



Making Compliance More Than an Afterthought

July 20, 2022

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Zen Lawyer Journey @zenlawyerjourn1 · Mar 23

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Business guy: are you aware of any laws impacting the financial services industry?

Me: yes

Biz: good. toss them on a PowerPoint

What Kind of Product Do You Want to Develop?

Product Footprint

Potentially Applicable State Laws

- Licensing
- Interest Rate Limits
- Disclosures

Document Development

Potentially Applicable Laws

- TILA
- State Laws

Marketing

- UDAAP
- TCPA
- CAN-SPAM

Application Process

Ease is vital, but not at the expense of compliance

Potentially applicable laws

- ECOA
- ESIGN
- GLBA
- TILA
- UDAAP
- State Laws

Servicing

In-house or outsource?

Potentially Applicable Laws

- FDCPA
- State Laws

Compliance Management

- Compliance management system
- Policies and procedures

Functions of a CMS

- “To maintain legal compliance, an institution must develop and maintain a sound compliance management system that is integrated into the overall framework for product design, delivery, and administration across their entire product and service lifecycle.”
- To ensure compliance with Federal consumer financial laws and regulations and to address and prevent associated risks of harm to consumers (*customers*).

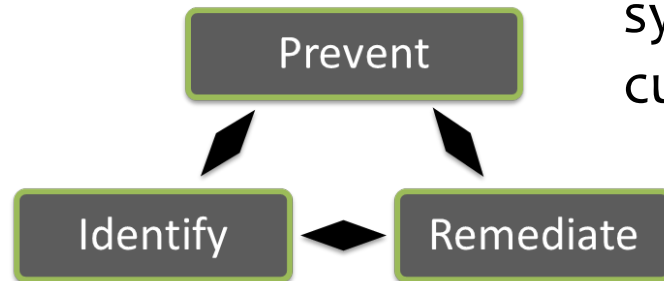
Elements of a CMS

- Board and Senior Management
- Compliance Program
- Policies and Procedures
- Training
- Monitoring / Audit
- Complaint Management
- Service Provider Oversight

Functions of a CMS

- Establish a company's compliance responsibilities.
- Communicate the compliance responsibilities to employees.
- Ensure that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes.

- Review (i.e., audit) the actual operations to ensure responsibilities are carried out and legal requirements are met.
- Take corrective action and remediate as necessary.
- Periodically review and update CMS, policies and procedures, systems, tools, etc. to remain current.



Requirements of a CMS

- Formal and written
- Risk-based
- Comprehensive
- Integrated into the framework of operations
- Covers the entire lifecycle of the product/service
- Be based on size, complexity, and nature and scope of activities;
- Be adapted to business strategy and operations;
- “Appropriately address and prevent violations of law *and* associated harms to *customers.*”

Board and Senior Management

- The Board and Senior Management must be actively participating in compliance.
- The Board must establish compliance expectations for the company and its service providers.
- Board must be adequately trained/informed on compliance matters.
- The Board must demonstrate a commitment to company's CMS.
 - Allocate adequate resources to compliance.
- The Board must oversee the company's CMS.
- The Board must ensure there are change management policies & procedures; and that they work.

Board and Senior Management

CFPB Examination Manual

- Because the effectiveness of a CMS is grounded in the actions taken by its board and senior management, Examiners should seek to determine whether the board and management meet the following objectives:

Oversight of and Commitment to the Institution's CMS

1. Demonstrate a **strong commitment and oversight** to the institution's CMS.
2. Provide **compliance resources** including systems, capital, and human resources commensurate with the institution's size, complexity, and risk profile.
3. Ensure that staff is knowledgeable, empowered and held accountable for compliance with Federal consumer financial laws.
4. Conduct **comprehensive and ongoing due diligence and oversight** of service providers consistent with the CFPB's expectations to ensure that the institution complies with Federal consumer financial laws.
5. Exercise oversight of service providers' policies, procedures, internal controls, and training to ensure consistent oversight of compliance Responsibilities.

Board and Senior Management

CFPB Bulletin 2016 - Detecting and Preventing ~~Consumer~~ *Customer* Harm from Production Incentives.

