

## Financial Institution Compliance Update



June 4, 2014

*This communication is designed to provide you with quick snapshots and timely perspective on recent regulatory developments.*

### CFPB Guidance: Make consumer protection a priority and avoid costly risks

#### Background of issue

Since the establishment of the Consumer Financial Protection (CFPB) through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), there has been an increase of penalties for alleged unfair, deceptive, or abusive acts. Public enforcement orders, civil money penalty orders, administrative proceedings and Department of Justice referrals administered by the CFPB within the past twelve months include:

- One of the nation's largest banks was ordered to pay \$727 million in relief to consumers harmed by practices related to credit card add-on products. Roughly, 1.4 million consumers were affected by the bank's alleged deceptive marketing of their add-on products. The bank also illegally charged approximately 1.9 million consumer accounts for credit monitoring and credit reporting services that they were not receiving.<sup>1</sup>
- A mortgage lender and its former owner and

#### Contact us

If you have specific questions regarding the regulatory content and commentary of this message, please contact:

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If you are planning to attend the ABA Regulatory Compliance conference in New Orleans, LA, June 8 – 11, visit us at booth #104 to ask questions to **Experis Finance** professionals. We will be available to address regulatory concerns and share best practices.

current president were ordered to pay \$81,076 for funneling illegal kickbacks to a bank in exchange for real estate referrals. The Bureau charged the non-depository mortgage lender which entered into an agreement with a bank which referred potential borrowers to the mortgage lender in exchange for kickbacks. The kickbacks were disguised as inflated lease payments for renting office space within the bank.<sup>2</sup>

- The CFPB initiated an administrative proceeding against a mortgage originator, alleging the company harmed consumers through a mortgage insurance kickback scheme that started as early as 1995. The CFPB is seeking a civil fine, a permanent injunction to prevent future violations, and victim restitution. The mortgage company is specifically accused of kickbacks, overcharging loans, and creating higher priced Private Mortgage Insurance.<sup>3</sup>
- The CFPB and the Department of Justice (DOJ) filed a joint complaint against another bank for charging higher prices on mortgage loans to African-American and Hispanic borrowers than similarly creditworthy white borrowers between the years 2002 and 2008. The agencies also filed a proposed order to settle the complaint that requires the bank to pay \$35 million in restitution to harmed African-American and Hispanic borrowers.<sup>4</sup>

## **Challenges to consider**

Recent CFPB orders as well as examination procedures set the tone for risk management priorities regarding consumer protection. These expectations will have a profound impact on Compliance Management Programs for the foreseeable future. Historically, compliance with banking laws and regulations could be described in terms such as “accuracy” and “full disclosure,” which were applied at the transactional level. However, additional requirements for compliance risk management have emerged. The assessment of risk has shifted a greater focus from transactional risk to reputational risk, a risk much harder to manage in a Compliance Management Program. This includes evaluating, at a detailed level, UDAAP risks associated with your products, applications and services.

## **Actions to take to ensure compliance and consumer protection**

Compliance Officers, Senior Management, and Boards must find ways to proactively respond to the emerging risks and evaluating how each product and service is impacting the consumer. This

can be accomplished by incorporating the following components to the Compliance Management Program:

- Communicate a clear “tone at the top” of expectations through various means, particularly in the form of policies, procedures and training materials.
- Work with front line leaders to reinforce expectations by establishing and communicating a relevant “tone in the middle.”
- Use the CFPB Supervision Exam Manual to enhance the compliance and internal audit’s current scope and plan.
- Ensure that UDAAP requirements are incorporated into the everyday business processes.
- Strive for fairness and transparency when communicating product features, terms and costs to customers, and apply the same standard in the delivery, support and servicing of all products. High risk areas to focus on are:
  - Advertising and Solicitations
  - Loan and Account Disclosures
  - Call Center operations
  - Servicing and Collections
- Maintain procedures for consumer complaints, including identification, documentation, reporting, and tracking. Instruct your staff to be alert for, and to properly report, the following comments from customers, even if oral:
  - Allegations of misleading or false statements
  - Missing disclosures or information
  - Undue or excessive fees
  - Previously undisclosed or unauthorized charges in their accounts.

Develop a process for due diligence and regular review of third-parties that are involved in products and service sales or delivery to your customers. Remember that your responsibility for their activity is the same as if it is handled directly by you. Your financial institution will have direct accountability for their advertising, acts, and practices. An effective third-party management program incorporates risk assessment, due diligence, contract structuring and review, and regular monitoring and reporting.

## How Experis can help

**Experis Finance** offers industry experience in advising financial institutions on the requirements of regulatory requirements through assessments of their Compliance Management Programs. Experis has assisted a variety of financial institutions to assess the potential risk of harm to consumers, become CFPB exam ready and enhance an institutions compliance, complaint and third-party oversight programs.

If you have any issues or concerns with these steps, contact an **Experis representative**. We have a team of professionals experienced in working with clients to address these issues and avoid costly fines and penalties.

1 Source: CFPB website, <http://www.consumerfinance.gov/newsroom>

2 Source: CFPB website, <http://www.consumerfinance.gov/newsroom>

3 Source: CFPB website, <http://www.consumerfinance.gov/newsroom>

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