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# CFPB Supervision and Enforcement: Thinking About Overlap

October 27, 2016

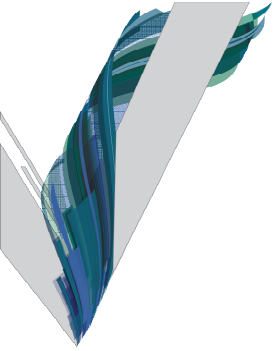
**Panelists:**

Garry Reeder, Managing Director, Chain Bridge Partners, LLC

Jonathan L. Pompan, Partner, Venable LLP

Andrew E. Bigart, Counsel, Venable LLP

Alexandra Megaris, Associate, Venable LLP



# Welcome to Today's Webinar

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## Themes We Will Cover Today

- How the CFPB's Supervision, Enforcement, and Fair Lending Division is organized and the roles played by the Office of Enforcement and Office of Supervision
- Strategies for navigating supervision examinations, appealing examination findings, and averting public enforcement actions
- The differences between the two offices and how to interact with each



# Today's Panelists



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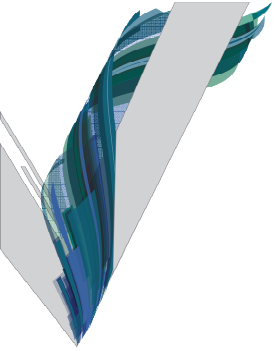
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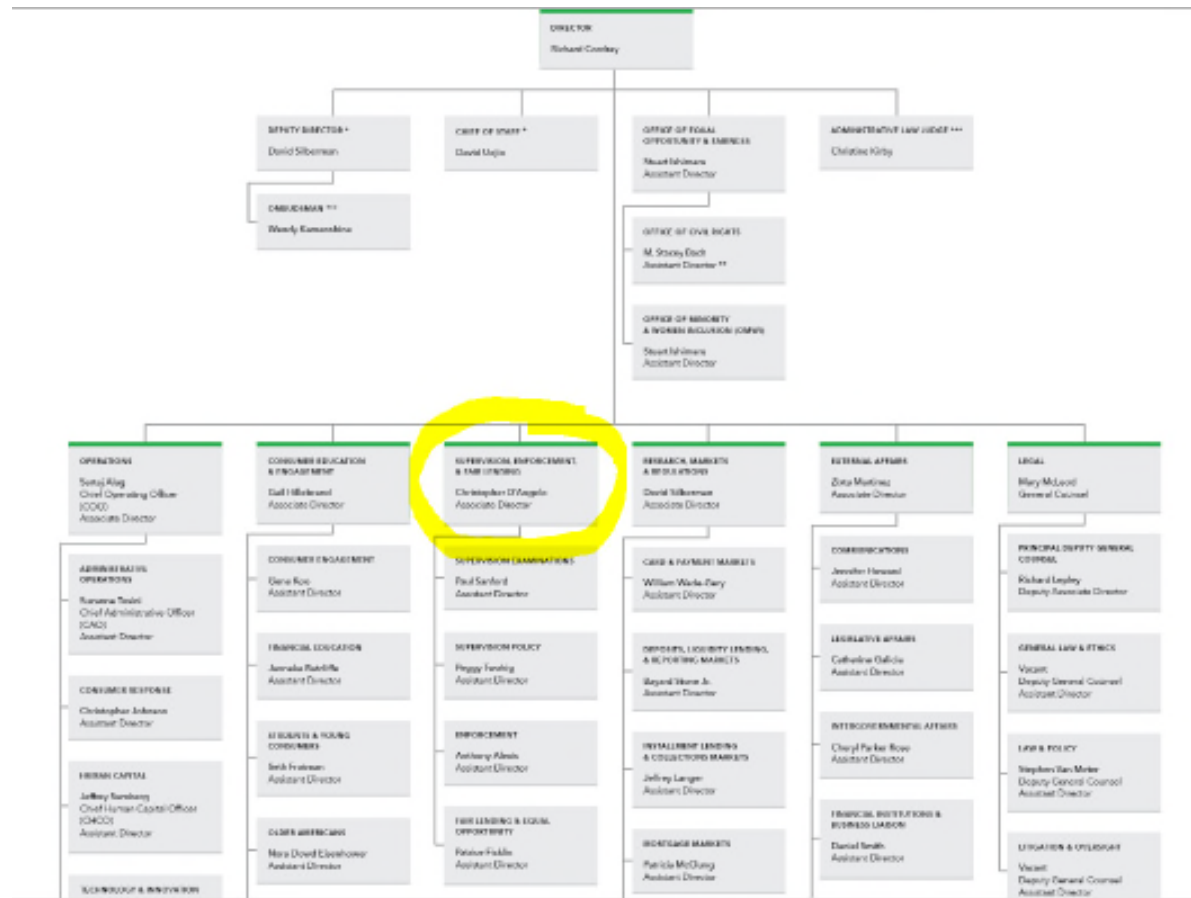


