

**VENABLE<sup>®</sup><sub>LLP</sub>**

**What Lead Generators  
Need to Know About the  
Consumer Financial Protection Bureau (CFPB)**

**LeadsCon  
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## Agenda for Today

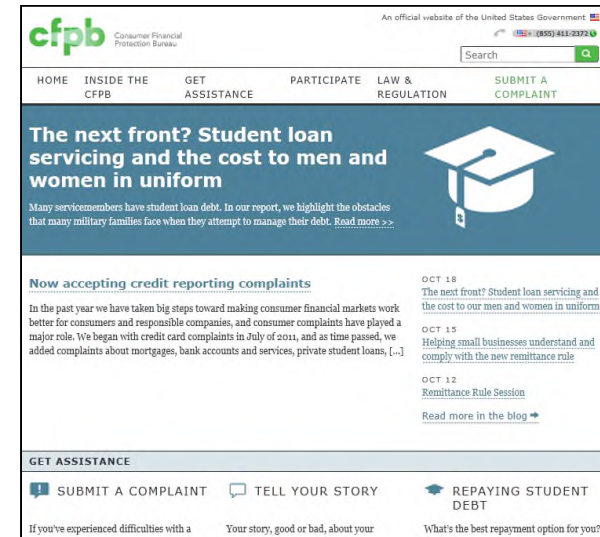
- What is the CFPB?
- What does the CFPB Cover?
- What Laws and Regulations does the CFPB Enforce?
- CFPB Supervision and Examinations
- CFPB Enforcement Authority
- Tips to Survive and Thrive in a Post CFPB Environment
- Why does the CFPB Matter?



*This presentation is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.*

# What is the CFPB?

- Created by the **Dodd-Frank Wall Street Reform and Consumer Protection Act** in July 2010
- The CFPB **consolidates most Federal consumer financial protection authority in one place.**



“The central mission of the **Consumer Financial Protection Bureau (CFPB)** is to make markets for consumer financial products and services work for Americans — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products.”  
(Source: CFPB Website)

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## CFPB Focus: Educate, Enforce, Study

- **Educate** – “An informed consumer is the first line of defense against abusive practices.”
- **Enforce** – “Like a neighborhood cop on the beat, the CFPB supervises banks, credit unions, and other financial companies, and we will enforce Federal consumer financial laws.”
- **Study** – “The consumer bureau gathers and analyzes available information to better understand consumers, financial services providers, and consumer financial markets.”



## What does the CFPB Do?

Congress established the CFPB to protect consumers by carrying out Federal consumer financial laws. Among other things, it:

- Conducts rule-making, supervision, and enforcement for Federal consumer financial protection laws
- Restricts unfair, deceptive, or abusive acts or practices
- Takes consumer complaints
- Promotes financial education
- Researches consumer behavior
- Monitors financial markets for new risks to consumers
- Enforces laws that outlaw discrimination and other unfair treatment in consumer finance

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## What does the CFPB Cover?

- CFPB has authority over consumer financial products and services, includes
  - Private Student Loans
  - Small-Dollar Loans (i.e., payday)
  - Debt Relief Services
  - Automotive Vehicle Loans
  - Mortgages
  - Credit Cards
  - Money Transmission
  - Prepaid Cards
  - and more

CFPB supervision and enforcement efforts focus on **primary providers and service providers, including “lead generators”**





# Student Loan, Servicemembers and Older American Initiatives



**Student debt**  
repayment assistant


Know your options

**Know**  
**Before You Owe**  
student loans



**Servicemembers and veterans**

Plan your future and protect your finances



**Older Americans**

Navigate financial challenges safely



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# What Laws and Regulations does the CFPB Enforce?

