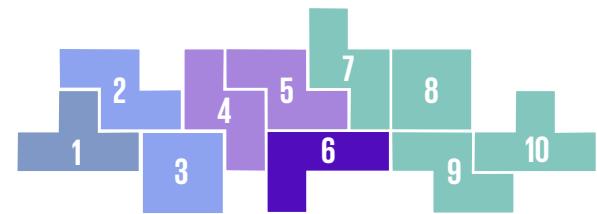




06 Protecting Fairness



Regulatory Signals

- Fair Access
- Fairness in Focus
- AI Influence
- Direct Harm

Though in part redefined by executive actions, “fairness” laws continue in force with ongoing attention to disclosure clarity and accuracy, “access” to banking, and the use of AI.

“Risk and Business leaders are recommended to revisit the core principles of their fairness programs with a particular focus on equal access and uses of AI.”



Mike Lamberth
*Partner
Advisory*



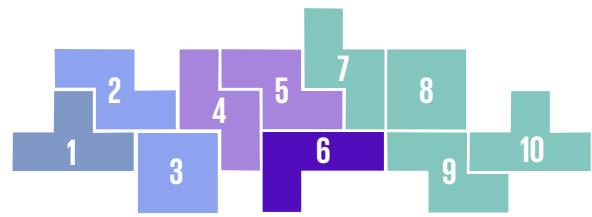
“As regulators ease historical constraints on the types of products accessible to main street investors, companies will need to be diligent in the execution of their suitability and fiduciary responsibilities.”

Mike Sullivan
*Principal
Advisory*





06 Protecting Fairness



Regulatory Signals

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Signal

Executive directives have set expectations for assuring fair access to products, services, and opportunities for consumers and organizations alike (e.g., banking services, internet access, health care, prescription drugs).

Examples

Practices perceived to result in denying services to some individuals/entities are targeted by executive directives, including those based on:

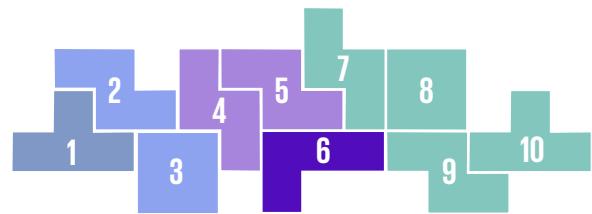
- Political or religious beliefs, affiliations, or business (e.g., EO 14331)
- Failure to meet certain investment criteria (e.g., EO 14330)
- Presumption rather than a policy, practice, or intent (e.g., EO 14281)
- Unfair/noncompetitive practices within a specific industry (e.g., EO 14254 , EO 14297)

What to Watch

- In financial services, heightened attention to potential issues related to “debanking,” “disparate impact,” and “suitability”
- Potential for prolonged uncertainty as to whether a new standard of “fairness” will take shape or the role that states may play to help set and enforce it



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Signal

Fairness continues to be the law. Long standing consumer and investor protection laws (e.g., ECOA, FHA, FTC Act) and their implementing regulations remain intact and assessed in supervisory examinations. Federal regulators continue to emphasize their expectations for organizations to embed fairness into services and practices, alongside increasing state legislative and enforcement activity.

Examples

Targeted actions to protect fair access/fair treatment include:

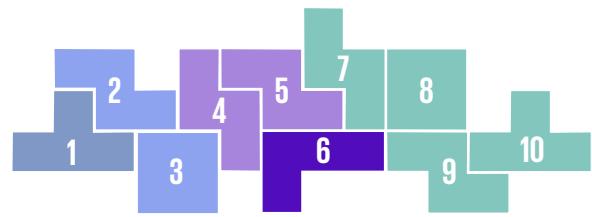
- Building fairness into goals and strategies (e.g., FTC Strategic Plan)
- Providing transparency on processes and expectations (e.g., DOJ Memo on White Collar Crime)
- Eliminating “reputation risk” from supervisory materials (e.g., bank interagency proposal); prohibiting denial of services based on non-risk-based criteria (e.g., state laws introduced in AZ, GA, ID)
- Requiring clear and truthful representations/disclosure (e.g., FTC Final Rule on Unfair or Deceptive Fees)
- Restricting the use of automated decision-making tools/systems for lending practices (e.g., state laws introduced in RI, NY)
- Considering retail investor access to private funds (e.g., SEC Statements (Atkins, Uyeda))

What to Watch

- Expectations for clear, true, and complete representations/disclosure in consumer/investor-facing materials
- Recommendations provided to retail investors align with the customer's risk profile, are fair and unbiased, and in the best interest of the customer
- Heightened scrutiny of adverse decisions in providing services



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Signal

Heightened awareness of the potential for bias in AI applications (e.g., lending, employment, healthcare decisions). High degree of state-level legislation/regulation to apply “unfair or deceptive acts or practices” standards to AI systems.

Examples

Actions to mitigate the potential for bias including:

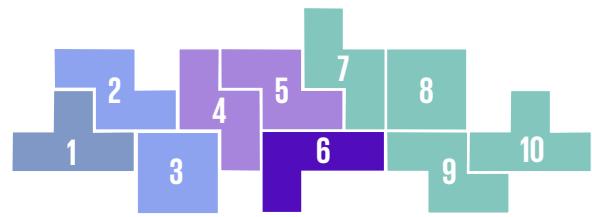
- Applying antitrust laws to ensure market incumbents do not hinder newcomers or startups (e.g., DOJ Speech (Slater) on real competition in AI)
- Considering applications substantially developed by AI to not be original ideas “to maintain fairness and originality” (e.g., NIH 2025 Policy)
- Applying anti-bias/fair lending laws to lending and pricing decisions made by AI or automated technology tools (e.g., CA, MA, NJ State AGs); prohibiting pricing algorithms trained on competitor data (e.g., CA, OH state bills)
- Adopting “comprehensive” AI bills (e.g., state laws (CO, UT))

What to Watch

- Potential for legislation/regulation at the federal or state level to incorporate requirements for transparency, accountability, and bias mitigation



06 Protecting Fairness



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Signal

Shifting supervision and enforcement to focus on instances where there is clear intent to "victimize" consumers/investors and "tangible harm" or "actual fraud."

Examples

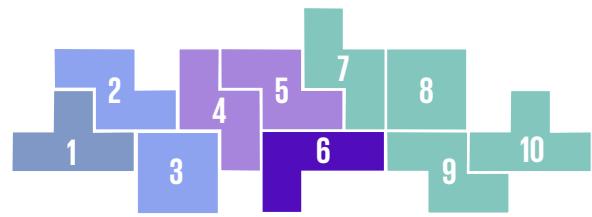
- Focusing investigations on "tangible harm to consumers," returning funds to victims rather than penalizing organizations (e.g., CFPB Staff Memo)
- Dropping investigations/lawsuits against organizations that do not have clear criminal intent or obvious victims (e.g., DOJ)

What to Watch

- State AGs are expected to intensify activity across a wider range of financial products and services and across an array of providers
- Expect increased collaboration through multi-state investigations



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Relevant Thought Leadership



[Consumer Fairness and Protection: Key Insights and Leading Practices for Financial Institutions](#)

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