The Elements of a Consumer Financial Services Compliance Program
by Gregory J. Pulles
January 12, 2012

As of January 4, 2012, the Bureau of Consumer Financial Services has a Director. The Bureau's Examination Manual (October 13, 2011) places heavy emphasis on effective compliance programs. The Bureau has provided specific guidance on how it will examine these programs. Institutions must examine their compliance programs in light of this guidance and make appropriate enhancements. This article lays out the requisite elements of a compliant program, and includes checklists that can be employed by an institution in evaluating whether its program is effective. The article sets forth a list of federal and state laws that should be the subject of a comprehensive compliance program.

Summary

A compliance program should have these elements:

(1) A written Compliance Management System setting forth how the institution manages compliance risk

(2) Adequate staffing with qualified Legal and Compliance staff

(3) Proper reporting relationship of that staff to most Senior Management and the Board of Directors

(4) Comprehensive checklists that apply to all federal, state and local laws that govern consumer financial services and products

(5) Regular application of the checklists by Legal and Compliance personnel

(6) Training of Senior Management, the Board, and line personnel by Legal and Compliance personnel

(7) Comprehensive Compliance Manuals for use by line personnel

(8) Rigorous and continuous forms drafting/revision by Legal and Compliance staff

(9) Legal review of all fees and charges

(10) Regular communication of new regulatory developments by Legal and Compliance staff

(11) Integration of Legal/Compliance personnel into the product development function

(12) Integration of Legal/Compliance personnel into the marketing function

(13) Integration of Legal/Compliance personnel into product life cycle

(14) Control over third-party service providers ("TPSP")

(15) Self testing by all business lines, using protocols developed by Legal/Compliance staff

(16) Internal and external audits of the compliance function

(17) Regular reporting of self testing, legal/compliance testing, and audit results to Senior Management and the Board of Directors

(18) A comprehensive Customer Complaint Resolution Policy, including intake, legal/compliance participation, and reporting to Senior Management and the Board of Directors

(19) A written policy for Regulatory Examination Reports/resolution of key findings/identified deficiencies

(20) Legal review of line-of-business compensation arrangements

(21) Special process for unfair, deceptive and abusive acts and practices

(22) Special process for fair lending compliance

(23) Employee law violation reporting policy

(1) Written Compliance Management System

A Compliance Management System document will set forth in detail the methods by which the institution manages the entire consumer compliance function. It will detail all of the institution's method for addressing all that is set forth below in (2) through (22). It includes legal, compliance, self assessment and audit review processes. It includes the Compliance Manuals used to communicate the law to the lines of business.

Checklist:

- □ Does the institution have a written Compliance Management System?
- □ Has the system been approved by the Board?
- □ Is the system current? Has it been updated within the last 12 months?
- □ Does the written document represent a comprehensive presentation of all the methods by which the institution manages the compliance function?
- □ Does the written document cover the compliance review function, including the audit function?

(2) Adequate Staffing with Qualified Legal and Compliance Staff

The most important outcome of a compliance program is compliance with the law. Substance governs over form, or should. The most important question a regulator should ask after an examination is whether the bank/financial institution complied with applicable law.

The single most important factor in law compliance is the employment of experienced and talented attorneys and compliance officers. Rarely will an institution with qualified staff have significant failures to comply with the law, and rarely will an institution with poorly qualified or insufficient staff not experience a failure to comply.

If the institution does not have internal legal staff, then outside counsel with consumer law experience should be engaged.

The number of compliance personnel must be increased in the current environment and with the advent of the Consumer Financial Protection Bureau (the "Bureau"). Smaller institutions should join with other institutions and share compliance resources if necessary, consistent with antitrust and confidentiality laws.

Salaries must be kept at levels necessary to attract and keep qualified leadership. The internal and external audit should evaluate staffing and salaries.

Checklist:

- □ Does Senior Management and the Board of Directors annually evaluate, in writing and recorded:

- □ the experience?
- □ competence?
- □ performance?
- □ staffing adequacy of the compliance personnel (□ in light of new regulatory requirements in the prior and upcoming year)?
- □ salaries and budget?

□ Does internal audit include an evaluation of compliance department staffing adequacy in their annual audit of the compliance function?

