

CFPB Bites of the Month - 2024 Annual Review - Nondiscrimination and Military Protection Law

January 21, 2025 | [Erica A.N. Kramer](#), [Eric L. Johnson](#), [Justin B. Hosie](#) and [Kristen Yarows](#)

In this article, we share a timeline of our monthly "bites" for 2024 applicable to consumers protected by nondiscrimination and military protection laws. 2025 will likely bring more of the same, particularly in the area of enforcement of military protection laws, as protection of servicemembers is generally a matter of bipartisan concern.

Bite 15: The CFPB's Early 2024 Announcement About Enforcement Work in 2023

On January 29, 2024, the CFPB **published** a summary of its 2023 enforcement actions, and noted its expanding capacity for enforcement going forward. The CFPB noted that in 2023, it filed 29 enforcement actions and resolved 6 previously-filed lawsuits through final orders. Those orders led to agreements to pay \$3.07 billion dollars to consumers, and approximately \$498 million dollars in civil money penalties. The CFPB identified "key actions" from the past year, which included an order against an auto title lender that allegedly violated servicemember protections, an action against a large bank for alleged fee violations, an order against a different large bank for alleged discrimination practices, a lawsuit against a lender who the CFPB claims pushed consumers into refinances, an action against a credit reporting company, and a settlement with a credit repair firm. The CFPB noted that 2023 was the first time that a team of technologists dedicated to enforcement matters joined the CFPB, and that in 2024, the CFPB is significantly expanding its enforcement capabilities by hiring more attorneys, along with additional analysts, paralegals, e-litigation support specialists, economists, and more.

Bite 14: CFPB Releases Study on Small Business Lending

On November 13, 2024, the CFPB **released** a study on small business lending, noting disparities in how lenders treat business owners based on race. The CFPB study involved matched-pair testing using trained individuals who posed as small business owners seeking credit. The testers visited 25 unique bank branches in Fairfax County, Virginia and 25 branches in Nassau County, New York. Black participants were assigned slightly more favorable financial profiles but received less encouragement to apply for loans and were more frequently steered toward alternative loan products. The study noted significant disparities in two key areas. First, Black participants received less encouragement to apply for a loan, with lenders expressing interest in 23% of participants. White participants received lender interest at a 40% level. Second, Black business owners were suggested credit cards and home equity loans 59% of the time.

White participants received such suggestions 39% of the time. The CFPB stated that although the pilot study was limited to two counties, it illustrates why collecting comprehensive lending data is crucial for uncovering potential discrimination.

Bite 13: CFPB Issues 2023 Fair Lending Annual Report to Congress

On June 26, 2024, the CFPB issued its 2023 Fair Lending Annual Report to Congress. The Dodd Frank Act requires the CFPB to annually report on public enforcement actions taken under the Equal Credit Opportunity Act (ECOA) and to report on HMDA data. The CFPB reported that it took action against a so-called "repeat offender" national bank for allegedly discriminating against Armenian Americans applying for credit cards. The CFPB also reported that the CFPB and Department of Justice sued a developer for allegedly targeting Latinos with inferior mortgage products. The CFPB further reported that it identified "significant issues" with inaccurate HMDA data and filed two enforcement actions for reporting inaccurate data. The CFPB and its interagency partners continued to address appraisal bias by filing court briefs, issuing proposed guidance, and carrying out rulemaking. The CFPB finalized the Small Business Lending rule, issued a circular on adverse action notice requirements, and issued numerous fair lending-related reports and data.

Bite 12: CFPB Publishes Servicemember Affairs Annual Report

On September 24, 2024, the CFPB published its annual report on the top financial concerns facing servicemembers, veterans, and military families. The report found that active duty and veteran students encountered many financial challenges, including difficulties getting help from student loan servicers and schools withholding transcripts as a means to collect. The report also identified other problems experienced by the military community, such as increasing scams targeting older veterans. In 2023, servicemembers, veterans, and their families submitted nearly 84,600 complaints to the CFPB, which was a 27% increase from 2022 and a 98% increase from 2021. Key findings from the annual report include: The number of complaints filed by service members increased across all major products, including credit or consumer reporting, debt collection, credit cards, checking or savings accounts, and mortgages. Servicemembers, military families, and veterans reported challenges when trying to contact or get help from their student loan servicer. Servicemembers reported servicing errors for student loans that prevented enrollment in income-driven repayment plans. The CFPB noted that schools withholding transcripts may prevent servicemembers and veterans from securing employment, receiving promotions, or completing their degrees.

Bite 11: CFPB Receives Petition to Treat Housing Rental Leases as Credit

On August 12, 2024, a consumer advocacy group submitted a petition to the CFPB requesting rulemaking under the ECOA to define residential real estate leases as "credit" and landlords as "creditors" under the ECOA for two limited purposes. One is related to the adverse action requirement in Section 1691(d) of the ECOA. The other is to ban the inclusion of medical debt on consumer reports. The consumer advocacy group argued that extending the ECOA notice requirements to rental housing could help improve tenants' chances to be approved for the next rental application by potentially exposing

errors in credit screening reports or weaknesses that they can address ahead of time. Also, the consumer advocacy group argued that the logic for banning medical debt information from credit reports and underwriting carries over equally to the credit screening context. Finally, the consumer advocacy group argued that the CFPB has the authority to advance ECOA's anti-discrimination objectives.