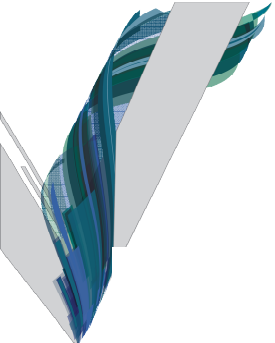
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# Examinations and Enforcement: Big Picture

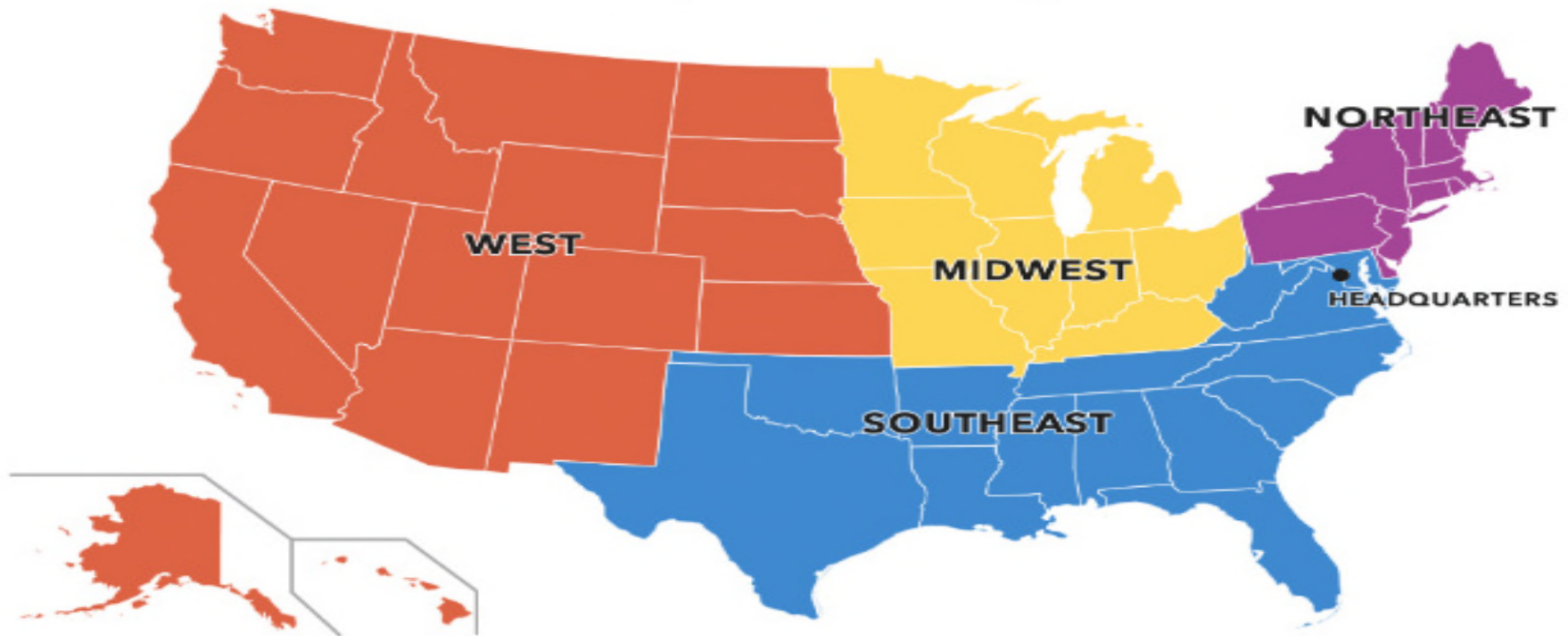
# Organization of CFPB & Division of Supervision, Enforcement and Fair Lending





# CFPB Examinations are Managed by Regions and Coordinated by HQ

CFPB Supervision Regions





## Consumer Focus

“We have a somewhat different approach here. We are now examining institutions for how they treat consumers. It’s not about the institution itself. It’s about the impact on consumers. It’s almost as though you take your traditional examination mode and you take that examiner and turn them around 180 degrees to look back at the public and how they’re affected rather than solely at the potential impact on the institution.”

