

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—Bureau clarifies ‘abusiveness’ standard; accounts for benefit to consumers, good faith, (Jan. 24, 2020)

Banking and Finance Law Daily Wrap Up

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The Bureau hopes to ensure that any uncertainty does not impede or deter the provision of otherwise lawful financial products or services that could be beneficial to consumers.

The Consumer Financial Protection Bureau has issued a policy statement clarifying how it intends to apply the "abusiveness" standard in supervision and enforcement matters. Under section 1031(a) of the Dodd-Frank Act, the Bureau may use its authority to prevent covered entities from engaging in abusive acts or practices in connection with consumer financial services or offerings. According to the Bureau, since the Act's enactment almost 10 years ago, uncertainty remains as to the scope and meaning of abusiveness. The [policy statement](#), which is immediately applicable, is intended to provide clarity and foster greater certainty.

The policy statement provides that the Bureau will apply the following principles during supervision and enforcement activities:

1. focus on citing or challenging conduct as abusive in supervision and enforcement matters only when the harm to consumers outweighs the benefit to consumers (including its effects on access to credit);
2. generally, avoid "dual pleading" of abusiveness and unfairness or deception violations arising from all or nearly all the same facts, and allege "stand alone" abusiveness violations that demonstrate clearly the nexus between cited facts and the Bureau's legal analysis; and
3. seek monetary relief for abusiveness only when there has been a lack of a good-faith effort to comply with the law, except the Bureau will continue to seek restitution for injured consumers regardless of whether a company acted in good faith or bad faith.

The Bureau leaves open the possibility of engaging in a future rulemaking to further define the abusiveness standard.

"I am committed to ensuring we have clear rules of the road and fostering a culture of compliance—a key element in preventing consumer harm," said CFPB Director Kathleen Kraninger in the Bureau's [announcement](#). "We've developed a policy that provides a solid framework to prevent consumer harm while promoting the clarity needed to foster consumer beneficial products as well as compliance in the marketplace, now and in the future."

RegulatoryActivity: CFPB ConsumerCredit DoddFrankAct EnforcementActions UDAAP