

# EXHIBIT J

MAY 2017

# Policies and Procedures Manual

Office of Enforcement | Version 3.0

## Opening an Enforcement Matter

This policy governs the opening of matters by the Office of Enforcement based on information that a covered person may have committed or may commit a violation of federal consumer financial law. Matters are divided into two categories: the “research matter” and the “investigation.” A matter may be opened at any stage, whether during the research matter phase, the investigation stage, or at the stage when the Bureau is ready to approach a subject to settle or file a complaint.

The decision to conduct either a research matter or an investigation must be carefully considered in light of its impact on:

- The potential subject(s);
- The market in general;
- Bureau and Enforcement resources;
- The Enforcement Strategic Plan;
- Other Bureau divisions; and
- Law enforcement partners.

This policy is designed to promote vigorous enforcement while effectively monitoring investigation activities.

This policy also addresses how to handle the opening of matters that come to Enforcement through the Action Review Committee (ARC) process.

### Research Matters

While not necessary in every instance, conducting a research matter prior to deciding whether to open an investigation permits Staff to gather basic information and preliminarily evaluate the potential for successful enforcement of suspected violations of federal consumer financial law while minimizing the disruptions and risks associated with contacting investigation subjects during an investigation.

**CAUTION!**  
These materials may be subject to one or more of the following privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

Research matters should be opened primarily to evaluate nascent ideas for enforcement work to determine if an investigation is warranted. Research matters should be completed fairly quickly after determining whether further investigation is appropriate.

The primary purpose of a research matter is to collect and analyze easily obtainable information in order to:

- Determine whether the relevant conduct likely violates federal consumer financial law and the Bureau likely has jurisdiction.
- Determine whether non-Bureau law enforcement partners are investigating the matter or should be advised of the Bureau's interest in the matter.
- Evaluate whether an investigation is in the best interest of the Bureau and would be an effective use of Office of Enforcement resources.
- Determine how the matter will be staffed.
- Identify and prepare to address issues that may be raised during the Enforcement Action Process (EAP).
- Draft an Opening Investigation Memorandum.

## OPENING A RESEARCH MATTER

Any member of the Enforcement Office may propose a research matter according to the following process:

When a team member has an idea for a research matter, she should prepare a Recommendation for Assignment of a Matter (RAM).<sup>1</sup> RAMs should be one page in length and should provide the RAM author's summary views about the following:

- What conduct pertaining to a financial product or service may be taking place that may harm consumers;
- What federal consumer financial law(s) might be violated by the conduct if it is, in fact, occurring;

**CAUTION!**  
These materials  
may be subject  
to one or more  
of the following  
privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

<sup>1</sup> Z:\Enforcement\Resources\Policy Manual and Templates V.2.0\Templates and Forms\RAM Template.dotx

- What entities—if any have been specifically identified—may be engaging in this conduct; and
- Limited other relevant information.

The RAM should be shared with the appropriate Enforcement Issue Team who may be able to provide insight on the specific matter and who will confirm that the conduct in question is not currently being handled by the Bureau’s Office of Supervision.

Staff is responsible for ensuring that the conduct in question is not currently being handled by the Office of Enforcement or the FTC, by reviewing the Enforcement MMS (LawBase) and OMB Max.

Attorneys and paralegals should provide RAMs to their LD. Other personnel may select any LD to review their RAMs.

LDs may open research matters. If the LD chooses not to open the matter, the RAM will go to the Enforcement Director, Principal Deputy, and Chief of Staff (the Enforcement Front Office) to review and decide whether to open.

The team member who presented the RAM may be assigned to the opened research matter. If the team member who presented the RAM is unavailable or not assigned to work on an opened research matter, the LD should assign the matter to other Staff.

Within one week of opening the research matter, the ALD supervising a research matter will notify the Chief of Staff and ask the Legal Assistant assigned to enter the matter into the MMS and OMB Max.

Research matters should generally be open for no longer than two months, during which period Staff should spend a limited amount of time determining whether the issues identified warrant opening an investigation.

After two months, a determination will be made whether the research matter should either become an investigation or be closed with no action. Investigations should generally be opened promptly thereafter, according to the process described below. Issue Teams should monitor closed research matters to determine whether they merit reconsideration or new action by the Office in the future.

**CAUTION!**  
These materials may be subject to one or more of the following privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

## LIMITING EXTERNAL CONTACT

During research matters, Staff should avoid any direct interaction with potential investigation subjects, their known agents, or third party witnesses (other than consumers or potential victims). Evidence gathering should generally be limited to non-identifiable internet searching, review of consumer complaints, media sources, legal research, and contact with other law enforcement agencies and consumers. Staff should ask consumers that they contact during research matters to keep their conversations confidential, although it is understood that consumers may choose to ignore such requests.

## Investigations

Pursuant to the EAP, the Enforcement Director must approve the opening of any new investigation. When submitting a proposal to open an investigation to the Enforcement Director, Staff should follow the procedures described below.

- !** The Bureau is authorized to investigate merely on suspicion that any person has violated any provision of federal consumer financial law, or to seek assurance that a violation has not occurred. An investigation is a means to gather facts to assist in the determination of whether further action by the Bureau has the potential to address conduct that violates federal consumer financial law. The existence of an investigation does not suggest that the subject has indeed violated the law. It is not necessary to have evidence that a law has in fact been violated before opening an investigation.

