

CFPB Shores Up Legal Basis for Monitoring Loan Servicing Discrimination

May 11, 2022

On May 9, 2022, the Consumer Financial Protection Bureau [issued an advisory opinion](#) declaring that the Equal Credit Opportunity Act's prohibitions against discrimination protect borrowers in all aspects of a credit transaction, including in connection with account servicing.

Echoing positions taken in [previous amicus briefs](#), the CFPB's opinion highlights that the ECOA defines an "applicant" to mean "any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit" (15 US Code 1691a(b)). As defined by Regulation B, an "applicant" includes "any person who requests or who has received an extension of credit from a creditor." According to the CFPB, the "best interpretation" is therefore that an "applicant" subject to the protections in the ECOA and Regulation B includes an existing borrower.

By clarifying the scope of the ECOA and Regulation B, the CFPB is enhancing its legal basis for applying the ECOA's anti-discrimination provisions to post-origination interactions with borrowers. In a key footnote, the CFPB states that it "interprets aspects of the credit transactions enumerated in Regulation B as including and encompassing the servicing of that credit, debt collection, loss mitigation, payment plans, settlements, co-signer release, and certain other services provided to existing accountholders." The opinion also highlights prior CFPB enforcement actions, such as its action against a large bank that allegedly discriminated against certain borrowers by engaging in aggressive collections practices.

The announcement is part of a broader CFPB initiative to expand the boundaries of anti-discrimination protections, such as in its [March 16 announcement](#) that it would leverage its unfair, deceptive, and abusive acts or practices (UDAAP) authority to [prohibit discrimination in noncredit financial products and services](#).

What does this mean for you?

In light of the CFPB's announcement, financial services providers may want to consider taking action to enhance their fair servicing practices, including by:

- Expanding fair lending training to employees engaged in account servicing, debt collection and loss mitigation.
- Expanding fair lending policies to clearly incorporate fair servicing principles in all aspects of account servicing.
- Revisiting servicing practices to assess whether borrowers with existing credit are receiving adverse action notices, as appropriate.
- Adopting a testing program to assess whether servicing practices risk noncompliance with the ECOA's anti-discrimination protections.

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