

## OSHA issues interim final rule on certain procedures for handling 'retaliation complaints' under the Consumer Financial Protection Act

By: Edwin S. Hopson  
Wyatt, Tarrant & Combs, LLP

On April 3, 2014, the Occupational Safety and Health Administration (OSHA) issued an interim final rule setting forth procedures and time frames for handling and processing retaliation complaints under the Consumer Financial Protection Act (CFPA).

In its press release, OSHA invited public comments on its interim final rule.

CFPA was enacted by the Congress on July 21, 2010, and provides protection to employees from retaliation by employers that offer or provide consumer financial products or services, such as banks and mortgage companies, that write residential mortgages, mortgage loan modifications, and provide foreclosure relief services, private education loans, payday loans, consumer credit, and debt relief services.

The interim final rule contains many of the same procedures, burdens of proof, remedies and statutes of limitations that other whistleblower protection statutes do that are also administered by OSHA.

For instance, "protected activity" by covered employees is defined as:

• providing information relating to any violation of the CFPA or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial Protection (Bureau), or any rule, order, standard, or prohibition prescribed by the Bureau, to:

- their employer,
- the Bureau, or
- any other Federal, state, or local government authority or law enforcement agency;

• testifying in, filing, or instituting proceedings under any of these provisions; or

• objecting or refusing to participate in any conduct that the employee reasonably believes violates any of these provisions.

Conduct that is considered "Retaliation" is defined as:

- Firing or laying off
- Reducing pay or hours
- Reassigning
  - Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Blacklisting
- Intimidating
- Making threats

Complaints of retaliation in violation of CFPA must be filed with OSHA within 180 days after the alleged retaliatory action.

**The interim final rule contains many of the same ... [provisions] that other whistleblower protection statutes do that are also administered by OSHA.**

OSHA has developed a new fact sheet entitled "Filing Whistleblower Complaints under the CFPA." The fact sheet may be found at:

<https://www.osha.gov/Publications/OSHA3720.pdf>

OSHA also enforces the whistleblower provisions of the Occupational Safety and Health Act and some 21 other statutes protecting employees who report violations of various workplace, commercial motor vehicle, airline, nuclear, pipeline, environmental, railroad, public transportation, maritime, consumer product, motor vehicle safety, health care reform, corporate securities, food safety and consumer financial reform regulations.

Additional information is available at:

<http://www.whistleblowers.gov>