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Practice Update

CFPB Rescinds Temporary COVID Policy Statements

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On April 1, 2021, the Consumer Financial Protection Bureau rescinded seven policy statements issued between March 26 through June 3, 2020 that provided temporary relief from certain regulatory obligations during the COVID-19 pandemic. The CFPB also rescinded its 2018 bulletin on supervisory communications and replaced it with a revised bulletin describing its use of matters requiring attention (MRAs) to effectively convey supervisory expectations.

Dave Uejio, Acting Director of the CFPB, explained "Providing regulatory flexibility to companies should not come at the expense of consumers. Because many financial institutions have developed more robust remote capabilities and demonstrated improved operations, it is no longer prudent to maintain these flexibilities." This rescission is another signal from the CFPB that it intends to take a more aggressive posture.

The rescinded policy statements and MRA Bulletin are:

1. **Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic** (March 26, 2020)

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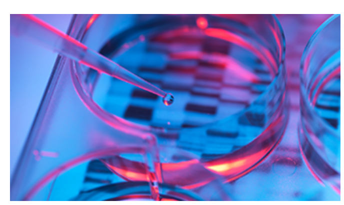

This statement (as explained in our prior alert) provided that the CFPB would take into account challenges facing financial institutions as they related to supervisory activities and enforcement actions during the pandemic. The CFPB had stated it would be "sensitive to good-faith efforts demonstrably designed to assist consumers."

2. **Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act** (March 26, 2020)

This statement (as explained in our prior alert) relaxed quarterly reporting requirements for the reporting of Home Mortgage Disclosure Act data under Regulation C. The rescission instructs all financial institutions required to file quarterly to do so beginning with their 2021 first quarter data, due on or before May 31, 2021, for all covered loans and applications with a final action taken date between January 1 and March 31, 2021.

3. Statement on Supervisory and Enforcement Practices Regarding CFPB Information Collections for Credit Card and Prepaid Account Issuers (March 26, 2020)

This statement (as explained in our prior alert) suspended requirements under Regulations E and Z to submit prepaid card and credit card account agreements. The rescission reinstates these requirements and provides guidance as to how financial institutions should now meet the specified information collections requirements relating to credit card and prepaid accounts.

4. Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act (April 1, 2020)

This statement (as explained in our prior alert) highlighted furnishers' responsibilities under the Coronavirus Aid, Relief, and Economic Security Act

(CARES Act) and informed furnishers and consumer reporting agencies of the CFPB's flexible supervisory and enforcement approach during the pandemic regarding compliance with the Fair Credit Reporting Act and Regulation V. The rescission keeps intact the section entitled "Furnishing Consumer Information Impacted by COVID-19" which articulates the CFPB's support for furnishers' voluntary efforts to provide payment relief, and that the CFPB does not intend to cite in examinations or take enforcement actions against furnishers to consumer reporting agencies that accurately reflect the payment relief measures they are employing.

5. Statement on Supervisory and Enforcement Practices Regarding Certain Filing Requirements Under the Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J (April 27, 2020)

The rescission instructs land developers subject to ILSA and Regulation J to resume filing of required annual reports of activity and financial statements.

6. Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic (May 13, 2020)

This statement (as explained in our prior alert) had provided that the CFPB would evaluate a creditor's circumstances due to the pandemic before it decided to pursue an action against a creditor that takes longer than required by Regulation Z to resolve a billing error, so long as the creditor had made good faith efforts to get the necessary information and make a determination as quickly as possible.

7. Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic (June 3, 2020)

This statement (as explained in our prior alert) provided that under specified circumstances, the

CFPB did not pursue any action against a credit card issuer which did not obtain E-SIGN Act consent from a consumer during a telephone call to allow electronic delivery of certain written disclosures required by Regulation Z, so long as the issuer obtained both the consumer's oral consent to e-delivery and oral confirmation of their ability to review the electronic written disclosures.

- **Bulletin 2018-01: Changes to Types of Supervisory Communications**

Through Bulletin 2018-01, released in 2018, the CFPB announced changes to how it articulates supervisory expectations to institutions. The CFPB stated then that it would continue communicating written findings to institutions through examination reports and supervisory letters. Those reports and letters were to include two categories of findings that convey supervisory expectations: **(i)** maters requiring attention (MRAs), and **(ii)** supervisory recommendations (SRs). The Bureau replaced the 2018 bulletin with new Bulletin 2021-01. This bulletin announced changes to how CFPB examiners articulate supervisory expectations. The new bulletin states the CFPB will continue to rely on MRAs. The Bureau explained that its examiners will use MRAs to communicate to an entity's Board of Directors and senior management goals the entity should accomplish to remedy violations identified by the CFPB. The bulletin reiterated that it expects entities to implement a compliance management system that "among other things, effectively prevents, identifies, and addresses risks to consumers." The bullet also noted that the CFPB will discontinue the use of SRs because it believes MRAs will more effectively communicate the CFPB's supervisory expectations.

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Banks, servicers, and other financial institutions need to be aware the CFPB rescinded these temporary flexibilities and should update their compliance policies accordingly.

We will continue to monitor for new guidance from federal regulators regarding the pandemic and its impacts. Our interactive foreclosure and eviction suspension map, court closure map, RON updates, and more resources are available at our Coronavirus Resource Center.