An investigation should generally be opened when initial research provides

- A plausible set of facts that, if proven, would amount to a violation of one or more federal consumer financial laws;
- Reason to believe that one or more specific entities may be engaging in the conduct described in those facts;
- Evidence of a magnitude of harm that justifies investment of Office resources;

**CAUTION!**  
These materials  
may be subject  
to one or more  
of the following  
privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

- That there are sufficient Enforcement resources available to properly address the matter; and
- That the devotion of those Enforcement resources is consistent with the Office's Strategic Plan and articulated priorities or warrants a conscious departure from those plans and priorities.

Prior to proposing the opening of an investigation, Staff should consider a number of factors, including the following:

- Whether there is a need for immediate action to protect consumers;
- Whether there exists a sufficiently credible source of information or set of facts indicating potential violations of federal consumer financial law;
- The statutes or rules potentially violated and defenses that may be raised;
- Whether the conduct is relevant to a Bureau program or priority;
- Whether the conduct involves a possibly widespread and/or emerging industry practice;
- The egregiousness of the potential violation;
- The magnitude of potential harm to consumers;
- Whether the potentially harmed group is particularly vulnerable or at risk;
- Whether the conduct is ongoing;
- Whether the perpetrator of the conduct is a recidivist;
- Whether the conduct can be investigated efficiently and within the relevant statute of limitations period;
- Whether it might be more appropriate for other Bureau components to address the conduct;
- Whether other authorities, including federal or state agencies or regulators, are already investigating the conduct and/or might be better suited to do so than the Bureau;
- Whether the matter presents a good opportunity to cooperate with other civil and criminal agencies including strategic law enforcement partners;

**CAUTION!**  
These materials  
may be subject  
to one or more  
of the following  
privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

- Whether the matter gives the Bureau an opportunity to be visible in a community that might not otherwise be familiar with the Bureau or the protections afforded by federal consumer financial law;
- Whether opening an investigation would be an appropriate use of Bureau resources;
- Whether opening an investigation would advance the goals articulated in the Enforcement Strategic Plan.

## The Opening Investigation Memorandum

The following process should generally be used to open an investigation.

Before drafting an Opening Investigation Memorandum (Opening Memo), Staff should discuss the proposed investigation with their ALD and LD.

Staff should draft Opening Memos using the [Opening Memo template](#).<sup>2</sup> The following information should be included in every Opening Memo:

- The investigation's identifying number
- The Examination number, if applicable
- The subject's name
- The origin or source(s) of the investigation
- A brief description of the background facts
- The Bureau's jurisdiction
- **The potential legal violations**
- **Potential violator(s)**
- Other relevant parties
- Counsel of potential violators or other relevant parties (if known)
- The Statement of Purpose pursuant to 12 C.F.R. § 1080.5 (see [Complying with Rule of Investigation 1080.5 \[Notification of Purpose\]](#))

**CAUTION!**  
These materials may be subject to one or more of the following privileges:  
Attorney-Client, Work Product, Law Enforcement.

<sup>2</sup> Z:\Enforcement\Resources\Policy Manual and Templates V.2.0\Templates and Forms\Opening Memo Investigation 2016.09.08

- The investigation's supervising LD and ALD

The Opening Memo should be shared with the appropriate Issue Team for Issue Team and PST input. The Issue Team and PST should, within a week of receipt of the Opening Memo, provide the case team with feedback about whether they believe the investigation should be opened and how this investigation fits into the Enforcement Strategic Plan and articulated priorities. The Issue Team and PST feedback may be oral and informal, but should also include a short written recommendation to the Enforcement Front Office about whether to proceed with opening the investigation. That written recommendation should be no more than one page long, and should be provided in a document separate from the Opening Memo.

Staff should incorporate Issue Team and PST management feedback, if appropriate, and send the Opening Memo and feedback page to their LD.

Within a week, the LD should make a final determination about whether to advance the Opening Memo and, if advancing, send it to the Litigation Review Inbox ([Litigation\\_Review\\_Inbox@cfpb.gov](mailto:Litigation_Review_Inbox@cfpb.gov)), copying the Enforcement Senior Team, for review by the Enforcement Front Office. If an LD chooses not to open an investigation, she should notify the Enforcement Front Office.

The Enforcement Director, in consultation with the Enforcement Front Office, will either approve the opening of the investigation or request that the LD discuss it at her next regularly scheduled check in.

Staff are responsible for ensuring that the Enforcement MMS (LawBase) and OMB Max are updated at all stages of investigations.

## ARC Matters

SEFL Staff Memoranda<sup>3</sup> describe the ARC process and associated responsibilities for Enforcement. Staff should familiarize themselves with those policies and follow them in their exam support work. The following procedures apply internally within Enforcement for ARC matters.

Before Staff provide comments on the ARC memo, they should consult with their LD.

**CAUTION!**  
These materials  
may be subject  
to one or more  
of the following  
privileges:  
Attorney-Client,  
Work Product,  
Law Enforcement.

---

<sup>3</sup> [https://team.cfpb.local/wiki/index.php/SEFL\\_Staff\\_Memos](https://team.cfpb.local/wiki/index.php/SEFL_Staff_Memos)