
The CFPB Is Making Progress On Economic Racial Inequality, But There Is More To Do

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By virtually every measure, we continue to see profound and persistent racial economic inequality in the United States. Black Americans are significantly [less likely](#) to start small businesses and see them thrive; the unemployment rate for Black Americans has consistently been higher than that for white Americans [by a considerable margin](#); and the wealth gap remains huge, as the typical Black household has just [10% of the wealth](#) of the typical white household, a disparity that amounts to an astonishing wealth differential of \$10.6 trillion.

While it may seem counterintuitive, the financial regulators that oversee our banking, securities, and derivatives markets have a critical role to play in closing this economic racial divide. And one of the most effective agencies in this fight is the Consumer Financial Protection Bureau or “CFPB.” The CFPB is the federal government’s most meaningful attempt in generations to protect individuals not only from predatory practices but also from racial discrimination in the financial markets.

The CFPB combats discrimination indirectly through its rulemaking and enforcement work against predatory and unfair practices in the markets for auto loans, student loans, credit cards, and other products. That helps minorities because they suffer disproportionate harm from financial products and services that are unfair, deceptive, or abusive. The CFPB also tackles racial discrimination head on in its enforcement actions as well as through rules and guidance that expressly target discrimination by those who sell consumer financial products and services.

During the Biden Administration, the CFPB has lived up to its promise by intensifying its efforts to address racial justice issues and acknowledging systemic inequities that affect communities of color. The CFPB’s actions have included rulemaking, enforcement actions, and guidance to ensure fair treatment and equitable access to financial services.

The CFPB stands out as a beacon of hope and an example of what strong leadership can do to advance the causes of racial justice, equity, and inclusion in the financial marketplace. Under Director Rohit Chopra’s leadership, the CFPB has made new strides and steady progress towards a more fair and racially equitable financial system.

Recent CFPB Rulemakings That Benefit Minorities

New Rules Curtailing Credit Card Penalty Fees, Overdraft Fees, and Non-Sufficient Funds Fees

Over the past few years, the CFPB has proposed new rules curtailing “junk fees,” which companies often use to nickel-and-dime their customers and conceal their pricing practices. In the case of



credit card late fees, which minority communities disproportionately face, the Bureau [issued a rule](#) to substantially limit the amount companies can charge for these fees, ensuring that they are fair and proportional to the actual costs borne by the company. Minority communities also disproportionately face overdraft and nonsufficient funds or “NSF” fees, which are charged when a consumer charges a debit to a bank account exceeding the account’s balance. And here, too, the CFPB has issued important new rules which prohibit outright, or otherwise substantially limit, the ability of financial institutions to charge both [overdraft](#) and [NSF](#) fees.

[New Rules Imposing Additional Consumer Protections for PACE Loans and Buy-Now Pay-Later Loans, Both of Which Disproportionately Impact Minority Communities](#)

During the Biden Administration, the CFPB issued new rules imposing strong consumer protections for both [PACE loans](#) and [Buy-Now, Pay-Later loans](#), both of which are disproportionately used by underrepresented communities. Indeed, [recent research](#) from the Federal Reserve Bank of Boston on Buy-Now, Pay-Later loans found that Black, Latino, and female consumers are significantly more likely to use Buy-Now, Pay-Later services compared with their counterparts. Fortunately, the Bureau’s recent interpretive rule on Buy-Now, Pay-Later loans made clear that these loans should be treated largely like credit cards under the Truth In Lending Act, affording consumers key consumer protections like the ability to dispute charges and obtain refunds.

[A New Rule to Help Expose Discrimination: Small Business Lending Data Collection Rule \(Section 1071 of Dodd-Frank\)](#)

In March of 2023, the CFPB issued the [Small Business Lending Data Collection Rule](#) to enhance transparency in small business lending and identify potential discriminatory lending practices. The rule requires financial institutions to collect and report data on credit applications from small businesses, including data on the race, ethnicity, and gender of the principal owners. This data will help the CFPB and other regulators to assess whether and to what extent small businesses, particularly those owned by minorities, face discrimination in accessing credit. That information is in turn the basis for future, targeted regulation and enforcement to address this form of discrimination.

