

**MULTI-STATE
DEBT COLLECTION
EXAMINATION MANUAL**

Objectives of Manual

The objectives of this manual are to:

- Provide a uniform examination guide and procedures for joint state debt collection examinations;
- Provide a resource that is flexible to enhance the consistency of joint debt collection examinations;

Expectations of Debt Collection Examiner

- Every deficiency or violation cited in the examination should be supported with documentation for the examination workprogram.
- Each examiner and the EIC have the responsibility to write clear, concise and comprehensive examination comments that cite appropriate state and federal laws and are free of grammatical and spelling errors.
- Examiners should have a working knowledge of The Fair Debt Collection Practices Act (FDCPA) and the FTC Commentary on the FDCPA.

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Trust Account Examination Procedures

Most states require that a licensee maintain a trust account if a collection agency receives or holds funds belonging to another as well as a separate business (operating) account.

The examination of the trust account requires focused attention. It is critical that the licensee manages the trust account properly. The operating account should also be reviewed from the prospective that if the account is mismanaged, the business itself, or the trust account, could be compromised.

Examiners should determine the following:

1) Is the Trust Account used only for payments to creditor clients and other appropriate transactions and are only debtor payments deposited?

- Only collected debtor payments should be deposited to the trust account. Deposits from other sources should be reviewed as to purpose by the examiner.
- Disbursements from the account should be limited to:
 - a) Payments to creditor clients,
 - b) Transfers of the licensee's share of collections to the operating account, and
 - c) Account maintenance charges -the trust account must be reimbursed for maintenance charges from the operating account, or accounted for by reducing the licensee's share of collections.
- The examiner should identify any other disbursements and proceed accordingly

2) Trust Checks Cleared the Bank in a Timely manner?

- Generally, trust checks should clear within two trust remittance cycles of their issue.
- Locate the licensee's internal check register – electronic or paper.
- Review the check register for the past twelve months and verify that no trust account check numbers are missing or unaccounted for.
- Visually scan the check listing and note any checks issued to questionable payees; verify that the payees are in fact clients (licensees are asked to provide a client list in the Information Request.).
- Locate the listing of outstanding trust checks included with the most recent account reconciliation.

- If a total dollar amount and number of outstanding checks has not been provided, calculate these totals.
- Tabulate the number and dollar amount of outstanding checks that are from:
 - a) the two most recent trust disbursements,
 - b) other checks outstanding for a year or less
 - c) checks that are over one year outstanding. Note conspicuous amounts, repetitions, and age of checks
- Refer to the information compiled above to discuss the licensee's policy for following up on outstanding checks with management.

3) *Is the trust account being reconciled monthly and current?*

- Examine the reconciliation process
- Prove the arithmetic
 - Verify that the deposit total on the reconciliation compares with the deposit total on the respective bank statement. Compare the dollar amount of checks issued for the period with the amount deposited for the period. The amounts should be more or less equal, taking transactions in transit into consideration. If the cleared check total amount seems unusually less than the deposit total, it may be that the licensee is leaving a "cushion" in the trust account by not transferring its entire share.
 - If deposits are listed in the reconciliation as being in transit, verify that they appear as deposits on the ensuing month's bank statement. Generally, they should be the first deposits to post on that statement. If they are not posted as expected, confirm each listed deposit and its source. This information is normally recorded in the reconciliation detail report generated by the accounting software. If the reconciliation is done by hand, ask the licensee to identify the deposit and explain why it did not clear in the ensuing period. Do not assume an uncleared deposit exists because it is listed on the reconciliation.
 - Investigate any uncleared deposit that is carried from one statement to another as outstanding. At times, correcting entries are carried as deposits in transit when they are actually general ledger corrections to the trust account. Such entries will overstate the balance and may obscure an "out of trust" condition.

Outstanding Checks

The outstanding checks listing can reveal mismanagement of the trust account. It is simply to surreptitiously report a check as issued in the trust register. Do not conclude without basis that a check has been issued, or if issued, that it has been delivered if it is listed in the licensee's check register. As mentioned earlier, expect trust checks to clear within two bank statements following issue. Be inquisitive if more than 10% have not

cleared during that period. From the bank statements, note checks that clear far out of sequence. Gather client contact information on clients that have not negotiated two or more remittance checks for follow up.

