

CFPB Bites of the Month - 2022 Annual Review - Nondiscrimination and Military Protection Laws

February 1, 2023 | [Erica A.N. Kramer](#), [Justin B. Hosie](#) and [Eric L. Johnson](#)

In this article, we share a timeline of our monthly "bites" for 2022 applicable to consumers protected by nondiscrimination and military protection laws. The CFPB has historically been particularly active with respect to enforcing laws intended to protect vulnerable consumer groups, such as servicemembers, consumers of color, and consumers with limited English proficiency. Unsurprisingly, 2022 showed no change to this long-held position.

So, what happened in 2022?

1. The CFPB's Office of Minority Women and Inclusion released a report on diversity and inclusion within financial services

On January 19, 2022, the CFPB [released](#) a report on diversity and inclusion within financial services. Under Section 342 of the Dodd-Frank Act, the CFPB's Office of Minority and Women Inclusion (OMWI) is charged with developing standards for assessing diversity and inclusion at the financial entities the CFPB regulates. To further that effort, the CFPB engaged in an analysis of 2020 public data and compiled a report to share its findings.

OMWI analyzed the financial services' industry commitment to diversity and inclusion by assessing publicly available information of entities regulated by the CFPB. Based on the research and analysis, the CFPB has outlined recommendations for large, midsize, and small institutions. The Report addresses diversity and inclusion initiatives and various options available to entities of different sizes. The report also highlights the activities that financial institutions have engaged in to advance diversity, equity, and inclusion.

The CFPB indicated that it will use the data collected to provide examples of diversity and inclusion best practices, resources, and success stories to encourage the adoption of diversity and inclusion best practices.

2. The CFPB issued a joint letter to The Appraisal Foundation

On February 4, 2022, the CFPB joined senior staff from across the federal government to [submit](#) a joint letter to The Appraisal Foundation (TAF) to emphasize that federal prohibitions against discrimination under the Fair Housing Act and Equal Credit

Opportunity Act extend to appraisals. The CFPB expressed an ongoing concern that some appraisers may be unaware of these federal discrimination bans and urged TAF to provide clear guidance on the existing legal standards as they relate to appraisal bias. The CFPB indicated that it was deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies.

The CFPB indicated that it was carefully reviewing the findings of a report identifying biases and barriers funded by the Federal Financial Institutions Examination Council's Appraisal Subcommittee. According to the CFPB, the report raises serious concerns regarding existing appraisal standards and provides recommendations with respect to fairness, equity, objectivity, and diversity in appraisals and the training and credentialing of appraisers.

3. The CFPB addressed special purpose credit programs

On February 22, 2022, the CFPB joined seven other federal agencies in issuing a statement encouraging lenders to explore opportunities to increase credit access through special purpose credit programs (SPCPs) to better serve historically disadvantaged individuals and communities.

Under Federal law, lenders are permitted, under certain conditions, to design and implement SPCPs to extend credit to a class of persons who would otherwise be denied credit or would receive it on less favorable terms. In particular, the Equal Credit Opportunity Act (ECOA) and Regulation B permit creditors to offer or participate in SPCPs to meet special social needs through any:

- Credit assistance program authorized by federal or state law for the benefit of an economically disadvantaged class of persons;
- Credit assistance program offered by a non-for-profit organization for the benefit of its members or an economically disadvantaged class of persons; or
- SPCP offered by a for-profit organization, or in which such an organization participates to meet special social needs, if it meets certain standards prescribed in regulation by the CFPB.

Previously, the CFPB issued guidance that helped to explain how lenders can offer or participate in an SPCP. In addition, the Department of Housing and Urban Development recently issued guidance confirming SPCPs for real estate loans or credit assistance, that are compliant with ECOA and Regulation B, generally would not violate the Fair Housing Act.

