

## CFPB Bites of the Month - 2023 Annual Review - Nondiscrimination and Military Protection Law

January 18, 2024 | [Erica A.N. Kramer](#), [Justin B. Hosie](#), [Eric L. Johnson](#) and [Laura J. Bacon](#)

In this article, we share a timeline of our monthly "bites" for 2023 applicable to consumers protected by nondiscrimination and military protection laws.

### Bite 15: Director Chopra Delivered Remarks at DOJ Event

On April 19, 2023, Director Chopra spoke at a Justice Department Interagency event in Newark, NJ to highlight efforts to combat modern-day redlining. Director Chopra stated that the CFPB has previously prioritized two types of modern-day redlining: (i) digital redlining, which includes algorithmic bias and technologies marketed as artificial intelligence and (ii) exclusionary conduct by mortgage lenders, including nonbanks. He discussed the CFPB's new focus on a third category - discriminatory targeting, also known as "reverse redlining." According to the CFPB, discriminatory targeting is the act of directing predatory products or practices at certain groups, neighborhoods, or parts of a community. Instead of viewing specific groups of people as inherently problematic, and therefore too risky to lend to, the Director said that companies engaging in discriminatory targeting see those same groups as prime for financial exploitation and credit predation. The CFPB cautioned that when a lender either excludes protected groups of consumers from lending or targets those consumers with harmful credit products or services, they violate the Equal Credit Opportunity Act (ECOA), other consumer financial protection laws, and civil rights laws. He also discussed the CFPB's Statement of Interest, filed in the U.S. District Court for the Southern District of Florida in a case against a for profit college addressed below.

### Bite 14: Joint Statement on Automated Systems

On April 25, 2023, the CFPB, DOJ, FTC, and EEOC released a joint statement outlining a commitment to fairness, equality, and justice. The agencies indicated that they would use their authority to protect consumers from discriminatory outcomes that can arise when financial institutions make decisions using AI. The CFPB addressed what it calls "black box algorithms," algorithmic marketing and advertising, abusive use of AI, digital redlining, and repeat offenders' use of AI technology. The CFPB also highlighted its whistle-blowing process for tech workers, and encouraged engineers, data scientists, and others to report potential discrimination and other misconduct.

### Bite 13: CFPB Delivers Annual Fair Lending Report to Congress

On June 29, 2023, the CFPB issued its annual Fair Lending Report to Congress, reporting information under the ECOA and the Home Mortgage Disclosure Act. According to the CFPB, its 2022 fair lending work centered on the those most affected by unlawful discrimination, including efforts to address

redlining and discrimination in home appraisals. The report also said that the CFPB issued rules and guidance addressing fair lending protections for prospective applicants, applicants for credit, and existing account holders. Finally, the CFPB said it will be focusing future efforts on emerging technologies, protecting consumers from algorithmic bias, digital surveillance, data harvesting, patterns it calls "dark patterns," and protecting consumers from automated systems marketed as artificial intelligence.

#### Bite 12: Servicemember Reports About ID Theft

On January 12, 2023 the CFPB announced that it had released an "Issue Spotlight" addressing servicemember reports about identity theft. The Issue Spotlight indicates that activity duty servicemembers are 22% more likely than their civilian counterparts to report that an identity thief has used their stolen information to open an account. The Issue Spotlight also addresses how identity theft can threaten servicemember security clearances and housing options. The Issue Spotlight states that between 2014 and 2022, military complaints about identity theft increased nearly fivefold, from just over 200 annually in 2014, to more than 1,000 in 2022. The Issue Spotlight also says that financial institutions are the first line of defense and must maintain procedures to identify suspicious activities. Finally, the Issue Spotlight outlines how military consumers can protect their credit and address identity theft.

