



OFFICE OF INSPECTOR GENERAL

Evaluation Report

2013-AE-C-021

The CFPB Should Reassess Its Approach
to Integrating Enforcement Attorneys
Into Examinations and
Enhance Associated Safeguards

December 16, 2013

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU

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Abbreviations

CFPB	Consumer Financial Protection Bureau
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
EIC	examiner in charge
examination support policy	<i>Enforcement and Fair Lending Exam Support Activity and the Management of Exam-Generated Legal Issues</i>
federal banking agencies	Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation
Federal Reserve Board	Board of Governors of the Federal Reserve System
FTC	Federal Trade Commission
SEFL	Division of Supervision, Enforcement, and Fair Lending



Executive Summary:

The CFPB Should Reassess Its Approach to Integrating Enforcement Attorneys Into Examinations and Enhance Associated Safeguards

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Purpose

The Office of Inspector General conducted an evaluation of the Consumer Financial Protection Bureau's (CFPB) integration of enforcement attorneys into its examinations of depository and nondepository institutions' compliance with applicable laws and regulations. Our objectives were to assess (1) the potential risks associated with this approach to conducting examinations and (2) the effectiveness of any safeguards that the CFPB adopted to mitigate the potential risks associated with this examination approach.

Background

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act established the CFPB to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws." The CFPB has both supervisory and enforcement authorities with respect to examinations of depository and nondepository institutions.

Findings

The CFPB should determine the appropriate level of enforcement attorney integration into examinations by reassessing the potential risks associated with the practice against the potential benefits and document the results of the assessment. Our evaluation results indicated that the CFPB's February 2012 policy describing the general principles of the integrated approach did not sufficiently detail how the approach should be implemented and was not uniformly distributed to CFPB supervision and enforcement staff. As a result, CFPB supervision and enforcement staff's awareness, understanding, and execution of the policy, as well as their messaging to supervised institutions concerning the role of enforcement attorneys in examinations, varied considerably. During our evaluation, we also learned that enforcement attorneys did not receive formal training on the CFPB's examination process and that the CFPB lacked a policy on enforcement attorneys' access to institutions' systems during examinations. We believe that opportunities exist to enhance awareness of management's expectations regarding the integrated approach and the procedural safeguards associated with the practice.

In addition, we learned that the CFPB reorganized its supervision function in December 2012 and established points of contact within the Office of Supervision Policy to address legal questions that arise during examinations, in part to ensure more consistent interpretations of applicable laws or regulations. As of the end of our fieldwork, August 2013, the CFPB had not updated its February 2012 policy describing the integrated approach to reflect changes to the process for resolving legal questions.

When we commenced our evaluation, the CFPB informed us that it had initiated an internal review to evaluate its approach to integrating enforcement attorneys into examinations. During our evaluation, we routinely met with senior CFPB officials and shared our preliminary observations concerning the integrated approach, including its potential risks. In October 2013, when our draft report was nearing completion, senior CFPB officials informed us that the agency had finalized its internal review and had reconsidered its approach regarding integrating enforcement attorneys into examinations. According to CFPB senior officials, new policies and procedures reflecting the revised approach became effective in November 2013, which was outside the scope of this evaluation. Thus, our report reflects our assessment of the CFPB's February 2012 policy related to the integrated approach.

Recommendations

Our report contains seven recommendations. As outlined in this report, the CFPB indicated that it has taken actions or has planned activities to address our recommendations. We intend to conduct future follow-up activities to determine whether the CFPB's actions are responsive to our recommendations.

Access the full report: http://www.federalreserve.gov/oig/files/CFPB_Enforcement_Attorneys_Examinations_full_Dec2013.pdf

For more information, contact the OIG at 202-973-5000 or visit <http://www.consumerfinance.gov/oig>.

Summary of Recommendations, OIG Report No. 2013-AE-C-021

Rec. no.	Report page no.	Recommendation	Responsible office
1	13	Determine the appropriate level of enforcement attorney integration into examinations by reassessing the potential risks associated with the practice against the potential benefits, and document the results of the assessment.	Division of Supervision, Enforcement, and Fair Lending
2	13	Develop an updated policy and accompanying operating procedures that align with the agency's intended level of enforcement attorney integration in the examination process. Specifically, the CFPB should define <ol style="list-style-type: none"> a. the roles and responsibilities of examination staff and enforcement attorneys with precision and clarity. b. expectations regarding enforcement attorneys' potential involvement during each examination phase, including their involvement in supervisory activities, such as performing examination modules, drafting supervisory documents, and obtaining information from institutions. c. the information that should be communicated to institutions concerning enforcement attorneys' role in the examination process. d. the "primacy of Supervision" concept, which may include establishing protocols for managing documentation requests and communications with the institution. 	Division of Supervision, Enforcement, and Fair Lending
3	13	Ensure that all relevant staff receive the updated policy and accompanying operating procedures, as well as formal training on those materials.	Division of Supervision, Enforcement, and Fair Lending
4	17	Formalize training for enforcement attorneys on the CFPB's examination process and require the attorneys to complete such training prior to any involvement in examinations.	Division of Supervision, Enforcement, and Fair Lending
5	19	Determine whether enforcement attorneys should have the ability to obtain direct access to supervised institutions' systems and, if such access is deemed appropriate, specify the purpose of the access.	Division of Supervision, Enforcement, and Fair Lending
6	19	Develop safeguards, such as a policy on enforcement attorneys obtaining direct access to supervised institutions' systems for the purpose of examinations. Issues for consideration in developing such a policy include <ol style="list-style-type: none"> a. the controls or limitations on enforcement attorneys' access and any required communications to the institution regarding this access, should the Division of Supervision, Enforcement, and Fair Lending decide that such access is appropriate. b. alignment of system access with examination scope. c. penalties for inappropriate access to systems or inappropriate use of information obtained through appropriate or inappropriate access. d. appropriate dissemination of the policy to relevant staff. 	Division of Supervision, Enforcement, and Fair Lending
7	22	Define the roles and responsibilities of the Office of Supervision Policy points of contact, enforcement attorneys, and other relevant parties, such as Legal Division staff, with regard to addressing different types of legal questions from examination staff.	Division of Supervision, Enforcement, and Fair Lending

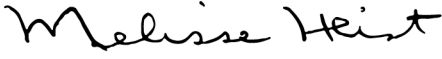


OFFICE OF INSPECTOR GENERAL
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
CONSUMER FINANCIAL PROTECTION BUREAU
WASHINGTON, DC 20551

December 16, 2013

MEMORANDUM

TO: Steve Antonakes
Deputy Director and Associate Director for Supervision, Enforcement,
and Fair Lending
Consumer Financial Protection Bureau

FROM: Melissa Heist 
Associate Inspector General for Audits and Evaluations

SUBJECT: OIG Report No. 2013-AE-C-021: *The CFPB Should Reassess Its Approach to Integrating Enforcement Attorneys Into Examinations and Enhance Associated Safeguards*

Attached is the Office of Inspector General's report on the subject evaluation. Our objectives were to assess the potential risks associated with the Consumer Financial Protection Bureau's (CFPB) approach to integrating enforcement attorneys into examinations, as well as the effectiveness of any safeguards that the CFPB adopted to mitigate the potential risks associated with this examination approach.

We provided you with a draft of our report for review and comment. In your response, you concurred with our recommendations and outlined actions that have been taken or will be implemented to address our recommendations. We have included your response as appendix B to our report.

