



CARES Act 2021: The CFPB Plans to Take Immediate and Aggressive Actions Related to COVID Relief

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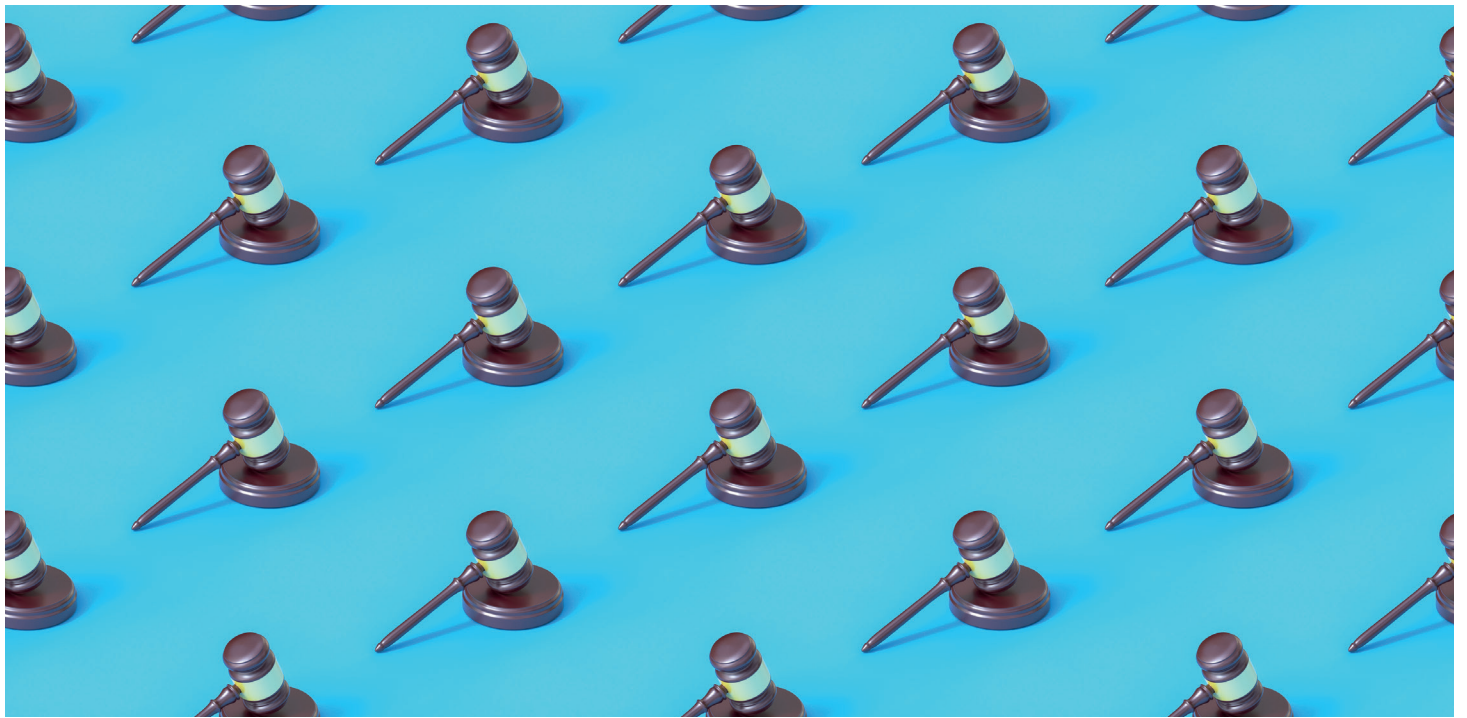
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*The end of
the COVID-19
pandemic is
nearing, and
so are the
forbearance and
credit reporting
accommodations
from the CARES
Act legislation
enacted in
March 2020.*

David Uejio, acting director of the Consumer Financial Protection Bureau (CFPB), recently stated that the bureau is taking much-needed action to protect consumers, particularly the most economically vulnerable.¹ As part of this new focus, “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.”² As such, the case for CARES Act examination preparation is stronger than ever.