Bite 10: CFPB Drafts Letter to Illinois Committee

On April 9, 2024, Deputy Director Zixta Martinez sent a letter to the Illinois Joint Committee on Administrative Rules, commenting on proposed rules under the state's Community Reinvestment Act (CRA). The letter supported proposed appraisal-related changes to the state CRA which indicate that it is a violation of the ECOA for a lender to rely on or give force or effect to discriminatory appraisals to deny loan applications when the lender knew or should have known of the discrimination. The letter claimed that these provisions accurately describe ECOA, and noted that the CFPB and Department of Justice have previously taken the same position.

Bite 9: Statement of Principles on Appraisal Bias

On February 12, 2024, the Federal Financial Institutions Examination Council (FFIEC) issued a statement of principles to its member entities, which include the CFPB along with the other prudential regulators like the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, National Credit Union Administration, and the FFIEC's State Liaison Committee. The FFIEC noted that these principles were being communicated to mitigate risks that may arise due to potential discrimination or bias in appraisal and evaluation practices and to promote credible valuations. The statement focused on consumer compliance and safety and soundness examination principles. The FFIEC noted that valuation discrimination and bias can cause consumer harm, lead to violations of law, have a detrimental impact on communities, undermine an institution's credit decisions, and negatively impact its safety and soundness. Lastly, according to the FFIEC, this statement of principles should not be interpreted as new guidance to supervised institutions or as evidence of an increased focus on appraisal practices. Rather, the statement is meant to offer transparency into the examination process and to support risk-focused examination work.

Bite 8: CFPB Finalizes Interagency Guidance on ROVs

On July 18, 2024, the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and CFPB issued interagency guidance on reconsiderations of value (ROVs) of residential real estate transactions. ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to *reassess* the value of residential real estate. The guidance advises on policies and procedures that financial institutions may implement to permit consumers to provide information that may not have been considered during an appraisal or if deficiencies are identified. The guidance offers examples of policies and procedures to help identify, address, and mitigate discrimination risk. The agencies largely finalized the guidance as initially proposed back in July 2023, with some edits based on the public comments received, including clarifying the guidance's scope.

Bite 7: CFPB Files Amicus Brief in Servicemember Case

On April 11, 2024, the CFPB and DOJ filed a joint brief in the U.S. Court of Appeals for the Fourth Circuit in support of servicemembers' claims that a large bank charged them too much interest on credit card debt during active service. The Servicemembers Civil Relief Act (SCRA) gives servicemembers the right to reduced interest during active-duty military service, and includes a provision that provides that anyone who has suffered a violation may be a representative party or a member of a class, notwithstanding any previous agreement to the contrary. In this case, four servicemembers sued their bank for interest violations, and the bank responded by saying that the arbitration provisions in the credit card agreements require the plaintiffs to arbitrate their cases instead of bringing them to court. The District Court agreed with the plaintiffs, and the bank appealed that ruling. The DOJ and CFPB stated in their amicus brief that the District Court was correct.

Bite 6: Judge Denies Developer's Motion to Dismiss in CFPB Lawsuit

On October 7, 2024, the U.S. District Court for the Southern District of Texas denied a developer's Motion to Dismiss a discrimination lawsuit in which the CFPB alleged reverse redlining. Specifically, the CFPB alleged that the Texas developer targeted consumers with limited English proficiency. In December 2023, the CFPB and Department of Justice filed a complaint against the developer, alleging that the companies engaged in discriminatory targeting of Hispanic consumers with predatory financing and other unlawful conduct. The complaint alleged that the defendants violated the ECOA, the Fair Housing Act, the Interstate Land Sales Full Disclosure Act, prohibitions on deception under the Consumer Financial Protection Act, and violated regulations under those laws. The complaint alleged that the developer advertises almost exclusively in Spanish and featured cultural markers associated with Latin America in its advertising. The court denied the developer's motion and acknowledged that although the Supreme Court and the 5th Circuit have not ruled on whether reverse discrimination is a recognizable form of discrimination under the ECOA, other courts have ruled that it is.

