

What To Do and Not Do During the CFPB's Transitional Period

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The Consumer Financial Protection Bureau ("CFPB") has faced significant operational constraints under recent changes in the present administration and Congress. With its budget significantly reduced and market concerns related to [this week's announcement](#) about bureau leadership, financial institutions will likely have substantive questions about their ongoing consumer financial services compliance.

Accordingly, I thought that I would put down some thoughts on what financial institutions CAN DO during this transitional period at the CFPB and what they SHOULD NOT DO at this time. Because I am a regulatory lawyer who focuses on compliance, I will go through the things NOT TO DO, first.

Do Not

- Decide to forego following the consumer financial services compliance policies and procedures your institution already has in place. These policies and procedures are viewed by all regulators as being components of your overall compliance management system ("CMS") and even if the CFPB will not be on-site supervising your institution for the next three years, your other supervising regulators will be paying attention to how robust your CMS is. And, a failure to comply in one part of the CMS can be a source of consternation in supervision exams, in and of itself.
- Revise your consumer financial services policies and procedures to be less stringent, just because the CFPB will not be looking over your shoulder. There may be other reasons that are reasonable for revising those policies and procedures to be less stringent, including statements from the other prudential regulators that reputational risk is not as important as previously, or court cases coming through that interpret the alphabet soup of regulations in a more business-friendly manner.
- Become less concerned about consumer complaints. Consumer complaints are incredibly useful bellwethers for all sorts of reasons and are generally among the first things requested when any regulator, plaintiff's attorney or potential business partner or investor is looking at your business. Robust and timely responses to consumer complaints continue to be important for all financial institutions, as are sessions with legal and compliance staff to identify trends in consumer complaints and root causes.
- Think that if a potential violation of law or regulation occurs, the statute of limitations will run out before a revived CFPB in the future has the ability to identify it. Remember, the CFPB has previously made extensive use of "tolling agreements" when the statute of limitations has already run, or is about to run, and choosing not to agree to the tolling agreement has in the past almost guaranteed that the CFPB will immediately sue under their unfair or deceptive or abusive acts or practices ("UDAAP") authority and as many other violations as they can muster. And, even if the statute of limitations has clearly run and there is no tolling agreement put in front of your organization, the CFPB's UDAAP authority has a very long period over which it can be leveraged by the CFPB.

Do

- Take advantage of the more open environment to test and try new products or services, because you will not need to worry about a CFPB interrupting the test/trial in flight. Of course, it is imperative to continue to address any concerns that may arise regarding consumer financial services compliance and to document thoroughly any problems that may arise during the test/trial, as well as the adjustments made to the product or service to address those problems.
- Consider re-allocating compliance resources (people and otherwise) that might otherwise be focused upon CFPB exam preparation/response or responding to investigations to addressing how new technologies will impact your

provision of consumer financial services. This is an excellent time to allow your compliance functions to learn about payment stablecoins, cryptocurrencies, tokenized assets, and of course, how artificial intelligence is, can and will be used in the organization to deliver, support and upgrade the consumer financial services it provides.

- Take this time to really look at products or services that drive consumer complaints and consider whether adjustments can and should be made to reduce those complaints. When the organization is not having to play as much defense, it is an excellent time to work on creating a better offense.

I hope this list helps provide some grounding for how to think about the next three years and can be useful to support shifts in resources and perspectives in your organizations. And, of course, as we enter this holiday season with Thanksgiving next week, I hope that you are able to enjoy time with your loved ones!