

A DRIVE-BY INTRODUCTION TO THE CFPB

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FEDERAL TRADE COMMISSION

- Federal Trade Commission had enforcement authority for violations of the Fair Debt Collection Practices Act
- FTC issued advisory opinions, but did not have authority to promulgate rules

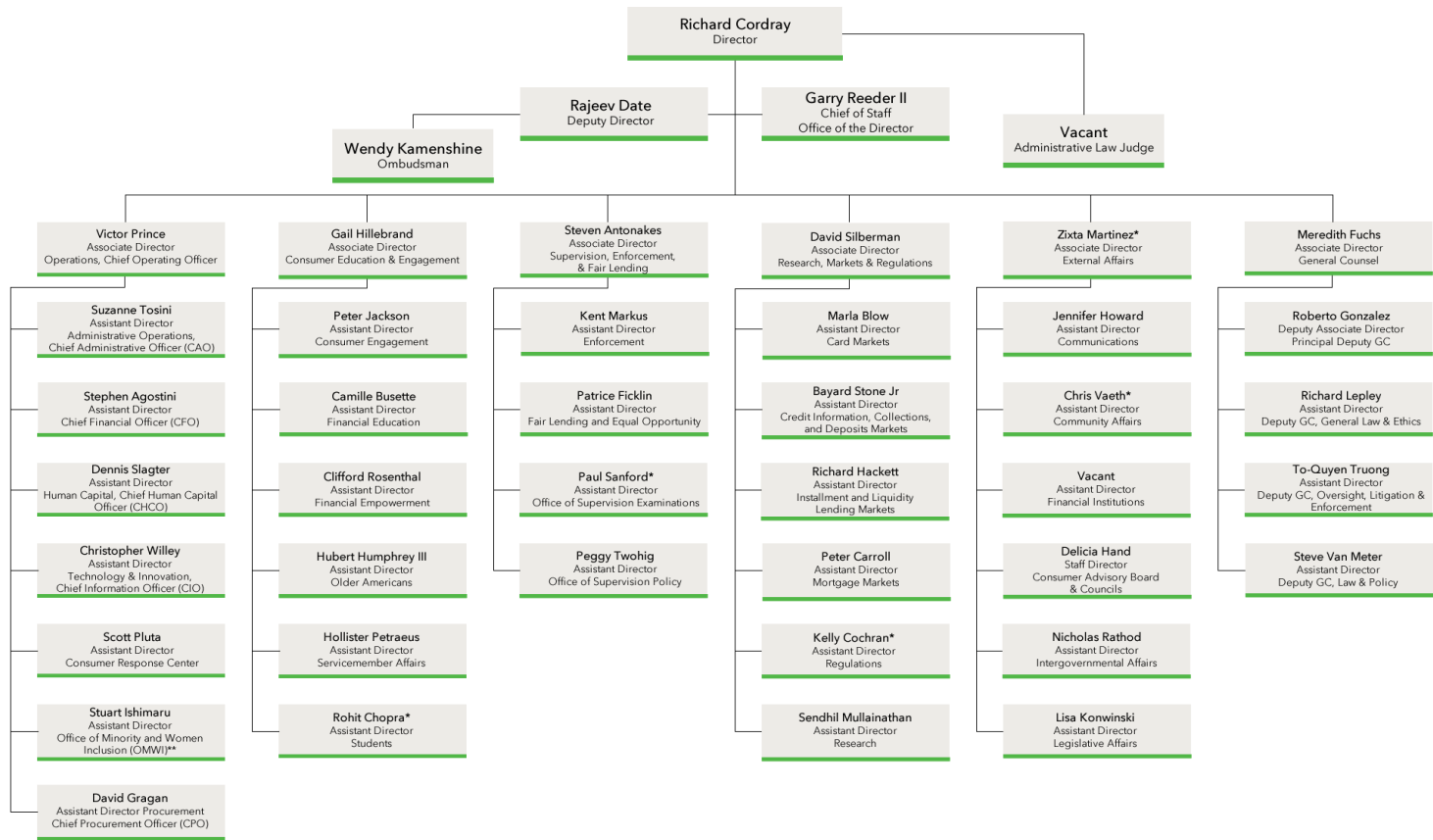
DODD-FRANK ACT

- Created the Consumer Financial Protection Bureau
 - Authority
 - Promulgate rules
 - Enforce enumerated financial laws
 - Supervise certain non-bank covered persons

