Consumer Finance Monitor (Season 4, Episode 32): The CFPB's Summer 2021 Supervisory Highlights: A Close Look At Credit Reporting, Debt Collection, Fair Lending and Mortgage Loan Origination and Servicing Issues

Speakers: Alan Kaplinsky, Chris Willis, and Reid Herlihy

Alan Kaplinsky:

Welcome to Consumer Finance Monitor Podcast, where we follow important developments in the world of Consumer Financial Services. I'm Alan Kaplinsky, senior counsel at Ballard Spahr, and I'm very pleased to be hosting our podcast today in which we are going to explore in some detail some supervisory highlights that were issued in June of this year by the Consumer Financial Protection Bureau, or we'll refer to it by the acronym CFPB. The consumer financial marketplace saw significant impacts from the COVID-19 pandemic that began in March of 2020. The CFPB adapted its work by among other things focusing approximately half of its supervisory activities on so-called prioritized assessments or PAs, and they started that in May of 2020. PAs were designed to obtain real-time information from a broad group of supervised entities that operate in markets that posed elevated risk of consumer harm due to pandemic related issues.

Alan Kaplinsky:

The bureau analyzed these pandemic related market developments to determine which markets were most likely to pose risks to consumers. The observations that the CFPB made regarding the prioritized assessments were in the special edition of supervisory highlights. And we are not going to be covering that today. So the items that we're going to cover, the supervisory highlights that were issued in June, and they are really all non-pandemic related. But please don't operate under the impression that the prioritized assessments and the items that were identified by the CFPB is being problematic, that they are of a lower priority. They are not. They continue to be of the very highest priority. But nevertheless, the CFPB has reminded us that non-pandemic items are still of great concern to us.

Alan Kaplinsky:

And if you at all doubt that, let me just point out that the supervisory highlights we're going to talk about momentarily are 47 pages in length. We're going to talk about five of them today. Let me first introduce my colleagues that have joined me today. First is Chris Willis. Chris is the co-chair of our Consumer Financial Services Group. He succeeded me at the beginning of this year, and Chris among other things spends a lot of time focusing on the CFPB and what it's up to. And a lot of that focus is on supervision and enforcements because I think Chris has handled probably more enforcement matters involving the CFPB than any lawyer I'm aware of. So Chris, a very warm welcome to you. I'm very pleased you've joined us today.

Chris Willis:

Thanks a lot, Alan, and always happy to be here.

Alan Kaplinsky:

Yeah. And then let me introduce Reid Herlihy. Reid is with our mortgage banking group. Like Chris, works out of our Atlanta office, and Reid focuses also to a great extent on the activities of the CFPB, but his focus is on mortgage origination and mortgage servicing. So of course, it's appropriate that Reid would focus on those two topics today. But before we do that, we're going to go to Chris, and Chris and I are going to talk about three very important areas that were singled out by the CFPB. Number one, credit reporting, number two, debt collection, and last and certainly not least, fair lending. So Chris, let me start with you and the first question I have. I know there was some commentary about issues with consumer reporting

agencies in the supervisory highlights, but did any part of that commentary relate to furnishers of information because that's going to be our primary focus today, given that there are many, many more furnishers than there are credit reporting agencies.

Chris Willis:

That's right. And there are actually, as you noted, there were a series of observations about the activities of consumer reporting agencies like failing to comply with security freeze requests or complying with the requirement to block information that was reportedly due to identity theft. But then there was one directed at the consumer reporting agencies that I thought would be very interesting to furnishers. So the CFPB asserted that consumer reporting agencies were failing to ensure accuracy and integrity of the data in their consumer reporting databases when they failed to delete information that was supplied by what the CFPB referred to as unreliable furnishers. And so these were furnishers that according to the CFPB had behaved in response to disputes in ways that suggested that their information wasn't accurate.

Chris Willis:

So for example, if a furnisher just failed to respond to disputes or deleted all trade lines that was the subject of disputes, or with 100% certainty validated all of its reporting in response to all disputes. All of those should have been signed to the consumer reporting agency that these were unreliable furnishers and that their information should be excluded from the database. So if you're a furnisher, I think the takeaway is the consumer reporting agencies are supposed to be monitoring you and particularly your responses to disputes for patterns like this. And if they conclude that you are unreliable as the CFPB has alleged, they may feel obligated to exclude your trade lines from their consumer reports, which sort of goes against the purpose of consumer reporting if you're the furnisher in the first place. So I think that's something that's important for furnishers to know.

