



Internal Use Only

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SEFL Staff Memorandum 2016-03
Updates SEFL Staff Memorandum 2016-01

TO All SEFL Staff

FROM David Bleicken
Acting Associate Director – Supervision, Enforcement, and Fair Lending

SUBJECT SEFL Integration 3.3

Summary

This memorandum updates SEFL Integration 3.2 to reflect changes to the calculation of deadlines throughout the exam report process. As a result of these changes, all internal deadlines will be structured as business days rather than calendar days.

The effective date of SEFL Integration 3.3 is July 1, 2016.

Discussion

SEFL Integration 3.2 sets out a 54 calendar day timeline for “Full Track” reports and a 61 calendar day timeline for “Expedited Track” reports. The calendar day based approach can result in as little as 34 workdays for the completion of reports, depending on the amount of holidays and weekends that fall within the report period. This SEFL 3.3 revision converts internal deadlines to a business day based approach, which will bring consistency to the process, align deadlines with available work days to complete the task, and provide relief to certain “pain points” in the current process.

In addition to a direct translation of 30 calendar days to 20 business days and seven calendar days to five business days, these revisions also reallocate days from specific parts of the process that have historically taken less time to complete to other parts of the process that have proven to take more time. For example, less time is now allotted for final review

and issuance to the Prudential Regulator or entity. Instead, those days have been reallocated to steps earlier in the process, allowing more time for review and approval within the Regions for Expedited Track reports, and for HQ feedback during the Full Track process.

Staff Contacts

Any questions on SEFL Integration 3.3 should be addressed to:
Janani Yates, Lead for Business Analytics, SEFL Front Office and
Kerry Morse, Senior Program Manager, Office of Supervision. Examinations.

Attachments

Attachment 1: SEFL Integration 3.3
Attachment 2: SEFL Integration 3.3 - redline to 3.2

ATTACHMENT 1: SEFL INTEGRATION 3.3

Table of Contents

Part I: SEFL Coordination and Prioritization	2
Part II: Decision Rights in the Examination Process	6
Part III: The Role of Enforcement Attorneys in Examination Work	15
Part IV: Action Review Committee (ARC) Process	18
Part V: Compliance and Disposition of Required Actions	26
Appendix: ARC Factors for Evaluation	28

PART I: SEFL COORDINATION AND PRIORITIZATION

1. Scope

This policy outlines how Supervision Policy, Supervision Examinations, Enforcement, and Fair Lending (SEFL) will jointly coordinate its prioritization of examinations and investigations. The policy is written with the recognition that SEFL has finite resources with which to oversee financial institutions. Thus, it seeks to eliminate inefficiencies by clarifying the roles and equities of each Office¹, and creating substantial “free space” for each Office to operate. The policy builds on existing prioritization efforts occurring in each of the Offices, while also outlining new measures that will foster better integration and streamlined decision making. The policy consists of four parts: strategy, information sharing and scheduling, tool choice, and conflict resolution.

2. Strategy

The Offices will coordinate their overall strategies (Decision 0.1- see Playbook for detail), both among and within product markets, as they refresh them. This coordination will occur with annual re-setting, supplemented more frequently through periodic meetings, and will be enhanced by the information sharing described below. The Offices will share prospective resource allocations in various product markets, and resolve any disagreements in the course of regular discussions. SEFL will present each of its Office’s strategies to the Director.

For example, the Office of Supervision Examinations (OSE) will seek input from the Office of Supervision Policy (OSP), Enforcement (ENF) and Fair Lending (FL) on its assessment of market risk for each market, and on the resulting proportion of examination work devoted to that market. The FL and OSP Assistant Directors (ADs) for make the decision (Decision 0.2- see Playbook for detail) about specific examination priorities in their respective areas. Fair Lending Supervision’s assessment of risks will be used to determine the fair lending institution product lines (IPLs) selected for targeted fair lending reviews. Enforcement and Fair Lending Enforcement will also assess risk in each market. SEFL Offices will also seek input from all other CFPB Divisions as part of their ongoing risk assessments.

3. Information Sharing and Scheduling

- a. Offices will schedule examinations² and open research matters on the basis of their respective strategies. Additionally, Offices will coordinate in advance to harmonize their examination schedule and list of research matters. This coordination will generally occur on an IPL basis, although some matters may necessitate coordination focused on a specific practice or type of consumer harm. The FL and OSP ADs make decisions on examination/IPL priorities based on inputs captured through the process facilitated by OSE’s RAMPS team. SEFL will present each of the Office’s

¹ The Offices are the Offices of Supervision Policy, Supervision Examinations, Enforcement, and Fair Lending and Equal Opportunity.² For the purposes of this policy, “examination” means either an examination (resulting in a rating) or a target review, which does not.

² For the purposes of this policy, “examination” means either an examination (resulting in a rating) or a target review, which does not.

- strategies to the Director and ratification will occur per the conflict resolution guidance in Section 5.
- b. Annually, OSE will create an examination schedule for a 24-month period. The Regional Director (RD) will create a region-specific schedule (Decision 0.3- see Playbook for detail), and the Offices ADs ratify it. In the course of creating this schedule, OSE will consult with FL and ENF and consider their input, making modifications as appropriate.
 - c. Similarly, on no less than a monthly basis, OSE will share with FL and ENF an updated examination schedule, reflecting any changes that have occurred to the original 24-month schedule. FL and ENF have ratify rights for changes to scheduling.
 - d. On a monthly basis, ENF will share with relevant OSP, OSE, and FL Headquarters (HQ) staff a report of open research matters that includes relevant updates. This list will include research matters opened on behalf of FL. OSP will share this information with regional management, particularly as it relates to supervised institutions within their regions.
 - e. The Offices will also share with each other any risk information about specific institutions and IPLs, including any information relevant to examination scoping. This risk information may include field and market intelligence (FMI), complaints, civil litigation, tipsters and whistleblowers, and any other information that is gathered about institutions and IPLs on a regular or periodic basis. The Offices will be responsible for distributing the information within their respective office. This information will be utilized in the scoping of examinations and planning of investigations.

4. Tool Choice

Given the significant amount of compliance oversight work to be done, and SEFL's finite resources, it is essential for Supervision and Enforcement to each have substantial "free space" in which to operate while ensuring collaboration. Accordingly, the following parameters will apply when any SEFL office identifies a matter that requires oversight attention and a tool choice is required:

- a. **Presumption for Supervision:** If OSE has scheduled an examination of the relevant IPL within the next **12 months**, there will be a strong presumption that the oversight inquiry will occur through an examination for all issues scoped and addressed. For fair lending matters, proposed enforcement actions would be subject to the presumption only if the planned IPL is a targeted Equal Credit Opportunity Act (ECOA) review. In these instances, if Enforcement/Fair Lending Enforcement has information related to an IPL, it will provide input through the OSP, or Fair Lending Supervision if the IPL is a targeted ECOA review, regarding the scope of the examination or through the Bi-Weekly Updates (as described in Part III.3 of this policy). This presumption does not preclude the opening of an enforcement investigation if Supervision becomes resource-constrained and Enforcement/Fair Lending Enforcement has sufficient capacity. However, for issues ultimately not scoped and addressed by the examination, approval must be provided by the SEFL Associate Director and Director prior to distributing an Enforcement Action Process (EAP) approval to open a formal investigation.

- b. **Presumption for Enforcement:** For an IPL that does not have a scheduled examination within the next **12 months**, there will be a strong presumption that Enforcement/Fair Lending Enforcement can initiate an investigation through the EAP. In these instances, Supervision will generally already be aware of matters likely to result in an investigation due to the process for sharing information about ongoing research matters outlined above. This presumption does not preclude the scheduling of an examination if Enforcement is resource constrained and Supervision has sufficient capacity.
- c. **Supervised Institution 4-Day Notice:** Enforcement/Fair Lending Enforcement will provide at least **4 calendar days** internal courtesy notice to the Supervision and Fair Lending Assistant Directors for any investigation of a supervised institution (i.e., any institution that has been examined before or has an IPL on Supervision's schedule), prior to initiating an EAP investigation.
 - i. The above notice does not apply to matters that, pursuant to a decision through the Action Review Committee (ARC), are being addressed by enforcement.
- d. **Strategy Adherence:** Once Supervision has set its examination schedule, it will not use information shared by Enforcement about research matters to change its examination schedule, without approval by the SEFL ADs. Similarly, Enforcement/Fair Lending Enforcement will not open new research matters or investigations based on information provided by Supervision in the course of refreshing its examination schedule until Supervision has determined whether or not to add specific IPLs to the examination schedule.
- e. **Post-Examination Limitation:** Enforcement/Fair Lending Enforcement will not open an EAP investigation at a recently examined IPL until **4 months** after the on-site portion of an examination is completed, without the approval of the SEFL ADs.³
 - i. The above limitation does not apply to matters that, pursuant to a decision through the Action Review Committee (ARC), are being addressed by enforcement.
 - ii. For fair lending matters, the above limitation applies only to matters where the recently examined IPL was a targeted ECOA review.

