

Inside Tips for Demonstrating Compliance and Navigating CFPB Examinations

By Jonathan L. Pompan, Alexandra Megaris, and Katherine M. Lamberth

Navigating a government examination requires more foresight and vigilance than ever. Between the inception of the Consumer Financial Protection Bureau (CFPB) and heightened scrutiny from state and local regulators, it is no secret that regulatory expectations have increased exponentially over the past several years. Furthermore, even companies that are RMA certified and accustomed to government oversight can find supervisory interactions with federal and state regulators, particularly with CFPB, to be opaque and confusing. As a result, members of the receivables management industry must be careful when navigating an examination. To shed some light on the CFPB's processes for examinations and investigations, as well as the intersection of supervision and enforcement, we obtained several documents from the CFPB through a Freedom of Information Act (FOIA) request, including a copy of the CFPB's internal Supervision, Enforcement, and Fair Lending (SEFL) Examination Playbook (Examination Playbook), SEFL Integration Memorandum (Memorandum), and the Enforcement Policies and Procedures Manual Version 2.0 (Enforcement Manual). In addition to illuminating the key decisions and inputs of various stakeholders that are made throughout the examination and investigation processes, these documents provide details on what a company facing an examination or investigation can expect at each stage.

The Examination Process

The Examination Playbook identifies and describes the key decisions that arise at each stage of the examination process, as well as who within the CFPB is responsible for making and implementing each key decision. The purpose of the Examination Playbook is to provide guidance to CFPB decision makers on their roles and responsibilities, referred to as “decision rights,” throughout the examination or target review.

As outlined by the Examination Playbook, the examination process is composed of four stages: scoping, on-site analysis, off-site analysis, and report review.

Scoping

Scoping involves setting examination priorities and schedules across markets and individual institutions. It also includes conducting pre-examination activities such as preliminary information requests and determining the scope of the examination.

- Examination Priorities. The Assistant Directors (ADs) for the



Office of Supervision Policy (OSP) are responsible for determining examination priorities. Resources are allocated using a risk-based assessment that evaluates the potential for consumer harm based on the institution's market share and risks inherent to the institution's operations. Inherent risk factors may include, but are not limited to, previous examinations, regulatory actions, and consumer complaints. Because of the CFPB's risk-based approach for selecting entities to examine, an institution that has a robust compliance management system (CMS) is less likely to be a priority for CFPB examination.

- **Specific Scope and Schedule.** The Examiner-in-Charge (EIC) is responsible for making decisions regarding the scope of the examination, the preparation of the Information Request, and the examination schedule. These decisions involve determining which activities will be conducted during the examination and relevant modules, and which items of information are pertinent to the examination of the particular institution.



On-Site Analysis

On-site analysis involves conducting interviews, observations, transaction testing, and other examination processes that assess the institution's compliance with federal consumer financial laws and potential violations. After the on-site examination is complete, additional time may be granted for the off-site analysis of relevant factual findings and other information.

- **Modifications to Scope.** The Field Manager/Senior Examination Manager (FM/SEM) is responsible for making decisions regarding modifications to the scope of the examination once it has commenced.
- **Examination Findings.** The EIC is responsible for conducting the closing meeting and making related decisions, including any preliminary examination findings, expected corrective actions, recommended rating, and next steps. The EIC is also responsible for preliminary decisions regarding whether an examination is "clean"—i.e., does not involve any potential violations of federal consumer financial laws—and eligible for review on an expedited track. The Assistant Regional Director (ARD), the OSP AD, and the Office of Enforcement (ENF) are responsible for approving review of an examination on an expedited review track.

Off-Site Analysis

Off-site analysis involves escalating potential violations of federal consumer financial laws discovered during the examination and determining whether an enforcement or supervisory action should be pursued. It is at this stage that collected information and

findings can lead to an enforcement action.

- **Interpretations of Non-Routine Questions of Law.** The Legal Division is responsible for determining whether a violation has occurred with respect to non-routine questions of law, except where the question of law involves a regulation – then the Office of Regulations is responsible for the determination.
- **PARR Letter.** A Potential Action and Request for Response (PARR) Letter notifies the institution that the CFPB is considering whether to propose a supervisory or enforcement action, based on preliminary findings of potential legal violations. The FM/SEM is responsible for determining whether a PARR letter should be sent. The PARR Letter is drafted by the OSP Program Manager and approved by the Regional Director.
- **ARC.** Decisions on whether potential legal violations should be escalated to the Action Review Committee (ARC) are also made by the FM/SEM. The ARC evaluates over thirteen factors spread among four categories: violation, institution, policy, and justice. The ARC then recommends to the Director whether the matter should be handled through the supervisory process or public enforcement action.