- CFPB Director Richard Cordray

Source: Cordray Defends Complaint Database, Talks Qualified Mortgage Plan, American Banker, July 9, 2012





# CFPB's Supervisory Authority

- Supervisory Authority
  - Banks with more than \$10 billion in assets, concerning the offering or provision of a consumer financial service or product, and these banks' affiliates
  - Nonbanks concerning the offering or provision of a consumer financial service or product: mortgage, payday loans, and private student loans and "larger participants" in defined markets (e.g., CRAs, debt collectors, and more)
- Service Providers



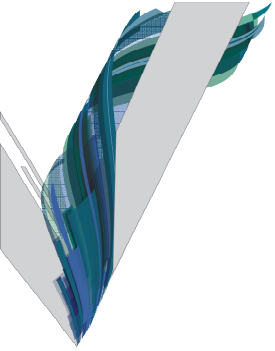
## CFPB's Enforcement Authority

- CFPB is authorized to conduct investigations to determine whether ***any person*** is, or has, engaged in conduct that violates ***federal consumer financial law***
- Includes "**service providers**" and "**related persons.**"
- Examples of federal consumer financial law:
  - The Electronic Fund Transfer Act
  - Fair Debt Collection Practices Act
  - Fair Credit Reporting Act
  - The Truth in Lending Act
  - The **Consumer Financial Protection Act**, which prohibits **unfair, deceptive, or abusive acts or practices** in connection with any transaction with a consumer for a consumer financial product or service



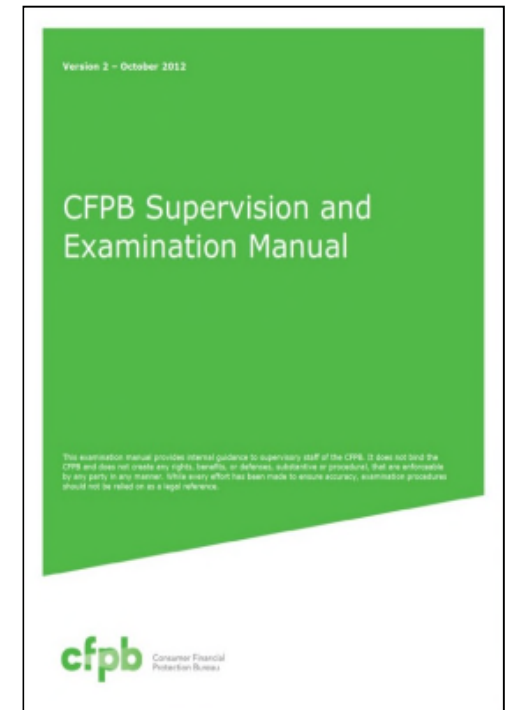
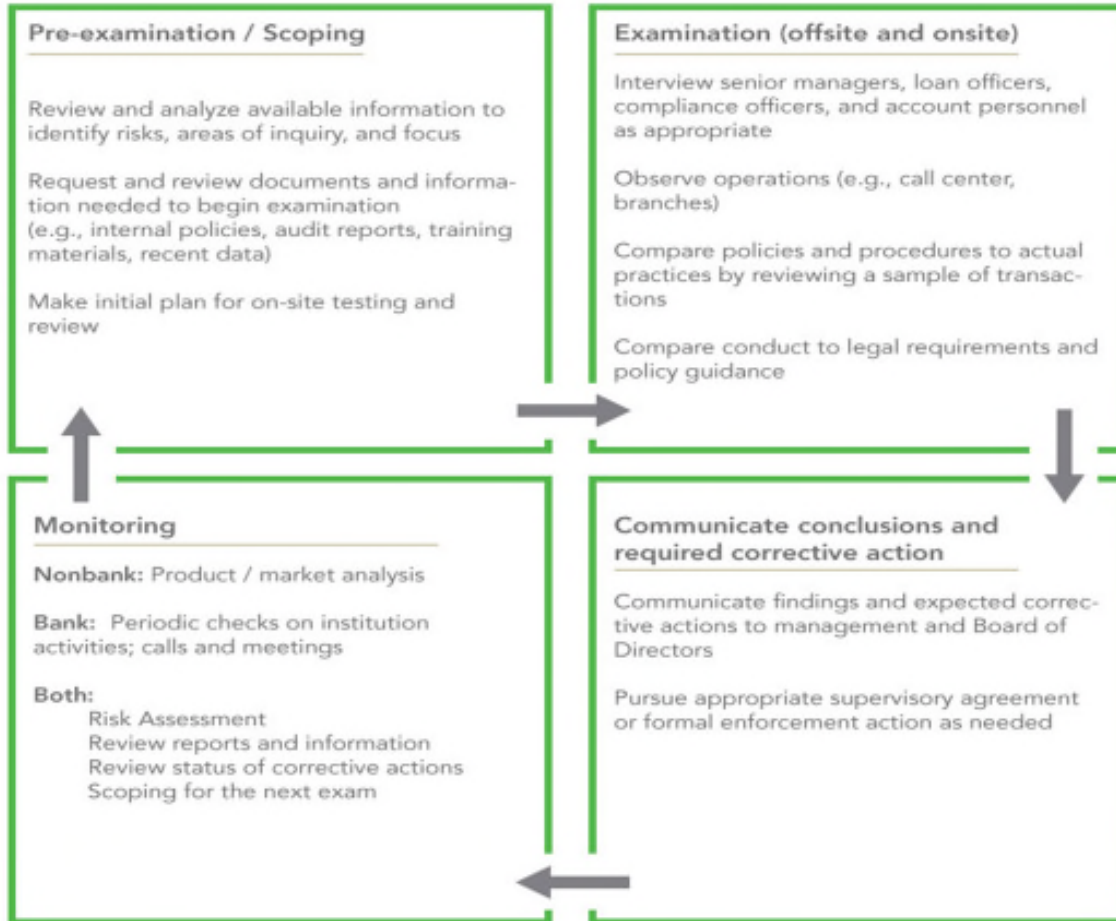
## Tools & Remedies Available to CFPB

