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Insights

Significant Reg. B Changes on the Horizon

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The Consumer Financial Protection Bureau ("CFPB") proposed sweeping changes to Regulation B, the implementing regulation of the Equal Credit Opportunity Act ("ECOA"), which is expected to ease the regulatory compliance burden of creditors as well as shakeup the landscape of Special Purpose Credit Programs ("SPCP").

ECOA generally prohibits discrimination by a creditor against an applicant regarding any aspect of a credit transaction on the basis of race, color, religion, national origin, marital status, sex, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. The proposed changes to Regulation B, published November 13, 2025, would (1) eliminate the concept of disparate impact under ECOA, (2) narrow and clarify when a creditor may be prohibitively discouraging applicants or prospective applications, and (3) diminish the scope of SPCPs.

Disparate Impact Under ECOA

Pursuant to President Trump's previously issued Executive Order 14281, the CFPB is seeking to eliminate the use of disparate-impact liability to the maximum degree possible. Disparate-impact claims are those claims made under antidiscrimination laws that a given policy, while neutral on its face as to a protected class, has a disproportionate effect towards a protected class. These claims do not require discriminatory intent.

Although disparate-impact claims may be removed from Regulation B, it is still possible that a court might interpret the intent of ECOA as covering disparate impact. As such, lenders still face some risk in the event their facially neutral lending policies or practices have a disparate impact on protected classes, although those compliance and litigation risks are greatly diminished by this proposed rule change.

Discouraging Applicants

Regulation B contains an anti-circumvention tool under 12 C.F.R. § 1002.4(b) (and its accompanying commentary) which broadly prohibits creditors from discouraging applicants from seeking or applying for credit based on a protected class. The CFPB expressed concern that the broad coverage of the current regulation and potential interpretations constrain free speech and commercial activity. The changes made will narrow the regulation, mainly through (1) limiting the conduct that could be seen as "discouraging" to only oral or written statements, (2) clarifying that affirmative *encouragement* of one particular group to apply for credit does not constitute prohibited discouragement of another group, and (3) heightening the standard required for conduct to be prohibited discouragement.

The CFPB provided several examples of conduct that it expects to no longer be constrained by Regulation B after this change, including geographic targeting of customers, business decisions of where to locate branch

offices, where to advertise, or where to engage with the community will no longer potentially be considered as discouraging certain categories of people. Additionally, the CFPB provided examples of conduct that would not be considered discouraging, such as making statements in support of local law enforcement, recommending that consumers investigate a neighborhood's schools, its proximity to grocery stores, and its crime statistics prior to purchasing a home, and encouraging consumers to seek financial literacy resources.

Overall, this rule change will allow creditors more freedom in making business decisions without the concern that such decisions will be construed as prohibitively discouraging other applicants.

Special Purpose Credit Programs

While Regulation B generally prohibits discrimination in credit transactions, it allows special purpose credit programs ("SPCP") to consider prohibited characteristics, such as race, if certain criteria are satisfied. The CFPB's proposed rule would significantly narrow the exception allowed by SPCPs. The CFPB has proposed prohibiting SPCPs by a for-profit organization with race, color, national origin, or sex, as the common characteristic in determining eligibility for the SPCP. For-profit organizations would also be restricted in using religion, marital status, age, or income derived from a public assistance program as eligibility criteria.

For-profit creditors currently operating an SPCP will need to evaluate their current programs to determine if they comply with the proposed rule and determine whether to adopt changes to the program or to discontinue its use.

If finalized, the rule changes to Regulation B are expected to become effective in February, 2026.

Krieg DeVault's Financial Institutions attorneys are closely monitoring the changes to Regulation B and are able to provide counsel to financial institutions on the impact of these changes to their operations.

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