Since the financial crisis, banks and servicers have invested heavily in compliance management systems. The combination of the largely remote workforce due to COVID and the hasty passing of new regulatory requirements has increased regulatory risk significantly. The programs and protections included in the CARES Act have a significant impact on the operations and servicing systems used by many financial institutions. The systems were not set up to comply with the amended Fair Credit Reporting Act (FCRA) requirements that borrowers with CARES Act accommodations be reported as current whether or not they are making payments.

To prepare for a CARES Act examination, it is important to understand both the key areas the CFPB will focus on and the types of issues that have been identified.

CARES Act Examination Focus Areas

- Conducting an assessment of the quality of compliance risk management systems
- Reviewing board and management reporting and oversight
- Assessing internal controls, such as policies, procedures, and employee training
- Evaluating intake and management of credit reporting and servicing-related consumer complaints
- Reviewing process workflows and scripts to implement the credit reporting and mortgage servicing provisions of the CARES Act

¹ Uejio, Dave, “The Bureau is taking much-needed action to protect consumers, particularly the most economically vulnerable,” CFPB (January 28, 2021), available at: <https://www.consumerfinance.gov/about-us/blog/the-bureau-is-taking-much-needed-action-to-protect-consumers-particularly-the-most-economically-vulnerable/>

² Id.

Several CARES Act compliance issues have made the headlines, most notably the Wells Fargo class action alleging that the company improperly placed borrowers mortgage into forbearance or extended the durations of the forbearance without consent.³ That case is just one example of the many types of CARES Act compliance issues facing servicers and banks, including:

- Issues associated with enrolling borrowers in CARES Act forbearance programs, such as:
 - > Delays or failure to appropriately enroll borrowers (e.g., miscoding borrower forbearance requests)
 - > Enrolling borrowers in unwanted forbearances
 - > Failure to extend forbearance timelines due to lack of response from loan holder⁴
- Providing incomplete or inaccurate information about the programs, such as:
 - > Indicating that CARES Act forbearances would result in lump-sum repayment when non-lump-sum repayment options may have been available
 - > Indicating that only delinquent borrowers could qualify for CARES Act forbearances
 - > Indicating a borrower signature was required to enroll in CARES Act forbearances
- Actions inconsistent with forbearance (e.g., assessing late fees, sending default notices, initiating foreclosures, inappropriate credit reporting):
 - > Withdrawing funds from borrowers in deferment
 - > Setting off stimulus payments and unemployment insurance benefits to cover bank fees and other debts⁵

In addition to the issues outlined above, several emerging issues resulted from the previous year of forbearance. Unintended consequences of the push for forbearance accommodations include negative impacts to interest accrual, escrow shortages and potential payment shocks, complications with adjustable-rate mortgage (ARM) resets, and forgoing loan modifications for forbearance accommodations, regardless of which option is appropriate for that particular borrower. Post-accommodation credit reporting challenges also have been a hot topic over the past few months and should be a focus going forward.

The CFPB is expected to take a hard line on CARES Act compliance violations, including potential penalties. The best course of action is to move quickly and prepare for an exam or a follow up (whether the CFPB has already sent a letter, the bureau has said to expect them soon).⁶ Immediate steps that can be taken to prepare include:

- Memorialize and maintain all steps taken throughout the process in a central repository. This should include:
 - > Governance structure, list of impacted accounts, steps taken to ensure compliance, updates to policies and procedures, updates to controls, trainings and attendance, updates to call scripts, records of complaints, and credit reporting disputes.
- Work with system vendors on credit reporting accuracy: a review of their Metro 2 logic; any updates they have implemented (obtain and review the results of their user acceptance testing and the impact updates have on specific CARES Act reporting scenarios); join vendor roundtables focused on credit reporting accuracy and CARES Act compliance; alert vendors of accuracy issues, and request that they share any known issues with your company.
- Establish an appropriate monitoring program that includes second- and third-line testing. There also are opportunities to leverage data analytics and third-party continuous monitoring tools on both servicing and credit reporting.
- Remediate issues quickly, and document the steps taken.

