



News

Vaishali Rao Discusses Significance of CFPB's New Policy on UDAAP 'Abusiveness' Prong

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Hinshaw partner Vaishali Rao discussed with Jon Hill of *Law360* the significance of a recent policy statement issued by the Consumer Financial Protection Bureau (CFPB) regarding its authority to police "abusive" conduct of financial services companies, under the Dodd-Frank law. The abusiveness prong is an extension of the authority under the Federal Trade Commission Act for agencies to initiate enforcement over unfair or deceptive acts or practices, or UDAAPs.

There has been considerable uncertainty over the CFPB's definition of what constitutes an abusive act or practice. Rao reviewed this issue in a July 2019 byline titled "[What Does 'Abusive' Really Mean Under Dodd-Frank?](#)" Industry groups such as ACA International have [lobbied hard for further clarity](#) regarding the standard, and the CFPB's policy statement sought to address some of those concerns.

Rao noted that some aspects of the policy statement—such as the commitment to limit double-pleading of abusiveness claims alongside related unfairness or deception claims—provide reassurance. However, uncertainties remain, including a lack of clarity on what kind of compliance actions would qualify as "good faith" thereby avoiding certain fines and penalties per the new policy.

"It looked like an attempt to try to make industry participants feel comfortable that [CFPB enforcement staff] were not going to take arbitrary and capricious actions against them," she said. "But I think in the end it's misguided, because if I'm representing a company, I don't really have a clear sense of what will show good-faith compliance."

Rao's bottom line: "I'm not advising a client on UDAAP risk differently. I don't think you'd change your advice based on this policy statement."

[Read the full article on the Law360 website](#) (*subscription required*)

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