An out of trust condition may exist if the total dollar amount of outstanding trust checks prior to the current trust run exceeds the trust account balance per the licensee's trust account register on the same day, assuming the register is current. If the register is being properly maintained, the register account balance will be negative in such a situation. The bank statement is of no value in making this determination as it does not account for uncleared transactions. If during an examination it is determined the licensee has been out of trust resulting from anything but a clerical error, the EIC should be notified immediately and the examiner and EIC should seek instructions from a supervisor as to how to handle this situation. If the shortage is determined to have resulted from a clerical error and was quickly resolved, the examiner can address the issue in the closing interview and in the examination report.

Break down and record the outstanding trust checks following the Trust Reconciliation Checklist. Note clients with multiple outstanding checks. Question the licensee to determine if it is in contact with the client and what process it uses to follow up on outstanding trust checks. Some states recommend that outstanding checks be followed up, at a minimum, every three months to verify that its client contact information remains viable and that the payment was actually received. Lost trust checks should be voided and reissued. If the client's payment is returned for lack of valid address, the licensee should make a valid effort to locate the client and redeliver the payment. The examiner should review the unclaimed property procedures of the licensee to ascertain if licensee is submitting as required by state(s) law. The licensee has no ownership rights the money held in trust and it is prudent to eliminate the liability in a timely manner.

Cancelled and Voided Checks

Keeping cancelled & voided checks or copies on file is not specifically required under most state laws, but licensees are required to preserve all records related to its collection activities for a period of six years after the final disposition of the account. **This time frame requirement may differ by state. For the purpose of the multistate examination, use the retention law which is most stringent.** It is also considered a generally accepted accounting practice and therefore state laws covering GAAP accounting or record keeping could be applicable. In practice, a licensee could obtain copies of all transactions on its account from its bank. Many financial institutions provide online visual access to accounts. The drawback to electronic records is that voided checks are not accounted for unless the item itself is retained. Voided checks are necessary to maintain account integrity. Another possibility is that all aspects of trust management might be handled electronically and the only trust records immediately available are digital.

If check image records are not available, the examiner should request copies of any checks or deposit records believed necessary to complete a sound examination.

Bank Account Balance Review

The bank reconciliation establishes the true account position, providing it has been correctly completed. Examiners should review bank statements from the trust and operating accounts for the previous 12 months. The daily bank balance of the trust should never be negative. Unless it is the result of a bona fide error such as a misposting, a negative balance represents an out of trust condition.

If the licensee is keeping its records in the required manner, a negative balance on its bank statement would also be reflected in its internal bank ledger, or register. It may be necessary to go back several bank cycles to document the account status. Recognize that there will be outstanding checks on the account at any time. If the bank statement shows a negative balance, that balance is actually understated by the amount of outstanding checks. Examiners should seek direction from a supervisor if an unexplainable negative trust balance is discovered.

Licensees may maintain several trust accounts to facilitate incoming collections from different sources, such as ACH transfers, electronic checks, debit/credit card payments, or accounts dedicated to individual clients. In order to determine a true trust balance at a point in time, the balances of all trust accounts must be considered. Large volume licensees may manage all collections, trust payments, and other handlings of trust funds electronically, which will present a challenge while tracking payments.

Ideally, all collected funds should be deposited to a trust account. However, an examiner may encounter situations wherein licensees use peripheral accounts to accept debtor payments. Electronic payment processing providers characteristically withhold final remittances to payees until the transactions are verified as cleared. In order to avoid continual adjusting entries to the trust account, licensees may use a transitional account to accept the conditional payments, but make transfers to the trust account only after clearing is verified. This is an acceptable practice but requires that the examiner verify that funds credited to holding accounts are accurately transferred to the trust account and properly distributed.

