



Regulatory Alert

Regulatory Insights



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CFPB supervisory and enforcement focus

Key points

The CFPB has denoted racial equity and long-term economic impacts on consumers from COVID-19, including housing insecurity, mortgage/credit servicing, and credit reporting, as key priorities under the Biden Administration. It has further stated that it intends to take “aggressive action,” including a renewed and expedited focus on investigations and enforcement, to ensure consumers, and especially “vulnerable” consumers, are protected from financial harm. Consumer complaints will drive investigations related to disparities among consumers, especially regarding fairness, including access, treatment, and servicing. Companies must anticipate heightened attention on compliance with consumer regulations across fairness/UDAAP, fair lending and access to credit, fair credit reporting and debt collection, and mortgage and consumer loan servicing.

All companies under CFPB supervision, including depository financial services companies (collectively, Banks), non-bank financial services companies, inclusive of fintech providers and large debt servicers, and largest participants in product categories should anticipate an increase in investigative letters, supervisory examinations, and supervisory and enforcement actions. Entities with anomalies (e.g., via complaint volume, high fee revenue, or low penetration of vulnerable communities) will be targets for CFPB supervision and/or enforcement.

The Biden Administration has brought new leadership and priorities to the CFPB, marked by an immediate and renewed focus on consumer protection through heightened supervision and enforcement. This focus prioritizes economically vulnerable consumers impacted by COVID-19 and/or racial equity and will likely impact areas under the CFPB’s authority as highlighted below.

Consumer complaints

The CFPB’s consumer complaints database provides near real-time information about the types of challenges consumers are experiencing with financial products and services as well as how companies are responding to their customers’ concerns. The information supports efforts to supervise companies, enforce federal consumer financial laws, and identify emerging issues. It may also be shared with the prudential regulators (e.g., Federal

Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation), the Federal Trade Commission (FTC), other federal agencies (e.g., Department of Justice), and state agencies.

CFPB has stated that it will:

- “Seek out, listen to, and integrate consumer voices into all Bureau priorities.”
- Highlight companies with a “poor track record” for providing substantive responses to consumer complaints, or with disparities in their responses between consumer groups; these companies may be subject to further review or investigation by CFPB.
- Collaborate with stakeholders, such as consumer advocates, community-based organizations, civil rights groups, tribal and Indigenous rights groups, and



individual consumers to ensure all consumers are aware of their rights.

Vulnerable consumers

CFPB has described the population of low-income and economically vulnerable consumers as diverse by culture, geography, stage of life, and financial status. Frequently, these consumers are unbanked or underbanked and have thin or no credit files. They may face a variety of obstacles and barriers to obtaining financial services including availability of financial institutions (rural settings); high fee or minimum balance requirements; poor credit history; lack of required identification; and limited internet access. Similarly, they may be disadvantaged by language barriers, low levels of literacy or numeracy, disability, or other factors that may limit access.

Since COVID-19, the population of “vulnerable” consumers has expanded to include consumers affected by “economic dislocation” resulting from measures to control the pandemic while also highlighting groups that have experienced “disproportional impact.”

Key groups that CFPB will focus on include:

- Servicemembers
- College students and recent graduates
- Elderly
- Black, Brown, and Indigenous communities
- Small business owners, and especially minority- and women-owned businesses
- The housing insecure (consumers at risk of mortgage foreclosure or tenant eviction).

Consumer protection regulations

The CFPB’s priority on economically vulnerable consumers impacted by COVID-19 and racial equity will focus on the consumer protections provided in a number of consumer financial protection laws and regulations, including these below.

— UDAAP

- CFPB has broad authority to prevent unfair, deceptive, or abusive acts or practices (UDAAP) in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

— ECOA and Regulation B – Fair lending

- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, make it unlawful to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, or age. It is also unlawful to

discriminate because all or part of the applicant’s income is derived from any public assistance program or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

- The Biden Administration has expanded, through executive order, the prohibited classes to include gender identity and sexual orientation.
- A creditor’s practice may be considered discriminatory if it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face. This is referred to as “**disparate impact**.”
- CFPB values expanded, nondiscriminatory access to banking services and credit. In-market use of AI models and algorithms is growing in this area but may also introduce potential bias risk. The CFPB will likely expand its attention to Bank and non-bank use, accordingly, and particularly relative to potential fair lending and UDAAP concerns.
- The ECOA was amended by Section 1071 of the Dodd-Frank Act, which requires the CFPB to impose data collection and reporting requirements for **small businesses and women- and minority-owned businesses** in order to facilitate enforcement of fair lending laws and enable communities, government entities, and creditors to identify business and community development needs and opportunities. CFPB is moving toward a rule proposal in 2021.

— HMDA and Regulation C

- The Home Mortgage Disclosure Act (HMDA) requires certain financial institutions to maintain, report, and publicly disclose loan-level information about mortgage lending activity. The data are used to monitor whether financial institutions are serving the needs of their individual neighborhoods or may be engaging in discriminatory practices.

— MLA and SCRA

CFPB, along with the prudential regulators, will be focused on service member protections through their associated jurisdictional authority under MLA and SCRA.

- The Military Lending Act (MLA) provides special protections for active duty servicemembers, including an interest rate cap on non-mortgage loan products such as payday loans, unsecured instalment loans, certain student loans, and credit cards. It applies to transactions originated while on active duty.

- The Servicemember Civil Relief Act (SCRA) provides certain special protections for active duty servicemembers on debts, including mortgages, that were originated prior to entering active duty.

— FDCPA

- The Fair Debt Collection Practices Act (FDCPA) applies to the collection of consumer debt incurred for personal, family, or house purposes by debt collectors (as defined in the rule). It is intended to protect consumers from prohibited unfair, deceptive, or abusive acts or practices, and covers communications with the consumer and third parties (including when and where communication may occur) as well as information that debt collectors must provide to the consumer. CFPB has passed new rules implementing aspects of this law affecting UDAAP prohibitions and disclosures will go into effect on November 30, 2021.

— FCRA and Regulation V

- The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, covers the furnishing, use, and disclosure of information in reports associated with credit, insurance, employment, and other decisions made about consumers. It imposes obligations on entities that qualify as consumer reporting agencies, as well as on persons who use consumer report information or furnish information to consumer reporting agencies.

In the context of the CFPB's priorities, the CFPB has highlighted:

- Application of the MLA and SCRA protections to Reservists and members of the National Guard that have been placed on active duty in response to COVID-19

- Processing of SBA PPP loan and forgiveness applications, including assessment of protections against fraud, UDAAP, and disparate impacts as well as the timeliness and fairness of complaints and disputes resolution
- Implementation of CARES Act provisions related to forbearance and foreclosure moratoriums, including accuracy and timeliness, with ongoing attention to tenant eviction moratoriums and programs addressing rental and utilities assistance and housing counseling
- Disclosures to consumers regarding CARES Act provisions, including accuracy and timeliness
- Application and processing of accommodations and other relief to customers suffering economic hardship, impacting credit card accounts, auto loans, student loans, or deposit accounts
- Consumer harm resulting from overdraft fees and transaction order processing
- The role of racial bias in home appraisals
- Reporting of consumer information to consumer reporting companies, and response to consumer disputes regarding the accuracy of consumer report information.

Compliance risks and consumer/investor protections are highlighted in separate sections of KPMG Regulatory Insights' Ten Key Regulatory Challenges of 2021; they are available [here](#) and [here](#). A mid-year update is available [here](#).

A KPMG Regulatory Insights Regulatory Alert on a July 2021 executive order to promote competition and protect consumers is available [here](#).

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