CFPB Significantly Revises Equal Credit Opportunity Act Rule, Regulation B

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On April 18, the Consumer Financial Protection Bureau (CFPB) finalized their **proposed rule** to amend Regulation B, the promulgating rule tied to the Equal Credit Opportunity Act (ECOA). The **Final Rule** did not veer far from the proposed rule, even though the CFPB received approximately 64,500 comments on the proposed rule. Accused of using AI to draft the proposed rule by some commenters, the CFPB asserted that AI was not used for the proposed rule and that "bureau attorneys, paralegals, economists, analysists, and other employees" worked on both the proposed rule and the final rule. Whether AI was used by the CFPB in writing the final rule and/or analyzing the comments was not addressed.

The key elements of the changes are:

- No disparate impact: Noting that the Supreme Court has "not examined whether a disparate-impact claim is permitted under ECOA", the final rule declares that "under the best reading of the statute, disparate-impact claims are not cognizable under ECOA". Therefore, they have deleted the language in Section 1002.6(a) and the accompanying staff commentary that referred to the "effects test." This effectively means that only intentional discrimination can be addressed under ECOA, and that there is no longer a need for creditors to take steps to ensure that discrimination does not occur unintentionally, as a result of morphing credit models or the inclusion of a factor that favors one gender over another gender.

  The CFPB states that these changes will serve to keep creditors from being deterred from "developing innovative policies because of concerns about how those policies may affect protected classes." Viewed from the other side, as noted by various commentators, these changes potentially allow lenders to not have to pay attention to whether they are serving certain demographics or geographies, and they can choose not to offer credit at all to certain groups.

- Disparate-treatment shield: Further, the revisions now "expressly shield" creditors from disparate-treatment liability for" gathering information on marital status, age or the receipt of public assistance income, because there "may be legitimate, non-discriminatory reasons for creditors to collect and consider such information."
- Protecting against discouraging applications for credit has chilled creditor business practices and their rights to speech. Despite the fact that Regulation B has included prohibitions against discouraging "acts or practices" the CFPB has proceeded to limit the application of discouragement considerations to only "oral or written statements 'directed at' applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from applying for credit."

  Moreover, the staff commentary has been updated to reflect that encouraging statements intended to address one set of applicants cannot be deemed to discourage other sets of applicants, as long as the other sets of applicants are not the intended recipients of such statements. And the standard for judging whether discouragement has occurred would be whether "an objective creditor would know, or should know [that the statements] would cause a reasonable person to believe that the creditor would deny them credit or offer them credit on less favorable terms than other borrowers." These changes are necessary to avoid chilling creditor innovation and protecting their rights to speech.

- Special Purpose Credit Programs (SPCPs) may not be targeted to a group based on a prohibited basis of race, color, national origin or sex. This update to SPCPs applies only to for-profit creditors, and is justified because the CFPB "finds there is no evidence . . of any credit markets in which consumers 'would effectively be denied credit' because of their race, color, national origin, or sex in the absence of SPCPs offered or participated in by for-profit organizations."

The changes to Regulation B are not in harmony with state laws that require disparate-impact analysis and potentially place creditors in a difficult position, as they attempt to comply with both. The Final Rule goes into effect in late July 2026.