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# Change in CFPB Structure Will Not Impact Fair Lending Enforcement; Compliance Does Not Take a Holiday

By Thomas A. Brooks, Timothy D. Lee, Joann Needleman / Feb 21, 2018

Acting Director Mick Mulvaney's decision to transition the Office of Fair Lending and Equal Opportunity ("OFLEO") out of the Office of Supervision, Enforcement and Fair Lending ("SEFL") does not eliminate or diminish the Consumer Financial Protection Bureau's ("CFPB") enforcement authority over discriminatory lending practices. The CFPB's enforcement authority over discriminatory lending practices is not a product of where the OFLEO falls within the CFPB's structure; it is a product of federal consumer protection law. Consistent with Director's Mulvaney's recent comments and applicable federal law, the CFPB's supervision and enforcement functions with respect to discriminatory lending practices will not be "stripped" or "reduced" as result of the transition. Rather, the performance of such functions—like other supervision and enforcement functions of the CFPB—will remain a product of coordination between multiple divisions within the CFPB led by the Enforcement Division of SEFL. Similarly, covered entities should not consider this structural change as a signal to relax their current compliance policies and procedures.

This coordinated enforcement approach led by one division is not unique to the CFPB. In fact, it is consistent with other prudential regulators such as the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC"). The purpose is to promote consistency in complying with all areas of consumer financial law. For example, the Enforcement and Compliance Division within the Chief Counsel's Office of the OCC coordinates and documents enforcement actions brought by the OCC against national banks, federal savings associations, and federally chartered branches and agencies of foreign banks. Additionally, it coordinates with the Department of Justice ("DOJ") and other federal banking and regulatory agencies to conduct formal investigations and law enforcement efforts on behalf of the OCC. The FDIC's Division of Risk Management and Supervision also coordinates examinations and, based on those examinations, makes recommendations to the Enforcement Section of the FDIC's Legal Division.

Like the other prudential regulators, federal law grants the CFPB broad authority to conduct investigations—including joint investigations with other government regulators—to ensure banks and other financial services providers comply with federal consumer financial law, including federal fair lending laws. See 12 U.S.C.A. § 5561 *et seq.* The tools available to the CFPB prior to an enforcement proceeding may include subpoenas, civil investigative demands for testimony, responses to written questions, documents or other forms of discovery. See *id.* § 5561 (a)-(c). The CFPB's authority to conduct these investigations "includes matters relating to fair lending." *Id.* § 5562(a)(2). Such investigations and enforcement proceedings often arise out of CFPB examinations conducted by "[SEFL] managers, and analysts, experts, and attorneys from Supervision, Research, Markets and Regulations, the Office of General Counsel, and other CFPB divisions . . . work[ing] especially closely with the OFLEO and the Enforcement division when reviewing fair lending." *CFPB Supervision and Examination Process, Overview, Manual V.2* (October 2012) (updated March 2017). Per such guidance, compliance examinations and enforcement actions arising out of violations of federal consumer law are not a product of the investigation of a single CFPB division. Rather, these compliance examinations and resulting enforcement actions, including actions related to fair lending compliance, are, per federal law and CFPB practice, a product of coordination between multiple divisions within the CFPB.

Recent public statements made by the Acting Director confirm that the CFPB is a law enforcement agency that will continue to enforce consumer protection laws as mandated under Dodd-Frank. Fair lending laws, like the Equal Credit Opportunity Act, fall within the enumerated consumer protection laws under the jurisdiction of the CFPB. Contrary to what many pundits on Capitol Hill and elsewhere believe, the CFPB's supervision and enforcement functions with respect to discriminatory lending practices will not be ignored as result of the transition of OFLEO out of the SEFL. Supervision and enforcement functions with respect to discriminatory lending practices will continue through the coordinated supervision and enforcement functions of the CFPB's Enforcement Division. As such, now is not the time to scale back the resources dedicated to ensure compliance with state and federal fair lending laws and financial institutions must continue to review and update their policies and procedures. Compliance does not take a holiday.