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## HOW TO NAVIGATE A CFPB ADMINISTRATIVE PROCEEDING

*Recent heightened enforcement activity and statements by the CFPB director raise the possibility that the Bureau will exercise its long-neglected authority to bring contested litigation in its administrative forum. In this article, the author, a former Deputy General Counsel at the Bureau, describes administrative enforcement proceedings under the Bureau's rules. He lays out in detail the steps in the proceeding: from the authority to conduct proceedings, to the rules on pleadings, discovery, and motion practice. He then turns to the hearing and recommended decision. He closes with the Director's decision and review in the courts of appeal.*

By John R. Coleman \*

After a slow start, Consumer Financial Protection Bureau (“CFPB” or “Bureau”) Director Rohit Chopra’s enforcement program appears to be gaining steam. The CFPB has aggressively enforced federal consumer financial law during its short history, with an average of more than 30 public enforcement actions per calendar year through 2020.<sup>1</sup> Given his reputation as an advocate of vigorous law enforcement, it was surprising that the CFPB brought only five enforcement actions in Chopra’s first six months at the helm.<sup>2</sup>

It now appears that this slow start may have reflected a change in enforcement priorities, not a reluctance to exercise the CFPB’s enforcement authority. In recent congressional testimony, Chopra signaled that, under his leadership, the CFPB would be shifting its enforcement focus away from smaller entities and towards larger

entities.<sup>3</sup> He also signaled that the CFPB would be less likely to settle matters, predicting that its approach “may lead to more litigation.”<sup>4</sup> Consistent with these statements, the CFPB brought four enforcement actions during Chopra’s seventh month at the helm, three of which were against large, publicly traded financial services providers, and two of which are contested.<sup>5</sup>

The prospect of more litigated enforcement actions raises the possibility that the CFPB will exercise its long-neglected authority to bring contested litigation in its administrative forum.<sup>6</sup> Although it has been over five years since the CFPB brought a contested enforcement

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<sup>1</sup> See, e.g., Enforcement by the Numbers | CFPB (consumerfinance.gov).

<sup>2</sup> Enforcement Actions | CFPB (consumerfinance.gov) (listing five public enforcement actions between October 12, 2021 and April 11, 2022).

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<sup>3</sup> Prepared Statement of Director Rohit Chopra before the House Committee on Financial Services | CFPB (consumerfinance.gov).

<sup>4</sup> *Id.*

<sup>5</sup> Enforcement Actions | CFPB (consumerfinance.gov) (listing four public enforcement actions between April 12, 2022 and May 12, 2022).

<sup>6</sup> See 12 U.S.C. § 5563.

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