

## CFPB Issues Advisory Opinion on ECOA Compliance

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Auto Finance News recently spoke to Hudson Cook partner Jean Noonan about the Consumer Financial Protection Bureau (CFPB) advisory opinion confirming that the Bureau considers all aspects of credit arrangements to be subject to the Equal Credit Opportunity Act (ECOA), including servicing, collections, repossession and other actions.

"The CFPB is giving notice that discrimination in servicing and collections is an area where they're going to be looking," Jean said. Auto lenders must watch for discriminatory practices in all areas of credit transactions, including in offering extensions or contacting customers with delinquent accounts, she added. Client representatives, for example, should offer payment assistance to all delinquent consumers who are eligible, rather than waiting for a customer to ask for assistance or offering options to some customers based on the representative's own reasoning, adding it is also important for the employee to note why assistance was or wasn't given.

In its December 2021 amicus brief issued in response to the *Fralish v. Bank of America* case, the Bureau stated that, "ECOA's protections continue to apply after an applicant received credit." The CFPB's most recent opinion doubles down on the view that lenders cannot discriminate against borrowers with existing credit or consumers who are applying for credit. Considering the Bureau's broad supervisory and enforcement authority, Jean cautioned lenders to take note. "The CFPB feels that the ECOA is either not ambiguous in favor of saying that existing customers are applicants, or that if it is ambiguous, Regulation B solves that ambiguity," she said. "Auto lenders have to worry about discrimination not just in the approve or deny decision, but in all aspects of a credit transaction."

Jean is a partner in Hudson Cook's Washington, DC office. She advises clients on consumer financial services, fair lending, marketing, financial privacy, and consumer protection matters. She counsels financial institutions and others in complying with laws related to consumer credit, privacy, telemarketing, and unfair trade practices. Jean represents clients in government investigations, examinations, and enforcement actions before federal agencies, including the CFPB, FTC, and federal prudential regulators, and in other ancillary matters. Jean has testified before Congress on legislative proposals relating to consumer financial services issues and lectures extensively on issues affecting financial institutions.

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