

What to Expect from a CFPB Audit

The following is an article written by one of AllRegs' experts that have just come through a CFPB audit.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act) established the Consumer Financial Protection Bureau (CFPB) and authorizes it to supervise certain consumer financial services companies, credit unions and their affiliates for consumer protection purposes. The CFPB has been charged with the implementation of, examination for compliance with and enforcement of Federal consumer finance law. How do you get ready for and survive your CFPB examination? The following article, written by an AllRegs subject matter expert after completing a recent CFPB audit, discusses what to expect from a CFPB Audit.

Simply, be prepared for the biggest request for examination information you have ever received. This will probably change with time, and be prepared for inexperienced examiners (individuals who are not well versed in the areas they are examining). Be prepared for lots of "suggestions" from the examiners that are not necessarily practices that are required by federal law.

Expect a total focus on the consumer. Even if you are complying to the letter with federal regulations, any practice could be deemed to be unfair and deceptive if it is not clear to the consumer or could be construed as confusing to the consumer, industry standards notwithstanding. Always use the 'least sophisticated consumer' standard when reviewing any process or function.

Prepare for the Examination

- **1. CFPB Guidance**
 - Review all guidance issued by CFPB including:
 - The Origination Examination Manual
 - The Servicing Examination Manual
 - The third party oversight guidance (issued in April 2012)
 - Make it a habit to frequently go to the CFPB website to review issued guidance and any new guidance that may have been issued since the last time you reviewed the website. The website is www.consumerfinance.gov – click on "Law & Regulation," then click on "Guidance."
 - If you are not already in compliance with any published guidance, have plans in place to get there.
- **2. Policies and Procedures**
 - Policies and Procedures must be up-to-date
 - You should have a formal process in place to regularly review and certify that all policies and procedures are up-to-date.
 - Policies and procedures should be readily available to all employees
 - You should have a formal process in place to let employees know when policies and procedures are updated.

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- Version tracking (documentation of when updates are made, what was updated, approved by whom, etc.) should be in place and readily available.
- Policies and procedures must reference the specific regulation applicable to that specific policy and procedure (such as privacy, equal credit, fair lending, etc.) and cover all applicable facets of the regulation.
 - For example, it is not sufficient to state that company policy is to comply with all privacy regulations. The policy and procedure must specify how privacy regulations are followed so that the policy ensures compliance in specific, not generalized, terms.
- 3. Training
 - You should have a formal training program in place that is made available to all employees – this can be external or internal training.
 - Mandatory training (such as privacy, equal credit, fair lending, etc.) should be tracked to ensure all employees take the training
 - Mandatory training should be no less than annual
 - Training materials should cover the detailed information on corporate policies in compliance with the policies and procedures.
 - Training must reference specific regulations applicable to the specific training material.
 - You should have a process in place to ensure training is current and up-to-date
 - Similar to updates to policies and procedures, you should have version control for training materials to document when updates are made, what was updated, approved by whom, etc.
 - You should have a process in place to advise employees when training materials have been updated and new training provided, if necessary.
 - CFPB will expect that senior management as well as Board of Director level individuals take compliance training.
- 4. Privacy

Privacy of consumer non-public personal information will be a focus of the CFPB examiners.

- Make sure you have a current corporate privacy policy
- Make sure you are training all employees on privacy
- Make sure to monitor outgoing emails to third parties to ensure privacy (encrypt emails, etc.)
- Third party vendors should have access only to that information which is needed to perform the services for which they are responsible
- Make sure you have either shredding bins or secure disposal of information which contains consumer non-public personal information
- Make sure employee desks are kept clear of consumer non-public personal information at the end of the day or during the day if the employee is away from his/her desk (i.e., clean desk policy)

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- 5. Fair Lending Analysis
 - Fair lending analysis should be performed on the origination/lending function as well as the servicing function
 - If not already in place, plans should be implemented to perform such analysis in the near future
 - Fair lending analysis must be performed on a regular basis with records kept to verify analysis performed and results.
 - Documented, prompt action should be taken for any exceptions discovered during the analysis.

- 6. Consumer Complaints/Qualified Written Requests
 - Customers must be provided with contact information to submit complaints (via mail, email or via website).
 - Tracking logs must be in place to track receipt of and response to consumer complaints.
- Files must be maintained with a copy of the complaint and response (electronic copies acceptable).
- Make sure all employees know where to send consumer complaints for handling.