Operating Accounts

As stated earlier, examiners should review the operating account for transactions that suggest that the licensee may be having financial difficulty:

- Frequent overdrafts
- Minimal balances
- Company money used for personal expenses
- Account not reconciled in a timely manner
- Deposits from sources other than transfers from trust

Examiners are required to complete the attached module [\(insert hyperlink to module\)](#) and submit a copy to the EIC and retain a copy for their workpapers. Examiners are responsible for compiling a comment for the report based on their review and findings. See report comment instructions [\(insert hyperlink to page\)](#).

Payment Tracing / Transaction Testing

This section of the manual address how consumers' payments are processed and remitted to the creditor in accordance with applicable state specific laws, as well as how payments are applied to consumers' accounts and other account maintenance issues, including those with electronic funds transfers.

Examiners should review policies and procedures regarding fees, payment allocation and processing to assess whether they are adequate to ensure compliance with all state and federal laws.

Procedures for payment tracing:

- 1) Obtain the daily records of consumer debtor payments for the review period. This information should be submitted by the licensee as part of the response to the Information Request.
- 2) From the daily records provided, choose a sample of debtor payments to trace from receipt to remittance by:
 - a) Obtaining and reviewing client trust account deposit records and banking statements to confirm debtor payments are deposited into the account as required by various state regulations.
 - b) Obtaining and reviewing client trust account banking statements and client remittance statements to confirm debtor payments are remitted to clients as required by various state regulations.
 - c) Obtaining and reviewing client trust account banking statements to confirm agency income is transferred to agency operations account as required by various state regulations.
 - d) Obtaining and reviewing client trust account banking statements to confirm debtor payments are not used in agency operations per various state regulations.

To verify a-d above, provide the list of debtors payments selected and request from the licensee the following information for each payment selected:

- e) Deposit record or credit card posting - payment and total deposit amount
- f) Bank statement reflecting the deposit
- g) Debtor account record - showing the individual payment posting
- h) Remittance statement - reflecting the individual payment
- i) Check register - reflecting the applicable remittance statement
- j) Bank statement - reflecting the applicable cleared remittance check

- k) Original contract/ documentation of the applicable debt – if any charges or interest are being added to the amount of the debt, this information will support such charges or interest to the debtor’s legal obligation
- l) Please highlight each to show the individual item referenced

IMPORTANT

Make sure the listing of debtor payments includes a sampling from each state participating in the examination. A selection of approximately 25-30 payments per participating state should be sufficient to test for compliance. If any issues are noted, expand your sample.

Procedures for transaction testing:

- 1) Using the same information received in item #1, select 25 debtors from each of the participating states and request provide the list to the licensee, requesting debtor payment histories for each debtor. Once obtained, confirm the following:
 - a) Debtor payments are timely and accurately posted to account balance;
 - b) All debtor payments are applied as instructed and where no instruction is given, applied only to undisputed debts;
 - c) Unauthorized charges are not added or included in the amount of the original claim provided by the client (including interest, late fees, service charges, collection charges, etc.);
 - d) If interest or other charges are added, verify the original agreement between the debtor and creditor legally allow for the addition of such charges per FDCPA and state specific regulations.
 - e) Post dated checks, continuing ACH and credit card debtor payments are handled as required (notifications per statute).
 - f) Recurring debit card transactions are being processed according to Reg E.

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Financial Review Examination Procedures

The financial condition of a debt collection agency is critical to meet its obligations to creditors and ability to operate in a safe sound manner. Management should have the financial accounting systems, procedures, policies and internal controls to ensure the preparation of accurate financial statements and financial reporting according to U.S. Generally Accepted Accounting Principles and regulatory requirements.

Examiners should review the following:

Audited Financial Statements:

- Review audited financial statements received as part of the initial Information Request.
- Review opinion letter to determine if it has qualifications (i.e., on-going concerns).
- Review auditor's management letter and follow-up on status.
- Review notes to financial statements for changes in accounting policies, year-end audit adjustments, significant developments in company in procedure and other information. Note any significant items in relation to size of company. Review with management any material occurrence since the "as of" date of the examination and material changes in financial statements that would have adverse effect upon capital, assets, management, earnings or liquidity.
- Compute licensee's net worth. Check with participating states to see if there are specific net worth requirements per state law.
- Determine date audited financial statements received by state and if late per state law/regulation. (Some states require submission of audited financials by a certain date. Find out if a participating state has this requirement.)