#### Bite 11: CFPB Releases Joint Letter Regarding Discrimination in Appraisal Standards

On February 14, 2023, the CFPB and other federal agencies sent a letter to The Appraisal Foundation (TAF), which is a private, nongovernmental organization that sets appraisal standards. The letter urges TAF to revise its draft Ethics Rule for appraisers to address federal prohibitions against discrimination. The agencies expressed concern about: (i) appraisers lacking awareness of these prohibitions, (ii) alleged discriminatory statements in appraisals, and (iii) disparities for communities and borrowers of color. The CFPB indicated that this was the second time that the CFPB has asked TAF to address appraisal bias and claimed that TAF appears reluctant to act. The CFPB said it would continue to work closely with other agencies to address mis-valuation of properties owned or sold by families and communities of color.

#### Bite 10: CFPB Launches Initiative on Immigrant Access to Fair Credit

On October 12, 2023, the CFPB launched an initiative on immigrant access to fair credit, and started investigating immigrants' financial experiences. The CFPB noted that creditors have denied immigrant borrowers credit cards, vehicle financing, and student loans, based on their immigration status, including those protected under the Deferred Action for Childhood Arrivals Program. According to the CFPB, it has received complaints from consumers who received positive feedback from lenders about their credit scores and income, but were ultimately denied because of their immigration status alone. The CFPB and the Department of Justice also issued a joint statement on fair lending and credit opportunities for immigrant borrowers under the ECOA. Under the ECOA, the CFPB noted that lenders are not prohibited from considering a borrower's immigration status, but they are prohibited from using that status to discriminate based on national origin, race, and other protected characteristics. The CFPB's statement seeks to remind lenders that they cannot use immigration status to justify unlawful discrimination.

#### Bite 9: CFPB Issues Guidance on AI-Driven Credit Denials

On September 19, 2023, the CFPB issued new guidance about creditors using artificial intelligence and other complex models to assess consumers' creditworthiness, and reminded these creditors that consumers must receive accurate and specific reasons for credit denials. According to the CFPB, when creditors take adverse action against consumers, they cannot simply use CFPB sample adverse action forms and checklists if those materials do not reflect the actual reason for the denial or change. According to the CFPB, creditors are using increasingly complex algorithms in underwriting, sometimes involving information obtained through consumer surveillance. As a result, the CFPB claims that consumers may be denied credit for reasons that they don't consider particularly relevant to their finances. The CFPB also noted that when creditors simply select the closest matching factor on a sample denial form, they may not be following the law if those reasons don't sufficiently reflect the actual reason for the action taken against the consumer.

#### Bite 8: Comment Requested on Proposed Rule about Automated Valuation Models

On June 1, 2023, the CFPB, FDIC, Federal Reserve, NCUA, FHFA, and OCC requested comment on a proposed rule to address the credibility and integrity of real estate valuation models. The rule is designed to regulate automated valuation models (AVMs), which are models used as part of the real estate valuation process, that are made possible by advances in database and modeling technology and the availability of larger property datasets. Under the proposed rule, the agencies would require policies, practices, procedures, and quality control standards designed to ensure the credibility and integrity of valuations. Standards in the rule are intended to ensure a high level of confidence in the estimates produced by AVMs, help protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and promote compliance with applicable nondiscrimination laws. The CFPB indicated that it was especially concerned that the AVMs may continue to reflect any bias or blind spots that existed in the data used to create these models. The comment period is now closed.

#### Bite 7: CFPB Finalized a Rule to Create a New Data Set on Small Business Lending in America

On March 30, 2023, the CFPB announced that it had finalized its small business lending rule. Under the CFPB, Congress required the CFPB to issue a rule to increase transparency in small business lending, promote economic development, and combat unlawful discrimination. Under the Rule, business lenders will be required to collect and report information about the applications they receive, including geographic and demographic data, lending decisions, and the price of credit. The CFPB will require the largest lenders to report first and will allow lenders to accept the self-identification of the small businesses as women-, minority-, or LGBTQI+-owned, and will not need to make their own determinations about these identifiers. The CFPB will also give extra time for implementation to small lenders that have strong records of service to their local communities. The CFPB published several compliance aids including an Executive Summary of the Rule, a Small Business Lending Rule Compliance Dates Info Sheet, a Small Business Lending Data Points Chart, a Small Business Lending Rule Key Dates Chart, and a Filing Instruction Guide for data submission.

