CFPB Outlines Its COVID-19 Supervision and Enforcement Agenda

By Joann Needleman, Ann E. Lemmo / Jul 21, 2020

On July 2, 2020, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issued a short press release announcing a new supervisory approach called "Prioritized Assessments" ("PAs"). PAs were developed in response to COVID-19's impact upon consumers and the consumer financial marketplace. Along with this announcement, the Bureau provided nine Frequently Asked Questions ("FAQs") that further explain the approach. In short, PAs are higher-level examinations upon covered entities that operate in markets that "pose elevated risk of consumer harm due to pandemic related issues." The PAs are somewhat out of left field given that the CFPB had issued several guidance documents and bulletins since the onset of the COVID-19 pandemic, which seemed to suggest that the Bureau was aware of the impact the crisis was having on financial institutions, as well as consumers. In fact, prior guidance seemed to suggest some flexibility on the part of the Bureau. However, on July 16, 2020, Director Kraninger hosted a webinar as part of Consumer Protection Week which struck a more forceful tone and outlined how the PAs will be used and the markets that would be targeted. The webinar further confirmed that the CFPB fully intends to use its authority to enforce Federal consumer financial law when assessing pandemic-related practices by financial institutions.

Structure of the Prioritized Assessments

Unlike a traditional supervisory examination which can do a look-back of several months or several years, PAs will seek real-time information from the financial institution that reflects pandemic-related issues. Because the scope is narrower, the Bureau will be able to expand its supervisory oversight over a greater number of institutions, industries, and markets that were significantly impacted by COVID-19. The Bureau stated that it has "reviewed and analyzed pandemic related market developments," and will focus first on consumer risk where there are instances of job loss, reduced income, or inability to make loan payments. Additionally, markets that were specifically identified in the CARES Act, like mortgages and student loans, will be prioritized. It has been reported that many financial institutions already have received targeted requests seeking, for example, data and information on how the institution is assisting consumers, operational challenges the institution is facing as the result of COVID-19, and changes that have been made to the institution's compliance management systems. The information obtained will assist CFPB supervisory staff to assess compliance risks both to the institution and the consumer. Upon the completion of that initial assessment, the CFPB will then determine the next steps either for that entity or for the consumer finance market as a whole.

CPFB's July 16th Webinar

The July 16th webinar reiterated much of what the Bureau articulated in its July 2nd press release regarding PAs. The webinar provided further detail and confirmed that the PAs will replace the Bureau's current supervision and examination schedule. Three additional points from the webinar are worth noting: first, the CFPB made clear that it would also be assessing financial institutions who participated in Paycheck Protection Program ("PPP") for fair lending compliance, specifically as it relates to small business borrowers; second, that failure of a financial institution to otherwise comply with the CARES Act, while not a violation of a Federal consumer financial law, could otherwise constitute an unfair, deceptive or abusive act or practice (UDAAP); and third, the CFPB specifically identified consumer markets such as student loan servicing, residential mortgage servicing, credit reporting, and collections as initials targets because these markets are addressed in the CARES Act.

With regard to PPP loan originations for small businesses, the CFPB will assess whether the institution complied with the Equal Credit Opportunity Act (ECOA), including adverse action requirements, and whether additional restrictions were placed upon the PPP loan and/or the borrower which were not within the Small Business Administration's guidelines.

Post pandemic regulatory enforcement was discussed in Clark Hill's podcast Credit Eco To Go on June 23, 2020.

Consumer financial services institutions should consider conducting an immediate assessment of their pandemic-related activities now that the CFPB has put the industry on notice that examinations and investigations are on the horizon. At the beginning of the COVID-19 pandemic, there was simply no playbook to prepare institutions for their pandemic response. Sparse and conflicting guidance did little to ensure that on-the-spot decisions did not otherwise expose the financial entity to inherent risk and liability. Well-documented support for an institution's activities and a course of conduct, whether done in real time on through a more recent audit, could go a long way to ensure the CPFB, and maybe other regulators, that decisions were not arbitrarily made.

Clark Hill's Banking and Financial Services group has been actively reviewing all the latest and current information released from the CFPB to provide our clients with the most up-to-date information and guidance. For more information please contact Joann Needleman (jneedleman@clarkhill.com).

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