

U.S. Department of Labor

Occupational Safety and Health Administration
201 Varick Street, Room 670
New York, New York 10014
Tel: (212) 337-2368
Fax: (212) 337-2371



March 3, 2016

Ms. Sarah E. Bouchard, Esq.
Morgan Lewis & Bacchius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Via UPS, Tracking No. (b) (7)(C)

Re: JPMorgan Chase Bank, N.A. (b) (7)(C)

Dear Ms. Bouchard,

This is to advise you that we have completed our investigation of the above referenced complaint filed by (b) (7)(C) (Complainant) against JPMorgan Chase Bank, NA. (Respondent) on May 29, 2015, under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX), 18 U.S.C. §1514A and the Consumer Financial Protection Act of 2010 (CFPA), §1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. §5567. In brief, Complainant alleges Respondent retaliated against (b) (7)(C) by removing Complainant's responsibilities, eliminating (b) (7)(C) position, not permitting Complainant to remain in the office while enrolled in the Talent Reassignment Program, and subsequently terminating (b) (7)(C) employment for Complainant's "refusal to pass failed RCSA tests"¹ and for raising regulatory reporting issues to senior management and audit and compliance personnel that had a direct impact on the accuracy of Respondent's regulatory reporting.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through (b) (7)(C) agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region II, finds that there is reasonable cause to believe that Respondent violated SOX and CFPA and issues the following findings:

Secretary's Findings

Complainant was placed in the Talent Reassignment Program on or about May 1, 2014, and on July 31, 2014, when Complainant was not able to obtain a job position through Respondent's Talent Reassignment Program, (b) (7)(C) was officially terminated. On May 29, 2014 Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against (b) (7)(C) in violation

¹ RCSA, Risk Control Self-Assessment is a formal process in which Chase identifies, assesses, and monitors operational risk.

of SOX and CFPA. This complaint was filed within 180 days of the alleged adverse actions and is timely.

Respondent is a company within the meaning of 18 U.S.C. §1514A in that it is a company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78o(d)). Respondent is also a company within the meaning of 12 U.S.C. §5567. Respondent is a company subject to the jurisdiction of the Bureau of Consumer Financial Protection and is engaged in offering or providing a consumer financial product or service.

Complainant worked for Respondent as a Loan Delivery Operations Manager in Iselin, New Jersey. Complainant was an employee that performed tasks related to the offering or provision of a consumer financial product or service. Complainant is an employee within the meaning of 18 U.S.C. §1514A and 12 U.S.C. §5567. Complainant and Respondent are covered under SOX and CFPA.

On Oct 27, 2015, OSHA notified Respondent that OSHA had reasonable cause to believe that Respondent has violated SOX and CFPA and that preliminary reinstatement of Complainant is warranted. OSHA attached evidence supporting its preliminary determination to the letter. Respondent was allowed ten days to provide clear and convincing evidence that Complainant's protected activity in no way contributed to its decision to terminate Complainant, pursuant to SOX and CFPA. To date, Respondent has not provided any new evidence.

Customer Service Department

Respondent hired Complainant in September 2011 as a Customer Care Supervisor. In June 2013, Complainant moved to the role of Loan Delivery Operations Manager²-Chase Mortgage Banking supporting the Secondary Marketing within the Capital Markets. In this role, Complainant was responsible for the accurate and timely submissions of loans to government sponsored entities ("GSEs") such as FannieMae, FreddieMac, and GinnieMae. Complainant's position was accountable for establishing the necessary structure and controls to enable the business to achieve its strategic priorities. Complainant developed process improvements and created meaningful reporting and tracking around the salability and delivery of loans. Complainant reported to Sharon Detoro, Senior Vice President of Loan Delivery. The loan delivery process is the method by which Respondent pooled and delivered closed loans identified for mortgage backed securities ("MBS") trades.

² The following information was obtained from Job Connect:

"Loan delivery Operations Manager Responsibilities included, Manage and develops staff of approximately 3- 5FTE's".

"Insure accurately and timely delivery of all salable loans to GSE's". "Fully understand all GSE requirements for delivery"

"Lead special projects from creation to implementation" "Monitor and report on projects" "Participate in the development of goals and execution of strategies within the department"

"Work with product development team as new products or enhancements are introduced to insure business needs are met".