Alan Kaplinsky:

Yeah. I agree with that, Chris, but the examples that you gave and that the CFPB gave are pretty black and white. It's pretty easy to figure out that if somebody is just deleting all trade lines, 100% of the deadlines, that's an easy one. But what about the gray areas? What about the things that maybe it looks a little fishy. They're deleting a lot of the trade lines, but not 100% of them. I mean, how do you deal with that?

Chris Willis:

I think that the consumer reporting agencies are left to make a judgment on that. And they know that they're subject to scrutiny on this from the CFPB as a result of these supervisory highlights, but they don't know exactly how far to go. So it will depend on how conservatively they interpret this guidance that they've just been given in terms of how much scrutiny they put on furnishers in those so-called gray areas that you just mentioned, Alan.

Alan Kaplinsky:

Yeah. And let's turn to the furnisher side for a minute. A furnisher, I assume it would not be a good thing to be labeled by a consumer reporting agency as an unreliable furnisher, right? That's not something that you want to put that up on your website.

Chris Willis:

No, I think saying it's not a good thing is somewhat of an understatement because it has the immediate business impact of removing your credit reporting from that database, which again, defeats the business purpose of credit reporting. But moreover, we also know that the consumer reporting agencies are under near constant examination by the CFPB. And so one can quite easily imagine an information request coming from the CFPB of show me the names of all furnishers you determined to be unreliable during the exam period. And if your name's on that list, guess what it may trigger, it may trigger an enforcement investigation of you as a furnisher which could have significant negative consequences. So yes, you don't want to be on that unreliable list. That's a naughty list you want to avoid.

Alan Kaplinsky:

Yeah. That's what I would think. Let me ask a different question now. There also seemed to be some discussion about furnishers' responses to frivolous or irrelevant disputes. What is it that the CFPB said about that and what do you think the significance is to furnishers?

Chris Willis:

Sure. So the frivolous or irrelevant exception under the FCRA basically says that a furnisher doesn't have to investigate or respond to other than sending a notice to a frivolous or irrelevant dispute. That's basically a duplicate of a prior dispute that the furnisher has already investigated. And then right under that in the statute, in the furnisher section of the FCRA, it allows the furnisher to ignore disputes that are received or reasonably determined to have been received from a consumer debt repair... Sorry, a credit repair organization. So in this particular instance, the CFPB called out a mortgage furnisher for having a policy that looked at the signature on a direct dispute that was received in writing and compared it to the signature on file for the consumer, I guess from the time of origination of the mortgage. And if they didn't match, deeming it to be a frivolous or irrelevant dispute or deeming it to be from a credit repair organization.

Chris Willis:

And so the CFPB said, well, that's not right. You can't just sit there and ask for a matching signature and then make your determination solely on that. That's too rigid and too limiting, it's sort of my intuition of what the CFPB was thinking. But what was really interesting is that the remedy for this, according to the supervisory highlights, was that the furnisher or furnishers involved adopted policies and procedures to reasonably identify disputes that were frivolous or irrelevant because they originated from a credit repair organization. And so the significance of that to me is the furnisher community has in general been pretty reluctant to invoke and rely on the frivolous or irrelevant provision in 1681s-2 of the FCRA because they've been worried that if they over-code disputes as frivolous or irrelevant, they'll get in trouble with the CFPB, kind of like this one did in the supervisory highlights.

Chris Willis:

But at the same time, the CFPB signaling, I think, in the supervisory highlights that it's okay to use that exception. It's okay to have policies and procedures to reasonably identify credit repair organizations submitted disputes and then ignore them because the statute allows you to do that. And so I think that ought to really trigger furnishers to give greater consideration to doing exactly what the CFPB required this furnisher to do, come up with an actual reasonable way of identifying those and then spare yourself the time and trouble of manually investigating everyone. Because right now as we all know, the consumer credit industry is a wash in a tidal wave of frivolous disputes, mass produced form disputes sent in by debt settlement companies and credit repair organizations. It's a huge cost, it's a huge burden and trying to find a legitimate dispute among all of these form letters is like finding a needle in a haystack.

