



# CFPB Update: Regulatory and Enforcement Developments

December 16, 2014, 12:30 – 1:30 pm ET  
American Law Institute Webinar

*Jonathan L. Pompan*  
*Alexandra Megaris*



# Agenda

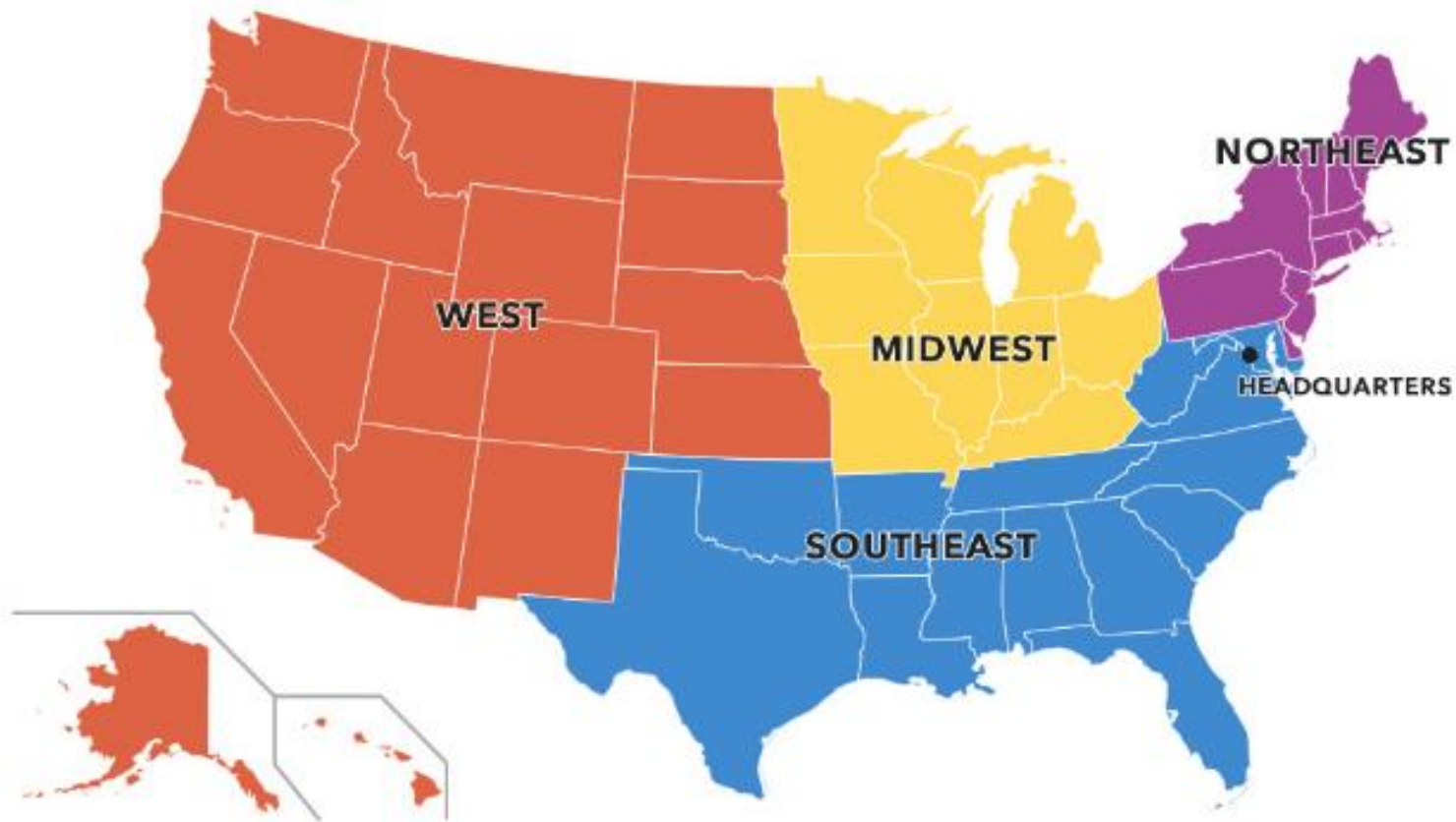
- **Supervision and Examinations**
  - What is CFPB Supervision?
  - Where does it fit in within the Bureau?
  - CFPB Examination Process
  - What is the CFPB Finding?
- **Enforcement Actions**
  - Authority
  - Common Triggers
  - A look back and look forward...
  - Key Steps to Responding to a CID
  - Compliance Tips
- **Observations and Q & A**



