

Lucy Morris Quoted in Law360 Article on CFPB's Defeat On Anti-Bias Exam Policy

4 Questions About CFPB's Defeat On Anti-Bias Exam Policy

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By **Jon Hill**

Law360 (September 12, 2023, 11:01 PM EDT) -- The Consumer Financial Protection Bureau has suffered a stinging defeat in an industry-backed lawsuit challenging the agency's bid to examine banks and other companies more broadly for potentially discriminatory practices. Here, [Law360 breaks down what could come next](#).

In a late Friday decision, U.S. District Judge J. Campbell Barker of Texas threw out a policy adopted by the CFPB last year that set the stage for its examiners to look for improper bias in a wider range of consumer financial settings, not just those traditionally covered by fair lending laws.

The policy relied on the CFPB's core authority to stop unfair, deceptive and abusive acts and practices, or UDAAPs, an authority that covers all consumer financial markets. Under the policy, the CFPB outlined its view that discrimination could qualify as an unfair practice and said it would scrutinize firms accordingly.

Will the CFPB Appeal?

The CFPB doesn't seem ready to back down, at least not yet.

As of Tuesday, the CFPB had not filed any paperwork to begin the appeal process, but [Lucy E. Morris](#), a [Hudson Cook LLP](#) partner and former [CFPB](#) deputy enforcement director, said she would be surprised if the agency throws in the towel at this stage.

"I expect they will appeal," Morris told Law360. "They have tended to appeal whenever their authority is challenged, but I don't know that they will be successful."

Morris was alluding to the likely dim prospects that a CFPB appeal would face at the Fifth Circuit, which has already declared that it believes the agency is constitutionally defective and essentially incapable of legitimate policymaking in its present state.

What About Companies That Belong to Other Trade Groups?

In addition to striking down the CFPB's exam policy, Judge Barker entered a permanent injunction in favor of the national and state-level trade associations that sued the agency. Those groups are the [U.S. Chamber](#), [American Bankers Association](#), [Consumer Bankers Association](#) and several Texas banking and business organizations.

What other trade groups do next "will come down to a business decision for each organization and whether individual companies feel they need to have that same injunctive relief, which would be kind of a belt-and-suspenders approach," Morris said.

But as a practical matter, such an injunction might not be strictly necessary. Having had its unfair discrimination theory shot down so conspicuously, Hudson Cook's Morris said it will be "really tricky" for the CFPB to deploy it in actual enforcement actions at this point.

What Could This Mean for the FTC?

For now, of course, as far as the [FTC](#) is concerned, nothing has been vacated and the agency is not subject to the injunction issued by Judge Barker. Friday's decision, in other words, offers companies "no relief" with the FTC, Hudson Cook's Morris said.

"But I do think this opinion should have at least some chilling effect on the FTC," Morris added. "This clearly will be litigated."

Subscribers to Law360 may access the complete article [here](#).

About Lucy Morris

Lucy is a partner in the firm's Washington, DC office and a former Deputy Enforcement Director at the CFPB. Lucy counsels financial institutions and others in complying with federal consumer financial laws and prohibitions against unfair, deceptive, or abusive trade practices. She is an experienced advocate and litigator, representing clients in government investigations, examinations, and enforcement actions before federal and state agencies, including the CFPB, FTC, U.S. Department of Justice, and state AG offices.

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