



Actions Speak Louder than Words

By Eric L. Johnson

One of my all-time favorite sayings is “actions speaker louder than words.” Or, in other words, what you do has a stronger impact on people than what you say. I can think of no better application of that maxim than to the CFPB’s actions since Director Kraninger took over at the Bureau. Let me explain.

You may remember that in April of this year, the new CFPB director outlined her vision for the Bureau in a speech at the Bipartisan Policy Center. As I wrote at the time, her remarks appeared to signal a continued shift in the Bureau’s emphasis from using enforcement actions as a form of regulation (e.g., “regulation by enforcement”) and the primary tool it uses to keep “bad actors” in check toward the use of the Bureau’s other “tools” – education and supervision.

Specifically, she stated the Bureau would no longer be engaging in rulemaking through its enforcement actions. She stated the focus of that Bureau “tool” – enforcement – would be on preventing consumer harm. She further stated they would conduct rigorous economic and market analysis in the rulemaking process. Rulemakings wouldn’t be rushed and they would proceed deliberately and transparently.

She also confirmed her view that supervision is the “heart” of the CFPB. At the time, she indicated she is focused on ensuring the Bureau uses this tool effectively and efficiently as possible to prevent consumer harm.

She also stated the Bureau would ensure that enforcement investigations proceed carefully and purposefully to ensure a fair and thorough evaluation of the facts and law. The Bureau would also hold bad actors accountable and may in some cases engage in a public enforcement action when needed to “send a clear message” to the marketplace to deter unlawful behavior and support a level playing field.

Ok, so that’s what she said back in April. But, what actions has the Bureau actually taken since then? It was reported recently that the Bureau has ratcheted up investigations and enforcement actions. Companies are receiving more civil investigative demands (CIDs) and notices alerting them to the possibility of an enforcement action. The director has denied at least nine Petitions to Modify or Set Aside CIDs since she took over the helm.

That’s been our experience as well – our firm’s Government Investigations, Examinations and Enforcement practice group has been very busy so far this year. The Bureau appears to be

bringing the same types of cases against the same types of parties and with the same types of settlement demands as under prior directors. It appears to be business as usual for the Bureau, notwithstanding the director’s comments. A review of the CFPB’s enforcement actions so far this year (20) notes that the number of actions its brought in 2019 has increased over 80 percent than those brought in 2018.

Does that mean that Director Kraninger’s comments may be rhetoric rather than an actual change? She recently told a group of used car dealers that the Bureau has no plans to regulate by enforcement. But, is that true? Let’s look at some of the CFPB’s recent actions that appear to go against some of the director’s comments:

Example #1: Declaring that it is an unfair practice to allow repossession agents to charge customers for removing, inventorying, storing, and returning personal property found in a repossessed car, even if state law permits these types of charges.

Example #2: Declaring that it is an unfair practice to allow a vendor to charge a fee to take a phone payment, without first telling the customer all alternative methods of payment that have no fee or a lower fee. This view is held despite the fact that the customer was told the fee after stating a payment method preference and expressly agreed to the fee.

The Bureau’s *actions* certainly appear to be speaking louder than the director’s *words*. So, what can you do? You can and should still listen to what the director and others at the CFPB are saying; those are still important to hear. More importantly however, is to actually watch and track their actions – who are they enforcing against, what actions are they taking and whether they are still continuing to push the envelope as in the past. Don’t be lulled to sleep by the nice words you may hear from the director and others at the Bureau. Their actions will tell you far more about what types of practices it may find objectionable than any words that may pass through their lips.

The NAF Legal Committee will continue to keep you informed about legal and regulatory changes of interest to the sub-prime auto finance industry.

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