

# BURR ALERT

## A Look at the Consumer Financial Protection Bureau's Supervision and Examination Manual—Version 1.0.

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On October 13, 2011, the Bureau of Consumer Financial Protection ("CFPB") released the first version of its Supervision and Examination Manual.<sup>1</sup> The purpose of the manual is to provide CFPB examiners with the tools to give consumer financial companies consistent, consumer-focused, data-driven examinations to ensure compliance with consumer protection laws. To create this initial version, the CFPB used existing examination procedures from the Federal Financial Institutions Examination Council (FFIEC) and used the Uniform Consumer Compliance Rating System.

The manual is organized into three parts: (1) Compliance Supervision and Examination; (2) Examinations Procedures; and (3) Examination Process Templates. The first section details the CFPB's supervision and examination process. The second section, on examination procedures, contains an overview of compliance management. In addition, it provides narratives and examination procedures to determine compliance with specific legislative acts. The acts with outlined procedures are: (1) Unfair, Deceptive or Abusive Acts or Practices; (2) Equal Credit Opportunity Act; (3) Home Mortgage Disclosure Act; (4) Truth in Lending Act; (5) Real Estate Settlement Procedures Act; (6) Homeowners Protection Act; (7) Consumer Leasing Act; (8) Fair Credit Reporting Act; (9) Fair Debt Collection Practices Act; (10) Electronic Fund Transfer Act; (11) Truth in Savings Act; and (12) Privacy of Consumer Financial Information. A handful of the acts have accompanying checklists to further assist examiners. Part two also includes examination procedures specifically on mortgage servicing. Finally, the third section provides examiners with templates to document the examination process. This includes entity profiles, risk assessments, supervision plans, and examination reports.

### **MANUAL'S THEMES AND OBJECTIVES**

The CFPB manual is crafted around three main themes: (1) consistency; (2) consumer risk focus; and (3) data analysis. By publishing this manual, the CFPB makes clear that it wants to be consistent in the implementation and enforcement of its supervision and examinations. Although the manual is not binding upon examiners, the CFPB created and published it to act as a tool for examiners to use to provide consistent standards. The manual does note, however, that

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<sup>1</sup> All information comes from the Consumer Financial Protection Bureau's manual and other information from their website. A list of useful references is included at the end of this article.

consistency in supervision and examination does not necessitate expectations for uniform procedures. The CFPB recognizes that the wide variety of companies it will oversee may all have to comply with consumer finance laws, but that their means of compliance will not necessarily be uniform.

The CFPB's other two main focuses are consumer risk and data analysis. By using risks to consumers to focus its reviews, the CFPB believes it can ensure compliance, but also will be able to determine whether a company's policies and procedures are designed to prevent future consumer harm. Keeping risks to the consumer in mind, CFPB wants data driven supervision and examination of its entities. A wide variety of data sources will be exhausted, including the following: the entity itself; direct observation; information from CFPB offices and divisions; and other state and federal agencies.

By using a consistent, consumer-focused, data-driven approach, the CFPB hopes to better achieve its objectives, which are to "implement, examine for compliance with, and enforce 'Federal consumer financial law.'"

#### **WHAT THE MANUAL TELLS CONSUMER FINANCIAL INSTITUTIONS TO EXPECT**

The CFPB's intention, as stated in the manual, is to create a continuous cycle of supervision. This cycle includes four stages: (1) pre-examination/coping; (2) examination (offsite and onsite); (3) communication of conclusions and required corrective action; and (4) monitoring.

##### ***Who Will Be Supervised and How***

It is important to note that the CFPB manual applies to **all** consumer financial products and service providers. This includes traditional depository institutions, like large banks, thrifts, and credit unions, as well as non-depository consumer financial companies.

The supervision process for depository and non-depository institutions differs somewhat. Non-depository consumer finance companies will be monitored by the Nonbank Supervision Risk Analytics and Monitoring team. This team will analyze risk indicative data to determine which industries and institutions should be examined, instead of constantly monitoring each individual non-depository consumer finance company. Large depository institutions, on the other hand, will each receive a Lead Examiner who will monitor the entity and its affiliates. The CFPB will use the information gathered during this monitoring to create an Institution Profile, a Risk Assessment, and a Supervision Plan for each large depository institution so that the CFPB can use them to administer both supervision and examinations.

##### ***Who Will Be Examined and When***

The CFPB will begin its examinations with large insured depository institutions, and their affiliates, in the fourth quarter of 2011. These institutions are those that have total assets over \$10 billion. The CFPB will examine these large banks on a continuing basis, and other depository institutions will be examined periodically. Two considerations will be used to determine regular examination schedules for large depository institutions: "(1) an assessment of risks to consumers and (2)

ensuring consistency with statutory requirements that CFPB and prudential regulators coordinate the scheduling of examinations of large depository institutions and affiliates and conduct 'simultaneous' examinations of depository institutions, as well as coordinating examinations with State regulators."

