

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

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regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

CFPB Issues its Annual Fair Lending Report and Sets its 2017 Agenda

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The CFPB has issued its 2016 Fair Lending Report which provides a summary of the Bureau's efforts in fair lending for 2016. The Report also includes an indication of the Bureau's fair lending priorities for 2017. Here are the highlights:

- **A Risk Prioritization Approach.** The Report confirms that the Bureau takes a risk-based prioritization approach to supervisory and enforcement. Risk-based prioritization considers several factors including cooperation with the Bureau's special population offices, consumer complaints, tips and leads from advocacy groups, whistleblowers, and other governmental agencies, supervisory and enforcement history and, of course, analysis of HMDA and other data.
- **2016 Fair Lending Activities.** The Report indicates that its 2016 focus was on mortgage and indirect auto lending, as well as credit card account management. While the Bureau is expected to continue investigations in these three areas, it will also increase its focus on other segments of consumer credit.
- **2017 Fair Lending Priorities.** Based upon this approach, the Bureau intends to increase its focus in the areas of redlining, mortgage and student loan servicing and small business lending.
- **Mortgage and Student Loan Servicing.** The Report expresses concerns as to whether student loan and mortgage servicers are handling workouts and loss mitigation differently with customers based on their race, ethnicity, sex or age.
- **Small Business Lending.** Dodd-Frank charges the CFPB with ensuring that women-owned and minority businesses have fair access to credit. The CFPB intends to begin exercising small business lending supervisory authority to ensure fair access to credit.
- **Fair Lending Supervisory Observations.** The Report recaps CFPB examination observations that were previously covered the CFPB's 2016 Summer and Fall Supervisory Highlights.
- While we are not going to rehash all of the 2016 Supervisory Highlights, the Bureau's observations as to redlining bear repeating. The Report indicates the factors considered by the CFPB is assessing redlining risk and provides the following laundry list:
 - Strength of the institution's compliance management system including its

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

underwriting policies and guidelines;

- Unique attributes of the relevant geographic area, including population demographics, credit profiles, and the housing market;
- Lending patterns including applications and originations with and without purchased loans;
- Peer and market comparisons;
- The institution's physical presence in the area (full-service branches, ATM only branches, brokers and loan production offices, etc.), as well as the services offered;
- Marketing;
- Mapping;
- CRA assessment area and market area more generally;
- The institution's lending policies and procedures record;
- Additional, miscellaneous evidence (including whistleblower tips, loan officer diversity, testing, and comparative file reviews); and
- An institution's explanation for apparent disparate treatments.

- **Ongoing Investigations.** The Bureau's ongoing investigations and referrals to DOJ include discrimination in mortgage and auto lending, as well as discrimination in credit card account management.

Based upon the Report and prior announcements regarding fair lending prioritization from the Bureau in the past several months, mortgage, and student loan servicers should be re-examining their policies and procedures as to loss mitigation and workouts to ensure their practices are consistent with the Equal Credit Opportunity Act and other fair lending mandates.

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