

II. Compliance Examinations — Analysis

relevant information, or to begin correcting problems where appropriate.

The financial institution's directors/trustees are encouraged to participate in regularly scheduled meetings with examiners. However, examination findings should be discussed with senior management prior to discussing with Board members. Also, the EIC should notify the financial institution's management as early as possible of any plans to meet with the Board to present examination findings. This will provide directors/trustees with an opportunity to forego meetings during the examination, if that is their preference.

Review of the Compliance Management System

Based on information gleaned from the discussions with bank management and staff, along with the off-site review and analysis, the examiner should:

- Determine the quality of the institution's compliance management system, including the degree to which management has taken a proactive approach to compliance and whether management can demonstrate its ability to assure compliance with federal consumer laws and regulations.
- Assess whether the compliance management system is effective at facilitating compliance.
- Identify potential deficiencies in the compliance management system and areas of greatest risk and concern.
- Determine where transaction testing is necessary.

The following sections include question lists that are intended to serve only as general guidance for the matters to be addressed during the examiner's dialogue with bank personnel. The sections are organized by elements of the CMS, and should be considered in conjunction with each of the different operational areas of the bank to come to a conclusion about the strength of each element overall. The questions will not apply to every examination scenario and should be customized to each situation. Examiner judgment must be used to determine whether additional pertinent questions should be asked. Because all the facets of a compliance management system are interrelated, certain themes will be repeated in the question lists for multiple sections. Throughout the examination process, the examiner should refer to the FDIC Law, Regulations and Related Acts service set, and any pertinent outstanding FDIC guidance regarding the regulatory or policy requirements of each area under review.

NOTE: The question lists are not to be given to institution management to complete.

Applicable Statutes and Regulations

The compliance management system must adequately address (through oversight, policies and procedures, training,

monitoring, complaint response, and audit) all areas related to the following federal consumer laws, regulations, rules, and policy statements:

Lending

Truth in Lending
Real Estate Settlement Procedures
Homeowners Protection
Credit Practices Rule
Equal Credit Opportunity
Fair Housing
Home Mortgage Disclosure
Fair Credit Reporting
Flood Insurance
Preservation of Consumers' Claims and Defenses
Homeownership Counseling

Deposits

Truth in Savings
Electronic Fund Transfers
Expedited Funds Availability
Interest on Deposits

Other

CRA Technical Requirements
Advertisement of Membership
Electronic Banking
Privacy of Consumer Financial Information
Right to Financial Privacy
Non-Deposit Products
Consumer Leasing
Fair Debt Collection Practices
Branch Closings
Interstate Banking
Children's Online Privacy Protection
Unfair or Deceptive Acts or Practices
Telephone Consumer Protection
Controlling the Assault of Non-Solicited
Pornography and Marketing

Evaluating Management Oversight

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to management oversight;*
- *Prior Reports of Examination, including Compliance, Safety and Soundness, and specialty examinations (with a focus on the management component of each);*
- *Minutes of the meetings of the Board of Directors (BOD), compliance committee, discount committee, etc.;*
- *New, modified or amended compliance-related policies, procedures, and other internal memorandum;*

- *All files related to the receipt and resolution of compliance-related consumer complaints archived by the institution or the FDIC, including information from the FDIC's automated complaint tracking system (Specialized Tracking and Reporting System [STARS]);*
- *Written management and Board response and follow-up to internal and external audits;*
- *Agreements with outside vendors for compliance services and educational material;*
- *Institution organizational chart and management résumés; and*
- *Examiner notes from discussions with the compliance officer, senior managers, etc.*

Procedures

1. Review Board and committee minutes. Review of these documents should give the examiner an indication of the following:
 - Extent of Board oversight/involvement in assuring compliance with consumer protection and fair lending laws and regulations.
 - Training of Directors and senior management regarding compliance and fair lending issues.
 - Rationale for implementing new policies or procedures or modifying existing ones.
 - Any negative comments on rejected loan applications during loan committee or any other meeting (such records must be traced to the specific loan file to assure that no unlawful disparate treatment or discrimination was involved in the denial).
 - Consideration of new loan or deposit products and strategies for their implementation.
 - Consideration of new software or software vendors.
 - Consideration of third parties for compliance audit.
 - Approval of, and rationale for, branch openings and closings.
 - Whether the Board documented a review of the prior Report that included, as applicable: a discussion of recommendations for policy changes, an adoption of those revisions, and a report regarding corrective action and subsequent testing for identified violations
2. Based on the material reviewed during PEP and on-site, and based on discussions with management, answer the following questions:
 - What is the bank's business strategy and what are the compliance implications of that strategy (for example, elevated risk due to rapidly growing subprime lending, cutting-edge e-banking activities, etc.)?
 - What particular compliance-related areas does management feel are weak or in need of review?
3. Have the Board and senior management worked to foster a positive climate for compliance?
- Has management allocated the appropriate level of resources to compliance?
- Does the institution have a designated compliance officer and/or compliance committee? If not, is the absence of an officer or committee significant in light of the institution's resources and risk profile?
- Has management ensured that the compliance officer(s) and/or compliance committee has the appropriate level of authority and accountability to effectively administer the institution's compliance management system?
- Has management responded appropriately and promptly to consumer complaints?
- Has management responded appropriately to deficiencies noted and suggestions made at previous examinations and audits?
- How does management stay abreast of changes in regulatory requirements and other compliance issues? Is this method appropriate in light of the institution's resources and risk profile?
- How does management ensure that the institution's staff stays abreast of changes?
- How does management ensure that compliance is considered as part of new product and service development, marketing, and advertising?
- How does management ensure that due diligence is performed prior to changing software or software vendors or third party audit providers?
- What is the level of management's knowledge of compliance issues?
- Does the review of the Board and/or Compliance Committee minutes indicate a reasonable level of Board involvement?
- Is the Board aware that it is ultimately responsible for the institution's compliance management system?
3. Develop and document a preliminary assessment of the institution's performance related to this area. Is management oversight generally strong, adequate, weak? On what is this assessment based?

Evaluating the Compliance Program

Policies and Procedures

Material to be reviewed during completion of this section will include, at a minimum:

- *The examiner-determined risk profile of the financial institution as it relates to policies and procedures, including the institution's business strategy, product offering, branches, etc.;*