# What is CFPB Supervision?

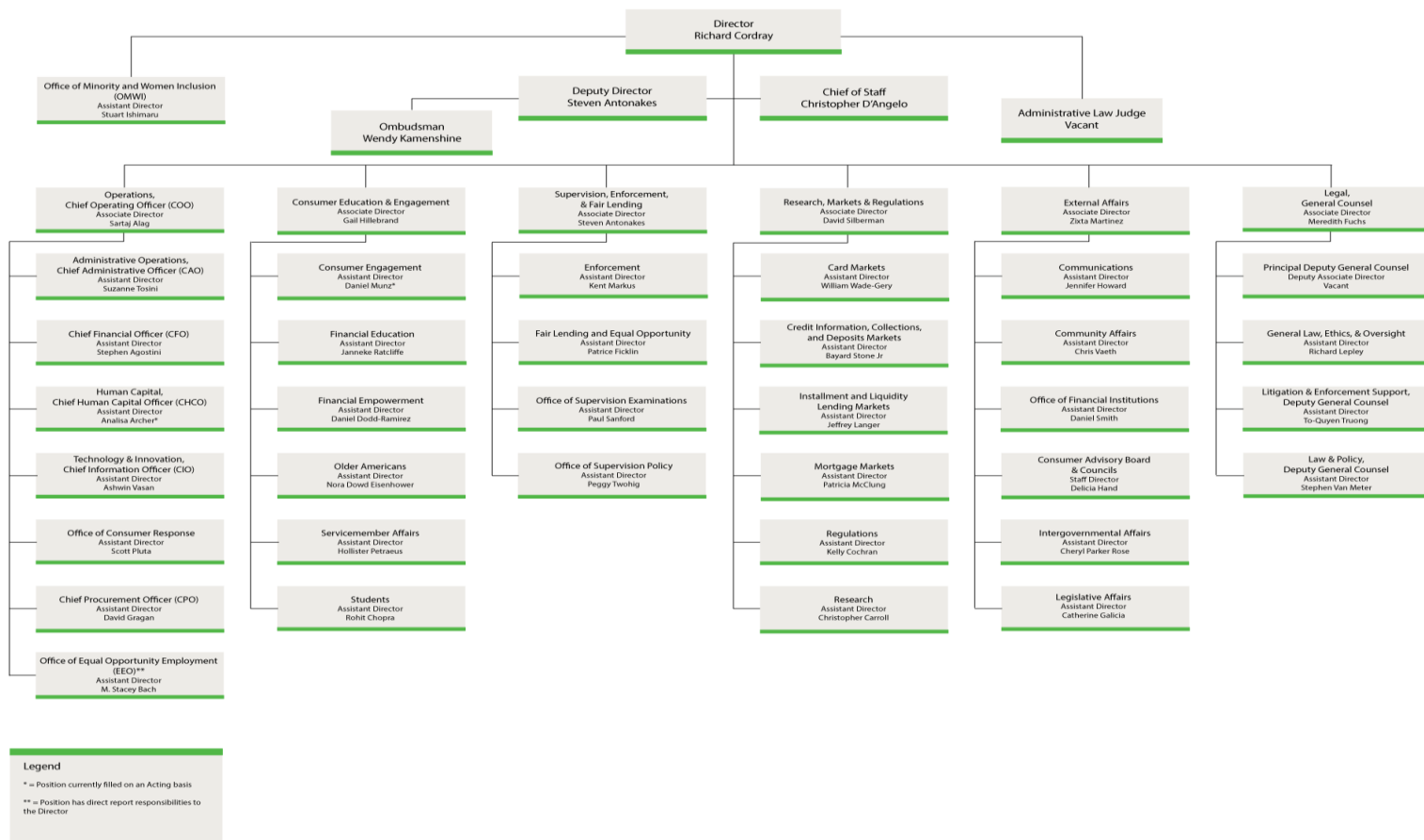


# CFPB Supervision Authority



# CFPB Supervision and Examination: Where does it fit in within the Bureau?





Last updated: August 26, 2014



# CFPB Supervision and Examinations

## 1. Mission

The supervision program will promote the development of markets for consumer financial products and services that are fair, transparent, and competitive.