Bite 5: Appeals Court Rules in Favor of CFPB in Redlining Case

On July 11, 2024, the U.S. Court of Appeals for the 7th Circuit ruled that the ECOA applies not just to credit applicants but also to *prospective* applicants. The CFPB filed a redlining lawsuit against a Chicago mortgage lender in 2020, alleging that the company's CEO made disparaging remarks on a radio show that could have discouraged Black potential customers from submitting applications, in violation of the ECOA and Regulation B. The district court dismissed the CFPB's lawsuit, and the 7th Circuit reversed that decision. The 7th Circuit held that the Illinois federal court should not have dismissed the lawsuit because "[w]hen the text of the ECOA is read as a whole, it is clear that Congress authorized the imposition of liability for the discouragement of prospective applicants." The 7th Circuit wrote, "The district court held that ECOA does not authorize the imposition of liability for the discouragement of prospective applicants. We take a different view." The case was reversed and remanded back to the district court. The mortgage lender could appeal the case to the full 7th Circuit or to the Supreme Court.

Bite 4: CFPB Appeals District Court's Decision in UDAAP Exam Manual Case

On August 8, 2024, the CFPB appealed an earlier decision from the U.S. District Court for the Eastern District of Texas, which had vacated changes to the CFPB's examination manual. Those amendments deemed discriminatory conduct to be an unfair practice. At that time, the District Court's decision held that the changes were invalid because the CFPB's funding structure was unconstitutional, and because the changes exceeded the CFPB's UDAAP authority. After that decision, the Supreme Court upheld the CFPB's funding structure as constitutional. In its appeal, the CFPB raised standing and procedural issues. The CFPB also argued that "the only natural reading" of United States Code Section 5531 "is that unfairness can encompass discriminatory acts." The CFPB argued that Congress provided "clear congressional authorization to regulate in that manner." The response is due on September 6, 2024.

Bite 3: CFPB Settles Case with Mortgage Company over Alleged Discrimination

On November 1, 2024, the CFPB settled a case involving a mortgage company that allegedly discouraged potential applicants based on race or racial composition. The lawsuit alleged that the mortgage company violated the ECOA, Regulation B, and the CFPA. The trial court granted the mortgage company's motion to dismiss, and the Seventh Circuit reversed the decision. The Seventh Circuit's decision held that "an analysis of the ECOA as a whole makes clear that the text prohibits not only outright discrimination against applications for credit, but also the discouragement of prospective applications for credit." The proposed order prohibits the mortgage company from engaging in any acts or practices that violate the ECOA, requires the mortgage company to maintain a compliance management system, and requires the mortgage company to provide ongoing educational training for its employees. The proposed order also requires the mortgage company to pay a \$105,000 civil money penalty

Bite 2: CFPB To Distribute Relief to Veterans

On January 2, 2024, the CFPB announced that it has distributed \$6 million in financial relief to consumers that were harmed by alleged illegal lending practices that targeted veterans. According to the CFPB, five connected companies misled consumers, including veterans, into selling their pension and disability payments, which is illegal under federal and state law. The CFPB alleged that these transactions were not sales, but illegal, high-interest loans. These payments stem from years-old enforcement actions. In 2019, the CFPB and the state of Arkansas reached an agreement with one of the companies, and three others faced a lawsuit filed by the CFPB and the state of South Carolina. The 5th named defendant worked along with the others named in these actions. He settled with the CFPB in 2019 in response to allegations that he violated the CFPA by misleading consumers about interest rates and the validity of the contracts, as well as when the consumers would receive their funds from the transactions. The harmed consumers received a distribution in December 2023 that totaled \$6 million, partially funded from the CFPB's civil penalty fund.

Bite 1: CFPB and DOJ Take Action Against Mortgage Company

On October 15, 2024, the CFPB and DOJ announced an action against a mortgage company, alleging it redlined in Birmingham, Alabama, violating the ECOA, the Consumer Financial Protection Act, and the Fair Housing Act. The CFPB alleged that the mortgage company's own data showed that it was failing to serve majority-Black neighborhoods around Birmingham, but before October 2022, did not take any steps to address redlining risks, other than telling loan officers not to discriminate. The complaint also alleged that the company predominantly directed its marketing to majority-white areas, including locating its three retail loan offices and three loan production desks in majority-white areas. The proposed order requires the company to pay a \$1.9 million penalty to the CFPB's civil penalty fund, provide \$7 million for a loan subsidy program, and pay at least \$1 million to serve neighborhoods it redlined. The \$1 million to serve the neighborhoods it redlined includes: spending at least \$500,000 on advertising and outreach, spending at least \$250,000 on consumer education, and spending at least \$250,000 on partnerships with one or more community-based or governmental organizations.

Extra Bite: FTC Charges Cash Advance Provider

On January 24, 2024, the FTC announced an action against an online cash advance provider and its founders. In addition to claims related to charges, the FTC alleged the Company did not consider public assistance income, declining advances to public assistance recipients, but nevertheless charged them for a monthly subscription. In a settlement order, the parties agreed to (i) pay \$3 million in consumer refunds; (ii) stop deceiving consumers about the use of an algorithm or artificial intelligence; (iii) get consumers' express, informed consent for charges; (iv) provide an easy method for cancellation; (v) stop deploying discriminatory practices; (vi) enact a fair lending program; and (vii) create and maintain records of consumer testing.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our [lineup](#) for 2025. If you missed any of our prior Bites, [request a replay](#) on our website

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