

Six Simple Ways to Stay Out of Trouble with the CFPB

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The Consumer Financial Protection Bureau (CFPB) is just over a year old. After a few false starts, it is now fully engaged in a rule-making rampage. In addition to the prolific rule-making and guidance, this heavily funded federal agency is involved in aggressive investigations and enforcement.

Because these rules and investigations govern and influence financial transactions in the vacation ownership industry, ARDA and many of its members have been closely monitoring the changes proposed by the CFPB.

Outline a Strategy

Based on the past year, we have identified six simple ways to avoid unwanted attention from the CFPB.

1 Have adequate compliance management and complaint handling systems.

The CFPB accepts complaints through its Web site, by mail, fax, and a little-to-no wait call center. It is incredibly easy for consumers to file complaints with the CFPB, but typically, those complaints will come to you first. Having an adequate compliance management system and handing complaints effectively in-house goes a long way in avoiding scrutiny by this agency.

2 Oversee key service providers to minimize your potential liability.

The actions of your service providers could expose you, so you should be comfortable with their ability to comply with federal law. Review your contracts with

third-party service resources and ensure they are not creating risk for you.

3 Comply with substantive laws, such as prohibitions against unfair, deceptive, or abusive acts and practices (UDAAP).

Compliance with state timeshare regulations does not ensure compliance with UDAAP, which may have a different threshold for disclosure. Pay particular attention to compliance with UDAAP in connection with timeshare advertising and marketing.

4 Do not take the position that if a practice is not expressly prohibited, it is permitted.

Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial services or a service provider to engage in any unfair, deceptive, or abusive act or practice. What constitutes “unfair, deceptive or abusive acts or practices” is open to interpretation by the CFPB, and there is no safe harbor merely by refraining from activities that are expressly prohibited.

“What are the key rules to know?”

5 Avoid stonewalling the CFPB when it issues a civil investigative demand (CID) to your company.

A CID is a request for certain documents and information and answers to questions from the CFPB, and the scope of the CID can be very broad. There can be risks and benefits of challenging the CID, and it is important to weigh those risks and benefits with legal counsel. Stonewalling is not an effective strategy.

6 Pay attention to the Service members Civil Relief Act (SCRA), even though it may involve only a few of your customers.

The SCRA protects those who have recently been called to active duty or are preparing for a long-term deployment by (among other things) capping the interest rate

on servicemembers' debt obligations at 6 percent. While the segment of owners that may qualify for SCRA protection may be small, the Act has garnered significant media attention—making it higher priority for enforcement—and violations could lead to substantial civil money penalties.

Be Prepared

Developing best practices with your legal and financial professionals in advance of a CFPB complaint will help avoid future adverse consequences for your business.

The regulatory climate will continue to change, but the CFPB's overarching goal of promoting fairness and transparency for consumer financial products and services means that implementing these six suggestions will establish the groundwork for compliance, moving forward. These steps could help mitigate risk, so you don't

find your company unexpectedly in this agency's crosshairs. ■



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