"Holding both banks and nonbanks accountable to consumer financial laws will help create a fairer, more transparent market for consumers. It will create a better environment for the honest businesses that serve them. And it will help the overall economic stability of our country."

— Richard Cordray, Director of the CFPB

## ■ Approach

The CFPB has designed a supervision program to ensure that banks and nonbanks comply with federal consumer financial laws and to detect and assess the risks to consumers that arise from these businesses.

This consumer-centered approach to supervision is based on three main principles:

1. Focus on risks to consumers in the policies and practices of consumer financial providers,
2. Analyze available data on the activities of providers, on the markets in which they operate, and on the risks to consumers, and
3. Apply consistent standards in supervision of both bank and nonbank consumer financial companies.

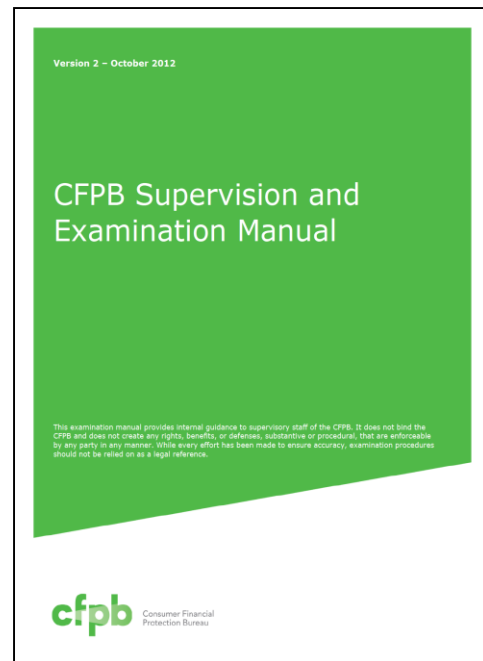
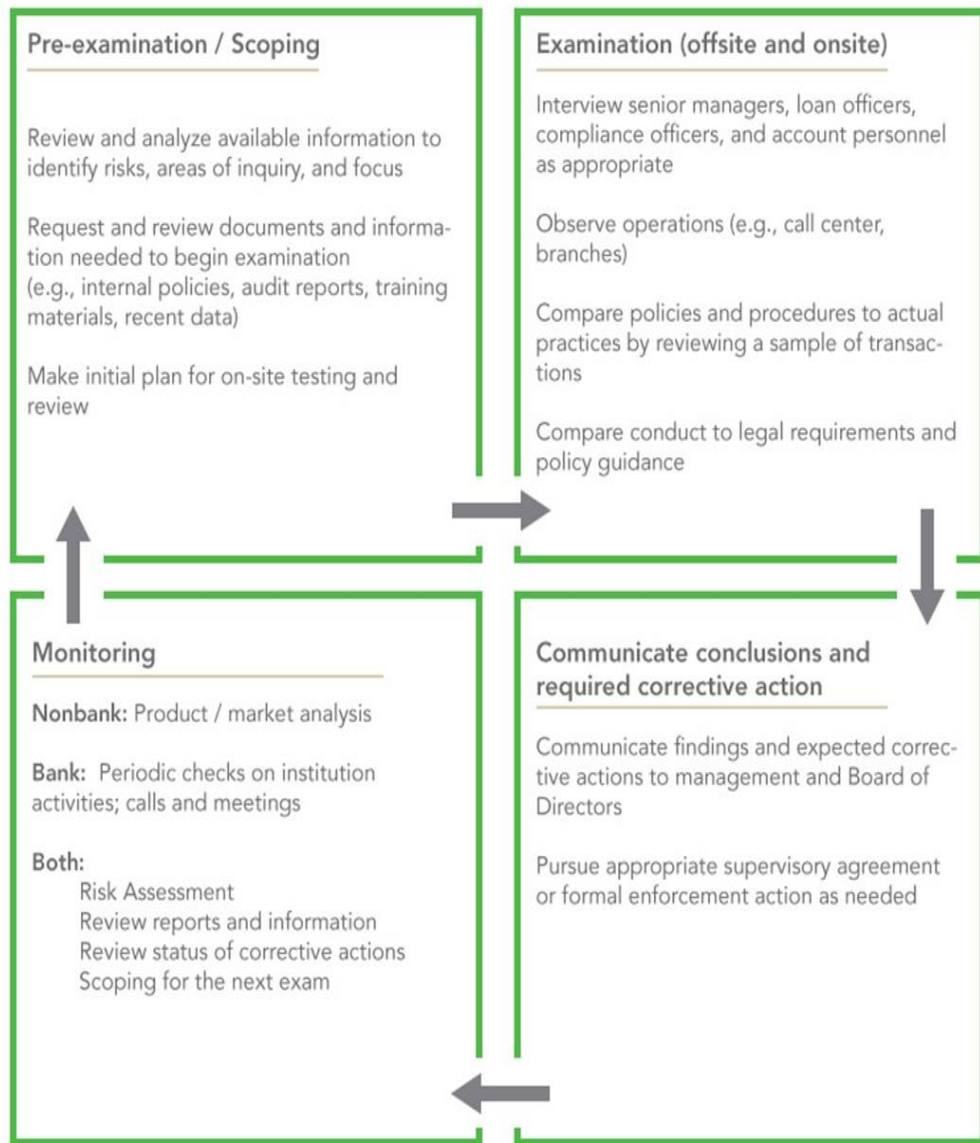


