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How to Prepare for CFPB Examinations*

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The Consumer Financial Protection Bureau has been in existence long enough that knowledge of its examination process should be well known. At the same time, with finalization of many new rules, the Bureau has become a supervisor and examining agency for many institutions that are unfamiliar with federal regulatory examinations. For those institutions, and others who have not yet been examined by the Bureau, a primer on how to prepare for such examinations might be useful.

First, and foremost, the institution to be examined must come to terms with the mission and purpose of the Bureau. It has been created to —

“ensure that all consumers have access to markets for consumer financial products and services, and that markets for consumer financial products and services are fair, transparent, and competitive.”¹

As Deputy Director Antonakes said in a February 2015 speech,

“The Bureau does not have a safety and soundness mandate. Our mission is to protect consumers by promoting a consumer financial services marketplace where consumers can understand the costs, benefits, and risks of the financial decisions they make.”²

For institutions that have been most concerned that examiners and auditors will find a weakness in their financial plans or progress, dealing with examiners who are focusing exclusively on how consumers are treated will require some adjustment. It is a crucial first step, however, probably the most important adjustment that can be made by an institution facing such an examination.

In addition to this fundamental adjustment, institutions must understand that the Bureau prides itself on being driven by data. That has many ramifications, and is worth a few additional comments.

*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

¹Sec. 1021 of Dodd Frank Act.

²Remarks of Deputy Director Antonakes at the Exchequer Club, February 18, 2015.

The scope of responsibility of the Bureau is extensive. A reasonable guess at how many institutions are within their examining authority would be difficult, but certainly would exceed 10,000 and might be as many as 20,000. Without dwelling on the actual number, the point is that there are too many for the Bureau to consider utilizing traditional regulatory methods of federal and state financial institutions. They simply don't have the resources. Therefore, they utilize publicly and privately obtained data to determine what industries create the greatest risk to consumers and in those industries, which entities. The data they analyze drives those decisions.

The Bureau does not generally examine an institution from top to bottom, right to left. Instead, it makes a decision based on the risk revealed by its analysis of data on what products and services across an industry should be examined (say the escrow business in mortgage lending and servicing), and will choose to focus on that product or service across many institutions at the same time. That also will eliminate some inconsistencies that might otherwise arise as a result of different teams examining different institutions for the same issues. In horizontal examinations, the entire industry can be ultimately reviewed by Bureau seniors at the same time, and objective reviews of the entire scan can hopefully reduce inconsistencies, institution to institution.

In other cases, the Bureau will analyze the consumer complaints it has received and find that a particular institution may have an inordinate amount of complaints, sometimes focused on one product and sometimes across the board. In that case, the Bureau might engage in a targeted examination solely on that institution driven by the complaints it has analyzed.

The dependence and reliance on data, therefore, leads to a clear conclusion that an institution to be examined should ensure that its files are in order, that policies are documented, that updates are noted and brought to the attention of senior management, then acted upon by senior management, that training is monitored and the results are included in the files, etc. Documentation of the compliance management system, therefore, is crucial.

It goes almost without saying that, at the end of the day, the Bureau wants to assure itself that it fully understands the management of the compliance operations at the institutions. How does the institution manage the compliance operations throughout the entity, and how is that management documented so that the Bureau can easily evaluate the quality of the management. That means that the Board, or at a minimum, a Board committee, must be knowledgeable about the compliance management system at the institution, that that familiarity must be documented and kept current, and that radiating from the Board or its committee, must be a clear line of authority throughout the institution for managing that system. That includes a competent Compliance Officer that has sufficient funding and staff to do his or her job.

Assuming that the examination is not generated by a Civil Investigative Demand, the institution generally will receive some informal communication from the Bureau as the Bureau prepares for the examination. The Lead Examiner, or perhaps the Examiner in Charge of that examination, may contact the institution and have general conversation about the examination. The institution by then should have already assigned an individual at the institution to be the single point of contact for the Bureau team. That permits the institution to maintain a record of the examination, what is requested, what responses have been given, etc. Communications should run through that person, within reason.

At some point, at least 60 days before the commencement of the on-site examination, the Bureau will provide the institution with a Request for Information, a formal document that outlines the data that the Bureau needs from the institution. The institution should read the RFI carefully, and be confident that it understands what has been asked of it. It should not be reluctant to ask the examiners what it is they are searching for in the examination and what they might need to find that. As data is submitted to the

Bureau, it is acceptable and probably of some help to the examiners to summarize the various submissions with an accompanying memorandum filed with that submission. Prepare a road map for them; they will be grateful. Occasionally some issues arise with respect to privacy and confidentiality of data submitted, but those issues can be addressed adequately as the response progresses by submitting the data with a memorandum attached. Treat all requests during the examination as formal requests, notwithstanding that they might have been conveyed in a casual manner.

The institution should be aware, having by this time read the Bureau's examination manuals, that the Bureau always examines for UDAAP violations as well as Fair Lending violations in every examination. Fair Lending rules have been fairly well finalized over time, with the possible exception of disparate impact, but UDAAP guidance continues to accumulate over time. The examining team will be reviewing for violations of all consumer laws, including Fair Lending and UDAAP, and will be determining what risk to consumers is presented by the institution's practices, products and services. This will include a review of sales practices, the consumer segments to which the products are offered, the nature and structure of the products, the management of the delivery of the products and services, etc. They will determine what controls are in place to address the risks that exist, whether the institution treats consumer complaints seriously and responds promptly, changing practices when a review of complaints shows that to be desirable, and whether in total they view their operations from the perspective of the experience the consumer has dealing with the institution.

Examiners will interview employees (a list of employees they know they want to interview before the on-site exam begins can be obtained from the Bureau before they arrive on-site), they will visit many of the offices of the institution, they will read the advertising material and the sales protocols, they will ask sufficient questions to permit them to fully understand how products and services really work, they will review the method by which the institution responds to complaints, and engage in other work that will permit them to understand all aspects of the institution's compliance with consumer laws.

At the end of the examination, there will be a closing meeting, at which the examiner will provide tentative findings, including corrective actions that should be made by the institution. Those findings will be reviewed at the Field level and sometimes at a higher level within the Bureau, and after that review, the institution will be given a Supervisory Letter or Examination Report that is the formal description of what the Bureau found in its examination. It generally echoes what the closing meeting outlined, but sometimes is different.

That is the end of the examination process, and at that point, the job of the institution is to make the corrections outlined in the supervisory letter. While they can be appealed, successful appeals are few and generally not worth the expense and effort. Nevertheless there is a process that can be followed should an institution feel compelled to have its day in the appeals review court.

More serious issues are at stake if the institution receives a Civil Investigative Demand. This can lead to criminal prosecution and the tone and attitude of the examiners is radically different from that of the normal examination. It may be impossible, for example, to discover what it is the examiners are searching for in the CID exam. Such exams are infrequent, however, and are not the ordinary occurrence.

For standard examinations, however, there are a few basic rules an institution should follow:

- Understand the perspective of the Bureau — consumer experience;
- Take a hard look at the compliance management system;

- Provide a compliance officer with sufficient funding, authority, and staff;
- Treat consumer complaints seriously;
- Document your policies, procedures and practices;
- Assemble beneficial data;
- Begin early, before notification from the Bureau of an impending examination; and
- If corrections need to be made, make them and don't wait to be told to do so.

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