□ Does external audit include an evaluation of compliance department staffing adequacy in their annual audit of the compliance function?

□ Does Senior Management evaluate the adequacy of legal support for the compliance function annually?

(3) Proper Reporting Relationship of Legal/Compliance to Most Senior Management and the Board of Directors

Employees pay attention to how the Board and Senior Management deal with the reporting lines for Legal and Compliance. If these functions do not report to the highest level, they have less influence and their advice is often disregarded.

Both Legal and Compliance should have a reporting relationship to the Board of Directors as well as to Senior Management.

Checklist:

□ Does Legal/Compliance report to Senior Management?

□ Are Legal/Compliance salaries set by Senior Management?

□ Is the level of Senior Management to which Legal/Compliance report "high enough"?

□ Do Legal/Compliance have a meaningful reporting relationship to the Board?

□ Are Legal/Compliance independent of lines of business?

(4) Comprehensive Checklists

The first and last concern of the Compliance Program should be results: is the institution in compliance with applicable law? Lawyers and compliance officers are the key, checklists are their primary tool. There is no substitute, for example, for ensuring compliance with the Federal Trust in Lending Act then regular, rigorous application of a Truth in Lending compliance checklist. The list of applicable law is ever expanding. Some of these checklists, especially those relative to state law, will apply only to lawyers (e.g., usury).

Checklist:

- □ Does the institution have comprehensive checklists prepared/reviewed by outside counsel?
- □ Are these checklists updated annually?
- □ Is there a process in place to create a checklist when a new law/regulation is enacted/promulgated?
- □ Are these laws covered?

Federal Law

Loans:

- □ Advertising Requirements/Restrictions
- □ Americans with Disabilities Act
- □ Antitying Rules
- □ Bank Secrecy Act/Antimoney Laundering/Patriot Act
- □ Bank Security Act
- □ Bank Services Company Act
- □ Bankruptcy Code (Automatic Stay, Permanent Stay, Exemptions)
- □ Community Reinvestment Act
- □ Conflicts of Interest – Prudential Regulators' Rules
- □ Consumer Protection in Sales of Insurance/Credit Insurance
- □ Credit Card Amendments/Truth in Lending Act
- □ Credit Scoring – Prudential Regulators' Rules
- □ Debt Cancellation Contracts
- □ Do Not Call
- □ Document Retention
- □ Drivers License Protection Act
- □ Due on Sale Restrictions
- □ Electronic Funds Transfer Act
- □ Electronic Signatures in Global and National Commerce Act
- □ Environmental Laws
- □ Equal Credit Opportunity Act
- □ Exemption Laws
- □ Fair and Accurate Credit Transactions Act of 2003
- □ Fair Credit Reporting Act
- □ Fair Debt Collections Practices Act
- □ Federal Arbitration Act
- □ Federal Antitrust Laws
- □ Federal Enforcement of Child Support Act
- □ Federal Housing Act
- □ Flood Disaster Protection Act
- □ FTC Act Section 5 – Unfair and Deceptive Acts and Practices
- □ FTC Credit Practices Rule

- ☐ Helping Families Save Their Homes Act
- ☐ Higher Education Opportunity Act
- ☐ Home Mortgage Disclosure Act
- ☐ Home Ownership and Equity Protection Act
- ☐ Identity Theft/Red Flags
- ☐ Indirect Lending – Prudential Regulators
- ☐ Information Security
- ☐ Internal Revenue Code
- ☐ Internet Banking-Prudential Regulators
- ☐ Know Your Customer Rules
- ☐ Margin Stock, Bank Credit
- ☐ Most Favored Lender (FDIC insured)
- ☐ Non Interest Charges-Prudential Regulators' Rules
- ☐ Privacy
- ☐ Prudential Regular Loan Regulations of -Appraisals, Loan Fees, Prepayment Fees/Restrictions
- ☐ Real Estate Settlement Procedures Act (RESPA)
- ☐ SAFE Act
- ☐ Servicing Requirements – Prudential Regulators
- ☐ Subprime Lending – Prudential Regulators
- ☐ Suitability
- ☐ Truth in Lending
- ☐ Unfair, Deceptive, Abusive (Dodd-Frank)

Deposits:

- ☐ Advertising Requirements – Prudential Regulators
- ☐ Americans with Disabilities Act
- ☐ Antiying Rules
- ☐ ATM Requirements – Prudential Regulators
- ☐ Bank Secrecy Act/Antimoneylaundering/Patriot Act
- ☐ Bank Security Act
- ☐ Brokered Deposits
- ☐ Check 21 Act
- ☐ Conflicts of Interest – Prudential Regulators
- ☐ Customer Identification Program Requirements
- ☐ Data Security-Prudential Regulators' Rules
- ☐ Debit Card Restrictions
- ☐ Do Not Call
- ☐ Document Retention
- ☐ Drivers License Protection Act
- ☐ Electronic Funds Transfer Act
- ☐ Electronic Signatures in Global and National Commerce Act
- ☐ Fair Credit Reporting Act
- ☐ Fair Debt Collection Practices Act
- ☐ Federal Arbitration Act
- ☐ Giveaway Restrictions
- ☐ Gramm-Leach-Bliley (Privacy)

- □ Identity Theft/Red Flags
- □ Information Security (including response to unauthorized access)
- □ Insurance of Accounts/FDIC
- □ Internet Banking – Prudential Regulators' Rules
- □ Internal Revenue Code
- □ Know Your Customer Rules
- □ Non-Interest Charges – Prudential Regulators' Rules
- □ Overdraft Requirements (Opt in/Opt out/Disclosures)
- □ Privacy
- □ Prudential Regulators Deposit Fee Restrictions/Disclosures
- □ Regulation D
- □ Regulation J – Federal Reserve Board
- □ Security Devices/Minimum Requirements
- □ Truth in Savings Act
- □ Unfair, Deceptive, Abusive (Dodd-Frank)

Other:

- □ Affiliate Sharing Restrictions
- □ Do Not Call
- □ Foreign Corrupt Practices Act

State Law Compliance (Loans, Deposits, Other):

- □ Automated Teller Machines, Disclosures, Access, Fees
- □ Capacity to Contract
- □ Collection Practices
- □ Conflict of Laws/Selection of Substantive Law Restrictions
- □ Credit Reporting
- □ Deposit Charges
- □ Deposit Disclosures
- □ Deposit Opening Restrictions (prior closed accounts)
- □ Deposit Rate Calculation
- □ Disabilities/Access
- □ Due on Sale Restrictions
- □ Duty of Care Requirements
- □ Elderly Protection
- □ Escheat
- □ Exemption Laws/Disclosures
- □ Fair Lending/Discrimination Laws
- □ Foreclosure Requirements/Restrictions
- □ Interest Rates/Usury
- □ Loan Acceleration Restrictions
- □ Loan Antikickback (Mini RESPA) Prohibitions
- □ Loan Broker Requirements
- □ Loan "Best Rate Available" Requirements
- □ Loan Charges
- □ Loan Suitability Requirements ("SAFE" Acts)

- □ Minimum Security
- □ Notarial
- □ Plain Language Requirements
- □ Prepayment Restrictions/Prohibitions
- □ Privacy/Confidentiality
- □ Statute of Frauds
- □ Unconscionability
- □ Unfair and Deceptive Acts and Practices
- □ Uniform Commercial Code Article 1
- □ Uniform Commercial Code Article 3, 4
- □ Uniform Commercial Code Article 9 Debtor Protections, Deficiencies

(5) Regular Application of the Checklists

Checklists are of no value unless they are regularly applied by Legal or Compliance departments.

Checklist:

- □ Is each checklist applied at least annually by the Compliance or Legal function?
- □ Are completed/executed customer files for all products tested against the checklist?
- □ Is each geographical area in which the institution operates included in the sample of files?
- □ Is the sample of files to be reviewed sufficient?
- □ Are line of business procedures manuals tested against the checklist?
- □ Do the Checklists cover the "life cycle" of the product: advertising/marketing/ sale/closing/servicing/collection?
- □ Is mystery shopping employed as necessary in applying the checklists?
- □ Do Legal/Compliance interview line of business staff as part of the application of the checklists?
- □ Are law violations corrected?
- □ Where appropriate is the customer reimbursed?
- □ Are law violations reported to:
  - □ Senior Management?
  - □ Board?
  - □ Line of Business?