## CFPB Examination Process





# The CFPB Examination Process



# CFPB Examination Procedures

## CFPB

### Examination Procedures

### Debt Collection

#### Examination Procedures Debt Collection

These examination procedures apply to larger participants in the consumer debt collection market defined by 12 CFR 1090.105 and other entities within the supervisory authority of the Consumer Financial Protection Bureau (CFPB) to the extent that they seek to collect debt from consumers. The procedures contain a series of modules, grouping similar requirements together. Prior to using these procedures, however, examiners should complete a risk assessment and scope memorandum. Depending on the scope, and in conjunction with the compliance management system review procedures, each examination will cover one or more of the following modules:

1. Entity Business Model
2. Communications in Connection with Debt Collection
3. Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies
4. Consumer Complaints, Dispute Resolution, and Debt Validation
5. Payment Processing and Account Maintenance
6. Equal Credit Opportunity Act
7. Litigation Practices, Repossession, and Time-Barred Debt

#### Examination Objectives

- To assess the quality of the regulated entity's compliance management systems, including its internal controls and policies and procedures, for its debt collection business.
- To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with debt collection.
- To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.
- To determine, in accordance with CFPB internal consultation requirements, whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

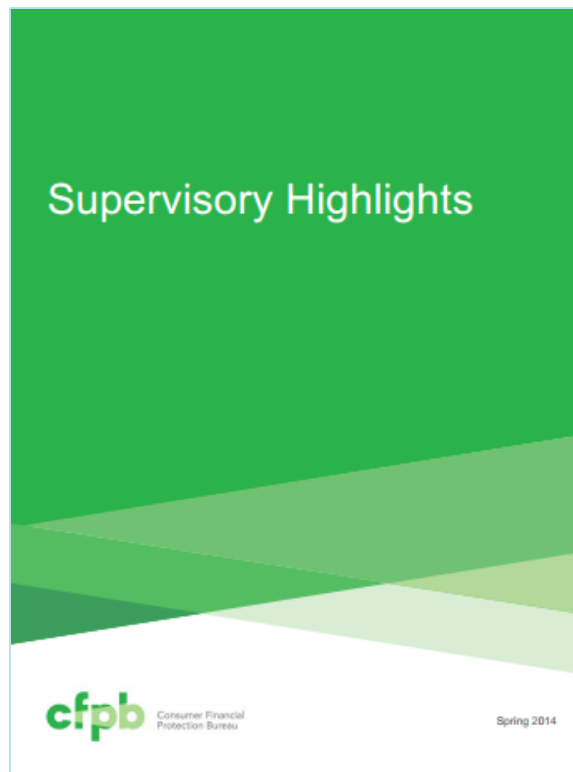
#### Background

# CFPB Examination Objectives

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# What is the CFPB finding?



