

Version 2 – October 2012

# CFPB Supervision and Examination Manual

This examination manual provides internal guidance to supervisory staff of the CFPB. It does not bind the CFPB and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner. While every effort has been made to ensure accuracy, examination procedures should not be relied on as a legal reference.



Consumer Financial  
Protection Bureau

### Referral of Matters or Information to Other Agencies

#### *Criminal Activity*

In the course of their work, examiners may obtain evidence that a regulated entity or a customer has engaged in conduct that may constitute a violation of Federal criminal law. The CFPB is required by the Act<sup>21</sup> to refer such findings to the Department of Justice (DOJ) for further review and action. Examiners who, during the course of conducting their examination duties, believe they have found evidence of criminal conduct should consult internally to discuss their findings and the appropriate next steps. Headquarters will handle referral of appropriate matters to DOJ. Some examples of fact scenarios that may necessitate a referral to the DOJ include, but are not limited to, the following:

- Based on documented information that the examiner has obtained, a regulated entity's financial records are comprised of data that appear to be false.
- A regulated entity's records or files show that it has direct business relationships with individuals or businesses based in a country that is the target of one or more types of United States government sanctions. (See sanctioned country lists at [www.treasury.gov](http://www.treasury.gov) and [www.state.gov](http://www.state.gov).)
- A loan file or other type of file or record concerning a customer of a regulated entity contains one or more of the following documents that may indicate that the customer has engaged in potentially criminal conduct:
  - Bank statements that show that the customer has one or more bank accounts in a country that is a target of United States government sanctions. (See sanctioned country lists at [www.treasury.gov](http://www.treasury.gov) and [www.state.gov](http://www.state.gov).)
  - Based on documented information in a loan file, (1) a loan application appears to contain false information, (2) an appraisal for real property appears to contain false information, or (3) a document used to verify loan eligibility appears to contain false information. (Documents used to verify loan eligibility include but are not limited to bank statements, Forms 1099, Forms W-2, and/or federal income tax returns.)

#### *Tax Law Non-Compliance*

The CFPB is also required under the Act to refer information identifying possible tax law non-compliance to the Internal Revenue Service (IRS).<sup>22</sup> Examiners who, during the course of conducting their examination duties, believe they have found evidence of tax law non-compliance should consult internally about the appropriate next steps. Headquarters will handle referral of matters to the IRS.

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<sup>21</sup> See Sec. 1056

<sup>22</sup> See Secs. 1024(b)(6) and 1025(b)(5).

Some examples of fact scenarios that may necessitate a referral to the IRS include, but are not limited to, the following:

- **Based on documented information that the examiner has obtained, a regulated entity's tax returns are comprised of data that appear false.**
- A loan file or other type of file or record concerning a customer of a regulated entity contains one or more of the following documents that may indicate that the customer has failed to comply with the tax laws:
  - Documents used to verify loan eligibility that clearly document that the customer has substantially greater income than the income that the customer reported on Federal income tax returns. Documents used to verify loan eligibility include statements showing a customer's investment portfolio, bank statements, and/or Forms 1099.

### *ECOA/pattern or practice*

The Equal Credit Opportunity Act (ECOA) requires the CFPB to refer matters to DOJ whenever the CFPB "has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of Section 1691(a)" of ECOA, which states ECOA's basic prohibitions against discrimination.<sup>23</sup> In matters that do not involve a pattern or practice of discouragement or denial, the CFPB may refer the matter to the DOJ whenever the agency has reason to believe that one or more creditors has violated Section 1691(a).<sup>24</sup> Headquarters will handle referral of appropriate matters to DOJ.

### *Matters not within the CFPB's authority*

**When examiners find information that may indicate violations of law that are not within the CFPB's authority, the information will be passed on to the appropriate prudential, other Federal, or state regulator.** These situations will generally be handled by the Examiner in Charge, after consulting internally.

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<sup>23</sup> 15 U.S.C. § 1691e(g).

<sup>24</sup> *Id.*

Credit System institution; or federally insured credit union, including certain non-federally insured credit unions.<sup>8</sup>

*Employee* is not defined in the SAFE Act or SAFE Act regulation. However, the regulation's preamble explains that **the meaning of "employee" under the SAFE Act regulation is consistent with the common-law right-to-control test.** For example, the results of this test generally determine whether an institution files an Internal Revenue Service Form W-2 or Form 1099 for an individual.<sup>9</sup>

*Mortgage loan originator or MLO* means an individual who (1) takes a residential mortgage loan application *and* (2) offers or negotiates terms of a residential mortgage loan for compensation or gain. The term *mortgage loan originator* does not include:

- An individual who performs purely administrative or clerical tasks on behalf of an individual who is an MLO;
- An individual who only performs real estate brokerage activities (as defined in 12 U.S.C. Section 5102(3)(D)) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other MLO or by any agent of such lender, mortgage broker, or other MLO, and meets the MLO definition; or
- An individual or entity solely involved in extensions of credit related to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

Appendix A to the SAFE Act regulation provides examples of activities of taking a loan application and offering or negotiating loan terms that fall within or outside of the definition of MLOs for federal registration purposes.

*Registry* means the Nationwide Mortgage Licensing System and Registry, or NMLS system, developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed MLOs, and through which federal MLO registrations must be accomplished.<sup>10</sup>

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<sup>8</sup> 12 CFR Secs. 1007.101(c), 1007.102.

<sup>9</sup> See 75 Fed. Reg. at 44664 for a discussion of the meaning of "employee" as used in the SAFE Act regulation. Covered financial institutions that are credit unions sometimes rely upon volunteers to originate mortgage loans. **The right-to-control test under the common law agency doctrine likewise applies to these credit unions. Credit union management establishes the policies, procedures, and practices that volunteers use in performing their functions. Therefore, these volunteers qualify as employees of the covered financial institution for purposes of the SAFE Act regulation.**

<sup>10</sup> See the Nationwide Mortgage and Licensing System and Registry website at: <http://mortgage.nationwidelicencingsystem.org/fedreg/Pages/default.aspx>. System information on federal registration can be found under the Federal Registration tab at that site.