

Publications

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CFPB Issues New Fair Lending Rule on Disparate Impact Discrimination and Other Topics

Key Takeaways

- The CFPB issued a final rule on April 22, 2026, eliminating disparate impact as a basis for ECOA enforcement. It also revises discouragement standards and restricts special-purpose credit program criteria.
- The rule reduces fair lending exposure while tightening limits on how lenders structure targeted credit programs. It creates compliance risk for institutions using demographic factors or targeted marketing strategies.
- Lenders should reassess compliance frameworks in response to the CFPB's revised standards.

On April 22, 2026, the Consumer Financial Protection Bureau (CFPB) issued a final rule to remove disparate impact as a viable theory for enforcement of the Equal Credit Opportunity Act (ECOA), clarify the prohibition on discouraging prospective applicants and establish new limits on special-purpose credit programs offered by lenders. The new final rule revises the prohibition on discouragement cases where the lender knows or should know that its statements would discourage a prospective applicant. It also clarifies that encouraging statements in marketing made to one group are not discouraging to other groups who were not included in the marketing effort. As for special-purpose credit programs, the bureau will prohibit for-profit lenders from using race, sex or national origin as criteria for qualification. It will also place several new restrictions on the use of any common characteristics for determining eligibility.

This development is consistent with prior pronouncements from the current Trump Administration. For example, Executive Order 14281, Sec. 2, states: "It 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."

It remains to be seen how the CFPB's new rule will impact state enforcement activity and the courts. For example, in a recent decision involving a credit union, the U.S. Court of Appeals for the Fourth Circuit allowed a suit based on disparate impact to proceed. This is an issue that we are watching closely and will continue to report on.

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