Chris Willis:

So if we use greater reason to try to exclude those set from credit repair organizations, I think we'd be better off and the consumers with legitimate disputes would be better off too. That, to me, is the takeaway from this piece of the supervisory highlights.

Alan Kaplinsky:

Yeah. Okay. So unless there's anything else you want to mention about what the CFPB has identified as problematic areas in the credit reporting area, I think we'll move along and talk about debt collection.

Chris Willis:

Yeah. Let's do.

Alan Kaplinsky:

Yeah. So there were a series of observations that the CFPB made about debt collection. Did you see anything notable there?

Chris Willis:

Honestly, not really. There's a list of about eight or 10 things that they found in examinations of debt collectors, all of which seem like really basic garden variety, non-surprising stuff that's required by the FTCPA, like calling people at work when they should have known that the consumer couldn't receive calls at work, or communicating with third parties that were not permitted, or continuing to communicate after receiving a cease and desist request, or other very basic things like that. And so none of the stuff that the bureau reported in this section of the supervisory highlights really broke any new ground, I didn't think with respect to debt collection. I think it's just a further signal to us as if we needed any further signal that the bureau is very focused on debt collection issues. It always has been, honestly. It's an area of large numbers of consumer complaints as the bureau has noted on multiple occasions.

Chris Willis:

It was the subject of the recent rulemaking that just concluded at the end of last year, the new Regulation F. And so we're all on plenty of notice that the CFPB is very concerned about FTCPA compliance and will look hard for potential violations of the statute. But again, there's no new ground, no new precedent in my mind in what was in this supervisory highlights as related to debt collection.

Alan Kaplinsky:

I generally would agree with you, Chris. One area that caught my attention and I'd like to get your reaction to it is 2.3.7, that talked about incorrect systemic implementation of state interest rate cap. That's an area where sometimes it's very difficult to figure out what that cap is. I mean, it can vary to a great extent. If we're talking about a debt collector, it may have been originated by a bank in a certain state and then it may have been sold to some other third party. That third party may or may not have the ability to charge the same interest rate as the bank. Then sometimes after a loan goes into a default, there is a post-default interest rate that can be charged. Sometimes if you accelerate the loan balance, you can charge any interest rate after that period of time. And you've got federal preemption that sometimes overlaps with state interest rates ceilings. I'm wondering if you could comment on that.

Chris Willis:

I agree with you that it's a complicated issue. However, charging interest after placement is not something that a whole lot of debt collectors do. I mean, some obviously do. It was in the supervisory highlights and I'm aware that it sometimes happens in the industry, but usually by the time a debt collector has the accounts, they're charged off and they're not accruing interest anymore. And so you're right. For that narrow segment of debt collectors that actually have interest accruing on an account that they are working either for a creditor or for a debt buyer, they definitely do have to be worried about that, and it is a difficult nut to crack. And in fact, I think one of the big reasons why there's not more interest charged by debt collectors is because of the very difficulties that you just mentioned. It's very hard to get it correct with all of the variations in state law and which state law applies and which states law applies, and then the federal preemption issues that you just mentioned.

Chris Willis:

It's just a morass. And so that's why I think a lot of debt collectors is one of the reasons I think they stay away from accruing interest on accounts that are in collections.

Alan Kaplinsky:

Yeah. And that's a very, very good practical point that you've made. It's something which was just very difficult for we as lawyers to figure out what the lawful rate is. And I can imagine how difficult it would be for a debt collector to go down that rabbit hole. Let me now turn to the third and final area of supervisory highlights I'd like you to comment upon, and that is on

the fair lending front. And it looks to me like the CFPB noted HMDA and redlining issues. Can you summarize those issues for us?

Chris Willis:

Sure. And again, we're not seeing anything really surprising here, so it's no secret that the CFPB is interested in HMDA compliance and this had a number of enforcement actions, in fact, related to HMDA compliance. And here, the bureau simply noted that it found widespread errors in the HMDA loan application registers of various financial institutions and basically said these were due to flaws or deficiencies in those institution's compliance management systems. And so it underlines once more how important it is to get those HMDA reporting files accurate and the fact that we know that the CFPB will look at the accuracy of those and test them on a transaction by transaction basis during supervisory exams, that in fact has led to a lot of the enforcement activity that we've seen on HMDA by the CFPB.