4. The CFPB outlined options to prevent algorithmic bias in home valuations

On February 23, 2022, the CFPB outlined options to ensure accurate and fair home valuation computer models. Specifically, the CFPB, along with its federal partners,

intends to:

- Ensure a high level of confidence in the estimates produced by automated valuation models;
- Protect against the manipulation of data;
- Seek to avoid conflicts of interest;
- Require random sample testing and reviews; and
- Account for any other such factor that the agencies determine to be appropriate.

According to the CFPB, automated valuation models can pose fair lending risks to homebuyers and homeowners. The CFPB indicated that it is particularly concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further perpetuate disparities. Accordingly, the CFPB, along with several other agencies are working together to develop a proposed rule that will regulate the use of automated valuation models.

5. The CFPB is pursuing discrimination in consumer finance, beyond credit transactions, using its unfairness authority

On March 16, 2022, the CFPB announced changes to its supervisory operations to address discrimination, including in situations where fair lending laws do not apply. The CFPB indicated that in examinations, it plans to scrutinize discriminatory conduct related to advertising, pricing, and other areas to ensure that companies are testing for and eliminating discrimination.

Government regulators and private plaintiffs have commonly relied on the Equal Credit Opportunity Act (ECOA), a fair lending law which covers extensions of credit. However, under this new approach, certain discriminatory practices may also trigger liability under the Consumer Financial Protection Act (CFPA), which prohibits unfair, deceptive and abusive acts and practices (UDAAPs). The CFPB published an updated exam manual for evaluating UDAAPs, which notes that discrimination may meet the criteria for "unfairness."

The CFPB said 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.

On September 29, 2022, the U.S. Chamber of Commerce, American Bankers Association, Consumer Bankers Association, and other organizations filed a complaint in the Eastern District of Texas against the CFPB. The plaintiffs claimed the CFPB exceeded its statutory authority when it revised its UDAAP exam manual in March. They also claimed the changes were arbitrary and capricious, and violated the Administrative Procedure Act's notice and comment requirements.

6. The CFPB Issued its Fiscal Year 2021 Office of Minority and Women Inclusion Annual Report to Congress

On April 1, 2022, the CFPB announced that it had issued its FY 2021 OMWI Annual Report to Congress provided detailed information about the diversity and inclusion work over the past fiscal year, highlighting workforce diversity, workplace inclusion, supplier diversity, inclusion in business activities, and work related to regulated entities. With respect to regulated entities, OMWI is required to develop standards for assessing diversity and inclusion at the financial entities the CFPB regulates. According to the report, the CFPB engaged in analysis of public data to gain a better understanding of diversity and inclusion within the financial services sector. As a result of those efforts, the CFPB published the Diversity and Inclusion within Financial Services Report back in January 2022.

7. The CFPB terminated a "no-action letter" issued by the prior administration

On April 13, 2022, the CFPB announced that a loan originator notified the CFPB that it intended to add a significant number of new variables to its underwriting and pricing model, and requested termination of its prior "no action letter" from the CFPB. As requested by the company, the CFPB terminated the 2020 "no-action letter," effective immediately. The CFPB had granted the loan originator a "no-action letter" in September 2017 and a second letter in November 2020. The CFPB had immunized the lender from fair lending law claims with respect to its underwriting algorithm, while the "no-action letter" remained in force. Under the terms of the 2020 "no-action letter," the CFPB had required the lender to notify the CFPB of significant changes to its artificial intelligence model prior to their implementation.

8. The CFPB issued an advisory opinion on coverage of fair lending laws

On May 9, 2022, the CFPB published an advisory opinion confirming that the Equal Credit Opportunity Act (ECOA) bars lenders from discriminating against customers after they have received a transaction, not just during the application process. The advisory opinion states that ECOA continues to protect borrowers after they have applied for and received credit and that it requires lenders to provide adverse action notices to borrowers with existing credit when, for example, an existing account is terminated or an account's terms are unfavorably changed.