We appreciate the cooperation that we received from CFPB staff during our evaluation. Please contact me if you would like to discuss this report or any related issues.

cc: David Bleicken
Patrice Ficklin
Kent Markus
Paul Sanford
Peggy Twohig

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Introduction

Objectives

In the fall of 2012, the Office of Inspector General Hotline received a complaint regarding the activities of Consumer Financial Protection Bureau (CFPB) enforcement attorneys during an examination. In response, we reviewed materials submitted by the complainant and conducted interviews with members of that examination team, including those responsible for supervising the examination. Subsequently, we decided to initiate a broader evaluation of the CFPB's integration of enforcement attorneys into its examinations of depository and nondepository institutions' compliance with applicable federal consumer financial laws and regulations. Our objectives for the evaluation were to assess (1) the potential risks associated with this approach to conducting examinations and (2) the effectiveness of any safeguards that the CFPB adopted to mitigate the potential risks associated with this examination approach.¹ For additional information regarding our scope and methodology, see appendix A.

Background

Federal Regulatory Structure for Overseeing Consumer Financial Protection Matters

The Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, collectively referred to herein as the federal banking agencies, each have a dual role in supervising certain entities within their jurisdictions to ensure their (1) safety and soundness and (2) compliance with applicable federal consumer financial laws² and regulations. The Federal Reserve Board oversees state-chartered banks that are members of the Federal Reserve System,³ the Federal Deposit Insurance Corporation oversees state-chartered banks that are not members of this system, and the Office of the Comptroller of the Currency supervises national banks.

In addition to the federal banking agencies described above, the Federal Trade Commission (FTC) has certain authorities for enforcing applicable consumer protection laws and regulations. These authorities apply to nondepository institutions; however, the FTC does not

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1. We use the term *safeguard* to refer to internal controls—the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the organization.
 2. Federal consumer financial law, as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act, includes over a dozen existing federal consumer protection laws, such as the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Equal Credit Opportunity Act. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1002 (12), 124 Stat. 1376, 1957 (2010) (codified at 12 U.S.C § 5481(12), (14) (2010)).
 3. The Federal Reserve Board also supervises other entities, such as bank holding companies. Its supervision authorities include financial holding companies formed under the Gramm-Leach-Bliley Act.

have the authority to regularly examine such institutions in order to assess their compliance with those laws and regulations.⁴

Prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the subsequent transfer of certain authorities to the CFPB one year later, these federal regulators predominantly shared supervision and enforcement authorities over entities that provide consumer financial products and services. Critics of this regulatory structure often opined that it was fragmented. Moreover, some suggested that the federal banking agencies' supervisory approach placed more emphasis on ensuring the safety and soundness of supervised institutions than on consumer financial protection. Critics argued that federal consumer financial regulatory authorities should be consolidated in a single regulator exclusively focused on consumer protection.⁵

On July 21, 2010, the Dodd-Frank Act was enacted, and title X of the statute established the CFPB to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”⁶ While the federal banking agencies and the FTC continue to have some consumer protection authorities, the Dodd-Frank Act provided the CFPB with several significant authorities in this area, as described below.

The CFPB's Authorities Regarding Supervision and Enforcement and Its Initial Implementation of These Activities

The Dodd-Frank Act provided the CFPB with the authority to supervise the following types of consumer financial market participants:

- depository institutions with more than \$10 billion in total assets⁷
- certain nondepository institutions, including entities in the consumer mortgage, private education lending, and payday lending markets; larger participants in markets for other consumer financial products or services as defined by the CFPB; and entities that the CFPB has reasonable cause to believe are “engaging, or ha[ve] engaged, in

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4. Other federal regulatory agencies also have supervision and enforcement authorities relating to consumer financial protection, including the U.S. Department of Housing and Urban Development and the National Credit Union Administration.
 5. For further information on the former federal regulatory structure for overseeing consumer compliance matters, see Sean M. Hoskins, *A Brief Overview of Actions Taken by the Consumer Financial Protection Bureau (CFPB) in Its First Year*, Congressional Research Service, August 29, 2012; David H. Carpenter, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, Congressional Research Service, June 7, 2012; and David H. Carpenter, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, Congressional Research Service, July 21, 2010.
 6. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1011(a), 124 Stat. 1376, 1964 (2010) (codified at 12 U.S.C. § 5491(a) (2010)).
 7. The relevant prudential regulator retained primary consumer protection supervisory and enforcement authority for depository institutions with total assets of \$10 billion or less. However, the Dodd-Frank Act granted the CFPB the authority to participate in examinations of these smaller depository institutions on a sampling basis.

conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services”⁸

In July 2011, the CFPB commenced its operations and also initiated its supervision program for large depository institutions. By law, the CFPB could not exercise its authority to regulate nondepository institutions until its director was appointed. On January 4, 2012, the President appointed the Director of the CFPB during a Senate recess.⁹ The following day, the CFPB announced that it had launched its supervision program for nondepository institutions.

The Dodd-Frank Act also provided the CFPB with the authority to take appropriate enforcement action to address violations of federal consumer financial laws. However, the CFPB does not have criminal enforcement authority. During the course of examinations, if CFPB examiners identify significant issues or potential violations of law, enforcement attorneys and their supervision colleagues in the CFPB’s Division of Supervision, Enforcement, and Fair Lending (SEFL) collectively may initiate enforcement actions. In addition, pursuant to investigative activities, the agency may issue subpoenas for witness testimony or documentary evidence in relation to CFPB hearings or may issue civil investigative demands to entities that may have materials relevant to an investigation. According to the Dodd-Frank Act, the agency shall have the jurisdiction to grant “any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law,” including but not limited to civil monetary penalties, restitution, limitations on the activities or functions of the party against whom the action is brought, and public notification regarding the violation.¹⁰ The CFPB issued nine public enforcement actions according to the agency’s March 2013 semiannual report.¹¹

The CFPB’s Supervision, Enforcement, and Fair Lending Organizational Structure

In April 2013, the CFPB published its five-year strategic plan.¹² The plan defined the agency’s mission as helping “consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.” SEFL is a division within the CFPB that conducts activities that are central to the agency’s consumer financial protection mission. The division has responsibility for conducting examinations of institutions’ compliance with federal

8. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1024(a)(1)(C), 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. § 5514(a)(1)(C) (2010)).

9. On July 16, 2013, the Senate confirmed Richard Cordray as the Director of the CFPB.

10. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1055(a), 124 Stat. 1376, 2029-30 (2010) (codified at 12 U.S.C. § 5565 (1)(2010)).

11. The CFPB issued these nine public enforcement actions from January 1, 2012, through December 31, 2012. Additional information on these enforcement actions can be found in the CFPB’s semiannual report, available at http://files.consumerfinance.gov/f/201303_CFPB_SemiAnnualReport_March2013.pdf.

12. *The Consumer Financial Protection Bureau Strategic Plan FY 2013–FY 2017* is available at <http://www.consumerfinance.gov/strategic-plan>.

consumer financial protection laws and regulations, initiating enforcement actions when appropriate, and providing oversight and enforcement of fair lending laws.

The CFPB originally organized its supervision activities according to its dual responsibility to supervise depository and nondepository institutions. In December 2012, however, the CFPB announced that it had reorganized its supervision activities to enhance their effectiveness and efficiency. As a result of this reorganization, the CFPB established within SEFL the Office of Supervision Examinations and the Office of Supervision Policy, among other offices. Both offices address depository and nondepository institution supervision.

The Office of Supervision Examinations oversees the CFPB's examination efforts and works to ensure that policies and procedures are followed. This office also manages the recruiting, training, and commissioning processes for CFPB examiners. The Office of Supervision Examinations has four regional offices, located in New York (Northeast Regional Office), Washington, DC (Southeast Regional Office), Chicago (Midwest Regional Office), and San Francisco (West Regional Office).

The Office of Supervision Policy seeks to ensure that supervision decisions are consistent with applicable laws and the CFPB's mission. It also ensures that supervision decisions are consistent across markets, charters, and regions.

