

# MBa Compliance Essentials

## CFPB EXAMINATIONS: What We Know Now

September 29, 2014

Presented by

Don Lampe\*, Partner, Morrison & Foerster, LLP

Washington, DC

[dlampe@mofo.com](mailto:dlampe@mofo.com) (202) 887-1524

\*Not admitted in DC; limited to federal practice; licensed only in NC

# MBa

# What is “Supervision”?

Congress directed Consumer Financial Protection Bureau to “require information and conduct examinations” of non-bank mortgage market participants & banks with >\$10B in assets

“Donut hole” for depositories of <\$10B in assets

CFPB required to take risk-based approach to supervision of covered persons, based on “risks to consumers posed to consumers in relevant product markets and geographic markets, taking into consideration” following four factors:

- Asset size
- Volume of relevant transactions
- Risks to consumers created by consumer financial products/services
- Other factors deemed relevant to Bureau for class of covered persons

## Focus on consumers

- CFPB will look at entire life cycle of product or service
- Importance of company's ability to detect, prevent & remedy violations that may harm consumers

## Data driven

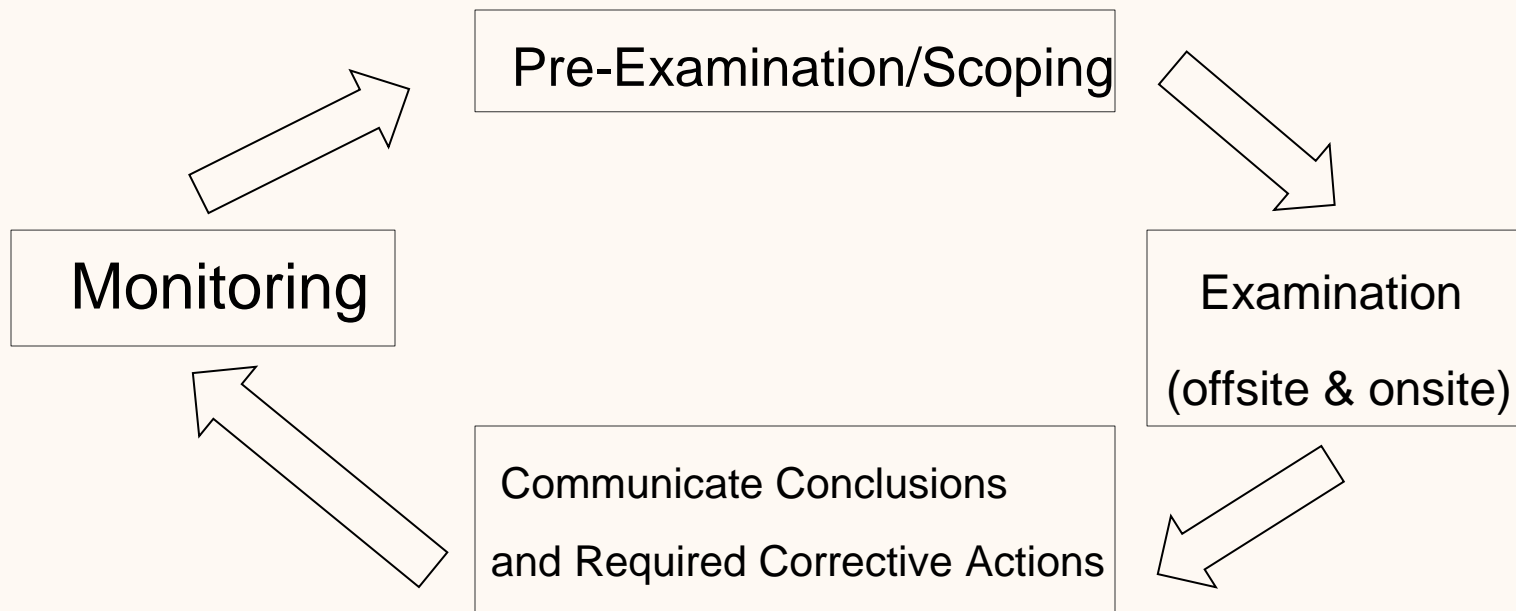
- Review of information available publicly of from other state or federal regulators
- Examiners will perform transaction testing using sampling procedures & gather information directly from management and staff

## Consistency

- CFPB aims to apply consistent standards in supervision of all types of institutions offering same types of products or services

CFPB exercises supervisory authority principally by examinations

But supervision is not an “event” but a continuous process, a Supervision and Examination Cycle:



CFPB conducts several types of examinations or reviews

- Regularly-scheduled company-specific exams, looking into all activities of a particular lender or servicer (common for non-banks)
- Target reviews, involving a single entity and targeted at particular situation, due to special concern at the Bureau
- Horizontal reviews, looking across multiple institutions to examine particular products or practices (commonly, involving banks)
- Limited-scope exams, such as CMS and/or Fair Lending exams

CFPB reminds the industry that exams not in lieu of investigations in connection with potential enforcement actions – including CID's for testimony, responses to written questions and requests for documents

CFPB has explained to industry participants what to expect in exams, both in terms of exam process and covered laws & regs

## **SUPERVISION AND EXAMINATION MANUAL – VERSION 2.0**

First issued in 10/2011, revised & expanded since then, to cover laws & product lines (including mortgage origination & mortgage servicing per January 2014 new & revised CFPB regs)

CFPB exam guidelines are product-specific (mortgage origination, mortgage servicing) and regulation-specific (TILA, RESPA, ECOA, FDCPA, HOEPA, etc., etc.)

