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Mulvaney Cuts CFPB Fair Lending Office's Enforcement Power

By **Jon Hill**

Law360, New York (February 1, 2018, 7:21 PM EST) -- Consumer Financial Protection Bureau Acting Director Mick Mulvaney said Tuesday that a key agency office tasked with policing lenders for compliance with anti-discrimination laws will lose its enforcement duties and be brought under the purview of his office, a move that is sparking criticism from consumer advocacy and civil rights groups.

In an email sent to all CFPB staff, Mulvaney announced that the Office of Fair Lending and Equal Opportunity will vacate its current spot in the CFPB's Supervision, Enforcement and Fair Lending division to become part of the Office of Equal Opportunity and Fairness, which is housed in the Office of the Director.

As part of the move, the Office of Fair Lending will leave behind its supervision and enforcement functions in SEFL but keep its focus on "advocacy, coordination and education," Mulvaney said in the email, which characterized the reorganization as part of his ongoing efforts to streamline CFPB operations.

"I am continuing to evaluate bureau operations, and will be making changes where I deem necessary," Mulvaney said in the email. "These changes are intended to help make the Bureau more efficient, effective, and accountable, and I plan to seek both internal and external input as I continue to evaluate how we work."

The Office of Fair Lending and Equal Opportunity grew out of a desire in Congress in the wake of the financial crisis to sharpen bank regulators' focus on minority borrowers, who had been disproportionately affected by the mid-2000s boom in subprime lending and the wave of foreclosures that followed.

Congress required that a fair lending office be established within the CFPB as part of its landmark Dodd-Frank Act financial reform law and provided for the office to have "such powers and duties as the director may delegate to the office," including enforcement of fair lending laws like the Equal Credit Opportunity Act and Home Mortgage Disclosure Act.

Since then, the office has led the CFPB's fair lending policymaking, education and supervision efforts and collaborated with other federal agencies and state regulators on enforcement actions. Working with the Department of Justice, for example, OFLEO helped reach a $33 million settlement of residential mortgage redlining claims against Hudson City Savings Bank in 2015, the largest-ever deal of its kind.

The office has also looked beyond the mortgage market to other areas of lending, like the groundwork it laid for a 2013 deal in which Ally Financial Inc. agreed to pay $98 million to settle charges it discriminated against black, Hispanic, Asian and Pacific Islander auto loan borrowers by charging them higher interest rates.

According to John Czwartacki, a senior adviser to Mulvaney, the CFPB will continue to carry out its fair lending supervision and enforcement functions going forward, but moving OFLEO into the director's office and away from supervision and enforcement will enhance the fair lending office's "ability to focus on its other important responsibilities."

"The fact is, it never made sense to have two separate and duplicative supervision and enforcement functions within the same agency — one for all cases except fair lending, and the other only for fair lending cases," Czwartacki said in a statement to Law360. "By announcing our intent to combine these efforts under one roof, we gain efficiency and consistency without sacrificing effectiveness."

But consumer advocates and civil rights groups are expressing alarm that the changes to OFLEO will actually reduce the CFPB's effectiveness on the fair lending front by pulling away dedicated personnel and resources from the issue.

"The enforcement of [the Equal Credit Opportunity Act and Home Mortgage Disclosure Act] — it's anybody's guess what happens," Rob Randhava, senior counsel for The Leadership Conference on Civil and Human Rights, told Law360. "But when you have people without that focused mission, the concern is that it could be less of a priority."

And even if the goal is to improve efficiency, how the changes to OFLEO will accomplish that isn't obvious from Mulvaney's brief email, according to Randhava.

"This raises a lot more questions about it than answers," Randhava said.

For Lisa Donner, the executive director of Americans for Financial Reform, the OLFEO changes send a "troubling message about the enforcement of civil rights laws and will harm people — especially in communities of color — who are wronged by payday lenders, debt collectors or auto dealers, among others."

"Fair lending is a fundamentally important part of the work of the Consumer Financial Protection Bureau, and of a financial system that works for families and communities," Donner said in a statement. "[OFLEO] needs the authority, the resources, and the connections to key levers of change to do its job."

While Mulvaney's own appointment to the agency touched off litigation from opponents that remains ongoing, it's not yet clear whether opponents of the OFLEO changes have any legal recourse to challenge them. Under Dodd-Frank, the CFPB director has "a lot of authority," Randhava said.

It's also not yet clear how the OFLEO changes will affect CFPB staff themselves. Although Mulvaney said in his email that he doesn't expect the move to result in "changes in employment status" for staff, he did advise that some employees "may experience changes in jobs and duties."

But according to Ori Lev, a former CFPB deputy enforcement director for litigation who's now a consumer financial services partner at Mayer Brown LLP, the consequences stand to be significant inside and outside the agency.

“This is a big deal,” Lev said in a statement. “Moving the office of fair lending out of the division that handles enforcement and supervision is more than a message; it will have real-life impact on the number of CFPB fair lending cases and examinations.”

--Additional reporting by Juan Carlos Rodriguez. Editing by Alanna Weissman.