Audit Firm:

- Determine auditing firm
- Determine if firm was changed within the last year (May indicate issues if firm has been recently changed or changed multiple times over last several years)

Interim Financial Statements:

- Review interim financial statements provided with Information Request.
- Ensure trust account balances are listed on balance sheet.

- Confirm trust account balances on financial statements tie to total trust account balances per bank records

Net Worth:

- Examiners need to evaluate for compliance with specific state regulations regarding net worth requirements.

Net Working Capital:

- Wisconsin has a requirement for minimum net working capital

Other:

- Obtain and review the Unclaimed Property Reports filed by the licensee as required. Obtain and review unclaimed property policies and procedures to determine if adequate.

Compliance with generally accepted accounting principles (GAAP)

It is unlikely that an examiner will have the background to authenticate GAAP. However, with an understanding of basic financial accounting, an examiner should be able to identify record keeping issues, financial and otherwise, that might contribute to a less than accurate picture of the Licensee's compliancy. The intent of this check point is that the examiner should note any concern that the licensee's financial or documentary records misrepresent actual conditions. Any issues noted should be reviewed in greater depth, documented, and included in the examination report either in the narrative, or as a general or regulatory finding. In extreme instances where time appears to be of the essence, the field examiner should discuss the issue with a supervisor.

Examiners are required to complete the attached module [\(insert hyperlink to module\)](#) and submit a copy to the EIC and retain a copy for their workpapers. Examiners are responsible for compiling a comment for the report based on their review and findings. See report comment instructions [\(insert hyperlink to page\)](#).

Communications in Connection with Debt Collection

The following procedures will address FDCPA and UDAAP issues that may arise when entities communicate with consumers or third parties as part of their debt collection activities.

In assessing an entity's communications, examiners should consider documents and recordings, including hard copies or electronic copies of letters, voice recordings of telephone communications, and notes made during or after telephone calls or personal visits. Examiners should review a sample of written records and listen to a sample of collection calls as well as listen to live collector calls.

The procedures regarding communications in connection with debt collection are separated into the following subcategories:

- Call Review
- Collection Letter Review
- Collector Note Review

Collection Call Review

This section is focused on a licensee's internal practices with respect to individual state regulations and the FDCPA. Some state laws mirror the FDCPA. FDCPA regulations address communications and practices more specifically. Examiners should review the FDCPA and the FDCPA Commentary for content.

When conducting an examination, examiners should be attuned to licensee conversations with debtors, or attempts to contact debtors, to help assess communication compliancy. When the examiner is sitting in with a collector, the collector will no doubt attempt to conduct business in a compliant manner. "Eavesdropping" can help establish more typical practices.

Prior to performing side-by-side monitoring with a collector, familiarize yourself with the entity's procedure manual and any training information relating to collector calls to be able to determine a collector is in compliance with entity's own procedures. These manuals and training materials are requested with the initial Information Request.

Things to look for during live call review:

- Sit in with individual collectors, watch their methodology, question procedures and note any areas of concern.
- Note that proper disclosures are given in a timely manner (mini Miranda, etc)
- What, if any, messages are left on consumer voice mail and answering machines. FDCPA §§804,805. Addendum 2 includes commentary, opinion, and case reference on this topic. Become familiar with Addendum 2 in order to recognize potential violations and to be conversant with licensees on the topic.
- Listen to agent conversations for indications of harassing techniques or false or misleading representations. §§806,807 FDCPA.

Examples:

- Falsely represent the character, amount, or legal status of the debt, or of any services rendered, or compensation he or she may receive for collecting the debt.
- Falsely represent or imply that he or she is an attorney or that communications are from an attorney.
- Threaten to take any action which is not legal or intended.
- Falsely represent or imply that the consumer committed a crime or other conduct to disgrace the consumer.
- Communicate, or threaten to communicate, false credit information or information which should be known to be false, including not identifying disputed debts as such.
- Using any false representation or deceptive means to collect or attempt to collect a debt or to obtain information about a consumer.