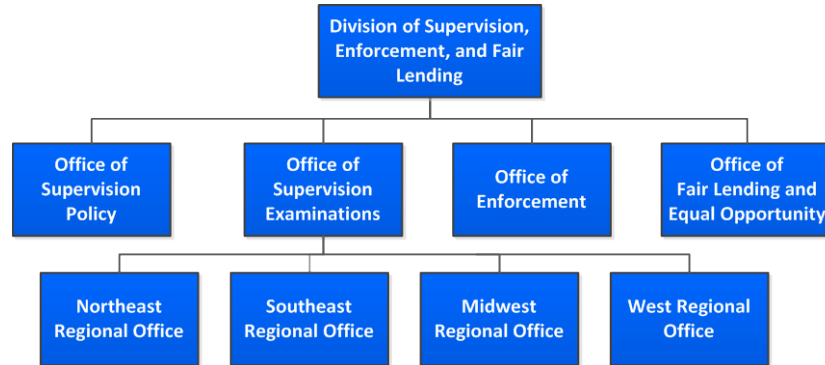
The Office of Enforcement, within SEFL, initiates investigations and enforcement actions, as appropriate, to ensure that providers of consumer financial products and services comply with applicable laws and regulations. Among other duties, CFPB enforcement attorneys manage enforcement cases, provide legal analysis, and support examiners during examinations.

The Office of Fair Lending and Equal Opportunity, also within SEFL, assesses entities' compliance with fair lending laws.

Figure 1 illustrates the SEFL organizational structure.¹³

13. This organization chart is not comprehensive and includes only detail relevant to this evaluation.

Figure 1: SEFL Organizational Structure



Source: OIG compilation based on a review of CFPB documentation.

The CFPB’s Integration of Enforcement Attorneys Into Examinations

As noted previously, several federal regulatory agencies have supervision and enforcement authorities over entities that provide consumer financial products and services. These agencies have different approaches for evaluating and enforcing consumer compliance. We learned that many of the CFPB’s early hires within the supervision and enforcement functions previously worked at the federal banking agencies or other regulatory agencies. These early hires brought a variety of viewpoints on how the supervision and enforcement functions should work together in executing the agency’s supervision and enforcement mandates. CFPB management decided to integrate at least one enforcement attorney into each examination due to perceived benefits of the approach.

According to several CFPB staff, the integrated approach enhances efficiency during the supervisory process. They indicated that integrating an enforcement attorney into each examination from the outset better ensures that if a potential enforcement issue arises, supervision staff do not have to spend substantial time familiarizing the attorney with the facts and circumstances associated with the issue. A senior CFPB official noted that the integrated approach allows the CFPB to compress the fieldwork associated with the examination and any resulting enforcement action into one step.

Guidance Related to the Integration of Enforcement Attorneys Into Examinations

To formalize the integration of enforcement attorneys into examinations, on February 1, 2012, the CFPB issued a one-page policy, *Enforcement and Fair Lending Exam Support Activity and the Management of Exam-Generated Legal Issues* (examination support policy). This document contains a principles-based description of the agency’s expectations for how and when enforcement attorneys should interact with the CFPB’s examination teams during various stages of the examination process. Specifically, it describes how the examiner in charge (EIC) shall engage the assigned enforcement attorney during the scoping, fieldwork, and report drafting phases of the examination. According to the CFPB, under this approach, the CFPB’s supervision, enforcement, and fair lending functions should collaborate during examinations to realize efficiencies in the supervisory process.

In addition to the examination support policy, the CFPB's examination manual briefly addresses coordination between the agency's supervision and enforcement functions.¹⁴ The manual notes that the supervision function will work closely with the Office of Fair Lending and Equal Opportunity and the enforcement function when reviewing fair lending compliance and evaluating other potential violations of federal consumer financial laws. This manual does not supplement or expand on the principles outlined in the examination support policy with regard to the integration of enforcement attorneys into examinations.

Industry Concerns With, and Internal Review of, the Integrated Approach

Some bankers and financial services media outlets have raised concerns about the CFPB's integration of enforcement attorneys into examinations, indicating that the practice can potentially transform examinations into an adversarial process or inhibit communications between the CFPB and supervised institutions. Other industry concerns include the lack of consistent execution of the integrated approach, particularly with respect to the onsite presence of enforcement attorneys at some examinations but not at others. One industry group expressed concern that the CFPB has not provided institutions with an explanation regarding the presence of enforcement attorneys at examinations.

In response to such industry concerns, the CFPB's Ombudsman initiated a review to assess the agency's implementation of the examination support policy. According to the *CFPB Ombudsman's Office FY 2012 Annual Report to the Director*, as an advocate for a fair process, the Ombudsman met with both internal and external stakeholders to obtain their perspectives on the approach.¹⁵ During these sessions, stakeholders shared their understanding of the implementation of the integrated approach. These stakeholders also shared potential benefits of the approach, such as process efficiencies, as well as drawbacks, including the potential for the approach to be a barrier to a free exchange of information during an examination. As a result, the Ombudsman recommended that the CFPB review its implementation of the approach and, in the interim, clarify the role of enforcement attorneys in examinations.

The CFPB subsequently initiated an internal review of the approach. A CFPB official informed us that this effort would evaluate the effectiveness of the integrated approach and determine whether the agency should continue the approach. During our evaluation, we routinely met with senior CFPB officials and shared our preliminary observations concerning the integrated approach, including its potential risks. These meetings occurred while the CFPB's internal review was ongoing.

14. The *CFPB Supervision and Examination Manual*, version 2, was issued in October 2012 and is available at <http://www.consumerfinance.gov/guidance/supervision/manual>.

15. The *CFPB Ombudsman's Office FY 2012 Annual Report to the Director* is available at http://files.consumerfinance.gov/f/201211_Ombuds_Office_Annual_Report.pdf.

Completion of OIG Fieldwork and the CFPB's Subsequent Announcement of Plans to Revise the Integrated Approach

In August 2013, we completed the fieldwork phase of our evaluation pursuant to our objectives and scope and initiated the report drafting phase. In October 2013, when our draft report was nearing completion, senior CFPB officials informed us that the agency had finalized its internal review and had reconsidered its approach regarding integrating enforcement attorneys into examinations. CFPB management provided a high-level description of some of the prospective changes to the integrated approach, including its decision to discontinue enforcement attorney participation in onsite examination activities. However, CFPB officials indicated that enforcement attorneys will continue to support examination teams throughout the examination process.

According to CFPB senior officials, the agency's new policies and procedures which reflect its revised approach became effective in November 2013. As these new policies and procedures were issued after we completed the fieldwork phase of our evaluation, we did not review these documents.¹⁶

We provided the CFPB an opportunity to provide a response to this report, including any information to address the findings and recommendations of our evaluation. That response is included in its entirety in appendix B.

We intend to conduct follow-up activities to determine whether the actions outlined in the CFPB's response address our findings and recommendations. We will perform these follow-up activities after sufficient time has elapsed to allow us to adequately assess the effectiveness of the agency's response to our recommendations.

16. This report describes the policy detailing the CFPB's approach to integrating enforcement attorneys into examinations that was in effect during our fieldwork period, February 2013 to August 2013. As such, we may refer to this policy and the CFPB's associated practices in the present tense throughout this report. We understand that revised policies and procedures reflecting changes to the integrated approach became effective in November 2013.