- □ Is the "root" cause of a violation identified?

- □ Is corrective action taken through training, modification to the Compliance Manual or Line of Business Policy/Procedure?

(6) Training

Line of business employees cannot be expected to comply with the law unless they know what it is and how it applies to their business. Financial institutions need to develop training programs that fit the institution, combining training at employee orientation, new employee extended training, ongoing periodic training, and written and internet training materials. Legal and Compliance need to be involved in the creation and periodic review of the training process, and conduct training wherever possible and appropriate. Training must include Senior Management and the Board.

Checklist:

- □ Does the institution have a formal written training process specifically targeted to consumer financial laws?

- □ Does the institution include training in consumer financial laws in orientation sessions?

- □ Before an employee involved in the provision of consumer financial services or products begins interfacing with customers, is he/she trained in consumer financial laws?

- □ Have Legal/Compliance prepared consumer financial law employee training materials?

- □ Does the institution use employee tests to ensure employees learn the relevant information?

- □ Does the institution have adequate records demonstrating that individual employees have been trained?

- □ Does the institution conduct ongoing training of employees?

- □ Does the institution keep employees apprised in writing of new laws and regulations?

- □ Do all policies and procedures have a "compliance with law" component that adequately describes in plain language applicable laws and regulations?

- □ Is there specific training across the institution, covering the "life cycle" of a product, for unfair, deceptive and abusive acts and practices?

(7) Compliance Manuals

Compliance personnel cannot possibly communicate all the legal requirements to all personnel on a one-to-one basis. Compliance Manuals in plain and understandable language must be created by Compliance and be available for employee access. Legal should review these manuals periodically to ensure that they remain current and address new products and laws.

Checklist:

- □ Does the institution have compliance manuals in place for all line-of-business personnel?
- □ Are there sufficient copies available so that all staff can have access (via intranet or otherwise)?
- □ Are the manuals tailored to all lines of business and products and are they comprehensive (are there any gaps – lines of business or products not covered)?
- □ Are the manuals updated on a regular basis?
- □ Are the manuals reviewed by legal personnel?

(8) Forms Revision

Many instances of law noncompliance can be traced to the failure of a form to comply with applicable law. All forms used with customers should be drafted by counsel and reviewed by Compliance.

Checklist:

- □ Does the institution keep a comprehensive log of all forms used with customers?
- □ Does the log track all versions (by date of implementation) of a particular form?
- □ Does the institution have an accurate “database” or “form bank” of forms, enabling the institution to produce all revisions of a particular form, by date, for regulators and in litigation?
- □ Can the institution identify all changes, sequentially, to a particular form?
- □ Are forms prepared by counsel and reviewed by Compliance?
- □ Does the institution preclude the initiation of a new form without the written, documented approval of the Legal and Compliance Departments?
- □ Does the institution preclude the modification of any form without the written, documented approval of the Legal and Compliance Departments?

□ Are all forms reviewed annually for compliance by the Legal and Compliance Departments?

(9) Legal Review of Fees and Charges

Many law violations occur because a fee has been charged which is in excess of, or not in compliance with, applicable law. Legal review can eliminate this risk.

Checklist:

□ Does the institution require written, documented Legal Department approval of all new fees and charges?

□ Does the institution require written, documented Legal Department approval of all increases in fees and charges?

□ Does the Legal Department regularly review a chart of all fees and charges assessed by the institution for compliance with applicable legal limits/restrictions?

(10) Communication of New Regulatory Requirements

New laws and regulations are promulgated almost daily. It is critical that these requirements are communicated to those in the institution with a need to know.

Checklist:

□ Do Legal and Compliance have a system in place for communicating law changes?

□ Do the institution's written policies covering the Legal/Compliance function require Legal/Compliance to timely communicate new legal/regulatory developments to lines of business, Management, and the Board?

□ Is there evidence that recent changes in the law/regulations have been communicated:

- □ to the Board?
- □ to Management?
- □ to line personnel?

□ Are law/regulatory changes incorporated into compliance manuals/lines of business policies and procedures on a regular basis?

