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The CFPB's Enforcement Process

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OVERVIEW

CFPB Enforcement Overview



- The CFPB has broad investigative authority under Dodd-Frank over “any person” to determine whether they have violated a federal consumer law
 - Not limited to supervised entities
- With this broad enforcement authority the CFPB:
 - Has brought over **140** enforcement actions
 - Has obtained more than **\$11 billion** in total relief to date

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The Cost of a CFPB Enforcement Action



- The CFPB can seek the following remedies:
 - Injunctive relief
 - Consumer redress (restitution or damages)
 - Penalties
- Potential penalties can be substantial.
 - \$5,437 per violation
 - \$27,186 per reckless violation
 - \$1,087,450 per knowing violation
 - CFPB just obtained its largest civil money penalty: \$100 million

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Timeline of a Typical CFPB Investigation



- Receive CID (administrative subpoena) for documents, written reports, and information
 - Negotiate over scope of CID
 - Produce documents in accordance with agreed upon modifications
- The CFPB may send additional CIDs for documents, emails, or sworn testimony
 - Depending on the scope of the investigation, this information gathering stage may last many months

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Timeline of a Typical CFPB Investigation (Cont.)



- CFPB staff decides whether or not to recommend an action
 - If the CFPB decides not to go forward with an enforcement action, the file will be closed (but may be reopened at any time)
 - If the staff recommends an enforcement action, the entity will receive a Notice of Opportunity to Respond and Advice (“NORA”) notice
 - Entity responds with written submission and can request a meeting
- Negotiate a settlement or the CFPB brings an action in court/through the administrative adjudicative process
 - About ¾ of defendants settle with the CFPB and about ¼ litigate
 - The defendants who decide to litigate are disproportionately smaller entities

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A DIFFERENT APPROACH TO ENFORCEMENT

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CFPB Enforcement vs. SEC Enforcement Procedure

- Different Turf, Different Priorities – But there is always fraud
 - SEC: Investment Advisers, market abuse, structure products, fraud
 - CFPB: Debt collection, RESPA, fair lending, UDAAP, credit cards, fraud
- Investigation
 - Opening an investigation
 - SEC: MUI, Informal, Formal – All non-public and confidential
 - CFPB: All Formal, Starts out BIG (CIDs like to make a point)

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CFPB Enforcement vs. SEC Enforcement: Document Demand



- CFPB CID vs. SEC Subpoena
 - Very Formal, unyielding, young
 - Fewer, longer CIDs
 - CIDs include interrogatories
 - Very short timeline, not always negotiable
 - 10 days: Meet-and-confer
 - 21 days: Petition Director to limit CID
 - No objection at meet and confer, cannot petition director
 - Very difficult to succeed: Know Staff, specifics of burden or unfairness
 - Petitions become public

CFPB Enforcement vs. SEC Enforcement: Document Production



- ESI Document Submission Standards matter
 - Must produce according to CFPB's standards
 - Requires technical expertise or the help of a specialized data vendor
 - IT specialist on the meet-and-confer call
 - Meet all deadlines
 - Modifications (scope or timing) must be requested in writing
 - If accepted, the CFPB will issue a modification letter
 - Be prepared to produce at least some information/documents by the deadline in the CID
- Withhold and Log Privileged Materials
 - Privilege log must be submitted at time of production, signed by the attorney stating the grounds for privilege
 - Sensitive personally identifiable information may not be withheld

CFPB Enforcement vs. SEC Enforcement: Lessons Learned

- NORA vs. Wells Submission

- During the NORA call, the CFPB Staff will verbally outline the evidence supporting its decision to recommend an enforcement action
 - The Staff will not outline allegations in writing
 - The amount of detail provided during the NORA call highly dependent on Staff
- The NORA is not guaranteed. Staff can proceed with an enforcement action without providing the company an opportunity to respond.
- SEC:
 - More flexibility (time and submission length)
 - Main opportunity to present defense to Management, the Litigation Unit and the Commission

- Getting Adults in the Room

UNDERSTANDING THE TARGET SELECTION PROCESS

Common Sources of CFPB Enforcement Investigations

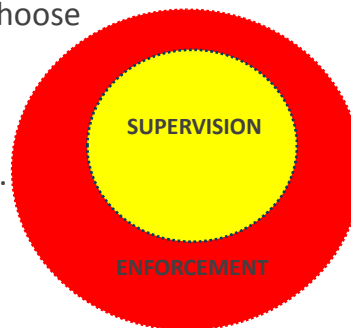


- Referrals from CFPB supervisory examinations
- Referrals from other agencies
- Consumer complaints
 - CFPB maintains Consumer Complaint Portal and has access to the FTC's Consumer Sentinel Network
- Whistleblowers
- Consumer groups
- Private litigation
- Press reports

TOOL Choice



- Unlike prudential regulators, CFPB Enforcement conducts investigations independent of examinations
- For Supervised Entities, CFPB can choose
 - Examination via Supervision, or
 - Investigation via Enforcement.
- Information gathering mechanisms.
- Choice impacts outcome.



