



February 11, 2021

CFPB ACTING DIRECTOR ENDS COVID PAUSE AND CALLS OUT INDUSTRY FOR SLOW COMPLAINT RESPONSE TIMES

The Consumer Financial Protection Bureau's ("CFPB") Acting Director Dave Uejio announced in a blog post that he has directed the Division of Research, Markets and Regulation ("RMR") to end the CFPB's "pause on quarterly Home Mortgage Disclosure Act ("HMDA") reporting, CARD Act data collection and more that was " implemented around the start of the COVID-19 pandemic.

In the blog post, the Acting Director stated that authorizes RMR to take the following steps:

- Prepare an analysis on housing insecurity, including mortgage foreclosures, mobile home repossession and landlord-tenant evictions;
- Prepare an analysis of the most pressing consumer finance barriers to racial equity to inform research and rulemaking priorities;
- Explicitly include in policy proposals the racial equity impact of the policy intervention; and
- Resume data collections, including HMDA quarterly reporting, CARD Act data collection, previously completed Dodd-Frank Section 1071 (small business lending) data collection and ongoing PACE data collection.

Acting Director Uejio asked RMR to focus rulemaking on the pandemic response, including (i) focusing the mortgage servicing rulemaking on pandemic response to avert, to the extent possible, a foreclosure crisis when the COVID-19 forbearances end, presumably in March and April, and (ii) exploring options for preserving the status quo with respect to QM and the debt collection rules.

Acting Director Uejio also stated that he will be assessing regulatory actions taken by the previous leadership and adjusting as necessary and appropriate those not in line with the CFPB's consumer protection mission and mandate.

On February 10th, Acting Director Uejio published another blog post highlighting that consumer complaints are at an all-time high now and that some companies have been lax in meeting their obligation to respond to complaints. Acting Director Uejio stated that he has asked Consumer Response to prepare a report highlighting

those companies with a poor track record of timely and adequate responses to Black, Brown and Indigenous communities. The CFPB will be publishing the analysis. He also stated that senior leadership of these companies can expect to be hearing from the CFPB. □

◆ *Mike Tomkies and Lindsay Valentine*

TWO COMMISSIONERS DISSENT IN FINAL FTC SETTLEMENT WITH ZOOM

The Federal Trade Commission ("FTC") finalized a settlement with the prominent video communications company, Zoom Video Communications, Inc., that requires the company to implement a robust information security program. In the original complaint, the FTC alleged that the company failed to protect users' information in a variety of ways, including that the company (i) misrepresented the level of encryption that it provided for its meetings and (ii) installed software on Mac users' computers that bypassed the computer's security setting and put users at risk for hackers.

The settlement prohibits the company from making privacy and security misrepresentations and requires that it establish and implement a comprehensive security program ("Program"). To satisfy the Program, the company must, among other things:

- (1) Document in writing the content, implementation and maintenance of the Program;
- (2) Designate a qualified employee to coordinate and be responsible for the Program;
- (3) Assess and document, at least every 12 months and promptly following a covered incident, internal and external risks to the security, confidentiality or integrity of covered information that could result in authorized collection, use or disclosure of covered information;
- (4) Design, implement, maintain and document safeguards that control for the internal and external risks company identifies in item (3) above;
- (5) Assess, at least every 12 months and promptly following a covered incident, the sufficiency of any safeguards in place to address internal and external risks to the security of covered information and modify the Program based on the results;
- (6) Select and retain service providers capable of safeguarding covered information they access through or receive from the

Darrell L. Dreher
ddreher@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Emily C. Cellier
ecellier@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

2750 HUNTINGTON CENTER

41 S. HIGH STREET

COLUMBUS, OHIO 43215

TELEPHONE: (614) 628-8000 FAXSIMILE: (614) 628-1600

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Michael C. Tomkies
mtomkies@dltlaw.com

Susan M. Seaman
sseaman@dltlaw.com

Lindsay P. Valentine
lvalentine@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Robin R. De Leo
robin@deher-la.com



company, and contractually require service providers to implement and maintain safeguards for the covered information; and

- (7) Obtain assessments of the Program from one or more qualified, objective and independent third-party professionals.

Commissioner Chopra, who also is President Biden's pick as the Director of the CFPB, stated in a dissent that he felt the settlement was weak as it provides no help, no notice, no money for victims and no meaningful accountability for Zoom. Commissioner Chopra noted that despite public alarm and comment, the FTC voted to approve the settlement with no changes whatsoever. Commissioner Chopra ended the dissent by stating that the FTC undermined its credibility, both as an enforcer and as a government agency that listens to the public.

Commissioner Slaughter (now Acting FTC Chair) wrote her own dissent. She stated that she did not believe the proposed settlement order did enough to ensure that consumers can trust the video conferencing tool; specifically, she said the settlement did not address Zoom's privacy failings and did not require Zoom to provide any recourse to affected users. Commissioner Slaughter also emphasized that despite widespread public opposition to the proposed order, the FTC voted to finalize the proposed order without making a single change.

These dissenting opinions could signal that under the leadership of Commissioners Chopra and Slaughter, the FTC and CFPB will bring enforcement actions that provide greater relief to harmed consumers and require greater accountability from companies violating laws and engaging in acts and practices deemed harmful to consumers. □

❖ *Mike Tomkies and Lindsay Valentine*