- May investigate covered persons and service providers by issuing **administrative subpoenas** and **compelling testimony**
- May issue **cease-and-desist orders**
- May initiate actions in **administrative** or **federal district court** and obtain:
  - Monetary relief for consumers (e.g., refunds, payment of damages)
  - Disgorgement for unjust enrichment
  - Injunctive relief
  - Civil money penalties



# CFPB Examination Process

# The CFPB Examination Process





# CFPB Examination Objectives

- To **assess the quality of the regulated entity's compliance management systems**, including its internal controls and policies and procedures, for its activities
- To **identify acts or practices that materially increase the risk of violations** of federal consumer financial laws in connection with its activities
- 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**



## Pre-Examination / Scoping: Information Request

- Information Request will include requests for data, information, and documents (number and time period varies)
- Also will include important information about your exam, including:
  - Areas of focus;
  - On-site start date;
  - Review period;
  - Name of Examiner-in-Charge;
  - Estimated number of examiners;
  - Deadline for responding to requests;
  - Instructions for providing materials to exam team;
  - Document retention obligations; and
  - Definitions of terms used in Information Request



## Examination: Offsite and Onsite

- Each examiner will be responsible for different exam topics
- Examiners may visit a subset or all sites, and may visit service providers (or have already done so)
- Often require or necessitate presentation from company on various subject matters
- Examiners may conduct interviews with employees, including consumer facing staff
- Often daily (or near daily) follow-up requests (called Additional Requests)





# Examinations Allow for a Deep Dive

- **Interviews of Employees**

- Who may be interviewed?
- How much notice?
- What to expect?
- How to interact and who can attend?

- **Additional Requests**

- Examples
- Approach
- What does it mean?



# Conclusion of Examination

- Preliminary Report of Examination
  - Provides opportunity to respond to CFPB (may not be all findings)
- Supervisory Agreement or Formal Enforcement Action
  - Potential Action and Request for Response Letter (“PARR” Letter)
    - Potential for non-public settlement of alleged violations of law; or
    - Referral to Division of Enforcement
  - General Counsel’s office typically consulted
  - Responding to the PARR and the Action Review Committee (ARC) process: violation, institution, and policy factors
- Final Report of Examination
  - Matters Requiring Attention
    - Often will include forward and backward matters
  - Rating from 1 (highest) to 5 (lowest)
- Confidentiality
  - The examination report and any related supervisory matters are confidential and, in general, may not be shared by the examinee with any persons outside the examinee



# CFPB Examination Appeals Process



1700 G Street NW, Washington, DC 20002

## Appeals of Supervisory Matters<sup>1</sup>

November 3, 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)<sup>2</sup> or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter,<sup>3</sup> the entity may appeal. The key aspects of the appeals process as outlined in this document are:

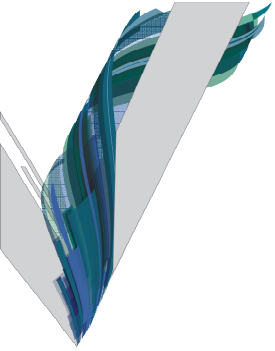
- CFPB managers who did not participate in the supervisory matter and whose knowledge and background enable them to meaningfully evaluate supervisory matters will be involved in reviewing appeals;
- The CFPB will only entertain appeals submitted in writing, with documentation supporting the appeal, and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

<sup>1</sup> 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.

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

<sup>3</sup> 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.

- Financial service providers under the 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.
- 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.
- Appeals may include an oral presentation.
- Appeals are confidential and can be worth the effort, however, may be contemporaneous with enforcement.



# **CFPB Focus on UDAAPs and Compliance Federal Consumer Financial Law**

# Drivers of Standards & Expectations

**Submit a complaint**

Here, an issue with a financial product or service? We'll forward your complaint to the company and work to get a response from them.

Check your complaint status

Para presentar una queja en español, llámanos al (855) 411-2372

Choose a product or service to get started

If you don't want to submit a complaint, you can tell your story.

