

November 2014

Fair Lending Enforcement Processes

Office of Fair Lending and Equal Opportunity



Consumer Financial
Protection Bureau

CONFIDENTIAL: ATTORNEY WORK PRODUCT/ATTORNEY CLIENT PRIVILEGE/CSI/CII

Enforcement Action Process Steps¹

Proposed Action	Notice and/or Hold ²	Required Documents	Required Approval
Research Assignment Matter	If FL determines that a lead should be handled through enforcement, FL will notify the ENF FL issue team and ENF will open an administrative RAM		
Open Investigation	Notice: Director's Office, SEFL Front Office, Supervision, Fair Lending, RMR, CE, Legal, Operations ("EAP List") Hold³: 3 business days from notice	Memo should contain: source of the investigation; conduct under investigation; provisions of law potentially applicable; facts that if proven, would constitute legal violations; Statement of Purpose; staff assigned.	Enforcement Director
Issuance of CID to Supervised Entity	Notice: Supervision Exam Team		Enforcement Director/ ENF Litigation Deputy
Contacting Institution Post-Arc	Notice but no hold: Supervision.	N/A	
Preliminary Settlement Discussions	N/A	N/A	Supervising ENF or FL ENF Deputy
Authority to Settle – Proposed Parameters	Notice: EAP List Hold: 2 weeks from notice (1 week for comments/request, 1 week for discussion)	Memo should contain: relevant facts; legal analysis; litigation risks; CMP analysis; term sheet; draft settlement documents (optional)	Director in consultation with SEFL Associate Director
Authority to Sue – Administrative or District Court Action	Notice: EAP List Hold: 2 weeks from notice (1 week for comments/request, 1 week for discussion)	Memo should contain: relevant facts; legal analysis; litigation risks; CMP analysis; source and availability of recovery; draft complaint	Director in consultation with SEFL Associate Director
Authority to Settle – Final outside Settlement Parameters	Notice: Executive Clearance + EAP List Hold: 24-Hours	Memo should include terms reached and explaining proposed variance or change in facts	Director in consultation with SEFL Associate Director
Authority to Settle – Final within Settlement Parameters	Information Memo	Memo should include terms reached within parameters, no material changes, and timing of filing	Director in consultation with SEFL Associate Director

