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## CFPB Will Begin Using UDAAP Authority to Address Discrimination in Wide Array of Consumer Financial Products

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On March 16, the Consumer Financial Protection Bureau (CFPB) announced that it would begin examining financial institutions for discriminatory practices under its authority to prohibit unfair, deceptive, or abusive acts or practices (UDAAP). Specifically, the CFPB issued changes to its examination manual on UDAAPs that require examiners to scrutinize discriminatory conduct that may be unfair – including in situations where fair lending laws may not apply.

The CFPB has broad authority to examine bank and non-bank financial institutions for compliance with federal consumer financial law. As part of that mandate, the CFPB and other bank regulators have traditionally relied on the Equal Credit Opportunity Act (ECOA) to address discriminatory practices. ECOA, however, is limited to extensions of credit. In contrast, the CFPB's unfairness authority applies to all consumer financial products or services, such as collections, payments, remittances, and deposits.

The CFPB announced that its examiners would assess whether a financial institution's conduct is discriminatory under an unfairness standard. Under the Consumer Financial Protection Act, an act or practice is "unfair" if it (1) causes or is likely to cause substantial injury to consumers, (2) the injury is not reasonably avoidable by consumers, and (3) the injury is not outweighed by countervailing benefits to consumers or competition.

In a blog post accompanying the announcement, the CFPB highlighted as unfair discriminatory practices "not allowing people of color to open deposit accounts" and "complex algorithms that can target highly specific demographics of consumers to exploit perceived vulnerabilities and strengthen structural inequities." The CFPB stated that it would be "closely examining" automated decision-making models, along with how companies generally test and monitor for discrimination.

The CFPB's announcement is a significant but not unexpected change in the agency's approach. Director Chopra has made clear that he would take an expansive view of the CFPB's authorities and that addressing structural inequities would be a top priority. Financial institutions should prepare accordingly.