Eventually, examinations will expand to non-depository consumer financial companies. These companies will include mortgage lenders, payday lenders, and private education lenders. Non-depository consumer financial companies "will be 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."

Generally, the CFPB will notify supervised entities in advance of upcoming examinations. However, in addition to regularly scheduled examinations, supervised entities should know that CFPB may conduct Target and Horizontal Reviews.

Target Reviews will generally involve a single entity and will focus on a particular situation such as significant volume of particular customer complaints or a specific concern that has come to CFPB's attention. Horizontal Reviews will look across multiple entities to examine issues arising from particular products or practices and determine whether supervisory measures or enforcement actions are needed.

### ***How the Examination Will Be Administered***

Examinations will be coordinated throughout many offices and divisions of CFPB. Examination procedures will be similar to, and at times coordinated with, prudential and State regulators' examinations.

The supervised entity can generally expect to see the following steps in the course of its CFPB examination:

- Collection and review of available information (collected from CFPB, other Federal and state agencies, public sources, and the entity to be examined)
- Onsite observations, interviews, and document review
- Communication from Examiner in Charge about preliminary findings and conclusions
- Release of the final examination report.

### ***What Will Happen After the Examination***

If the CFPB examination resulted in any negative findings, the CFPB will first "seek cooperation from the entity to correct any problems identified." The CFPB encourages self-correction. The CFPB will likely recommend informal supervisory measures or formal enforcement action, depending on the type of problem and the severity of harm it causes consumers.

Generally, the CFPB will treat all supervisory information and examination reports and ratings as highly confidential. However, the most serious circumstances may result in a public enforcement action. In addition, the CFPB may share examination reports requiring supervisory action with prudential regulators when required by statute. Depending on the nature of the violations, the CFPB may also bring "administrative enforcement proceedings or civil action in Federal district court." Finally, the CFPB may refer findings outside of its authority to the appropriate prudential, Federal, or state regulator. This might include the Department of Justice, in the case of criminal activities, or the Internal Revenue Service, in the case of non-compliance with tax laws.

## **HOW TO USE THE MANUAL**

The CFPB's Supervision and Examination Manual was made public, instead of only an internal release, so that companies providing consumer financial products and services would know how the CFPB evaluates risks and conducts evaluations. By making the manual available to companies and consumers, the CFPB seems to be promoting both transparency and successful compliance. If consumer financial institutions know how the CFPB will evaluate their compliance, it should be easier for those institutions to ensure their compliance. In short, the manual is published for both examiners *and* consumer financial institutions to use.

One of the CFPB's expectations is for "every regulated entity under its supervision and enforcement authority to have an effective compliance management system adapted to its business strategy and operations." The manual's supervision and examination procedures essentially provide consumer financial companies with the basic objectives and procedures necessary to evaluate, design, manage, or restructure a successful compliance management system. This includes details on board of directors and management oversight; a compliance program—including policies, procedures, training, monitoring, and corrective action; any consumer complaint response; and a compliance audit. By using the examiner's objectives and procedures to guide the implementation of their own compliance management system, depository and non-depository consumer financial companies should be much more likely to have successful CFPB compliance examinations.

In addition, consumer financial companies can use the templates provided in the third section to assess their own risks, and they can use the narrative, examination procedures, and checklists in the second section to assess their own compliance. Because part two of the manual is designed around specific acts, each consumer financial company can easily focus on compliance with the legislation it knows applies to it.

## **CONCLUSION**

In conclusion, the CFPB's Supervision and Examination Manual could be viewed by the consumer financial community as a useful first glimpse into the new CFPB regulation and enforcement. The manual provides valuable insight into the supervision and examination methods the CFPB will use on consumer financial companies. Instead of being viewed as overwhelming and burdensome, the manual can actually provide companies methods to more effectively ensure their compliance and successful CFPB examinations.

However, the manual is not without its flaws. For example, the manual includes several acts it is ensuring compliance with, but only provides checklists for a handful of those acts. Further, the CFPB intends to eventually organize its examination procedures in the second section of the manual by product and line of business. In this first version, however, only an example of this exists—the procedures for reviewing mortgage servicing. In addition, even the CFPB strongly cautions against using the manual as a legal reference. Finally, the CFPB itself recognizes that the manual is a work in progress and encourages feedback and suggestions to be sent to [CFPB\\_Supervision@cfpg.gov](mailto:CFPB_Supervision@cfpg.gov).

## REFERENCES

- *Supervision and Examination Manual*, <http://www.consumerfinance.gov/guidance/supervision/manual/>.
- *A Guide to CFPB's Supervision*, <http://www.consumerfinance.gov/guide-cfpb-supervision/>.
- *Supervision and Examination Manual Q&A*, <http://www.consumerfinance.gov/guidance/supervision/manual/supervision-manual-ga/>.
- *ABA Dodd-Frank Tracker, Consumer Protection - CFPB*, <http://regreformtracker.aba.com/search/label/Building%20the%20Bureau>.

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No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.