**MOST COMMON**

- Mortgage
- Debt collection
- Credit reporting

**OTHER PRODUCTS AND SERVICES**

- Bank account or service
- Credit card
- Money transfer
- Payday loan
- Student loan
- Vehicle or other consumer loan

**FINAL RULES ISSUED BY THE CFPB**

**2015**

**JUNE 10**

Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service

**JUNE 9**

Minimum Requirements for Appraisal Management Companies

**APRIL 15**

Substitution of Credit Card Agreements Under the Truth in Lending Act (Regulation Z)

Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule

**JANUARY 20**

**Supervisory Highlights**

complaint

**cfpb** Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

**CFPB Compliance Bulletin 2015-07**

**Date:** December 16, 2015

**Subject:** In-Person Collection of Consumer Debt

In response to recent practices observed during supervisory examinations and enforcement investigations, the Consumer Financial Protection Bureau (CFPB or Bureau) issues this compliance bulletin to provide guidance to creditors, debt

Case 1:15-cv-001 Document 1-1 Filed 01/05/16 Page 1

No. 15-024

In The United States Court of Appeals For The Sixth Circuit

Debra Robinson  
Individual and on behalf of a class,  
Plaintiff-Appellee,

v.

Northland Group Inc.,  
Defendant-Appellee.

On Appeal from the United States District Court  
for the Western District of Michigan  
File Case 1:15-cv-001

Chief of Justice  
Brett Kavanaugh  
Debra Robinson  
Northland Group Inc.

Assistant Chief Justice  
William G. Bryant  
Debra Robinson  
Northland Group Inc.

Senior Circuit Judge  
Richard L. Young  
Debra Robinson  
Northland Group Inc.

Circuit Judge  
Michael R. Gableman  
Debra Robinson  
Northland Group Inc.

Circuit Judge  
Thomas J. Tash  
Debra Robinson  
Northland Group Inc.

Circuit Judge  
David S. Tatel  
Debra Robinson  
Northland Group Inc.

Circuit Judge  
William M. Kavanaugh  
Debra Robinson  
Northland Group Inc.

Circuit Judge  
Thomas A. Zuber  
Debra Robinson  
Northland Group Inc.

**Version 2 - October 2012**

**CFPB Supervision and Examination Manual**

This examination manual provides internal guidance to supervisory staff of the CFPB. It does not bind the CFPB and does not create any legal benefits or defenses, substantive or procedural, that are enforceable by any party in any manner, unless such action has been made to ensure accuracy, descriptive procedures should not be relied on as a legal reference.

**cfpb** Consumer Financial Protection Bureau

**2015 Debt**

Administrative Proceeding File No. 2015-CFPB-0011 - Guaranty Mortgage Corporation

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0010 - International Land Consultants, Inc., et al.

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0009 - Regions Bank

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0008 - Fort Knox Military Assistance Company, LLC

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0007 - R M K Financial Corporation

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0006 - Flagship Financial Group, LLC

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0005 - American Preferred Lending, Inc.

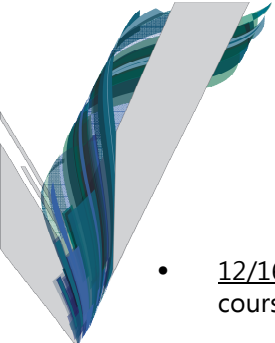
- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0004 - New Day Financial, LLC

- Consent order
- Stipulation

Administrative Proceeding File No. 2015-CFPB-0003 - Confidential Finance Company, LLC

