



December 6, 2011

CFPB ENFORCEMENT PROCEEDINGS EARLY WARNING NOTICE SYSTEM ANNOUNCED

The Consumer Financial Protection Bureau (CFPB) issued a bulletin providing information on the Early Warning Notice process the CFPB intends to use in connection with potential enforcement proceedings.

According to the CFPB, prior to enforcement proceedings by the CFPB, the CFPB Office of Enforcement may give the subject of a potential recommendation to commence enforcement proceedings notice of the nature of the subject's potential violations and may offer the subject the opportunity to submit a written statement in response. The CFPB indicated that whether to give such notice is discretionary, and a notice may not be appropriate in some situations, such as in cases of ongoing fraud or when the Office of Enforcement needs to act quickly.

The goal of the Early Warning Notice is to give companies the opportunity to present their position to the CFPB before an enforcement action is commenced.

The CFPB stated in the bulletin that the written statement provided in response to an Early Warning Notice should primarily focus on legal and policy matters relevant to the potential enforcement proceedings. The CFPB will require that any factual assertions relied upon or presented in the written statement be made under oath by someone with personal knowledge of such facts. Companies will be informed in the Early Warning Notice that submissions in response to the notice may be discoverable by third parties in accordance with applicable law. Generally, the CFPB will require that the written statement be submitted on 8.5 by 11 inch paper, double spaced, in at least 12-point type and no longer than 40 pages. According to the CFPB, unless otherwise specified, the written submissions must be received by the CFPB no more than 14 calendar days after the notice.

The bulletin stated that if after the written statement is submitted, the Office of Enforcement recommends the commencement of an enforcement proceeding, the written statement will be included with that recommendation.

The bulletin linked to a sample Early Warning Notice letter that contains much of the above information. The sample Early Warning Notice letter indicates that the letter would follow a telephone call to the company. In addition, the sample letter provides that the CFPB is to be notified no later than 7 days after the telephone call giving an Early Warning Notice is received whether a submission will be made and that submissions are to be made by e-mail or hand delivery to the CFPB.

Companies receiving an Early Warning Notice should take the opportunity to explain and resolve any potential issues to avoid the commencement of formal enforcement proceedings resulting from inaccurate or incomplete information. As the time frame for a response to an Early Warning Notice is brief, companies should have a procedure in place to start the response system immediately upon receiving an Early Warning Notice.

Please do not hesitate contact us if you have any questions. □

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