Supervision priorities



Date	Institution	Product Line
Q1	XYZ Bank	Mortgage Organization
Q1	ABC Non Bank	Baseline Fair Lending
Q2	ABC Bank	Auto Finance
Q2	XYZ Non Bank	Student Loan Servicing
Q3	ABC Bank	Mortgage Servicing

- Supervision establishes exam schedule based on risk-based analysis of Institution Product Lines (IPLs).
- Finite (though large) number of IPLs subject to supervisory authority.
- IPLs are risk weighted based on market risk (consumer harm potential) and entity risk (supervisory rating, consumer complaints).
- Result is examination schedule identifying specific IPLs to be examined in coming year.

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Enforcement priorities



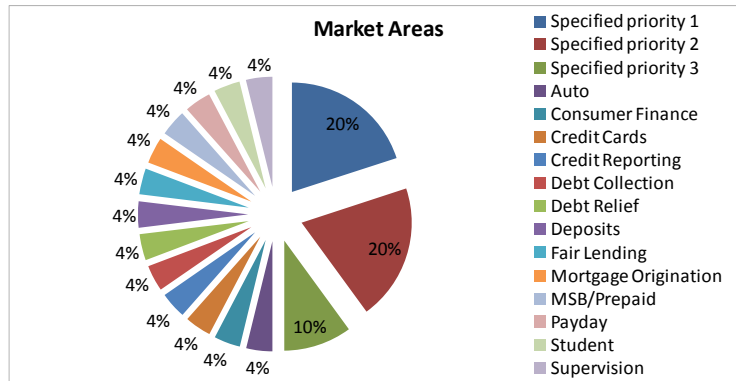
- Unlike Supervision, Enforcement does not identify institutions as specific targets of investigation as part of strategic planning process
- Instead, Enforcement seeks to identify *market areas & practices* it wants to address
- Goal: targeted resource allocation
- All suggested enforcement investigations – both organic and referrals from Supervision – are measured against this plan

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Enforcement priorities



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Tool choice revisited

- CFPB's approach to Tool Choice is grounded in these Strategic Plans.
- Which tool to use if issue identified?
- General Rule:
 - If IPL is on Supervision exam schedule in next 12 months, strong presumption for Supervision examination.
 - If IPL not scheduled for exam in next 12 months, strong presumption for Enforcement investigation.

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Different start/different finish

- In theory, Examination and Investigation are just information gathering tools
- In practice, they often lead to different outcomes
 - Examination: exam report, MOU, or public enforcement action
 - Investigation: closure, public enforcement action
- Currently, no mechanism for confidential supervisory resolution of enforcement investigation

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WHO CAN BE A TARGET?

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Possible targets of a CFPB Enforcement Action - UDAAP



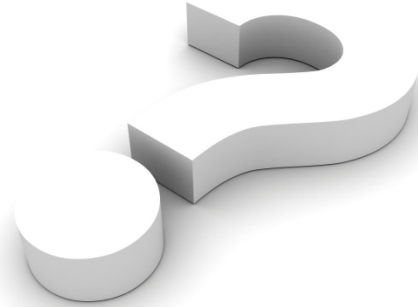
- Covered persons
- Service providers of covered persons
- Related persons
 - Officers, directors, employees charged with managerial responsibility, and controlling shareholders of covered persons.
 - Shareholders, consultants, JV partners, or other persons materially participating in conduct or affairs of covered persons
 - Independent contractors who knowingly or recklessly participate in a violation of law
- Individuals and entities that provide “substantial assistance” to a covered person committing a UDAAP violation.

Individual Liability



- Approximately 30% of enforcement actions include claims against individuals
- Bases for individual liability:
 - Individual is a “related person”
 - Individual provided “substantial assistance” to a covered person committing a UDAAP violation.
- Most individual liability actions involve officers and individuals who were alleged to have materially participated in the affairs of the covered institution.

QUESTIONS?



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