- Ask a collector to walk you through the process of accepting a credit/debit card or other electronic payment. Ask where the consumer's card holder information is stored. Ask if the licensee accepts recurring debtor payments and if so, is a charge made automatically or is the debtor required to re-submit their card or account information. Follow this up before concluding the exam by asking management about its Payment Card Industry Data Security Standard (PCI DSS) compliance program. CHI data is also subject to provision of Federal Regulation P – CFR Title 16 Part 313 - Section 505(a)(7) of the Gramm-Leach-Bliley Act.
- Observe if any unfair practices are being used to attempt to collect a debt such as:
 - Collecting any fees or interest incidental to original obligation
 - Soliciting any postdated checks (some states prohibit this practice)
- Observe what procedures are taken by collector if consumer disputes debt during conversation
- Observe what procedures are taken by collector when consumer requests verification of debt
- Observe what procedures are taken when collector calls wrong number
- Observe what procedures are taken when collector is trying to locate a debtor through a third party
- Observe if collector communicates with third parties (spouse, employer etc)

Examiners are required to complete the attached module [\(insert hyperlink to module\)](#) and submit a copy to the EIC and retain a copy for their workpapers. Examiners are responsible for compiling a comment for the report based on their review and findings. See report comment instructions [\(insert hyperlink to page\)](#).

Collection Letter Review

Copies of all collection letters utilized by the entity are requested in the initial Information Request. The following review should be conducted to ensure compliance with all state and federal regulations for written communications regarding the collection of a debt.

1. Determine whether the debt collector discloses in its first written communication with the consumer that it is attempting to collect a debt and that any information obtained will be used for that purpose. If the initial communication is oral, determine whether the debt collector also discloses the same information in the initial oral communication. (15 U.S.C. 1692e(11)).
2. Determine whether the debt collector discloses in subsequent communications that the communication is from a debt collector. (15 U.S.C. 1692e(11)).
3. Determine whether the debt collector misrepresents its identity or authorization by:
 - a. Using any business, company, or organization name other than the true name of the debt collector's business, company, or organization (15 U.S.C. 1692e(14));
 - b. Misrepresenting that it is vouched for, bonded by, or affiliated with the United States or any State, including by using any badge, uniform, or facsimile thereof (15 U.S.C. 1692e(1));
 - c. Falsely representing or implying that an individual debt collector is an attorney or that any communication is from an attorney (15 U.S.C. 1692e(3));
 - d. Falsely representing or implying that it operates or is employed by a consumer reporting agency (15 U.S.C. 1692e(16));
 - e. Using or distributing any written communication that creates a false impression as to its source, authorization, or approval, or that simulates or is falsely represented to be a government document (15 U.S.C. 1692e(9)); or
 - f. Using any forms that falsely imply that someone other than the creditor is participating in the collection activities. If so, determine the source of the forms. (15 U.S.C. 1692j).
5. Determine whether the debt collector makes any false representations regarding the nature of the communications, for example by:
 - a. Falsely representing or implying that documents are legal process (15 U.S.C. 1692e(13)); or
 - b. Falsely representing that documents are not legal process forms, or that documents do not require action by the consumer (15 U.S.C. 1692e(15)).
6. Determine whether the debt collector sends postcards to communicate with the consumer regarding a debt. (15 U.S.C. 1692f(7)).
7. Determine whether the debt collector refrains from using any language or symbols on

envelopes, other than its address and its business name, when communicating with consumers by mail or telegram. If it uses its business name on envelopes, determine whether the name indicates that it is in the debt collection business. (15 U.S.C. 1692f(8)).

8. Determine whether the debt collector causes any person to incur charges for communications by concealing the true purpose of the communications (e.g., by making collect calls or sending telegrams). (15 U.S.C. 1692f(5)).