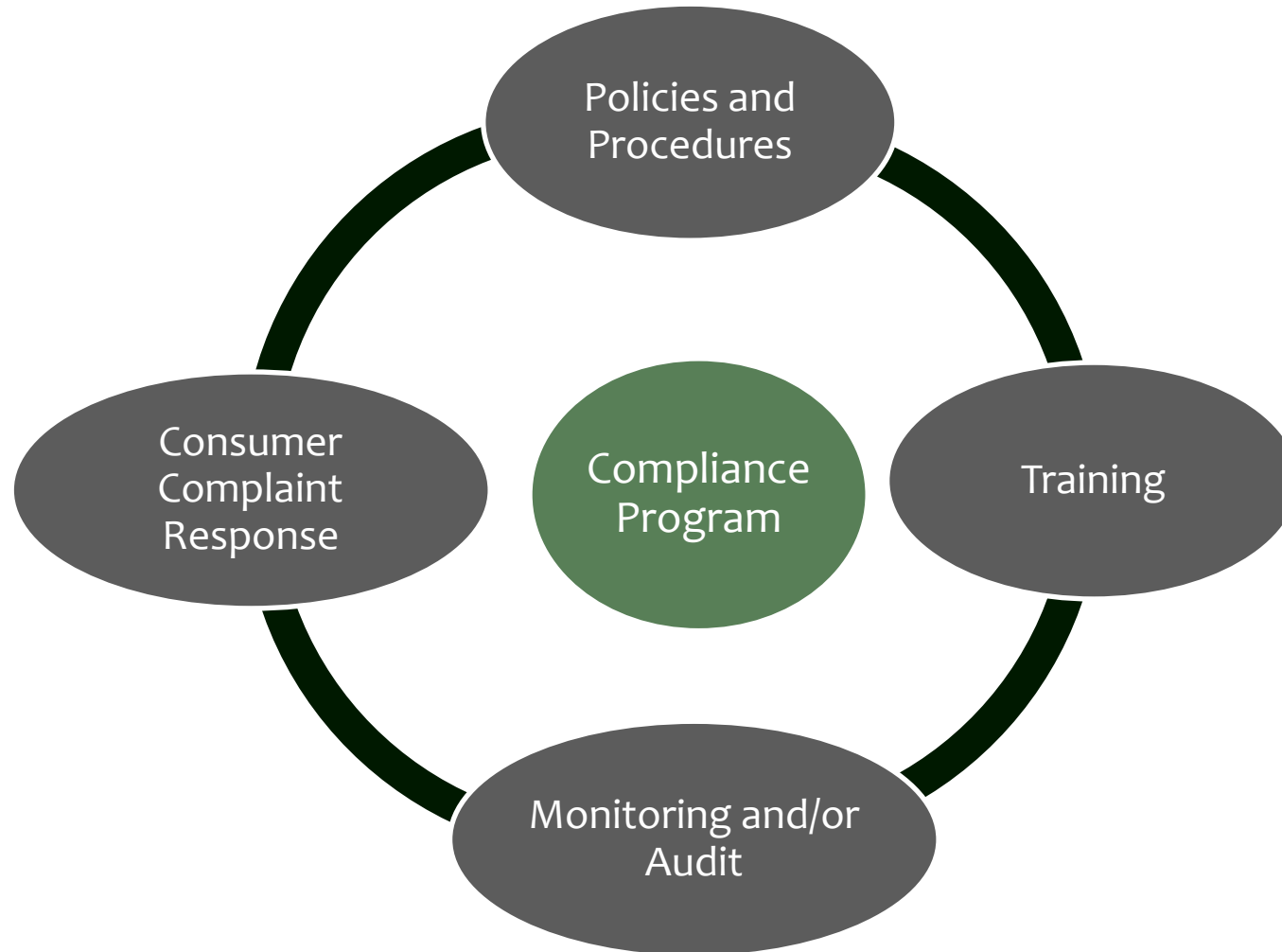
- Board of directors and management oversight

Fostering a culture of strong customer service related to incentives. In product sales, for example, ensuring that *customers* are only offered products likely to benefit their interests;

Board members and senior management should consider not only the outcomes these programs seek to achieve, but also how they may **incidentally incentivize outcomes that harm customers**. They should authorize compliance personnel to design and implement CMS elements that address both intended and unintended outcomes, and provide adequate resources to do so.

