Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—CFPB finalizes updates to administrative enforcement proceedings, (Feb. 27, 2023)

Banking and Finance Law Daily Wrap Up

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By Sharon E. Williams

According to the Bureau, the updates will assist the agency in better carrying out its responsibilities.

The Consumer Financial Protection Bureau has finalized an update to its Rules of Practice for Adjudication Proceedings, the agency announced in a blog post. The Bureau's final rule takes effect upon its publication in the *Federal Register*.

The CFPB is directed by Congress to enforce certain laws related to consumer financial protection with the Consumer Financial Protection Act of 2010 directing the CFPB to bring enforcement matters either through administrative adjudications or in federal district court. While the CFPB rarely brings cases through administrative adjudication, the agency took a fresh look at the existing procedures to ensure a fair and efficient process. In certain circumstances, administrative adjudications can be valuable.

One benefit of administrative adjudication is that it can allow an agency to utilize its regulatory expertise, the CFPB said. For example, in the case of *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947), the Supreme Court noted the importance of case-by-case agency expertise where an "agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.".

Another benefit of agency familiarity with the regulatory regime is when crafting effective prospective remedies that prevent recurrence of the violations. As the Supreme Court observed in a case concerning an FTC adjudication, the "Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed." *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 612 (1946).

Administrative adjudications are conducted in accordance with the Administrative Procedure Act and are subject to review by a United States Court of Appeals. The CFPB updated their procedures to make them as fair and effective for all parties as possible providing for, among other things, that:

- Parties have the flexibility to conduct depositions of potential witnesses. This approach will mean hearings can proceed more efficiently and focus more on issues central to the proceeding.
- A proceeding can be divided into two or more stages. Federal courts sometimes decide that it is efficient to divide cases into separate stages. The updated rule makes the same case-management tool available in the CFPB's administrative adjudications. If a case is bifurcated, issues can be resolved or clarified at the initial stage, making subsequent stages more focused and efficient for all parties.

The Bureau believes that the amendments will provide greater procedural flexibility, which should ultimately contribute to more effective and efficient proceedings.

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