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The CFPB Changed Its Enforcement Of "Abusive" Acts After Seeking Industry Feedback, A Move That Consumer Advocates Criticized As Hobbling Its Own Enforcement Efforts.

After Seeking "'Industry Feedback,'" The CFPB Changed Its Application Of The "'Abusiveness' Standard In Supervision And Enforcement Matters," Despite Being Specifically Empowered By Dodd-Frank With "Broad Authority To Stamp Out 'Abusive' Acts Or Practices Related To Consumer Financial Products

In January 2020, The CFPB Followed "'Industry Feedback'" And Neutered Its Own Ability To Enforce "'Abusive' Acts Or Practices Related To Consumer Financial Products."

On January 24, 2020, The CFPB Issued A Policy Statement Regarding Its Application Of The "'Abusiveness' Standard In Supervision And Enforcement Matters." "The Consumer Financial Protection Bureau (Bureau) today issued a policy statement providing a common-sense framework on how it intends to apply the 'abusiveness' standard in supervision and enforcement matters." [Press Release, 01/24/20]

Kathy Kraninger "Sought Industry Feedback" In How To Define Abusive After Years Of Industry Complaints About The CFPB's Use Of The Term In Enforcement Actions. "The industry frequently complained that the agency's former Democratic director, Richard Cordray, used this novel power as a catch-all to go after a range of practices. They said there was legal confusion over the scope and meaning of the term, and have lobbied lawmakers and the CFPB to better define it. Current CFPB director Kathy Kraninger, a Trump administration appointee, last year sought industry feedback on how to apply the [abusive] term." [Reuters, 01/24/20]

The Landmark Dodd-Frank Act Specifically Empowered The CFPB With "Broad Authority To Stamp Out 'Abusive' Acts Or Practices Related To Consumer Financial Products."

The CFPB Was Empowered By Dodd-Frank With "Broad Authority To Stamp Out 'Abusive' Acts Or Practices Related To Consumer Financial Products, In Addition To 'Unfair' And 'Deceptive' Practices." "Following the 2007-2009 global financial crisis, Congress passed the Dodd-Frank Act giving the Consumer Financial Protection Bureau (CFPB) broad authority to stamp out 'abusive' acts or practices related to consumer financial products, in addition to 'unfair' and 'deceptive' practices. While the latter two legal terms were well defined, Dodd-Frank was the first federal law to prohibit 'abusive' lending practices." [Reuters, 01/24/20]

Under These Changes, The CFPB Began Focusing Only On Abusive Conduct When The "Harm To Consumers Outweighs The Benefit," While No Longer Applying Abusive Acts To Violations That Are Also Unfair Or Deceptive. The Bureau Also Stopped Seeking Monetary Relief When There Had Been A "Good-Faith Effort To Comply With The Law."

Under Its New Principles On Abusive Acts, The CFPB Only Focuses On Abusive Conduct When The "Harm To Consumers Outweighs The Benefit."

Under Its New Principles On Abusive Acts, The CFPB Only Focuses On Abusive Conduct In "Supervision And Enforcement Matters" When The "Harm To Consumers Outweighs The Benefit." "Through this policy statement, the Bureau is providing clarification on how it intends to apply abusiveness in order to promote compliance and certainty. Commencing immediately the Bureau 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" [Press Release, 01/24/20]

Under Its New Principles On Abusive Acts, The CFPB Will Only Apply Abusive Acts To Violations That Don't Also Fall Under Unfair Or Deceptive Acts.

The Bureau Also Began "Generally Avoiding 'Dual Pleading' Of Abusiveness And Unfairness Or Deception Violations Arising From All Or Nearly All The Same Facts," Making One Act Only Apply To One Of The Violations. "Commencing immediately the Bureau intends to apply the following principles during supervision and enforcement work by: […] 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 Bureau's legal analysis" [Press Release, 01/24/20]

Under Its New Principles On Abusive Acts, The CFPB Will Only Seek Monetary Relief If There Had Been A "Lack Of A Good-Faith Effort To Comply With The Law."