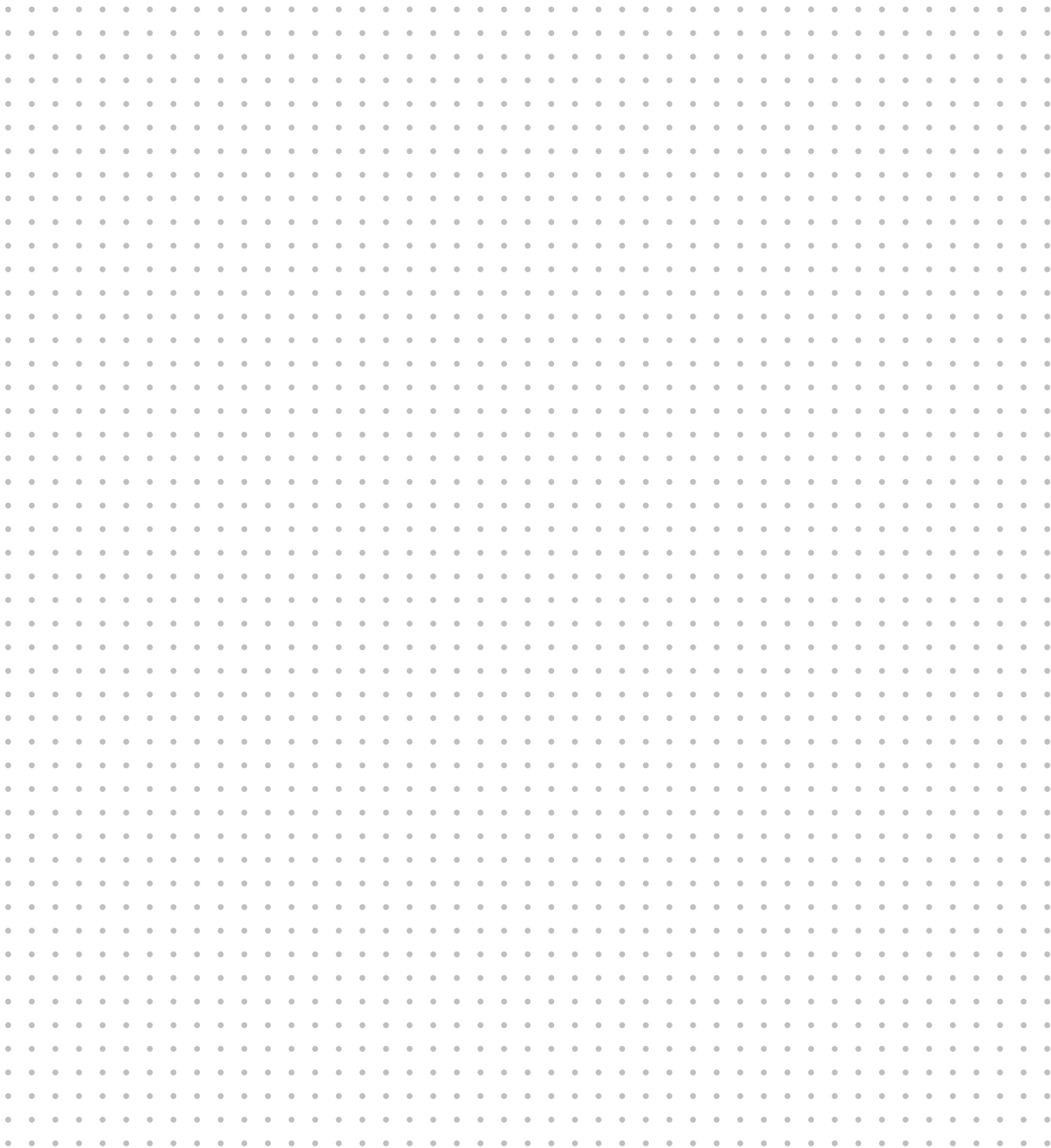
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³ Keller Rohrback, "Wells Fargo Mortgage Forbearance Litigation," Cases, available at: <https://krcomplexlit.com/currentcases/wells-fargo-mortgage-forbearance-litigation>

⁴ Uejio [2021].

⁵ Id.

⁶ Uejio [2021].



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