

New CFPB Advisory Opinion Program Would Give Lenders a Safe Harbor for Violating Federal Consumer Laws

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Washington, D.C. - The Consumer Financial Protection Bureau (CFPB) today announced plans to create an advisory opinion program which, if enacted, would circumvent the public notice-and-comment process, a pillar of our government and democracy. The intent of the advisory opinion program, according to the CFPB, would be to provide clear guidance to assist companies in better understanding their legal and regulatory obligations through advisory opinions. But in actuality, the CFPB is proposing to sidestep the usual public notice-and-comment rulemaking process under the Administrative Procedures Act, and the congressionally-mandated process for providing interpretations of the Truth and Lending Act.

“This is a dangerous precedent. The CFPB is giving lenders an end-run around the public notice-and-comment process, which is designed to ensure accountability and true transparency. Instead, the CFPB is offering lenders immunity from liability for violations of the law.” **said National Consumer Law Center Associate Director Lauren Saunders.** “And without explaining the procedures or safeguards, the CFPB is giving yet another ‘get out of jail’ card to industry which is itching to evade compliance with federal law.”

“There is a high risk that issuing interpretive rules this way will result in one-sided or incomplete interpretations, as the Bureau will be dependent on the requester to provide the factual context and will not have the benefit of opposing viewpoints, as is afforded by the public notice-and-comment process under the Administrative Procedures Act,” **Saunders added.**

Worse, once these interpretations are issued, they could be entitled to a level of deference almost equal to that of regular rulemaking, outside of the context of the original requester. Agencies that issue advisory opinions usually end up with a welter of contradictory, mostly pro-industry interpretations that have the long-term impact of undermining the credibility of the agency and the deference accorded to it.

“Today’s announcement is yet another example of the CFPB doing favors for industry rather than carrying out its mission to protect consumers. The CFPB’s new advisory opinion program does not prevent consumer harm or even promote transparency and accountability. Instead, it will reduce consumer protection by promoting inconsistent and arbitrary interpretations of consumer law,” **said Linda Jun, senior policy counsel at Americans for Financial Reform Education Fund.**