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OCC Highlights Banks' Compliance Staffing Issues, Even as Regulators Place More Compliance Demands on Banks and Place Executives at More Risk

By: Michael Flynn*

In its recent *Semiannual Risk Perspective*, the Office of the Comptroller of the Currency (OCC) has highlighted the difficulties banks face finding adequate numbers and quality of hires for compliance oversight. While there are several reasons for this issue, it comes at an especially inopportune time, when banks face increasing compliance demands and regulator requirements that target compliance activities and Chief Compliance Officers specifically. This combination highlights the extra care banks must exercise, in order to build up compliance groups as required and operationally needed, while hopefully finding enough qualified candidates.

Banking regulators have made it clear that individual senior managers and executives at banks face more individual exposure and requirements that increase the risks they face:

- The Director of the Consumer Financial Protection Bureau (CFPB) has indicated that the CFPB will look to hold individual managers/executives liable for company activities they direct or allow, and the CFPB has begun bringing legal proceedings against such individuals.
- The Department of Justice (DOJ) will require Chief Compliance Officers, as well as CEOs, to certify that corrective actions taken were "reasonably" designed to address the shortcomings and violations identified. *See* Buchalter Client Alert, June 23, 2022
- The CFPB has announced its intent to seek greater penalties against companies, especially large institutions, that are repeat offenders and their executives. *See* Buchalter Client Alert, April 1, 2022

At the same time, the regulatory and compliance pressures on banks have grown. It is well recognized that the regulatory environment has grown stricter and more demanding, while agencies increase the scope of their regulatory demands. As just a few recent examples, the banking regulators, including the OCC, issued a proposed revision to the Community Reinvestment Act regulations that would significantly change many banks' compliance and operational requirements. The CFPB issued a proposed Small Business Lending Data Collection rule, which would require banks and other lenders to create a whole new data collection and reporting regime. And the CFPB broadened the types of consumer financial products to be examined for discrimination issues. *See* Buchalter Client Alert, , March 31, 2022

All of this requires stronger, and more fully staffed, bank compliance units. Yet, in the face of these demands, the ability to effectively staff is challenged by a number of factors. In its [Spring 2022 Semiannual Risk Perspective] the OCC highlighted the difficulties banks are facing in staffing compliance units, at both the staff/line level and the manager and executive level. The OCC recognized that these difficulties reflect a number of factors, including the general lack of potential employees faced by many industries post-COVID emergency, and the greatly increased compliance hiring that has already occurred in the financial services industry, removing many qualified persons from the pool of available hiring candidates. The OCC stated specifically:

> Recruiting and retaining talent with the desired level of knowledge and experience is a growing challenge in the banking sector. Similar to other industries, banks have been operating with a barbell staffing model for several years, with concentrations in junior- and senior-level personnel. . . When combined with strong competition from both banks and nonbanks, retaining and attracting talent with the appropriate expertise is driving up bank personnel costs.
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> Bank compliance functions also are experiencing challenges retaining and replacing staff. A lack of access to subject matter expertise may result in increased compliance and operational risks, particularly if existing compliance processes, controls, testing, and training become subject to funding cutbacks or limitations, or if future compliance management program enhancements and maintenance are delayed.

OCC *Semiannual Perspective*, pp. 18, 21-22.

The OCC report acknowledged that these staffing issues exist in a time of operational and regulatory challenges for banks. Pressures include numerous consumer compliance issues, the Community Reinvestment Act and Fair Lending, FinCen and OFAC guidance re Russian sanctions, fraud in government relief programs, environmental crimes and BSA/AML issues, requirements for third party due diligence, and other concerns.

While the OCC report highlights these concerns, it does not provide any specific relief from these problems or the aggressive regulatory and risk environment discussed above. While banks may have no choice but to continue hiring compliance personnel as needed, the OCC suggests that they may not find as many highly qualified candidates as they would normally. While there is no simple solution to such a complex issue, this suggests that banks likely should move to recruit quickly when positions must be filled or created, and should consider even stronger training and monitoring for new compliance hires. Such increased training might be suggested even if the quality of a bank's new hires is not compromised; adding new staff always places strong demands on both the new hires and the existing unit.

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