

Vendor Management: Who the CFPB is Watching and Who They Are Expecting You to be Watching

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Dodd-Frank Act gives the Consumer Financial Protection Bureau (CFPB) authority to:

- obtain reports on compliance with consumer financial laws from vendors; and
- enforcement of consumer financial laws

Source: Dodd-Frank Act §§ 1024(e), 1025(d), 1026(e), 1053, 1054; 12 U.S.C. §§ 5514(e), 5515(d), 5516(e), 5563, and 5564

General Guidance from the CFPB Supervision and Examination Manual

Employee Training

- "Education of an entity's board of directors, management, and staff is essential to maintaining an effective compliance program. Board members should receive sufficient information to enable them to understand the entity's responsibilities and the commensurate resource requirements. Management and staff should receive specific, comprehensive training that reinforces and helps implement written policies and procedures. Requirements for compliance with Federal consumer financial laws, including prohibitions against unlawful discrimination and unfair, deceptive, and abusive acts and practices, should be incorporated into training for all relevant officers and employees, including audit personnel."

General Guidance from the CFPB Supervision and Examination Manual (continued)

Examination Procedures

- Review of training materials
- Review of training developed in response to monitoring, audit, or examination findings and recommendations/issues raised in consumer complaints and inquiries
- Assess whether program is designed to provide training about the regulatory requirements relevant to particular positions for loan officers
- Review plans for additions, deletions, or changes to compliance training, and compare actual training activities to prior plans

Supervised banks and non-banks are expected to oversee their business relationships with service providers to ensure compliance with federal law

Verify that service provider understands and can comply with federal laws

Review service provider's policies, procedures, internal controls and training materials

Contractual expectations of compliance with federal laws

Establish internal controls and monitoring to ensure compliance with federal laws

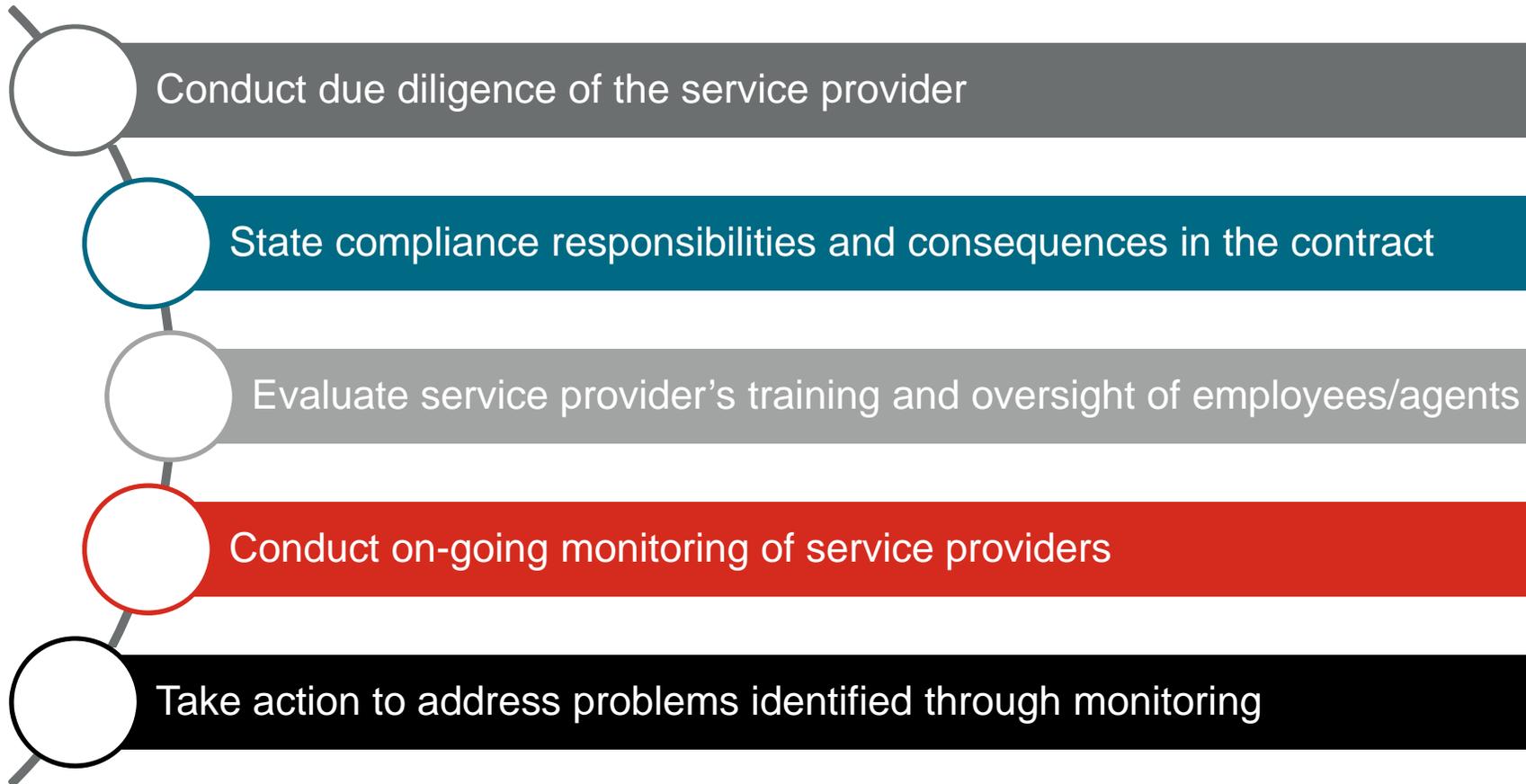
Promptly address any problems identified through monitoring

Mortgage Servicing

Policies and Procedures must be designed to ensure that a servicer:

- has access to accurate and current documents
- is periodically reviewed
- facilitates sharing accurate and current information regarding loss mitigation

Summary of Requirements



WHY IS THIS IMPORTANT?