Finding 1: The CFPB Did Not Consistently Execute Its Integrated Approach in Accordance With the Broad Expectations Outlined in the Examination Support Policy

Supervision and enforcement staff's understanding and execution of the principles outlined in the examination support policy varied considerably. In addition, in some cases supervision and enforcement staff delivered inconsistent messaging to supervised institutions about the role of enforcement attorneys in examinations. We attribute these inconsistencies to multiple causes. First, CFPB supervision and enforcement staff exhibited varying levels of awareness of the examination support policy and did not receive formal training on this policy. Second, the policy outlines general principles regarding the agency's integrated approach but does not sufficiently describe how the approach should be implemented. In our opinion, the inherent risks associated with staffing a relatively new agency and the CFPB's regional operating model further underscore the need to clearly define expectations for staff to ensure consistent execution of supervision activities in accordance with management's expectations. The inconsistent execution of the integrated approach could expose the CFPB to reputational risk, which could potentially undermine any benefits to be derived from the integrated approach.

Establishing Clear Expectations Regarding the Integrated Approach Increases the Likelihood of Its Effective and Consistent Implementation

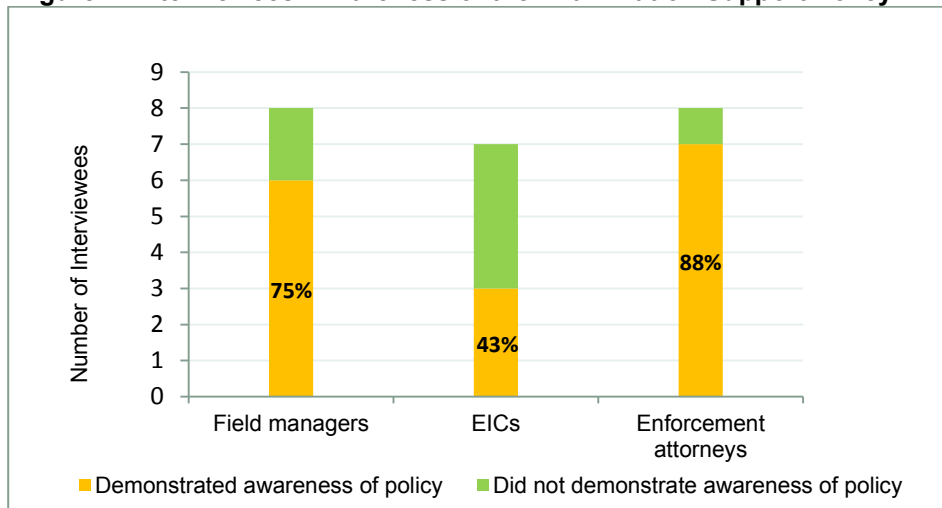
To execute its supervisory activities, the CFPB, as a relatively new agency, hired examiners with diverse backgrounds and experience levels. The varied prior experience of examiners increases the risk that they may not execute the integrated approach in accordance with management's expectations in the absence of clear guidance and effective training. Further, the CFPB employs a regional operating model to execute its supervisory activities. Each of the agency's four regional directors is responsible for leading several assistant regional directors, field managers, and a staff of over 100 examiners. The CFPB did not establish clear expectations regarding the integrated approach and did not reinforce those expectations via formal training. In our opinion, providing staff clear guidance and effective training on the integrated approach increases the likelihood that staff in different regions will execute the approach consistently.

Supervision and Enforcement Staff's Awareness of the Examination Support Policy Varied

On February 1, 2012, the CFPB issued the examination support policy, which addressed the agency's approach to integrating enforcement attorneys into the examination process. Of the 23 field managers, EICs, and enforcement attorneys we interviewed, approximately 70 percent demonstrated an awareness of the policy. Figure 2 illustrates their respective awareness of the policy. EICs exhibited the lowest awareness rate; less than half of the EICs we interviewed were aware of the policy. Several interviewees noted that they were not aware of the examination support policy or were unsure whether they had received it. One interviewee

indicated that the policy “sounds familiar,” but noted that he was not certain whether he had read it.

Figure 2: Interviewees’ Awareness of the Examination Support Policy



Source: CFPB staff’s responses during OIG interviews.

We asked interviewees to describe how the CFPB disseminated the examination support policy to staff. Some individuals indicated that they received the policy via e-mail or during a meeting. A senior official noted that the CFPB distributed the policy to field managers, but the official was not certain that all examination staff received it and acknowledged that it could have been better distributed. One interviewee noted that it generally can be difficult to find CFPB policies and procedures. Further, one senior official noted that it is sometimes a challenge to ensure that those hired after the policy’s issuance are aware of it.

We also asked interviewees whether the CFPB delivered any training to accompany the examination support policy. In response, a field manager indicated that he did not remember any formal instruction on this topic, but he noted that “the CFPB had regional conferences and an annual national conference in DC, where these things were discussed.” An enforcement attorney noted that “enforcement held ‘all-enforcement-staff meetings’ where they discussed the enforcement attorneys’ support role”; however, he did not recall receiving any formal training on the integrated approach.

Supervision and Enforcement Staff’s Understanding and Execution of the Examination Support Policy Varied

According to the examination support policy, the EIC should engage the assigned enforcement attorney during the scoping, fieldwork, and report drafting phases of the examination. Nevertheless, interviewees noted variation in the enforcement attorneys’ involvement during each of these phases.

Scoping

In preparation for an examination, supervision staff perform scoping activities, which include data gathering, drafting a scope summary, and conducting preliminary meetings with the institution under examination. According to the examination support policy, EICs should ensure that the assigned enforcement attorney participates in early scoping discussions and attends the preliminary meetings in which the attorney's role on the examination is explained to the institution. The policy does not specify, however, what should be communicated to institutions regarding the role of enforcement attorneys on examinations.

Despite the guidance concerning enforcement attorneys' expected participation in scoping, their involvement in this phase varied considerably. Several interviewees noted that enforcement attorneys were involved in scoping activities, while others informed us that they were not. While the examination support policy notes that the enforcement attorney should attend the preliminary meetings with the institution, interviewees informed us that enforcement attorneys did not always attend such meetings.

We also identified some variation in the message communicated to supervised institutions regarding the role of the enforcement attorney in the examination. In accordance with the examination support policy, several interviewees noted that they communicated the enforcement attorney's role to the institution at the preliminary meeting or via an earlier communication. Several interviewees stated that they informed institutions that the enforcement attorney provides support or guidance to the examination team on legal issues. CFPB staff also noted that the enforcement attorneys' participation was not necessarily an indication that an enforcement action was imminent. One examiner, however, indicated that he informs supervised institutions that enforcement attorneys attend examinations to obtain training on the supervision process. Specifically, this individual noted that he communicates that the enforcement attorneys are "there for observational purposes, to obtain some cross-training on supervision, and occasionally to provide assistance to the exam team." In one instance, an enforcement attorney informed us of his own understanding that "enforcement attorneys were part of the examination for cross-training purposes, to understand what supervision does, how they work, and their examination process." However, multiple field managers indicated that they did not inform the institutions that attorneys were participating for such purposes, but instead communicated that they were participating to provide support to the examination team.

We learned that senior SEFL management and the CFPB's Legal Division approved a set of talking points for CFPB staff to use when communicating with institutions about the integrated approach. One interviewee informed us that he "received guidance on talking points to use when explaining the role of enforcement attorneys to institutions"; however, three of the CFPB's four regional directors noted that they were not aware of such talking points. In our opinion, variability in messaging and in disseminating talking points to relevant staff may lead to an inconsistent experience among supervised institutions and may also lead to examination teams not operating in accordance with CFPB management's expectations.

Overall, we learned that enforcement attorneys did not always participate in the scoping phase, or in the preliminary meetings with supervised institutions. Further, we identified variation in the message communicated to institutions regarding the role of enforcement attorneys in the examination. In our opinion, this variation demonstrates the inconsistencies in staff's understanding and execution of the policy.

Fieldwork

During the fieldwork phase, supervision staff conduct examination procedures, which may include interviews, transaction testing, or other activities. While not specifically noted in the policy, we understand that aspects of fieldwork can be performed onsite and offsite.