9. The CFPB provided Spanish-language disclosures

On May 11, 2022, the CFPB announced that it published Spanish-language disclosures. To help financial institutions better support Spanish-speaking communities, the CFPB unveiled Spanish translations of the following federal model disclosures:

- prepaid card model forms,
- adverse action sample notices,
- home mortgage origination documents,

- early intervention clauses for mortgage servicers,
- credit reporting notices, and
- the debt collection model validation notice.

The CFPB encouraged the use of the translations alongside the corresponding English-language disclosures when working with Spanish-speakers. These publications are a continuation of the CFPB's articulated commitment to provide more translated documents for use in serving consumers with limited English proficiency, as articulated in its January 2021 Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency.

10. The CFPB addresses credit models using algorithms

On May 26, 2022, the CFPB announced that it had published a Consumer Financial Protection Circular addressing adverse action notice requirements under the Equal Credit Opportunity Act (ECOA). The CFPB confirmed that federal anti-discrimination law requires companies to explain the specific reasons for taking adverse actions, even when they are relying on credit models using complex algorithms. In the past, however, the CFPB has also recognized that artificial intelligence-based credit underwriting does present challenges when identifying specific reasons for adverse action, suggesting that there are likely more developments ahead when it comes to adverse action notices and the use of credit models that involve novel intersections of non-traditional data.

11. CFPB Publishes 2021 Office of Servicemembers Affairs Annual Report

On June 13, 2022, the CFPB announced that it had published the 2021 Office of Servicemembers Affairs Annual Report. The Office of Servicemember Affairs' annual report on the top financial concerns facing servicemembers, veterans, and military families, based on the complaints they submitted to the CFPB. Servicemembers told the CFPB about billing inaccuracies and that debt collectors used aggressive tactics to recover allegedly unpaid medical bills. Servicemembers also reported failures by credit reporting companies in helping to resolve inaccuracies and other credit reporting issues.

12. CFPB and DOJ issued a caution about servicemember protections

On July 29, 2022, the Department of Justice (DOJ) and the CFPB issued a joint letter reminding auto finance companies about legal protections for military families under the Servicemembers Civil Relief Act. The letter addressed wrongful repossessions, penalties for termination, and interest rate benefits. The letter reminded auto companies that they have the burden to identify whether borrowers are protected from repossession, and included links to the Department of Defense website to verify a borrower's military status, along with information about the DOJ's Servicemembers and Veterans Initiative, and the CFPB's Office of Servicemember Affairs.

13. CFPB Sues Online Lender for Allegedly Overcharging Servicemembers and Not Permitting Cancellation

On September 29, 2022, the CFPB filed a [complaint](#) against an online lender and 38 of its subsidiaries, for allegedly imposing illegal and excessive charges on servicemembers and their dependents. The CFPB alleges that the lender violated the Military Lending Act by charging more than 36% per year on loans to servicemembers and their dependents, through a combination of stated interest rates and monthly membership fees. The CFPB also alleges that the online lender required customers to join a membership program to access certain "low-APR" loans, and then did not allow the customers to cancel their memberships until they paid their loans.

14. CFPB Finds Members of the Reserves and National Guard Paying Millions of Dollars in Extra Interest Each Year

On December 7, 2022, the CFPB [released](#) a report claiming that Reserve and National Guard members are paying an extra \$9 Million a year because creditors fail to provide mandatory rate reductions. As a result, the CFPB indicated that creditors should automatically apply all benefits when a servicemember invokes their rights. For example, the CFPB indicated that creditors should apply SCRA interest rate reductions for all accounts when a servicemember invokes their rights on a single account.

As you can see, 2022 was an active year for the CFPB when it comes to enforcing non-discrimination laws (through the laws themselves, as well as through purported expansions of the agency's UDAP authority), enforcing consumer protection laws geared toward protecting servicemembers, and providing resources to serve consumers with limited English proficiency. We expect more of the same in 2023, as the CFPB continues its efforts aimed at preventing discrimination, expanding access to credit, and protecting underserved communities. In addition, we also urge readers to stay alert to developments from the DOJ regarding the Americans with Disabilities Act and, in particular, accessibility of web content.

Still hungry?

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