# CFPB Supervision & Examination: A Look Back...

- July 2011 – Supervision Launched for Banks, Thrifts, Credit Unions > \$10 bil.
- July 2012 – Supervision Launched Nonbanks
  - mortgage companies (originators, brokers, and servicers, and loan modification or foreclosure relief services);
  - payday lenders; and
  - private education lenders
- Sept. 2012 – Consumer Reporting Market
- Jan. 2013 – Debt Collection Market
- Aug. 2013 – Nonbanks that Pose Risks to Consumers (regardless of size or market)
- March 2014 - Student Loan Servicing
- Possibly Sept. 2014 - International Money Transfer, Remittance Market



# CFPB Supervisory Highlights

- Periodically releases *Supervisory Highlights Reports* (4 to date)
- General Observations
  - Focus on Compliance Management Systems (CMS)
  - Third-Party Service Providers – high compliance expectations (potential for legal liability)
  - Fair Lending
- Remedial Actions
  - Public Enforcement Actions
  - Nonpublic Supervisory Actions
- Market Focus
  - Depository Institutions
  - Mortgage – servicing transfers, payment processing, loss mit.,
  - Consumer Reporting – dispute handling
  - Debt Collection – furnisher obligations (dispute investigations), recurring electronic transfer of funds, FDCPA limitations on phone calls and false and misleading statements
  - Short-term, small dollar lending – debt collection practices, ACH practices
  - Fair Lending – exception documentation, adverse action notices



# CFPB Guidance Highlights and Trends

- Routine Updates and New [Examination Procedures and Guidance](#)
- April 2012 – Third Party Service Providers
- July 2012 – Credit Card Add-on Products
- Feb. 2013 – Mortgage Servicing Transfers (RESPA, FCRA, FDCPA, and UDAAPs)
- March 2013 – Auto Lending
- July 2013 – FDCPA and UDAAP re representations about impact of payment of debt on credit score and reports
- July 2013 – UDAAPs in collection of consumer debts
- Sept. 2013 – FCRA and Furnisher Obligations
- Sept. 2013 – Payroll Card Bulletin (EFTA and Reg. E).
- Dec. 2013 - Social Media: Consumer Compliance Risk Management Guidance (w/ FFIEC)
- Feb. 2014 - FCRA and Reg. V provisions that apply to debt buyers, debt collectors and other furnishers
- Oct. 2014 – mortgage servicers, student loans, and more



# CFPB Examination Appeals Process

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

CFPB Bulletin 2012-07

Date: October 31, 2012

Subject: Appeals of Supervisory Matters

The CFPB recently began issuing examination reports and supervisory letters to financial service providers that it supervises. Today we are implementing a policy that would allow our supervised entities to appeal certain supervisory findings in those examination reports and supervisory letters. The policy promotes the CFPB's goals of having constructive supervisory relationships with supervised entities and having a fair and factually based supervision program. We expect that offering a credible, fair opportunity to appeal supervisory findings should lead to greater industry compliance, and heightened compliance should in turn produce better markets for consumers.

The appeals process, as outlined in the attached document, involves a review of the appealed matter by a committee that includes management at CFPB Headquarters in Washington, D.C. and representatives of regional offices that were not involved in the matter under review. Financial service providers, including depository institutions, under CFPB's jurisdiction may request a review of a less than satisfactory compliance rating (a 3, 4, or 5) or any underlying adverse finding set forth in the relevant examination report, or adverse findings conveyed in a supervisory letter.

The CFPB will periodically review and make any necessary updates to its appeals policy. In addition, the CFPB welcomes feedback on the policy. The public may send comments to [CFPB\\_Supervision@CFPB.gov](mailto:CFPB_Supervision@CFPB.gov).

Attachment

- Financial service providers under the CFPB's jurisdiction may request a review of a less than satisfactory compliance rating or any underlying adverse finding set forth in the relevant examination report, or adverse findings conveyed in a supervisory letter.
- Appeals are handled by a committee that includes management at CFPB headquarters in Washington, D.C. and representatives of regional offices that were not involved in the matter under review.
- Requires written submission, supporting documentation, and adhering to timeframes.