(11) Integration of the Legal/Compliance Function into Product Development

The Compliance Program must reach all aspects of the life cycle of a product or service. No product should be developed without the involvement of the legal and compliance function. Legal/Compliance should not be used simply to review products after they

have been developed – they should be included at the initiation of the product development process.

Checklist:

- □ Do the institution's written policies and procedures call for Legal/Compliance involvement in product development; i.e., are Legal/Compliance integrated into the process and involved from the beginning of any product development initiative?
- □ Is Legal/Compliance written/documented approval required before any product can be offered to the public?
- □ Is Legal/Compliance written/documented approval required before any change to the product can be implemented and offered to the public?
- □ Do the institution's policies/procedures/job description/product development charter contain a compliance with law section and incorporate a requirement for Legal/Compliance involvement/approval?
- □ Does product development incorporate a specific review for unfair, deceptive, or abusive aspects?

(12) Integration of Legal/Compliance into the Marketing Function

Many law violations originate in the marketing of products and services, and thorough Legal/Compliance review is essential.

Checklist:

- □ Does the institution require that Legal/Compliance provide written approval of all marketing materials?
- □ Do Legal and Compliance employ a comprehensive checklist in evaluating marketing materials?
    - □ Do these include unfair, deceptive and abusive acts or practices?
    - □ Are completed checklists saved?
- □ When marketing materials are reused (i.e., dropped from use for some period and then brought back for reuse) does the institution require the Legal/Compliance approval to be updated?
    - □ Does marketing incorporate a specific review for unfair, deceptive, or abusive aspects?

(13) Legal/Compliance/Product Life Cycle Involvement

The Bureau expects that all aspects of the life cycle of a product or service will be covered by an institution's Compliance Program. This means that Legal and Compliance must be involved in the sale and servicing (and collection) of services and products, in addition to the development and marketing of the product.

Checklist:

- □ Does the Legal/Compliance function have involvement in the institution's operating committees/operating structure so that they are aware of how products are being sold and serviced?
- □ Do the checklists employed by Legal/Compliance have sufficient coverage to reach all aspects of sales and servicing of services and products (the entire "life cycle" of a product)?
- □ Do the institution's written policies/procedures require written Legal/Compliance approval of all sales scripts?
- □ Do the institution's written policies/procedures require written Legal/Compliance approval of all servicing procedures?
- □ Does each business unit reflect in its policies the unit's responsibility for compliance with applicable Consumer Financial Laws?

(14) Control Over Third-Party Service Providers (TPSP)

Regulators hold institutions responsible for the law violations of third-party service providers engaged by the institution. Federal regulators have issued specific guidance covering the controls, policies and procedures, and oversight they expect institutions to employ in using third parties.

Checklist:

- □ Does the institution have written contracts in place with all TPSP?
- □ Do those contracts require the TPSP to comply with all applicable law?
- □ Have these contracts been reviewed by Legal/Compliance?
- □ Has the institution advised the TPSP in writing of its expectation that the TPSP will comply with all applicable law?
- □ Does the institution provide the TPSP with its Consumer Financial Law and Compliance Statement?
- □ Does the institution audit or otherwise periodically verify the TPSP's compliance with law?

- □ Did the institution engage in sufficient due diligence before contracting with the TPSP?
- □ Did the institution document this due diligence?
- □ Has the institution received any customer complaints that implicate the TPSP?
- □ Have these been dealt with appropriately?
- □ Do Legal/Compliance/Internal/External audit review sample TPSP file/work to apply applicable checklists to verify compliance?
- □ Have Legal/Compliance reviewed the TPSP Policies and Procedures?
- □ Does the TPSP have a sufficient Compliance Program and Manual in place?
- □ Are law/regulatory changes that implicate the TPSP's services for the institution communicated by the institution's Legal/Compliance function to the TPSP?