Some common exceptions found during the collection letter review

- The letterhead does not reflect the name provided in the application. Most states prohibit any entities from conducting business under any other name or at any other place of business than that named in the license.
- The address provided in the letters is not the same as the address provided on the application.
- Collection letters submitted are not identified by number or title. (CT requirement)
- The initial collection letter does not include all information required to be disclosed by some state regulations which require that a debt collector provide the following information in the initial communication with the consumer or within five days after the initial communication has been made:
 - (A) The amount of the debt; (B) The name of the creditor to whom the debt is owed; (C) A statement that unless the consumer debtor, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the consumer collection agency; (D) A statement that if the consumer debtor notifies the consumer collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the consumer collection agency will obtain verification of the debt or a copy of a judgment against the consumer debtor and a copy of such verification or judgment will be mailed to the consumer debtor by the consumer collection agency; and (E) A statement that, upon the consumer debtor's written request within the thirty-day period, the consumer collection agency will provide the consumer debtor with the name and address of the original creditor, if different from the current creditor.
- Subsequent collection letters do not specifically state **this communication is from a debt collector** as required by Section 807(11) of the Fair Debt Collection Practices Act.
- Subsequent collection letters do not specifically state the communication is **an attempt to collect a debt and any information obtained will be used for that purpose** as required by Section 807(11) of the Fair Debt Collections Practices Act
- Collection letters indicate interest will be included in the balance collected. Some states prohibit the adding of a charge or fee to the amount of the claim received for collection unless the consumer debtor is legally liable.

- Collection letters indicate fees will be imposed for credit card, pay-by-phone and/or payments arranged by the applicant through Western Union. **However**, some states prohibit the charging of a convenience fee.
- Collection letters making reference to improving credit scores, etc. This may be construed as a deceptive act.

Examiners are required to complete the attached module [\(insert hyperlink to module\)](#) and submit a copy to the EIC and retain a copy for their workpapers. Examiners are responsible for compiling a comment for the report based on their review and findings. See report comment instructions [\(insert hyperlink to page\)](#).

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Collection Note Review

This section focuses on a licensee's internal practices with respect to documenting all collection activity. Collection notes should have enough detail to determine what happened during the call and are a good place to determine adherence with state and federal regulations.

Prior to the on-site portion of the examination:

The IR requests a listing of all debtor payments for the review period. Each participating state is required to make a selection of accounts (number determined by the EIC) and submit to the EIC. The EIC will then request printouts for each account selected be made available by the first day of the on-site examination.

Examiners should obtain the following prior to the start of the review:

- The listing of the debtor accounts selected by each participating state to ensure all accounts requested are provided. These selections are made prior to the on-site visit and should be available the first day of the on-site examination.
- Make sure to review non-payment accounts as well as active payment accounts.
- The list of transaction codes for each collection system used by the entity. This is usually requested with the initial IR.
- Poll the participating states for any state specific requirement. (Refer to Collection Note Review module) **Remember you will be reviewing the collection notes for all participating states, not just your state.**
- Find out what time zone the collector notes are recorded in. This is important when reviewing notes to determine if calls are made during the allowable time period of 8 am -9 pm debtor's local time.
- A listing of the collection letters. This will be helpful in determining when particular letters are sent to the consumers. This listing should be submitted with the initial IR response.

Things to look for during the review:

- Notes should have date, time, collector name, name of person collector spoke with and description of what took place.
- When is the initial collection letter being sent?
- Notes should indicate if required disclosures were given.

- If you see a payment plan being set up, do you see the postdated check notices being sent and are they sent during the required time frame?
- Keep an eye out for any notations regarding fees. This is a good place to determine if convenience fees are being charged but not reported in the initial IR.
- You may see something in the notes where you may need to request the collection call recording to get clarification on what happened during the call. Note the name, account number, date and time of call and submit the request to the EIC.
- Determine if collector communicates with third parties to obtain location information which is defined as consumer's home address and telephone number or place of employment. Determine if any third party is contacted more than once.
- If a notation is made that the debt is being disputed, pay attention to any further collection activity, or if/when verification of debt or any other documents are sent to consumer. Does the entity continue collecting? Is the account closed after consumer disputes a debt?

