# How to Ace Your CFPB Exam

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**Moderator**  
Alan S. Kaplinsky  
Practice Leader  
Consumer Financial Services  
215.864.8544  
kaplinsky@ballardspahr.com

**Panelists**  
Richard J. Andreano, Jr.  
Practice Leader  
Mortgage Banking  
202.661.2271  
andreanor@ballardspahr.com

John L. Culhane, Jr.  
Partner  
Consumer Financial Services  
215.864.8535  
culhane@ballardspahr.com

Mark J. Furletti  
Partner  
Consumer Financial Services  
215.864.8138  
furlettim@ballardspahr.com

Stefanie H. Jackman  
Partner  
Consumer Financial Services  
678.420.9490  
jackmans@ballardspahr.com

Bowen "Bo" Ranney  
Associate  
Consumer Financial Services  
646.346.8064  
raneyb@ballardspahr.com

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Overview

• CFPB Supervision objectives and culture
• Exam preparation: the basics
• FFIEC proposed changes to the consumer compliance rating system
• How consumer complaints are used by examiners
• Best practices for interacting with CFPB examiners
• Preliminary exam findings
• How to respond to PARR letters
• The exam is over: what can I say (and not say) about the results
CFPB Supervision objectives and culture

• Three principles guiding the CFPB supervisory process:
  - Focus on consumers
  - Data driven
  - Consistency

• Unlike enforcement context, exams not intended to be adversarial

• Akin to a 4th Line of Defense?
Exam Preparation: Background

- I’m new to CFPB exams. What will be the areas of focus?
  - They tell you

- Examination Manual, v. 2.0 (October 2012):
  - Base Manual and Updates are available on the CFPB’s website: http://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/
  - First item in Examination Procedures: Compliance Management System
  - Other items address specific topic areas, such as mortgage origination and servicing, UDAAP, and specific federal statutes

- “Guided by the Risk Assessment, every examination must include a review of compliance management, any potential unfair, deceptive, or abusive practices, and regulatory compliance matters presenting risks to consumers. Every examination of lending must also include a review for discrimination.”
Exam Prep: Compliance Management System

- How a supervised entity:
  - Establishes its compliance responsibilities
  - Communicates those responsibilities to employees
  - Ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes
  - Reviews operations to ensure responsibilities are carried out and legal requirements are met
  - Takes corrective action; updates tools, systems, materials as necessary

- Effective system commonly has 4 interdependent components:
  - Board and management oversight
  - Compliance program
  - Response to consumer complaints
  - Compliance audit

- Vendors must be covered, CFPB Bulletin 2012-03
Exam Prep: Consumer Compliance Ratings

• Current Rating System:
  - 1: Entity in a strong compliance position
  - 2: Entity in a generally strong compliance position
  - 3: Entity in a less than satisfactory compliance position
  - 4: Entity requires close supervisory attention and monitoring to promptly correct the serious compliance problems disclosed
  - 5: Entity in need of the strongest supervisory attention and monitoring

• With a rating of 3 to 5, a meeting with the board or principal(s) is required to convey the examination findings
  - Also required if informal supervisory agreement or formal enforcement action is recommended
Exam Preparation: The Basics

• Ensure you have a rigorous Compliance Management System that is supervised by an experienced, senior compliance officer

• Review policies and procedures for accuracy and completeness and to avoid any potential violations of law

• Review your actual practices to:
  - Confirm that they are consistent with the policies and procedures and applicable law
  - Identify any practices that may present systemic risks to consumers

• Have outside counsel vet the system and your practices
  - Include document/file review to get reaction as a means of insight into how the CFPB may view you
FFIEC proposed changes to rating system

- FFIEC proposal reflects change in supervisory focus
  - Prior focus on transaction testing (prudential regulators)
  - Current focus on compliance management system (CFPB and all others)
- Rating scale from 1 to 5 (composite rating only)
  - 1-2 satisfactory or better (strong, satisfactory)
  - 3-5 less than satisfactory (deficient, seriously deficient, critically deficient)
- Board and management oversight – assessment factors
  - Oversight and commitment
  - Change management
  - Comprehension, identification and management of risk
  - Self-identification and corrective action
FFIEC proposed changes to rating system