(15) Business Unit/Line Self Testing

The Bureau expects that each Business Unit/Line will accept responsibility for compliance with all applicable consumer financial laws. Business Units cannot expect the Legal/Compliance function to be responsible for the Business Unit's compliance. Each Business Unit must own its own compliance. Each Business Unit must therefore engage in self testing and self assessment. The Business Unit should work with Compliance to develop appropriate self testing protocols that enable the Unit to randomly and periodically evaluate compliance, to include appropriate sampling of products, geographies and staff. The self testing needs to incorporate a process which identifies instances of noncompliance, corrective action taken in terms of customer relief, correction to policies and procedures, and additional employee training, as well as reporting of such instances to Management and the Board. Each Business Unit should accept responsibility for the entire life cycle of a product or service, from product design, to delivery and administration, with special emphasis on how the Unit processes and addresses customer complaints, and identification of any act or practice that could be deemed unfair, deceptive or abusive.

Checklist:

- □ Does each Business Unit have a written policy that acknowledges the Business Unit's responsibility for compliance with all applicable consumer financial laws?
- □ Does each Business Unit have a self-testing protocol in place?
- □ Does the self testing protocol include addressing deficiencies and instances of noncompliance?
  - □ Does this protocol include corrective action with the customer?
  - □ Reporting to Management and the Board?

- □ Corrections to policies and procedures to ensure the error will not be repeated?
- □ Additional training?

□ Does self testing deal with all aspects of the life cycle of a product/service?

- □ Development?
- □ Marketing?
- □ Sales, including scripts?
- □ Servicing?
- □ Collection?

□ Does the self testing include a specific review of all customer complaints?

□ Does the self testing include a specific review for any act or practice that might be regarded as unfair, deceptive, or abusive?

□ Does the Business Unit identify higher risk areas in terms of potential for customer harm?

(16) Independent Compliance Auditing

It may not be feasible for the Business Unit, Legal, and Compliance to engage in comprehensive application/testing against checklists for the hundreds of applicable consumer financial laws, and then to layer on independent testing by internal/external auditors. But that is clearly what the Bureau expects – that the compliance audit function be independent of compliance management. Institutions will need to work with their audit staff and their compliance regulator – be it the Prudential Regulator or the Bureau – to arrive at a clear and workable solution in this area, and to determine the extent to which, and how, the institution's compliance auditors can utilize the Business Unit's self testing, and Legal/Compliance checklist review.

Checklist:

□ Does the internal or external audit function regularly conduct an audit of the institution's compliance function?

□ Is there a sampling of customer transactions conducted?

□ Does the audit properly and sufficiently address the institution's compliance with all applicable consumer financial laws?

□ Is the schedule and coverage of the audit activities appropriate for the institution in view of its size, consumer financial product offerings, and the manner in which it conducts its business?

□ Does the Compliance Function/Business Unit receive a copy of the audit report in a timely manner?

- □ Does the auditor report to the Board?
- □ Are any deficiencies identified promptly addressed by Management?
- □ Does the audit report address these corrections?
- □ Does Management track the corrections?
- □ Is the audit engagement letter sufficient in scope and coverage and include all of the above?
- □ Does the audit include:
    - □ A specific review for unfair, deceptive or abusive acts or practices?
    - □ A review of prior audit findings?
    - □ A review of new products?
    - □ A review of legal requirements?
    - □ A review of self identified risks of consumer harm?
    - □ A review of areas?
    - □ A review of fair lending laws?
    - □ A review of third-party service provider activity/compliance?

(17) Regular Reporting to Senior Management and the Board

Management and the Board must be able to demonstrate that they have delivered to all Business Units and Third-Party Service Providers a clear expectation that the institution will comply with all applicable Consumer Financial Laws and will promptly correct any instances where the institution has failed to comply.

A key component to the Management and the Board's compliance responsibility is the receipt and review of regular periodic Compliance Reports. Every Business Unit should regularly report on compliance, including a report on self testing, identified instances of noncompliance (and the corrective action taken with respect to the incident and with respect to preventing future incidents), new products and marketing initiatives, training, customer complaints (including corrective action relative to the incident and preventing future incidents), compliance audits (and identified deficiencies and corrective action taken), and legal and compliance reviews. The Legal, Compliance, and internal/external audit should make similar reports on their activities and whatever reports they have issued should be appended.

Legal and Compliance should make specific reports on new products/features, new laws and regulations, unfair, deceptive and abusive reviews, fair lending reviews, and loan servicing reviews.

Management should prepare for the Board a specific periodic report on customer complaints and the status of regulatory examinations and necessary corrections made/implemented, and any other matters relative to compliance with Consumer Financial Laws.

