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Justice Department and CFPB Form Mutual Fair Lending Agreement

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On December 6, 2012, the United States Department of Justice (DOJ) and the Consumer Financial Protection Bureau (CFPB) executed a Memorandum of Understanding (MOU) Regarding Fair Lending Coordination. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), authorized the CFPB to implement and enforce consumer financial law, including but not limited to the Equal Credit Opportunity Act (ECOA), and established the Office of Fair Lending and Equal Opportunity within the CFPB. The CFPB's enforcement powers include the authority to hold hearings and file civil lawsuits. The DOJ is also authorized to enforce ECOA, the Fair Housing Act (FHA), and the Servicemembers Civil Relief Act (SCRA) through federal lawsuits. Dodd-Frank specifically authorizes the CFPB to engage in joint investigations with the DOJ in matters related to fair lending.

The agencies, consumers, and the mortgage lending industry benefit from agency coordination which promotes the consistent enforcement of fair lending laws and prevents duplicative efforts. With this goal in mind, the DOJ and CFPB have executed this MOU, pursuant to which the two entities may exchange and share "Non-Public Information." "Non-Public Information" includes: supervisory, investigatory, and personally identifiable information. "Personally identifiable information," is defined as "information that can be used to distinguish or trace an individual's identity, alone, or when combined with other personal identifying information that is linked or linkable to a specific individual." The DOJ and CFPB also agree to coordinate the planning of and conducting investigations. In addition, the CFPB agrees to refer matters to the DOJ when the CFPB has reason to believe a creditor has engaged in a pattern or practice of lending discrimination.

This MOU is only part of a continuing partnership between the CFPB and the DOJ, formed to protect consumers from lending discrimination. Through its Fair Lending Unit, the DOJ has resolved several high-profile matters involving fair-lending violations. In the past year, monetary relief awarded to borrowers to resolve allegations of discriminatory lending practices has exceeded $500 million dollars.

United States Justice Department, Fair Lending Enforcement Highlights:

United States vs. Bank of America - Consent Order entered: October 10, 2012

Bank of America agreed to pay between $1000 and $5000 dollars per eligible loan applicant to resolve allegations that it required disabled applicants to provide a physician's letter as a condition of credit, for example, to document the receipt of SSDI income. In addition, Bank of America paid $125,000 to the named HUD complainants.

United States vs. Wells Fargo Bank - Consent Order entered: September 20, 2012

Wells Fargo agreed to pay $125 million dollars to wholesale borrowers to resolve allegations that it steered qualified African American and Hispanic borrowers into subprime mortgages when similarly situated non-Hispanic, white borrowers received prime loans. Additionally, Wells Fargo allegedly charged African American and Hispanic wholesale borrowers higher fees and rates than non-Hispanic white borrowers on the prohibited basis of either race or national origin. Wells Fargo also agreed to provide $50 million dollars as direct down payment assistance for communities where large numbers borrowers were allegedly discriminated against.

United States vs. SunTrust Mortgage - Consent Order entered: September 14, 2012

SunTrust Mortgage agreed to pay $21 million dollars and further agreed to maintain specific improved pricing policies and fair lending monitoring for at least three years, in order to resolve allegations that it systematically charged African American and Hispanic borrowers higher discretionary broker fees and retail loan markups than non-Hispanic, white borrowers.

United States vs. Countrywide Financial - Consent Order entered: December 28, 2011

Countrywide Financial, a wholly-owned subsidiary of Bank of America, agreed to pay $335 million dollars to settle allegations that it steered Hispanic and African-American borrowers into subprime loans, and charged those borrowers systematically higher discretionary fees and markups than similarly situated non-Hispanic white borrowers

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