



Ballard Spahr Compliance Management System

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Jeremy T. Rosenblum, Practice Leader
Consumer Financial Services Group
215.864.8505 | rosenblum@ballardspahr.com

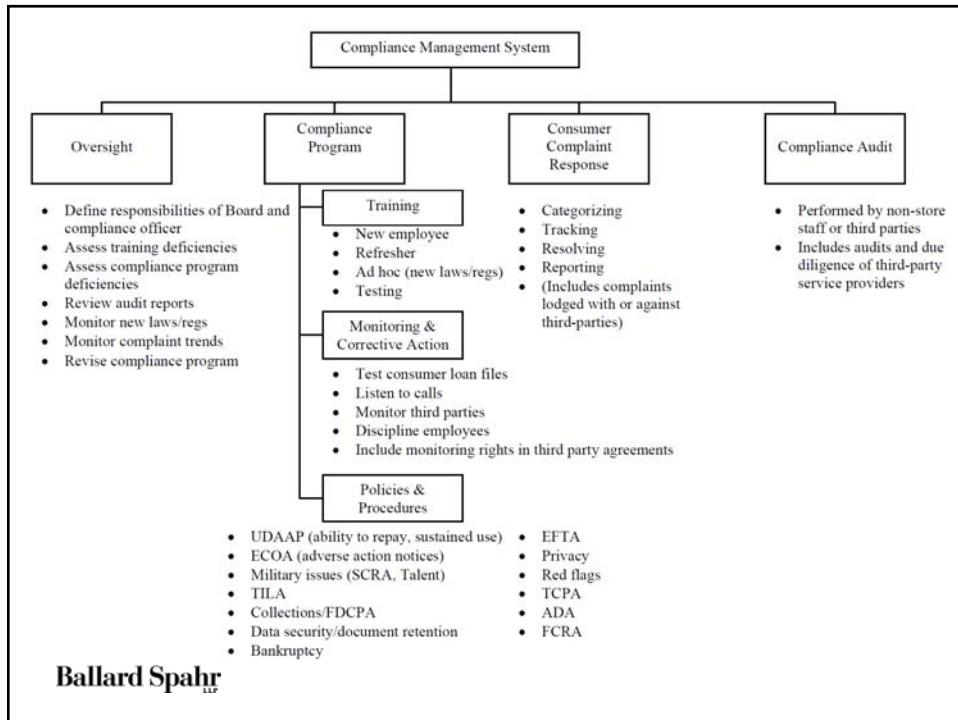
Mark J. Furletti, Associate
Consumer Financial Services Group
215.864.8138 | furlettim@ballardspahr.com

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The need for a compliance management system

- CFPB has made it clear that lenders must have a *written* compliance management system.
- CFPB's 800+ page Exam Manual describes the policies and procedures comprising such a system in great detail. The CFPB's Short-Term, Small-Dollar Lending Examination Guidance supplements the Exam Manual, setting forth additional areas to be addressed in payday loan policies and procedures.
- CFPB has instructed its examiners to request and review exam target's policies and procedures. And the CFPB's "First Day Letters" confirm that they do so.

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What should system cover?

- Consumer complaint response
- Training
- Monitoring and corrective action
- Compliance audits
- Third party service provider oversight
- Board/owner oversight
- Policies and procedures addressing applicable consumer protection laws (e.g., TILA, ECOA, EFTA, UDAAP)

System should be risk based

“CFPB examiners should seek to determine whether the [owner or] board...have: Allocated resources to the compliance function commensurate with the size and complexity of the entity’s operations and practices, the Federal consumer financial laws and regulations to which the entity is subject, and necessary to avoid the potential consumer harm associated with violations of such laws and regulations” --CFPB Exam Manual

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Consumer complaint response

- Documenting
- Tracking
- Responding
- Observing trends
- Reporting trends to management
- Using complaint data to improve procedures, disclosures, training, etc.

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Training

Compliance management system can be used to train employees throughout organization:

- New store employees (TILA, ECOA)
- Collectors (FDCPA)
- Marketing staff (TILA)
- Operations (EFTA, TILA)
- All employees (data security, privacy)

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Monitoring and corrective action

- Listening to collection calls
- Auditing loan files
- Mystery shopping by phone or in store
- Background checks on employees
- Corrective action
- Termination

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Compliance audits

- Performed by third parties or non-store staff
- Report results to owner/Board
- Using audit data to improve procedures, disclosures, training, etc.

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Third party service provider oversight

- Due diligence on third parties
- Agreements with third parties
 - Audit rights
 - Reps regarding compliance with privacy and other applicable laws and licenses
 - Complaint handling
- On-site visits
- Review of third-party's written policies

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Board/owner oversight

- Appoint chief compliance officer
- Review compliance reports
- Review audits
- Analyze complaints
- Monitor for new laws and regulations
- Revise compliance management system as needed

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Substantive policies and procedures

- | | |
|---|--|
| <ul style="list-style-type: none">• UDAAP/sustained use• ECOA• FCRA• TILA• EFTA | <ul style="list-style-type: none">• Collections/FDCPA• Privacy/Red Flags/GLBA• Data security/preservation• Military protections• Anti-money laundering |
|---|--|

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UDAAP/sustained use

- Sustained use disclosures and notices
- Payment option disclosures
- Reporting
- Ensuring ability to repay

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ECOA

- Information that may be collected from applicant
- Information that may be considered in underwriting
- Discouragement/discrimination
 - Non-employment income
 - Spouses and jointly-owned vehicles
- Model notice for denied applicants

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FCRA

- Permissible purpose
- Adverse action notices
 - CRA disclosure
 - Non-CRA disclosure
 - Credit score disclosure
- Affiliate marketing opt-outs

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TILA

- Written disclosures
 - Properly categorizing fees and charges in box and in itemization
 - Properly calculating APRs
 - Including all necessary disclosures
- Oral disclosures
 - “We charge \$15 per \$100 borrowed.”
- Advertising and trigger terms

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EFTA

- Prohibition against compulsory use of preauthorized EFTs
- Written authorization for preauthorized EFTs
- Proper authorization for all debits, including late fees and NSF fees

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Collections/FDCPA

- When, where and with whom communication permitted
 - Time of day of calls
 - Third parties
 - Requests not to call
 - Cell phone calls
- Harassing or abusive practices
- False or misleading representations
- Unfair practices

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Privacy/Red Flags/GLBA

- Safe harbor privacy notices
- Sharing only as permitted in notice
- Tracking opt-outs
- Sharing account numbers with nonaffiliates
- Obligating third party service
- Detecting ID theft

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Data security/preservation

- Employee and management training
 - Password policies
 - Keeping desks clear of customer information
- Securing areas with customer information
- Securing information systems
- Selection and oversight of service providers
- Managing system failures

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Military protections

- Covered borrower statements
- Providing relief requested under Servicemembers Civil Relief Act
- Collecting from the military

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Questions/Resources

If you have questions about anything we covered today, please contact:

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