- Under the Consumer Financial Protection Act, it is **unlawful** for any provider of **consumer financial products or services** or a **service provider** to engage in any **unfair, deceptive or abusive act or practice (UDAAP)**. (This is Section 5 of the FTC Act on steroids!)
- Broad rulemaking authority enforcement authority to prevent UDAAP in connection with **any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.**
- In addition, CFPB has **supervisory authority** for detecting and assessing risks to consumers and to markets for consumer financial products and services

## Additional Authorities:

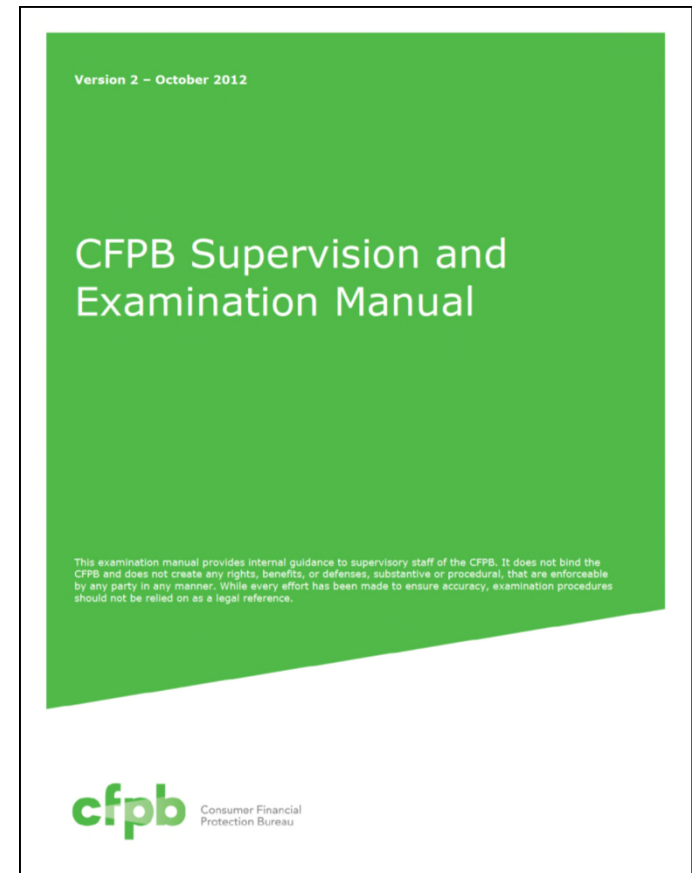
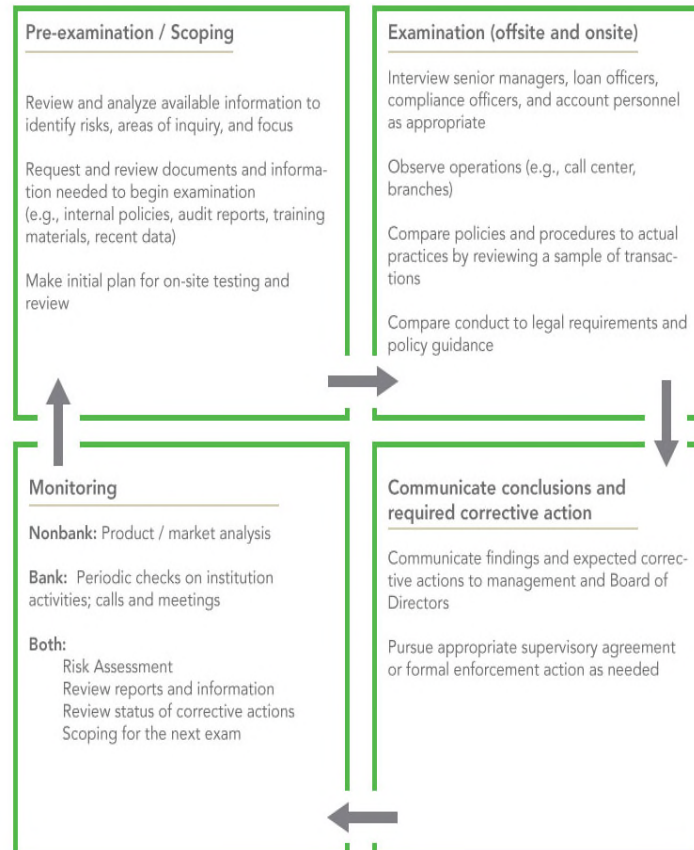
- Fair Lending Laws
- Telemarketing Sales Rule
- Mortgage Lending and Regulations
- Mortgage Acts and Practices Advertising Rule
- Mortgage Assistance Relief Services Rule



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# CFPB Examination Process



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# 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 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**.