According to the examination support policy, the EIC is expected to keep the assigned enforcement attorney apprised of the progress of the examination and of any issues that arise, and the EIC is also expected to hold a midpoint conversation with the enforcement attorney to evaluate the examination's direction. The examination support policy does not specify (1) whether the enforcement attorney should join the examination team during the onsite examination activities or (2) the activities in which the enforcement attorney is expected to be involved.

Our interviews revealed considerable variability in the level of participation of enforcement attorneys in onsite examination activities. A field manager informed us that supervised institutions are often suspicious of enforcement attorneys' involvement in examinations, and in some cases, involved their own legal counsel in meetings with CFPB staff. Several CFPB supervision staff acknowledged that the enforcement attorneys' onsite presence can create a "chilling effect." Accordingly, interviewees expressed concerns that institutions may seek to limit the examination team's access to information, which could hamper the effectiveness of supervisory efforts unless full access is ultimately granted. A field manager indicated that due to such issues, he generally tries to "limit the participation of enforcement attorneys on exams," and prefers to "keep them behind the scenes."

However, a senior CFPB official stated that "some attorneys have indicated a desire to be onsite more . . . to observe the examination process, participate in examination work, and interview management," noting that "their presence can really enhance the examiners' interviews and work onsite." In another example, an examiner noted that an enforcement attorney performed examination procedures on a particular examination and opined that it is "mutually beneficial if enforcement attorneys are on site at examinations and assist with performing examination modules."¹⁷ However, a senior official within the Office of Supervision Examinations stated that enforcement attorneys should not be performing examination modules.

The enforcement attorneys' varying involvement during the fieldwork phase of examinations demonstrates the differences in staff's understanding and also illustrates the inconsistent execution of the examination support policy. Further, staff's differences of opinion on key topics such as the value of having the enforcement attorneys participate in onsite examination activities reinforces the need to resolve this issue by clarifying the policy.

17. Examination modules consist of detailed steps for examiners to perform in order to assess specific aspects of the supervised entity's operations.

Reporting

At the conclusion of the fieldwork phase, the examination team drafts a report to communicate the examination findings to the supervised institution. According to the examination support policy, the EIC will ensure the enforcement attorney's participation in the development of the examination report, especially as it relates to identifying any legal violations and determining appropriate remedies.

We found, however, that supervision personnel had varied understandings of when and how to involve enforcement attorneys in the report development process. An interviewee noted that confusion has arisen between examination staff and enforcement attorneys concerning who is responsible for drafting certain types of supervisory documents. Another interviewee noted that "it would be better for both supervision and enforcement if everyone's roles were more defined and clear." A senior official indicated that examiners should not share draft examination reports with enforcement attorneys until those materials are approved by CFPB regional management. However, another senior official indicated that he encourages examiners to share draft reports with enforcement attorneys prior to review by regional management. These varying interpretations of how and when enforcement attorneys should be involved in the report development process further demonstrate the differences in supervision personnel's understanding and execution of the examination support policy.

Enforcement Attorneys' Respect of the "Primacy of Supervision" Varied

A key concept noted in the examination support policy is that enforcement attorneys shall respect the "primacy of Supervision" by being "careful not to interfere with the Supervision chain of command." However, the policy does not clearly articulate how this concept should be applied in practice. Several supervision and enforcement staff acknowledged that supervision is expected to drive the examination process. In addition, some staff highlighted examples in which the supervision and enforcement staff collaborated effectively. Other interviewees, however, informed us of several situations in which enforcement attorneys did not appear to follow the intent of the "primacy of Supervision" concept noted in the policy.

A senior official noted examples of enforcement attorneys submitting requests for documentation directly to the supervised institution, instead of working through the examination team. The official noted that the requests were either duplicative of existing requests or outside the examination scope, which made the examination team appear fragmented. An interviewee noted that the CFPB should "continue to clarify the enforcement attorney's role on the examination and advise that enforcement attorneys should not try to drive the examination." According to another interviewee, one enforcement attorney drafted an enforcement action and escalated it to CFPB senior management for review without the knowledge of the examination team. The interviewee opined that the attorney's conduct did not adhere to the "primacy of Supervision" concept noted in the examination support policy. These examples reinforce the need for training on this key concept and the need to further delineate management's expectations for acceptable and effective collaboration.

Conclusion

We found that supervision and enforcement staff exhibited varying levels of awareness of the examination support policy and did not receive formal training on the policy. In addition, the policy does not sufficiently detail how the integrated approach should be implemented. As a result, supervision and enforcement staff's understanding and execution of the principles outlined in the policy varied considerably. Further, in some cases, examiners appeared to have delivered inconsistent messages to supervised institutions about the role of enforcement attorneys in examinations, specifically with regard to whether attorneys were involved in examinations for training purposes.

Recommendations

We recommend that the Deputy Director and Associate Director for SEFL

1. Determine the appropriate level of enforcement attorney integration into examinations by reassessing the potential risks associated with the practice against the potential benefits, and document the results of the assessment.
2. Develop an updated policy and accompanying operating procedures that align with the agency's intended level of enforcement attorney integration in the examination process. Specifically, the CFPB should define
 - a. the roles and responsibilities of examination staff and enforcement attorneys with precision and clarity.
 - b. expectations regarding enforcement attorneys' potential involvement during each examination phase, including their involvement in supervisory activities, such as performing examination modules, drafting supervisory documents, and obtaining information from institutions.
 - c. the information that should be communicated to institutions concerning enforcement attorneys' role in the examination process.
 - d. the "primacy of Supervision" concept, which may include establishing protocols for managing documentation requests and communications with the institution.
3. Ensure that all relevant staff receive the updated policy and accompanying operating procedures, as well as formal training on those materials.

Management's Response

Regarding recommendation 1, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. Throughout much of the past year, CFPB has been

engaged in a comprehensive reassessment regarding the appropriate level of enforcement attorney integration into examinations. In December 2012, the CFPB's Division of Supervision, Enforcement, and Fair Lending and Equal Opportunity (SEFL) convened a working group to review existing CFPB policy regarding the integration of enforcement attorneys into CFPB examinations. The working group consisted of members from all SEFL offices, including a mix of Headquarters and field staff. The group met regularly to evaluate existing practices and discuss potential issues and solutions. The group also solicited oral feedback internally from each SEFL office and SEFL management and externally with more than 20 Chief Compliance Officers of major financial institutions.

Through this process, we determined that by discontinuing CFPB enforcement attorneys' involvement in on-site examination activities generally, and by clarifying enforcement attorneys' role in examination support, we would achieve greater efficiency and more capacity in all offices. On October 7, 2013, CFPB formally announced a new policy implementing these changes. This policy will be effective nationally, and will be implemented in CFPB headquarters operations as well as in each CFPB region.

Regarding recommendation 2, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. On October 7, 2013, the CFPB formally announced its new policy. This policy defines roles and responsibilities for enforcement attorneys, examiners, and the SEFL offices; expectations regarding enforcement attorney support of CFPB examination activities; and protocols for managing documentation requests and communications with supervised entities. We also are developing consistent messaging for CFPB staff to communicate the new policy to supervised institutions as needed. In addition, CFPB is drafting additional operating procedures to implement the new policy. These operating procedures will contain appropriate monitoring and reporting requirements and other internal controls to facilitate the oversight of the effectiveness of the new policy.

Regarding recommendation 3, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. Since adopting the new policy, the CFPB has conducted a series of seven training sessions, some live and some online via webinar. These sessions were mandatory for all SEFL staff. The CFPB also made available the training materials and a recording of one of the trainings to all SEFL staff on the CFPB Intranet. Staff who could not attend a training session were required to listen to the recording and certify that they had received training. As of Friday, November 15, 2013, 578 SEFL staff members, out of a total of 619 (or approximately 93 percent), had completed this mandatory

training. New hires will receive appropriate training on the policy as part of the orientation process.