5. **Conflict Resolution**

- a. The Offices will work closely together to agree on overall strategy, market risk, institution and IPL risk, scheduling, tool choice, and examination and investigation scope. Any disagreements within these processes should be resolved among the SEFL ADs within two weeks.

³ An investigation may be opened within the 4 month period if unforeseen circumstances arise and a course of action is agreed upon by the SEFL Assistant Directors. Any disagreements will be resolved pursuant to Section 5 entitled "Conflict Resolution."

- i. If necessary, disagreements on any of these aspects can be escalated to the SEFL Associate Director. In these instances, offices will be permitted to provide briefing memoranda (memos) to the SEFL Associate Director of no more than two pages for disposition.
- ii. The SEFL Associate Director will report any disagreements raised pursuant to this section and confer with the Director about any proposed resolutions.

PART II: SEFL DECISION RIGHTS IN THE EXAMINATION PROCESS

This policy describes decision rights, roles, and responsibilities in the examination process.

Further details on decision rights roles and responsibilities may be found in the SEFL Integration Playbook, which is designed to provide guidance to decision makers on key decisions identified throughout the examination process and each decision maker's roles and responsibilities. The Playbook will be complemented by the Exam Workbook, a tool each exam is strongly encouraged to use to track key decisions throughout the exam process. Updates may be provided as improvements are made to the examination decision making process.

Types of decision rights are:

- Input: Right to provide input or be consulted before a decision is made
- Make Decision: Right to make decisions in light of key input gathered
- Ratify: Right to veto or overturn a decision
- Notify: Right to be notified of a decision outcome after it has been made or ratified

Decision Rights may be delegated for general purposes at the discretion of SEFL Leadership, or in specific instances at the discretion of specific Decision Right-holders. Decision Rights outlined in the Playbook are not intended to replace chain of command or limit collaboration; those involved in key decisions should keep supervisors abreast of decisions and collaborate across CFPB as needed. The Playbook also contains notify rights, which are not listed below. The decision rights detailed in this policy do not release decision-makers from responsibilities provided by other policies.

1.1a. FL Data Request and Analysis: Preliminary development of examination scope and information request for Fair Lending Targeted Examinations⁴ approximately **125 business days** prior to on-site exam.

The FL Point-of-Contact (POC) makes the decision, after receiving inputs and incorporating feedback on the data request letter from the Examiner-in-Charge (EIC),⁵ Field Manager/Senior Exam Manager (FM/SEM) and Office of Research (OR) Economist. The FL AD and OR Section Chief⁶ ratify the FL POC's decision.

1.2a. FL Risk Assessment and Examination Focal Point Identification: Analysis by Fair Lending Supervision attorneys and economists prior to on-site examination to identify focal points for Fair Lending Targeted Examinations **40 business days** prior to on-site exam.

The FL POC makes the decision on focal points of examinations based on review of OR's regression analysis, FL priorities, and other relevant supervisory information. The EIC, FM/SEM, and OR Economist provide appropriate input from OR Reports, FMI, and

⁴ As the term is used in this policy, Fair Lending Targeted Examinations does not include HMDA verification reviews.

⁵ Decision rights in the Region may be delegated at the discretion of the RD. The FM/SEM may assume EIC Make rights for non-commissioned EICs.

⁶ Throughout this document, all input and ratify rights given to the OR Economist or Section Chief are limited to examinations in which they are providing statistical/econometric analysis, and may only be exercised for decisions related to that analysis, including how it is characterized. FL will facilitate the exercise of OR decision rights where the decision-maker is not in Fair Lending.

Entity Data to FL POC. The FL Assistant Director and OR Section Chief ratify the FL POC's decision.

1.3a. FL Scope Summary and Info Request: For Fair Lending Targeted Examinations, development of scope summary document and preparation of the information request for additional information required 20-30 business days prior to on-site exam.

The EIC makes the decision, after reviewing input from FL POC, OSP POC, ENF Staff/Deputy and OR Economist. The FL Deputy AD, OR Section Chief, and Assistant Regional Director (ARD) ratify the EIC's decision.

1.3b. Preliminary Scope and Info Request: Preliminary examination scoping including product lines and modules and development/ preparation of the Information Request for Targeted Examinations approximately 60-80 business days prior to on-site exam.

The EIC makes the decision with input from OSP POC, FL POC (for Home Mortgage Disclosure Act (HMDA) verification reviews), and ENF Staff/Deputy. OSP Program Manager and FM/SEM ratify the EIC's decision. For HMDA verification reviews, the FL Deputy AD and the FM/SEM ratify the EIC's decision, either instead of the OSP Program Manager (for reviews that include only HMDA verification) or in addition to the OSP Program Manager (for reviews that include HMDA verification in addition to other non-FL areas of review).

1.4a. FL Final Examination Schedule: Finalized on-site scheduling based on review of entity documentation and CFPB resource constraints; decision is to be made in the context of the regional examination start and end dates made in Decision 0.3.

The EIC makes the decision, after receiving inputs from the OR Economist, FL Deputy AD, and ENF Staff/Deputy. The FM/SEM ratifies the EIC's decision.

1.4b. Final Examination Schedule: Finalized scheduling based on review of entity documentation and resource constraints; decision is to be made in the context of the regional examination start and end dates made in Decision 0.3.

The EIC makes the decision with input from the OSP Program Manager, Fair Lending Deputy AD (for HMDA verification review), and ENF Staff/Deputy. The FM/SEM ratifies the EIC's decision.

1.5a. FL Final Scope: Finalized scope for Fair Lending Targeted Examinations based on review of entity documentation and CFPB resource constraints.

The EIC makes the decision and uploads the final Scope Summary to SES, after receiving inputs from the OSP POC, FL POC, OR Economist, and ENF Staff/Deputy. The ARD and FL Deputy AD ratify the decision after ensuring the level of detail and resources are appropriate. The OR Section Chief may ratify only if the scope is changed in a way that affects OR resources.

1.5b. Final Scope: Finalized scope for Targeted Examinations based on review of entity documentation and CFPB resource constraints.

The EIC makes the decision with input from the OSP POC, FL POC (for HMDA verification reviews), and ENF Staff/Deputy and uploads the final scope summary to SES. The ARD ratifies the decision after ensuring the level of detail and resources are appropriate.

2.1. Work Papers: Determination of which templates to compile for findings documentation and final work papers to support final examination conclusions.

The EIC makes the decision with input on appropriate findings templates from the OSP POC, FL POC and OR Economist (as applicable on ECOA/HMDA related work papers), and ENF Staff/Deputy and uploads applicable documentation to SES or stores the documentation in such other location as is consistent with the Office of Supervision's guidelines. The ARD ratifies the EIC's decision.

2.2. Scope Modifications: Modification to examination scope after initial scope is finalized.

The FM/SEM makes the decision with input on the impact of the scope change from OSP POC, FL POC, ENF Staff/Deputy, OR Economist (as applicable), and EIC and uploads the modified scope summary to SES. The FM/SEM also considers personnel resource constraints in Supervision/FL HQ, ENF, and the Regions. The OSP Program Manager, FL Deputy AD, RD, and ENF AD ratify the modified scope summary. The OR Section Chief may ratify only if the scope is changed in a way that affects OR resources.

2.3. Optional Fact Verification Memo: Review and validation of factual findings (without legal interpretation) during the examination with entity; generally happens multiple times throughout duration of on-site examination phase.

The EIC makes the decision and drafts and sends the Fact Verification Memo to the entity with input received on bi-weekly update calls from the OSP POC, FL POC and OR Economist as needed for ECOA and HMDA issues, and ENF Staff/Deputy. The FM/SEM ratifies the decision. The FL AD and OR Section Chief (as applicable) ratify decisions for Fair Lending Targeted Examinations or other ECOA or HMDA issues.

2.4. Post-Examination Status Meeting with Entity: Meeting with entity to disclose preliminary findings and provide status update /next steps around open questions.

The EIC makes the decision and develops an outline or script with input received on bi-weekly update calls on what can be shared regarding findings and open issues. The OSP POC, OSP Program Manager, FL POC (as applicable), OR Economist (as applicable), FL Deputy AD (as applicable), FL ENF Staff/Deputy (as applicable), and ENF Staff/Deputy provide input. The ENF AD, FL AD (as applicable for FL Enforcement decisions), OR Section Chief (as applicable), and ARD ratify the decision, after which the EIC facilitates the meeting with the entity.