The **“tone from the top”** should empower all employees to report suspected incidents of improper behavior without fear of retaliation, providing easily accessible means to do so

Components of a Compliance Program



Policies and Procedures

- Designed to effectively manage compliance risk in the Company's products, services, and activities.
- Should be consistent with board-approved compliance policies.
- **Administered by a Compliance Officer.**
- Aligned with business strategies with outcomes.
- Covers the full life-cycle of all products and/or services offered.
- Maintained and modified to remain current and complete.
- **Should serve as "training and reference tool" for employees in their day-to-day activities.**
- Addresses compliance with **applicable Federal consumer financial laws**
 - Designed to minimize violations and to detect and minimize associated risks of harm to customer.

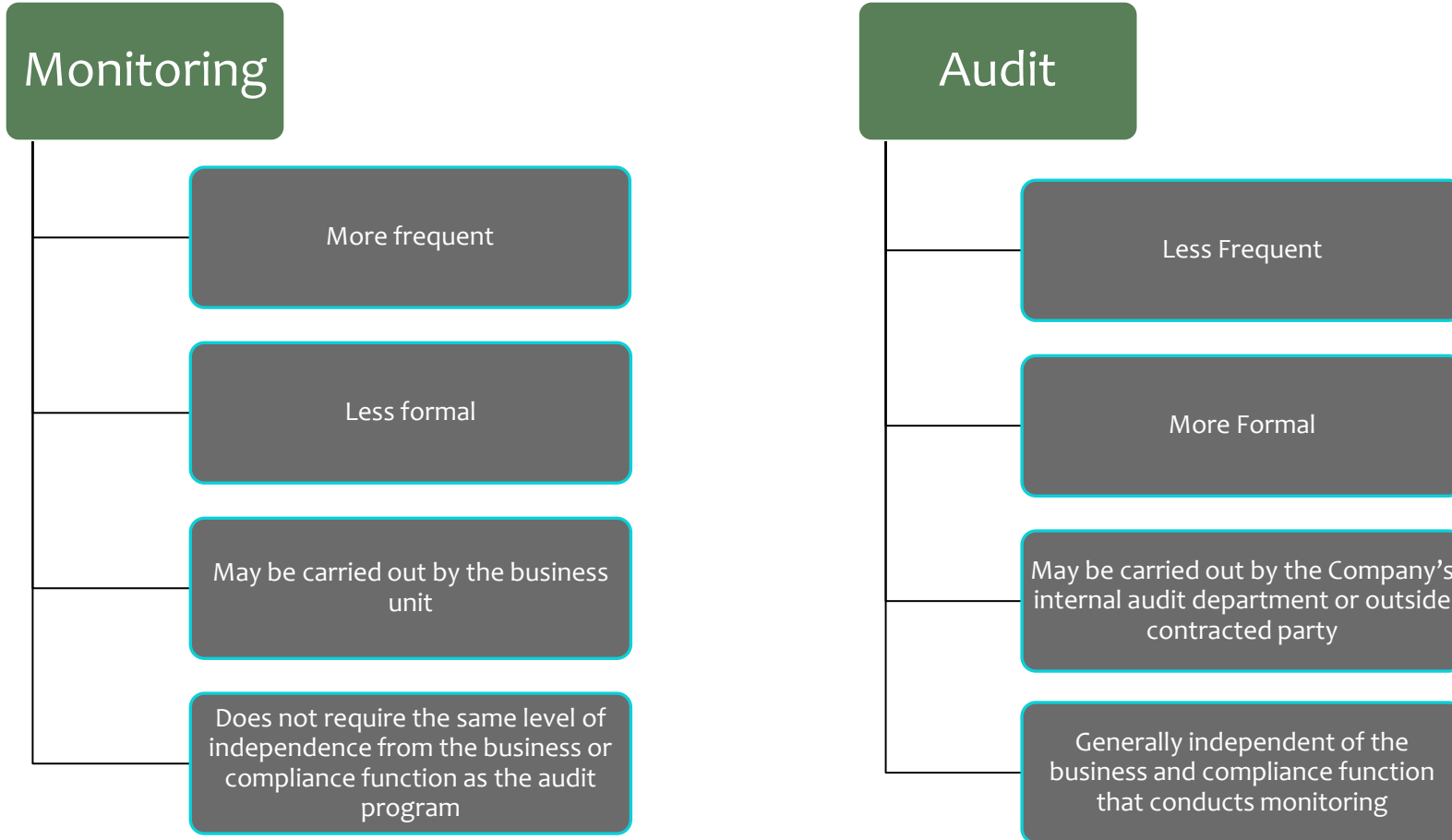
Policies and Procedures

1	AML OFAC Patriot Act Policy	Bank Secrecy Act and Anti-Money Laundering Rules & Office of Foreign Assets Control (“OFAC”) and Sanctions
2	CAN-SPAM Policy	CAN-SPAM Act
3	ECOA Policy	Equal Credit Opportunity Act, and Reg. B
4	EFT Policy	NACHA Rules and Operating Guidelines & ETFA/Reg. E
5	ESIGN Policy	Electronic Signatures in Global and National Commerce Act (E-Sign)
6	FCRA Policy	Fair Credit Reporting Act and Reg. V
7	Marketing Policy	Marketing
8	Service Provider Policy	Vendor Management
9	SCRA Policy	Servicemembers Civil Relief Act
10	TCPA Policy	Telephone Consumer Protection Act
11	UDAP Prevention Policy	FTC Act, Unfair or Deceptive Acts or Practices

Training

- Board should receive sufficient information to enable Board to understand the company's compliance responsibilities and the commensurate resource requirements.
- Management and staff should receive specific, comprehensive training that reinforces and helps implement written policies and procedures.
- Comprehensive, timely, and specifically tailored to the particular responsibilities of the staff receiving it.
- Updated **proactively** to ensure that all staff is aware of compliance responsibilities.
 - In advance of the rollout of new or changed products or the effective date of new or changed consumer protection laws and regulations
- Should be consistent with policies and procedures and designed to reinforce those policies and procedures.
