

KD Alert: Consumer Financial Protection Bureau Announces New Policy Regarding Abusive Acts

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On January 24, 2020, the Consumer Financial Protection Bureau (“CFPB”) announced a new policy to clarify how it will define “abusive acts” under the Dodd-Frank Act’s prohibition on unfair, deceptive, or abusive acts or practices (“UDAAP”). The CFPB previously did not have a definition of what constituted an abusive practice.

Through this policy statement, the CFPB is providing clarification on how it intends to apply certain criteria regarding abusiveness in order to promote compliance and certainty. The CFPB intends to apply the following principles during supervision and enforcement work by:

- focusing on citing or challenging conduct as abusive in supervision and enforcement matters only when the harm to consumers outweighs the benefit;
- generally avoiding “dual pleading” of abusiveness and unfairness or deception violations arising from all or nearly all the same facts, and alleging “stand alone” abusiveness violations that demonstrate clearly the nexus between cited facts and the CFPB’s legal analysis; and
- seeking monetary relief for abusiveness only when there has been a lack of a good-faith effort to comply with the law, except the CFPB will continue to seek restitution for injured consumers regardless of whether a company acted in good faith or bad faith.

CFPB Director Kathleen Kraninger stated that she is “committed to ensuring we have clear rules of the road and fostering a culture of compliance – a key element in preventing consumer harm.” She also stated that, “We’ve developed a policy that provides a solid framework to prevent consumer harm while promoting the clarity needed to foster consumer beneficial products as well as compliance in the marketplace, now and in the future.” The CFPB also noted in the policy statement that it left open the possibility of engaging in future rulemaking to further define the abusiveness standard.

KD’s Consumer Financial Services Practice Group has had extensive involvement with the CFPB and state regulators. Please contact us to discuss your policies and protocols before the CFPB contacts you.