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CFPB Industry Impact Uncertain Amid Priority Shift, Staff Cuts

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On April 16, the Consumer Financial Protection Bureau released a memo to staff outlining its new supervision and enforcement priorities for 2025. These priorities appear to be intended to reverse some of the more prominent areas of emphasis of the bureau under its most recent previous leadership and are consistent with the general emphasis on deregulation that has been a feature of many initiatives of the new presidential administration.

This memo must also be read in conjunction with the CFPB's most recent reduction in force, or RIF, notice sent to staff.

While the RIF is currently the subject of active litigation between the bureau and the union representing the employees in National Treasury Employees Union v. Vought in the U.S. Court of Appeals for the District of Columbia Circuit, it sends a very different message to the industries under the CFPB's supervisory authority because the priorities memo would seem to require a level of staffing far in excess of the bureau's most recent RIF effort.

This raises the question: What do the memo and the RIF signify for the financial services industry, and what are some practical takeaways for industry participants?

The New CFPB Supervision and Enforcement Priorities Memo

First, let's examine the memo to staff outlining the new supervision and enforcement priorities. In the memo, CFPB Chief Legal Officer Mark Paoletta outlined the CFPB's new supervision and enforcement priorities emphasizing the protection of consumers, particularly service members, their families and veterans.

The memo reflects the bureau's intention to focus its resources on addressing tangible harms and "pressing threats" to consumers, shifting away from enforcement and supervision tasks that can be effectively managed by state authorities. Consequently, the memo states that "all prior enforcement and supervision priority documents are hereby rescinded."

To mitigate the rising costs associated with supervisory exams, which contribute to increased business expenses

and consumer prices, the memo reflects the bureau's plan to reduce the number of supervisory exams by 50%.

This reduction will emphasize conciliation, correction and remediation of harms identified through consumer complaints. The memo notes that the bureau seeks to foster collaborative efforts with supervised entities to resolve issues, ensuring measurable benefits for consumers.

A significant shift in focus, as reflected in the memo, will return the bureau's attention to depository institutions rather than nondepository entities. In 2012, one year after the CFPB's inception, the bureau's supervision was predominantly concentrated on banks and depository institutions, comprising 70% of its activities, per the memo.

However, this focus has since shifted, with over 60% of examinations now targeting nonbanks, according to the memo. The bureau aims to restore the 2012 proportions, concentrating on the largest banks and depository institutions.

The memo also reflects the bureau's prioritization of addressing actual fraud against consumers, focusing on cases with identifiable victims and measurable damages.

Key areas of priority include mortgages, which receive the highest attention, as well as data furnishing violations under the Fair Credit Reporting Act, consumer contracts and debts under the Fair Debt Collection Practices Act, fraudulent overcharges and fees, and inadequate controls leading to consumer information loss.

Efforts to redress tangible harm, as outlined in the memo, will focus on returning money directly to consumers rather than imposing penalties to fill the bureau's penalty fund. Special attention will be given to service members, their families and veterans, ensuring they receive necessary support and redress.

With respect to federalism, the memo reflects the bureau's intention to deprioritize participation in multistate examinations unless required by statute, and to minimize duplicative enforcement where state regulators are already engaged.

Coordination with other federal agencies will be enhanced to eliminate duplicative supervision and synchronize exam timing with other federal regulators.

The memo indicates that the bureau will not pursue supervision under novel legal theories, focusing instead on areas clearly within its statutory authority. In terms of fair lending enforcement, the bureau will avoid what it calls "unconstitutional racial classification or discrimination," including forgoing redlining cases and other fair lending supervision or enforcement cases based solely on statistical analysis, and will pursue only cases of proven intentional racial discrimination with identified victims.

Finally, certain other areas will be deprioritized, as reflected in the memo, including loans for "justice involved" individuals, medical debt, peer-to-peer platforms and lending, student loans, remittances, consumer data, and digital payments.

The memo states that the bureau's primary consumer enforcement tools will remain its disclosure statutes, avoiding attempts to create price controls.

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What This Means for the Financial Services Industry

At first glance, the CFPB's new priorities reflect a significant shift in focus, emphasizing collaboration with supervised entities, reducing regulatory burdens and targeting tangible consumer harms.