Chris Willis:

So it's the same issue that we've seen before just replayed again and it's a warning to small business lenders who someday soon will be subject to a similar reporting requirement to HMDA under the Section 1071 rulemaking that's ongoing with the CFPB right now and as to which we expect to propose rule later in 2021, that the same kind of scrutiny in terms of the accuracy of their reporting is likely to be applied to them.

Alan Kaplinsky:

Right. Chris, I'm wondering if you might, for those listeners who aren't that familiar with 1071, just very briefly describe what it entails.

Chris Willis:

Of course. Yeah. So it's very similar to HMDA, but for small business lending. It requires small business lenders to collect demographic information, including race and ethnicity of small business loan applicants and then gather that information together and report it to the CFPB, just like HMDA data is done for consumer mortgages. And of course, the purpose of the collection and submission of that data is to enable fair lending analyses by the regulators, which then serves as the stepping stone to enforcement activity, just as HMDA has done in the consumer mortgage space.

Alan Kaplinsky:

Right. One other sort of general observation, I'm wondering if you share it or not, throughout the supervisory highlights, as you pointed out, particularly in the debt collection area, a number of these things are very basic. They're very basic prohibitions that are in the FTCPA. There's nothing very nuanced or uncertain. But yet some of the things they've identified appear to me not to be the kinds of things that are going to be a general application and that is their one off kinds of things that the CFPB found. And I sort of scratched my head wondering why did they waste the paper and the print on stuff like that.

Chris Willis:

You're right that there are some issues like that in the supervisory highlights and it's perhaps due to the desire for them to document the fact that they found certain practices in the market, to warn other market participants to be on guard about those seemingly idiosyncratic issues so that they don't repeat in another institution. So I think the bureau probably saw it as having some value, even if it's not industry-wide.

Alan Kaplinsky:

Right. One thing we ought to point out for our listeners and that is, they looked at examinations that took place prior to the end of last year. And of course, prior to the end of last year, Kathy Kraninger was the director of the CFPB and it was under the Trump administration. Beginning after the inauguration, we now have an acting director appointed by President Biden,

David Uejio. And so the report got issued under the new administration, but the items identified were identified under the old regime.

Chris Willis:

Correct.

Alan Kaplinsky:

Yeah. Did you have anything else on fair lending or that you wanted to point out or redlining?

Chris Willis:

There is one more, yeah. There was a redlining entry with respect to fair lending. And essentially there, the CFPB recited that it found that a lender violated the Equal Credit Opportunity Act by redlining with respect to mortgage lending. And the CFPB went through the fact that the examination was conducted because of an analysis of HMDA data indicating potential redlining by the lender, which we've seen the bureau do that lots of times over the last four or five years, trigger targeted redlining exams based on reviews of HMDA data. So there's no reason to think they will stop doing that. And then the CFPB marched through the elements that you typically see in filed enforcement cases dealing with redlining. That is a lack of applications and originations in majority minority areas, as compared to peers defined by the CFPB.

Chris Willis:

Direct marketing materials here that only had models that were non-Hispanic white, other marketing materials that showed mortgage loan officers, all of whom were non-Hispanic white, and all of its physical offices were in majority non-Hispanic white areas. Very typical of the kinds of elements you see alleged by past redlining cases that the CFPB or DOJ has brought. And so here, what you have is the CFPB applying the same redlining formula that we were already aware of to a lender that met the elements of that formula in the bureau's judgment. So it doesn't break any new ground. What it does is it underlines the fact that redlining, which we knew was a very high area of interest for the CFPB during the Kraninger administration when she was director, that continued and I don't think we should expect that it will continue any less under Dave Uejio's leadership or potentially Rohit Chopra's leadership.

Alan Kaplinsky:

Right. Right. Right. Okay. Well, Chris, thank you very much. I appreciate the observations you made about the three areas that you covered. Let me now turn to Reid. First of all, Reid, a very warm welcome to you. I'm glad you are on our program today.

Reid Herlihy:

Thanks, Alan. I'm very happy to be here and look forward to speaking with you today.

Alan Kaplinsky:

Okay. So first of all, I'm wondering if you could give us an overview of the items that the CFPB highlighted under the categories of mortgage origination and then mortgage services.