Once appropriate additional operating procedures with respect to the policy have been finalized, CFPB will ensure that all applicable CFPB staff receive appropriate formal training on those procedures, as well.

OIG Comment

In our opinion, the actions described by the Deputy Director and Associate Director for SEFL appear to be responsive to our recommendations. We plan to follow up on the CFPB's actions to ensure that each recommendation is fully addressed.

Finding 2: The CFPB Did Not Formally Train Enforcement Attorneys on the CFPB's Examination Process

Five of the eight enforcement attorneys we interviewed as part of our sample indicated that they had little or no examination experience prior to joining the CFPB. In addition, we learned that enforcement attorneys did not receive formal training on the CFPB's examination process. We believe that these attorneys should receive formal introductory training on the agency's examination process. Without formal training in this area, enforcement attorneys may not have an appreciation for key aspects of the examination process and may operate in a manner that exposes the agency to reputational risk.

Enforcement Attorneys Did Not Receive Formal Training on the Examination Process

The enforcement attorneys whom we interviewed had varied backgrounds, having previously worked at law firms, federal and state regulatory agencies, and other organizations. Five of the eight enforcement attorneys we interviewed as part of our sample indicated that they had little or no experience related to examinations prior to joining the CFPB.

We learned that enforcement attorneys received ad hoc or "on-the-job" training on the CFPB's examination process. However, interviewees indicated that enforcement attorneys did not receive formal training in this area. A field manager noted that the enforcement attorneys' limited knowledge of the examination process was troubling to some examiners. A senior CFPB official noted that the on-the-job training has been helpful, but a formal introductory course on examinations would be more beneficial. Another senior agency official noted that it would be beneficial for enforcement attorneys to receive formal training in this area, as such training would help to promote consistency during the supervisory process.

Without formal training on the examination process and greater clarity with respect to the roles of examiners and enforcement attorneys, enforcement attorneys may operate in a manner that could expose the CFPB to reputational risk. For example, enforcement attorneys assisting examiners in completing examination procedures may not have an appreciation of the importance of the examination's scope and could inadvertently deviate from the formally communicated scope without realizing the possible consequences of that action. In our opinion, formal training on the examination process would enhance the attorneys' appreciation for key aspects of the examination process, including scoping, fieldwork, and reporting.

Recommendation

We recommend that the Deputy Director and Associate Director for SEFL

4. Formalize training for enforcement attorneys on the CFPB's examination process and require the attorneys to complete such training prior to any involvement in examinations.

Management's Response

Regarding recommendation 4, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. CFPB has conducted a series of mandatory training sessions for all SEFL staff, including enforcement attorneys, regarding the new policy and the role of enforcement attorneys in CFPB's examination process. This training provides greater clarity with respect to the roles of examiners and enforcement attorneys. All SEFL staff, including enforcement attorneys, have been required to participate in this training and the CFPB is ensuring compliance with this requirement.

Pursuant to the newly effective policy, CFPB enforcement attorneys generally will no longer participate in on-site examination activities. In addition, the new policy improves procedures regarding communications between enforcement attorneys and examiners by providing for enforcement attorney consultation off-site with the Office of Supervision Policy on legal questions, rather than directly with examiners in the field. CFPB's new policy thus adequately addresses the reputational and other risks identified in the Evaluation Report.

Nevertheless, we are considering additional training to further educate enforcement attorneys regarding the examination process.

OIG Comment

In our opinion, the actions described by the Deputy Director and Associate Director for SEFL appear to be responsive to our recommendation. We plan to follow up on the CFPB's actions to ensure that the recommendation is fully addressed.

Finding 3: The CFPB Lacked a Policy on Enforcement Attorneys' Access to Institutions' Systems During Examinations

The CFPB has not formally defined its expectations regarding whether enforcement attorneys should be able to obtain direct access to institutions' systems for the purpose of examinations. We found that enforcement attorneys have obtained direct access to examined institutions' systems containing personally identifiable customer information. As a relatively new agency, the CFPB is still developing policies, procedures, and other safeguards around its operations. We believe that the CFPB should clarify its expectations regarding whether the attorneys should be able to access supervised institutions' systems and, if so, establish safeguards around the access. In the absence of clearly defined expectations on systems access and clearly defined roles for enforcement attorneys and examiners, enforcement attorneys accessing institutions' systems may create the appearance that enforcement attorneys participate on CFPB examinations as a pretense to conduct preliminary investigative activities.

Institutions Provide Varying Levels of Access to Their Systems

The CFPB is authorized to obtain the information necessary to conduct its supervisory activities. Accordingly, on occasion, examiners obtain direct access to institutions' systems for the purpose of conducting examinations. Some interviewees noted that when they obtain access, the supervised institution provides them with read-only access. Other interviewees indicated that institutions sometimes establish electronic repositories, such as SharePoint sites, where they post documentation for the examination team's use, or they may provide documentation to examiners in hard-copy format. We learned that institutions may have differing preferences or capabilities that drive the level of access provided to CFPB staff.

The CFPB Lacked a Policy on System Access

Based on our interviews, we found that enforcement attorneys typically did not obtain direct access to institutions' systems. Interviewees informed us that institutions may provide documentation to examiners who furnish the documents to the assigned enforcement attorney as needed. In some instances, however, we learned that enforcement attorneys have obtained direct access to examined institutions' systems containing personally identifiable customer information.

Interviewees informed us that the CFPB does not have a policy prohibiting enforcement attorneys from obtaining direct access to institutions' systems for the purpose of examinations. Several interviewees opined that enforcement attorneys should not be able to directly access an institution's systems and highlighted the risks associated with affording enforcement attorneys such access. For example, one interviewee noted that it would create trepidation among institutions if enforcement attorneys had access to their systems. Accordingly, we noted that in the absence of formal safeguards, supervision staff within certain examination teams imposed informal limitations on the assigned enforcement attorneys' ability to access systems during their examinations. In addition, an enforcement attorney informed us that he

“would not access systems directly, and it is implicitly understood that it is not something that the enforcement attorneys should be doing.” A field manager also indicated that there has never been any expectation that enforcement attorneys “would be involved in conducting exam work or have any need for system access.” In our opinion, interviewees’ concerns regarding enforcement attorneys accessing institutions’ systems highlights the need for a policy to formalize CFPB management’s expectations on this issue.

Clarifying the agency’s expectations regarding whether enforcement attorneys should be able to have direct access to institutions’ systems and clarifying the roles of examiners and enforcement attorneys will help to mitigate the reputation risk associated with enforcement attorneys participating on examinations. In our opinion, a policy on system access and additional role clarity could serve as a possible safeguard to mitigate the risk of CFPB enforcement attorneys operating in a manner that is inconsistent with senior officials’ expectations.

Recommendations

We recommend that the Deputy Director and Associate Director for SEFL

5. Determine whether enforcement attorneys should have the ability to obtain direct access to supervised institutions’ systems and, if such access is deemed appropriate, specify the purpose of the access.
6. Develop safeguards, such as a policy on enforcement attorneys obtaining direct access to supervised institutions’ systems for the purpose of examinations. Issues for consideration in developing such a policy include
 - a. the controls or limitations on enforcement attorneys’ access and any required communications to the institution regarding this access, should SEFL decide that such access is appropriate.
 - b. alignment of system access with examination scope.
 - c. penalties for inappropriate access to systems or inappropriate use of information obtained through appropriate or inappropriate access.
 - d. appropriate dissemination of the policy to relevant staff.