• Compliance management program – assessment factors
  - Policies and procedures
  - Training
  - Monitoring and/or audit
  - Consumer complaint response

• Violations of law and consumer harm – assessment factors
  - Root cause
  - Severity of violation
  - Duration
  - Pervasiveness

• Final rating balances effectiveness of CMS over all products
How complaints are used by examiners

- Exam prioritization
- CMS exams
- Targeted and horizontal exams
  - Qualitative and quantitative reports from Consumer Response on request
- Inform transaction testing sample selection
Interacting with CFPB examiners

• **Pre-exam** – limited (though responding to Information Request)
  - Designate exam liaison

• **On-site / during exam**
  - Substantive meetings / presentations
  - Be responsive to follow-up requests
  - Track questions and requests posed by exam team
  - Weekly status meetings
  - Visibility / role of CFPB enforcement attorneys and OSP contact
  - Exit meeting

• **Post-exam** – generally limited
  - Provide any lingering responses
  - Possible receipt of a PARR letter
Preliminary exam findings

• Addressing preliminary findings during the exam: How?
  - Ongoing dialogue with exam team
  - Weekly status meetings
  - Exit meeting

• Self-report or not?

• How the CFPB internally considers preliminary exam findings
How to respond to PARR letters

• Potential Action and Request for Response (PARR)
• Timeframe
• How presented
• Audience
  - Action Review Committee (ARC) (NOT the exam team)
• What to include
• Best arguments to make
  - Violation-focused, institution-focused, and policy-focused
    • Scope of harm, remediate, reliability of CMS
• Possible outcomes / likelihood of future CFPB interactions
• Best practices for mitigating risk of receiving a PARR letter
The exam is over: what can I say

(and not say) about the results . . .

• Cannot disclose Confidential Supervisory Information (CSI) except in limited circumstances

• Bulletin 2015-01 – CSI includes all of the following:

  - Reports of examination, inspection and visitation, non-public operating, condition and compliance reports, and any information contained in, derived from, or related to such reports;

  - Any documents, including reports of examination, prepared by, on behalf of, or for the use of the CFPB or any other federal, state, or foreign government agency in the exercise of supervisory authority over a financial institution, and any information derived from such documents;
• Bulletin 2015-01 (cont.)
  - Any communications between the CFPB and a regulated entity or a federal, state, or foreign government agency related to the CFPB’s supervision of the institution;
  - Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. § 5481, or is subject to the CFPB’s supervisory authority; and
  - Information that is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(8). 12 CFR § 1070.2(i)

• CSI does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess
The exam is over: what can I say

• So can I disclose...
  1. The fact that I had an exam?
  2. When the exam ended?
  3. The outcome of the exam?
  4. What was/was not covered?
  5. Subsequent enforcement or follow up activities?
  6. In later due diligence?

• To disclose CSI, need prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending
Thank you for joining us!

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Consumer Financial Services
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678.420.9490
jackmans@ballardspahr.com

Bowen "Bo" Ranney
Associate
Consumer Financial Services
646.346.8064
ranneyb@ballardspahr.com
Moderator – Alan S. Kaplinsky

Practice Leader of the Consumer Financial Services Group at Ballard Spahr

Devotes his practice to counseling financial institutions with respect to bank regulatory and transactional matters and defending them in individual and class action lawsuits (including CFPB investigations and government enforcement matters)

First President of the American College of Consumer Financial Services Lawyers

Former Chair of the American Bar Association Committee on Consumer Financial Services of the Business Law Section

Co-Chair of the Practising Law Institute's Annual Consumer Financial Services Institute, now on its 21st year

Has been named as a tier one banking and consumer financial services lawyer in the 2006 through 2015 editions of *Chambers USA*

Has been named in *The Best Lawyers in America* under financial services regulation law and banking and finance litigation from 2007 to 2015

Member of the Bloomberg BNA Banking Report Advisory Board

Recipient of the National Law Journal's 2015 Litigation Trailblazers Award for pioneering the use of class action waivers in consumer arbitration provisions
Panelist – Richard J. Andreano, Jr.