"Communicate and report to upper management any impacts to Loan Delivery/Capital Markets"

"Manage internal RCSA (Risk and Control Self-Assessment) including identifying, assessing, defining controls "Effectiveness and testing".

"Support needs of Secondary Marketing, Trade Support and other Capital Market areas".

Complainant's primary responsibility was to ensure the data for each loan was correct and met the requirements of the GSE's before delivery. The department would complete the administrative function of delivering the loans after the Investment Bank teams had already marketed the pools. When loans were identified as having errors preventing sale, it was Complainant's job to investigate them on a loan by loan basis, identifying problems in the loan origination process.

Complainant Reports SOX and CFPA violations

Protected activity under SOX consists in part of providing information to and/or causing information to be provided, regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to a person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate the misconduct.

Protected activity under CFPA consists of reporting to a person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate the misconduct, reasonably believed violations of any provision of CFPA or any other provision of law that is subject to the jurisdiction of the Consumer Financial Protection Bureau (CFPB), or any rule, order, standard, or prohibition prescribed by the CFPB. CFPA refers to the laws implemented and enforced by the CFPB as Federal consumer financial law. The Home Mortgage Disclosure Act of 1975, Regulation C, (12 U.S.C. 2801 et seq.) is one of the enumerated consumer laws.

Complainant engaged in SOX and CFPA protected activity from November – December 2013 when [REDACTED] reported that loans had been incorrectly recorded as sold when in fact they had not been sold for a period of three years, a violation of SEC rules and regulations. Complainant reported this to Sharon Detoro as process deficiencies, lack of proper monitoring, and reconciliation of defective loan exceptions. Complainant engaged in SOX protected activity when, in or about December 2013, [REDACTED] reported process deficiencies and a lack of proper monitoring and reconciliation of defective loan exceptions to Sharon Detoro, (Senior VP Loan Deliver) Darlene Kovacs, (Loan Delivery Operations Manager) and Val Porter (VP for Loan Delivery). Complainant had a reasonable belief that Respondent and its officers' actions resulted in inaccurate disclosures, resulting in possible fraud to its investors, violated SEC rules and regulations, violated CFPB rules and regulations, as well as other federal and state statutes.

Complainant's protected activity continued when [REDACTED] reported to Monica Rocha in Control Governance (VP Control & Government Loans) several times between December 2 and 10, 2013 that [REDACTED] direct managers had asked [REDACTED] to pass the RCSA Compliance test that had previously failed on December 2, 2013. Complainant alleges this action was an attempt to conceal the deficient reconciliation process for the holding pool and the accounting violation where loans were inaccurately recorded as sold in the Capital Markets system of record. When Respondent was forced to accept the test fail, Complainant was then instructed to record the sold loan issue as an IT problem. A full 6 months later in April 2014 Complainant discovered that the "sold" loans had not been corrected at all. Complainant was also excluded from the process to review the Action Plan progress. The Action Plan was signed off on and closed out on May 1, three days before [REDACTED]

position was eliminated. Complainant was objectively reasonable in (b) (7)(C) belief that (b) (7)(C) supervisors' practices were illegal and violated SEC regulations.

Complainant engaged in CFPA protected activity when (b) (7)(C) contacted Emily Orr (Auditor) on or about January 10, 2014 and explained that coding errors had been found in the Investigator Records table and that (b) (7)(C) was required to file the inaccurate reporting in the Home Mortgage Disclosure Act Loan Application Register (HMDA LAR). On or about January 16, 2014, Complainant continued to report to Sharon Detoro, Senior VP Loan Delivery, Val Porter, VP for Loan Delivery, Vishal Parihk, VP of the IT Department, Darlene Kovacs, Loan Delivery Operations Manager and Bill Covell, SVP of the IT Department, that the number of Purchaser Codes (b) (7)(C) had identified as incorrect were still in the Investor Record Table within the Collaborative Master Data Management (CMDM). On or about January 23, 2014, Complainant submitted emails to Sharon Detoro, Val Porter, Vishal Parihk, Darlene Kovacs, and Bill Covell explaining numerous violations that (b) (7)(C) expected would affect the accuracy of Respondent's HMDA LAR. Complainant had a reasonable belief that reporting historical HMDA Regulation C inaccurate disclosures and any future disclosures would be in violation of the HMDA. The HMDA of 1975 requires lending institutions to report public loan data. It serves to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment, 12 CFR Part 203 (Regulation C).

