

CFPB Fall Supervisory Highlights Shed Light on Agency Priorities – Fair Lending

Article By:

Jessie Manzewitsch

Andrew J. Narod

As 2021 came to an end, the Consumer Financial Protection Bureau (CFPB) released its 2021 Fall Supervisory Highlights, which cover the CFPB's findings of examinations completed on the first half of the year. Though the CFPB's Fair Lending Supervision Program reviews compliance with the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, and the Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C, the CFPB focuses its attention on violations of the ECOA and Regulation B. In particular, the CFPB expresses concern with pricing and religious discrimination.

Pricing Discrimination

As for pricing discrimination, the Bureau notes mortgage lenders, in violation of ECOA, discriminated against Black and female borrowers when granting pricing exceptions for competitive offers. Likewise, the CFPB identified lenders with statistically significant disparities in pricing exceptions for these groups. The CFPB believes the violations were in part due to failure of officers to follow the lender's own policies and procedures regarding pricing exceptions for competitive offers, lack of oversight over these officers, and the lender's failure to take corrective action surrounding self-identified risks. Furthermore, the CFPB reports that although previous fair lending monitoring reports had exposed a lack of documentation supporting pricing exception decisions, lenders failed to improve documentation processes.

Religious Discrimination

Regulation B prohibits a creditor from inquiring about religion or taking religion into account in "any system of evaluating creditworthiness of applicants." The CFPB found that applications used for small business loans extended to religious institutions contained explicit inquiries about religion. The Bureau deemed the practice to be in violation of the ECOA and Regulation B. The CFPB found further violations when lenders denied credit applications of religious institutions for failure to respond to these questions. In response to these findings, lenders updated the questionnaire and extended credit offers to the affected applicants.

The Fall Supervisory Highlights are particularly useful because they reveal the CFPB's concerns and help predict where the Bureau will focus its regulatory power. As these violations demonstrate, where sound policies exist without a strong management and oversight system, violations may slip through the cracks, leaving lenders exposed to regulatory enforcement action. Also telling is the bureau's focus on religious discrimination in small business loans. This is consistent with the greater regulatory trend toward increased regulation of non-consumer finance products. For more information about the Fall Supervisory Highlights, please refer to our recent post, "[CFPB Fall Supervisory Highlights Shed Light on Agency Priorities](https://www.natlawreview.com/article/cfpb-fall-supervisory-highlights-shed-light-on-agency-priorities),"

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