

SMAART Bureau Supervision: Version 1 and Counting

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The Bureau of Consumer Financial Protection's release of its Supervisory and Examination Manual Version 1.0 is clearly a work in progress. As with any new software there will be balky code amidst its hundreds of pages — your numbers may vary with your printer settings. I've puzzled over some choice of language, some policy and legal premises and more than a few assertions of supervisory expectations, but those are not the point of this column. After all CFPB admits the iterative nature of the document and invites feedback. ABA will take them up on that invitation more directly.

What is most important to recognize about the CFPB Manual Version 1.0 is it fundamentally echoes the same compliance risk management approach embodied in the existing prudential regulators' compliance procedures — down to the explicit adoption of the FFIEC rating system. The compliance risk management elements articulated by the Bureau correlate to banking agency standards that have been described in various forms and acronyms in the past:

- **A**ccountability to board and management oversight
- **I**mplementation of a **S**ystem of policies and procedures
- **T**raining
- **M**onitoring and corrective action
- **R**esponse to consumer complaints
- **C**ompliance performance **A**udit

are an acronym for SMAART compliance programs.

Moreover, delivering compliant transactions everyday supported by a self-identifying and self-correcting process managed by professionally competent staff is the standard banks have met for decades. It is just this type of accountable compliance management that we look forward to having non-banks implement and compete under.

Some commenters will pick on the recasting of compliance risk as “risk to consumers,” as well as the apparent elevation of UDAAP and fair lending reviews as worrisome, if not threatening — and burdensome, if not chilling. Certainly we would all benefit by a clear articulation of expectations and going forward we should monitor how the application of these changes impact banks' abilities to serve customers and communities with the full breadth of products and choices they demand. However, we should not react to the new manual (or any creep it portends for prudential regulator examination) defensively.

Given the historically low incidence of material UDAAP or fair lending violations (evident in less than 1% of examinations), the Bureau and its sister regulators should avoid imposing a new superstructure of controls on the day-to-day ethical behavior of bank employees where no substantial risk of bad practices and no substantive harm to customers are likely. As a data-driven agency, the Bureau should consider the sound record of bank performance as a strong indicator that bankers are not the real source of UDAAP or fair lending risk to consumers.

As President Obama said upon signing the Dodd-Frank Act “when there are clear rules and basic safeguards...it is more profitable to play by the rules than to game the system.” Banks are prepared to abide by such clear rules and to deliver such basic safeguards as trusted providers for responsible customers. As the President said, “that's what these [DFA] reforms are designed to achieve — no more, no less.” So it should be the goal of the Bureau's manual to examine for adherence to such clear rules and basic safeguards — no more, no less — by both banks and our non-bank competitors.