2.5 Duration of Off-site Analysis Period: Extensions to the period of time for off-site analysis in a given examination, beyond the 10 business days that each examination is granted. Additional 10 business day units of analysis time may be added up to three times, for a total of up to 40 business days. Further increments may be added in unique circumstances where examinations require complex statistical analysis.

The ARD makes the decision on adding an additional 10 business days for off-site analysis with input from OSP or FL SUP POC, OSP Program Manager or FL Deputy AD, OR Section Chief (as applicable), EIC, and FM. The RD, OSE AD, and either OSP AD, or FL AD (as applicable) ratify the decision.

2.6a Move to Expedited Review: Determination of which review track an exam will follow based on whether the exam is “clean” or not. “Clean” exams are those exams that do not require interpretation from legal, do not require a Potential Action and Request for Response (PARR) Letter, and do not require the ARC process. In general “clean” exams also have minimal violations and low consumer harm/risk.

The EIC makes the decision on expediting an exam after evaluating input and determining if an exam meets the expedited criteria with input from OSP POC, OSP Program Manager, FL POC, FL Deputy AD, and ENF Staff/Deputy. The OSP AD, FL AD, ENF AD and ARD ratify the decision. An exam may not be appropriate for expedited review when there are different views about whether an examination meets the definition of “clean” described above, or when findings are disputed by the entity, HMDA errors are above the resubmission threshold, an exam is focused on a new IPL or entity, or the exam is a roll-up exam. Any parties listed above may suggest the decision be revisited in the event that new information presents itself during the review of the report (Decision 3.1).

2.6b Need for Legal (or Regulations) Opinion: Determination of need for sending a memo to Legal (or Regulations) outlining preliminary factual findings and analysis; this memo serves as primary input for Legal’s (or Regulation’s) determination(s) on a violation decision.

The OSP Program Manager or FL Deputy AD make the decision to develop a memo seeking Legal’s (or Regulation’s) opinion on a violation decision and gather input from OSP POC, FL POC, OR Economist (as applicable), ENF Staff/Deputy, EIC, and FM/SEM. The OSP AD, FL AD, and RD ratify the decision on whether to consult Legal (or Regulations).

2.7a Violation Decision for Non-Routine Questions of Law: Determination if violation around non-routine questions of law, except discrimination-related ECOA,⁷ has occurred.

Legal makes the decision if a violation has occurred and has the right of “non-objection” to the memo after reviewing the memo to Legal from OSP. The OSP POC drafts the memo to Legal and includes input from EIC on issue as well as OSP Program Manager, OSP AD, FL AD, FM/SEM, ARD, RD, ENF Staff/Deputy, and ENF AD. The SEFL Associate Director and Director have ratify rights in the case where OSP or the Region does not agree with Legal’s decision.

2.7b Violation Decision for Non-Routine Questions of Law (Regulations): Determination if violation around non-routine questions of law (Regulations), except discrimination-related ECOA, has occurred.

⁷ Non-routine matters include potentially unfair, deceptive or abusive acts or practices, substantive claims of discrimination, and all matters where the interpretation or application of a law or regulation is not clear based on the text or any official commentary.

(b)(7)(E)

Regulations makes the decision if a violation has occurred and has the right of “non-objection” to the memo after reviewing the memo to Regulations. The OSP POC drafts the memo to Regulations and includes input from EIC on issue as well as OSP Program Manager, OSP AD, FL AD, FM/SEM, ARD, RD, ENF Staff/Deputy, and ENF AD. Legal has ratify rights, and the SEFL Associate Director and Director have ratify rights in the case where OSP or the Region does not agree with the decision.

2.7c Violation Decision for Non-Routine Questions of Law (Fair Lending):

Determination if discrimination in violation of ECOA or Regulation B may have occurred.

The FL AD makes the decision whether a violation may have occurred, and documents the decision in a Fair Lending Initial Determination Memo (FLID) with input from the FL POC, FL Deputy AD, EIC, FM/SEM, ARD, RD, and OR Economist. The OR Section Chief has a ratify right during the development of the FLID over how OR analysis is characterized. Legal and Regulations have ratify rights. The SEFL Associate Director and Director have ratify rights in the case where FL or the Region does not agree with the way in which Legal or Regulations exercises its ratify right.

2.8. Need for a PARR Letter: Determination of need for sending a Potential Action and Request for Response (PARR) Letter to the entity.

The FM/SEM makes the decision whether to send a PARR to an institution with input from the EIC, OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, and ENF Staff/Deputy provide input. The OSP AD, FL AD, ENF AD and RD ratify the decision to draft a PARR Letter. FL decision rights for PARRs are for potential HMDA and/or non-discrimination ECOA violations.

2.9a. PARR Letter Approval: A PARR Letter provides a supervised entity notice that the CFPB has found potential violation(s) of Federal consumer financial law and is considering possible public enforcement action. Subject entities are invited to substantively respond to PARR Letters within 14 calendar days. A PARR Letter may be used when addressing both potential non-ECOA (or non-discrimination ECOA) violations and HMDA violations.

The OSP Program Manager makes the decision regarding content of a PARR Letter. The OSP Program Manager or assigned OSP POC drafts the PARR Letter with input from the FM/SEM, EIC, OSP Deputy AD, ENF Staff/Deputy, Legal, and, as applicable, the FL POC, FL Deputy AD, and FL AD. FL decision rights for PARRs are for potential HMDA and/or non-discrimination ECOA violations. The RD ratifies the content, signs, and approves sending the PARR Letter to the entity.⁸

2.9b PARR-FL Letter Approval: Documentation of 1) preliminary findings of potential ECOA violation(s), notice that the CFPB is considering referral to the Department of Justice and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days; or 2) preliminary findings of HMDA violation(s), and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days.

⁸ This arrangement will be collectively revisited after one year from the date it is instituted.

The FL POC makes the decision regarding content, drafts, signs, and sends the PARR-FL Letter. The ENF Staff/Deputy, EIC, OR Economist, FM/SEM and RD provide input. The FL Deputy AD ratifies the content and approves sending the PARR-FL Letter to the entity.

2.10 Need to ARC: Determination of need for developing an ARC memo and holding an ensuing ARC meeting.

The FM/SEM makes the decision regarding whether an exam will go through the ARC process based on the criteria outlined in Part IV of this policy and input from OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, ENF/Staff Deputy, and the EIC. The OSP AD, FL AD, ENF AD and RD ratify the decision regarding whether or not to put an exam through the ARC Process.

2.11 ARC Memo Approval: Development of ARC Memo (internal) and recommended decision to pursue public enforcement action or non-public supervisory action.

The FM/SEM makes the decision regarding the content, drafts the ARC Memo and circulates it for input to the EIC and OSP POC, who also solicits the input of the FL POC, FL Deputy AD, ENF Staff/Deputy, OR Economist (as applicable), and Legal. The RD reviews and signs the memo and ratifies sending the memo to the ARC Committee (see Part IV, section 3.b).

2.12 ARC Decision on Enforcement or Supervision: Decision by ARC members (Assistant Directors of the SEFL Offices or their designees) on whether or not a matter will be pursued through public enforcement action.

The OSE AD, OSP AD, FL AD, and ENF AD review the ARC Memo and vote on whether they (a) believe the matter should be handled through the supervisory process, (b) believe that public enforcement action is warranted, (c) wish to convene a meeting of the ARC to discuss the matter, or (d) abstain. Input is provided from the RD via the ARC Memo and additional input as needed during the deliberation or voting period. The SEFL Associate Director ratifies the vote within 3 business days of ARC Committee vote.

3.1 Expedited-Review Track Report Approval: Decision and ratification that an expedited exam report (per Decision 2.5) is finalized and ready to be sent to Prudential Regulators/entity.

The ARD makes the decision on content within the final exam report by collecting input within the Region from the EIC, Review Examiner, and FM/SEM. The report is approved within the Region no later than **25 business days** after the exam is placed on the Expedited Track. The report is submitted by the ARD to HQ where further input is captured from the OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, OR Economist (as applicable) and FL Deputy AD. The input is assessed, consolidated, and reconciled in a manner that presents stakeholders' input without conflicts by the OSP POC or FL POC and returned to the ARD to incorporate feedback no later than **15 business days** after the report is submitted to HQ. The RD ratifies the content of the exam report before sending to the entity or Prudential Regulator within **5 business days** of receiving input from HQ.

