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FEDERAL CONSUMER PROTECTION METHODS: CFPB'S INVESTIGATIONAL HEARINGS

When the CFPB receives information leading it to suspect that a covered entity has engaged in a violation of a consumer finance protection law, it may initiate an investigational hearing. The authors set out the background and legal framework governing such hearings, and suggest practical tips for entities and witnesses summoned to testify.

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In response to the Great Recession of 2008, Congress took steps to enhance consumer protection and prevent lending abuse through the enactment of the Dodd-Frank Act.[1] Title X of Dodd-Frank (the Consumer Financial Protection Act or "CFPA") creates the Consumer Financial Protection Bureau as a mechanism to "police the way banks manage mortgages, credit cards, payday loans, and other financial products."[2] The CFPB's mission is to protect consumers from deceptive and abusive loan and financial services practices by enforcing rules for both bank and nonbank entities, and by conducting examinations of consumer-related business.[3]

Within this context, practitioners in CFPB matters have seen an upswing in Bureau investigational hearings since the recent transition of leadership at the agency. This article explains the legal framework for CFPB investigational hearings, the proposed changes in the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 78o).

[2] *See id*. tit. X, 124 Stat. at 1955-2113; *see also* Renae Merle, *Consumer Financial Protection Bureau One Step Closer to Getting New Chief*, L.A. TIMES (Nov. 29, 2018, 1:35 PM), https://www.latimes.com/business/la-fi-cfpb-kraninger-senate-vote-20181129-story.html; 12 U.S.C. § 5511 (2010).

[3] The CFPB's enabling expressly identifies three groups of nonbanks the CFPB supervises regardless of size: mortgage companies (such as lenders, brokers, and servicers), payday lenders, and private education lenders. The CFPB also has some discretion to exert supervisory authority over "larger participants" in certain consumer financial markets involving nonbanks if the CFPB has "reasonable cause to determine that the nonbank poses risks to consumers in offering its financial services or products," and identifies such larger participants through public rulemaking. *See, e.g., Introduction to Financial Services: the Bureau of Consumer Financial Protection (CFPB)*, CONG. RESEARCH SERV. (updated Jan. 8, 2019), https://crsreports.congress.gov/product/ pdf/IF/IF10031.

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