

To the Point:

Closeout with the CFPB

Answers from insideCompliance



insideARM.com
accounts receivable management



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A Tale of Two Enforcement Actions

CFPB investigations rely heavily on rules and practices that were already perfected by the Federal Trade Commission. Investigations start with a Civil Investigative Demand (CID) which identifies the laws or regulations at issue. The CID contains requests which look very similar to litigation requests for production of documents or interrogatories, but it's for defensive discovery only. You have to provide a certificate of compliance. You have to satisfy document submission standards that the CFPB has.

Next, your agency will participate in investigational hearings or depositions. Keep in mind the fact that the Bureau will share confidential information with federal or state agencies. This is the time when collection agencies need to be their own best advocates. If you have a positive story to tell the CFPB, tell it. But if the CFPB is considering enforcement action, it will submit a Notice and Opportunity to Respond and Advise, or NORA, letter. What you have to do then is to persuade and to convince the CFPB that no enforcement action is necessary.

Here's a Tip:

"It is a huge mistake to think of this kind of exercise as a mere data dump. You have to be an advocate. You need to be aggressive in your positions. And you do this through position papers and cover letters."

*Anthony DiResta
Partner, Winston & Strawn LLP*

[CFPB examinations](#) are designed to maximize the Bureau's coverage of consumer risk in the market. The CFPB does risk-based analysis by focusing on a particular product or service.

First, your agency will receive an information request, similar to a CID. The CFPB requests a lot of information about the company's business model, its board of directors and senior management team, the compliance program, your policies, your practices, your procedures, industry practices, your training of employees, your monitoring and your internal evaluations, evaluations or monitoring done by third parties, and consumer complaints and responses. **YOU MUST PROVIDE INFORMATION FOR ALL THESE AREAS!**

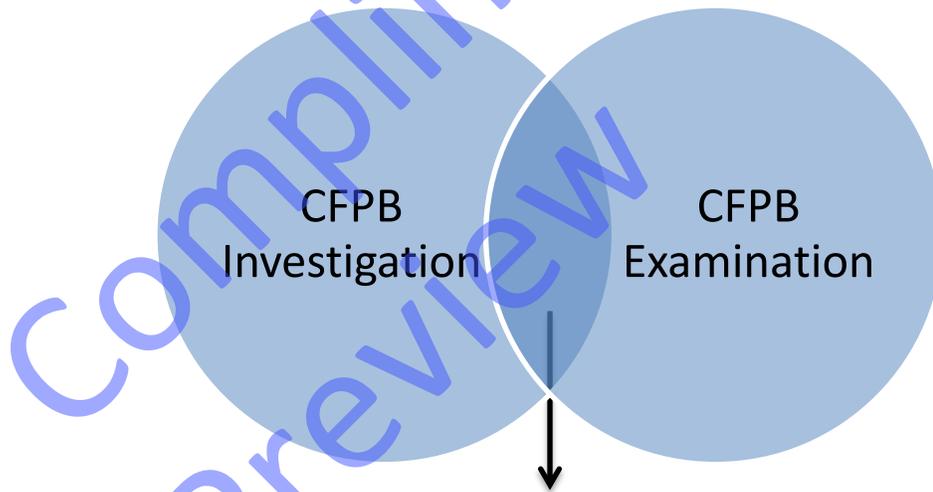
Next, auditors will conduct on-site visits. They will interview employees, including your senior staff. After that, the CFPB will draft its preliminary conclusions. They may provide suggestions for corrective action, where they provide conclusions and proposed actions and share that with the company. Then an examination report is drafted, finalized and formally approved. Finally, that final report is delivered, containing a confidential rating.

The good news is that collection agencies and their general counsel can avoid CFPB on-site “horror stories.” At the meet-and-confer during the exam, set a tone of respect and civility. If the auditors feel that you're taking their job seriously – you want to get them the information that they're asking for; you're committed to showing that your agency is a well-oiled compliance machine and you're proud of what you're doing – then they too will conduct themselves as appropriate professionals.

Here's a Tip:

“Worst case scenario: if somebody acted in what I considered to be an unprofessional and uncivil manner, I would not be shy on calling that person out or calling the person, the head auditor, or contacting somebody I would know here in Washington to say, ‘I've got a real problem here, this is not the kind of conduct you would want your employee in the bureau to do.’”

*Anthony DiResta
Partner, Winston & Strawn LLP*



Structurally and strategically, exams and investigations are fundamentally similar. Don't approach a CFPB investigation or examination as a litigator or as an investigation by an attorney general.