3.2 Full Review Track Report Approval: Decision and ratification that exam report under Full Review (per Decision 2.5) is finalized and ready to move to Prudential Regulators/entity.

The ARD makes the decision on content within the final exam report by collecting input within the Region from the EIC, Review Examiner, and FM/SEM. The report is approved within the Region no later than **15 business days** after exam analysis finalized. The report is submitted by the ARD to HQ for review where further input is captured from the OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, OR Economist (as applicable), FL Deputy AD, ENF Staff/Deputy and Legal. The input is assessed, consolidated, and reconciled in a manner that presents stakeholders' input without conflicts by the OSP POC or FL POC and returned to the ARD to address input. The RD ratifies the exam report and submits the report to HQ to be ratified by OSE AD, OSP AD, FL AD and SEFL Associate Director. The Headquarter review is completed in **25 business days**. The ARD incorporates input from SEFL ADs and SEFL Associate Director before sending to the entity or Prudential Regulator within **5 business days** of receiving input from HQ.

SEFL EXAMINATION PROCESS TIMING

This following table outlines the associated timing with each step of the process:

Phase	Decision	Timing
	<u>1.1a FL Data Request and Analysis</u>	125 business days before on-site
	<u>1.2a FL Risk Assessment and Exam Focal Point Identification</u>	40 business days before on-site
	<u>1.3a FL Scope Summary and Info Request</u>	20-30 business days before on-site for Fair Lending Targeted Examinations
	<u>1.3b Preliminary Scope Summary and Info Request</u>	60-80 business days before on-site Targeted Examinations
	<u>1.4a FL Final Exam Schedule</u>	20 business days before on-site
	<u>1.4b Final Exam Schedule</u>	
On-site	<u>2.1 Work Papers</u>	6-8 weeks to complete the on-site exam activities
	<u>2.2 Scope Modification</u>	
	<u>2.3 Optional Fact Verification Memo</u>	
	<u>2.4 Post-Exam Status Meeting with Entity</u>	
Off-site Ana	<u>2.5 Duration of Off-site Analysis Period</u>	10 business days after completion of on-site exam activities, with up to three incremental 10 business day

		extensions, for a total of up to 40 business days (additional extensions allowed for exams requiring complex statistical analysis)
	2.6a <u>Move to Expedited Review</u>	Upon completion of the off-site analysis period, the duration of which is determined in decision right 2.5
	2.6b <u>Need for Legal Opinion</u>	
	2.7a <u>Violation Decision for Non-Routine Questions of Law</u>	10 business days for Legal Memo drafting (measured from the end of the off-site analysis period)
	2.7b <u>Violation Decision for Non-Routine Questions of Law (Regulations)</u>	5 business days for Legal/Regulations Division Response 3 business days for Legal to Ratify Regulations' decisions 2.7b) 10 business days to complete the Legal Response analysis
	2.7c <u>Violation Decision for Non-Routine Questions of Law (FL)</u>	25 total business days for Legal Memo drafting (FLID- includes Legal Response time) (measured from when enough information is available to draft the memo or the last day on-site) 10 business days for Legal Division and Regulations Response (included in 25 business day total duration) 10 business days to complete the Legal Response analysis
	2.8 <u>Need for PARR Letter</u>	10 business days to draft and approve PARR
	2.9a <u>PARR Letter Approval</u>	5 business days for Fair Lending to draft and approve PARR
	2.9b <u>PARR-Fair Lending Letter Approval</u>	14 calendar days for the Entity to respond to the PARR (unless an extension is granted) 5 business days to complete PARR Response analysis (additional 10 business days to complete PARR Response analysis if the PARR Response contains quantitative

		analysis and/or challenges to the CFPB's statistical methodology/code.)
	2.10 <u>Need to ARC</u>	15 business days to draft and approve ARC memo (3 business days of which is for HQ offices to provide input, and 2 business days of which is for HQ POC to consolidate input)
	2.11 <u>ARC Memo Approval</u>	
	2.12 <u>ARC Decision on ENF or Supervision</u>	5 business days for SEFL ADs to determine if (a) the matter should be handled through the supervisory process, (b) believes that public enforcement action is warranted, (c) wishes to convene a meeting of the ARC to discuss the matter, or (d) abstains. 3 business days for SEFL Associate Director to either concur in the decision or note his objection
Report Review	3.1 <u>Expedited-Review Track Report Approval</u>	25 business days for the Region to draft and approve the report 15 business days for the HQ Report Review 5 business days for the Region to incorporate feedback
	3.2 <u>Full-Review Track Report Approval</u>	15 business days for the Region to draft and approve the report 25 business days for the HQ Report Review (3business days of which is for the Region to incorporate HQ input prior to review by the applicable SEFL ADs) 5 business days for the Region to incorporate feedback

PART III: ENFORCEMENT ATTORNEY ROLE IN EXAMINATION WORK

1. Scope

This policy outlines the role of attorneys with enforcement responsibilities on examinations and the governing principles for information sharing about examination work among the SEFL offices.

2. Coordination Through Supervision Policy and Fair Lending Supervision

- a. OSP staff will be the primary HQ staff receiving information about and advising on ongoing examinations. Fair Lending Supervision will be the primary HQ staff receiving information about and advising on ongoing fair lending examinations, in coordination with the OSP POC for that examination. OSP staff will serve as points of contact for individual examinations for HQ and field staff. On a parallel track, Fair Lending Supervision staff will serve as points of contact for individual fair lending issues arising in examinations for HQ and field staff. Enforcement attorneys (including Fair Lending Enforcement attorneys on an as needed basis) will continue to support and receive information about examinations in the respects described below in “Bi-Weekly Updates.”
- b. In an effort to improve efficiency and consistency, Enforcement and Fair Lending Enforcement attorneys will generally not attend on-site examinations or receive information directly from examiners or institutions under examination prior to completion of the ARC process, other than by participation in the Bi-Weekly Updates. Enforcement and Fair Lending Enforcement attorneys will not directly access supervised institutions’ systems under the CFPB’s supervisory authority. Enforcement and Fair Lending Enforcement attorneys, through Supervision Policy or Fair Lending Supervision, may review/analyze information obtained by the CFPB throughout the supervisory process but must convey any questions or requests for additional information either through Supervision Policy (or Fair Lending Supervision for fair lending matters) or in the Bi-Weekly Updates as described below. When an examination is likely to result in a public enforcement action, Enforcement and Fair Lending Enforcement attorneys may attend meetings with institutions during an examination, such as exit meetings.
 - i. An examination is deemed likely to result in a public enforcement action when a decision has been made through the Action Review Committee (ARC) process to refer a matter for potential enforcement action.
- c. Enforcement and Fair Lending Enforcement attorneys will collaborate and consult with OSP or Fair Lending Supervision (as appropriate) on non-routine⁹ matters and may comment on examination product during HQ review. OSP and Fair Lending Supervision are responsible for keeping Enforcement and Fair Lending Enforcement

⁹ Non-routine matters include potentially unfair, deceptive or abusive acts or practices, substantive claims of discrimination, and all matters where the interpretation or application of a law or regulation is not clear based on the text or any official commentary.

(b)(7)(E)

attorneys apprised of examination updates to promote full collaboration, as well as for facilitating their participation during the bi-weekly Updates.

3. Bi-Weekly Updates

OSP staff will convene bi-weekly update calls (including telephonic participation as needed) regarding examinations with the field staff that representative Enforcement attorneys should also regularly attend. For Fair Lending examinations, Fair Lending Supervision staff will convene bi-weekly update calls (including telephonic participation as needed) regarding examinations with the field staff that representative Enforcement and OSP staff regularly attend and Fair Lending Enforcement on an as needed basis. Field staff will provide updates regarding examinations. Enforcement should have input about examination scoping (including review of legal matters pending involving the institution, complaints filed against the institution, legal investigations by partnering agencies and officials involving the institution, and any whistleblower tips involving the institution, though this work should be coordinated with OSP or Fair Lending Supervision and is not intended to duplicate any work already being done by OSP or Fair Lending Supervision).

The first such telephone update should occur at the commencement of the scoping of the examination or no later than two weeks prior to the due date of the scoping memo and should discuss all relevant information received. Thereafter, the bi-weekly update call should provide a full and substantive exchange of issues, ideas, and questions relevant to the examination among all of the participants. The calls should continue until an examination report or supervisory letter is issued. If a Memorandum of Understanding (MOU) is also resulting from the examination or review, the calls should include updates on the status of the MOU and continue until the MOU is signed, if it is signed after the associated letter or report is issued. The group of participants may have follow-up discussions as needed between the bi-weekly update call, but Enforcement and Fair Lending Enforcement attorneys will not in any way direct the conduct or actions of Supervision staff, and OSP and Fair Lending Supervision will make recommendations to relevant Supervision staff about the examination process as OSP and Fair Lending Supervision deem appropriate.