CFPB MISSION

- Making rules more effective
- Consistently and fairly enforcing those rules
- Empowering consumers to take more control over their economic lives

CFPB STRUCTURE



Legend

* = Position currently filled on an Acting basis

** = Position has direct report responsibilities to the Director

CFPB DIVISIONS

- **CHIEF OPERATING OFFICER**
 - **Consumer Response Team** that addresses consumer complaints, provides consumers with information, and connects them with additional resources where appropriate.
- **CONSUMER EDUCATION AND ENGAGEMENT**
 - **Financial Education Team** that provides consumers with information to help them make informed financial decisions.
- **SUPERVISION, ENFORCEMENT & FAIR LENDING**
 - **Enforcement Team** that investigates potential violations;
 - **Examinations Team** that will recruit, train, and commission examiners and ensure policies and procedures are followed and plan and execute examinations appropriately in light of resources and priorities;
 - **Policy Team** which that will ensure that policy decisions for supervision are consistent with both the law and our mission, and that they are consistent across markets, charters, and regions.
- **RESEARCH, MARKETS AND REGULATIONS**
 - **Research Team** investigates consumer financial markets and publishes findings to improve information available to market participants and the Bureau and evaluates benefits and costs of potential and existing regulations.
 - **Markets Team** provides practical market intelligence and monitoring to Bureau colleagues and to the public.
 - **Regulations Team** ensures that rules implementing the consumer protection laws under the Bureau's authority are issued and interpreted in an informed, fair, and efficient manner in accordance with the law.
- **GENERAL COUNSEL**
 - Responsible for the Bureau's interpretation of all applicable laws.

CFPB REGULATION

- The CFPB has authority to issue regulations under the enumerated consumer financial laws
- Examples
 - Larger Participant
 - Privileged Information
 - Procedures for risk-based determinations

CFPB ENFORCEMENT

- May enforce consumer financial laws against any covered entity, regardless of size
- Concurrent jurisdiction with FTC, state regulators and Attorneys General
- Examples
 - Capital One Bank
 - Discover Bank
 - American Express Companies

CFPB SUPERVISION

- Larger Participants
- Service Providers
- Risky Businesses

CFPB SUPERVISION

- **Larger Participants**

- Includes

- Third-party collectors
 - Law firms and attorneys
 - Debt buyers

- Test

- >\$10 million in annual receipts resulting from consumer debt collection
 - “Annual receipts” is defined as “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these items are reported to the IRS, as differentiated from gross collections
 - Does not include receipts that result from collecting debts originally owed to medical provider.
 - May apply to about 175 debt collectors who account for approximately 60% of annual receipts in the consumer debt collection market

CFPB SUPERVISION

- **Service Providers**

- Definition

- “Any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service...”

- Rule of Construction

- “A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.”

- Larger Participant Rule

- “Service providers to consumer debt collectors and consumer reporting agencies may include firms such as. . . law firms. . .”