[Significant Enforcement Actions Targeting Discrimination](#)

The CFPB has used its enforcement authority as a powerful weapon against a wide variety of financial market abuses, including discrimination. Since its inception, the CFPB has brought [numerous enforcement actions](#) against financial institutions for engaging in discriminatory conduct. Here are a few recent examples.

[Enforcement Action Against Trustmark National Bank for Discriminating Against Black and Hispanic Families](#)

In October 2021, the CFPB and DOJ settled [an enforcement action](#) against Trustmark National Bank for deliberately discriminating against Black and Hispanic families. The CFPB and DOJ alleged that Trustmark discriminated against Black and Hispanic neighborhoods by deliberately not marketing, offering, or originating home loans to consumers in majority-Black and Hispanic neighborhoods in



the Memphis metropolitan area. As part of the settlement, the bank agreed to a \$5 million fine and to invest an additional \$3.85 million in a loan subsidy fund for affected communities.

Enforcement Action Against Trident Mortgage, a Nonbank Mortgage Lender, for Illegal Discriminatory Redlining

In July 2022, the CFPB and DOJ settled a lawsuit against Trident Mortgage for deliberately discriminating against minority families. The settlement, which [ordered Trident to pay more than \\$22 million in fines and remedial relief](#), was the first government resolution involving illegal redlining by a nonbank lender.

Recent CFPB Guidance Promoting Racial Justice

In addition to formal rulemaking, the CFPB has issued important guidance to fortify its approach to fighting discrimination in the marketplace for consumer financial products and services.

Joint Statement on Using Special Purpose Credit Programs (SPCPs) to Serve Unmet Credit Needs

In February 2022, the CFPB, along with other federal agencies, [issued guidance](#) clarifying the Equal Credit Opportunity Act provisions that allow for Special Purpose Credit Programs to meet the credit needs of specified classes of persons. This guidance supports financial institutions in creating credit programs specifically designed to benefit minority communities, thus promoting greater financial inclusion.

Consumer Financial Protection Circular 2022-03: Adverse action notification requirements in connection with credit decisions based on complex algorithms

In May 2022, the CFPB [issued a Circular](#) confirming that federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms.

Other relevant Guidance initiatives include the following:

- [Consumer Financial Protection Circular 2024-02: Deceptive marketing practices about the speed or cost of sending a remittance transfer](#) – March 27, 2024
- [Fair Credit Reporting; Background Screening](#) – January 11, 2024
- [Consumer Financial Protection Circular 2023-02: Reopening deposit accounts that consumers previously closed](#) – May 10, 2023
- [Fair Debt Collection Practices Act \(Regulation F\); Time-Barred Debt](#) – April 26, 2023
- [Consumer Financial Protection Circular 2022-06: Unanticipated overdraft fee assessment practices](#) – October 26, 2022
- [Consumer Financial Protection Circular 2022-03: Adverse action notification requirements in connection with credit decisions based on complex algorithms](#) – May 26, 2022

Other CFPB Initiatives That Help Fight Discrimination

The CFPB has gone beyond rulemaking, enforcement, and guidance to pursue other ways of fighting discrimination, ranging from tailoring its enforcement manual to filing amicus briefs and enhancing financial literacy efforts.

Revision of CFPB Examination Manual to Consider Discrimination an “Unfair Business Practice” under the Consumer Financial Protection Act

In March 2022, [the CFPB announced changes](#) to its supervisory operations to better protect families and communities from illegal discrimination. In the announcement, the CFPB stated that it was revising its examination manual to clarify that discrimination may meet the criteria for “unfairness” under the CFPB’s statute. The CFPB therefore stated that in the course of examining banks’ and other companies’ compliance with consumer protection rules, the Bureau will scrutinize discriminatory conduct and will closely examine financial institutions’ decision-making in advertising, pricing, and other areas to ensure that companies are appropriately testing for and eliminating illegal discrimination. Following this announcement, several large banks and industry groups challenged this policy in court, which the CFPB is still litigating.