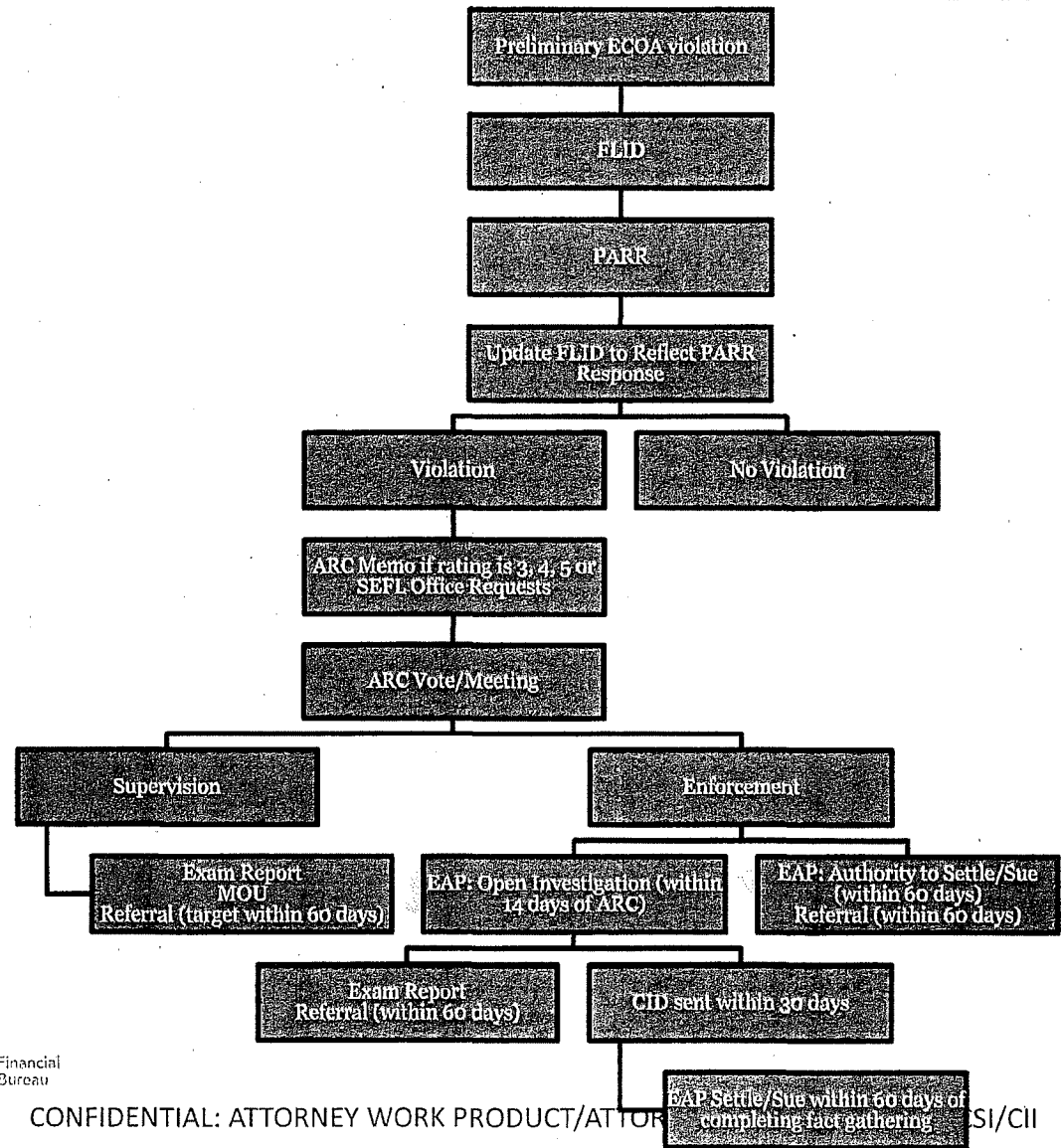
¹ This chart should serve as a quick reference guide and should be read in tandem with the EAP memorandum, which provides substantial additional details.

² In rare and unusual exigent circumstances (e.g., a TRO), a highly abbreviated notice/discussion opportunity will be triggered.

³ To facilitate Bureau coordination, when the process contemplates a "hold," disagreements about whether to proceed will be discussed by representatives from Enforcement and interested offices as needed. Disputes that remain unresolved may be referred to the Director. In addition, process owners will consult with relevant Bureau offices during the progress of a matter as appropriate, and each office will designate a Point of Contact for each matter to ensure consistency and coordination.