CFPB SUPERVISION

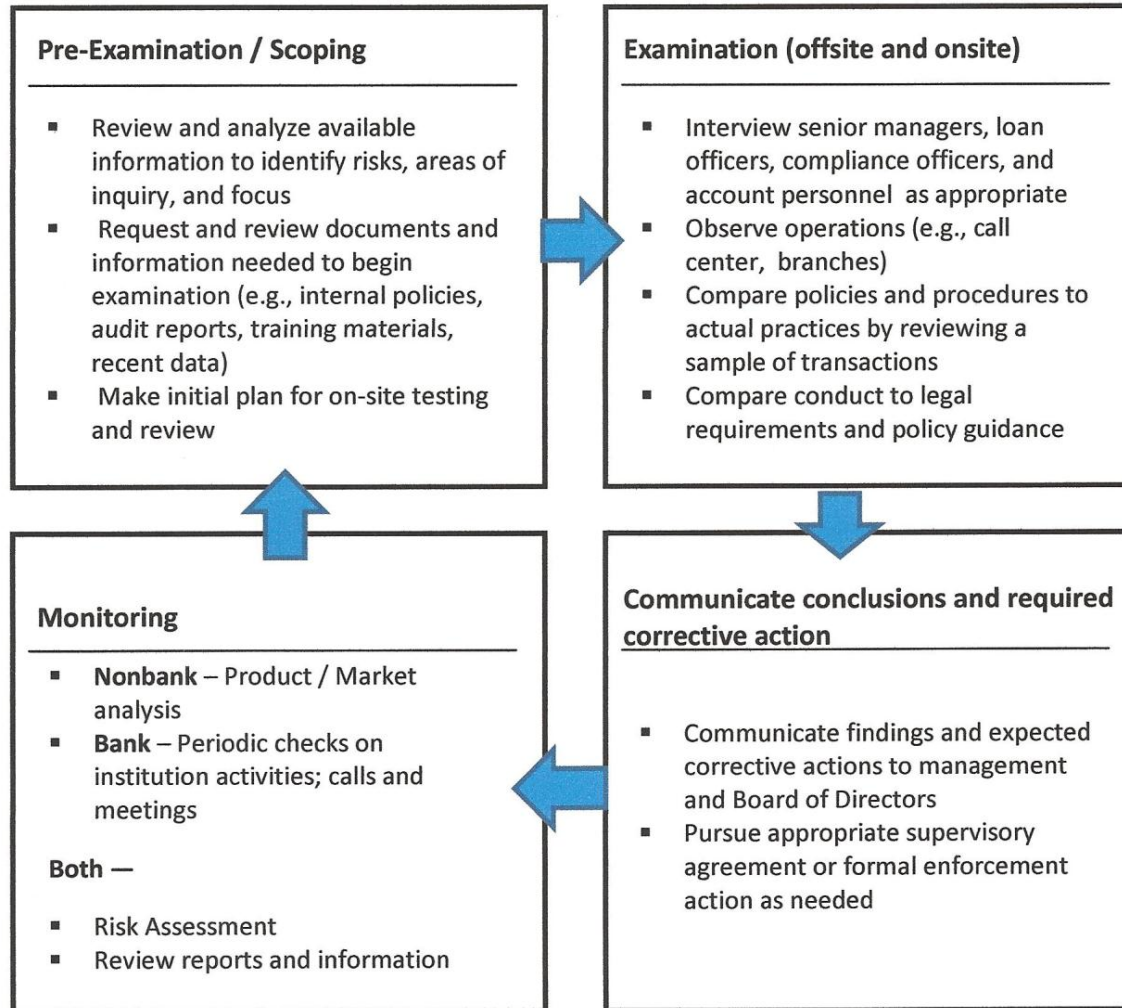
- **Risky Businesses**

- May supervise any non-bank covered person, regardless of size, if there is a “reasonable cause to determine that such person is engaging, or has engaged, in conduct that poses risks to consumers.”
- Determination based on:
 - Correspondence from state regulators and CFPB correspondence files
 - State licensing information for the entity
 - Complaint information (internal, state, CFPB, other sources)
 - FTC Consumer Sentinel database
 - Newspaper articles, web postings, or blogs
 - Content of the supervised entity’s website

CFPB EXAMINATIONS

- **Goals**
 - Assess the quality of the regulated entity's compliance management system
 - Identify acts or practices that materially increase the risk of violations of Federal consumer financial laws
 - Gather facts to determine whether a regulated entity engages in acts or practices that violate Federal consumer financial laws
 - Determine whether a violation of a Federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate

CFPB EXAMINATIONS - OVERVIEW



CFPB EXAMINATION PROCESS

- CFPB will send a notice letter approximately 60 days before the on-site examination
- Letter will include a request for information
- Information will be used by CFPB to determine the specific examination procedures
- CFPB will arrange an entrance meeting members of the supervised entity's management
- Examiners will meet regularly with the entity point of contact to discuss interim findings and examination progress
- Report will be prepared and submitted to entity
- Degree of follow-up and oversight related to compliance ratings

CFPB EXAMINATION PROCESS

- **Examination Report**

- Consists of

- Conclusion (discussion of compliance rating)
- Comments & Supporting Analysis
- Required Corrective Actions

- Report Must be shared with board or principals if compliance rating is “3” or below

- Type and severity of problems will determine whether informal supervisory measures or formal enforcement action is necessary

CFPB EXAMINATION PROCESS

- **Compliance Ratings**

- “One”

- An [entity] in this category is in a strong compliance position.
 - Management is capable of and staff is sufficient for effectuating compliance.
 - An effective compliance program, including an efficient system of internal procedures and controls, has been established.
 - Changes in consumer statutes and regulations are promptly reflected in the institution's policies, procedures, and compliance training.
 - The institution provides adequate training for its employees.
 - If any violations are noted they relate to relatively minor deficiencies in forms or practices that are easily corrected.
 - There is no evidence of discriminatory acts or practices, reimbursable violations, or practices resulting in repeat violations.
 - Violations and deficiencies are promptly corrected by management.
 - As a result, the institution gives no cause for supervisory concern.

