JUL 06
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Payactiv asks CFPB to terminate safe harbor protections

Article

The news: The **Consumer Financial Protection Bureau** (CFPB) terminated early-wage access provider **Payactiv's** sandbox protections at the company's request, per a press release.

What exactly happened? Last month, the CFPB told Payactiv that it was considering ending the protections after Payactiv implied the agency endorsed the company's early wage access products. The protections, which were granted in December 2020, provided a temporary safe harbor from liability under the **Truth in Lending Act** and allowed Payactiv to test new, innovative products.

- Payactiv then requested that the CFPB terminate its Sandbox Approval Order early.
- Payactiv said it wants to make changes to its fee structure without getting approval from CFPB. Terminating the sandbox would allow it to do this quickly and flexibly.
- In a press release announcing the termination, the CFPB made it clear that the protections do not represent a product endorsement.

Other companies have also requested that the CFPB end their protection agreements early, including lender **Upstart**, which ended its agreement six months prematurely.

A new approach: In May, the CFPB said it will begin backing away from offering the sandbox protections because they've proved to be ineffective. Companies currently receiving protection will keep it until its expiration.

- The CFPB said that companies were misconstruing the meaning of the protections. It feared consumers would think certain products these companies offered had the bureau's backing.
- The agency has subsequently created the **Office of Competition and Innovation** to promote product development.
- The agency will host incubation events like sprints, hack-a-thons, and table-top exercises to encourage discussion and innovation in the industry, and to give participants an opportunity to share concerns with regulators.

Added control? The CFPB has been vocal under the Biden administration about consumer protectionism, and has promised to investigate a slew of topics from open banking regulation to overdraft fees. The growing list and the bureau's new approach to innovation may raise red flags to financial institutions.

- Doing away with the sandbox innovation approach might clear the way for the agency to crack down on firms trying new things.
- Hosting events is a collaborative way to allow companies to voice concerns and share ideas. But at the end of the day, they're not likely to instill confidence in firms that they can test new concepts without repercussions.

Firms have grown critical: Firms voluntarily giving up their protection status also indicates that they are fed up with the agency's approach to innovation. Payactiv's desire to quickly move forward with a new fee structure and its willingness to surrender its protections is a sign that the CFPB imposes too many restrictions or obstacles on the innovation process. Firms are finding it more beneficial to move forward on their own and watching to see whether they end up in hot water. It also indicates that even though the CFPB has been barking about enforcement, firms aren't scared of its bite.

The big takeaway: The relationship between financial institutions and the CFPB is strained. Trade groups are speaking up about reforms deemed too "radical" and disadvantageous to consumers, and businesses are starting to question if the agency is stifling innovation rather than promoting it. The relationship is headed toward a tipping point. The CFPB needs to determine whether it wants to rekindle good feelings, or end things for good.