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CFPB Proposes Changes to Regulation B

January 30, 2026 | Erica A.N. Kramer

On November 13, the Consumer Financial Protection Bureau published a Notice of Proposed Rulemaking proposing various revisions to Regulation B. These revisions would impact whether disparate impact is a cognizable legal theory under the Equal Credit Opportunity Act, under what circumstances a creditor may be deemed to be discouraging an applicant or prospective applicant, and under what conditions a creditor may offer special purpose credit programs (SPCPs). The notice was developed to address comments submitted in response to a Request for Information on ECOA and Reg. B published by the CFPB in 2020.

Likely the most significant change would be the proposed revisions to Reg. B that, if adopted, would expressly state that the ECOA does not authorize disparate-impact liability. The CFPB states that such revisions are necessary for consistency and compliance with President Trump's "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" and 'Restoring Equality of Opportunity and Meritocracy" Executive Orders, which require eliminating, to the extent possible, the use of disparate-impact liability in all contexts. Though these changes would eliminate the disparate-impact theory of liability under the ECOA (readers should note that the theory was never part of the text of the ECOA or Reg. B, a fact that often led to debate over whether it was an appropriate theory of ECOA liability in the first place), disparate-impact liability will still be cognizable under the Fair Housing Act pursuant to U.S. Supreme Court precedent.

The notice also proposes to amend certain provisions of Reg. B relating to discouraging prospective applicants, stating that the current wording used in Reg. B has resulted in overbroad interpretations that serve to prohibit business practices that do not truly circumvent or evade the ECOA's discrimination prohibitions. The CFPB cites several examples of such business practices, including "business decisions about where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events." Accordingly, the revised wording would specifically target discriminatory "oral or written statements" but not acts or practices. Thus, the example business practices "would not constitute prohibited discouragement even if they had some communicative effect that some consumers could arguably find discouraging." Further, the revisions would clarify that encouraging applicants or prospective applicants would also not be deemed discriminatory, as doing so "is not an action intended to (or even likely to) discourage other applicants or prospective applicants, who did not receive the statements and might, in fact, have been entirely unaware of them, from applying for credit."

The notice also proposes changes to the requirements for SPCPs, which would, among other things, require the SPCP's written plan to provide evidence of the need for the SPCP. The proposal also seeks to prohibit an SPCP from "using a common characteristic of race, color, national origin, or sex, or any combination thereof, as a factor in determining eligibility for the SPCP." Organizations would also be required to demonstrate that "applicants with common characteristics that would otherwise be a prohibited basis would not receive credit under the organization's current standards due to the common characteristic and that providing credit of the type and amount sought could not be accomplished through a program that does not use an otherwise prohibited basis as eligibility criteria."

The predominant benefit to covered persons articulated in the notice appears to be reduced entity-level compliance costs. However, the notice admits that covered persons would still be subject to "other antidiscrimination statutes ... similar to ECOA," such as state antidiscrimination laws and the FHA (for housing creditors). Further, the notice is thin on articulated benefits to consumers from the proposed revisions, though it surmises that the compliance cost savings may be passed on to consumers and that "some consumers may experience a faster credit application process and greater product variety." The notice further states that the CFPB "lacks data" to estimate consumer benefits and that, therefore, it "seeks comments and data that would allow quantifying these benefits."

Comments on the notice are due on or before December 15, 2025. Any final rule that is adopted will be effective 90 days after publication in the *Federal Register*.

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