CFPB EXAMINATION PROCESS

- **Compliance Ratings (Cont'd)**

- Five

- An [entity] in this category is in need of the strongest supervisory attention and monitoring
- It is substantially in non-compliance with the consumer statutes and regulations
- Management has demonstrated its unwillingness or inability to operate within the scope of consumer statutes and regulations
- Previous efforts on the part of the regulatory authority to obtain voluntary compliance have been unproductive
- Discrimination, substantial overcharges, or practices resulting in serious repeat violations are present

CFPB EXAMINATION PROCESS

- **Requests for Information**
 - Organizational charts and process flowcharts
 - Board minutes and annual reports
 - Relevant management reporting
 - Policies and procedures
 - Notes and disclosures
 - Telephone recordings
 - Operating checklists, worksheets, and review documents
 - Monitoring procedures
 - Compensation policies
 - Relevant computer program and system details
 - Consumer files, including original loan documents, and payment records systems
 - Historical examination information
 - Audit and compliance reports, and management responses to findings
 - Training programs and materials
 - Scripts for employee use
 - Third-party contracts and oversight materials, including monitoring reports and finding
 - Written correspondence with consumer
 - Court documents
 - Consumer complaints and disputes submitted to virtually anyone

CFPB EXAMINATION PROCESS

- **Privileged & Confidential Information**
 - CFPB will “request submission of privileged information only when it determines that such information is material to its supervisory objectives and that it cannot practicably obtain the same information from non-privileged sources.”
 - If requested, entity should discuss potential issues with examiners
 - If attorney refuses to provide privileged information, indication that CFPB will ask client to waive privilege

CFPB EXAMINATION PROCESS

- **Privileged Information (cont'd)**
 - Final Rule: Confidential Treatment of Privileged Information
 - “The submission by any person of any information to the CFPB for any purpose in the course of any supervisory or regulatory process of the CFPB shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the CFPB.”

CFPB EXAMINATION PROCESS

- **Privileged Information (cont'd)**
 - H.R. 4014
 - A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—
 - any other covered agency, in any capacity; or
 - any other agency of the Federal Government.
 - “Covered Agency”
 - Any Federal banking agency.
 - The Farm Credit Administration.
 - The Farm Credit System Insurance Corporation.
 - The National Credit Union Administration.
 - The Government Accountability Office.
 - The Bureau of Consumer Financial Protection.
 - Federal Housing Finance Agency.

EXAMINATION PROCEDURES MODULES

- Module 1 - Entity Business Model
- Module 2 - Communications in Connection with Debt Collection
- Module 3 - Information Sharing, Privacy, and Interactions With Consumer Reporting Agencies
- Module 4 - Consumer Complaints, Dispute Resolution, and Debt Validation
- Module 5 - Payment Processing and Account Maintenance
- Module 6 - Equal Credit Opportunity Act
- Module 7 - Litigation Practices, Repossession, and Time-Barred Debt

COMPLIANCE MANAGEMENT REVIEW

An effective compliance management system has four interdependent control components:

1. Board and management oversight
2. Compliance program
 - a. Policies & Procedures
 - b. Training
 - c. Monitoring & Corrective Action
3. Consumer complaint response
4. Compliance audit

COMPLIANCE MANAGEMENT REVIEW

- **Board & Management Oversight**
 - Clear expectations about compliance, not only within the entity, but also to service providers
 - Qualified and experienced chief compliance officer
 - Established compliance function to set policies, procedures, and standards.
 - Resources allocated to the compliance function commensurate with size and complexity
 - Identified and addressed compliance issues and risks of harm to consumers.
 - Required audit coverage of compliance matters and periodic review of compliance audits

COMPLIANCE MANAGEMENT REVIEW

- **Compliance Program**
 - **Policies & Procedures**
 - Consistent with board-approved policies
 - Address compliance with applicable Federal consumer financial laws in a manner designed to prevent violations and to detect and prevent associated risks of harm to consumers.
 - Maintained and modified to remain current

COMPLIANCE MANAGEMENT REVIEW

- **Compliance Program (Cont'd)**
 - **Training**
 - Current, complete, directed to appropriate individuals based on their roles, effective, and commensurate with the size of the entity and nature and risks to consumers presented by its activities.
 - Consistent with policies and procedures and designed to reinforce those policies and procedures
 - Compliance professionals have access to training

