
1700 G Street NW, Washington, DC 20552

Appeals of Supervisory Matters¹

October 28, 2015

General Purpose

To promote a constructive supervisory relationship with the financial service providers, including depository institutions, under its jurisdiction, the CFPB is implementing a supervisory appeals process.

Throughout the supervisory process, the CFPB and its supervised entities should engage in an open and candid dialogue on a continuing basis. During an examination or review, CFPB examiners and regional management should ensure that supervised entities understand examiner concerns and issues that arise. In turn, supervised entities should present all relevant information in a timely manner during the examination or review process to ensure that examiners' analyses are complete.

After an examination or targeted review, if a supervised entity disagrees with a less than satisfactory compliance rating (a 3, 4, or 5)² or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter,³ the entity may appeal. The key aspects of the appeals process as outlined in this document are:

- CFPB managers who did not participate in the supervisory matter and whose knowledge and background enable them to meaningfully evaluate supervisory matters will be involved in reviewing appeals;
- The CFPB will only entertain appeals submitted in writing, with documentation supporting the appeal, and within specified timeframes; and

¹ This policy is not intended to nor should it be construed to: (1) restrict or limit in any way the CFPB's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any person, including one who is the subject of CFPB supervisory, investigation or enforcement activity, any substantive or procedural rights or defenses that are enforceable in any manner.

² See the *CFPB Supervision and Examination Manual's* chapter on the examination process. <http://www.consumerfinance.gov/guidance/supervision/manual/>

³ The CFPB will issue supervisory letters for its reviews of consumer compliance matters that do not result in the issuance of a compliance rating. Supervised entities may appeal adverse findings described in a supervisory letter in the same manner as such findings in an examination report. Adverse findings are those that result in a Matter Requiring Attention.

CFPB Aims to Increase Nonbank Exams



CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers

Bureau Seeks Comment on Updated Procedures

APR 25, 2022

Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) announced that it is invoking a largely unused legal provision to examine nonbank financial companies that pose risks to consumers. The CFPB believes that utilizing this dormant authority will help protect consumers and level the playing field between banks and nonbanks. The CFPB is also seeking public comments on a procedural rule to make this process more transparent.

“Given the rapid growth of consumer offerings by nonbanks, the CFPB is now utilizing a dormant authority to hold nonbanks to the same standards that banks are held to,” said CFPB Director Rohit Chopra. “This authority gives us critical agility to move as quickly as the market, allowing us to conduct examinations of financial companies posing risks to consumers and stop harm before it spreads.”

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the CFPB has authority to use traditional law enforcement to stop companies from engaging in conduct that pose risk to consumers; this can involve adversarial litigation. However, the law also gives the CFPB authority to conduct supervisory examinations to review the books and records of regulated entities. CFPB examiners typically provide a report to entities with problems that need to be addressed, and responsible institutions typically take prompt corrective action.

Nonbank supervision

For decades before the Dodd-Frank Act, only banks and credit unions were subject to federal supervision. But after the 2008 financial crisis in which nonbank companies played a pivotal role, Congress tasked the CFPB with supervising certain nonbanks, in addition to large depository institutions with more than \$10 billion in assets, and their service providers. Nonbanks do not have a bank, thrift, or credit union charter; many today operate nationally and brand themselves as “fintechs.”



Questions and Answers

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