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CFPB Expands the Consumer Financial Products It Will Examine for Potential Discrimination Issues; Intends to Include All Financial Services Markets, Not Just Loan Products

By: [Michael Flynn](#)

On March 16, 2022, the CFPB announced it will expand the scope of its enforcement activities regarding discrimination beyond the specific areas covered by ECOA, by applying the UDAAP unfair practices standard to discriminatory practices in all consumers financial segments. The CFPB announcement stated that “[t]he CFPB will examine for discrimination in all consumer finance markets, including credit, servicing, collections, consumer reporting, payments, remittances, and deposits.” A copy of the announcement can be found [here](#).

As part of the CFPB’s announcement, Director Rohit Capra stated: “When a person is denied access to a bank account because of their religion or race, this is unambiguously unfair. We will be expanding our anti-discrimination efforts to combat discriminatory practices across the board in consumer finance.”

At the same time as this announcement, the CFPB released an updated examination manual explaining how the bureau will apply the unfairness standard to discrimination examination. It noted that:

- discrimination may meet the criteria for “unfairness” by causing substantial harm to consumers that they cannot reasonably avoid, where that harm is not outweighed by countervailing benefits to consumers or competition.
- Consumers can be harmed by discrimination regardless of whether it is intentional.
- Discrimination can be unfair in cases where the conduct may also be covered by ECOA, as well as in instances where ECOA does not apply. For example, denying access to a checking account because the individual is of a particular race could be an unfair practice even in those instances where ECOA may not apply.

Thus, in consumer financial areas where companies have not previously done detailed fair lending type analysis, testing and oversight previously, CFPB examiners will likely require supervised companies to show their processes for assessing and testing for risks and discriminatory outcomes, including documentation of customer demographics and the impact of products and fees on different demographic groups. This expanded scope will require companies that have little experience in such reviews and oversight to implement strong discrimination/fair lending data reviews, testing and oversight.

Even for companies that already perform such oversight for some products, such activity will likely have to be expanded to other products. This will be particularly difficult and novel in non-credit consumer financial areas, such as those mentioned above.

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