Lastly, The Bureau Started "Seeking Monetary Relief For Abusiveness Only When There [Had] Been A Lack Of A Good-Faith Effort To Comply With The Law," While Still Seeking Restitution No Matter If A Company "Acted In Good Faith Or Bad Faith." "Commencing immediately the Bureau intends to apply the following principles during supervision and enforcement work by: […] Seeking monetary relief for abusiveness only when there has been a lack of a good-faith effort to comply with the law, except the Bureau will continue to seek restitution for injured consumers regardless of whether a company acted in good faith or bad faith" [Press Release, 01/24/20]

Under The Obama Administration, The CFPB Frequently Cited Abusive Practices In Lawsuits And Other Enforcement Actions.

In May 2015, The CFPB Filed A Lawsuit Against Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, And Daniel S. Lipsky Partly Due To Their Abusive Business Practices.

In A May 2015 Complaint, The CFPB Specifically Noted Abusive Practices Conducted By Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, And Daniel S. Lipsky, Including:

- **"Guarantee[ing] To Consumers That They Will Save Money If They Enroll In The IM Program."** [CFPB v. Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, And Daniel S. Lipsky Complaint, Case 3:15-cv-02106]

- **Knowing That A "Substantial Number Of Consumers Will Leave The IM Program Prior To Saving Any Money"** [CFPB v. Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, And Daniel S. Lipsky Complaint, Case 3:15-cv-02106]

- **Taking "Unreasonable Advantage Of Consumers' Lack Of Understanding Of The Material Risks, Costs, Or Conditions Of The IM Program."** [CFPB v. Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, And Daniel S. Lipsky Complaint, Case 3:15-cv-02106]

In September 2015, The CFPB Filed A Consent Order Against Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. And Asset Acceptance Capital Corp. Partly Due To Abusive Practices Including, "Harass[ing], Oppress[ing], Or Abus[ing] Any Person In Connection With The Collection Of A Debt."

In A September 2015 Consent Order, The CFPB Specifically Noted Abusive Practices Conducted By Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. And Asset Acceptance Capital Corp, Including "Conduct The Natural Consequence Of Which Is To Harass, Oppress, Or Abuse Any Person In Connection With The Collection Of A Debt." "In numerous instances, in connection with collecting or attempting to collect Debt, Asset made an excessive number of telephone calls and engaged in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a Debt. The acts or practices set forth in Paragraph 120 are harassing or abusive and constitute violations of Sections 8o6 and 8o6(5) of the FDCPA, 15 U.S.C. §§ 1692d, 1692d(5)." [Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp., Consent Order, File No. 2015-CFPB-0022]

In March 2015, The CFPB Filed A Complaint Against Universal Debt Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Account Solutions, LLC And Others Partly Due To Oppressive And Abusive Conduct In Telephone Communications.

In A March 2015 Complaint, The CFPB Specifically Noted Abusive Practices Universal Debt Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Account Solutions, LLC And Others, Including:

- **"Placing Telephone Calls Without Meaningful Disclosure Of The Caller's Identity"** [CFPB v. Universal Debt Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Account Solutions, LLC et al., Case No 1:15-CV-0859]

- **"Concealing Their Identity By Causing '000-000-0000' To Appear On The Consumer's Caller Identification"** [CFPB v. Universal Debt Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Account Solutions, LLC et al., Case No 1:15-CV-0859]

- **"Threatening Arrest And Garnishment Of Wages"** [CFPB v. Universal Debt Payment Solutions, LLC, Universal Debt Solutions, LLC, WNY Account Solutions, LLC et al., Case No 1:15-CV-0859]

Consumer Advocates Railed The CFPB's Changes To Its Enforcement Of Abusive Conduct As "'Deeply Disturbing'" And "'Taking An Arrow Out Of Its Quiver.'"

Americans For Financial Reform Described The CFPB's Decision As "'Deeply Disturbing.'"