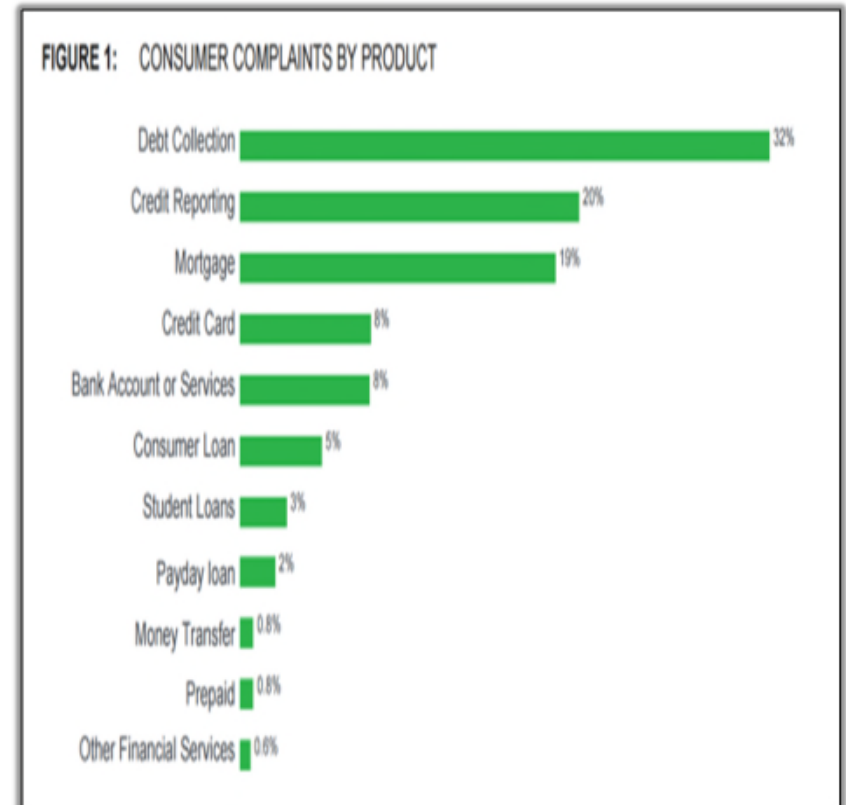
- Consent order
- Stipulation



# The Stakes Are High: Exam Findings Often Lead to Public Enforcement Actions

- 12/16/2015: the CFPB announced a consent order with a **short-term, small-dollar lender**, for illegal debt collection practices, discovered during the course of a Bureau examination.
  - The lender was ordered to refund **\$7.5 million** to 93,000 consumers, pay a **\$3 million** civil money penalty, and stop collection of remaining payday and installment loan debts owed by roughly 130,000 consumers. The company is additionally barred from in-person debt collection.
- 3/6/2015: From January 2013 through May 2013, the Bureau conducted an examination that reviewed an **indirect auto lending business** for compliance with ECOA and Regulation B, which lead to a referral to the DOJ.
  - The auto lender was ordered to substantially reduce or eliminate dealer discretion, pay **\$18 million** in damages for consumer harm, and pay to hire a settlement administrator to distribute funds to victims. The DOJ filed a separate enforcement action.
- 10/9/2014, the CFPB found that a **bank** harmed credit card consumers by practicing illegal and discriminatory credit card practices. These practices were discovered during a routine CFPB supervision exam.
  - Enforcement action: The consent order requires the bank pay **\$25 million** in direct loan subsidies to qualified borrowers in the affected communities, **\$2.25 million** in community programs and outreach, and a **\$5.5 million penalty**. This represents the largest redlining settlement in history as measured by such direct subsidies.
- 6/19/2014, the CFPB, found that a **bank** caused consumers to be subjected to deceptive marketing practices when being sold debt cancellation credit card add-on products by telemarketers. The enforcement action stems from a CFPB examination which was conducted between December 2012 and February 2013.
  - The bank paid a total of approximately **\$201 million** in redress including payments, credits, interest, and debt forgiveness to approximately 133,463 eligible consumers.
- 3/19/2013: the CFPB found that a **bank** had a policy of allowing dealers to increase or “mark up” consumers’ risk-based interest rates, and paying dealers from those markups, and that the policy lacked adequate controls or monitoring.
  - The Bureau forced the bank to pay **\$80 million** in damages to harmed African-American, Hispanic, and Asian and/or Pacific Islander borrowers. Additionally, the bank paid approximately **\$38.9 million** to consumers that the bank determined were both eligible and overcharged on auto loans.

# The Role of Consumer Complaints



# Complaints Received by the CFPB and Monetary Relief Obtained for Consumers

(Sept. 2016 Report)

As of September 1, 2016, the CFPB has handled approximately 982,400 complaints, including approximately 28,700 complaints in August 2016. Table 1 shows the percentage change in complaint volume by product, comparing June - August 2015 with June - August 2016.<sup>4</sup>

**TABLE 1: CHANGE IN COMPLAINT VOLUME**

|                         | % change  | 3 month average:<br>Jun - Aug 2015 | 3 month average:<br>Jun - Aug 2016 |
|-------------------------|-----------|------------------------------------|------------------------------------|
| Student loan            | 78%       | 642                                | 1,141                              |
| Bank account or service | 26%       | 2,002                              | 2,524                              |
| Prepaid                 | 20%       | 187                                | 225                                |
| Credit card             | 16%       | 1,927                              | 2,243                              |
| Consumer loan           | 8%        | 1,260                              | 1,359                              |
| Other financial service | 5%        | 188                                | 199                                |
| Debt collection         | 0%        | 7,732                              | 7,726                              |
| Credit reporting        | -7%       | 5,478                              | 5,078                              |
| Money transfer          | -11%      | 221                                | 197                                |
| Mortgage                | -11%      | 4,692                              | 4,170                              |
| Payday loan             | -18%      | 461                                | 379                                |
| <b>Total</b>            | <b>2%</b> | <b>24,989</b>                      | <b>25,508</b>                      |