“There are no secrets” – CFPB Exam Manual now at 2,000 pages, but “breaking it down” is not easy

Building your compliance function around the CFPB Exam Manual is a **MUST**

Thusfar, experience in the field: Bureau “says what it means” (Exam Manual) and “means what it says” (conduct of exams per Manual)

Experience shows that **PREPARATION** is key, not waiting until you get notice from CFPB of upcoming examination

Examinations begin with CFPB evaluation of the lender's or servicer's  
COMPLIANCE MANAGEMENT SYSTEM

CFPB “borrowed” its supervisory approach from banking (prudential) regulators – FDIC, OCC, Fed, etc.

With CMS, CFPB applying bank-like supervision to non-banks

- Familiar to depositories, central federal regulator with supervisory authority not “new”
- NOT familiar to non-depositories, new way of approaching compliance internally & externally, to satisfy new central federal regulator

Part of the “borrowing” from banking regulators: guidance on third party service providers, approach to fair lending (disparate impact based on HMDA data), risk-based examination priorities, etc.



So, for non-banks, what is “CMS”?

Almost a misnomer, not a single “system” but grouping of mandatory organizational configurations, corporate governance and senior management accountability measures, and policies, procedures and controls for initial and ongoing risk assessment, compliance-based business process, active risk mitigation and corrective measures driven by feedback loops (monitoring)

CMS represents both a “top down” (corporate governance, management responsibility) and a “bottom up” (policies, procedures, controls and transaction-level monitoring) approach to compliance

The “bottom up” components are familiar ground for non-banks, *i.e.*, the policies, procedures & guidelines that must be followed every day

CFPB has communicated its priorities through Exam Manual, Guidance and public statements

CFPB examination preparation should include attention to these priorities

Priorities may be different, depending on basic activities (origination v. servicing), product types, product channels, size and complexity of organization and affiliate relationships

Thus far, priorities appear to be –

- Existence of CMS and documented policies and procedures, including monitoring
- Third party service provider management
- Fair lending/UDAAP – “fairness” for consumers
- Loss mitigation and foreclosure (servicing)
- Servicing nuts and bolts such as payment processing, escrows and servicing transfers

CFPB is consumer-focused, examining from consumer's point of view

- What did the consumer understand? Was the product or process confusing to the consumer?
- Was the consumer deprived of information that would have helped the consumer avoid potential harm?
- Was the provider aware of potential consumer harm yet didn't act to mitigate it?

CFPB believes in monitoring and testing, to prove that compliance systems working and yielding error-free outcomes

Widespread cooperation between CFPB and state regulators not (yet) evident - CFPB seems satisfied to conduct exams without great deal of state regulator (examiner) involvement

MBA Compliance Essentials now include “CFPB Examination Resource Guide,” 100+ page guidebook covering ALL ASPECTS of CFPB Exams “From the field explanations,” with real-world examples, of pre-exam, on-site and post-exam activities of the CFPB & recommended actions by your company:

- How to build & implement a “Compliance Management System”

- PRACTICAL EXPLANATIONS & TOOLS (including extensive Checklists) for getting ready

- Practical tips on responding to the Exam Questionnaire and other information requests

- What to expect throughout the process, including working with CFPB examiners on-site, including detailed TIMELINES and process planning tools

- When to expect and what will be seen in post-examination results

Available for purchase at MBA events, including this one

On-line ordering:

[http://store.mortgagebankers.org/ProductDetail.aspx?product\\_code=DL2-009985-WC-W](http://store.mortgagebankers.org/ProductDetail.aspx?product_code=DL2-009985-WC-W)

**PART OF A SAMPLE CHECKLIST IS ON THE NEXT SLIDE**

## **CHAPTER IV CHECKLISTS: Compliance Management System**

### **Appendix 4-4 – CMS Checklist for Board and Management Oversight**

The CFPB, in connection with examining for CMS, expects the supervised entity to be able to provide and explain to the CFPB (in response to the Exam Questionnaire) the following, depending on the size, business volume and form of legal organization of the supervised entity:

- ☐ Board meeting minutes and supporting materials demonstrating the Board's activities and engagement with respect to compliance matters.
- ☐ Minutes and supporting materials showing Board committee structures and delegated responsibility for compliance matters, such as audit committee, compliance committee and/or risk committee.
- ☐ Descriptions of management committees, such as compliance management committees, with delegated authority and accountability for compliance matters, including documents (such as Board minutes and committee charters) demonstrating composition, functions and reporting responsibilities to the Board or one or more committees of the Board.
- ☐ If applicable, description of the authority and accountability for compliance matters of regional or business unit bodies, demonstrating composition, functions and reporting.
- ☐ Formal written compliance program document adopted by the Board of Directors or an appropriate committee of the Board (if applicable), including resource allocation to compliance as part of the entity's budget and planning process.
- ☐ Board minutes showing the approval of the position of Chief Compliance Officer (or equivalent title) and job description as the entity's head of compliance, with direct reporting responsibility to the Board or an appropriate committee of the Board (e.g., Compliance Committee) and CCO independence from revenue-generating business units.
- ☐ Documented processes for the identification of new regulatory requirements, changes in requirements and planning for implementation, as prepared by CCO and compliance staff and reviewed by Board or senior management.
- ☐ Documented processes for development and implementation of new consumer financial products or services, distribution channels or strategies, including documented compliance function participation.