
Consumer Financial Protection Bureau Announces Early Warning Notice Process for Enforcement Proceedings

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Yesterday, the Consumer Financial Protection Bureau ("the Bureau") issued Bulletin 2011-04, announcing that it intends to issue Early Warning Notices to potential respondents prior to initiating enforcement proceedings. The Bulletin and a sample notice are available [here](#).

Under this new process, the Bureau may (but is not required to) send an Early Warning Notice to a person or firm prior to initiating an enforcement action against them. The Notice will describe the nature of the potential violations of law, and provide the recipient with 14 days to submit a response to Bureau staff. "The primary focus of the written statement in response should be legal and policy matters relevant to the proposed enforcement proceedings. Any factual assertions relied upon ... must be made under oath." CFPB Bulletin 2011-04. Submissions are limited to 40 pages and may be discoverable by third parties. *Id.*

This is an important step towards ensuring due process in the CFPB enforcement process, and may blunt some potential criticisms of CFPB Chief of Enforcement and CFPB Director nominee Richard Cordray. Beginning in July 2011, we had urged the Bureau to adopt such a process, citing the SEC's "Wells process" as a model. See [SEC Provides an Enforcement Roadmap for the CFPB](#), by William R. McLucas in the *American Banker*; and [Due Process, Transparency and the Consumer Financial Protection Bureau](#), by Timothy J. Perla in *Securities Regulation and Law Report*. The Bureau's announcement explains that the Early Warning Notice process "is modeled on similar procedures that have been successful at other agencies." Interim Bureau head Raj Date adds that "the early warning notice announced today strikes a balance between the goal of fairness to those being investigated and our mission to protect consumers."

Important issues remain open. The Bulletin is silent on related procedural safeguards included in the SEC's Wells process, including the ability to review investigatory materials, and to have an opportunity for an in-person meeting with staff following the submission. We believe the CFPB staff will ultimately be persuaded on the merits that such additional steps will strengthen its decision-making process, and these enhancements may arise within early enforcement cases rather than additional statements of policy.

For more on WilmerHale's Consumer Financial Protection Bureau Working Group, click [here](#).

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