



Compliance Programs are Evolving. Are You?

Understanding and Implementing Effective Risk Management in Consumer Financial Services July 16, 2024

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Introduction

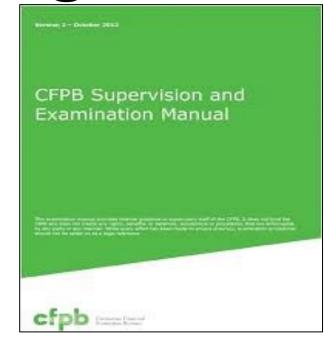
- How is the regulatory landscape evolving?
- How can modern risk and compliance management programs account for a rapidly changing regulatory landscape?
- What does a modern compliance management system look like?





How We Got Here: Legal and Regulatory Origins

- History:
 - Early compliance programs focused on basic legal requirements.
 - Development of more comprehensive frameworks over time.
- Milestones:
 - CFPB and State Regulatory Agency Expectations
- Evolution:
 - Transition from basic compliance to comprehensive risk management.
 - Increasing complexity of regulatory requirements.







Expanding Regulatory Landscape

- Recent Changes:
 - Significant new interpretations, regulations and amendments in the last five years.
 - Impact on compliance programs and operational procedures.
- CFPB Victory:
 - Significance of CFSA v. CFPB.
 - Implications for future regulatory actions.
 - But *Loper Bright-Enterprises* and *Corner Post* may serve as hurdles to aggressive federal regulatory action.
- State Regulators:
 - Increasing collaboration between CFPB and state regulators.
 - Examples of state regulatory actions and their impact on compliance.





Aggressive State Regulators

- Expansion:
 - Application of consumer-style regulations to commercial products.
 - Specific examples of regulations affecting commercial financial services.
- Examples:
 - Notable actions by state regulators (e.g., NYDFS, California DFPI).
 - Case studies of enforcement actions and their outcomes.
- Implications:
 - Challenges for compliance programs in adapting to state-level regulations.
 - Strategies for addressing aggressive regulatory actions.





Key Regulatory Bodies and Frameworks

- Role of the CFPB:
 - Who does the CFPB supervise?
 - Banks (as well as thrifts and credit unions)
 - Mortgage companies
 - Payday lenders
 - Private education lenders
 - "Larger Participants."
- Key regulations:
 - Truth in Lending Act (Reg Z)
 - Equal Credit Opportunity Act (Reg B)
 - Fair Debt Collection Practices Act
 - UDAAP





Key Regulatory Bodies and Frameworks

- Other Key Agencies:
 - Federal Reserve
 - Federal Trade Commission
 - FDIC
 - OCC
 - NCUA
- Prudential Banking Regulators and the FinTech Space
- FTC and UDAP
- State Laws and Regulators?
 - 2022 CFPB Interpretive Rule "Clarifying" Scope of States' Ability to Enforce Consumer Financial Protection Laws
 - Challenging State Regulators: NYDFS and California DFPI





Key Elements of an Effective Risk Management Program

Identification:

- Identify potential risks in consumer financial services.
- Risks specific to the industry?

Assessment:

- Evaluating the likelihood and impact of risks.
- Detailed analysis methods for assessing risks.

Mitigation:

- Strategies for reducing risks.
- Case studies of successful mitigation efforts.

Monitoring:

- Ongoing tracking of risks.
- Use of dashboards and scorecards for real-time monitoring.





Risk Identification

- Potential Risks:
 - Internal processes: Operational inefficiencies, employee misconduct.
 - Regulatory changes: New laws, amendments to existing regulations.
 - Litigation: Class action lawsuits, regulatory enforcement actions.
 - Reputational: Negative publicity, social media backlash.
 - Emerging threats: Cybersecurity risks, technological disruptions.
- Sources:
 - Identifying risks from various sources within the organization.
 - External sources: Market changes, economic shifts.







Risk Assessment

• Evaluation:

- Likelihood and impact of identified risks.
- Quantitative and qualitative assessment methods.
- Analysis:
 - Product verticals: Different products have different risk profiles.
 - Third-party risks: Vendor management, outsourcing risks.
- Audits:
 - Importance of internal audits: Regular reviews of internal processes.
 - Importance of external audits: Independent verification and validation.