Migration of Matter from SUP to ENF under SEFL 2.5



FL Enforcement Clearance Chart

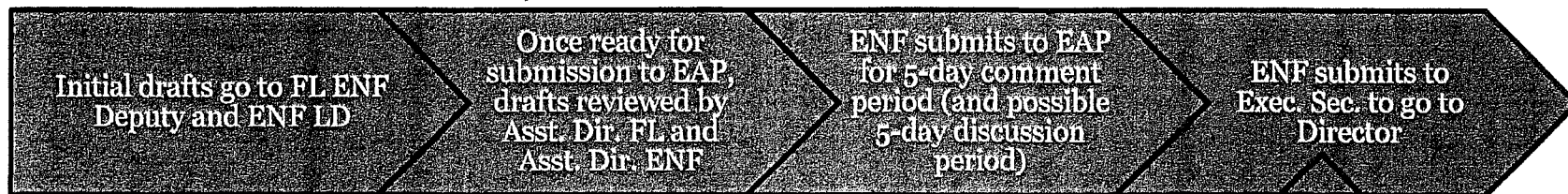
	Initial drafts	Preclearance and Internal FL Review (5 day review period)	SEFL Front Office (5 day review period)	Executive Secretary
EAP Opening Memo	FL ENF Deputy; ENF LD as appropriate	<ul style="list-style-type: none"> • FL SUP Deputy: FYI • FL RPR Deputy: Reviewer • FL PPl Deputy: FYI • FL Director: FL ENF Deputy will brief FL Dir. • Preclearance Process: Follow EAP 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • NA
CIDs	FL ENF Deputy; LD signs final version	<ul style="list-style-type: none"> • Preclearance Process: Follow EAP • FL ENF Deputy will brief FL Director 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • NA
PARR/NORA	FL ENF Deputy	<ul style="list-style-type: none"> • FL SUP Deputy: FYI • FL RPR Deputy: FYI • FL PPl Deputy: FYI • FL Director: FYI unless Deputies disagree • Preclearance <ul style="list-style-type: none"> ◦ ENF, Legal (as appropriate) 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • NA
Settle/Sue EAP arising out of Enforcement	FL ENF Deputy; ENF LD as appropriate	<ul style="list-style-type: none"> • FL SUP Deputy: reviewer if novel; otherwise, FYI • FL RPR Deputy: reviewer • FL PPl Deputy: FYI • FL Director: Reviewer • Preclearance Process: Follow EAP; preview to Legal and other interested stakeholders 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • 24-Hour Executive Clearance To Director
Settle/Sue EAP arising out of Supervision	FL ENF Deputy; ENF LD as appropriate	<ul style="list-style-type: none"> • FL SUP Deputy: FYI • FL RPR Deputy: reviewer • FL PPl Deputy: FYI • FL Director: Reviewer • Preclearance Process: Follow EAP; preview to Legal and other interested stakeholders 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • 24-Hour Executive Clearance To Director
Referral arising out of Enforcement	FL ENF Deputy	<ul style="list-style-type: none"> • FL SUP Deputy: FYI • FL RPR Deputy: FYI • FL PPl Deputy: FYI • FL Director: Reviewer • Preclearance <ul style="list-style-type: none"> ◦ ENF, OSP, OSE, Legal 	<ul style="list-style-type: none"> • Katherine G./Althea (attach SEFL Front Office cover sheet) 	<ul style="list-style-type: none"> • 24-Hour Executive Clearance To Director
Referral arising out of Supervision	FL ENF Deputy	<ul style="list-style-type: none"> • FL SUP Deputy: Reviewer • FL RPR Deputy: FYI • FL PPl Deputy: FYI • FL Director: Reviewer • Preclearance <ul style="list-style-type: none"> ◦ ENF, OSP, OSE, Legal 	<ul style="list-style-type: none"> • Katherine G./Althea (attach SEFL Front Office cover sheet) 	<ul style="list-style-type: none"> • 24-Hour Executive Clearance To Director
Briefs	FL ENF Deputy; ENF LD, as appropriate	<ul style="list-style-type: none"> • FL ENF Deputy will brief FL Director 	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • NA



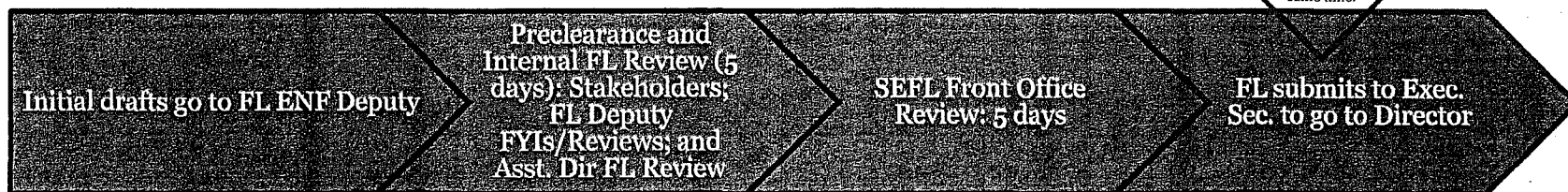
Consumer Financial Protection Bureau

EAP / Supervisory Letter / Referral Process Timing

EAP Authorization to Settle/Sue Process



Referral Process



The EAP memo and Referral Package should go to the Director at the same time.