#### Bite 6: CFPB Files Amicus Brief in Discrimination Case

On June 23, 2023, the CFPB filed an amicus brief in the U.S. Court of Appeals for the Second Circuit in a discrimination case involving mortgage lending, in support of a borrower's ability to bring discrimination claims. The plaintiffs alleged that a mortgage company and a bank targeted Black and Latino homeowners with abusive and predatory mortgage loans, directed loans to people whose low credit

scores indicated that they were at a relatively high risk of default, and imposed higher rates after a single missed payment. The default rate on the defendants' loans allegedly reached nearly 50%, which the CFPB says is well above industry standards. The mortgage company and bank appealed an order to pay compensatory damages, arguing that the borrowers should not have been able to bring their claims at all because too much time had elapsed since they received their mortgage loans, and because the borrowers signed a modification agreement releasing the companies from claims. The CFPB argued that federal law should permit borrowers to bring their claims when they did because the entities allegedly concealed their discriminatory and predatory conduct, and that borrowers cannot be bound by a contract to sign away their rights to challenge discrimination.

#### Bite 5: CFPB's Complaint Against Mortgage Company Dismissed

On February 3, 2023, a federal court ruled against the CFPB in a case against a mortgage company. Back in 2020 the CFPB had filed a redlining complaint claiming that the mortgage company's advertisements violated the ECOA by discriminating against prospective credit applicants. The text of the ECOA only refers to applicants, but Regulation B extends discrimination protections to prospective applicants. The mortgage company moved for dismissal noting that the ECOA applies to applicants only, and the court for the Northern District of Illinois agreed. The court ruled that the CFPB's approach failed the first step of the two-step Chevron test, which is whether Congress has directly spoken to the precise question at issue. Because Congress drafted the ECOA to apply to "applicants," and clearly and unambiguously defined that term, the court said that Congress had spoken to this precise question and therefore awarded no deference to the agency's expanded definition in Regulation B. The CFPB appealed the decision and oral arguments were held in the Seventh Circuit in December. As of this time, a decision has not yet been rendered.

#### Bite 4: CFPB Files Statement of Interest in Florida Discrimination Case

On April 14, 2023, the CFPB announced that it had filed a statement of interest in a Florida case involving alleged "discriminatory targeting." In that case, the plaintiffs alleged that a for-profit nursing school extended and arranged for students to take out loans, and intentionally targeted its program based on race. The plaintiffs claim that the school imposed new grading policies and graduation requirements while students were enrolled in the program, increasing the time and cost to complete the program, and that these actions constituted "discriminatory targeting." The nursing school argued that the plaintiffs failed to specify an aspect of the transaction that discriminated based on race and did not identify a specific unfair or predatory loan term. The CFPB takes the position that the ECOA's prohibition on discrimination applies "with respect to any aspect of a credit transaction" and therefore the plaintiffs were able to allege discriminatory targeting without identifying specific loan terms that violated the law.

#### Bite 3: CFPB Shuts Down Mortgage Loan Business for Alleged Repeat Offenses Against Military Families

On February 27, 2023, the CFPB announced that it had permanently banned a mortgage loan business for alleged repeat offenses against military families. The CFPB asserted that the mortgage lender's advertisements used fake U.S. Department of Veterans Affairs (VA) seals, the Federal Housing Administration (FHA) logo, and other elements to falsely imply that the lender was affiliated with the government. The CFPB also claimed that the lender deceived borrowers about interest rates and key terms by illegally disclosing a simple annual interest rate more conspicuously than the annual percentage rate, advertising unavailable credit terms, and using the name of the homeowner's current lender in a way that could mislead consumers. The advertisements also allegedly misrepresented that

the benefits were time limited and that military families could obtain VA cash-out refinancing loans without an appraisal. The advertisements also allegedly misrepresented monthly payment amounts, annual savings, and the cash available. The CFPB considered the lender a "repeat offender" based on a 2015 Consent Order alleging similar deceptive marketing practices. In addition to the permanent ban, the lender was required to pay a \$1 million penalty - deposited into the CFPB's civil penalty fund.