Report Review

Once an examination report is prepared, the review process depends on whether it is scheduled for expedited or full review.

- **Expedited Review.** Under the expedited track, the examination report is reviewed by the FM/ SEM and the OSP Program Manager and Deputy AD and approved by the RD.
- **Full Review.** Under the full-review track, the examination report is reviewed by the FM/ SEM, the OSP Program Manager and Deputy AD, the Legal Division, and staff of the Office of Enforcement, and reviewed and ratified by the OSE AD, OSP AD, RD, and SEFL Associate Director.



Key Tips for Navigating and Examination

Knowing the CFPB's internal examination policies and processes, and understanding who is responsible for making policy decisions and factual findings is important for developing a strategy for responding to examination information requests. Here are a few important considerations when planning for a CFPB examination:

- **Plan with All Stakeholders, but Be Prepared to Defend with Counsel.** A culture of compliance starts at the top and is exempli-

fied by an active compliance committee involved in examination preparedness; but when there is a potential that allegations regarding consumer financial law violations or a deficient compliance management system could be raised during an examination, in-house and outside counsel should be included to ensure that rights are protected and legal obligations are interpreted correctly.

- **Demonstrate Compliance through a Tailored CMS.** Companies that have completed examinations with few or no findings are those that not only comply with legal requirements, but can also effectively demonstrate such compliance through a tailored CMS. Further, institutions that demonstrate a strong CMS are deemed to present a lower risk to consumers and are generally examined less frequently. The RMA certification is a great tool for establishing and maintaining a strong CMS foundation.
- **Leverage Participation in Industry Self-Regulation.** The RMA certification program promotes rigorous industry standards. The standards are designed to meet federal and state statutory requirements, and many of the RMA standards exceed these requirements and establish best practices for the receivables industry.
- **Designate a Leader and Ambassador.** A CFPB examination is demanding and requires internal leadership and an “ambassador” who can interface the EIC and other staff. Designate an employee (preferably within the legal or compliance department) to serve as the point of contact for the CFPB examination team and to lead the process for document collection and production.



- **Watch Your Flank.** Develop a process of working with legal counsel to review all submissions to the CFPB for responsiveness, privilege, and consistency. The overall facts presented during the course of a review will be analyzed and findings of an examination

may lead to a recommended course of action (e.g., supervisory or enforcement action).

- **Develop Advocates.** It is important to prepare employees who likely will interface with CFPB examiners to explain how compliance is addressed among complex operations. Employees can be instrumental in reflecting a compliance culture, and the impression that the EIC and other examiners have about a company’s dedication to compliance can affect how information is presented in formal work papers and preliminary examination findings.
- **Know the Law.** Specific facts and law should be assessed with an eye to differences between the company and the CFPB on legal positions and analysis. This will help inform how alleged violations of federal consumer financial law are addressed.

The key to successfully navigating a CFPB examination is preparation. The companies in the best position to manage regulatory scrutiny are those that understand and follow applicable laws, invested significant time and resources to build their compliance management programs, and have the capacity to proactively identify issues and make corrections when needed.



Jonathan L. Pompan

Jonathan L. Pompan, a partner in the Washington, D.C. office of Venable LLP, co-chairs the firm’s Consumer Financial Protection Bureau (CFPB) Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of consumer financial services clients, including debt collectors, debt buyers, and their service providers, before the CFPB, the FTC, state Attorneys General, and regulatory agencies. His experience includes defending governmental consumer protection investigations and enforcement actions and examinations, including some of the earliest actions pursued by the CFPB, and providing consumer protection related compliance advice.



Alexandra Megaris

Alexandra Megaris advises companies on regulatory investigations and government enforcement matters, with a focus on consumer protection, consumer finance, and advertising issues. Ms. Megaris has extensive experience across a broad array of regulatory matters, including managing large-scale investigations before the Consumer Financial Protection Bureau, the Federal Trade Commission, state Attorneys General offices, the U.S. Postal Service, and the U.S. Congress.



Katherine Lamberth

Katherine Lamberth is an associate in the Financial Services Regulatory Group of Venable LLP, where she advises banks and other financial institutions on issues that arise under federal and state banking and consumer financial laws. In particular, she represents financial institutions in connection with supervisory examinations and enforcement matters and counsels clients on regulatory compliance and transactional issues arising under the Consumer Financial Protection Act. Ms. Lamberth also has experience advising trade associations on regulatory advocacy efforts before the CFPB.