COMPLIANCE MANAGEMENT REVIEW

- **Compliance Program (cont'd)**
 - **Monitoring & Corrective Action**
 - Monitoring is scheduled and completed and leads to timely corrective actions
 - Transactions and other consumer contacts are handled according to the entity's policies and procedures
 - Addresses deficiencies identified in internal or external audits, and the board's or management's directives on resolving the deficiencies
 - Findings are escalated to management

COMPLIANCE MANAGEMENT REVIEW

- **Consumer Complaint & Response**
 - Consumer complaints and inquiries are appropriately recorded and categorized
 - Complaints and inquiries are addressed and resolved promptly
 - Legal issues are appropriately escalated
 - Complaint data and individual cases drive adjustments to business practices as appropriate
 - Consumer complaints result in retrospective corrective action when appropriate

COMPLIANCE MANAGEMENT REVIEW

- **Consumer Complaints & Response (cont'd)**
 - Comprehensiveness of systems, procedures, and/or flowcharts for capturing, logging, tracking, handling, and reporting disputes and/or complaints and their resolutions.
 - Channels and physical locations the entity provides for receipt of customer disputes, complaints, and inquiries.
 - The effectiveness of any telephone line available for inquiries or complaints, including
 - whether it is toll-free
 - ease of accessing a live person
 - hold times
 - call abandonment rates.
 - Effectiveness of other means available for disputes, inquiries, or complaints, including written submissions and any online portal.
 - Processes and promptness in responding to consumer disputes and complaints.
 - Whether consumer complaints are captured, correctly categorized, and are handled appropriately.
 - Whether staffing levels are sufficient for volume and whether assumptions used for staffing determinations are validated or supported by analysis.
 - Whether the entity has a process for analyzing complaints to identify patterns of debt collection practices that violate the law or pose risks to consumers.

COMPLIANCE MANAGEMENT REVIEW

- **Compliance Audit**

- The audit program is sufficiently independent and reports to the board or a committee of the board.
- The audit program addresses compliance with all applicable Federal consumer financial laws.
- The schedule and coverage of audit activities is appropriate to the size of the entity, its consumer financial product offerings, and its manner of conducting its consumer financial products business.
- All appropriate compliance and business unit managers receive copies of audit reports in a timely manner.
- Audit results lead to appropriate, timely corrective action.

SERVICE PROVIDERS

- Conduct thorough due diligence to verify that the service provider understands and is capable of complying with federal consumer financial law;
- Request and review the service providers' policies, procedures, internal controls, and training materials to ensure that the service providers conduct appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Include in its contracts with its service providers clear expectations about compliance with Federal consumer financial laws as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;
- Establish internal controls and on-going monitoring to determine whether its service providers are complying with Federal consumer financial law; and
- Take prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

DEBT PURCHASES, SALES & TRANSFERS

- Sufficiency of information to determine:
 - the consumer's identity
 - the amount due
 - whether any fees charged were permitted by contract
 - the original creditor
- The nature and description of account-level information;
- Whether additional account level information can be provided or requested;
- Representations or disclaimers relating to the accuracy of the account-level information;
- Any reason the entity should doubt the accuracy of the account-level information

FDCPA

- **Communications**

- Analysis tracks the FDCPA's requirements and restrictions in §§1692b – 1692f relating to:

- acquisition of location information
 - communication in connection with debt collection
 - harassment or abuse
 - false or misleading representations and unfair practices

FDCPA

- **Communications (cont'd)**
 - “Catchall” Provision:
 - “Communicating with a person in any other harassing, oppressive or abusive manner not identified above [i.e. not identified in the FDCPA].”
 - Examiners are then directed to “consult with Headquarters to assess whether a particular communication is harassing, oppressive, or abusive.

FDCPA

- **Communications (cont'd)**
 - “Other Risks to Consumers”
 - Mobile Phones
 - Text Messages
 - E-mails
 - Identification on caller ID and e-mails
 - Predictive Dialers

FDCPA

- **Ceasing Communications, Validation Notices & Consumer Disputes**
 - Analysis tracks the FDCPA's requirements and restrictions in §1692c and §1692f regarding communications in connection with debt collection and unfair practices

FDCPA

- **Payment Processing & Account Maintenance**
 - Analysis tracks §§1692e, 1692f and 1692h regarding false or misleading representations, unfair practices and multiple debts
 - Payments received are applied as instructed and, where no instruction is given, applies payments only to undisputed debts
 - Balance of the debt not overstated;
 - No misrepresentations of the services rendered or the compensation allowed;
 - Postdated payments and the procedures for handling such payments.