Generally, Fair Lending Supervision shall not be required to attend all bi-weekly calls for non-Fair Lending Targeted Examinations and OSP shall not be required to attend all bi-weekly update calls for Fair Lending Targeted Examinations or reviews that include only HMDA verification. However, the OSP POC will notify the Fair Lending Supervision POC regarding the discovery or identification of any fair lending issues (i.e., ECOA and/or HMDA) in a non-Fair Lending Targeted Examination so that s/he may attend the next bi-weekly update call or otherwise obtain the relevant fair lending information. OSP or Fair Lending Supervision may cancel the meeting if it is determined that there are no new updates for a given period. OSP or Fair Lending Supervision may also schedule additional update calls during the on-site examination period as needed. Likewise, the Fair Lending Supervision POC will notify the OSP POC regarding the discovery or identification of any significant non-fair lending issues found in a Fair Lending Targeted Examination so that s/he may attend the next bi-weekly update call or otherwise obtain the relevant non-fair lending information. When regular attendance on bi-weekly update calls is not required as described above, the Fair Lending Supervision POC or the OSP POC, as applicable, will attend the initial scoping bi-weekly update call and a midpoint-examination bi-weekly update call to ensure that they have an understanding of the scope of the examination and important findings at key points in the examination process.

4. Office of Fair Lending

- a. The responsibilities of Fair Lending attorneys will be delineated between supervision and enforcement, with Fair Lending attorneys clearly designated as Fair Lending Supervision or Fair Lending Enforcement attorneys where examination work is concerned.
 - i. Fair Lending Supervision attorneys will be permitted to work on particular fair lending enforcement matters if they have had no involvement with those particular matters during the supervisory process. Fair Lending Regional Counsel and other Fair Lending attorneys assigned to specific regions may work on enforcement matters only if such matters involve institutions outside the region to which they are assigned.
- b. When fair lending matters progress through ARC and it is determined that public enforcement is the appropriate course, the Fair Lending Supervision attorneys will transfer the enforcement matter over to their Enforcement and/or Fair Lending Enforcement colleagues. Fair Lending Supervision attorneys should be consulted by the Enforcement and Fair Lending Enforcement attorneys on the matter. Enforcement and Fair Lending Enforcement attorneys should include the Fair Lending Supervision attorneys as consultants on key issues such as on documents and discussions regarding evidentiary issues, settlement terms, monitoring, and remediation. The Fair Lending Supervision attorneys may continue to work on the examination and on any potential referral to the Department of Justice.

5. Post-ARC Involvement of Supervision

For matters that have transitioned through the ARC process and have been referred for public enforcement action, Enforcement or Fair Lending Enforcement will regularly update Supervision and Fair Lending Supervision staff responsible for the underlying examination as to the progress of the public enforcement action. While Enforcement/Fair Lending Enforcement attorneys will have overall responsibility for meetings with the institution, the relevant Supervision/Fair Lending Supervision field staff will be invited to attend the appropriate meetings.

PART IV: ACTION REVIEW COMMITTEE (ARC) PROCESS

1. Scope

This process governs SEFL's decision-making as to whether certain legal violations identified in the course of an examination or targeted review should be addressed by public enforcement action or non-public supervisory action. The specific form of relief that will be sought in any such action, including injunctive and monetary relief, and whether and in what amount to assess civil money penalties, will be addressed through the separate review processes associated with the determined course of action, whether supervisory or enforcement.¹⁰

2. Notice to the Institution

- a. **Possible referral:** In the event that Fair Lending is considering referring an institution to the Department of Justice under the ECOA, it will send a PARR-FL letter to the institution in accordance with procedures adopted for that process, and subject to decision rights 2.9b outlined in Part II of this policy. The PARR-FL letter will typically be sent (and a response received) prior to the preparation of the ARC Memo.
- b. **Possible enforcement action:** As appropriate, in the course of the supervisory process, the CFPB may inform the institution with a PARR letter that the CFPB is considering the matter for formal action (that may include a non-public Memorandum of Understanding or a public enforcement action) and invite the institution's response. The issuance of a PARR letter is subject to decision rights 2.8 and 2.9a outlined in Part II of this policy.
- c. The above notices may be combined into one notice, as appropriate. Where a notice of possible referral is being provided pursuant to paragraph 2(a), the notice pursuant to paragraph 2(b) typically will be set forth in the PARR-FL letter, however Fair Lending may in its discretion decline to include the non-Fair Lending matters in the PARR-FL. The following chart provides guidance on when to use the PARR or PARR-FL letter template:

PARR Letter	Owner	Examination Violation Types
PARR-FL Letter	OFLEO	ECOA
		ECOA and HMDA
		HMDA

¹⁰ Occasionally, it may not be feasible to follow the process set forth below due to exigent circumstances. It is anticipated that such circumstances will be rare, and that normal procedures will only be suspended upon the recommendation of an Assistant Director of one of the Offices. In such situations, the SEFL Assistant Director will make every effort to personally contact a senior leader in each interested Office, alert them to the exigent circumstances, explain the necessity for accelerated action, and seek their input before making a recommendation. To the extent feasible, the SEFL Associate Director will also personally seek out the views of the Assistant Director of any Office that disagrees with the recommended course of action. Once the SEFL Associate Director has made a decision on the matter, it will be communicated to all SEFL Offices and the Regional Directors.

PARR Letter	OSP*	Non-ECOA (or non-discrimination ECOA) and HMDA
		Non-ECOA
*In the event of an examination where both non-ECOA and HMDA violations exist, OSP will draft the letter with input from OFLEO on HMDA-related matters		

- d. Absent special circumstances, the PARR letter must be drafted and approved within **10 business days** of a violation decision (**5 business days** for Fair Lending). The institution will be given **14 calendar days** to respond to the notice letter. For notices sent pursuant to paragraph 2(a), an extension may be granted pursuant to the PARR-FL Policy. For notices sent pursuant to paragraph 2(b), an extension may be granted at the discretion of the RD.

3. The ARC Memo

- a. In the circumstances described below, and where violations of Federal consumer financial law or legally enforceable CFPB orders have been discovered in the course of an examination/review, an ARC memo may be prepared (see 3.b.) by the Region to support the ARC's evaluation of relevant facts and law in determining whether public enforcement action is appropriate. Such a memo will be prepared in the following circumstances:
- i. If the overall facts uncovered during the course of the examination would support a rating of 3, 4, or 5, or the overall facts uncovered during the course of a review would support a rating of 3, 4, or 5 for the activities examined; or
 - ii. If any Office or RD believes the possible violations warrant public enforcement action or further discussion of that question by SEFL HQ.
- b. The ARC memo will be prepared under the direction of the RD with input from the assigned OSP and Fair Lending Supervision personnel. OSP, or Fair Lending Supervision as appropriate, will be responsible for soliciting and reconciling edits to the Region's ARC memo from assigned enforcement attorneys, and from OSP and FL where applicable, as well as consulting with relevant offices outside of SEFL, including the Legal Division and OR when appropriate (see Decision Right 2.11). The memo will then be returned to the RD to address the input. This process incorporates existing procedures for OSP and Fair Lending Supervision consultation with Legal on non-routine matters, under which Enforcement is consulted.
- c. The ARC memo will summarize the violations found and the applicability of the violation-focused and institution-focused factors set forth in the **Appendix**, as appropriate.¹¹ The ARC memo will also recommend whether or not to pursue public enforcement action and, where additional information is needed to inform settlement discussions or pursue an enforcement action, the ARC Memo will include a proposal for gathering such information, including an estimate of the time involved. The ARC memo will provide an objective analysis of the facts and the law

¹¹ The memo need not address the policy-focused factors, which will be considered by the ARC members when determining whether public enforcement action is appropriate.