Reid Herlihy:

Of course. So starting in origination, we have a few findings here. The bureau cited some Reg Z violations for compensating loan originators differently based on the product type. And specifically, the finding involved lower compensation for bond program loans that are subject to state housing finance agency requirements, and then higher compensation for LOs for construction loans. We also had an item covering Reg Z violations found due to a simultaneous purchase of lender and owner title insurance policies, for which the loan estimate disclose the lender's title insurance premium at the discounted rate, but

then the owner's title insurance premium at the full premium rate. The supervisory highlights also call out some deceptive practices by originators involving some broad waiver of rights provisions in the underlying loan documents.

Reid Herlihy:

One good example was the bureau citing the inclusion of a waiver provision in a [inaudible 00:26:44] to a security instrument stating that the borrowers who signed the agreement waived all of their rights to notice or judicial hearing before the lender exercise its right to a non-judicial foreclosure. And the bureau stated that it considered this deceptive because a reasonable consumer could understand the provision to waive the consumer's rights under Reg X to sue for something like perhaps the loss mitigation notice that violated the rules in the non-judicial foreclosure context. So a bit of an example there of importing some meaning into some of these waiver of rights and loan documents. Then of course we have as usual some findings in the servicing context, and the CFPB primarily noted violations of Reg X by mortgage servicers.

Reid Herlihy:

So first, we have an example of the bureau noting violations for failing to apply foreclosure protections on the date that outstanding loss mitigation application information was received, that rendered that application facially complete under the rule. And instead of applying the foreclosure holds on the date that the information was submitted, the servicer only did so after an internal analysis of that information, which according to the bureau here caused a delay of more than one day during which a foreclosure filing occurred. We also have an item citing violations of Reg X under their policy and procedure requirements in 1024.38. And those were found for failing to have an appropriate process in place to direct foreclosure counsel. Now, according to the bureau, some servicers under these findings with direct counsel to stop all legal foreclosure filings only after the servicer had sent the borrower the notice acknowledging receipt of the complete loss mitigation application.

Reid Herlihy:

And they know that such a process could technically violate Reg X because the notice of complete application can be sent up to five days after receipt of the application, whereas those foreclosure protections have to be applied on the date that the complete loss mitigation application is received. Sort of as an outlier here, I guess, because we are normally talking about loss mitigation. We see some violations cited under the escrow rules of Reg X. The CFPB notes violations for including in the estimated disbursements over the ensuing year for purposes of the annual escrow analysis, a full year of private mortgage insurance payments despite, quote, knowing that the PMI would terminate during the escrow accounting year and therefore the borrower should only be charged for part of the year. And finally, the bureau notes [inaudible 00:29:14] violations for deceptive practices by representing to borrowers who had submitted repeat loss mitigation applications that they wouldn't initiate foreclosure until a specified date.

Reid Herlihy:

And so in other words, they conveyed that those borrowers were covered by the foreclosure protections under Reg X. But because these repeat loss mitigation applications were exempt from coverage under the loss mitigation rules and the foreclosure protections under Reg X, the servicers did foreclose and initiated foreclosure prior to those dates provided in the communications.

Alan Kaplinsky:

So those are the main items that have been identified. Would you characterize these items, Reid, as sort of very basic items that any mortgage originator and servicer would obviously be aware of or were the things in here that you think were a little surprising and may be a little nuanced?

Reid Herlihy:

Absolutely nuanced. I think this is, from what I've seen for some of the mortgage violations, a difference from the Kraninger era, CFPB supervisory highlights which I would certainly characterize as more obvious run of the mill violations of the plain language requirements, whereas these get into some more technical, more difficult to comply with, perhaps were ticky-tacky violations of some of these provisions. And one including the escrow, the finding for an escrow violation, I think, is going to catch some folks by surprise.

Alan Kaplinsky:

Really? Okay. And if I've got it right, what you mentioned that they didn't like was that mortgage servicers were assuming the private mortgage insurance would be paid for an entire year, even when the loan to value ratio would get down to a certain level that would require the servicer to terminate the insurance and stop charging the premium.