While the prior administration focused on novel legal theories and financial products, as well as the nonbanks that issued them, the new administration is calling for a deeper focus on traditional banks and financial institutions.

Additionally, the prior administration focused on working with state banking regulators and state attorneys general to amplify the CFPB's enforcement actions; this administration is explicitly noting a different approach to working with other federal regulators and the states.

Practically speaking, there is much for institutions to take away from these changes. First, with an absolute reduction in the number of examinations, a refocus on banks rather than nonbanks and increased federal examination coordination, banks can expect a potentially significant reduction in examinations, and nonbanks even more so.

Second, while institutions directly harming consumers likely won't see any change in focus, other institutions can likely breathe a sigh of relief that more intangible consumer harms — such as long hold or wait times for customers with their loan servicers or the potential for harm because of alleged unfair, deceptive or abusive acts or practices, known as UDAAP — will not be a CFPB focus.

Third, the industry can expect a tangible shift away from UDAAP enforcement filling gaps between specific and defined statutory prohibitions, particularly regarding the "unfair" and "abusive" prongs.

Finally, with regard to fair lending, we will see a shift away from investigations and enforcement of cases where there is no identified intent to discriminate, only a "disparate impact" on protected class consumers.

These practical impacts must also be considered within the broader regulatory context. While this memo reflects the CFPB's supervision and enforcement priorities, it does not mean the CFPB is the only enforcer on the beat.

Although the CFPB is taking a different approach to regulation than the prior administration, many states are unlikely to share this changed view. We have already seen several states, notably California and New York, propose legislation to expand their authority further into UDAAP and privacy issues.

If nature abhors a vacuum, regulation does too, and state banking regulators and state attorneys general appear more than willing to step in to fill any perceived regulatory void left by the CFPB's changes in focus.

The CFPB's Reduction in Force

Just one day after issuing the supervision and enforcement priorities memo, the CFPB announced a wide-scale reduction in force, affecting 1,483 of its 1,690 employees, representing a reduction of nearly 90%. The cuts would reduce the Supervision Division from 437 examiners and administrative staff to a total of 50.

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Similarly, the Enforcement Division would be reduced from 198 attorneys and staff to a total of 50.

As noted above, the CFPB employees' union filed suit against the bureau in National Treasury Employees Union v. Vought, alleging several claims, including failures to follow required RIF protocols and illegally rendering the bureau unable to perform its statutorily mandated duties.

Following several contentious court hearings, the RIF was ultimately stayed pending a hearing on appeal, which took place on May 16. A final decision in that appeal has not yet been rendered.

While the supervision and enforcement memo outlined clear priorities for this administration, the subsequent RIF has rendered many of those priorities uncertain.

For instance, it is unclear how the CFPB could achieve its stated goal of a 50% reduction in examinations with a staff reduced by nearly 90%.

Additionally, since the bureau is statutorily mandated to examine nonbanks (as opposed to large banks, which they may examine), it is difficult to envision how their priority goals of focusing examinations on banks, rather than nonbanks, could be met.

It is possible that the CFPB plans to engage in some level of new hiring after this RIF, if it occurs, so fulfilling the bureau's priorities is not impossible, but it seems very challenging.

Conclusion

It is difficult to predict exactly what the future holds for the CFPB today. If the RIF ultimately proceeds, the financial services industry can reasonably expect significantly less activity from the CFPB, regardless of its stated priorities.

This scenario presents both challenges and opportunities for the industry. Fewer examinations and less enforcement would be welcomed by many in the industry.

However, without changes to the underlying federal consumer financial protection laws and regulations, the threat of state enforcement or private litigation remains significant.

With such a substantial reduction in staff, the industry should also expect limited CFPB capacity to change many of the rules the industry found problematic or to support industry product innovation efforts, among other issues.

The functional disappearance of the CFPB is indeed a double-edged sword. If, however, the RIF does not proceed as planned, or the CFPB hires a substantially new staff, the supervision and enforcement memo provides a clear window into the CFPB's priorities, at least until there is a new, fully confirmed director. As with everything else, we take it day by day as new facts emerge.

Read more at: https://www.law360.com/articles/2343514/cfpb-industry-impact-uncertain-amid-priority-shift-staff-cuts?copied=1

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