# Enforcement Actions



# CFPB Enforcement Authority

- 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.



# Common Triggers of Enforcement



# Consumer Complaint Database

The screenshot shows a web browser window with the URL [www.consumerfinance.gov/complaintdatabase/](http://www.consumerfinance.gov/complaintdatabase/). The page header includes the CFPB logo, contact information (855) 411-2372, and a search bar. The main navigation menu contains links for HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and SUBMIT A COMPLAINT. The page content includes a breadcrumb trail (HOME > CONSUMER COMPLAINT DATABASE), a title 'Consumer Complaint Database', and social media icons for Facebook, Twitter, and Email. A descriptive paragraph states: 'These are complaints we've received about financial products and services. Learn about the complaint process. We don't verify all the facts alleged in these complaints but we do take steps to confirm a commercial relationship between the consumer and company. Complaints are listed here after the company responds or after they have had the complaint for 15 calendar days, whichever comes first. We remove complaints if they don't meet all of the publication criteria. Data is refreshed nightly.' Below this is a 'DATA BY PRODUCT' section with links for All, Bank accounts or services, Credit cards, Credit reporting, Debt collection, Money transfers, Mortgages, Student loans, and Other consumer loans. A 'Download, sort, and visualize' section mentions the Socrata tool and provides links for Visualization tutorials from data.gov and Technical documentation.



# CFPB Enforcement: A Look Back

- Overview
  - Transferred investigations by prudential regulators and HUD
  - New investigations that “span the full breadth of the Bureau’s enforcement jurisdiction.
- Over 50 public enforcement actions
- Civil Money Penalties
  - 1Q – 2Q FY 2014 - \$37,137,000 mil. (13 defendants)
  - FY 2013 – \$49. mil. (2 defendants)
  - FY 2012 – \$32 mil. (11 defendants)



# CFPB Enforcement Highlights

- Mortgage Loan Servicer
- Mortgage Lenders
- Mortgage Reinsurance
- Mortgage Assistance Relief Services
- Credit Card Billing and Credit Card Add-on Products
- Auto Lending
- Student Lending
- UDAAPs in Debt Collection (by creditors and servicers)
- Debt Relief Services / Payment Processing
- Robo-signing of court Documents in Debt Collection



# Enforcement: A Look Forward...

- More litigated cases as the CFPB continues to push the envelope on policy and process matters, including scope of authority pre-July 2011.
- More joint enforcement actions with other banking regulators.
- More joint enforcement actions with the Department of Justice:
  - Criminal Referrals, Joint Civil Actions, Fair Lending
- More enforcement actions that grow out of supervisory activities.
- More enforcement actions that rely on “Related Person,” and “Substantial Assistance,” as well as state law compliance and other aggressive theories of liability.
- More enforcement actions with larger dollar numbers (restitution and civil money penalties).



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

1. Governance, Management, and Employee Information
2. Acts and practices (transactional level data);
3. Compliance Management Systems;
4. Policies and procedures;
5. Training;
6. Monitoring;
7. Consumer complaints
8. Compliance with enforcement actions; and
9. Corrective action





# 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.



# 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.



# 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.



# 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.



# 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.



# 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.



# 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.



# Responding to a CFPB Investigation (cont'd)

## Step 8: Consider Appropriate Follow-up

1. Client Focused
  1. Compliance Audit and Corrective Steps
  2. Coordination related to non-CFPB investigations
  3. Market Specific Focus
2. Advocate to the Bureau
  1. White Papers (Tell your side of the story)
  2. Presentations / Meetings
  3. 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 & 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



