

9 Election Consequences Financial Services Clients Should Be Prepared For

October 30, 2020

If a change of administration transpires due to the upcoming election, here are some considerations that financial services companies should keep in mind.

- **Major philosophical differences exist between Biden and Trump on “disparate impact” cases**, that is cases showing a disparity in outcome (e.g., approvals or interest rate) correlated or associated by race without showing intentional discrimination.
- Although Biden/Harris have promised legislative change as well, significant changes can be implemented **almost immediately after inauguration**, regardless of whether Congress is on board.
- For example, the Department of Justice Civil Rights Division currently disfavors “consent decree” resolution in many enforcement actions and presumptively limits decrees to two years where they are used. This limitation can end immediately without Congressional action, and would likely end immediately under a Biden administration. Thus **resolutions that can be negotiated prior to January 2021 should be**.
- Obama-era CFPB indirect auto lending and other similar “guidance-based” enforcement regimes also were never tied to a change in federal law in the first place (but rather a change in interpretation) and thus **can be resurrected without legislative action** if new leadership is in place.
- **Expect CFPB enforcement to increase substantially.**
- **Be Prepared.** If Biden/Harris win, use the transition period to conduct an internal review of lending programs with an eye toward racial or ethnic disparities and “unintentional” discrimination.
- **Don’t wait!** Though some changes in a new administration take time, career staff sympathetic to aggressive enforcement/disparate impact can have enforcement actions and investigations prepared in advance of the transition – requiring only sign-off of those new to the team. A change to more aggressive enforcement will be quicker than the slow-down was during the Trump transition.
- **Analyze your industry/ sector.** Biden/Harris are likely to return to a philosophy of “high impact” enforcement/litigation. “High impact” means enforcement against industry leaders/big names (and press releases) favored over enforcement against smaller, possibly more egregious, offenders. If your firm is in the “PayDay,” Subprime, or nontraditional space, be ready.
- Many newer **Fintech** companies and products may be too young to have institutional knowledge of the pre-Trump enforcement regime – get up to speed on the past to get a handle on the future and begin to educate yourself.

Contact McGlinchey's [Government and Internal Investigations](#) or [Consumer Financial Services Compliance](#) teams to get up to speed.

Related people

Robert N. Driscoll

Daniel T. Plunkett