On or about Jan 27, 2014 Complainant was in contact with Mr. Joseph Grams (Auditor) through instant message. During this instant message conversation Complainant reported that Respondent has been selling Texas 50 (a) loans to Federal Home Loan Mortgage Corporation (FHLMC), over a long period, without a contractual agreement. Mr. Grams acknowledged the seriousness of the problem by writing in response, "Possibly damaged credibility and rep risk on the street as well if doesn't package to the specs of the trade." The selling of the Texas 50 (a) loans to FHLMC without a contractual agreement had first been brought to the Loan Delivery Team by a senior trader within Capital Markets.

Complainant, on or about Feb 25, 2014, reported via email to Sharon Detoro, Val Porter, Monica Rocha and Darlene Kovacs that (b) (7)(C) failed the compliance test and listed the numerous violations. These compliance violations would result in inaccurate reporting under Regulation C. Complainant reported purchaser code errors existed in thousands of loans that would impact the accuracy of Respondent's 2013 HMDA LAR report and its external regulatory reporting obligations. The details of the compliance violations were taken directly from the RCSA Compliance Test worksheet.

After Complainant's escalations, on or about Feb 26, 2014, Val Porter informed Complainant that she was removing the Investor Record process from (b) (7)(C) team and assigning the responsibilities to Contract Finance. On or about April 3, 2014, Complainant submitted to Human Resources (b) (7)(C) response to the (corporate wide) survey. Complainant's response noted that (b) (7)(C) was being told by management to pass a "failed" compliance test. In addition Complainant reported in the survey that management circumvented the Compliance Governance Action Plan and failed to address the

loans that were incorrectly represented as sold since 2011. (b) (7)(C) noted violations had not been corrected despite the associated action plan being open for 6 months. This action plan was closed three days before Complainant's position elimination despite the sold loan issue not being fixed and an additional 79 loans having been identified as having an erroneous "sold" status totaling over \$12 million in value. The action plan was closed by Val Porter although Complainant was the named owner and did not consent to its closing. Complainant alleges the action plan was closed in an attempt to conceal the accounting violation and Respondent's failure to address to the matter.

On May 1, 2014, Complainant was invited to a "Business Update" meeting with Val Porter and Sharon Detoro, and was informed that (b) (7)(C) role was terminated immediately. Complainant was immediately stripped of (b) (7)(C) responsibilities and told that (b) (7)(C) should no longer come to the office. Complainant's employment was not immediately terminated; rather (b) (7)(C) was enrolled in Respondent's Talent Reassignment Program. Evidence suggests Respondent normally permits employees to remain in the office while searching for an available position. It appears Complainant was treated disparately when (b) (7)(C) was not permitted to remain in the office and access electronic systems that would have enhanced (b) (7)(C) ability to find a position within the firm.

On July 31, when Complainant was unable to obtain a job position through Respondent's Talent Reassignment Program, (b) (7)(C) employment was officially terminated. Respondent contends Complainant's position was eliminated as part of a corporate wide reduction in force affecting over 800 employees. Respondent has failed to provide any evidence that shows when these positions were eliminated, the locations of those offices, and what departments were affected. Evidence suggests Complainant was treated differently than other employees who had previously been subject to position elimination. Additionally, Complainant did not receive a bonus despite (b) (7)(C) satisfactory performance rating. OSHA requested evidence of Respondent's progressive disciplinary policy and any disciplinary action and/or counseling to substantiate why the bonus was withheld. However, to date Respondent has failed to provide a response. Respondent's actions also demonstrate animus. Respondent asserts that the elimination of Sharon Detoro's position further supports their defense. However, it was well known throughout the organization that Ms. Detoro had planned to retire during this time period. This information was relayed to Complainant by active employees.