- involved, including any new or potentially controversial theory of law, and the pros and cons involved in pursuing a supervisory or public enforcement action in the matter. In the event any SEFL Office disagrees with the description of the facts or law or the RD's recommendation set forth in the ARC memo, the dissenting Office(s) will have an opportunity to address its disagreement at an ARC meeting to be held after the memo is circulated.
- d. The ARC memo should be completed and submitted to the ARC¹² as soon as sufficient facts are available regarding the matter at issue, and no later than **15 business days** after analysis of the institution's response to a PARR letter is completed (under paragraph 2(a) or 2(b) above). The **15 business day** period includes a time period for the FM/SEM to seek HQ input as follows: the FM/SEM will distribute the memo directly to each of the HQ offices, who will review and provide their input to the OSP or FL SUP POC within **3 business days**. The POC then will consolidate HQ input within **2 business days** and send to the FM/SEM to incorporate into the memo.
 - e. The ARC memo will contain such attachments as the RD or other Offices believe may assist the ARC in its determinations, including, where available, the draft Examination Report/Supervisory Letter.
 - f. Where the RD believes that a matter involves violations that are substantially similar to those that have previously been addressed through either public enforcement action or confidential supervisory action, an abbreviated ARC Memo may be drafted, consistent with Decision Right 2.11. The memo will identify the previous action and note: (1) why the current matter is substantially similar; and (2) whether there is any reason for the CFPB to address the current violations in a different manner than it addressed the violations that triggered the previous action.
 - g. The examination team will continue to draft its examination report or supervisory letter while the ARC memo is being drafted. To the extent practical, the text of the ARC memo will be used in the appropriate portions of the examination report or supervisory letter.

4. Consideration of the ARC Memo

- a. Upon receipt, the ARC Memo will be distributed by OSE to designated points of contact in the Offices, as well as the Legal Division.
- b. Within **5 business days** of receipt of the ARC Memo each Office will reply to the ARC email box and the other Offices in writing whether it (a) believes the matter should be handled through the supervisory process, (b) believes that public enforcement action is warranted, (c) wishes to convene a meeting of the ARC to discuss the matter, or (d) abstains.
 - i. If an Office is voting for handling a matter through the supervisory process, it may suggest to the RD what type of supervisory action it believes is appropriate, although this will not be binding on the RD.

¹² The memo is to be sent to the CFPB_ARC_Request@cfpb.gov mailbox.

- c. In those cases where, upon review of the ARC Memo, all four Offices agree as to the appropriate course of conduct (supervisory vs. public enforcement action),¹³ the SEFL Associate Director will either concur in the decision or note his objection within **3 business days** of receiving the ARC Memo and confirmation of each Office's agreement on the course of action. In the event the SEFL Associate Director concurs in the decision, the agreed-upon determination will govern. In the event the SEFL Associate Director objects to the determination, the ARC will convene to discuss the matter pursuant to paragraph 5. The SEFL Associate Director's Office will notify each SEFL AD or designee of the SEFL Associate Director's decision. A copy of the ARC memo and the Associate Director's decision thereon will then be provided to each of the SEFL ADs and RDs, as well as the Legal Division.
- d. In those cases where one or more of the Offices disagrees as to the appropriate course of conduct or believes that an ARC discussion is necessary, the ARC will convene to discuss the matter and make a determination as to next steps, including how the offices will efficiently gather any additional information necessary to proceed.

5. ARC Meetings

- a. The ARC will consist of the ADs of the Offices or their designees, who will be the only voting members. In addition, the RDs, a representative from the SEFL Associate Director's office, and such other participants as may from time to time be appropriate will be invited to attend all ARC meetings in order to provide additional information relevant to ARC decision-making.
- b. The ARC will meet at a regularly scheduled time every week unless no matters have been referred to it for decision.
- c. The ARC will endeavor to reach unanimity as to whether or not to pursue public enforcement action. If the ARC achieves such unanimity, notice of the ARC's determination will be provided to the SEFL Associate Director's office. The SEFL Associate Director will then have **3 business days** to concur in, or object to, the ARC's determination. The SEFL Associate Director's Office will notify each SEFL AD or designee of the SEFL Associate Director's action. In the event that the SEFL Associate Director concurs in the ARC's determination, appropriate further action will be taken and notice of the ARC's determination will be provided to each of the RDs by the SEFL Associate Director's office.
- d. In the event the ARC is unable to reach unanimity among its members, or the SEFL Associate Director objects to the ARC's unanimous determination, the SEFL Associate Director will solicit the views of the SEFL ADs, decide the matter, and provide notice of the decision to each of the SEFL ADs and the RDs.
- e. OSE will be responsible for maintaining a tracking mechanism showing the timing and disposition of ARC votes and the ARC decision.

¹³ An abstention will constitute agreement with the views of the other Offices for these purposes.

6. Supervisory Letter or Examination Report

- a. For those matters in which an ARC Memo has been prepared, the Supervisory Letter or Examination Report will continue to be drafted but will not be finalized until a determination has been made as to whether or not the matter will be pursued through public enforcement action.
 - i. In matters that will not be pursued as public enforcement actions, the Supervisory Letter or Examination Report (as well as any MOU or other document, as appropriate) will be finalized and reviewed in the ordinary course.
 - ii. In matters being pursued as public enforcement actions, the Supervisory Letter or Examination Report:
 - (a) should identify the facts found during the examination/review as necessary to support the conclusions in the Supervisory Letter or Examination Report;
 - (b) will contain standard language indicating that the CFPB will use the Enforcement process to address certain specified matters (“These violations, any additional violations that might be identified in the course of investigating this conduct, and any [additional] corrective action, including remediation, will be addressed through the Enforcement process.”);
 - (c) may include only the following corrective actions with respect to violations that will be pursued as public enforcement actions:
 - (1) Direction to stop ongoing illegal conduct
 - (2) Direction to implement/enhance compliance management system (CMS), as long as it does not interfere with CMS requirements expected to be included in the CFPB or DOJ Order.
 - iii. In matters that may result or have resulted in a referral to the DOJ, the Supervisory Letter or Examination Report will contain the below standard language in the Conclusions and Comments Section indicating that the CFPB may refer or has referred certain specified matters to the DOJ.
 1. **For referrals that have not yet been made but are under consideration at the time of issuance of the Report or SL:** “The CFPB continues to evaluate whether the [type of discrimination or violation] found during this review will be referred to the Department of Justice (DOJ) pursuant to the ECOA and/or the December 6, 2012 Memorandum of Understanding between the CFPB and the DOJ. A referral may result in additional corrective action by the DOJ and/or the CFPB. Please note that the CFPB's referral of a matter to the DOJ is in addition to the CFPB's independent supervisory and enforcement authority to seek appropriate legal or equitable relief. Thus, a referral does not deprive the CFPB of its authority to take additional, independent action.”

2. **For referrals that have been made at the time of the issuance of the Report or SL:** “On [date], the CFPB referred this matter to the Department of Justice (DOJ) pursuant to the ECOA and the December 6, 2012 Memorandum of Understanding between the CFPB and the DOJ based on the CFPB’s finding of discrimination in violation of the ECOA. The referral may result in additional corrective action by the DOJ and/or the CFPB. Please note that the CFPB’s referral of a matter to the DOJ pursuant to ECOA is in addition to the CFPB’s independent supervisory and enforcement authority to seek appropriate legal or equitable relief. Thus, a referral does not deprive the CFPB of its authority to take additional, independent action.”
 - iv. To the extent not already provided in the normal course, the assigned OSP POC or FL POC will provide an opportunity for the assigned Enforcement and Fair Lending Enforcement attorneys (if applicable) to review and comment upon the Supervisory Letter or Examination Report before it is submitted for Supervision HQ management review. The OSP POC or FL POC will assess, consolidate, and reconcile comments in a manner that presents stakeholders’ input without conflicts before returning to the ARD to address input (Decision Right 3.2). Additionally, the OSP POC will notify Enforcement and Fair Lending Enforcement of any material changes to a Supervisory Letter or Examination Report prior to issuance.
 - b. For those matters in which no ARC Memo has been prepared pursuant to paragraph 3(a) above, any Office may refer the matter to the ARC upon review of the Supervisory Letter or Examination Report during HQ review. It is anticipated that such a referral will only occur in rare cases. The Supervisory Letter or Examination Report will then serve as a substitute for the ARC Memo.