Legal responsibility may lie with the supervised bank or non-bank for the actions of a service provider

In re U.S. Bank, National Association, 2014-CFPB-0013 (Sept. 25, 2014), available at: http://files.consumerfinance.gov/f/201409_cfpb_consent-order_us-bank.pdf

“The Bank’s compliance monitoring, Service Provider management and quality assurance failed to prevent, identify, or correct the billing for services that were not provided.”

“By reason of these billing practices, . . . the Bank engaged in unfair practices in violation of 1031(a) and 1036(a)(1)(B) of the CFPB, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).”

Bank ordered to reserve approximately \$48 million for the purpose of providing redress to harmed customers. Floor of \$25.5 million to be paid in redress.

\$5 million dollar civil money penalty paid directly to CFPB

Action Plan to ensure future compliance with financial laws

WHO IS A SERVICE PROVIDER?

Any person that provides a material service to a covered person in connection with consumer financial products or services, not including a person that provides support to businesses generally or a ministerial service (12 U.S.C. § 5481(26)).

Enforcement Actions for Service Provider Actions

In re Citibank, N.A., Department Stores National Bank; and Citicorp Credit Services, Inc. (USA), 2015-CFPB-0015 (July 21, 2015), available at:

http://files.consumerfinance.gov/f/201507_cfpb_consent-order-citibank-na-department-stores-national-bank-and-citicorp-credit-services-inc-usa.pdf

- Consent order finding violations of consumer financial laws for:
 - deceptive acts related to marketing sale and membership retention for credit card add-on products
 - CCSI USA's telemarketing of credit card add-on products in violation of the Telemarketing Sales Rule (16 C.F.R. §§ 310.3(c), 310.4(a)(7))
 - billing and administration of credit-card add-on products
 - Collection of delinquent DSNB Credit Card accounts
- Ordered to create compliance plan to ensure compliance with consumer financial laws and to appoint a compliance committee of three directors to make sure the plan is appropriate
- Financial Redress included deposit of \$700 million into account for restitution to harmed customers and a fine of \$35 million.

Enforcement Actions for Service Provider Actions

(continued)

In re Guarantee Mortgage Corporation, 2014-CFPB-0011 (June 05, 2015), available at: http://files.consumerfinance.gov/f/201506_cfpb_consent-order-guarantee-mortgage-corporation.pdf

- Violation of consumer financial laws for improperly compensating a marketing service provider for loan originations
- Permanent enjoinder issued for Guarantee Mortgage Corp., its officers, agents, employees, and attorneys from compensation payments for loan originations in violation of the Truth-in Lending Act
- Civil Fine of \$228,000.00, payable by owners of Guarantee Mortgage Corp. to the extent the company cannot pay the fine.

What the CFPB is Looking At and Looking for?

- Organization Charts and process flowcharts
- Board minutes
- Annual reports
- Management reporting
- Policies and procedures
- Rate sheets
- Loan applications
- Loan account documentation
- Notes
- Disclosures
- All other contents of loan underwriting and closing files
- Operating checklists, worksheets, and review documents
- Relevant computer program and system details
- Due diligence and monitoring procedures
- Lending procedures
- Underwriting guidelines
- Compensation policies
- Historical examination information
- Audit and compliance reports
- Management responses to findings
- Training programs and materials
- Service provider contracts
- Advertisements
- Complaints

Other Actions Examiners May Undertake

Perform transaction testing using approved sampling procedures

Conduct interviews with management and staff

Observe consumer interactions

Conduct interviews with consumers

PLAINTIFF'S BAR

Increased use of
CFPB Consumer
Complaint
Process

At least one case
of failure to
comply with
CFPB rules

July 2015 CFPB Monthly Complaint Report:

Table 1: Change in Complaint Volume

Complaint Type	% Change	3 Month Average (April – June 2014)	3 Month Average (April – June 2015)
Consumer Loan	55%	658	1,022
Credit Reporting	27%	3,570	4,538
Payday Loan	26%	359	454
Student Loans	18%	556	654
Credit Card	17%	1,556	1,818
Money Transfer	15%	177	204
Mortgage	2%	4,337	4,405
Debt Collection	-7%	7,810	7,286
Bank Account or Services	-8%	1,963	1,812
TOTAL	8%	21,020	22,736

July 2015 CFPB Monthly Complaint Report:

Table 2: Debt Collection Complaints by Type

Complaint Type	% of DC Complaints Received
Continued Attempts to Collect Debt not Owed	37%
Communication Tactics	20%
Disclosure Verification of Debt	14%
Taking/Threatening an Illegal Action	12%
False Statements or Representations	10%
Improper Contact or Sharing of Information	7%

PROTECTIVE ACTIONS

Create policy manuals for vendors

Establish regular reporting procedure to document vendor compliance

Establish periodic auditing for vendor compliance

PROTECTIVE ACTIONS (continued)

Create a record accurately documenting:

- Vendor contracts
- Receipt of vendor policy manuals
- Vendor reports
- Vendor communications regarding compliance
- Internal communications regarding vendors
- Corrective actions taken with vendors

Questions?



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