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Compliance Management System

This section of the Manual discusses the common elements of an effective consumer compliance management system: board of directors and management oversight, the compliance program (Policies and Procedures, Training, and Monitoring and Corrective Action) consumer complaint response, and compliance audit. A compliance management system is 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; and
- Takes corrective action and updates tools, systems, and materials as necessary.

An effective compliance management system commonly has four interdependent control components:

- Board and management oversight;
- Compliance program;
- Response to consumer complaints; and
- Compliance audit.

When all of these four control components are strong and well-coordinated, a licensed entity should be successful at managing its compliance responsibilities and risks.

The examination procedures for each of the components of CMS are listed below.

Board of Directors and Management Oversight **Examination Objectives and Procedures**

The board of directors is ultimately responsible for developing and administering a compliance management system that ensures compliance with state and Federal consumer debt collection laws and regulations and all other applicable laws and addresses and prevents associated risks of harm to consumers. In smaller entities, that ultimate responsibility may rest with a controlling person.

Because the effectiveness of a compliance management system is grounded in the actions taken by its board and senior management, examiners should seek to determine whether the board and senior management have:

1. Demonstrated clear expectations about compliance, not only within the entity, but also to service providers.
2. Adopted clear policy statements regarding consumer compliance.
3. Appointed an appropriately qualified and experienced chief compliance officer and provided for other compliance officers with authority and accountability. (In smaller or less complex entities where staffing is limited, a full-time compliance officer may not be necessary. However, management should have clear responsibility for compliance management and compliance staff should be assigned to carry out this function in a manner commensurate with the size of the entity and the nature and risks of its activities.)
4. Established a compliance function to set policies, procedures, and standards.
5. Allocated resources to the compliance function commensurate with the size and complexity of the entity's operations and practices, the Federal consumer financial laws and regulations to which the entity is subject, and necessary to avoid the potential consumer harm associated with violations of such laws and regulations.
6. Addressed consumer compliance issues and associated risks of harm to consumers throughout product development, marketing, and account administration, and through the entity's handling of consumer complaints and inquiries.
7. Required audit coverage of compliance matters and reviewed the results of periodic compliance audits.
8. Provided for recurring reports of compliance risks, issues, and resolution through a committee structure or to the board.

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Compliance Program

A sound compliance program is essential to the efficient and successful operation of the licensed entity, much as a business plan. A compliance program includes the following components:

- Policies and procedures;
- Training;
- Monitoring and corrective action.

A supervised entity should establish a formal, written compliance program, and that program generally should be administered by a chief compliance officer. In addition to being a planned and organized effort to guide the entity's compliance activities, a written program represents an essential source document that may serve as a training and reference tool for employees. A well planned, implemented, and maintained compliance program will prevent or reduce regulatory violations, protect consumers from non-compliance and associated harms, and help align business strategies with outcomes.

The examination objectives and procedures for the compliance program are divided in this section of the Manual among the three components of a program.

1) Policies and Procedures – Examination Objectives and Procedures

Compliance policies and procedures should be documented and in sufficient detail to implement the board-approved policy documents. Overall, examiners should seek to determine whether compliance policies and procedures:

1. Are consistent with board-approved policies.
2. Address compliance with applicable state and Federal consumer collection laws in a manner designed to prevent violations and to detect and prevent associated risks of harm to consumers.
3. Are maintained and modified to remain current and to serve as a reference for employees in their day-to-day activities.

Examiners should request and review compliance policies and procedures and discuss elements with compliance officers or other responsible officers and employees of the supervised entity, as outlined in the attached module. The module should be completed and retained as part of the examination workpapers.

INSERT MODULE

2) Training – Examination Objectives and Procedures

Education of an entity's board of directors, management, and staff is essential to maintaining an effective compliance program. Board members should receive sufficient information to enable them to understand the entity's responsibilities and the commensurate resource requirements. Management and staff should receive specific, comprehensive training that reinforces and helps implement written policies and procedures. Requirements for compliance with state and Federal consumer collection laws, including deceptive, and abusive acts and practices, should be incorporated into training for all relevant officers and employees, including audit personnel.