Reid Herlihy:

That's right. Yeah. And so it's a little funny, and I'll sort of give some background on that and why that perhaps might be surprising. So the escrow issue was actually something that was also covered in the recent frequently asked questions guidance from the bureau, and they specifically touched on this point. So it's clearly an issue of importance to the CFPB and I think as I hinted, one, I think maybe a lot of servicers may have to implement some changes to comply with. So the bureau is essentially saying, when you conduct this annual escrow analysis which involves estimating which disbursement payments have to be made out of escrow during the following year, if that scheduled automatic termination date for PMI is scheduled to occur during that following year, pursuant to the Homeowners Protection Act provisions, which gets down to the, you'll do the original amortization schedule and when it reaches a certain threshold, you have to tailor those estimated disbursements accordingly.

Reid Herlihy:

And the bureau states in the supervisory highlight that in that scenario, a servicer, quote, knows that the charges for PMI will not last the full 12 months and will terminate before the end of the escrow year, which is a little interesting because the trigger date actually applies for automatic termination only if the borrower is current on the loan at the time that termination is reached. So this requires you to assume that the borrower's going to make all these payments during the following year, and that the PMI is actually going to terminate on that automatic termination date. And it's kind of funny that the guidance in the FAQ's kind of sort of fudge or misstate that aspect because it states in the criteria that you look at whether the borrower is current at the time of the escrow analysis, as opposed to whether the borrower is actually current once that scheduled termination date is reached during that ensuing year.

Alan Kaplinsky:

You mentioned violations of Reg X by not properly handling facially complete applications. How does that issue impact mortgage services?

Reid Herlihy:

Yeah. And, Alan, this is one of those sort of trickier issues that I think are more reflective of some of the issues highlighted by the current leadership at the CFPB. This is a tricky one. I mean, the concept of a facially complete application, just for quick background, it's a scenario where you initially receive a loss mitigation application that's incomplete and then you're required to send out a notice to the borrower, obviously listing what items or information are missing. And then once the borrower submits those outstanding materials as listed in your notice, you have to treat the application as being, quote, facially complete, and then apply the relevant foreclosure holds. You can then commence a foreclosure, proceed to sale while those holds are in place. But here, the borrowers making very clear that you can't even have a couple of days to determine whether those submitted items are complete or satisfactory before applying those foreclosure holds.

Reid Herlihy:

I mean, the fact of this, obviously this will certainly encourage a broadened approach for when servicers treating application is facially complete and apply those holes, but it may also impact the way in which services, craft or customizer loss mitigation letters. So a lot of servicers just for ease of implementation and automation have taken an approach of issuing these sort of incomplete application request letters in a way that may not be ideally tailored or highly specified to what information is really needed or what constitutes satisfactory submission of that information. But here, the bureau is making it very clear that you're stuck with that type of request, and you have to apply the foreclosure protections once the borrower submits whatever you described in that letter.

Alan Kaplinsky:

Right. Right. Right. So another thing I would like you to amplify, Reid, if you would and it's the UDAAP issue, which you noted. It sounds like a problem of overstating borrower's rights and protections under Reg acts. What should the industry take away from this particular item?

Reid Herlihy:

Sure, Alan. Yeah. I mean, this is one, I think, that may be more in the category of an obvious violation, but one I always like to warn services about because it's really easy to lose track of this kind of an issue and to fall into these types of traps. So you have to take a hard look and a persistent look at whether the content of your letter inventory is in sync with the underlying program for how you treat certain accounts. And it's very easy, again, to fall into the trap of using generalized letter templates in a wide range of scenarios where certain of the assertions made in these often very complex letters with a lot of different regulatory aspects built in just may not be accurate. So here was a problem of using standard loss mitigation notices when the underlying loss mitigation application was exempt from coverage for being redundant.

Reid Herlihy:

So when the borrower, for purposes of gaming, the foreclosure holds, submits multiple applications, but they still remain delinquent. You don't have to undergo the full analysis each time, but this is going to happen in a lot of different scenarios, obviously, like sending letters, perhaps conveying foreclosure protections, when say the complete application wasn't received far enough in advance of a scheduled for closure, or maybe when generalized letters or are sent for loans that may not be within scope of the loss mitigation rules. And so just really with the immense size of your mortgage servicing letter inventories and really the increasing situational complexities under both federal and state law now, this is really an issue that needs consistent attention.

