

Banking and Finance Law Daily Wrap Up, EQUAL CREDIT OPPORTUNITY—CFPB proposes amendments to ECOA’s Regulation B, (Nov. 12, 2025)

Banking and Finance Law Daily Wrap Up

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The Bureau has proposed amending certain Reg B provisions on disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs.

The Consumer Financial Protection Bureau has requested comment on a [proposed rule](#) to amend provisions related to disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs under Regulation B, the regulation implementing the Equal Credit Opportunity Act (ECOA or Act). Specifically, the Bureau is proposing to amend provisions in Regulation B, 12 CFR part 1002, pertaining to whether disparate impact is cognizable under the Act; under what circumstances a creditor may be deemed to be discouraging an applicant or prospective applicant; and under what conditions may a creditor offer special purpose credit programs. The amendments would facilitate compliance with ECOA by clarifying the obligations imposed by the statute. Comments on the proposal are requested by Dec. 15, 2025.

2020 request for information. In July 2020, the CFPB published a Request for Information on the ECOA and Regulation B, seeking input on how to best to create a regulatory environment that expands access to credit and ensures that all consumers and communities are protected from discrimination in all aspects of a credit transaction. The RFI also asked whether the CFPB should clarify the law so that lenders are not discouraged from advertising credit products to traditionally disadvantaged groups and communities, such as African Americans (see [Banking and Finance Law Daily](#), Jul. 29, 2025).

The ECOA and Reg B make it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age. The Bureau requested comment on topics like whether the CFPB should clarify the law so financial regulations can provide better protection for consumers with limited English proficiency, such as many Spanish speakers.

In response to the RFI, the Bureau received and reviewed over 35 comment letters. In addition, “the Bureau obtained pertinent information in the course of carrying out its supervisory and enforcement responsibilities.”

After reviewing the comments and other information obtained in the course of carrying out its statutory responsibilities, the Bureau has proposed changes to Regulation B to provide that ECOA does not authorize disparate-impact liability (effects test), further define discouragement, and add prohibitions and restrictions for special purpose credit programs. The Bureau proposes this rule to (i) provide that ECOA does not authorize disparate impact claims; (ii) amend the prohibition on discouraging applicants or prospective applicants to clarify that it prohibits statements of intent to discriminate in violation of ECOA and is not triggered merely by negative consumer impressions, and to clarify that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements; and (iii) amend the standards for SPCPs offered or participated in by for-profit organizations to include new standards and related restrictions.

2025 Executive Orders. This year President Trump issued several Executive Orders relevant to the Bureau’s administration of ECOA. Executive Order 14173, entitled “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#),” states in part that “[t]he Federal Government is charged with enforcing our civil-rights laws. The purpose of this order is to ensure that it does so by ending illegal preferences and discrimination.” Executive Order 14281, entitled “[Restoring Equality of Opportunity and Meritocracy](#),” states in part that “[i]t is the policy of

the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals”.

Disparate impact. The Bureau reviews how the text of ECOA does not state that disparate-impact claims are cognizable under ECOA, nor does it contain effects-based language of the type that has been found in other statutes to invoke disparate-impact liability. However, in promulgating Regulation B, the Board/Bureau relied on legislative history to support authorizing disparate-impact liability.

In *Griggs v. Duke Power Co.* and subsequent cases, the Supreme Court held that certain provisions in antidiscrimination statutes may authorize disparate-impact claims. Under a disparate-impact claim, a plaintiff may challenge as unlawful discrimination facially neutral policies that have a disproportionate effect along prohibited basis lines. The Supreme Court has not determined whether a disparate-impact claim is permitted under ECOA.

Now, consistent with Executive Order 14281, the Bureau has examined Regulation B and considered whether disparate-impact claims may be cognizable under ECOA. The Bureau has preliminarily determined that, under the best reading of the statute, disparate-impact claims are not applicable under ECOA.

To this end, the Bureau is proposing to delete language in § 1002.6(a) and its accompanying commentary indicating that disparate-impact liability, which is referred to in the rule as the “effects test,” may be applicable under ECOA, and add language stating that the Act does not recognize the “effects test.” The Bureau is also proposing to delete the language in comment 2(p)-4 referring to the effects test. The Bureau is requesting comment on these proposed changes and on its preliminary determination that disparate-impact claims are not applicable under ECOA.

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