

CFPB: â??The Report of My Death Was an Exaggerationâ??

Description

Article by Michael Holden

After rumors circulated in 1897 that Mark Twain had died on a trip to Europe, he responded by famously noting in a letter to a newspaper, â??The report of my death was an exaggeration.â?

Similarly, this may be the case with White House Budget Director Russell Voughtâ??s rumored plans to close the Consumer Financial Protection Bureau (CFPB) within a few months.

Only time will tell if this is an exaggeration, but Voughtâ??s recent comments contributed to yet another kerfuffle of mixed messaging from Washington, with the administration insisting it has no plans to close the CFPB, while those assigned to run the agency released an [aggressive agenda of rulemaking](#) â?? double what was proposed in 2024 â?? which seems to indicate they plan to be around for a while.

Business owners in heavily regulated industries such as title insurance and lending should not be lulled into a sense of security that oversight will end in light of an emasculated federal agency.

From a legal standpoint, Vought may not have the authority to close an agency authorized by Congress. And the truth is that weakening one agencyâ??s power doesnâ??t weaken the power of the law itself, which can be enforced by other federal and state agencies that retain oversight of the industry. In addition, the plaintiffsâ?? bar still has the full measure of the law behind it in pursuing lawsuits against bad actors.

Hereâ??s what industry leaders should keep their eye on as the Washington turmoil continues.

The good news

Mark Calabria, who has been hired by the Office of Management and Budget and is helping to manage the CFPB until a permanent nominee is confirmed as director, has already indicated that he wants to return to formal rulemaking and move away from the CFPBâ??s penchant for releasing policy and legal interpretations through informal notices and analysis, a process which has confounded the industry.

In an Oct. 3 webinar hosted by October Research and featuring legal experts Noah Gillespie, of counsel with Greenberg Traurig, LLP and Loretta Salzano, founding partner of Franzen and Salzano, Salzano emphasized how difficult it has been for the industry, which has had to â??read the tea leavesâ?• of consent orders, rather than being able to rely on formal guidance.

â??The good news is Calabria said the CFPB will be acting through notice and comment rulemaking which makes it much easier for all of us,â?• she said. â??It means our opinions will be considered. Our voices will be heard. The CFPB will have to listen to us, and then we will have it in a regulation with full commentary.â?•

The warning

In the meantime, especially when it comes to enforcing regulations under the Real Estate Settlement Procedures Act (RESPA), the states have become increasingly active, in some cases, promulgating even stricter regulations than exist under the federal statute. This is especially important for title insurance companies, which are regulated at the state level. More state banking regulators are also including review of RESPA protocols in their licensing examinations.

Companies should continue to monitor how regulations may be changing in light of the CFPB's aggressive rulemaking agenda, although the recent gutting of the staff could well slow down those efforts. And although a lot of guidance previously issued by the CFPB was withdrawn under the current administration, that guidance may still be relied on by the states and the courts.

One other point to note is that the demise of the Chevron deference doctrine may weaken any efforts the current administration makes to overturn or diminish existing regulations.

When the Supreme Court overruled the Chevron doctrine in the case of *Loper Bright Enterprises v. Raimondo* in June 2024, the courts were no longer required to defer to agency interpretation of statutes but were once again permitted to apply their own reading of the law.

â??Whatever the agencies are doing is going to come up against this roadblock,â?• Gillespie said during the RESPA webinar. â??Are the courts going to respect the changes the administration is making, or will the court interpret those regulations differently?â?•

While it seems like much is changing on the regulatory front in Washington D.C., to date the laws themselves are still in full force and title agencies and lenders are well advised to stay the course, remaining cognizant of the fact that the noise coming out of Washington could well be, as Shakespeare noted, nothing but â??sound and fury signifying nothing.â?•

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