7. Supervisory or Public Enforcement Action

- a. Once an ARC decision has been made, the SEFL office responsible for implementing the corrective action will also be responsible for determining how additional information should be gathered and what additional information is required.¹⁴ When making this determination, the office will consider the proposal set forth in the ARC memo, but will not be constrained by it.
- b. For those matters in which public enforcement action has not been deemed appropriate, the RD will determine the appropriate remedial measures, with input from the other SEFL offices, and will oversee the implementation of those appropriate remedial measures. OSP/Fair Lending Supervision will consult with Enforcement and Fair Lending Enforcement, as appropriate, on behalf of the Region. Preparation and review of materials to implement the supervisory action (Examination Report, Supervisory Letter, draft MOU, board resolution, etc.) will be in accordance with the policies governing those matters, which require the materials

¹⁴ The SEFL office gathering additional information will be limited to gathering information through its own authority.

to be complete and through HQ review no more than **45 business days** for a Full Track Review Report Review (**15 business days** for the Regional Review, **25 business days** for the HQ review, and **5 business days** for the Region to transmit) after the ARC decision is made.¹⁵

- c. For those matters in which public enforcement action has been determined appropriate, Enforcement and FL Enforcement (in FL matters) will assign one or more attorneys to handle the matter. The Enforcement and Fair Lending attorneys will take the lead on developing and resolving the enforcement action, in consultation with the RD and Supervision HQ. Preparation and review of materials to implement the enforcement action (Enforcement Action Process submissions, Notice and Opportunity to Respond and Advise letter, consent order, complaint, etc.) will be in accordance with the policies governing those matters, as well as paragraph 2(b)(ii) in Part V of this policy.
 - i. In the event that additional information is necessary to inform settlement discussions or pursue an enforcement action, Enforcement or Fair Lending Enforcement, in coordination with Supervision, may seek such additional information from the institution either through the exercise of the CFPB's enforcement authority or voluntarily.
 - ii. Civil Investigative Demands (CIDs) may be sent to the supervised entity or third parties in connection with the public enforcement action if (a) an Open Investigation memo has been circulated through the Enforcement Action Process (EAP), or (b) settlement parameters have already been approved.
 - l. If additional information is sought by exercise of the CFPB's enforcement authority, pursuant to 7(c)(ii) above, an EAP Open Investigation memo should be submitted for EAP review within **10 business days** of the ARC decision to pursue a public enforcement action.
 - a. A CID seeking the necessary additional information should be sent to the institution within **30 business days** of EAP approval to open a formal investigation.
 - b. When further fact gathering by Enforcement or Fair Lending Enforcement is necessary, an EAP memo to Settle or Sue should be submitted into EAP review no later than **40 business days** after the additional fact gathering is completed.

¹⁵ Following Headquarters' review, the federal prudential regulators must be provided with 30 days to review and comment on Examination Reports for large depository institutions, credit unions, and their affiliates, pursuant to Section 1025(e) (1)(c) of Dodd Frank. Examination Reports are issued to the entity as soon as possible after such comments are considered. In an effort to improve transparency and foster communications, the prudential regulators will also receive a courtesy copy of the Supervisory Letters for the aforementioned entities five days prior to transmitting a letter to the entity. Supervisory Letters are issued to the entity as soon as possible after the expiration of the five days.

- c. In situations that Enforcement and/or Fair Lending Enforcement determine to be more complex, or where the factual record is substantially incomplete, they shall provide an explanation of why these timeframes should be adjusted, including a proposed alternative timeframe, for consideration and decision by the SEFL Associate Director.
 - iii. In the event of an ARC decision to pursue a public enforcement action where no additional information is needed to begin settlement discussions with the institution, an EAP memo to Settle or Sue should be submitted into EAP review no later than **40 business days** after the ARC decision. When complex statistical analysis (e.g., proxying and regression analysis) is necessary to calculate damages, an EAP memo to Settle or Sue should be submitted into EAP review no later than **40 business days** after the analysis is completed.
- d. If the ARC decides to pursue both supervisory remedial measures and a public enforcement action for the same matter, Supervision, Enforcement and Fair Lending will ensure that the text of any relevant documents (e.g. supervisory letter, examination report, consent order) are consistent with each other.
- e. In the rare instance where additional information is received after the ARC process is complete that materially affects any Office's views as to whether or not the matter should be resolved by public enforcement action, that Office or the SEFL Associate Director may reconvene the ARC. The Office that reconvenes the ARC will submit a supplemental ARC memorandum to the ARC supporting the recommended action.

PART V: COMPLIANCE AND DISPOSITION OF REQUIRED ACTIONS

1. Scope

This section identifies the specific SEFL Office or staff that will be responsible for monitoring compliance with and/or the disposing of required actions resulting from the CFPB's examinations and investigations.

2. Compliance and Disposition of Required Actions

- a. For public enforcement actions at institutions not supervised by the CFPB,¹⁶ Enforcement or Fair Lending Enforcement, as appropriate, will be responsible for monitoring and evaluating compliance with any required actions, and the discretion to recommend either to the Director or his designee when to release requirements/orders.¹⁷
- b. For public enforcement actions at supervised institutions, the RD will be responsible for monitoring and evaluating compliance with any required actions, and will have the discretion to recommend either to the Director or his designee when to release requirements/orders.
 - i. Before recommending release of requirements/orders, the RD will first ensure that appropriate staff in OSP, ENF, and FL are consulted including consultation with relevant interagency POCs. Then, the RD will provide notice to the four SEFL ADs and the Deputy General Counsel for Litigation and allow 7 calendar days for a response. The RD's notice will include: a summary of the requirements/orders; a summary of the work performed by regional staff that support their recommendation to release the order, including the actions taken by the institution to comply; a copy of the decision memo and termination order to be sent to the Director; and a list of staff who were consulted.
 - ii. In the course of pursuing public enforcement actions at supervised institutions, Enforcement and FL Enforcement will seek input from the appropriate RD regarding the terms of the consent order.
- c. For non-public required actions (e.g., Matters Requiring Attention, MOUs, Board Resolutions) resulting from examination work, the RD will be responsible for monitoring and evaluating compliance with the required actions, and will retain the discretion to release requirements as appropriate.
 - i. Before releasing MOUs and Board Resolutions, the RD will provide notice to the four SEFL ADs (copying CFPB_ARC_Request@cfpb.gov) and allow 7 calendar days for a response. The RD's notice will include a summary of

¹⁶ For these purposes, a supervised institution includes any institution that has been examined before or has an IPL on Supervision's schedule.

¹⁷ In combined Enforcement actions, Enforcement and Fair Lending Enforcement must coordinate in monitoring and evaluating compliance with their respective required actions and when recommending the release of any provisions, requirements, and actions.

the requirements/orders as well as a summary of the work performed by regional staff to support the release, including the actions taken by the institution to comply.

- ii. Any non-public required actions that are monitored and evaluated through on-site supervisory work that is addressed in a supervisory letter or examination report will go through the appropriate examination review track, as outlined in Decisions 3.1 and 3.2.
- iii. Non-public required actions in the form of Matters Requiring Attention may be monitored and evaluated outside of an examination or review and in that instance the requirements may be released at the sole discretion of the RD.

Appendix – ARC Factors for Evaluation

<u>Violation-focused Factors:</u>	(1) Severity of each violation:	(a) The nature of the violations.
		(b) The number of consumers affected.
		(c) The type and magnitude of the risk, harm, or loss to consumers.
		(d) The duration of the violations prior to discovery or notification.
		(e) The clarity of the law underlying the violation.
	(2) Whether the violation(s) has ceased or is ongoing and the likelihood that it will be repeated.	
(3) Whether the identified violations indicate targeting on a prohibited basis classes for which the CFPB has a special mandate.		
(4) The importance of deterrence , considering the significance and pervasiveness of the practice.		
(5) The variety of violations and number of products affected by the violations.		
<u>Institution-focused Factors:</u>	(1) The size , complexity, and financial health of the institution.	
	(2) The extent of the institution's cooperation to date and its willingness and ability to comply in the future:	(a) The nature and extent of the institution's cooperation with the examination or review.
		(b) Management's demonstrated ability and willingness to take corrective actions (will it comply with an MOU and has it in the past), and to operate in compliance with the law.
		(c) Whether the institution self-identified the violation, either prior to the examination or during the course of the examination, or whether the entity attempted to conceal the violation, including purposely engaging in complicated transactions to make the violation difficult to uncover. Self-reporting is a different factor from self-identification.
		(d) Whether the institution self-corrected the violation, including changing its practices and providing restitution, or other corrective actions taken by the entity on its own initiative, and if not, whether and for how long the entity continued to engage in the violation following notification by the CFPB.
(e) The institution's response to the PARR.		

	(3) Whether the institution knew or should have known (<i>e.g.</i> , through the volume of consumer complaints relating to the violations) of the violation.	
	(4) Prior regulatory action:	Whether the CFPB or another regulator has previously criticized or taken corrective action against the practice or conduct constituting the violation
<u>Policy-focused Factors</u>	(1) Other ongoing or anticipated SEFL or CFPB activity related to the problematic conduct.	
	(2) How responding to the conduct fits within the CFPB's or different offices' established priorities.	
	(3) Resource considerations of the office(s) that will be following through on the proposed course of action.	
	(4) Perspective of other regulators	
<u>Such other matters as justice may require.</u>		

Pilot Guide- Revised SEFL Associate Director Decision Memo Process

December 4, 2019

Overview

In order to provide more timely communication to supervised entities, SEFL Associate Director (AD) review of potential violations that are novel, complex, or UDAAP will now occur earlier in the exam life cycle. Timelines have been established for the earlier review of potential violations and the process will now occur simultaneously with the ARC Memo Drafting and Approval processes (or if no ARC is anticipated, it will occur after a PARR response is received but prior to the draft Supervisory Letter or Examination Report being sent to the HQ Report Review mailbox).¹ Furthermore, the date of the violation decision by the SEFL AD results in Exam Analysis Finalized (EAF) Date if the matter is not sent to the Action Review Committee (ARC).

