

Consumer Bureau's Shocking New "No Consumer Protection" Policy

FOR IMMEDIATE RELEASE: December 11, 2018

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Proposed Policy Changes Could Exempt Entire Industries from Consumer Laws and Regulations

Washington, D.C. – In a final affront to American families as acting director Mick Mulvaney headed out the door, just hours before Kathy Kraninger was sworn in as director, the Consumer Financial Protection Bureau (CFPB) has proposed a dramatic revision of its "no-action letter" policy and a new "Product Sandbox" that would give the Bureau broad authority to exempt entire industries from consumer protection laws and oversight.

"In a shocking, brazen, and unlawful move, the CFPB has proposed a 'no action' policy and 'product sandbox' that is instead a consumer protection desert that could wipe out consumer protection laws for entire industries, giving companies a safe harbor from liability if they harm consumers and from supervision or enforcement by the CFPB against unfair, deceptive, or abusive practices," **said Lauren Saunders, associate director of the National Consumer Law Center.** "The enemies of consumer protection failed to persuade Congress to gut the CFPB, and now the agency is trying to erase itself out of existence, and even stop consumers from protecting themselves." The CFPB has proposed two new policies.

Under the Product Sandbox, the Consumer Bureau purports to have authority to exempt companies or entire industries from federal laws and regulations without going through the rulemaking process, seeking public comment, or fulfilling legal requirements governing the consideration of costs, benefits, or impacts on small businesses. It is proposing to give companies "a 'safe harbor' from liability under the applicable statute(s) to the fullest extent permitted by these provisions ... i.e., the recipient would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties." Among others, the policy would permit exemptions from provisions of the laws governing mortgages, credit cards, and other forms of lending; fair lending laws that prohibit discrimination; and the laws protecting bank accounts and electronic payments.

"For example, with only a cursory 60-day review, the Bureau might decide that a computer algorithm used to decide who gets mortgages does not violate fair lending laws, even if the data later show that the algorithm discriminates against equally qualified borrowers of color. Or, the Bureau might try to exempt risky mortgages from the rules that apply to high-cost loans," **said Saunders.**

The new "no-action letter" policy would allow companies – and trade associations on behalf of an entire industry – to seek relief from consumer protection laws for products or services on the grounds of potential "uncertainty, ambiguity or barrier." Once a letter is granted, the CFPB "will not make supervisory findings or bring a supervisory or enforcement action against the recipient," either under its authority to address unfair, deceptive or abusive practices or under "any other identified statutory or regulatory authority within the Bureau's jurisdiction." The Bureau has

proposed several changes from the prior policy issued under former director Rich Cordray:

- Companies will not have to share data with the CFPB that would enable the agency to monitor the products for risks for consumers.
- The CFPB expects to grant or deny requests in only 60 days
- The default assumption will be that the letters would last indefinitely.
- The director will not need to approve the letters and will allow designated staff to commit the agency not to exercise its supervisory powers or take enforcement action.
- The Bureau is taking the position that much of the information in the applications will be confidential and not subject to public records requests.

“The CFPB’s proposals are unlawful, outside its authority, and undoubtedly will face a legal challenge,” **said Saunders**. “The Bureau cannot simply give companies a free pass to violate consumer protection laws, or carve big exemptions without even giving the public opportunity for input and without thoroughly considering the harms to consumers.”

Comments on the proposed policies will be due in mid-February but after the policies are final, the CFPB will not be taking public comment on applications to provide relief to particular companies, products, or services.

Related NCLC Materials

NCLC Comments in Response to CFPB’s Request for Information Regarding the Bureau’s Inherited Regulations and Rulemaking Authorities - electronic disclosures, statements, records and other communications, June 25, 2018

Letter opposing AZ HB 2434, Innovation Regulatory Sandbox, Jan. 24, 2018