

CFPB, FTC Open for Business

Investigations and Exams Continue (Remotely) During COVID-19 Pandemic

March 30, 2020 | [Lucy E. Morris](#)

As the public health crisis spreads and worsens, one might think that law enforcement agencies like the Consumer Financial Protection Bureau and Federal Trade Commission would pause enforcement and supervision work so that companies can focus on the health and safety of customers and employees. In fact, on March 26, the CFPB issued a "Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic." The Bureau said it is "providing needed flexibility to enable financial companies to work with customers in need as they respond to the COVID-19 pandemic." It said that Bureau supervision staff will keep in close contact with institutions to determine when supervisory events can be appropriately scheduled, and that Bureau enforcement activities also will consider staffing and related resource challenges confronting financial institutions and their counsel. While this statement sounds reasonable, it remains to be seen how this will work in practice. In the meantime, the CFPB and other agencies are still very much open for business.

In March, while the pandemic was spreading, the CFPB issued new Civil Investigative Demands, pursued ongoing investigations, and pressed certain companies to enter into settlements or risk being sued. Similarly, the FTC and state attorneys general continue to seek information from investigation targets and move forward with settlement negotiations, notwithstanding the public health crisis. This is not to suggest that law enforcement efforts have been completely unreasonable or tone-deaf during this time. Generally, these agencies have shown a willingness to be flexible with investigation deadlines. But as one enforcement attorney said to me recently, we are still "open for business." Companies under investigation still must support requests for CID modifications and time extensions, and cannot simply ignore agency demands.

It also appears that CFPB exams are continuing as scheduled. This means that supervised entities must continue to provide information in response to agency "first-day" letters and prepare for examiners to come "on-site" - a misnomer in the current environment - through remote means. Initial presentations to examiners will be done by phone and with slide decks, making it more challenging to forge relationships and put a "face" on the company. Examiners will interview company employees by phone rather than in-person and increasingly use written documents like "Fact Verification Memos" to seek company's agreement to exam findings. While examiners might be willing to move certain deadlines, exams are continuing during the pandemic. Companies should continue to be vigilant in preparing for and responding to exams.

Supervised entities must also continue to respond to exam reports, including Matters Requiring Attention that typically require a response within 90 days. And if an entity receives what is known as a

PARR letter - asking it to respond to potential law violations and explain why issues should be handled through the confidential supervisory process rather than a public enforcement action - the company should work with outside counsel to provide the most compelling response possible. Even before the pandemic, CFPB exams have been an increasing source of CFPB enforcement referrals. Now more than ever, it is important to take exams seriously and work constructively with examiners to avoid potential enforcement action. While the CFPB promises to be "more flexible" with deadlines, this is more likely to occur on the supervision side. Once a matter moves to enforcement, experience tells us that CFPB prosecutors will be less forgiving. It remains to be seen whether that will continue to be the case during this unprecedented public health crisis.

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