



REGULATION & LEGISLATION

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Regulator Spotlights Shine on Fair Lending

By John J. McKechnie

Fair lending oversight by federal regulators, while always a priority, has now become a central focus of both the Consumer Financial Protection Bureau (CFPB) and the National Credit Union Administration (NCUA) as the pandemic and broader economic factors take their toll on consumer borrowing. For credit unions and other lending institutions, this focus isn't showing up in new regulations. Instead, it's being seen in the form of tighter and more rigorous enforcement of what's already on the books, and it offers more expansive definition of what constitutes abusive lending practices.

The reason? It's the arrival of new, and more activist "cops on the beat."

CFPB Director Rohit Chopra and NCUA Chairman Todd Harper, both appointed to those jobs by President Biden in 2021, have delivered on their promises to be more vigilant consumer advocates in all areas, in particular home mortgage borrowing, which Chopra has called "the single most important, and most expensive financial transactions most Americans make in their lifetimes."



Financial institutions with more than \$10 billion in assets are subject to direct CFPB supervision. A dozen credit unions are in that category, although all federally insured credit unions are required to comply with regulations under CFPB administration.

CFPB GETS BUSY

Enforcement of consumer protection laws has been a project that Chopra has overseen at CFPB with enthusiasm. When he was sworn in as director last October, one of Chopra's initial moves was to beef up fair lending oversight. He created a dedicated office within CFPB that focuses exclusively on mortgage lending supervision. Chopra then instituted a policy of having enforcement lawyers select lenders for fair lending exams, with an eye toward bringing penalties for violations.

But the most significant move was

CFPB's March announcement that it was revising its Unfair and Deceptive or Abusive Practices (UDAAP) procedures. UDAAP is the law used to guide the Bureau's examination staff in evaluating discriminatory practices as potentially unfair and illegal. Significantly, the revision also guides examiners in assessing whether a lender's decision-making processes result in discrimination and allows CFPB to review whether an institution's safeguards actually prevent discrimination in connection with consumer lending and related services. Repeat offenders are subject to a streamlined litigation process, a change that Chopra said would create a "durable" record of court actions that allows for correction of consumer abuses through the court system.

Sources within CFPB say that the Bureau "already has a pipeline of UDAAP cases that could be brought to court. All lenders, including smaller banks and credit unions, should be aware of this new focus on UDAAP, because it is designed to put lenders on notice that we are watching, and we will act."

NCUA'S PARALLEL TRACK

NCUA Chairman Todd Harper appears anxious to tailor NCUA exam priorities to parallel those of CFPB when it comes to credit union mortgage lending. In his confirmation hearing in the Senate Banking Committee last September, Harper stated he is "emphasizing fair lending oversight...as a way to expand fair access to financial services."

Fair lending supervision by NCUA is based on three separate federal statutes: the Fair Housing Act, the law that prohibits discrimination in the purchase, sale, or financing of housing; the Equal Credit Opportunity Act (ECOA), which prohibits discrimination by lenders on the basis of sex or marital status; and the Home Mortgage Disclosure Act, which requires disclo-

sure of information about mortgage lending. In addition, NCUA has regulations that detail nondiscrimination requirements in real estate lending.


Taken together, these rules comprise NCUA's approach to overseeing fair lending compliance by credit unions. According to NCUA sources in both front-line examiner and legal compliance staff, the "raw number of fair lending exams has increased dramatically since mid-2021." Although NCUA did not disclose the exact number of such examinations, staff said "(fair lending) contacts in 2022 are more than five times greater" than in recent years.

ACUMA ON ALERT

ACUMA was the first credit union organization to uncover a nationwide uptick in fair lending violations alleged by NCUA. According to NCUA sources, some credit unions that modify lending software systems are inadvertently violating fair lending regulations by adding age and marital status parameters. While NCUA told ACUMA that these instances are "technical (with) no intent to discriminate is being found", they nonetheless are resulting in credit unions being flagged by their NCUA examiners.

While the need for credit unions to be mindful of fair lending compliance is nothing new, the increased spotlight puts a premium on the ability to manage the complexities and potential regulatory pitfalls that come with a mortgage lending portfolio.

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