Checklist:

- □ Do all Business Units report regularly in writing on their compliance activities?
  - □ Do the reports include:
    - □ Results of self testing?
    - □ Corrections of deficiencies noted in self testing?
    - □ Training?
    - □ Customer complaints and how they were addressed?
    - □ Compliance audits?
    - □ Findings of Legal/Compliance?
    - □ New products/features?
    - □ Regulatory examinations?
- □ Do Legal/Compliance issue separate regular reports to □ Management □ the Board covering:
  - □ Checklist reviews conducted?
  - □ Deficiencies noted in reviews and status of corrective action?
  - □ New products/services or additional features reviewed?
  - □ Fair Lending Compliance Activities?
  - □ Unfair, Deceptive, Abusive Compliance Activities?
  - □ Servicing Compliance Activities?
  - □ New laws and regulations?
  - □ Status of regulatory examinations, deficiencies, corrective action?
  - □ Complaints from customers?
  - □ Complaints from enforcement authorities/consumer advocates?
  - □ Testing/use of any automated tools (e.g., TIL calculators)?
  - □ Review of marketing, sales activity, scripts?
  - □ Personnel changes?
  - □ Personnel needs?
  - □ Upcoming reviews?
  - □ Third-party service providers activity/reviews?
- □ Do Legal/Audit have an executive session with the Board?
- □ Does the Board have a specific discussion at each Board meeting, reflected in the minutes, regarding compliance? Topics include:
  - □ Possible unfair, deceptive or abusive acts or practices?
  - □ Is there a real and meaningful discussion of each of the institution's products and services relative to the features and aspects that might be regarded as unfair, deceptive or abusive acts or practices?
  - □ Has the Board reviewed the Bureau's checklists (in the Bureau's Compliance Manual) for markers of unfair, deceptive and abusive acts or practices?
  - □ Discrimination in lending on a prohibited basis?

- □ Improper/noncompliant loan servicing?
- □ Performance of management in the area of Consumer Financial Law compliance?
- □ Status of regulatory compliance examinations, prior noted deficiencies, corrections?
- □ Compliance (corrections) from audit reports?
- □ Customer complaints?
- □ Complaints from states' Attorneys General and similar enforcement entities?
- □ New products/product features?
- □ Adequacy of Legal/Compliance staff?
- □ New legal/regulatory developments?

(18) Customer Complaint Procedure/Policy

Institutions which properly deal with customer complaints, whether they come directly from the customer or from an intermediary like the state Attorney General, significantly reduce their compliance risks. There are several necessary parts to a good Complaint Policy/Procedure:

1. Providing the customer easy ways to reach the institution.

   - Provide multiple methods.
   - Allow the customer to "go to the top" and avoid the branch.
   - Permit confidentiality.
   - Provide anonymity.
   - Clearly communicate all of the above to the customer.

2. Deal quickly, very quickly, with each complaint.

   - If possible, resolve the complaint on the spot. If not, never ever ever put it on the back burner.

3. Establish a written process for dealing with each complaint, and a maximum time for response.

4. Log in all complaints.

   - Require complaints to be entered in a log, create daily reports of complaints for Management and Legal/Compliance.

5. Every complaint that asserts a violation of law; every complaint that alleges unfairness, deception, or abuse; every complaint that alleges discrimination, or servicing error; every complaint that comes from a state Attorney General, private attorney, Prudential Regulator, the Bureau, or like authority, should be forwarded to and reviewed by Legal immediately, together with the proposed resolution of the complaint.

6. Legal should drive the customer response process.

7. Legal should analyze the log of complaints to identify any pattern or practice.

8. A record should be kept of all complaints and their resolution (the regulators will insist on this).

Checklist:

