



## **Regulatory: The consumer financial protection bureau issues exam manual 1.0** *What does it say to non-large banks and about the most feared word in all of Dodd-Frank?*

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*This column is part of a series of articles on the new Consumer Financial Protection Bureau and the upcoming wave of regulations affecting the consumer financial industry.*

As promised, on Oct. 13, 2011, the Consumer Financial Protection Bureau released version 1.0 of its Supervision and Examination Manual. In the short term, the manual will guide the Bureau's supervision and examination of "large" banks, thrifts and credit unions (i.e., those with total assets greater than \$10 billion), and all their affiliates. When the Bureau is "ready" (when it has a director), the Bureau intends to use the manual "as a tool to look at other providers of consumer financial products and services that are not depository institutions...." Stated differently, the manual is road map version 1.0 of how the Bureau intends to review all financial services providers once it is fully operational.

In many ways, the manual is not new. It incorporates examination procedures developed by the Federal Financial Institutions Examination Council (FFIEC), and uses the FFIEC's Uniform Interagency Consumer Compliance Rating System. The manual is divided into three parts:

1. A description of the supervision and examination process
2. Examination procedures, including both general instructions and procedures for determining compliance with specific regulations
3. Templates for documenting information about supervised entities and the examination process, including examination reports.

Generally speaking, the manual will look familiar to any institution that is accustomed to exams by any of the federal financial institution regulators. There are, however, a few new things worth mentioning.

For example, version 1.0 of the manual includes examination procedures for the mortgage servicing industry. According to the Bureau, examinations in the mortgage servicing industry are dictated by the impact of consumer protection problems. According to Raj Date, special advisor to the secretary of the U.S. Department of the Treasury and de facto acting head of the Bureau, the Bureau is "going to take a close and measured look at whether servicers are following the law." The Bureau intends to follow up version 1.0 with examination procedures for other industries and lines of business.

Another thing worth mentioning is the Bureau effectively dodged the most feared and least understood word in all of Title X of the Dodd-Frank Act: "abusive." Recall that Title X gives the Bureau the power to prevent unfair, deceptive, or abusive acts or practices (UDAAP). The Dodd-Frank Act defines unfair and abusive, but left deceptive undefined. Borrowing heavily from prior statements by the Federal Trade Commission, the Federal Deposit Insurance Corp. and other federal regulators, the manual goes to some effort to lay out the standards for these two terms and even provides some examples. But what does the manual say about the term "abusive"?

Nothing, really. The manual quotes the definition of "abusive" from Title X, that an abusive act or practice is one that:

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

The only thing the Bureau says beyond reciting the statutory definition is “although abusive acts also may be unfair or deceptive, examiners should be aware that the legal standards for abusive, unfair, and deceptive each are separate.” This is monumentally unhelpful and puzzling, particularly when the manual has commentary on and provides a myriad of examples of “unfair” and “deceptive” acts or practices.

Further, the Bureau is on record as saying that it “is making the general exam manual and servicing procedures public so that financial services providers know what to expect during their examinations, and so that the public knows how we are fulfilling our responsibilities.” So what are financial services providers supposed to expect when examined about so-called abusive acts or practices? How can they even identify them without further illumination of the standard?

The optimists out there will hope that, until the Bureau adopts comprehensive regulations regarding UDAAP, including fleshing out completely what constitutes an abusive act or practice, the Bureau will refrain from enforcing the provisions. The pessimists know better, though.

## About the Author



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