By Harlow T. Spaan
President
OnlineEd Inc.

Big or Small, Prepare for CFPB Audits

Make sure your operations meet regulatory requirements

Some mortgage brokers and originators may be operating under the theory that they are too small to attract regulators' attention.Although large companies may appear to be audited more frequently, particularly by the Consumer Financial Protection Bureau (CFPB), size alone isn't enough to keep smaller players off the radar of regulators.

In several notices, the CFPB has warned that it would audit mortgage companies regardless of their size. Although audits of bigger banks and mortgage-lending institutions may make headlines, the CFPB also has audited small and midsized businesses, which include sole practitioner brokers. This past May, for example, the CFPB fined a small Texas-based homebuilder more than $118,000 for violations of the Real Estate Settlement Procedures Act (RESPA), which involved illegal kickback allegations in return for referring clients to lenders. The homebuilder also was prohibited from engaging in future real estate settlement services, including mortgage origination.

This kind of punishment for RESPA violations is a cautionary tale, but it isn't unique. A cursory Internet search returns several cases of crackdowns on similar violations. The significant implication of this recent settlement by the CFPB is that the bureau is examining small-scale brokerage operations for issues that could exploit consumers. The days of counting on the small size of a business to provide anonymity are gone.

In addition to RESPA violations, the CFPB supervision and examination manual identifies numerous areas of audit concern. Two of these areas that often are ignored by small and midsized businesses are: compliance training and compliance-training tracking. Here is how the CFPB manual addresses these training-related issues.

Objectives

In preparing to meet CFPB requirements, mortgage originators should keep in mind that having appropriate training programs helps them build an effective compliance program. Staff should receive training that underscores and develops written policies and procedures. In addition, all executives, including audit personnel, should receive enough information to enable them to understand their responsibilities and obligations. Brokerages also should include requirements for conformation with federal laws, including prohibitions against unlawful discrimination and fraudulent practices. The CFPB manual lists these three objectives for training programs:

> "The days of counting on the small size of a business to provide anonymity are gone, at least as far as the CFPB is concerned."

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.

Procedures

To evaluate training-program compliance, CFPB examiners receive and review training records and interview management and staff. As per CFPB guidelines, examiners should follow nine steps that fully illustrate the procedures — from requesting and recovering training content, policies and materials to drawing preliminary conclusions about the strength, adequacy or weakness of training.

Being aware of these procedures can help mortgage companies be prepared for what CFPB examiners will look for in their reviews. Mortgage companies should have in place a training program that is appropriate for the market in which they operate. This training program should include the adoption of policies and procedures applicable to the business environment of the company. These policies and procedures should be understood and acknowledged by all employees and should be updated periodically. When updated, employees should be

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Harlow T. Spaan is president of OnlineEd Inc., an online provider of education for licensed professionals since 1999. He received his Juris Doctor from Willamette University, and his experience includes tax consulting, law practice, real estate brokerage and investment real estate, as well as founding a national home-inspection franchise. Spaan has led OnlineEd from its inception to becoming a leader in quality courses for the real estate and mortgage industries. Reach him at harlow@onlineed.com.

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informed and asked to acknowledge the changes, and employers should verify and track employee acknowledgement.

Environment

Training programs also should include specific and ongoing training relating to the direct environment in which companies operate. This past year, for example, the mortgage industry saw a rush to complete anti-money laundering training required under the Bank Secrecy Act and enforced by the Financial Crimes Enforcement Network.

Completing anti-money laundering training is a good start, but this specific training is only a small part of what the CFPB will look for in an examination. The overall picture is to have a training program that educates mortgage professionals, staff, management, directors and any other relevant personnel on consumer risk-reducing issues, along with providing training for all of the new rules and regulations enacted by the CFPB and other regulatory agencies. Training related to fair lending, RESPA, the Equal Credit Opportunity Act and other relevant laws is expected to be included, as well. In addition, if a company specializes in products such as Federal Housing Administration loans, then training on these products also should be considered.

Note that the CFPB requires companies to maintain records of completion for compliance-specific training, which means that companies should track all completed training. Compliance officers should be involved in selecting the training and should demonstrate the content of the training in the CFPB examination.

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Mortgage companies, regardless of size, should be ready for CFPB audits, and expect the bureau to scrutinize their policy and procedures, training, and records of compliance — among other broad areas. Although there are many third-party companies that can help you prepare for an audit, the best place to start is the CFPB supervision and examination manual at sctsm.in/CFPBexam. ●

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