Linda Jun, Senior Policy Counsel At The Americans For Financial Reform Education Fund, Described The "'CFPB's Decision To Hamstring Its Pursuit Of Abusive Conduct'" As "'Deeply Disturbing,'" Adding That Congress "'Specifically Gave The CFPB Flexibility To Enforce [Abusive Conduct] Because Scammers Are Creative In The Ways That They Abuse Consumers.'" "'The CFPB's new abusive policy limits the protection of consumers in ways Congress did not intend, curbs the CFPB's ability to pursue lawbreakers in court, and undercuts the incentives that companies have to ensure they are complying with the law,' said Linda Jun, senior policy counsel at Americans for Financial Reform Education Fund. 'The CFPB's decision to hamstring its pursuit of abusive conduct is deeply disturbing. Congress defined 'abusive' and specifically gave the CFPB flexibility to enforce it because scammers are creative in the ways that they abuse consumers.'" [National Consumer Law Center, 01/24/20]

The National Consumer Law Center Equated The CFPB's Decision As "'Taking An Arrow Out Of Its Quiver.'"

Lauren Saunders, Associate Director Of The National Consumer Law Center, Believed The Bureau Was Needlessly Harming Its Ability Go After Bad Actors, Equated The Move As "'Taking An Arrow Out Of Its Quiver.'" "'Congress specifically required weighing of costs and benefits in the definition of 'unfair but not 'abusive' but not every case is conducive to the quantifying of costs and benefits,' explained Lauren Saunders, associate director of the National Consumer Law Center. 'Should the CFPB have to measure and weigh the costs and benefits before it stops companies from scamming 9/11 firefighter heroes and NFL concussion victims out of millions of dollars in compensation funds, or when debt collectors use illegal tactics to file lawsuits in states where servicemembers do not live and contact their commanding officers?' Saunders added." [National Consumer Law Center, 01/24/20]

- **"'A Good Litigator Always Includes Alternative, Overlapping Legal Violations When Pursuing Lawbreakers. The CFPB Is Taking An Arrow Out of Its Quiver,' Saunders Said."** [National Consumer Law Center, 01/24/20]

The Center For Responsible Lending Criticized The CFPB's Decision As "'Deliberately Tying The Hands Of Its Enforcement And Supervision Of Abusive Acts Practices.'"

Will Corbett, Director Of Litigation At The Center For Responsible Lending, Criticized The CFPB's Decision As "'Deliberately Tying The Hands Of Its Enforcement And Supervision Of Abusive Acts Practices.'" "'The CFPB is deliberately tying the hands of its enforcement and supervision of abusive acts practices. In giving the CFPB authority to enforce the prohibition against abusive acts, Congress–through the Dodd-Frank Act—meant to expand consumer protections, not simply duplicate the unfairness prohibition—nor did Congress intend for bad actors to only be cited for a violation of one law at a time. Kathy Kraninger and CFPB leadership should stick to enforcing the law and not trying to rewrite it,' said Will Corbett, director of litigation at the Center for Responsible Lending." [National Consumer Law Center, 01/24/20]

Weakening The CFPB's Enforcement Of Abusive Acts And Practices Has Been A Long Time Goal Of Trump's CFPB Directors, With Former CFPB Acting Director Mick Mulvaney Co-Sponsoring Legislation As A Member Of Congress That Would Have "Remove[d] The CFPB's Authority To Regulate Abusive Acts Or Practices."

As A Member Of Congress, Former CFPB Acting Director Mick Mulvaney Co-Sponsored Legislation That Would Have "Remove[d] The CFPB's Authority To

Regulate Abusive Acts Or Practices

In April 2016, Rep. Blaine Luetkemeyer (R-MO) "Introduced The 'Unfair Or Deceptive Acts Or Practices Uniformity Act,' (H.R. 5112), Which Would Remove The CFPB's Authority To Regulate Abusive Acts Or Practices." "The Dodd-Frank Act gave the CFPB authority to regulate 'unfair, deceptive, or abusive' acts or practices. Republican Congressman Blaine Luetkemeyer has introduced the 'Unfair or Deceptive Acts or Practices Uniformity Act,' (H.R. 5112), which would remove the CFPB's authority to regulate abusive acts or practices." [Ballard Spahr, 05/05/16]

Mick Mulvaney Was One Of 5 Members Of Congress To Cosponsor This Legislation.

Cosponsors: H.R.5112 — 114th Congress (2015-2016)

All Information (Except Text)

Sponsor: Rep. Luetkemeyer, Blaine [R-MO-3] | Cosponsor statistics: 5 current - includes 0 original

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[Congress.gov, accessed 12/09/20]