LITIGATION PRACTICES

- **Forum**
 - Actions brought only in the judicial district or similar legal entity in which:
 - The consumer signed the contract sued upon; or
 - The consumer resides at the time the action is commence
- **Time-Barred Debt**
 - Policies and procedures related to debt that is older than the applicable statute of limitations, including how it is identified and collected upon;
 - Whether the entity sues or threatens to sue on time-barred debt;
 - Representations made to consumers regarding the time-barred nature of the debt and ability to sue on the debt.

LITIGATION PROCEDURES

- **Time-Barred Debt (cont'd)**
 - AmEx Consent Order
 - “Provide disclosures concerning the expiration of the Bank's litigation rights when collecting debt that is barred by applicable state statutes of limitations.”

UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES (“UDAAP”)

- Independent analysis regardless of whether any violation of federal financial consumer law

UDAAP

- **Unfair**

- It causes or is likely to cause substantial injury to consumers;
- The injury is not reasonably avoidable by consumers; and
- The injury is not outweighed by countervailing benefits to consumers or to competition.

UDAAP

- **Deceptive**

- The representation, omission, act, or practice misleads or is likely to mislead the consumer;
- The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
- The misleading representation, omission, act, or practice is material.

UDAAP

- **Abusive** –
 - Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
 - Takes unreasonable advantage of –
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

“We’ve been trying to puzzle through exactly how that term should be applied. . . We’re going to have to measure on a facts and circumstances basis as we go...”

NARCA MEETINGS WITH THE CFPB

- “This is not a ‘gotcha’ exercise.”
- “We understand you have a business to run. We are not there to be obstructionists. The process is not intended to be burdensome or prevent the usual day-to-day business.”
- “If there are problems that are not serious and will be corrected, we don’t have to make a federal case about it.”
- “Supervision is based on risk assessments, and the only guideline at this time is size.”
- “In debt collection, the primary issues we perceive are:
 - Accuracy of data used to pursue consumers;
 - After charge-off and sale, is there sufficient information as the debt moves through the chain of ownership;
 - Debt verification and disputes;
 - Consumer complaint analysis and management”
- “We really like to see self-analysis, self-correction and self-remediation, if not before the exam then volunteered when brought to the entity’s attention.”
- “We may ask for privileged information, and if the law firm refuses, we will ask the client to waive the privilege.”
- “We understand the law varies from state to state; whatever position is taken, the law firm should have documented justification to back it up.”
- “Compliance reviews will not assume one size fits all. We know larger firms can afford more sophisticated compliance systems, but in the end it’s the result that matters.”

RESOURCES

- **Must Read**

- **CFPB Debt Collection Field Examination Manual (“Field Manual”)**
http://files.consumerfinance.gov/f/201210_cfpb_debt-collection-examination-procedures.pdf
- **CFPB Supervision & Examination Manual v2, Compliance Management Review Section, pp. 34-46.**
http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf

- **Suggested Reading**

- **Final Rule: Defining Larger Participants of the Consumer Debt Collection Market**
<https://www.federalregister.gov/articles/2012/10/31/2012-26467/defining-larger-participants-of-the-consumer-debt-collection-market>
- **Final Rule: Confidential Treatment of Privileged Information**
<https://www.federalregister.gov/articles/2012/07/05/2012-16247/confidential-treatment-of-privileged-information>
- **Final Rule: Rules Relating to Investigations** <https://www.federalregister.gov/articles/2012/06/29/2012-14047/rules-relating-to-investigations>
- **Final Rule: Rules of Practice for Adjudication Proceedings**
<https://www.federalregister.gov/articles/2012/06/29/2012-14061/rules-of-practice-for-adjudication-proceedings>
- **Proposed Rule: Procedural Rules To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination** <https://www.federalregister.gov/articles/2012/05/25/2012-12718/procedural-rules-to-establish-supervisory-authority-over-certain-nonbank-covered-persons-based-on>
- **CFPB Bulletin 2012-03 Re: Service Providers** http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf
- **CFPB Bulletin 2012-07 Re: Appeals of Supervisory Matters**
http://files.consumerfinance.gov/f/201210_cfpb_bulletin_supervisory-appeals-process.pdf
- OR visit the Member-Only Section of the NARCA Website (soon to include a CFPB Resources page)

QUESTIONS?

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