



SRA

RE-ENERGIZED BANK EXAMINATION: WHAT TO EXPECT

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During our session, I will note matters that should influence, or warrant that you **change**, your current Risk Assessment Process.

As we move through the slides, watch for: © RAP Notes

Bank Regulation: The Only Constant is Change

1975: Passage of HMDA

1977: CRA

1978: International Banking Act

1978: Financial Institutions Regulatory and Interest Rate Control Act

1980: Depository Institutions Deregulation and Monetary Control Act

1980's: Oil Price Collapse and S & L Crisis

1981: Tax Reform Act

1982: Garn-St Germain Act

1983: International Lending Supervision Act

1987: Competitive Equality Banking Act

1989: Financial Institutions Reform, Recovery, and Enforcement Act

1991: Federal Deposit Insurance Corporation Improvement Act

1994: Riegle-Neal Interstate Banking and Branching Efficiency

1996: Economic Growth and Regulatory Paperwork Reduction

1999: Gramm-Leach-Bliley Act

2001: International Money Laundering Abatement and Financial Anti-Terrorism Act

2001: Updating and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

2002: Sarbanes-Oxley Act

2003: FACTA

2003: Check 21 Act

2009: TARP

2010: Dodd Frank Act

2016: Trump Election

2020: COVID

2021: Biden Election

- 2016 Republican White House brought promise of “Regulator easing”
- Mick Mulvaney called CFPB a “joke” in “a sick, sad kind of way”
- President Trump appointed Mulvaney CFPB’s Acting Director
- ***NY Times Magazine*** devoted a feature article on Apr 16, 2019:

Mick Mulvaney’s Master Class in Destroying a Bureaucracy From Within

**MAKE
AMERICA
PAY
AGAIN!**

*Rates as high
as 950% APR!*

“Make America Pay Again”

*Rates as high as
950% APR!*

And to be sure, with Mulvaney ...

- ✓ **Deregulation Policy toned down**
- ✓ **Changes via EO and Agency Actions**
- ✓ **Consumer Protection Deemphasized**
- ✓ **Agency Staff Focused on Deregulation – Bank Powers**
- ✓ **CFPB active, but narrowed range of topics**
- ✓ **OCC made real, favorable changes (CRA, True Lender, Fintech, Sandbox)**
- ✓ **But not as *laissez-faire* as industry hoped. Mulvaney picked his spots.**
- ✓ **“Regulator easing” was at the edges, did not reach most of the industry.**
- ✓ **CFPB provided “uneven enforcement” of regulation affecting consumer financial products. Maybe that’s a victory?**
- ✓ **Minimal Banking Legislation**
- ✓ **Congressional Review Act**
- ✓ **Continued BSA and AML Focus**

Until the Pandemic, things were reasonably quiet

- Banks absorbed Dodd-Frank Era rules; Compliance and Risk Management Systems continued to evolve*
- Outliers were addressed (Wells Fargo) © RAP Notes
- 2016-2020 was not a vacation for the industry ... but in 2021 & 2022, the environment will get tougher.
- Bank Examination is driven, first, by Bank Examination materials themselves. In effect, it's an open book exam. But, with shifts in power in D.C., Bank Oversight Expectations change. And some of that change affects Bank Examination.

CFPB Acting Director's Report of Exam findings:

- Bank Examination during the pandemic revealed significant flaws.
- The most worrisome CFPB Examination findings were compiled as "Prioritized Assessments" in an early January edition of CFPB's *Supervisory Highlights*.
- The findings show material non-compliance, but also tone-deafness, in the face of the pandemic.
- Bear in mind, CFPB refers to banks as "*the companies responsible for COVID relief*." You can't win a debate that starts with those words.

Examples: CFPB's "Priority Assessments"

Mortgage Servicers:

- Gave consumers incomplete or inaccurate CARES Act forbearance information. © RAP Notes
- Failed to process forbearance requests. © RAP Notes
- Collected and assessed late fees, despite having approved forbearances. © RAP Notes
- Servicers withdrew money even though consumers were in deferment. © RAP Notes

Student Loan Servicer:

- Denied thousands of forbearance extensions because the holder of the loan never responded. © RAP Notes

Other Creditors:

- Misreported accounts to credit bureaus. © **RAP Notes**
- Violated CARES Act protections in the Fair Credit Reporting Act. © **RAP Notes**
- Set off stimulus payments and unemployment insurance benefits to cover bank fees and other debts. © **RAP Notes**
- Set policy to take PPP applications only from pre-existing customers, which at minimum is a potential disparate impact on minority-owned businesses.
© **RAP Notes**

What will drive the Oversight Agenda in 2021-2022?

1. The Pandemic and its Economic Impact
2. Fintech © RAP Notes
 - Creativity in Servicing: New ways to predict probability of repayment. © RAP Notes
***A.I. will improve credit risk assessment. What Regs are affected?
What assessment should you add or change?***
 - Creativity w/ Products: New ways to pay. © RAP Notes
***What payment service changes will you introduce or need to accept?
What Regs are affected? What assessment should you add or change?***
3. Fair Lending
4. Policy perspectives from Capital Hill
5. Enterprise Risk Management

CFPB Report of exam findings is bad:

- CFPB Examination findings during the pandemic were compiled as “Prioritized Assessments” in an early January edition of CFPB’s *Supervisory Highlights*.
- Findings show material non-compliance, but also tone-deafness in the face of the pandemic.
- As you review these findings, bear in mind, CFPB refers to banks as “*the companies responsible for COVID relief*.” You can’t win a debate that starts with those words.

