

CFPB Sets Policy For Early Termination Of Consent Orders

By **Al Barbarino**

Law360 (October 6, 2020, 6:10 PM EDT) -- The Consumer Financial Protection Bureau has issued a policy statement detailing a new application process that will allow entities to terminate consent orders against them, though attorneys noted its limited scope due to a long list of requirements and exceptions.

The consent orders — settlements between the CFPB and companies accused of federal consumer financial law violations — will be terminated in "exceptional circumstances" at the "discretion and sole authority" of Director Kathy Kraninger in consultation with her staff, according to Monday's statement.

"Consent orders play an essential role in the bureau's enforcement work," the statement said. "At the same time, the bureau recognizes that consent orders can impose burdens on the entities subject to them."

To be considered for early termination, entities must demonstrate they have corrected violations, paid any required civil penalties or other monetary relief, adopted procedures to ensure future compliance, submitted adequate reports and maintained required records, the policy states.

The entity must also achieve a satisfactory rating of 2 within the compliance area at issue under the Uniform Interagency Consumer Compliance Rating System, a system issued by the Federal Financial Institutions Examination Council.

Stephanie Robinson, a partner in Mayer Brown's consumer financial services group, called the policy "welcome news" but noted that it was "limited in scope" given a number of additional exceptions limiting those who apply.

"Not only [does] the bureau reference exceptional circumstances, but that few entities will meet all of the eligibility criteria," Robinson said in an email.

The policy only applies to CFPB-issued administrative orders. It does not apply to individuals, only entities, nor does it apply to settlements approved and ordered by a court, as the bureau generally "does not believe it is an appropriate use of its resources to seek to alter the status of settlements entered by courts," according to the statement.

The policy also does not apply when an entity has been banned from participating in a certain industry, when the order involves violations of an earlier order, or when there was a related criminal action.

In addition, entities can't apply until a year after the entry of an order, or six months after all compliance plans required under an order have been fully implemented — whichever is later.

Jonathan L. Pompan, co-chair of Venable LLP's consumer financial services group and CFPB task force, also noted that CFPB administrative orders only make up a fraction of all orders, significantly limiting the pool of eligible participants.

Among the eligible, he said, those with "robust compliance management systems and confidence in their execution" of orders may wish to file an application, but others may be leery of attracting additional CFPB scrutiny without guaranteed results.

"Any company under an administrative consent order will need to determine whether the juice is worth the squeeze," he said. "It could be a very personalized decision."

The orders generally have a five-year term and describe the CFPB's findings and conclusions regarding violations, often imposing injunctive and monetary relief, penalties, reporting, recordkeeping and additional cooperation requirements, the CFPB statement said.

The move comes just under a year after Kraninger, at a November 2019 conference in New York, said the agency was looking at ways to streamline the process for entities to obtain early terminations and that the bureau was "committed to ensuring the consent orders remain in effect only as long as needed to achieve their desired effects."

--Additional reporting by Jon Hill. Editing by Marygrace Murphy.