# Compliance Checklist

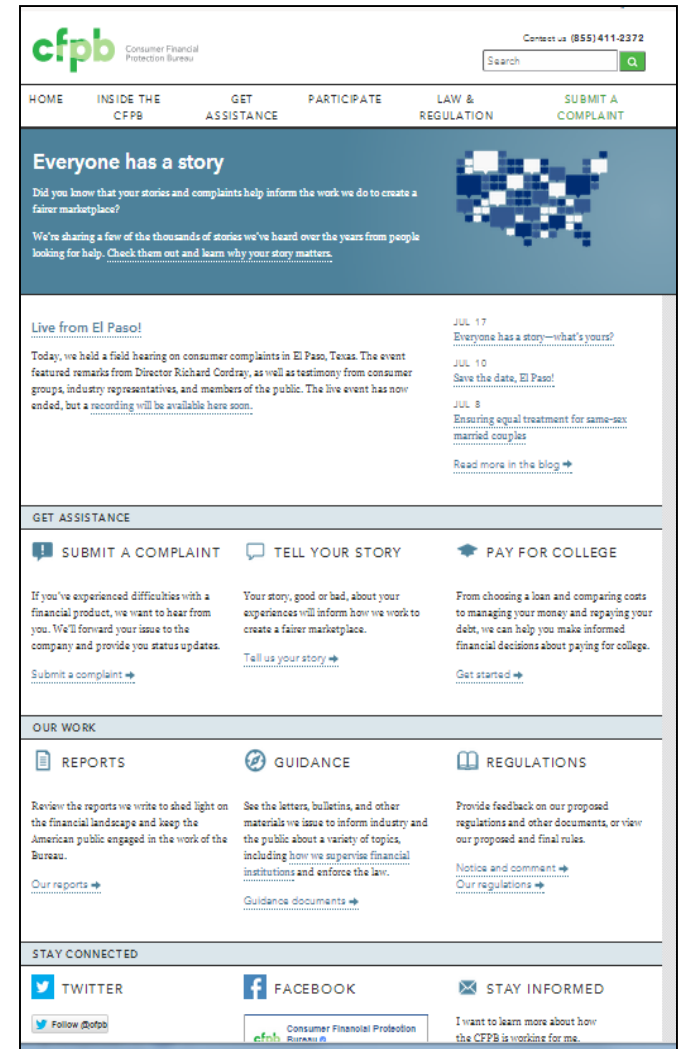
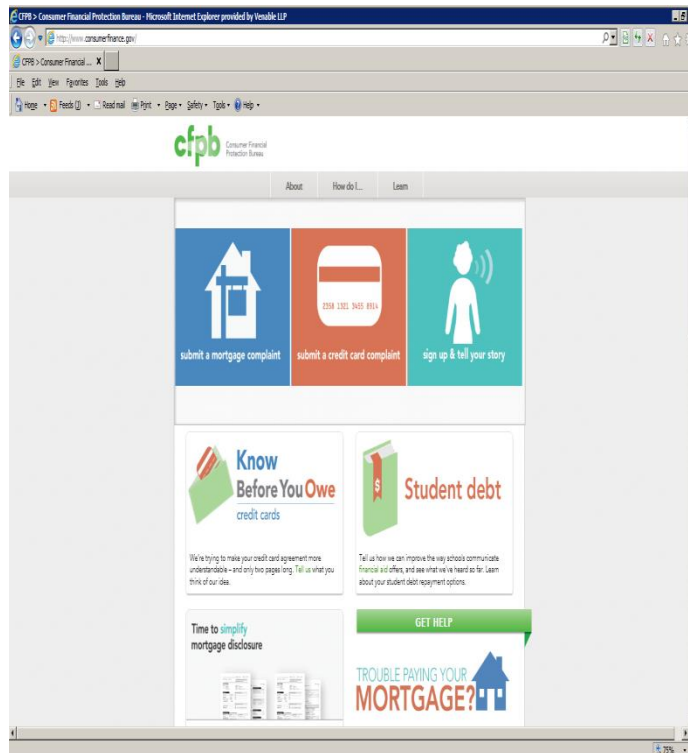
- ❑ Update/Enhance CMS on an Ongoing Basis.
- ❑ Develop a Gov't Investigation / Examination Response Plan.
  - ❑ Investigatory Demands
  - ❑ Examination Requests
  - ❑ Enforcement Actions
  - ❑ Due Diligence Requests from Vendors/Customers
- ❑ Comply with all applicable laws.
- ❑ Develop written policies, procedures, and practices.
- ❑ Due diligence, reporting, and monitoring of internal practices and third-party relationships.
- ❑ Review all consumer facing materials for compliance .
  - ❑ General debt collection legal requirements
  - ❑ Claim substantiation
  - ❑ Avoid deceptive disclosures
  - ❑ Use of testimonials
  - ❑ Digital advertising
  - ❑ Social Media
  - ❑ Telemarketing (e.g., scripts, dialing)
  - ❑ Market specific laws and guidance
  - ❑ Privacy and Data Security
- ❑ Consumer facing terms and conditions (arbitration?).
- ❑ Payment Policies and Portals.
- ❑ Review and revise B2B contracts to take in account regulatory environment.
  - ❑ Reporting and Monitoring (activities, compliance and complaints)
  - ❑ Regulatory examinations
  - ❑ Notice of third party subpoenas, examinations and investigations
  - ❑ Indemnity
  - ❑ Representations and Warranties
- ❑ Implement a complaint handling process.
- ❑ Consumer facing disclosures, including Website terms and conditions, privacy disclosure, and implementation of legal obligations.
- ❑ Federal Market Specific Requirements / Federal Financial Laws (E.g., FDCPA, TILA, Etc.).
- ❑ State laws and regulations.