Alan Kaplinsky:

Right. Right. Okay. Reid, is there anything else in the supervisory highlights under mortgage origination or servicing that we haven't already talked about that you think ought to be mentioned?

Reid Herlihy:

No, Alan. Those are really the highlights for me. I think there's some interesting stuff here and again, it shows, I think, a different type of focus by supervision now under the new leadership of the CFPB.

Alan Kaplinsky:

Yeah. I have just one other question I wanted to get your reactions to, and that is, you mentioned that they were concerned about certain, it sounded like boiler plate language in a mortgage instrument talking about waiving certain rights. That wasn't very specific in terms of what rights the borrower was purporting to waive. And the CFPB was very troubled about it because they thought that they were getting the borrower to waive certain rights that couldn't be waived as a matter of federal law. The waiver language that we're talking about, is that standard boiler plate language in a Fannie Mae, Freddie Mac uniform instrument, or do you think the CFPB was focusing on a customized mortgage instrument that had nothing to do with Fannie or Freddie?

Reid Herlihy:

It's a little hard to say without seeing specifically what the language said and we have kind of just a general description here from the bureau, but it doesn't really sound like generalized Fannie Freddie waiver language, but it is pretty vague and they sort of read into it some potentially deceptive language there in light of what I think are kind of unrelated aspects of potential Reg X violations. So it is interesting. It would be helpful and great to see what exactly what language was really included here. But it doesn't seem like the sort of typical boiler plate waiver language.

Alan Kaplinsky:

Right. Right. Right. Got it. Okay. So, Chris, just get back to you for a second, before we sign off, is there anything else that you would like to mention, either anything that Reid has commented on or anything else about these supervisory highlights or what you suggest that companies that are impacted by these highlights, what they should be doing, particularly in light of the new CFPB, the new sheriff in town?

Chris Willis:

Sure. I mean, we see here a set of supervisory observations that as you mentioned occurred during the time that Kathy Kraninger was the director of the CFPB. And that was during a time when we observed that a lot of violations of law were being handled by the CFPB through supervision exclusively and there weren't as many referrals to enforcement as we had experienced during the time that Richard Cordray was the director of the bureau. Now, we have the bureau, I think, likely to go back to the way it was between 2011 and 2017, and were probably a fair number of the observations that were in supervisory highlights here, we'd be hearing about and consent orders rather than in supervisory highlights. So what that says to the industry is if you have obviously any of the issues that are specifically discussed here, we need to be very attentive to fixing them.

Chris Willis:

But more generally, we need to take the opportunity to engage in a thorough review of our own practices as we can so that we can identify any risk areas that we might've fallen within our risk tolerance with the bureau being less aggressive in say between 2017 and 2020, but now which might be an excess of our risk tolerance, given the new regulatory environment and go ahead and take action to deal with those. So finding them and dealing with them before the regulator finds them and makes you deal with them is I think the call to action, I think, to the industry, and we're working with a lot of clients right now to engage in exactly that process.

Alan Kaplinsky:

Yeah. Doing so-called a compliance assessment. I assume where you identify what you think are going to be the hot button areas that the new CFPB is going to focus on, and then making sure that the banks or other companies you're working with are okay, that they're compliant. Or if they're not compliant, they learn about it before the CFPB comes in to do the next exam. Is that the idea?

Chris Willis:

Yeah, that's it. And we can do it in a variety of ways and we do it in a variety of ways that range from just having conversations to doing a full on mock CFPB exam, just depending on what clients want, and we've done lots of those over the years. And it's something that at this point in time, given the recent change in the regulatory environment is an especially productive project, I think, for members of the financial services community.

Alan Kaplinsky:

Yeah. Thank you. And I know, Reid, I assume on the mortgage side, you're doing the same thing. Am I right?

Reid Herlihy:

Absolutely, Alan.

Alan Kaplinsky:

Yeah. Okay. All right. Well, thank you, Chris. Thank you, Reid. And I particularly want to thank all of our listeners today who have downloaded this podcast. There are several other areas that the supervisory highlights deal with. And indeed on, I believe the 27th of July, a podcast will be released and you were involved on that one, Chris, as well in which we focused on some different areas in the supervisory highlights. And then there will yet be a third podcast that will get released a little bit later, focusing on some final areas. Once again, thank you for listening.