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New Rules: Short-Selling, Fair-Lending, Basel III

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The UK's New Short Selling Regime Launches

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On 16 April, the UK's Financial Conduct Authority (**FCA**) published **Policy Statement 26/5 on "Changes to the UK Short Selling Regime"** (**PS 26/5**) which forms part of the UK government's programme to repeal and replace retained European Union (EU) law post-Brexit (for our earlier note on this see **here**). In addition to this repeal and replace exercise, PS 26/5 aims to reduce some of the inefficiencies and disproportionately burdensome aspects of the previous short selling regime by:

- Removing the requirement for market makers to notify each financial instrument they want to benefit from the market maker exemption to report. Market makers will only be required to submit a single 'activity based' notification such that they can use the exemption for market making activities in any financial instrument;
- The FCA, consequently, is continuing to accept notifications via email and not is updating arrangements to automate the notification process from the start of the new regime;
- The FCA has extended the date when the new rules come into force, with phase 1 and the new short selling rules now starting on July 13.

CFPB Significantly Revises Equal Credit Opportunity Act Rule, Regulation B

April 23, 2026

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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.

New Cadwalader Whitepaper on Basel III Endgame Reproposal Treatment of Securitization Interests

April 23, 2026

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As we previously **reported** here in *Cabinet News & Views*, the Federal Reserve, the OCC, and the FDIC reproposed the Basel III Endgame package of amendments to the U.S. risk-based capital rules (“The Reproposal").

Last week, **we released a memo** taking a deep dive into the reproposals’ treatment of securitization exposures under both the New ERB Approach (“ERBA”) and the Revised Standardized Approach.

The Reproposal significantly revises the securitization capital framework applicable to U.S. banking organizations.

The key changes include:

- **SEC-SA.** The Reproposal would replace the current bifurcated securitization capital framework (SSFA and the gross-up approach under the standardized approach, and SFA under the advanced approaches) with a single SEC-SA methodology under both ERBA and the Revised Standardized Approach.

  The most significant change from the 2023 NPR is the retention of the p-factor at 0.5 for non-resecuritization exposures, rather than the previously-proposed increase to 1.0. The Reproposal also lowers the general risk weight floor from 20% to 15%, while imposing a 100% risk weight floor for resecuritization exposures and non-performing loan securitization exposures.

  The Reproposal makes a number of targeted, but important, revisions to the SEC-SA inputs, including Kg, W, A, and D.

  Underlying risk weights for commonly securitized assets have changed materially and will significantly affect securitization capital requirements through the input.

- **Exceptions to SEC-SA.** The Reproposal introduces a look-through approach for senior securitization exposures that are not resecuritization exposures (risk weight equal to the weighted-average risk weight of the underlying exposures, floored at 15%), a dedicated 100% risk weight for certain senior securitization exposures to qualifying NPL securitizations, revised treatment for nth-to-default credit derivatives that bypasses SEC-SA, expanded treatment for overlapping exposures, and a CET1 deduction (rather than a 1,250% risk weight) for the portion of a CEIO strip that does not constitute after-tax gain on sale.
- **Revised Securitization Definitions.** The Reproposal generally retains the existing definitions of traditional and synthetic securitization, but would add prepaid credit protection arrangements to the synthetic definition, provide that traditional securitizations can transfer credit *or equity* risk, and require that securitization exposures “depend solely” on the performance of the underlying exposures. The “depends solely” change, if read literally, could exclude many common traditional securitizations from the securitization framework.

- **New Operational Criteria for Synthetic Securitizations.** The Reproposal generally retains the existing operational criteria for synthetic securitizations, but adds several important changes. The eligible CRM list now includes eligible prepaid credit protection arrangements" and excludes nth-to-default credit derivatives.

  The operational criteria also include a prohibition on synthetic excess spread, a minimum payment threshold requirement, and a restriction on synthetic securitizations that include both revolving exposures and an early amortization provision.

  The definition of "eligible clean-up call" is expanded to cover certain regulatory and tax events.

- **Eligible Prepaid Credit Protection Arrangements; Other Changes to the Credit Risk Mitigation Framework.** The Reproposal introduces eligible prepaid credit protection arrangements as a new CRM category, providing a codified pathway for directly issued CLNs which replaces the current reservation of authority process. The 40% restructuring haircut for eligible credit derivatives is relaxed, subject to specified conditions. Financial collateral recognition under the simple approach is expanded to permit mismatched collateral, subject to applicable maturity- and currency-mismatch adjustments.
- **Changes to Credit Conversion Factors (CCFs); New Definition of Commitment.** CCFs for commitments that are not unconditionally cancelable are set at 40% regardless of maturity. ERBA introduces a 10% CCF for unconditionally cancelable commitments, while the Revised Standardized Approach retains a 0% CCF for such exposures. Off-balance sheet securitization exposures continue to be subject to a separate exposure-amount rule that generally produces an effective 100% CCF.

  The definition of "commitment" is significantly broadened to include contractual arrangements even where the banking organization is not obligated to extend credit or may refuse to do so with or without cause.

- **Other Changes Relevant to Securitization.** The Reproposal would eliminate the threshold-based CET1 deduction for MSAs and instead apply a 250% risk weight regardless of size.

  Under ERBA, securitization-related noninterest income and expenses would generally be included in the business-indicator calculation for operational risk; the reproposal does not provide a securitization-specific carve-out.

With respect to securitization, the Reproposal represents a marked improvement over the 2023 NPR. The retention of the p-factor at 0.5, although more punitive than the math would suggest it should be, is far less punitive than the 2023 NPR's proposed doubling to 1.0, and avoids the significant increase in capital requirements that market participants uniformly opposed.

The introduction of eligible prepaid credit protection arrangements provides, for the first time, a codified pathway for banking organizations to obtain capital recognition for directly issued credit-linked notes without prior supervisory approval, resolving a longstanding structural gap in the capital rules and removing a significant barrier to bank credit risk transfer transactions.

At the same time, the Reproposal retains some punitive features of the current securitization framework, including the p-factor of 0.5 and the 0.5 scalar applied to parameter (which implies a 625% risk weight on past due underlying exposures), and introduces new ones, such as the prohibition on synthetic excess spread and the inclusion of the positive current exposure of non-credit derivatives in the numerator of Kg.

The Reproposal also leaves a number of significant issues unresolved and poses a large number of questions on which the Agencies are actively seeking comment. Market participants should review these questions carefully and consider providing substantive responses on all questions during the comment period, which closes on June 18, 2026. Once a final rule is adopted, it is reasonable to assume that the securitization capital framework will not be the subject of material revision for many years.