**TABLE 2: MONTHLY PRODUCT TRENDS<sup>5</sup>**

| Products                | Complaints this month | % change vs last month | Monthly average since launch | Total complaints | Monthly complaints |
|-------------------------|-----------------------|------------------------|------------------------------|------------------|--------------------|
| Debt collection         | 9,746                 | 50%                    | 6,871                        | 264,123          |                    |
| Credit reporting        | 5,123                 | -2%                    | 3,480                        | 163,651          |                    |
| Mortgage                | 4,310                 | 10%                    | 4,206                        | 244,026          |                    |
| Bank account or service | 2,890                 | 11%                    | 1,743                        | 98,834           |                    |
| Credit card             | 2,801                 | 21%                    | 1,836                        | 101,790          |                    |
| Consumer loan           | 1,488                 | 13%                    | 772                          | 42,538           |                    |
| Student loan            | 1,264                 | 7%                     | 549                          | 33,118           |                    |
| Payday loan             | 431                   | 29%                    | 438                          | 15,356           |                    |
| Other financial service | 259                   | 86%                    | 154                          | 4,174            |                    |
| Prepaid                 | 245                   | 18%                    | 216                          | 5,851            |                    |
| Money transfer          | 230                   | 40%                    | 165                          | 6,890            |                    |
| <b>Total</b>            | <b>28,851</b>         | <b>21%</b>             | <b>15,845</b>                | <b>882,387</b>   |                    |

2013 2015

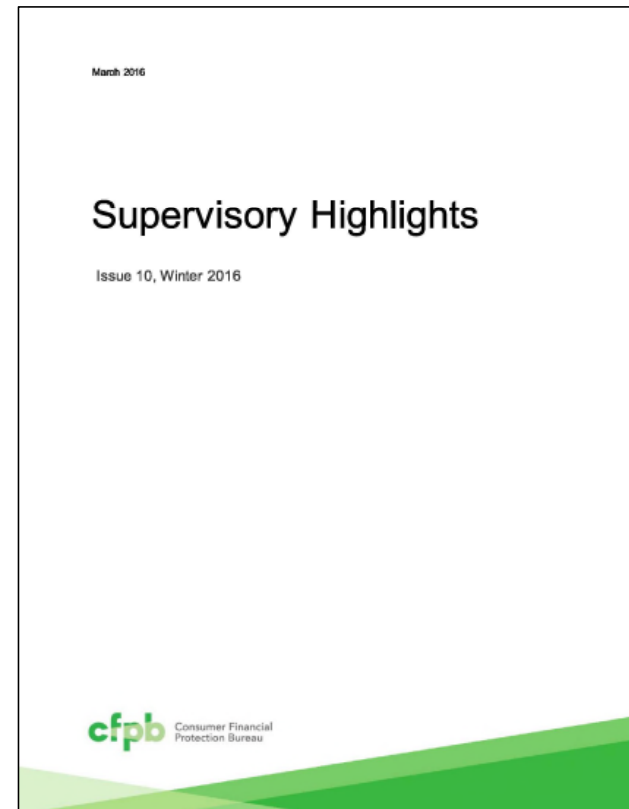
■ Product launch month ■ This month





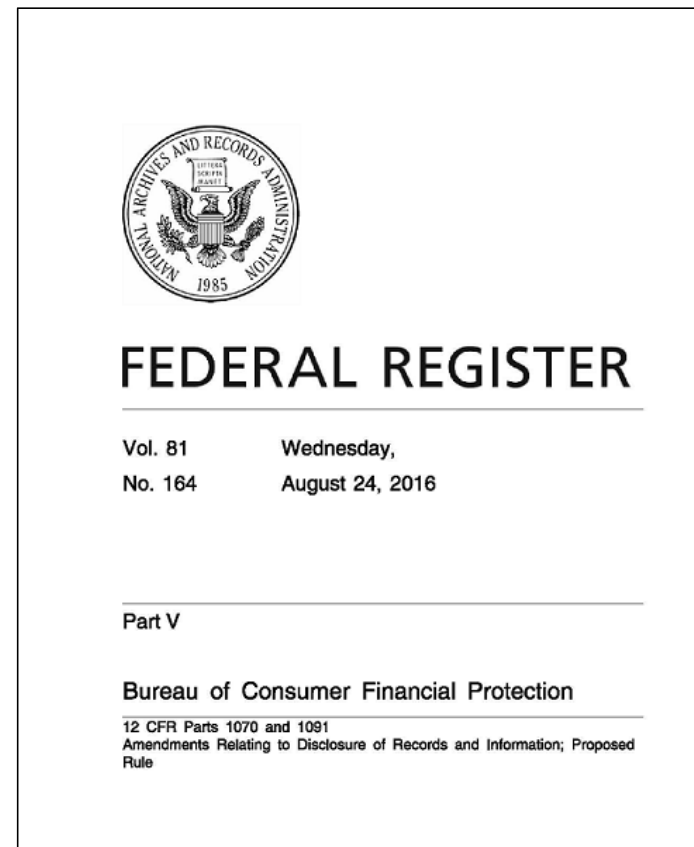
# Supervisory Highlights

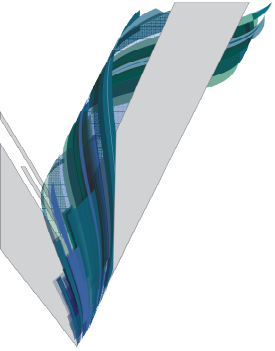
- Each quarter, the CFPB publishes “Supervisory Highlights,” summarizing findings from recent examinations
- The report includes information about recent public enforcement actions that resulted, at least in part, from supervisory work
- Most recent report is Winter 2016 (the tenth anniversary issue)