Risk Mitigation

- Strategies:
 - Avoidance: Eliminating activities that expose the organization to risk.
 - Reduction: Implementing controls to minimize risk.
 - Transfer: Using insurance or outsourcing to shift risk.
 - Retention: Accepting and budgeting for certain risks.
- Best Practices:
 - Implementing effective mitigation strategies.
 - Regular review and update of mitigation plans.





Risk Monitoring

- Tracking:
 - Continuous monitoring of risks.
 - Real-time monitoring tools and techniques.
- Tools:
 - Use of dashboards and scorecards.
 - Key risk indicators (KRIs) and key performance indicators (KPIs).
- Involvement:
 - Board and management's role in monitoring.
 - Regular reporting and communication with stakeholders.





Compliance Processes

- Roles:
 - Board: Oversight and strategic direction.
 - Officers: Implementation and enforcement of compliance policies.
 - Compliance and Legal Teams: Day-to-day management and adherence to regulations.
- Policies and Procedures:
 - Development: Creating clear and comprehensive guidelines.
 - Implementation: Ensuring policies are followed across the organization.
 - Review: Regular updates to keep pace with regulatory changes.
- Internal Controls:
 - Ensuring controls are in place to manage compliance risks.
 - Examples of effective internal controls.





Training and Awareness

- Importance:
 - Regular and comprehensive training for all employees.
 - Training on specific regulations, compliance policies, and ethical standards.
- Culture:
 - Building a culture of compliance: Engaging employees at all levels.
 - Promoting ethical behavior and accountability.
- Technology:
 - Leveraging AI and automation in training.
 - Ensuring training is adaptive to changing regulatory requirements.





Addressing Emerging Compliance Challenges

- Trends:
 - Cybersecurity threats: Increasing frequency and sophistication.
 - AI regulations: Emerging legal frameworks for AI use in financial services.
- Adaptation:
 - Staying informed about regulatory changes.
 - Proactive measures to adapt to new compliance requirements.
- Mature Programs:
 - Benefits of a mature compliance program: Enhanced risk management, better regulatory relationships.
 - Continuous improvement and adaptation to changing regulatory landscapes.



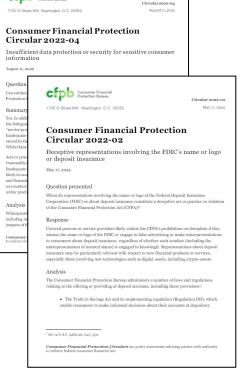
Regulatory Circulars & Reg. Developments

Cfpb Consumer Financia Protection Bureau

- Contract Terms and Conditions
- Preferencing and steering practices by digital intermediaries for consumer financial products or services
- Unlawful negative option marketing practices
- Insufficient data protection or security for sensitive consumer information
- Deceptive representations involving the FDIC's name or logo or deposit insurance
- Plus....
 - Payday Lending Rule: 12 CFR Part 1041.
 - Dodd-Frank Act Sections 1071 and 1033.
 - Fair Credit Reporting Act: Potential changes.
 - FTC Developments

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nforce f	preferential treatme product placement,	Response Yes. "Covered persons" and "service providers" must comply with the prohibition on unfair,	
	Background	deceptive, or abusive acts or practices in the CFPA.1 Negative option marketing practices may violate that prohibition where a seller (1) misrepresents or fails to clearly and conspicuously	
	For many househole	disclose the material terms of a negative option program; (2) fails to obtain consumers' informed consent; or (3) misleads consumers who want to cancel, erects unreasonable barriers	
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	researching, compa	cancellation procedures.	
		Background on Negative Option Marketing	
	Offering a comparis companies can and	As used in this Circular, the phrase "negative option" refers to a term or condition under which a seller may interpret a consumer's silence, failure to take an affirmative action to reject a product	
		or service, or failure to cancel an agreement as acceptance or continued acceptance of the offer.	
	Consumer Financi to enforce federal con	Negative option programs are common across the market, including in the market for consumer financial products and services, and such programs can take a variety of forms. For example, in	
		¹ I2 U.S.C. 5471671 (20), 5201, 5204. For simplicity, the remainder of this Circular refers to reserved persons and service provoken as "sellers," The CPPB notes, however, that entities and individuals can be covered persons or	

etion Circulars are policy statements advising parties with autho



cfpb Consumer Financial Protection Bureau





Thank you for attending

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