- 7. Quality Control/Internal Audit
 - A formal Quality Control program must be in place with regular, documented reviews.
 - Results of Quality Control reviews must be provided to senior management on a regular basis.
 - A process should be in place to address any errors determined during the quality control review:
 - Root cause analysis
 - Prevention of further errors
 - Follow-up with relevant business units to ensure corrections are in place and do not recur

- 8. Records Management/Document Retention

Make sure you are complying with all relevant documentation retention requirements (such as Making Home Affordable loss mitigation documentation requirements, federal regulations, etc.).

- 9. Loss Mitigation Records Management
 - Make sure you have retained all loss mitigation records, including documentation to support that every delinquent or imminent default customer has been offered loss mitigation.
 - System notes, file records and documentation should be readily available for the examiners.

CFPB Notification of the Examination and Pre-Examination Request

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- CFPB will not typically give notice well in advance – expect weeks, not months.
- The pre-examination request will be extensive, with most items due upon arrival.
- The number of examiners will depend on the size of the entity to be examined, however, expect a large group regardless of your size.
 - You will need to make sure to have sufficient space available for them, including system access.
- The CFPB examiners don't want paper files. Recommend setting up an internal share point to provide pre-examination request information and to exchange information for any additional requests from CFPB.
- Appoint one or more individuals to be your lead contact with the examiners when they arrive.
- CFPB does not currently assess a fee for the examination, but you must be prepared to spend a lot of time and effort preparing the pre-examination request materials, providing responses to on-going requests, etc., so the examination really is not "free" and in the end will cost your company a lot of money.
- Make sure all employees know the examination will be taking place and where the examiners will be housed.
 - Employees should answer any questions posed to them by examiners, and answer truthfully BUT they should answer only the specific question asked and only if it pertains to their responsibilities.
 - It is perfectly acceptable to respond "I'm sorry, that's not my area, but I will find the correct individual to answer your question."

The Pre-Examination Request

The pre-examination request will have a cover page identifying the dates of the exam and provide an attachment with modules (requested information for the examination). The majority of the requested information will be due upon arrival, but some items may be due prior to arrival.

The first part of the pre-examination request modules will be "General" information and lending/origination.

- These modules will include requests for general information about your company as well as information regarding the company's compliance management system, audit functions, the origination/lending functions, HMDA, fair lending and insurance sales.

The next set of modules will pertain to Servicing.

- These modules will include requests for information regarding servicing transfers and loan ownership transfers, payment processing and account maintenance, customer inquiries and complaints, escrow account and insurance maintenance, credit reporting, information sharing and privacy, collections and bankruptcy, loss mitigation and foreclosures.

Each module section will identify the time frame for review and will request lists of loans. These lists of loans will be used to request files for review. Each module will request organization charts for the function covered by the module, contact information for the

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individuals in senior management positions for that function, policies and procedures for that function as well as quality control or internal audits.

Counted individually, a recent pre-examination request covered over 400 line items requested for the examination (not including a request that may cover several items, such as a through b). This does not include items requested during the examination.

During the Examination

- Have all items requested to be available upon arrival ready and organized.
 - If there will be any delays in getting requested information, make sure to communicate the reason for those delays and the expected delivery date. This communication should be made with the lead examiner.
- Set reasonable expectations for items requested by the examiners during the examination review period.
 - This should be a discussion with the lead examiner.
- Expect that each examiner will submit requests for additional information he/she may be needing.
 - Don't expect a combined request each day or even an orderly process for requesting additional information.
- Expect that the examiners will be "green" and not experienced in the areas they will be examining. Hopefully, this will improve with time as the examiners become more experienced (i.e., on the job training if you will) or the CFPB hires experienced examiners.
 - It's a good opportunity to train them! Be positive!
- Expect a lot of 'suggestions' for changes in processes from the examiners.
- Remember, the total focus of the examiners and indeed the CFPB is the consumer. Everything they review will be strictly consumer-focused and 'what is best for the consumer.'
- Individual examiners vary greatly as to how much inter-action they will have with personnel or how many meetings they will request with individual departments.
- A weekly meeting with the lead examiner should be scheduled so that you can be kept abreast of how things are going.

Closing the Examination

- Expect that you will receive a 'draft' of the findings.
- You will have an opportunity to respond to and/or resolve the findings before the final examination report is issued.
- CFPB has not commented as to whether the findings or the final report will be made public at this time.