

# Clients & Friends Memo

## **COVID-19 Update: CFPB Announces New Supervisory and Enforcement Priorities in Light of COVID-19 Pandemic**

**July 17, 2020**

On July 16, 2020, the Consumer Financial Protection Bureau (“CFPB”) hosted a webinar outlining, for the first time, the CFPB’s supervisory and enforcement priorities in light of the coronavirus pandemic. Of note, the CFPB announced that it has de-prioritized a good portion of the agency’s existing exam schedule to conduct “prioritized assessments” focused on (i) consumers having trouble making loan payments, and (ii) markets where Congress provided special borrower protections under the CARES Act. These include: residential mortgage servicing, student loan servicing, auto loan servicing, consumer reporting and furnishing, and collections. The CFPB also stated that it plans to assess financial institutions’ implementation of the Paycheck Protection Program (“PPP”) for fair lending compliance. We expect these prioritized assessments will be the leading edge of the CFPB’s supervisory and enforcement work in consumer financial services markets most impacted by the pandemic.

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### **“Prioritized Assessments” Highlight CFPB Efforts during COVID-19**

The webinar was hosted by CFPB Director Kathy Kraninger and Associate Director for Supervision, Enforcement, and Fair Lending Bryan Schneider. The CFPB announced that it is shifting the focus of its examination program for the remainder of the year to “prioritized assessments.” Associate Director Schneider stated that these assessments expand the agency’s supervisory oversight beyond what the typical examination calendar allows so that the CFPB can gain greater insight into industry responses to the pandemic and ensure that financial institutions are paying close attention to practices that may cause consumer harm.

Prioritized assessments will be narrower than a standard exam in timeframe (limited to the past few months) and scope (focused on markets with elevated pandemic-related risk). The assessments will focus on markets in which consumers are having trouble making loan payments, and products and services for which Congress provided special borrower protections under the CARES Act. These include: mortgage servicing, student loan servicing, consumer reporting and furnishing, auto

loan servicing, and collections. Associate Director Schneider noted that while the CARES Act is not Federal consumer financial law, conduct that violates the statute also may constitute an unfair, deceptive, or abusive act or practice, or otherwise violate Federal consumer financial law.

The CFPB is using both consumer complaints and news reports to identify institutions for prioritized assessment. The agency has already sent these assessments to a number of institutions, with more to follow over the next several months. Associate Director Schneider emphasized that the CFPB is coordinating with its sister state and federal regulators to share information and avoid duplication, and that the CFPB will engage in follow-up work depending on the results of the assessment.

The CFPB will disclose its findings from prioritized assessments consistent with the confidentiality of examinations. The agency will look for opportunities to share anonymized findings in Supervisory Highlights and blog posts.

#### **Focus on Student Loan Servicing and PPP Fair Lending Compliance**

The CFPB discussed two specific areas of focus for prioritized assessment.

First, the CFPB singled out student loan servicing as an example of a market with elevated pandemic-related risk. The CFPB noted that the CARES Act suspends payments and accrual on federally owned student loans and entitles borrowers to credit on loan forgiveness. While the CARES Act is not Federal consumer financial law, the CFPB has authority to examine student loan servicing under its larger-participants rule. Prioritized assessments of student loans servicers will focus on what new repayment options are available to borrowers, how servicers are communicating these options to borrowers, and the operational risk of the programs. The CFPB also will examine student loan servicers furnishing compliance, including compliance with the CARES Act amendments to the Fair Credit Reporting Act ("FCRA"). The assessment will include servicing of private and federally owned loans.

Second, prioritized assessments will examine originations under the PPP. Associate Director Schneider stated that the CFPB has authority to examine small business loans for compliance with the Equal Credit Opportunity Act ("ECOA"). The CFPB will seek to assess (1) the steps financial institutions are taking to ensure programs comply with fair lending laws; (2) additional restrictions individual institutions have placed on PPP loans that exceed guidelines from the Small Business Administration; and (3) steps financial institutions are taking to ensure compliance with adverse action notice requirements.

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We believe the CFPB's webinar represents an important shift in the agency's supervisory and enforcement priorities. While the CFPB has issued operational guidance (and even has proposed amending some regulations) in response to the pandemic, it has not publicly stated its approach to *enforcing* Federal consumer financial law on issues arising out of the market disruptions caused by the pandemic. The CFPB has now put financial institutions on notice that it intends to broadly examine their pandemic-related practices and whether those practices comply with Federal consumer financial law (including ECOA for small business loans under the PPP) and the borrower protections enacted under the CARES Act. The issues that arise out of the CFPB's prioritized assessments are likely to be supervisory and enforcement priorities for the agency in the months and even years to come.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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