- Compliance professionals **must** have access to training that is necessary to administer a compliance program that is tailored to the supervised entity's risk profile, business strategy, and operations.

Monitoring and/or Audit



Complaint Management Program

- Is formal and intentional.
 - Easy for consumers to submit a complaint
 - Straightforward for the company to process complaints (*i.e.*, receive, respond, investigate, manage and resolve)
 - Considers and plans for the different channels through which complaints may come
 - Customer Service calls
 - Welcome calls
 - Website
 - **Social media data**
- Provides for “responsive and responsible” handling of complaints.
 - Deliberate, good faith effort toward resolution of each consumer complaint.
 - Must have processes and procedures to address complaints appropriately.
- Is a tool to gather “intelligence.”
 - Log, categorize, track data

Complaint Management Program

- Provides for escalating complaints, as appropriate:
 - Complaints that raise legal issues involving potential *customer* harm from unfair treatment or discrimination, unauthorized product enrollment, account openings or upgrades (including the addition of ancillary products), improper sales practices, imminent foreclosures or other regulatory compliance issues.
- Includes a process to analyze the complaint data (*i.e.*, **root cause analysis**) to identify:
 - Compliance issues;
 - Weaknesses in the CMS;
 - “Risks of harm” to customers; and
 - Flaws or weak points in business practices.

Complaint Management Program

- Requires remediation and corrective action (*i.e.*, fix the problem).
 - Internal and external
- Includes reporting of complaint data to key stakeholders.
 - Board and Senior Management
 - Compliance & Operations
- Takes into account and incorporates complaint data ***from*** and ***about*** service providers.
- Requires **service providers** who interact with customers to:
 - Provide complaint data; and
 - Follow a complaint protocol similar to the company's.
- Determine whether complaints involving service providers or other third parties referring business to the company receive appropriate handling and follow-up by such other company.

Service Provider Oversight

- Appropriate risk management program for service providers based on the size, scope, complexity, importance and potential for customer harm from the services being performed.

Questions/Discussion

If you would like to ask a question, you can ASK or type your question into the CHAT feature NOW.

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