Complainant raised both SOX and CFPA protected concerns over the course of several months. Numerous persons with supervisory authority over Complainant and/or persons who had the authority to investigate, discover, or terminate the misconduct, were made aware of these protected activities by Complainant; including managers, auditing officials, and compliance officials. As (b) (7)(C) protected complaints intensified, Respondent retaliated by removing Complainant's responsibilities, eliminating (b) (7)(C) position, not permitting Complainant to remain in the office while enrolled in the Talent Reassignment Program, and subsequently terminating (b) (7)(C) employment. Evidence shows that these protected activities were a contributing factor in Respondent's decision to take these adverse actions, and absent clear and convincing evidence that Respondent would have taken the same adverse actions even if Complainant had not engaged in protected activity, the complaint is meritorious.

Based on OSHA's investigation, it is reasonable to believe that Complainant's protected activity was a contributing factor in the adverse action taken against (b) (7)(C). Respondent has not provided

clear and convincing evidence that it would have taken the same adverse action in the absence of Complainant's protected activity. OSHA finds reasonable cause to believe that Respondent has violated 18 U.S.C. §1514A and issues the following preliminary order.

ORDER

Upon receipt of this Secretary's Findings and Preliminary Order, Respondent shall immediately reinstate Complainant with the same rights, seniority, and benefits that Complainant would have enjoyed had (b) (7)(C) never been discharged or experienced retaliation. Such reinstatement is not stayed by an objection in this order.

Respondent shall pay Complainant back pay, minus interim earnings, at the rate of (b) (7)(C), for the period August 1, 2014, until Respondent makes Complainant a bona fide offer of reinstatement. Respondent shall pay interest on the back wages in accordance with 26 U.S.C. 6621. As of March 6, 2016, Respondent shall pay Complainant back wages plus interest in the amount of \$151,669.36.

Respondent shall pay Complainant compensatory damages in the amount of \$51,654.85 for the following:

- Out of pocket medical expenses in the amount of \$1,654.85
- Emotional distress and mental anguish in the amount of \$50,000

Respondent will file with the Social Security Administration all forms necessary to ensure that the back pay award is allocated to the appropriate calendar periods in which Complainant would have earned the compensation. Refer to IRS Publication 957: Reporting Back Pay and Special Wage Payments to the Social Security Administration, as discussed in www.irs.gov/pub/irs-pdf/p957.pdf.

Respondent shall expunge Complainant's employment records of any reference to the exercise of (b) (7)(C) rights under SOX and CFPA.

Respondent shall not retaliate or discriminate against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to SOX or CFPA.

Respondent shall post immediately in a conspicuous place in or about its facility, including all places where notices for employees are customarily posted, including Respondent's internal Web site for employees or emails, if Respondent customarily uses one or more of these electronic methods for communicating with employees and maintain for a period of at least 60 consecutive days from the date of posting, the attached notice to employees, to be signed by responsible official of Respondent and the date of actual posting to be shown thereon.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review.

Objections must be filed in writing with:

Chief Administrative Law Judge Office of Administrative Law Judges
U.S. Department of Labor 800 K Street NW,
Suite 400 North Washington, D.C. 20001-8002
Telephone: (202) 693-7300
Fax: (202) 693-7365

With copies to:

(b) (7)(C)
(b) (7)(C)
(b) (7)(C)

Sarah E. Bouchard, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Teri M. Wigger
Assistant Regional Administrator
US DOL OSHA
201 Varick Street, Room 670
New York, NY 10014

In addition, please be advised that the U.S. Department of Labor does not represent Complainant or Respondent in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence for the record. The ALJ who conducts the hearing will issue a decision based on the evidence and arguments presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under SOX and CFPA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint. The rules and procedures for the handling of SOX cases can be found in Title 29, Code of Federal Regulations Part 1980, and Title 29, Code of Federal Regulations Part 1985 for CFPA.

JPMC (b) (7)(C)

They may also be obtained at www.whistleblowers.gov.

Sincerely,

Robert D. Kulick
Regional Administrator

cc:

(b) (7)(C)

U.S. Securities and Exchange Commission
U.S. DOL-Chief Administrative Law Judge
Consumer Financial Protection Bureau
Regional Office of the Solicitor
DWPP