Management’s Response

Regarding recommendation 5, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. The new CFPB policy limits the on-site involvement of enforcement attorneys during the course of a supervisory examination. Enforcement attorneys generally will not attend on-site

examinations or obtain information directly from institutions as part of the supervisory process. Where CFPB has formally initiated an enforcement investigation, CFPB enforcement attorneys will exercise appropriate investigative authority to conduct the investigation.

Regarding recommendation 6, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its policy on enforcement attorney integration into examinations. Under the new CFPB policy, enforcement attorneys generally will not attend on-site examinations or obtain information directly from institutions under examination as part of the supervisory process. As a consequence, enforcement attorneys do not have on-site access to institutions' systems for the purpose of conducting examinations, thus generally eliminating the concerns raised under this recommendation. Where CFPB has formally initiated an enforcement investigation, CFPB enforcement attorneys will exercise appropriate investigative authority to conduct the investigation. As with all CFPB policies, we expect enforcement attorneys and all other CFPB staff to follow the new policy regarding enforcement attorney involvement on examinations, and we will conduct the appropriate level of management oversight to ensure compliance. The CFPB is also currently drafting additional operating procedures to implement the new policy. These operating procedures will contain appropriate monitoring and reporting requirements and other internal controls to facilitate the oversight of the effectiveness of the new policy.

OIG Comment

In our opinion, the actions described by the Deputy Director and Associate Director for SEFL appear to be responsive to our recommendations. We plan to follow up on the CFPB's actions to ensure that each recommendation is fully addressed.

Finding 4: The Process for Resolving Legal Questions During Examinations Was Unclear

The CFPB's guidance on the process for resolving certain legal questions that arise during examinations is not sufficiently clear. The examination support policy provides some guidance on resolving legal questions that arise during examinations; however, we believe that the guidance should be strengthened. In December 2012, the CFPB's supervision function completed a reorganization and established points of contact within the Office of Supervision Policy to address legal questions that arise during examinations, in part to ensure more consistent interpretations of applicable laws and regulations across the agency. However, the examination support policy has not been updated to describe the role of these points of contact. We found that examination staff sometimes contacted the enforcement attorneys assigned to their examinations to resolve legal questions unrelated to enforcement issues, which could prevent management's desired legal expert from responding to the question. A senior official expressed concern that examiners may then act on the enforcement attorneys' interpretations, which may differ from those of the Office of Supervision Policy.

Examination Support Policy Does Not Clearly Define the Process for Resolving Legal Questions

According to the examination support policy, the examination team should engage the assistance of the assigned enforcement attorneys in resolving their "non-routine" legal questions. The policy also states that these questions ultimately should be referred to "Supervision supervisory personnel" for final resolution, but does not define the employees who constitute "Supervision supervisory personnel." Further, the examination support policy does not describe the types of legal questions that are considered "non-routine" and does not contain any guidance regarding the resolution of routine legal questions. In our opinion, the examination support policy's language regarding the resolution of legal questions provides unclear guidance to staff that leaves substantial room for staff interpretation.

In December 2012, the CFPB reorganized its supervision function into the Office of Supervision Policy and the Office of Supervision Examinations. The Office of Supervision Policy seeks to ensure that supervision decisions are consistent with applicable laws and the CFPB's mission. CFPB senior officials informed us that the reorganization established points of contact in the Office of Supervision Policy, who are responsible for addressing examiners' legal questions and carefully considering the CFPB's existing analysis to ensure that interpretations of applicable laws or regulations are consistent. However, we found that since its issuance, the examination support policy has not been updated to describe the role of the points of contact, leading to potential confusion among examination staff as to whom they should contact with legal questions.

Several interviewees informed us that examiners continue to contact the enforcement attorney assigned to their examinations regarding the interpretation of laws or regulations unrelated to enforcement issues. One enforcement attorney noted that his role included "providing legal interpretation services as a sort of 'lawyer on call.'" A field manager described the reasoning

for this practice, noting that “enforcement attorneys are part of the examination team, and therefore, it is easier for examiners to get in contact with them than supervision contacts in headquarters.”

However, a senior CFPB official informed us that enforcement attorneys should not provide guidance to examiners regarding legal questions unrelated to enforcement issues. This official explained that examiners should obtain legal guidance from the points of contact in the Office of Supervision Policy, who in turn should obtain guidance from the CFPB’s Legal Division. The official acknowledged that the process for resolving legal questions was not clearly communicated to staff and could be open to interpretation. Some interviewees indicated that when examination staff seek advice from enforcement attorneys instead of from the designated Office of Supervision Policy points of contact, they may receive interpretations which are not consistent with the agency’s intended posture on the matter. Examiners may then act on the enforcement attorneys’ interpretations, which could expose the CFPB to reputational risk.

Recommendation

We recommend that the Deputy Director and Associate Director for SEFL

7. Define the roles and responsibilities of the Office of Supervision Policy points of contact, enforcement attorneys, and other relevant parties, such as Legal Division staff, with regard to addressing different types of legal questions from examination staff.

Management’s Response

Regarding recommendation 7, the Deputy Director and Associate Director for SEFL stated the following:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. The new CFPB policy defines the roles and responsibilities of the CFPB Office of Supervision Policy points of contact and enforcement attorneys with regard to addressing different types of legal questions from examination staff. The policy also defines roles and responsibilities for CFPB’s Office of Fair Lending in resolving fair-lending-related legal questions that arise during examinations. The new CFPB policy requires the Office of Supervision Policy or the Office of Fair Lending to consult with other internal parties, including the CFPB’s Legal Division, as appropriate.

OIG Comment

In our opinion, the actions described by the Deputy Director and Associate Director for SEFL appear to be responsive to our recommendation. We plan to follow up on the CFPB’s actions to ensure that the recommendation is fully addressed.

Appendix A

Scope and Methodology

To accomplish our objectives, we reviewed materials detailing relevant background on the CFPB, such as title X of the Dodd-Frank Act, several Congressional Research Service studies that describe the CFPB's formation and structure,¹⁸ and the agency's strategic plan for fiscal years 2013–2017. We also reviewed controlling documents addressing the CFPB's supervision process and integrated approach, including the agency's examination manual and its examination support policy. In addition, we obtained background information on the supervision and enforcement approaches employed by other federal financial regulatory agencies. To understand industry perspectives on the integrated approach, we compiled and reviewed articles¹⁹ published by financial services media outlets as well as correspondence from an industry group.²⁰ We reviewed a report published by the CFPB's Ombudsman's Office that describes the agency's implementation of the integrated approach, and we met with the Ombudsman to discuss this effort.

We evaluated the CFPB's execution of the integrated approach by judgmentally selecting a sample of eight closed CFPB examinations of depository or nondepository institutions in which enforcement attorneys participated. This sample included two examinations from each of the CFPB's four regions. We reviewed supervisory materials for the sample examinations, such as scope memorandums and supervisory letters, and interviewed the field manager, the EIC, and the enforcement attorney assigned to those examinations.²¹ We also conducted interviews with each of the four CFPB regional directors as well as senior officials within SEFL.

We conducted our fieldwork from February 2013 through August 2013 and performed our evaluation in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency in January 2012.