Examiners should seek to determine whether:

1. Compliance training is current, complete, directed to appropriate individuals based on their roles, effective, and commensurate with the size of the entity and nature and risks to consumers presented by its activities.
2. Training is consistent with policies and procedures and designed to reinforce those policies and procedures.
3. Compliance professionals have access to training that is necessary to administer a compliance program that is appropriate for that supervised entity and its business strategy and operations.

Examiners should request and review training records and interview management and staff as appropriate to evaluate this element of the compliance program. Examiners should complete the attached module and retain as part of the examination workpapers.

INSERT MODULE

3) Monitoring and Corrective Action – Examination Objectives and Procedures

Monitoring is a compliance program element that seeks, in an organized and risk-focused way, to identify procedural or training weaknesses in an effort to provide for a high level of compliance by promptly identifying and correcting weaknesses. Monitoring and testing is generally more frequent and less formal than compliance audit coverage and reporting, may be carried out by the business unit, and does not require the same level of independence from the business or compliance function that an audit program does.

Examiners should evaluate monitoring and audit programs to determine whether, considered together, they are adequate and comprehensive.

Examiners review of compliance monitoring and testing should determine whether:

1. Monitoring is scheduled and completed and leads to timely corrective actions where appropriate.
2. The supervised entity is determining that transactions and other consumer contacts are handled according to the entity's policies and procedures.
3. Monitoring and testing consider the results of risk assessments or other guides for prioritizing reviews.

4. Monitoring addresses deficiencies identified in internal or external audits, and the board's or management's directives on resolving the deficiencies.
5. Findings are escalated to management and to the board of directors if appropriate.

Examiners should review monitoring, testing, and corrective action reports; sample supporting documents; and interview appropriate personnel. Examiners should complete the attached module and retain as part of the examination workpapers.

Insert Module

Consumer Complaints Examination Objectives and Procedures

An effective compliance management system should ensure that a supervised entity is responsive and responsible in handling consumer complaints and inquiries. Intelligence gathered from consumer contacts should be organized, retained, and used as part of an institution's compliance management system.

Examiners will consider consumer complaints to determine whether:

1. Consumer complaints and inquiries, regardless of where submitted, are appropriately recorded and categorized.
2. Complaints and inquiries, whether regarding the entity or its service providers, are addressed and resolved promptly.
3. Complaints that raise legal issues involving potential consumer harm from unfair treatment or discrimination, or other regulatory compliance issues, are appropriately escalated.
4. Complaint data and individual cases drive adjustments to business practices as appropriate.
5. Consumer complaints result in retrospective corrective action to correct the effects of the supervised entity's actions when appropriate.
6. Weaknesses in the compliance management system exist, based on the nature or number of substantive complaints from consumers.

Examiners should review records, interview management, and contact consumers if needed to evaluate this consumer response component of the compliance management system. Examiners should complete the attached module and retain as part of the examination workpapers.

INSERT MODULE

Compliance Audit Examination Objectives and Procedures

Audit coverage of compliance matters is the fourth component of an effective compliance management system. The audit function should review an institution's compliance with Federal consumer financial laws and adherence to internal policies and procedures and be independent of both the compliance program and business functions that include customer sales or service. A compliance audit program provides a board of directors or its designated committees with a determination of whether policies and standards adopted by the board to guide risk management are being implemented to provide for the level of compliance and consumer protection established by the board. The audit should also identify any significant gaps in board policies and standards.

Examiners will seek to determine whether:

1. The audit program is sufficiently independent and reports to the board or a committee of the board.
2. The audit program addresses compliance with all applicable Federal consumer financial laws.
3. The schedule and coverage of audit activities is appropriate to the size of the entity, its consumer financial product offerings, and its manner of conducting its consumer financial products business.
4. All appropriate compliance and business unit managers receive copies of audit reports in a timely manner.
5. Audit results lead to appropriate, timely corrective action.

Examiners will review records of the compliance audit program and discuss the audit methods, results, and reporting with audit managers. Examiners should complete the attached module and retain as part of the examination workpapers.

Insert Module here