# Additional Observations and Tips

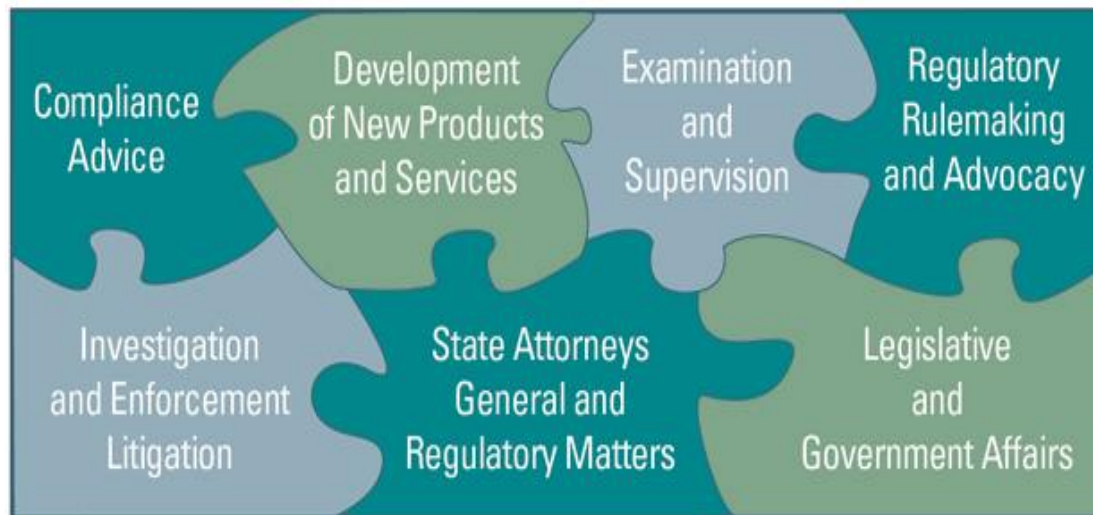
- Exams can take months.
- Keep track of what's reviewed and by whom.
- Consider providing context during and immediately after the onsite exam.
- Anticipate privilege issues.
- Early education and clarification can be key.
- While enforcement may not be onsite, they will still be involved in the process.
- Prepare to extract data, and prepare to place that data into context early in the process.
- Understand the CFPB's position on remediation and self-policing.
- Consider how an exam may impact overall legal and regulatory profile of company (e.g., private lawsuits, state licensing, etc.).
- Prepare and update management and board of directors at all stages.
  - Pre-exam prep
  - Scoping
  - Preliminary findings
  - Final Report (e.g., for matters requiring attention and other action items).
  - Possible confidential resolution and/or referral to enforcement.
  - Appeals process



# The CFPB Continues to Evolve



# Observations and Q & A



**Jonathan L. Pompan**

**202.344.4383**

**[jlpompan@Venable.com](mailto:jlpompan@Venable.com)**

**Alexandra Megaris**

**212.370.6210**

**[amegaris@Venable.com](mailto:amegaris@Venable.com)**

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