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To: Clients and Friends

From: Daniel S. Engle

Subject: CFPB Releases Circular Providing Guidance on Confidentiality Agreements and Whistleblower Protections

On July 24, 2024, the Consumer Financial Protection Bureau (“CFPB”) released a Consumer Financial Protection Circular (Circular 2024-04 [click here](#)) informing entities offering consumer financial products or services as described by the Consumer Financial Protection Act (“CFPA”) and their service providers that overbroad confidentiality agreements signed by employees could potentially violate the rights of whistleblowing employees under Section 1057 of the CFPA and thus be a violation of the CFPA.

The circular stated that the CFPA prevents “covered persons”—those offering financial products or services under the CFPA—and their service providers from retaliating against whistleblower employees who report misconduct to law enforcement or government regulators. It also noted that many covered persons and their service providers require employees to enter into confidentiality agreements that have penalties such as termination or potential lawsuit damages for breaching these agreements. The CFPB’s concern is that these confidentiality agreements may not clearly permit employees to communicate with law enforcement or government regulators and thus discourage or intimidate employees from disclosing misconduct. Because the CFPA prevents retaliating against whistleblower employees for disclosing misconduct under the CFPA, the CFPB’s position is that overbroad confidentiality agreements by covered persons and their service providers may violate federal law. The CFPB noted this may still be the case if the confidentiality agreement technically has language permitting whistleblowing such as language limiting the agreement “to the extent permitted by law” as an employee may not understand or be aware of their legal protections under the law.

The CFPB recommended that covered persons under the CFPA and their service providers ensure that confidentiality agreements with their employees expressly permit employees to communicate freely with government enforcement agencies and to cooperate in government investigations.

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