Amicus Brief in Important Discrimination Case, Seeking to Protect Consumers’ Right to Challenge Discrimination

In June 2023, the CFPB [filed an amicus brief](#) — *i.e.*, a “friend of the court” brief — in support of plaintiffs in the Second Circuit seeking to protect consumers’ ability to challenge discrimination in court. In the case, *Saint-Jean v. Emigrant Mortgage Company*, borrowers alleged that Emigrant Mortgage Company and Emigrant Bank targeted Black and Latino homeowners with abusive and predatory mortgage loans. A jury found that Emigrant had violated the law and awarded the plaintiffs hundreds of thousands of dollars in compensatory damages. On appeal, however, Emigrant was 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. The CFPB’s amicus brief explained why this argument was wrong, pointing out that Congress’s strong commitment to prohibiting discrimination in the credit markets would be undermined if courts did not allow consumers to challenge harmful conduct in these circumstances.

Consumer Education and Financial Literacy Programs

The CFPB has continued to engage in consumer education and financial literacy programs, with a special focus on underserved communities, to empower minority consumers with the knowledge and tools necessary to navigate the financial system. Over the past few years, the CFPB has expanded its outreach and educational programs aimed at minority communities. This includes workshops, webinars, and the distribution of educational materials on topics such as credit management, homeownership, and avoiding scams.

Fostering Diversity, Equity, and Inclusion in the Workplace

Over the past several years, the CFPB has continued to strengthen its Office of Minority and Women Inclusion, which seeks to ensure [a diverse and inclusive workplace culture](#) within the agency. The office also encourages companies to submit a [voluntary Diversity and Inclusion self-assessment](#) to



analyze their diversity programming. Moreover, language from [the CFPB's Diversity, Equity, Inclusion, and Accessibility Strategic Plan](#) for Fiscal Years 2022–2026; Director Chopra's interviews and speeches; and other sources all further confirm the salience of fighting discrimination among the Bureau's priorities.

Looking Forward — Ways the CFPB Could Further Bolster Its Racial Equity Efforts

As detailed above, the CFPB under the Biden Administration has demonstrated a strong commitment to promoting racial economic justice in the financial sector. Through comprehensive rulemaking, targeted enforcement actions, and strategic guidance, the Bureau strives to ensure that all consumers, regardless of race or ethnicity, have fair and equitable access to financial products and services. These efforts are crucial for dismantling systemic barriers and fostering a more inclusive financial system.

However, there is more work to do. Here are some of the ways the CFPB can build upon the work of the past and continue to advance the cause of racial justice, equity, and inclusion in the financial marketplace.

Re-Establish Crucial Underwriting Standards for Payday Loans

In 2017 the CFPB adopted strong underwriting standards to help curb abuses in the payday loan marketplace. They required payday lenders, before issuing a loan, to determine that a borrower could actually repay the loan according to its terms. This was a critically important protection designed to help desperate borrowers—disproportionately minorities—from becoming trapped in endless cycles of debt and incurring cumulatively massive fees and interest charges. However, in July 2020, the CFPB under the Trump administration [rescinded these underwriting requirements](#) in its [payday lending rule](#), thus reversing the important progress the Bureau had made during the prior administration.

During the Biden Administration, the CFPB has indicated its interest in addressing this problem, but we have yet to see decisive action. For example, Acting CFPB Director Dave Uejio, on March 23, 2021, issued [a blog post](#) that reaffirmed the Bureau's commitment to strong underwriting requirements and pledged to continue monitoring this area for potential future rulemaking. However, since that time, there has been little indication that the Bureau is actively pursuing such a rule. Given the predatory practices present in the payday lending industry, which disproportionately impact underrepresented communities, the CFPB should refocus its efforts to bring back this important aspect of its payday lending rule.

Protect Borrowers from Abusive Debt Collection Practices

In October 2020, the CFPB [adopted a rule](#) that [failed](#) to impose adequate restrictions on debt collection communications, allowing debt collectors to harass debtors with frequent and abusive contacts. It also left intact, albeit with some limits, the ability of debt collectors to attempt to collect stale, time-barred debt on which the statute of limitations had passed. The CFPB should consider revisiting this element of the rule to ensure sufficient protections are in place to prevent such abusive debt collection tactics.



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