# Enforcement Beyond CFPB?

- CFPB has proposed a rule to expand its discretion to share confidential supervisory information (CSI) with other ***domestic and foreign government governmental entities***
  - “Federal, State, or foreign governmental authority, or an entity exercising governmental authority” regardless of whether the authority has jurisdiction over the company whose CSI is shared
  - Replaces the CFPB General Counsel as the person who decides whether to disclose CSI with the head of Supervision, Enforcement, and Fair Lending
- Comment period closed on October 24, 2016





# **Additional Strategies and Observations**

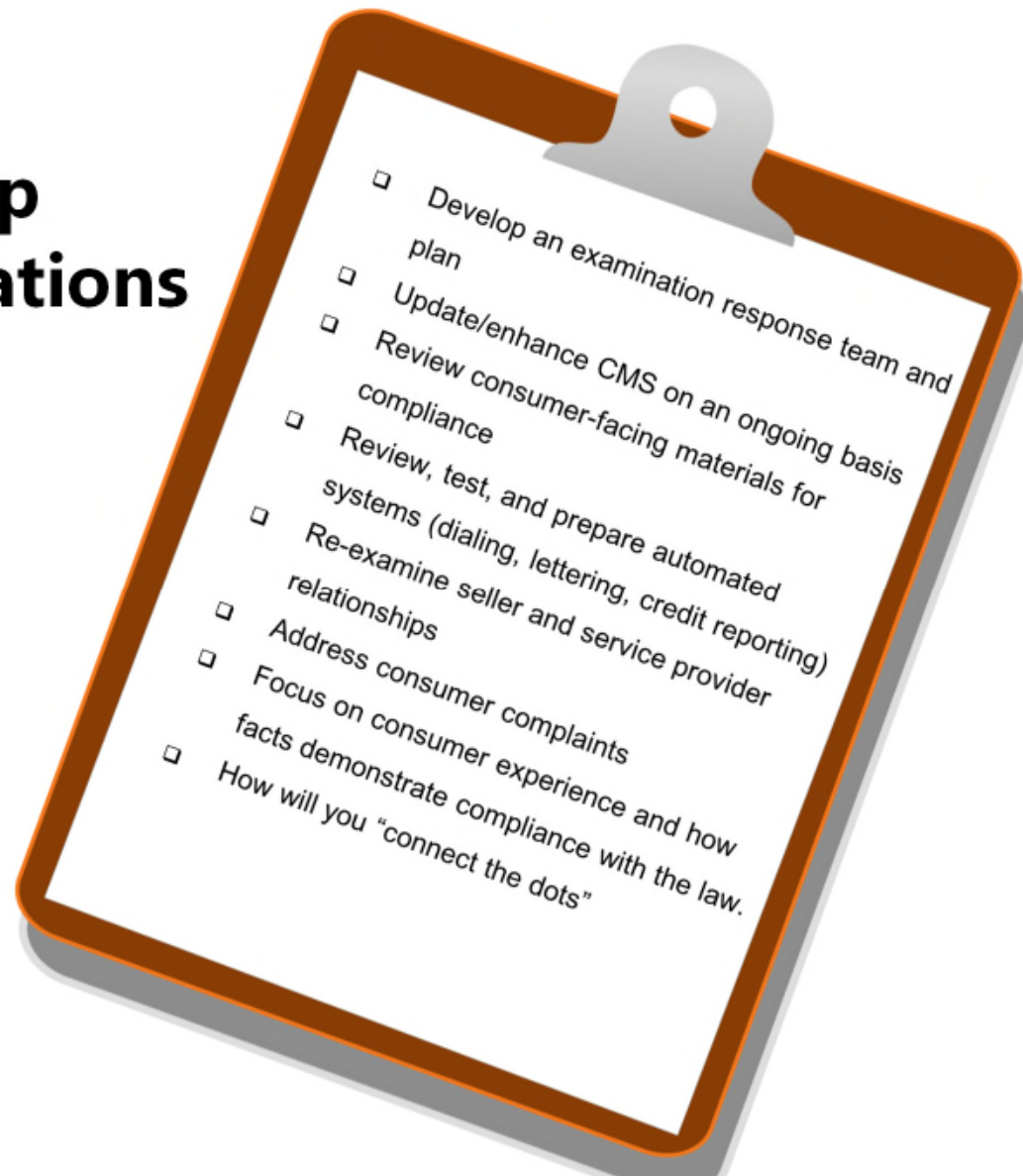


# Strategies and Observations

- 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 attorneys 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; and
  - *Appeals process*



# Exam Prep Considerations





# Questions for the Panel



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