

Consumer Compliance Examinations for Community Banks

What You Should Know to Help
Your Bank Prepare for the Next
Examination

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The opinions expressed are those of the presenter and are not those of the Federal Reserve Bank of Atlanta, the Federal Reserve System, or its Board of Governors.

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Objectives



- General Examination Framework
- Risk-Focused Supervision Examination Process
- Primary Examination Components
 - Guidance
 - Key Takeaways
- Questions

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Risk Focused Supervision Program Framework



CA 13-19 - Community Bank Risk-Focused Consumer Compliance Supervision Program

(Issued November 18, 2013; Effective January 1, 2014)

- Incorporates guidelines for **evaluating compliance management programs in the context of inherent risk** to the organization (including the bank, affiliates, and subsidiaries) as well as to consumers.
- Allows Reserve Banks to **tailor supervisory activities** to the structure, complexity, and risk of the organization and to **adjust** these activities over time, thus deploying Federal Reserve and bank resources efficiently and effectively.
- Acknowledges the value of **timely communication** regarding consumer compliance regulatory and supervisory matters by supplementing **point-in-time** supervisory work with **ongoing supervision**.

CA 13-20 - Consumer Compliance and Community Reinvestment Act (CRA) Examination Frequency Policy

(Issued November 18, 2013; Effective January 1, 2014)

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Risk Focused Supervision Program Process



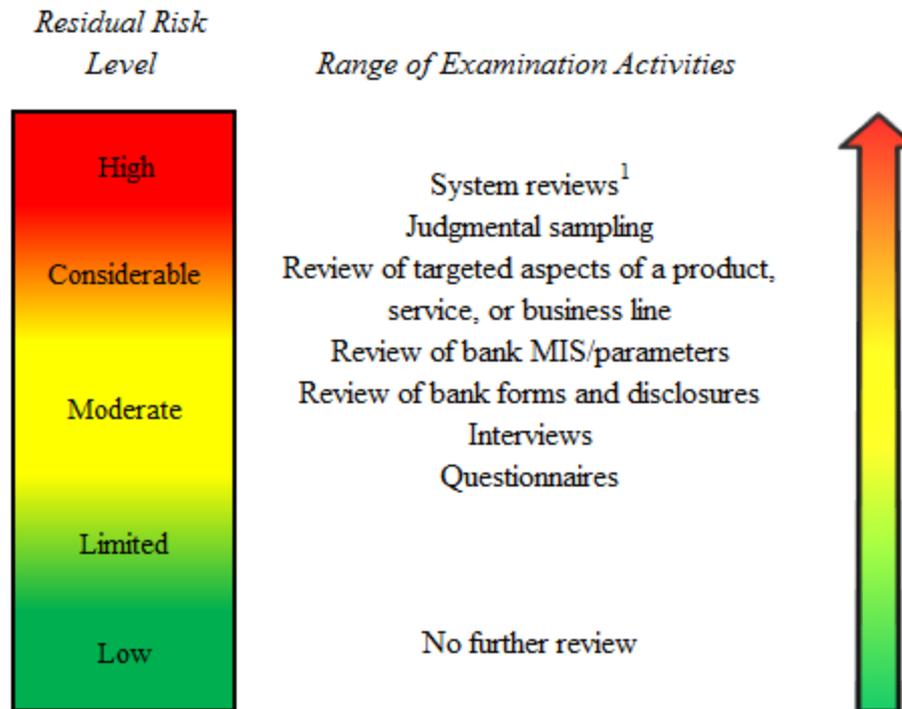
- Understanding the Institution
- Assessing the Institution's Risk
- Examination Scoping and Planning
- Examination Work
- Ongoing Supervision

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Level of Review



Risk-Focused Examination Work Program



¹From time to time, specific work programs may be developed to assess consumer compliance in certain higher risk areas. These System reviews may be precipitated by concerns about a particular product, service, business practice, or regulatory requirement.

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Fair Lending - Guidance



CA 09-6 - Interagency Fair Lending Examination Procedures
(Issued August 4, 2009)

CA 13-15 - Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule (Issued October 22, 2013)

CA 13-8 - Guidance on the Use of 2010 Census Data in Fair Lending Examinations (Issued May 16, 2013)

CA 07-6 - Federal Reserve Address Change for Complaints - Affecting Regulations AA, B, and the Fair Housing Act (Issued October 12, 2007; Effective October 1, 2008)

1994 Fair Lending Policy Statement and HUD Final Rule

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Fair Lending – Key Takeaways



Discretion always presents risk – acceptable parameters for exceptions should be articulated in your underwriting guidelines

- ❑ U5. Lack of clear guidance on making exceptions to underwriting criteria, including credit scoring overrides
- ❑ U6. Lack of clear loan file documentation regarding reasons for any exceptions to standard underwriting criteria, including credit scoring overrides

Clearly document all exceptions in the loan file

Commercial lenders need greater awareness of fair lending – business purpose or commercial loans are not exempt from the requirements of ECOA and Regulation B

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Fair Lending – Key Takeaways (Continued)



“Niche” banks – regardless of your business strategy, the bank is still required to serve the entirety of your market demographic

Evaluating redlining risk is still a primary component of our fair lending examination process

The most frequently cited Regulation B violation in our district is the address of the primary federal regulator on adverse action notices

You should be able to tell us your story!

