

CFPB Expands UDAAP Authority to Include Discrimination

April 29, 2022 | [Latif Zaman](#) and [Kristen Yarows](#)

On March 16, 2022, the Consumer Financial Protection Bureau ("CFPB") announced in a press release changes to its supervisory operations that may dramatically expand the reach of the CFPB's anti-discrimination mandate. Specifically, the CFPB now takes the position that discrimination, both intentional and unintentional, and in connection with any financial products, constitutes an Unfair, Deceptive or Abusive Acts or Practices ("UDAAP") under the Consumer Financial Protection Act ("CFPA"). The CFPB also updated its examination manual for evaluating UDAAPs to say that intentional and unintentional discrimination may meet the criteria for unfairness by causing substantial harm to consumers that they cannot reasonably avoid, where the harm is not outweighed by countervailing benefits to consumers or competition.

In a blog post titled "*Cracking down on discrimination in the financial sector*" that accompanied the updates, the Eric Halperin, Assistant Director for Enforcement at the CFPB, and Lorelei Salas, Assistant Director for Supervision and Policy at the CFPB said, "The updated manual guides examiners in looking beyond discrimination directly connected to fair lending laws, asking them to review any policies or practices that exclude individuals from products and services, or offer products or services with different terms, in an unfairly discriminatory manner."

The CFPB enforces several laws that can target discriminatory practices, including the Equal Credit Opportunity Act ("ECOA"). The ECOA is a fair lending law that only covers *extensions of credit*. The CFPB's UDAAP authority has a much broader reach, allowing the CFPB to target discrimination as an unfair practice in connection with *all* financial products and services and not just credit products. For example, while the ECOA would not apply if a person was denied access to a bank account (as opposed to being denied credit) because of their race, the CFPB can now bring an UDAAP action, claiming that the denial was an unfair practice. As CFPB Director Rohit Chopra explained, "[w]e will be expanding our anti-discrimination efforts to combat discriminatory practices across the board in consumer finance." The CFPB confirmed that it will examine for discrimination in all consumer finance markets, including credit, servicing, collections, consumer reporting, payments, remittances, and deposits. CFPB examiners will require supervised companies to show their processes for assessing risks and discriminatory outcomes, including documentation of customer demographics and the impact of products and fees on different demographic groups. The CFPB will look at how companies test and monitor their decision-making processes for unfair discrimination, as well as discrimination under the ECOA.

The examination manual includes various examination objects. One of the objectives is to assess the quality of the regulated entity's compliance risk management systems for avoiding UDAAPs. This includes whether the entity has a process to prevent discrimination in all aspects of consumer financial

products or services the entity offers or provides. The manual also addresses whether the entity has appropriate training for consumer service personnel to prevent discrimination.

The blog post posted by the CFPB discussed how the CFPB will combat discrimination, including prioritizing enforcement of ECOA and new rulemaking efforts. In the beginning of 2022, the CFPB collected public comments on a proposed rule that would require lenders to collect and report certain data with respect to small business loan applicants and applications. The proposed rule will be under Section 1071 of the CFPA and aims to collect information that will identify areas of business and community needs, as well as facilitate enforcement of fair lending laws. With the CFPB's prioritization of fair lending laws and its expansion of its UDAAP authority to encompass discrimination, companies should evaluate their compliance risk management systems to ensure there is a process to avoid discrimination.

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