

Banking and Finance Law Daily Wrap Up, EQUAL CREDIT OPPORTUNITY—Finalized Reg B addresses disparate impact, discouragement, special purpose credit programs, (Apr. 21, 2026)

Banking and Finance Law Daily Wrap Up

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The final rule rejects disparate-impact liability under ECOA, narrows discouragement standard, and adds new limits and conditions for forprofit special purpose credit programs.

The Consumer Financial Protection Bureau has issued a [final rule](#) amending Regulation B under the Equal Credit Opportunity Act (ECOA) to address three areas: disparate impact, discouragement of applicants, and special purpose credit programs (SPCPs). The rule removes Regulation B provisions recognizing disparate-impact liability, revises the scope and standard for prohibited discouragement, and establishes new prohibitions and conditions for SPCPs offered or participated in by for-profit organizations. The final rule applies prospectively and takes effect July 21, 2026.

Disparate impact. The final rule removes Regulation B language that had recognized disparate-impact liability—referred to in the regulation as an “effects test”—and replaces it with text stating that ECOA does not recognize the effects test. Specifically, the Bureau deletes the second sentence of § 1002.6(a) that referenced an effects test and removes related commentary explaining disparate impact, including commentary cross-references within the definition of empirically derived and other credit scoring systems.

In place of the deleted commentary, the Bureau adds new commentary clarifying that ECOA prohibits practices that discriminate on a prohibited basis regarding any aspect of a credit transaction but does not prohibit facially neutral practices absent intentional discrimination. The commentary states that facially neutral criteria may violate the Act only to the extent they function as proxies for protected characteristics and are designed or applied with discriminatory intent.

The Bureau explains that, in its view, ECOA's statutory text does not authorize disparate-impact liability and does not contain effects-based language of the type found in other antidiscrimination statutes. The final rule reflects the Bureau's determination that prior reliance on legislative history to recognize disparate impact was not the best reading of the statute. The Bureau states that consumers remain protected from intentional discrimination, including practices that operate as pretexts or proxies for prohibited bases.

Discouragement of applicants. The rule revises § 1002.4(b) and related commentary addressing discouragement of applicants and prospective applicants. First, it defines “oral or written statement” to mean spoken or written words or visual images, including symbols, photographs, or videos. Conforming changes remove references in the commentary to “acts or practices,” narrowing the provision to statements rather than business decisions such as branch locations or advertising choices.

Second, the rule clarifies that prohibited discouragement involves statements “directed at” applicants or prospective applicants. The commentary states that encouraging statements directed at one group of consumers do not constitute discouragement of consumers who were not the intended recipients. At the same time, statements directed to the public that express a discriminatory preference or policy of exclusion on a prohibited basis remain prohibited.

Third, the rule adopts a “knows or should know” standard for discouragement. Under the amended provision, a statement is prohibited only if the creditor knows or should know that the statement would cause a reasonable person

to believe the creditor would deny credit or grant credit on less favorable terms because of a prohibited basis. The Bureau adds illustrative examples of statements that would not meet that standard and revises examples of statements that would constitute prohibited discouragement.

The Bureau also removes as unnecessary commentary stating that creditors may affirmatively solicit members of traditionally disadvantaged groups to apply for credit, noting that the revised discouragement framework already permits targeted encouragement. In addition, the rule makes a technical conforming change to the selftesting privilege in § 1002.15(d)(1)(ii) by deleting a reference to “prospective applicants” to align the regulation with statutory language, without a substantive change.

Special purpose credit programs. The final rule adopts new prohibitions and conditions for SPCPs offered or participated in by forprofit organizations under § 1002.8. The rule adds a prohibition barring such SPCPs from using race, color, national origin, or sex—alone or in combination—as eligibility criteria. The Bureau states that these characteristics may not be used as common eligibility characteristics in for-profit SPCPs.

For other characteristics that are otherwise prohibited bases—religion, marital status, age, or income derived from a public assistance program—the rule permits use only subject to new conditions. The rule requires for-profit organizations to establish and administer SPCPs pursuant to a written plan that, among other elements, identifies the class of persons served, sets forth procedures and standards for extending credit, provides evidence of the need for the program, and explains why participants would not receive the credit absent the program. Where an SPCP relies on an otherwise prohibited characteristic, the plan must explain why meeting the special social need requires use of that characteristic and cannot be accomplished without it.

In addition, the rule revises § 1002.8(a)(3)(ii) to require that SPCPs extend credit to persons who would actually not receive the credit under the organization’s actual standards absent the program and adds a requirement that the organization maintain evidence for each participant that, without the program, the participant would not receive the credit because of the specific characteristic.

Finally, the final rule revises § 1002.8(b)(2) for clarity and adds commentary explaining that, once an SPCP’s eligibility criteria are established in compliance with the rule, creditors may not discriminate among eligible participants on a prohibited basis.

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