# CFPB Examination Focus

**CFPB examinations will generally cover one or more of the following modules:**

1. Entity Business Model
2. Advertising and Marketing Practices in Connection with Covered Activity (e.g., mortgage, auto lending, student loan, debt relief services, payday loan)
3. Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies
4. Consumer Complaints, Dispute Resolution
5. Payment Processing and Account Maintenance
6. Equal Credit Opportunity Act
7. Litigation Practices



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# General Examination Scope

- Organizational charts and process flowcharts;
- Board minutes, annual reports, or the equivalent to the extent available;
- Relevant management reporting;
- **Policies and procedures;**
- Notes and disclosures;
- **Telephone recordings;**
- Operating checklists, worksheets, and review documents;
- Monitoring procedures;
- **Compensation policies;** Relevant computer program and system details;
- Consumer files, including consumer documents, and payment records systems;
- Historical examination information;
- **Audit and compliance** reports, and management responses to findings;
- **Training programs** and materials;
- **Scripts** for employee use;
- **Third-party contracts and oversight materials,** including monitoring reports and findings;
- **Written correspondence** with consumers;
- Court documents; and Consumer complaints and disputes, including those submitted to CFPB Consumer Response Center, Consumer Sentinel, the Better Business Bureau, or other sources as appropriate.



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## CFPB and Lead Generation: What Will the CFPB Examine

- Identify whether the provider is a third-party or provider
- Review advertising (e.g., TV, radio, print, Internet, scripts, recordings, etc.)
- Determine whether relationship is appropriately disclosed
- Review statements and representations for accuracy and non-deception
- Review for disclosure of fees and other terms and conditions
- Privacy, online data pass, and other sharing of consumer data



# 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.
- 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.



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# Examples of CFPB Investigations and Enforcement Actions

- Credit Card Advertising
- Debt Relief Services
- Mortgage Advertising
- Prepaid Cards
- Sale of Add-on Products
- Mortgage Assistance Relief Services
- Schools/Private Student Loans
- Auto Lending



# Federal Consumer Protection Working Group

- Goal: Coordination of efforts to regulate and combat consumer fraud.
- Focus: consumer fraud, including **payday lending and other high pressure telemarketing or Internet scams, business opportunity schemes, for-profit schools, and third-party payment processors**
- Attorney General Eric Holder said that the partnership “will strengthen our collective efforts, enhance civil and criminal enforcement of consumer fraud and educate the public in an effort to prevent consumers from being victimized in the first place.”
- Members:
  - Department of Justice
  - Federal Trade Commission
  - Consumer Financial Protection Bureau
  - Department of Treasury
  - Federal Banking Agencies
  - State Attorneys General



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# Tips to Survive and Thrive in the Post-CFPB Environment

- ❑ Develop a CFPB 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 advertising and marketing for compliance
  - ❑ Claim substantiation
  - ❑ Avoid deceptive disclosures
  - ❑ Use of testimonials
  - ❑ Digital advertising
  - ❑ Social Media
  - ❑ Telemarketing (e.g., scripts, dialing)
  - ❑ Market specific laws and guidance
- ❑ Consumer facing terms and conditions (arbitration?)
- ❑ Payment Terms 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
- ❑ Update website terms and conditions, privacy disclosure, and implementation of legal obligations.
- ❑ Don't ignore market specific laws and regulations.
- ❑ State laws and regulations



# Why Does the CFPB Matter?

## The cost of noncompliance:



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# QUESTIONS AND DISCUSSION

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