- □ Does the institution have a formal Complaint Resolution Policy?
- □ Does the institution allow complaints through multiple methods (mail, phone, internet); i.e., make it easy to complain?
- □ Does the institution advise the customer, in ways that make it likely the customer will be aware, of the ways in which a complaint can be made?
- □ Does the institution require Legal Department involvement where a law violation is asserted?
    - □ Where a practice is alleged to be unfair, deceptive, or abusive?
    - □ Where lending discrimination is alleged?
    - □ Where servicing is involved?
    - □ Where a third party, such as the State Attorney General or private attorney, is involved?
    - □ Does Legal "drive the bus"?
- □ Does the institution timely respond to complaints?
- □ Do Senior Management and the Board review complaints?
    - □ Is it reflected in the minutes?
- □ Are there any patterns or practices?
- □ Does the institution keep a log of complaints, and their disposition, and timeliness of response?
- □ Does the institution take corrective action with products, services, training, policies and procedures to ensure against future complaints?
- □ Does the institution make a special review of complaints for:
    - □ Possible unfair, deceptive or abusive acts or practices?
    - □ Potential lending discrimination?
    - □ Potential deficiencies/errors in loan servicing?

- □ Does the institution include an analysis of complaints in connection with periodic reviews/updates to the Compliance Manual, Line of Business Policies and Procedures, and Employee Training?

- □ Do record retention policies specifically cover customer complaints?

(19) Regulatory Examinations

An institution must make absolutely sure that all deficiencies noted in regulatory compliance examinations are promptly and permanently addressed, and that their resolution is documented.

Checklist:

- □ Does the institution track all compliance examination noted deficiencies and law violations?

- □ Are policies, procedures and training reviewed after every examination in light of the examination findings?

- □ Do Senior Management and the Board receive regular written progress reports covering necessary corrections/remedies for all noted deficiencies?

- □ Do compliance audits include a review of regulatory examination noted deficiencies and their correction?

(20) Compensation Arrangements

Legal review of employee compensation arrangements should be part of the Compliance Program. The suggestions/risk indicators in the Bureau's Compliance Manual relative to compensation arrangements that increase the risk of unfair, deceptive and abusive acts and practices should be included in this review.

- □ Has the institution's legal department reviewed all employee compensation arrangements for the risk of practices that may inappropriately increase the risk of potentially unfair, deceptive or abusive acts or practices?

(21) Unfair, Deceptive or Abusive Acts or Practices

Perhaps the most important has been saved for almost last. See our separate discussion regarding the new UDAAP standard given to us by the Dodd-Frank Act. The institution should adopt a specific policy/manual section to ensure that UDAAP is incorporated at every level of the company, for all products, and for every aspect of the life cycle of a product. This aspect should be imbedded throughout everything you do.

Checklist:

- □ Does the institution have a specific policy for UDAAP?

- □ Is UDAAP imbedded in the entire life cycle of a product?
- □ Are regular reviews for UDAAP conducted by Legal/Compliance/Audit?
- □ Does the Board receive and consider Management Reports on UDAAP compliance?
- □ Is specific UDAAP training in place?
- □ Does the Board in its oversight of products specifically consider UDAAP concerns?
- □ Does the Board review every customer complaint raising UDAAP?

(22) Fair Lending

This area requires special focus because of the initiatives of the Bureau. The institution should have a separate Fair Lending Program, the necessary details of which are beyond the scope of this monograph.

Checklist:

- □ Does the institution have a separate Fair Lending Compliance Program?
- □ Has the institution self tested for compliance?
- □ Does the institution employ sufficient statistical tools to permit in-depth analysis of potential fair lending issues?
- □ Do Senior Management and the Board receive regular reports covering fair lending?
- □ Were any fair lending complaints received in the past year and appropriately investigated and resolved?
- □ Do lending units within the institution receive fair lending training?
- □ Does the audit function audit for fair lending compliance?
- □ Have automated tools been statistically validated?

(23) Law Violation Reporting

All employees must understand that they have an obligation to report suspected law violations.

Checklist:

- □ Does the company have a written policy in place requiring all employees to report suspected law violations to their supervisor?
- □ Does the policy allow for direct reports to the institution's counsel, ethics officer, internal audit, and the Board audit committee?
- □ Does the policy allow for anonymous reporting?
- □ Do Board minutes reflect appropriate action on any reports?
- □ Does the institution use some form of annual certification for/from all employees to ensure that all suspected law violations have been reported?

Disclaimer

©2012 Dorsey & Whitney LLP. This article is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by reading this article. Members of the Dorsey & Whitney LLP group issuing this communication will be pleased to provide further information regarding the matters discussed therein.