

July 15, 2021

Mr. David Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Acting Director Uejio:

During your six-month tenure as Acting Director, you have directed the Consumer Financial Protection Bureau (Bureau) to undertake several actions that would traditionally be reserved for a Senate-confirmed Director. These actions include issuing new rules, guidance, and policy statements; delaying the implementation date of multiple major rulemakings conducted in accordance with the APA under a Senate-confirmed Director; reversing and rescinding policy statements and guidance issued by a Senate-confirmed Director; and undertaking nine enforcement actions against financial services companies.

Senate confirmation is an important Constitutional process that ensures the will of the American public is preserved and Presidential power is limited. It is concerning the CFPB is conducting business as usual without a Senate-confirmed Director and without proper oversight. To that end, we would like additional information on the three specific actions described below.

1. Abusiveness Standard

In March, the Bureau rescinded a January 2020 policy statement that provided clarity on the application of the “abusiveness” standard in supervision and enforcement matters.¹ The 2020 policy statement provided transparency with respect to the Bureau’s strategy for enforcing alleged wrongdoing under the “abusive” component in UDAAP. This is particularly important in situations where there is overlap with allegations that a practice is “unfair” or “deceptive.”² Federal courts have established precedent to determine whether a practice is “unfair or deceptive.” The 2020 statement provided further clarity for financial institutions regarding when the “abusive standard” would apply. This certainty encouraged financial institutions to offer permissible, innovative products and services.

It is unclear why you rescinded this policy statement, which is to the benefit of consumers and the financial institutions that serve them. It will not expand the number of mortgage or auto loans, credit cards, or small dollar credit products. The Bureau’s decision

¹ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/>

² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

appears to be purely political and grounded in the strategy of “regulation by enforcement” that was utilized by the Bureau prior to 2017.

Please provide the Committee with the Bureau’s basis for making this change. Your response should include a list of enforcement actions pursued subsequent to your decision, including the duplicative charges against a company for allegations of abusive and unfair or deceptive practices. In addition, please outline the types of financial products and services that will be restricted for consumers because of this policy.

2. Supervisory Recommendation

In March, the Bureau rescinded a 2018 bulletin outlining the Bureau’s approach to supervisory communications.³ The 2018 bulletin was replaced with a new bulletin that upholds the Bureau’s use of Matters Requiring Attention (MRA) but eliminated the Supervisory Recommendation (SR). The SR is a tool that had been used by the Bureau to communicate and recommend action absent a violation of federal consumer financial law. While MRAs are not legally binding, an MRA can impact a financial institution’s compliance rating.

This shift in policy escalates all examiner recommendations to MRA level. It shows the Bureau is no longer interested in collaborating with supervised financial institutions through a feedback process that benefits consumers and financial institutions alike. The action further suggests the Bureau is reverting to a policy of regulation by enforcement.

Please provide the Bureau’s justification for not soliciting public comment with respect to removing the Supervisory Recommendation from the bulletin. This is particularly important considering the Bureau solicited public comment prior to its inclusion. In addition, please confirm to this Committee that the bulletin is not enforceable, and outline the statutory authority under which the Bureau is able to order a regulated financial institution to make changes in policies or practices where there is no finding of a violation of federal consumer financial law.

3. Military Lending Act Authority

In June, the Bureau issued an Interpretive Rule indicating the Bureau will resume supervising financial institutions for compliance with the Military Lending Act (MLA). In making this decision, the Bureau opined that it is “no longer persuaded by counterarguments that it does not have the relevant authority.”⁴ To be clear, Congress has never explicitly granted the Bureau this authority. In fact, in 2019, Director Kraninger “asked Congress to explicitly grant the

³ CFPB Bulletin 2018-01

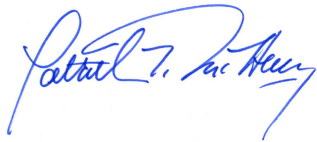
⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-interpretive-rule-on-authority-to-resume-examinations-regarding-the-military-lending-act/>

Bureau authority to conduct examinations specifically intended to review compliance with the MLA.”⁵

Please provide the justification for reversing the Bureau’s previous position that it lacked the authority to supervise financial institutions for compliance with the MLA and the legal basis for engaging in such supervision. In addition, we note that, absent an express legal authorization, the Bureau may not establish a usury limit on consumer credit, including with respect to extending the annual percentage rate limits in the MLA beyond the scope of that statute.⁶

We appreciate your attention to these issues. Please provide your response to the Committee on Financial Services, Minority Staff, no later than July 31, 2021. If you have any questions, please do not hesitate to contact Kathleen Palmer, Minority Staff at Kathleen.Palmer@mail.house.gov.

Sincerely,



Patrick McHenry
Ranking Member



Ann Wagner
Vice Ranking Member



Frank Lucas
Member of Congress



Pete Sessions
Member of Congress



Bill Posey
Member of Congress



Blaine Luetkemeyer
Member of Congress

⁵ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-asks-congress-clear-authority-supervise-compliance-military-lending-act/>

⁶ 12 U.S.C. §5517(o)



Bill Huizenga
Member of Congress



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