



# Consumer Financial Protection Bureau

# ALERT

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## CFPB and Justice Department Agree to Coordinate Fair Lending Enforcement Efforts

The U.S. Department of Justice and the Consumer Financial Protection Bureau have signed an agreement to coordinate fair lending enforcement efforts, including the sharing of information, joint investigations, and referrals from the CFPB to the Justice Department of potential Equal Credit Opportunity Act (ECOA) violations in cases where the Bureau has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. The agencies will also meet regularly to discuss pending fair lending investigations and opportunities for coordination.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the CFPB has the authority to enforce consumer federal consumer financial protection laws, including the ECOA and the Home Mortgage Disclosure Act (HMDA). The Bureau can initiate enforcement actions for violations of the ECOA and the HMDA against entities that are subject to its authority. The CFPB must also refer certain violations to the Justice Department, which is authorized to bring lawsuits enforcing the ECOA against any creditor that engages in a pattern or practice in violation of the act, as well as actions based on referrals from federal bank regulators including the CFPB.

The [Memorandum of Understanding](#) explains how the agencies intend to share information in matters that the CFPB refers to the Justice Department, in joint investigations, and in order to coordinate fair lending enforcement. The Memorandum provides for confidentiality of the shared information, including confidential supervisory and investigative information collected by the CFPB pursuant to its supervision and examination authority.

The Memorandum also provides that the CFPB will refer to the Justice Department all matters in which the Bureau has “reason to believe” that one or more creditors has engaged in a pattern or practice of lending discrimination. The CFPB may also refer any violations of Section 701(a) of the ECOA, including a recommendation that a civil action be commenced, if the CFPB cannot obtain compliance from the involved financial institution. The agreement requires that the CFPB provide the Justice Department with all non-public information “sufficient to support the referral.” While a referral does not divest the Bureau of its authority to pursue a supervisory or enforcement action, the Memorandum provides that the agencies will coordinate their efforts to avoid unnecessarily duplicative action. After the referral, the Department must make a reasonable effort to determine whether to proceed with its own investigation within 60 days of the referral, during which time the CFPB may not unilaterally commence its own action relating to the referred violations. Should exigent circumstances arise during the 60-day review period, the CFPB will consult with the Justice Department before taking any independent action.

The CFPB can also refer possible violations of other fair lending-related laws, including the Fair Housing Act and the Servicemembers Civil Relief Act, for which the Bureau lacks examination or enforcement authority and for which the Justice Department has enforcement authority. The Memorandum provides that the Justice Department may, “at its discretion,” notify the CFPB whenever the Department has reason to believe that a creditor has

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violated the ECOA or has information that may be relevant to a possible violation.

The Memorandum also provides for joint investigations, “when appropriate,” to “leverage resources and expertise,” while allowing each agency to retain “independent authority” to carry on its investigations in whatever manner it deems appropriate. The agencies also agree to conduct quarterly meetings to discuss investigative activity and notify one another at key stages, including the opening of an investigation or the filing of a lawsuit.

The new Memorandum follows a prior Memorandum of Understanding providing for general cooperation between the two agencies, and supplements an existing Information Sharing Agreement Regarding Fair Lending Investigations among the Justice Department, the U.S. Department of Housing and Urban Development and the Federal Trade Commission, under which the enforcement agencies share confidential information related to fair lending investigations, screening procedures, and investigative techniques.

For more information about the content of this alert, please contact [Michael Mallow](#), [Michael Thurman](#) or [Michael Jahnke](#).

#### *Attorneys*

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MICHAEL W. JAHNKE	MJAHNKE@LOEB.COM	212.407.4285
LIVIA M. KISER	LKISER@LOEB.COM	312.464.3170
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2263
MICHAELA A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122

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