



Regulatory Alert

Regulatory Insights for Financial Services

March 2022

Fairness: CFPB expands anti-discrimination focus

Consumer fairness is a vast concept that applies across the consumer lifecycle encompassing access and impact, sales practices, organizational disclosures, and ethical use of AI and machine learning. The CFPB's announcement and updated examination manual for anti-discrimination and UDAAP helps "codify" this broader application of "fairness" for consumer financial products and services. Companies should note that CFPB is keenly focused on evaluating fairness across demographic groups; companies will be expected to show that they have conducted expanded and robust demographic analysis.

The CFPB [announced](#) changes to its supervisory examinations procedures that will focus attention on the potential for "discriminatory conduct that violates the federal prohibition against unfair practices" across consumer financial services products and services and throughout the product lifecycle. The CFPB states, "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." Further, examiners will look at how companies test and monitor their decision-making processes for discrimination under the ECOA (Equal Credit Opportunity Act) as well as under the prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP, established by the Dodd-Frank Act).

In the announcement, the CFPB called out specific consumer finance markets (including credit, servicing, collections, consumer reporting, payments, remittances, and deposits) and activities (including advertising, pricing, and access.)

The CFPB concurrently [published](#) an updated exam manual for evaluating UDAAP. In general, examiners must determine whether companies have processes to:

- Prevent discrimination prior to implementation of or making changes to products and services, and to continue monitoring for discrimination after implementation.
- Periodically analyze and monitor decision-making processes including corrective actions to address any potential UDAAP concerns, including discrimination.
- Prevent targeting or exclusion of consumers from products and services, or offering different terms and conditions, in a discriminatory manner.
- Provide appropriate training for customer service personnel to prevent discrimination.

Examiners may test for:

- Products targeted to particular populations without appropriate tailoring of marketing, disclosures, and other materials designed to ensure understanding by the consumers.



- Terms provided to one customer demographic that are inferior as compared to other customer demographics.
- Offerings of products and services to one customer demographic that are greater in number as compared to other customer demographics.
- Customer treatment by service representatives that is more favorable (e.g., provide extra assistance or exceptions) to certain demographics than for customers of other demographics.
- Targeted advertising or marketing that is discriminatory.
- Discriminatory decision-making processes used in eligibility determinations, underwriting, pricing, servicing, or collections.
- Failure to evaluate and make necessary adjustments and corrections to prevent discrimination.

Examiners may review:

- Documentation regarding the use of models, algorithms, and decision-making processes used in connection with consumer financial products and services.
- Information collected, retained or used regarding customer demographics, including the demographics of customers using various products or services, and the breakdown of consumer demographics for various product uses, fees, revenue sources and costs, or the impacts of various products and services on specific demographics.

- Demographic research or analysis relating to marketing or advertising of consumer financial products or services.

Consumer complaints. The updated exam manual highlights that consumer complaints play a key role in identifying UDAAPs and instructs examiners to also consider complaints that are logged against a company's subsidiaries, affiliates, and third parties. CFPB has indicated that complaints – and how companies respond to them – inform the Bureau's supervisory, enforcement, and rule-writing efforts. Notably, the CFPB released two reports in 2021 analyzing complaints data by demographic characteristics (see reports [here](#) and [here](#)).

Other areas of focus. CFPB has separately said that it will be closely watching for potential disparate treatment and/or discriminatory outcomes related to the use of machine learning models for advertising, marketing, and underwriting.

Related KPMG releases:

- [Consumer Fairness and Protection: Key insights and leading practices for financial institutions](#)
- KPMG Regulatory Insights, Key Ten Regulatory Challenges of 2022, [Fairness and Inclusion](#)

For additional information, please contact [Amy Matsuo](#), [Todd Semanco](#), or [Mike Lamberth](#).

Contact the author:



Amy Matsuo
Principal and Leader
Regulatory and ESG Insights
amatsuo@kpmg.com

kpmg.com/socialmedia



Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

All information provided here is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the facts of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.