

# Regulators prioritize fair lending and equal access to credit

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Anyone who has attended a conference that looked at information from regulators within the past few months could not help but notice that a key area of focus is fair lending and equal access to credit.

While fair lending always has been an important consideration, it is apparent that there is a reinvigorated focus on this topic by federal regulators. When **Consumer Finance Protection Bureau** (CFPB) acting Director **David Uejio** was appointed in January, he shared a statement reflecting “new priorities and focus of the CFPB,” specifically noting racial equity as one of the organization’s two key priorities.

“I am going to elevate and expand existing investigations and exams and add new ones to ensure we have a healthy docket intended to address racial equity,” Uejio stated. “This of course means that fair lending enforcement is a top priority and will be emphasized accordingly. But we will also look more broadly, beyond fair lending, to identify and root out unlawful conduct that disproportionately impacts communities of color and other vulnerable populations,” he added.

In a video posted to the CFPB website, Uejio emphasized that “the CFPB will take action against institutions and individuals whose policies and practices prevent fair and equal access to credit or take advantage of poor, underserved, and disadvantaged communities.”

And, in the announcement of the CFPB’s 2020 Fair Lending Report to Congress in April 2021, Uejio stated: “In 2021 and beyond, the Bureau will place greater emphasis on fair lending and efforts to address racial equity for underserved communities, and will report on those efforts in 2022.”

The **Federal Trade Commission** (FTC) also has been active in the equal access space. In a March 26 blog post on its website, the FTC pointed to its 2020 enforcement action against a New York City auto dealer as an illustration of the “need for vigorous enforcement against companies whose practices result in discrimination.” That enforcement action of last year resulted in the auto dealer refunding nearly \$1.5 million to affected consumers.

According to a statement from FTC Commissioner **Rohit Chopra**, the case was the first time the FTC had charged an auto dealer with illegal racial discrimination. In a potential foreshadowing of things to come, Chopra, who is also the presumptive next CFPB director, noted that the practices the FTC alleged against the auto dealer were discriminatory and unfair, noting that the FTC can use its authority to attack harmful discrimination by using a disparate impact analysis and other tools.

The same would also hold true for the CFPB.

Based on this renewed focus by regulators, now is a great time for lenders to take a good hard look at their equal access and fair lending policies, procedures and training programs.

### Keep policies and procedures current

Lenders should review their policies and procedures to make sure they are up to date with respect to all protected classes. Note, for example, that the CFPB issued an interpretive rule on March 9 clarifying that the prohibition against sex discrimination under the Equal Credit Opportunity Act (ECOA) includes discrimination based on sexual orientation or gender identity. The CFPB will be reviewing its publications and examination guidance documents to update them, if needed, to reflect this interpretive rule.

Now would be a good time for lenders to do the same.

Lenders should also remember to take state anti-discrimination laws into consideration when reviewing and updating policies and procedures. Some state laws include classifications that go beyond those found in the ECOA.

### Cover the full spectrum

The equal access and fair lending requirements cover every aspect of a customer's dealings with a creditor, starting with advertising. Review your policies and procedures to make sure they cover not only the application and financing stages, but also the manner in which you advertise, the way your sales people interact with the customers, and the servicing, collection, and ultimate payoff of the credit transaction.

### Employee training

Compliance programs should provide for comprehensive, up-to-date staff training on equal access and other fair lending requirements. As such, staff in all stages of the credit cycle should receive appropriate training; new hires should receive prompt training; a periodic review of trainings should include the latest regulatory requirements; and employees should be required to take refresher courses as new developments occur.

There's no time like the present to make sure things are in good shape from an equal access and fair lending perspective.

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