This Pilot Guide documents revisions to:

- SEFL 3.3 Playbook: Decision Rights 2.5-3.2 for the Full-Review Track Report Approval Process
- SEFL Integration 3.3, Part II: SEFL Examination Process Timing
- SEFL Integration 3.3, Part II: SEFL Decision Rights in the Examination Process
- The SEFL Associate Director Decision Memo
- SES Data Directive on EAF Date Field

If you have any questions regarding the Pilot Guide for the Revised SEFL Front Office Review of Exam Reports and Supervisory Letters, please email the_box@cfpb.gov or contact Tim Siwy, Deputy Assistant Director for Supervision Examinations, at timothy.siwy@cfpb.gov.

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¹ As detailed in Decision Rights 2.10 and 2.11 in the SEFL 3.3 Playbook's Full-Review Track Report Approval Process.

SEFL Integration 3.3, Part II: SEFL Examination Process Timing

Off-site Analysis	2.8 <u>Need for PARR Letter</u>	10 business days to draft and approve PARR		
	2.9a <u>PARR Letter Approval</u>	5 business days for Fair Lending to draft and approve PARR		
	2.9b <u>PARR-Fair Lending Letter Approval</u>	14 calendar days for the Entity to respond to the PARR (unless an extension is granted) 5 business days to complete PARR Response analysis (additional 10 business days to complete PARR Response analysis if the PARR Response contains quantitative analysis and/or challenges to the CFPB’s statistical methodology/code.)		
	ARC 2.10 <u>Need to ARC</u>		AD 2.10 <u>Need for AD Decision Memo</u>	7 business days for OSP to draft and approve SEFL Associate Director (AD) Decision Memo (as needed)
	ARC 2.11 <u>ARC Memo Approval</u>	10 business days to draft ARC memo (including input from AD Decision Memo process if underway)	AD 2.11 <u>AD Decision Memo Approval</u>	for violations identified as potentially novel, complex, or UDAAPs, before submitting to SEFL Front Office for review and sending a notification copy to the region.

		<p>5 business days to approve ARC memo (3 business days of which is for HQ offices to provide input, and 2 business days of which is for HQ POC to consolidate input)</p>	<p>AD 2.12 SEFL Front Office Review of AD Decision Memo</p>	<p>5 business days for SEFL AD review.</p>
	<p>ARC 2.12 ARC Decision on ENF or Supervision</p>	<p>5 business days for SEFL ADs to determine if (a) the matter should be handled through the supervisory process, (b) believes that public enforcement action is warranted, (c) wishes to convene a meeting of the ARC to discuss the matter, or (d) abstains.</p> <p>3 business days for SEFL Associate Director to either concur in the decision or note his objection.</p>		
<p>Report Review</p>	<p>3.2 Full-Review Track Report Approval</p>	<p>15 business days for the Region to draft and approve the report</p> <p>25 business days for the HQ Report Review (3 business days of which is for the Region to incorporate HQ input prior to review by the applicable SEFL ADs)</p> <p>5 business days for the Region to incorporate feedback</p>		

Modifies SEFL 3.3 (Pages 13-14) -- Please note that **3.1 Expedited-Review Track Report Approval** remains in effect (and unedited), but has been left out of this document due to the focus on Full Review Track exam reports.

SEFL Integration 3.3, Part II: SEFL Decision Rights in the Examination Process

2.8. Need for a PARR Letter: Determination of need for sending a Potential Action and Request for Response (PARR) Letter to the entity.

The FM/SEM makes the decision whether to send a PARR to an institution with input from the EIC, OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, and ENF Staff/Deputy provide input. The OSP AD, FL AD, ENF AD and RD ratify the decision to draft a PARR Letter. FL decision rights for PARRs are for potential HMDA and/or non-discrimination ECOA violations.

2.9a - PARR Letter Approval: A PARR Letter provides a supervised entity notice that the CFPB has found potential violation(s) of Federal consumer financial law and is considering possible public enforcement action. Subject entities are invited to substantively respond to PARR Letters within 14 calendar days. A PARR Letter may be used when addressing both potential non-ECOA (or non-discrimination ECOA) violations and HMDA violations.

The OSP Program Manager makes the decision regarding content of a PARR Letter. The OSP Program Manager or assigned OSP POC drafts the PARR Letter with input from the FM/SEM, EIC, OSP Deputy AD, ENF Staff/Deputy, Legal, and, as applicable, the FL POC, FL Deputy AD, and FL AD. FL decision rights for PARRs are for potential HMDA and/or non-discrimination ECOA violations. The RD ratifies the content, signs, and approves sending the PARR Letter to the entity.²

2.9b - PARR-FL Letter Approval: Documentation of 1) preliminary findings of potential ECOA violation(s), notice that the CFPB is considering referral to the Department of Justice and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days; or 2) preliminary findings of HMDA violation(s), and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days.

The FL POC makes the decision regarding content, drafts, signs, and sends the PARR-FL Letter. The ENF Staff/Deputy, EIC, OR Economist, FM/SEM and RD provide input. The FL Deputy AD ratifies the content and approves sending the PARR-FL Letter to the entity.

ARC 2.10 - Need to ARC: Determination of need for developing an ARC memo and holding an ensuing ARC meeting.

The FM/SEM makes the decision regarding whether an exam will go through the ARC process based on the criteria outlined in Part IV of this policy and input from OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, ENF/Staff Deputy, and the EIC. The OSP AD, FL AD, ENF AD and RD ratify the decision regarding whether or not to put an exam through the ARC Process.

² This arrangement will be collectively revisited after one year from the date it is instituted.

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ARC 2.12 - ARC Decision on Enforcement or Supervision: Decision by ARC members (Assistant Directors of the SEFL Offices or their designees) on whether or not a matter will be pursued through public enforcement action.

The OSE AD, OSP AD, FL AD, and ENF AD review the ARC Memo and vote on whether they (a) believe the matter should be handled through the supervisory process, (b) believe that public enforcement action is warranted, (c) wish to convene a meeting of the ARC to discuss the matter, or (d) abstain. Input is provided from the RD via the ARC Memo and additional input as needed during the deliberation or voting period. The SEFL Associate Director ratifies the vote within 3 business days of ARC Committee vote.

3.2 - Full Review Track Report Approval: Decision and ratification that exam report under Full Review (per Decision 2.5) is finalized and ready to move to Prudential Regulators/entity.

The ARD makes the decision on content within the final exam report by collecting input within the Region from the EIC, Review Examiner, and FM/SEM. The report is approved within the Region no later than **15 business days** after exam analysis finalized. The report is submitted by the ARD to HQ for review where further input is captured from the OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, OR Economist (as applicable), FL Deputy AD, ENF Staff/Deputy and Legal. The input is assessed, consolidated, and reconciled in a manner that presents stakeholders' input without conflicts by the OSP POC or FL POC and returned to the ARD to address input. The RD ratifies the exam report and submits the report to HQ to be ratified by OSE AD, OSP AD, FL AD and SEFL Associate Director. The Headquarter review is completed in **25 business days**. The ARD incorporates input from SEFL ADs and SEFL Associate Director before sending to the entity or Prudential Regulator within **5 business days** of receiving input from HQ.

Implementation Date: 10/14/19

Modifies SEFL Integration 3.3 (Pages 10-12) – Please note that **3.1 Expedited-Review Track Report Approval** remains in effect (and unedited), but has been left out of this document due to the focus on Full Review Track exam reports.

SES Data Directive Excerpt:

Navigation	Subsection	Field Name	Field Definition	Required	Responsible Party	Due Date
12, 16	Type 12, 16 Manage Milestones - Milestone Manager - Milestone Details - Off-Site	Exam Analysis Finalized Date	Date enough information is collected to determine the exam is complete, latest of: <ul style="list-style-type: none"> • Initial Off-site Analysis End; • PARR/PARR FL Letter Rec (+5 business days); • PSA Letter/PSA Letter Rec (+5 business days); • Legal Review Comp (+ 10 business days); • Memo to Regs Rec (+ 10 business days); • SEFL AD decision on violations, or • ARC decision made. 	Yes	Region	Upon determination of the last step, but no later than COB Wednesday.