

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part X

Rescission of Statement of Policy on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Rescission of statement of policy.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is rescinding the Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic.

DATES: This rescission is applicable on April 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mehul Madia, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7104. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

On March 26, 2020, the Bureau issued a statement entitled, “Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic” (Statement), regarding the Bureau’s exercise of its supervisory and enforcement discretion during the pandemic.¹ Specifically, the Statement provided that the Bureau would take into account staffing and related resource challenges confronting financial institutions and their counsel as they relate to supervisory activities and enforcement actions. The Statement also noted that when conducting examinations and other supervisory activities and in determining whether to take enforcement action, the Bureau will consider the circumstances that entities may face as a result of the

¹ https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf

COVID-19 pandemic and will be sensitive to good-faith efforts demonstrably designed to assist consumers.

The Bureau hereby rescinds, as of April 1, 2021, the Statement and announces its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.

The Statement expressed the Bureau's recognition of the impact of the COVID-19 pandemic on the operations of many financial institutions, including staffing and related resource challenges confronting financial institutions and their counsel. The Bureau has concluded that since release of this statement such circumstances have changed. Since March 2020 and over the course of the COVID-19 pandemic, financial institutions and other entities that provide financial services and products to consumers have adjusted operations by, for example, shifting to a remote mode of operation. As States and other jurisdictions have rescinded and modified stay-at-home orders over the course of the pandemic, many financial services entities have resumed some level of in-person operations and, in many instances combined with more robust remote capabilities, have demonstrated improved business continuity.

With regard to the temporary flexibility announced in the Statement, the Bureau believes that companies should have had sufficient time to adapt to the pandemic and should now be able adequately to comply with the law and respond to enforcement actions or supervisory activities without the flexibility afforded under the statement. In addition, because the Statement did not create binding legal obligations on the Bureau or create or confer any substantive rights on external parties, it did not create any reasonable reliance interests for industry participants. Indeed, the Bureau never intended the Statement to be permanent, and accordingly expressly

framed the Statement as temporary relief.

The Bureau continues to encourage institutions to meet the financial services needs of their customers affected by the COVID-19 pandemic.

The COVID-19 pandemic is a national emergency that threatens the financial well-being of millions of Americans, with particularly dire effects to communities of color. As the pandemic continues to unfold, consumers are facing economic hardship and compliance with Federal consumer financial law therefore is of paramount importance. The Bureau's statutory purposes include "ensuring . . . that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. 5511(a). Declining to cite conduct consistent with the full scope of the Bureau's supervision authority based on the articulated principles in the Statement may skew the consumer financial marketplace, to the detriment of market participants who comply with the law. To fulfill its statutory mandate, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts, policies, and practices. It is therefore of critical importance that institutions adhere to consumer protection requirements, including fair lending laws, in their interactions with consumers, and that the Bureau use its supervisory and enforcement tools to the full extent and with the full flexibility afforded by Congress.

The Bureau is therefore rescinding the Statement, applicable as of April 1, 2021.²

² Last year, the Bureau, along with the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency (the "Agencies") issued statements entitled "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus" (April 7, 2020) (the "April 7 Interagency Statement"), and "Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus" (April 14, 2020) (the "April 14 Interagency Statement"). Both statements provided that the Agencies did not intend to take public enforcement actions against entities in certain instances. The April 7 Interagency Statement focused on loan modifications and stated that the agencies "do not expect to take a consumer compliance public enforcement action against an institution, provided that the circumstances were related to the National Emergency and that the institution made good faith efforts to support

Instead, in its discretion, the Bureau intends to exercise its supervisory and enforcement authority using a risk-based approach and considering responsible business conduct, consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.³

Regulatory Requirements

The Statement constituted a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It was intended to provide information regarding the Bureau’s general plans to exercise its supervisory and enforcement discretion and did not impose any legal requirements on external parties, nor did it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. This rescission likewise is a general statement of policy exempt from the notice and comment rulemaking requirements of the APA. It is intended to provide information regarding the Bureau’s general plans to exercise its supervision and enforcement discretion and does not impose any legal requirements on external parties or create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceedings. No notice of proposed rulemaking was originally required in issuing the Statement and it is not required in issuing this rescission. The Regulatory Flexibility

borrowers and comply with the consumer protection requirements, as well as responded to any needed corrective action.” Under the April 14 Interagency Statement, the agencies, as defined in that Statement, addressed flexibilities under certain appraisal standards. To the extent that the Bureau indicated flexibility, it now intends to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress. As detailed in the Statement it is issuing today, the Bureau believes the circumstances described in the April 7 Interagency Statement and the April 14 Interagency Statement have changed and that companies should have had sufficient time to adapt. As such, the Bureau does not intend to continue to provide any flexibilities afforded entities in these specific sections of both the April 7 Interagency Statement and the April 14 Interagency Statement.

³ See, e.g., CFPB Bulletin 2020-1, Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating, available at https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.

Act also does not require an initial or final regulatory flexibility analysis for this rescission. The Bureau has also determined that the rescission of the Statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: March 29, 2021.

/s/ David Uejio

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.