CFPB's "Priority Assessments"

Examples?

Mortgage Servicers:

- Gave consumers incomplete and inaccurate information about CARES Act forbearance. © RAP Notes
- Failed to process forbearance requests. © RAP Notes
- Collected and late fees, despite having approved forbearances. © RAP Notes
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Student Loan Servicer:

- Denied thousands of forbearance extensions because the holder of the loan never responded. © RAP Notes

Creditors:

- Misreported accounts to credit bureaus. © RAP Notes
- Violated CARES Act protections added to the FCRA. © RAP Notes
- Set off stimulus payments and unemployment insurance benefits to cover bank fees and other debts. © RAP Notes
- Established policies to take PPP applications only from pre-existing customers, a potential disparate impact on minority-owned businesses. © RAP Notes

1. The Pandemic and its Economic Impact ...

- **Covid-19 pandemic was an unanticipated Black Swan Event**
- **Swift Reaction from Congress & Regulators– Stimulus, PPP, Rapid Forbearance** © RAP Notes
- **Banks generally “got it right”**
- **Potential negative impact to Consumers was dampened considerably**
- **Biden Election and Change in Administration**
- **Will customers recover income streams, resume paying loans?** © RAP Notes
- **If average credit scores are down due to extended unemployment or sickness, will you make fewer loans? More risky loans?** © RAP Notes
- **Will small business customers adjust and survive?** © RAP Notes

- **Cheaper, Faster, Better? Hard to ignore. With Artificial Intelligence, a Bank can:**
 - Find the best new client prospects
 - Deepen existing relationships
 - Make faster, better credit decisions for small and medium sized businesses
 - Value collateral for asset-based products
 - Help clients manage cash and liquidity
 - Warn of potential credit trouble in your loan book
- **Fintechs help banks use AI.** © RAP Notes But a bank pursuing AI advantages may need to change how it assesses compliance risk (Fair lending, safety and soundness, privacy, AML, info security).
- **Who can "Fintech?:"** *Legal design of fintech loan relationships is in flux.* © RAP Notes
State attorneys general ... federal regulators ... state and federal legislative bodies ...
ALL of them have views on bank partner relationships and renting-the-charter.

3. Fair Lending: *You should expect ...*

- **Scrutiny of the Bank's treatment of small businesses**, and of PPP loan fairness; and of Use of artificial intelligence; and of Racial equity. © RAP Notes
- **Effort to identify Abusive practices.** © RAP Notes
- **Use of broader types of examination data**, such as how the bank handles complaints *en masse*, and how the bank handles complaints in comparison, one to another. © RAP Notes
- Remember, **Fair Lending covers credit applications and accounts**. Consider your small business loan marketing, credit and collection activities. (Ex.: If you modify small business loans, be prepared for comparing how you treat modification requests across the board. © RAP Notes)

3. Fair Lending (continued): *You should expect ...*

- **Even Paycheck Protection Program (“PPP”) loans are fair game for examination (did PPP lenders cater to existing customers?).** © RAP Notes
- **Fair Lending will drive multiple regulatory oversight exercises in the next 4 years, directly, or by its connection to a subject such as use of artificial intelligence.** © RAP Notes
- **CFPB Acting Director has identified his 2021 priorities for the CFPB:**
 - 1. Relief for consumers in hardship due to COVID-19 & related economic crisis, and**
 - 2. Racial equity.**
- **Note, he did not say ECOA compliance. Or Community Reinvestment Act compliance. He said Racial Equity.** © RAP Notes
- **Some clues? Consider the Regulatory Request Letter scope you’ve seen in the past. How has it changed?** © RAP Notes **Watch for Racial Equity questions to delve into areas seemingly outside the scope you remember.** © RAP Notes **Bank purchasing? Bank employees? vendors? Bank access?**

4. Policy perspectives from Capital Hill ...

- **Fortify yourself.** Majority parties in the House, Senate and White House, all put pressure on banking regulators. Right now, with Democrats across the board, pressure on policy will be intense.
- **No Unforced Errors.** If you have direct mail loan marketing with Reg. Z errors, don't solicit Congressional staff. (Yeah, I had one of those.)

5. Enterprise Risk Management

- ***Simply: Is your bank both...***

- Assessing relevant risks thoughtfully and routinely, AND

- Including executive management and the bank's board in the process.

- **Risk Factors:**

- ✧ GOVERNANCE

- ✧ STRATEGY

- ✧ CREDIT

- ✧ FINANCE

- ✧ RISK

- ✧ PEOPLE

CFPB is planning for greater levels of activity. Consider the 900-page Report of their Taskforce on Federal Consumer Financial Law, recommending extensive legislative and regulatory reform.

Their proposed improvements to existing law and regulation are built on 5 principles:

1. Consumer protection
2. Information and education
3. Competition and innovation
4. Regulatory modernization and flexibility; and
5. Inclusion and access



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THANK YOU!

**Compliance Management:
Advisory Services**

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