Exam Report/SL/MOU

Endeavor to have the referral complete at the same time as, or shortly after, the exam report and MOU are conveyed to the institution.

Referral Contents: Decision Memo + DOJ Referral Package

- Decision Memo to the Director
 - Sets forth factors underlying determination that there is a pattern or practice of lending discrimination
 - Sets forth predicted response from DOJ based on DOJ's factors for opening investigation
 - Cross references legal analysis set forth in either separate memo to the DOJ (regular referral) or exam report (streamlined referral)
 - Includes as attachments (a) the EAP memo (if applicable); and (b) the Referral Package to the DOJ

- Referral Package to the DOJ
 - Includes cover letter to DOJ summarizing the violation
 - Identifies referred entity and headquarters
 - Identifies relevant prudential regulator
 - Identifies nature of violation and applicable prohibited bases
 - If regular referral: a legal analysis of the violation
 - If streamlined referral: the exam report (redacted to relevant ECOA portions)
 - Attaches source documents supporting violation

Referral Contents Checklist

- Decision Memorandum to the Director

- Attachment A: EAP Memo (if seeking settle/sue authority)

- Attachment B: Cover Letter to DOJ

- Attachment 1: Legal Analysis

- Attachment 2: [Source Document]

- ...

- Attachment 9: [Source Document]



Only this part goes to the DOJ.

Logistics of Finalizing Referral Package

- Check headings on the cover letter (Confidential; Subject to Dec. 6 Information Sharing Agreement)
- Check headings on legal analysis (Privileged and Confidential; Subject to Dec. 6 Information Sharing Agreement)
- Update date of cover letter to reflect anticipated date of referral
- Merge each item of referral package to the DOJ together into a single PDF
- Add bookmarks for each attachment
- Bates-stamp referral package as follows:
 - Confidential Information; Property of the CFPB
 - [Date of production: ██████████] [Institution: ████████] ██████████ and so on
- Obtain FL Director's signature and substitute signed page in .pdf
- Ensure that data is prepared for simultaneous delivery to the DOJ



Executing a Referral

- After obtaining Director approval, coordinate with FL ENF Deputy on the timing of the referral and the timing of the referral call with the DOJ
- Referral package should be encrypted and password protected with password separately emailed
- Referral package must comply with RFPA
- Must log referral package on Information Sharing Tracker
- Must notify institution of the referral
 - There is a standard template for this
- Ensure that relevant prudential is aware of referral

Public Enforcement Metrics

- Opening of investigation to first filing or settlement: 2 years
- Percentage of all cases resolved by the CFPB that were successfully resolved through litigation, a settlement, or issuance of a default judgment: 75%
- Investigations or cases in which we share information or evidence with partners

Internal Enforcement Metrics - General

- Approved research matter to EAP investigation or closed: 6 months
- Approved EAP investigation to authority to settle or sue: 18 months
- Approved settle or sue authority to filing: 4 months

SEFL 2.5 Enforcement Metrics

- Did Enforcement share an update on its open research matters with SUP and FL in the last month?
- How many post-ARC matters had an EAP Open Investigation Memo submitted in the last month, and within how many days of an ARC decision (req: 14 days)?
- How many post-ARC matters had a CID or voluntary information request sent in the last month, and within how many days of EAP approval to open investigation (req: 30 days)?
- How many post-ARC matters had a settle/sue memo submitted in the last month, and within how many days of completed fact-gathering (req: 60 days, or if no CID, 60 days after ARC decision)?
- How many times did Enforcement recommend release of requirements/orders?
- These will be updated once SEFL 3.0 is finalized.