#### Bite 2: CFPB Orders Vehicle Title Company to Pay \$10 Million Penalty

On February 23, 2023 the CFPB announced a Consent Order involving a vehicle title loan company. The CFPB alleged that the company (i) extended credit at a rate in excess of the Military Lending Act's (MLA) 36% Military Annual Percentage Rate cap, (ii) failed to provide required MLA disclosures, and (iii) included prohibited provisions in its loan agreements with covered borrowers. The CFPB further alleged that the company employees ignored database responses showing that consumers were covered borrowers, changed consumers' personally identifiable information to obtain negative responses from the MLA database, and—in some cases—failed to verify covered borrower status at all. The CFPB called the company a "repeat offender" due to a 2016 Consent Order on other lending and debt-collection practices. The 2023 Consent Order required the company to pay more than \$5 million in consumer relief and a \$10 million penalty. In addition, the Consent Order requires the company to maintain robust internal controls and testing to address potential violations and report findings directly to the company's chief officers.

#### Bite 1: CFPB Takes Action Against Large Bank for Discrimination

On November 8, 2023, the CFPB announced that a large bank would pay \$25.9 million in fines and redress for violating the ECOA by allegedly discriminating against Armenian Americans. From 2015 through 2021, the bank was alleged to have targeted applicants with surnames that employees associated with Armenian national origin as well as applicants in or around Glendale, California because the bank allegedly stereotyped this group as being likely to commit crime and fraud. The bank specifically targeted surnames ending in "-ian" and "-yan," and Glendale, which is home to approximately 15% of the Armenian American population in the United States. According to the CFPB, supervisors at the bank conspired to hide the discrimination by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines, and employees lied about the basis of denial, providing false reasons to denied applicants. The CFPB also asserted that the bank denied Armenian American consumers outright, requiring additional information or placing a block on the account. The bank was required to pay \$1.4 million to affected consumers and a \$24.5 million fine to the civil penalty fund.

#### "Extra Bite" - Justice Department Reaches Agreement to Address Discriminatory Delivery of Housing Advertisements

On January 9, 2023, the Department of Justice announced that it had reached an agreement with a large social media platform, requiring changes in the platform's advertisement delivery system. According to the DOJ, the social media platform deployed discriminatory advertising in violation of the Fair Housing Act (FHA). The lawsuit alleged that the social media platform used algorithms in determining which users received housing advertisements, and alleged that those algorithms relied in part on characteristics protected by the FHA. The social media platform will be subject to court oversight and regular review of its compliance with the settlement through June 27, 2026. The social media platform has since developed a new system to reduce variances between the eligible audiences

and the actual audiences. The new system will be used for housing advertisements across the social media platform, and the agreement with the DOJ requires the social media platform to comply with certain requirements in stages. In 2024, we expect to see the CFPB continuing its efforts to protect customers identified by federal law as vulnerable and deserving of special protections, such as servicemembers. We're also likely to continue seeing a significant number of actions focused on alleged discrimination. In particular, we expect the CFPB to continue its scrutiny of artificial technology and machine learning, and whether the use of such technology raises concerns regarding discrimination.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our [lineup](#) for 2024. If you missed any of our prior Bites, [request a replay](#) on our website

---

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

**SUBSCRIBE TO INSIGHTS**

# HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

**[hudsoncook.com](https://hudsoncook.com)**

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice  
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