- Practice Leader of the Mortgage Banking Group at Ballard Spahr
- Advises banks, lenders, brokers, home builders, title companies, real estate professionals, and other settlement providers on regulatory compliance and transactional matters, Federal Housing Administration (FHA) issues, and administrative enforcement actions and investigations
- Counsels settlement service providers on issues concerning the Dodd-Frank Wall Street Reform and Consumer Protection Act, Real Estate Settlement Procedures Act (RESPA), Truth in Lending Act (TILA), TILA-RESPA Integrated Disclosure (TRID) Rule, Equal Credit Opportunity Act (ECOA), Fair Housing Act, Fair Credit Reporting Act (including FACTA), Home Mortgage Disclosure Act (HMDA), and Gramm-Leach-Bliley Act
- Assists clients with preparing for and handling CFPB examinations and with a variety of regulatory issues
Panelist – John L. Culhane, Jr.

- Partner at Ballard Spahr and a member of the firm’s Consumer Financial Services, Mortgage Banking, Bank Regulation and Supervision, Higher Education, and Privacy and Data Security Groups as well as its Fair Lending Task Force, TCPA Task Force, and the Military Lending Act Task Force

- Compliance practice emphasizes counseling clients on the development and implementation of innovative loan, leasing, and payment programs, and includes counseling on fair lending, servicing and collection issues

- Regulatory practice includes preparing clients for banking agency and CFPB targeted fair lending and full spectrum compliance examinations as well as assisting in the defense of consumer class actions, attorney general investigations, and agency enforcement actions

- Recognized as a top consumer financial services lawyer by Chambers USA, 2015

- Charter member of the American College of Consumer Financial Services Lawyers

- Former Chair of the Subcommittee on Fair Lending of the ABA Committee on Consumer Financial Services
Panelist – Mark J. Furletti

- Partner at Ballard Spahr and a member of the firm’s Consumer Financial Services Group
- Focuses on federal and state consumer lending and payments laws, including those that apply to payment cards, vehicle-secured loans, unsecured loans, and deposit products
- Counsels providers of consumer financial services, including banks, on regulatory compliance matters and has successfully represented such providers in class action litigation
- Recognized as a banking and finance “Up and Coming“ lawyer by Chambers USA, 2015
- Serves as the chair of the Firm’s TCPA Task Force and as co-chair of the Electronic Financial Services Subcommittee of the American Bar Association’s Consumer Financial Services Committee
- Vice Chair of the American Bar Association's Electronic Financial Services Subcommittee, 2012-2015
Panelist – Stefanie H. Jackman

- Partner in the Consumer Financial Services, Mortgage Banking, and Commercial Litigation Groups at Ballard Spahr
- Focuses primarily on complex litigation in the area of consumer financial services and financial institutions law
- Regularly defends financial institutions in connection with responding to Civil Investigative Demands from the CFPB
- Handles individual and class action litigation issues arising under an array of consumer financial laws including UDAAP, RESPA, TILA, FDCPA, FCRA, credit card, state UDAP, and payments-related litigation
- Advises various banks and non-bank creditors and their third party vendors on compliance with state and federal collections laws
- Experience developing Compliance Management Systems for a variety of clients in the collections, medical, auto, and installment lending industries
- Member of Ballard Spahr’s Collection Documentation, Marketplace Lending, and Fair Lending Task Forces
Panelist – Bowen "Bo" Ranney

- Associate in the Consumer Financial Services and Mortgage Banking Groups at Ballard Spahr
- Practice focuses on assisting clients with the implementation of compliance systems, preparation for CFPB exams, and the handling of CFPB and other agency exams, civil investigations, and enforcement proceedings
- Regularly defends financial institutions in connection with responding to PARR letters from the CFPB
- Additionally advises on compliance with the full range of federal and state consumer financial services laws, including the various laws enumerated by the Dodd-Frank Act; prohibitions against unfair, deceptive, and abusive acts and practices; and usury, licensing, and privacy laws
- Previously a Presidential Management Fellow and later an Examiner with the CFPB, Mr. Ranney worked in both supervision, where he served as EIC and in other leadership positions on examinations, and in enforcement, where he played a key role on the team that filed the CFPB’s first application for a temporary restraining order