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18. Sean M. Hoskins, *A Brief Overview of Actions Taken by the Consumer Financial Protection Bureau (CFPB) in Its First Year*, Congressional Research Service, August 29, 2012; David H. Carpenter, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, Congressional Research Service, June 7, 2012; and David H. Carpenter, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, June 21, 2010.
 19. Mark W. Olson, "CFPB Stepping into Vigilante Territory," *American Banker*, April 20, 2012; Kevin Petrasic, "CFPB Should Leave Enforcement Lawyers Out of Bank Exams," *American Banker*, December 12, 2012; Ronald L. Rubin, "The Identity Crisis at the Consumer Financial Protection Bureau," *Bloomberg Bureau of National Affairs*, January 22, 2013; and Kevin Wack, "Bankers Grill CFPB's Antonakes on Exam Process," *American Banker*, March 13, 2013.
 20. We reviewed two letters, dated July 2, 2012, and February 14, 2013, from David T. Hirschmann, President and Chief Executive Officer, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, to the Honorable Richard Cordray, Director, CFPB. These letters are available at <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-7.2-CFPB-Letter1.pdf> and <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2013-2-14-CFPB-supervision-letter.pdf>, respectively.
 21. An individual who served as the EIC for one of the examinations in our sample was no longer employed at the CFPB at the time of our evaluation. Accordingly, we did not interview that individual.

Appendix B Management's Response



1700 G Street, N.W., Washington, DC 20552

November 18, 2013

VIA ELECTRONIC MAIL

Michael VanHuysen
Senior OIG Manager for Supervision and Regulation
Office of Inspector General
Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
Washington, DC 20551

RE: CFPB Response to OIG Discussion Draft Report dated October 31, 2013

Dear Mr. VanHuysen:

Thank you for the opportunity to respond to the Evaluation Report from your office entitled, "The CFPB Should Reassess Its Approach to Integrating Enforcement Attorneys into Examinations and Enhance Associated Safeguards." We generally concur with the Evaluation Report's recommendations, which are consistent with the approach adopted by the Consumer Financial Protection Bureau (CFPB or Bureau) in our new policy related to the integration of enforcement attorneys in the supervision process, effective November 1, 2013.

As we have discussed with Office of Inspector General (OIG) staff over the course of this engagement, CFPB management has been actively engaged during the past year in reassessing its approach to integrating enforcement attorneys into examinations. CFPB staff informed OIG of this comprehensive assessment when this engagement began and have kept OIG staff informed throughout the process.

The CFPB has adopted a new policy that addresses the concerns identified in the Evaluation Report. This new CFPB policy became effective November 1, 2013. We appreciated the opportunity to brief OIG staff on this new policy prior to its effective date and OIG's adoption of the Evaluation Report. We are pleased that the OIG's recommendations match those that resulted from the CFPB's own comprehensive assessment, and that the policy changes we have implemented respond directly to OIG's concerns. We note that, to the extent the Evaluation Report describes operations inconsistent with this policy, they are no longer in effect.

Below are CFPB management's responses to each of the Evaluation Report's specific recommendations.

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CFPB Management Response to Recommendations #1-3:

Recommendation #1: We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. Throughout much of the past year, CFPB has been engaged in a comprehensive reassessment regarding the appropriate level of enforcement attorney integration into examinations. In December 2012, the CFPB's Division of Supervision, Enforcement, and Fair Lending and Equal Opportunity (SEFL) convened a working group to review existing CFPB policy regarding the integration of enforcement attorneys into CFPB examinations. The working group consisted of members from all SEFL offices, including a mix of Headquarters and field staff. The group met regularly to evaluate existing practices and discuss potential issues and solutions. The group also solicited oral feedback internally from each SEFL office and SEFL management and externally with more than 20 Chief Compliance Officers of major financial institutions.

Through this process, we determined that by discontinuing CFPB enforcement attorneys' involvement in on-site examination activities generally, and by clarifying enforcement attorneys' role in examination support, we would achieve greater efficiency and more capacity in all offices. On October 7, 2013, CFPB formally announced a new policy implementing these changes. This policy will be effective nationally, and will be implemented in CFPB headquarters operations as well as in each CFPB region.

Recommendation #2: We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. On October 7, 2013, the CFPB formally announced its new policy. This policy defines roles and responsibilities for enforcement attorneys, examiners, and the SEFL offices; expectations regarding enforcement attorney support of CFPB examination activities; and protocols for managing documentation requests and communications with supervised entities. We also are developing consistent messaging for CFPB staff to communicate the new policy to supervised institutions as needed. In addition, CFPB is drafting additional operating procedures to implement the new policy. These operating procedures will contain appropriate monitoring and reporting requirements and other internal controls to facilitate the oversight of the effectiveness of the new policy.

Recommendation #3: We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. Since adopting the new policy, the CFPB has conducted a series of seven training sessions, some live and some online via webinar. These sessions were mandatory for all SEFL staff. The CFPB also made available the training materials and a recording of one of the trainings to all SEFL staff on the CFPB Intranet. Staff who could not attend a training session were required to listen to the recording and certify that they had received training. As of Friday, November 15, 2013, 578 SEFL staff members, out of a total of 619 (or approximately 93 percent), had completed this mandatory training. New hires will receive appropriate training on the policy as part of the orientation process.

Once appropriate additional operating procedures with respect to the policy have been finalized,

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CFPB will ensure that all applicable CFPB staff receive appropriate formal training on those procedures, as well.

CFPB Management Response to Recommendation #4:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. CFPB has conducted a series of mandatory training sessions for all SEFL staff, including enforcement attorneys, regarding the new policy and the role of enforcement attorneys in CFPB's examination process. This training provides greater clarity with respect to the roles of examiners and enforcement attorneys. All SEFL staff, including enforcement attorneys, have been required to participate in this training and the CFPB is ensuring compliance with this requirement.

Pursuant to the newly effective policy, CFPB enforcement attorneys generally will no longer participate in on-site examination activities. In addition, the new policy improves procedures regarding communications between enforcement attorneys and examiners by providing for enforcement attorney consultation off-site with the Office of Supervision Policy on legal questions, rather than directly with examiners in the field. CFPB's new policy thus adequately addresses the reputational and other risks identified in the Evaluation Report.

Nevertheless, we are considering additional training to further educate enforcement attorneys regarding the examination process.

CFPB Management Response to Recommendations #5-6:

Recommendation #5: We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. The new CFPB policy limits the on-site involvement of enforcement attorneys during the course of a supervisory examination. Enforcement attorneys generally will not attend on-site examinations or obtain information directly from institutions as part of the supervisory process. Where CFPB has formally initiated an enforcement investigation, CFPB enforcement attorneys will exercise appropriate investigative authority to conduct the investigation.

Recommendation #6: We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its policy on enforcement attorney integration into examinations. Under the new CFPB policy, enforcement attorneys generally will not attend on-site examinations or obtain information directly from institutions under examination as part of the supervisory process. As a consequence, enforcement attorneys do not have on-site access to institutions' systems for the purpose of conducting examinations, thus generally eliminating the concerns raised under this recommendation. Where CFPB has formally initiated an enforcement investigation, CFPB enforcement attorneys will exercise appropriate investigative authority to conduct the investigation. As with all CFPB policies, we expect enforcement attorneys and all other CFPB staff to follow the new policy regarding enforcement attorney involvement on examinations, and we will conduct the appropriate level of management oversight to ensure compliance. The CFPB is also currently drafting additional operating procedures to implement the new policy. These operating procedures will contain appropriate monitoring and reporting

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requirements and other internal controls to facilitate the oversight of the effectiveness of the new policy.

CFPB Management Response to Recommendation #7:

We concur with this recommendation, and the CFPB is addressing the concerns raised in this recommendation through its new policy on enforcement attorney integration into examinations. The new CFPB policy defines the roles and responsibilities of the CFPB Office of Supervision Policy points of contact and enforcement attorneys with regard to addressing different types of legal questions from examination staff. The policy also defines roles and responsibilities for CFPB's Office of Fair Lending in resolving fair-lending-related legal questions that arise during examinations. The new CFPB policy requires the Office of Supervision Policy or the Office of Fair Lending to consult with other internal parties, including the CFPB's Legal Division, as appropriate.

Very truly yours,



Steven L. Antonakes
Deputy Director and Associate Director,
Supervision, Enforcement, and Fair Lending

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