

Calling His Shots - Acting Director Shares His Vision for Aggressive CFPB

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If you're a baseball fan, you probably know that it's one of the most disputed stories in all of sports - did Babe Ruth call his home run off the Cubs' Charlie Root in the '32 World Series? The story goes that just before strikes one and two, Babe reportedly pointed to the stands, telling the pitcher and everyone watching the game just where he was going to hit the baseball, and then smashing a home run to the deepest part of center field.

Although that called shot is disputed to this day, there can be no dispute that new CFPB Acting Director David Uejio has effectively "called his shot" and shared his vision in a series of blog posts. The acting director has effectively set the stage for an extremely invigorated and aggressive CFPB.

The acting director's first blog post on January 27 set the tone that he won't just be a steward for the next confirmed director. He shared an internal statement with employees at the CFPB, outlining the Bureau's new focus and priorities. In this first blog post, he outlined his broad vision for Supervision Enforcement and Fair Lending (SEFL). SEFL is the division within the Bureau that ensures compliance with federal consumer financial laws by supervising market participants and bringing enforcement actions. He explained that his email conveyed a "change of direction" at the CFPB.

He stated that his priorities for the CFPB are twofold: (1) relief for consumers facing hardship due to COVID-19 and the related economic crisis; and (2) racial equity. To carry out these priorities, the acting director is focusing supervision and enforcement tools on overseeing the companies responsible for COVID-19 relief.

Initially, he said he was concerned about the findings described in the Bureau's Supervisory Highlights January 2021 edition that companies were failing to properly administer relief through the COVID-19 crisis. In a series of Prioritized Assessments last year the Bureau's examiners found the following:

- Mortgage servicers gave consumers incomplete and inaccurate information about CARES Act forbearances, failed to process forbearance requests, and collected and assessed late fees despite having approved forbearances;
- Servicers withdrew money even though consumers were in deferment;

- One student loan servicer denied thousands of forbearance extensions because the loan holder never responded;
- Companies across markets misreported accounts to credit bureaus and violated CARES Act amendments that added protections to the Fair Credit Reporting Act;
- Some banks set off stimulus payments and unemployment insurance benefits in order to cover bank fees and other debts; and
- Examiners found that the widely used policy of banks only taking PPP applications from pre-existing customers may have a disproportionate negative impact on minority-owned businesses.

He further explained that moving forward, the CFPB will take aggressive action to ensure that regulated companies follow the law and meet their obligations to assist consumers during the COVID-19 pandemic.

He directed SEFL to always determine the full scope of issues found in its exams, systemically remediate all of those who are harmed, and change policies, procedures, and practices to address the root causes of harms. He wanted supervision to follow up to ensure it's done, without conducting new follow-up exams. He also explained that companies that have not already received instructions from their examiners should expect to receive letters in the mail soon.

He also directed SEFL to expedite enforcement investigations relating to COVID-19 so that the Bureau can take action now to ensure that industry gets the message that violations of law during this time of need will not be tolerated.

The acting director also provided some additional directions to SEFL. He explained that the Bureau will be reversing the policies of the last administration that weakened enforcement and supervision. True to his word, the Bureau recently rescinded its January 2020 Abusiveness Policy Statement in order to better protect consumers and the marketplace.

Further, the official policy of the CFPB will now be to supervise lenders with regard to the Military Lending Act (note that the CFPB has been enforcing against companies it alleged had violated the MLA). He also plans to rescind public statements conveying a relaxed approach to enforcement of the "laws in their care". He also said - "as we all know, practices and policies of the financial services industry have both caused and exacerbated racial inequality". He is going to "elevate and expand existing investigations and exams and add new ones to ensure we have a healthy docket intended to address racial equity". Fair lending enforcement is a top priority for the Bureau and will be emphasized accordingly. But, they will look more broadly, beyond fair lending, to "identify and root out unlawful conduct that disproportionately impacts communities of color and other vulnerable populations."

In the acting director's second blog post on February 4, he shared a second Bureau internal statement, this one about his vision for the Division of Research, Markets, and Regulations (RMR). RMR is responsible for monitoring consumer financial markets, conducting research, and writing rules. Again, he reiterated his priorities for the CFPB. He expected RMR's work (as well as the entire Bureau) to be centered on responding to those two crises with "urgency and immediacy".

The acting director asked RMR to immediately do the following:

- Prepare an analysis on housing insecurity, including mortgage foreclosures, mobile home repossessions, 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;

Resume data collections paused due to the pandemic, including HMDA quarterly reporting and the CARD Act data collection, as well as the previously completed 1071 data collection and the ongoing PACE data collection;

- Focus the mortgage servicing rulemaking on pandemic response to avert, to the extent possible, a foreclosure crisis when the COVID-19 forbearances end in March and April; and
- Explore options for preserving the status quo with respect to their Qualified Mortgage and debt collection rules. (note - On March 3, the Bureau released a notice of proposed rulemaking to delay the mandatory compliance date for one of their QM rules; might we see a similar delay in their debt collection rules?)

Finally, the acting director also pledged the RMR the support it needs to implement Dodd Frank section 1071 "without delay." This is the section of the Dodd Frank Act that would require financial institutions to compile, maintain, and submit to the Bureau certain data on applications for credit for women-owned, minority-owned, and small businesses.

As if the acting director wasn't making himself clear on his priorities and vision for the CFPB, in a February 9th blog post, he announced that they need more lawyers! The post reiterated the Bureau's goal and mission that requires "vigorous oversight" of all applicable Federal laws and the "fullest utilization" of the CFPB's legal authorities. For those of us who remember some of the CFPB's earliest "examinations" involving sending scores of attorneys on site, not just examiners, this is a reminder that we're moving back towards a Bureau more like former Director Cordray's Bureau.

Finally, as if there was any doubt as to his resolve, in a blog post dated February 10, the acting director shared a third internal statement, this one about his vision for the Division of Consumer Education and External Affairs (CEEAA). Again, he restated his twofold policy priorities for the Bureau.

In this blog post however, he added another top priority for the Bureau - making sure that consumers who submit complaints to the Bureau get the response and the relief they deserve. He said he understands that some companies have been "lax" in meeting their obligation to respond to complaints. It is the Bureau's expectation that companies provide substantive responses that address the issues consumers describe in their complaints.

He also stated that he understands that consumer advocates have found disparities in some companies' responses to Black, Brown, and Indigenous communities. Therefore, he asked Consumer Response to prepare a report highlighting the companies with a "poor track record" on these issues. The CFPB will be publishing this analysis and the senior leadership of these companies can expect to be

hearing from him.

He also asked the CEEA to immediately take certain steps, including aggressively rebuilding and repairing relationships with consumer, civil rights, racial justice, and tribal and Indigenous rights groups. He also asked the CEEA to transition from treating consumer input as mere anecdotes or stories to a world in which the "experience of our neighbors, our families, and our communities serve as crucial data that drives our policymaking." Translated, this means the Bureau will put more emphasis on unverified, anecdotal information in consumer complaints.

Make no mistake; the acting director has "called his shot" and shared his vision for the CFPB. And, although he is an "acting" director he could very well hit a few home runs before the next director (in all likelihood, Rohit Chopra) comes up to bat. If you don't hear the roar of the crowd, haven't warmed up yet and don't have your compliance game in order, what's stopping you?

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