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Unfair and Deceptive Acts and Practices - Guidance



CA 14-5 - Interagency Guidance Regarding Unfair or Deceptive Credit Practices (Issued August 22, 2014)

CA 07-8 - Consumer Compliance Examination Procedures for the Unfair or Deceptive Acts or Practices Provisions of Section 5 of the Federal Trade Commission Act (Issued November 6, 2007)

CA 04-2 - Unfair or Deceptive Acts or Practices by State-Chartered Banks (Policy Statement) (Issued March 11, 2004)

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Unfair and Deceptive Acts and Practices – Guidance – Legal Standards



Unfair practices

An act or practice is unfair where it:

- causes or is likely to cause substantial injury to consumers;
- cannot be reasonably avoided by consumers and;
- is not outweighed by countervailing benefits to consumers or to competition.

Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair.

Deceptive practices

An act or practice is deceptive where:

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

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Unfair and Deceptive Acts and Practices – Key Takeaways (Continued)



Consider these questions:

- What is the consumer's experience throughout the life cycle of such a product?
- Is the product, practice, or feature good for both the consumer and the bank? Is there a "win-win" scenario?
- Are features or terms structured in a way that makes it difficult for the customer to understand?
- Are products targeted to vulnerable populations?

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Unfair and Deceptive Acts and Practices – Key Takeaways (Continued)



- Are communications about the product's terms and features clear, conspicuous, accurate, and timely?
- Basically, would you want your loved one to have this product or service?
- In making these judgments, consider the issue from the perspective of a reasonable member of the target audience and whether any perceived harm could have been reasonably avoided.

Although UDAP violations are not referable to the Department of Justice, it could affect your CRA rating and the bank's ability to branch or engage in other expansionary activities.

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Flood - Guidance



CA 14-3 - Interagency Statement on Increased Maximum Flood Insurance Coverage for Other Residential Buildings (Issued May 30, 2014; Effective June 1, 2014)

CA 13-2 - Interagency Statement on the Impact of Biggert-Waters Act (Issued March 29, 2013)

2009 Interagency Questions and Answers Regarding Flood Insurance, 74 Fed. Reg. 35914, 35935 (July 21, 2009)

2011 Interagency Questions and Answers Regarding Flood Insurance, 76 FR 64175 (Oct. 17, 2011)

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Flood – Key Takeaways



The Board is required by law to impose civil money penalties (CMPs) when it finds a pattern or practice of violations of the federal flood insurance statutes implemented by the following provisions of Regulation H:

12 CFR § 208.25(c) requirement to purchase flood insurance where available

12 CFR § 208.25(e) requirement involving escrowing of flood insurance premiums

12 CFR § 208.25(g) force placement of flood insurance

12 CFR § 208.25(i) notice of special flood hazards and the availability of federal disaster relief assistance

12 CFR § 208.25(j) notice of servicer and any change of servicer

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Flood – Key Takeaways



Examiners will review portfolio loans, including renewals prior to the current review period

Increased penalties under Biggert Waters Act from \$385 per violation up to \$2,000 per violation

The maximum penalty cap per year has been deleted

The penalty amount is based on the cure date instead of the date when the violation first occurred.

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Truth in Lending and RESPA - Guidance



CA 13-26 -Regulation X Homeownership Counseling List Requirement (Issued December 23, 2013)

CA 13-25 - Revised Interagency Examination Procedures for Regulation Z and Applicability of CA Letter 09-12 (Issued December 23, 2013)

CA 13-24 - Revised RESPA Interagency Examination Procedures (Issued December 23, 2013)

CA 13-23 - Interagency Statement on Supervisory Approach for Qualified and Non-Qualified Mortgage Loans (Issued December 13, 2013)

CA 12-2 - Consumer Financial Protection Bureau Clarifies the Rules on Compensation to Loan Originators Based on Mortgage Transaction Terms or Conditions under Regulation Z (Issued April 4, 2012)

CFPB Small Entity Compliance Guides

<http://www.consumerfinance.gov/regulatory-implementation/>

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Truth in Lending and RESPA – Key Takeaways



Timing and content of disclosures – significant change will occur in August 2015

Compare HUD1 with the GFE provided to the consumer

Loan Originator Compensation – cannot be based on loan terms

Mortgage brokers must perform at least six compensable settlement services to receive compensation

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Community Reinvestment Act - Guidance



CA 14-02 - Revised Interagency Large Institution CRA Examination Procedures and Consolidation of Interagency CRA Examination Procedures and Supporting Materials (Issued April 18, 2014)

CA 13-18 - Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment (Issued November 15, 2013)

CA 12-4 - Guidance on the Usage of 2010 Census Data in Community Reinvestment Act Examinations (Issued April 23, 2012)

CA 10-2 - Revised Interagency Questions and Answers on Community Reinvestment (Issued March 11, 2010)

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Community Reinvestment Act – Key Takeaways



Community Bank Performance Context

At a minimum, you should know:

- Market Conditions
- Housing Conditions
- Community Development Needs and Opportunities

Periodically reevaluate your Assessment Areas based on demographic changes from the most recent Census and American Community Survey

You should know your markets and data better than we do!

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Questions?



Questions?