

Federal Agencies' Withdrawal of Joint Statement on Fair Lending Likely to Reduce Credit Opportunities for Non-Citizens

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On January 12, 2026, the Consumer Financial Protection Bureau and the Department of Justice withdrew their October 2023 joint statement regarding the implications of a creditor's consideration of an individual's immigration status on compliance with the Equal Credit Opportunity Act. The 2023 statement cautioned that creditor policies related to an applicant's immigration or citizenship status could, in certain circumstances, run afoul of the ECOA's and Regulation B's prohibition against discrimination on the basis of protected classes, including race and national origin.

The CFPB recently revised its policies regarding the issuance of guidance documents and will avoid issuing guidance that is not necessary or would increase compliance burdens. With this withdrawal, the CFPB concluded that the additional guidance on this topic was unnecessary, and, "to the extent that the joint statement was understood to require new or increased compliance efforts, it is appropriate for rescission under the Bureau's revised policy."

The withdrawal noted that Reg. B permits the consideration of any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis and expressly allows a creditor to take the applicant's immigration status into account. Under Reg. B, a creditor may consider the applicant's immigration status or status as a permanent resident of the United States and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment. It went on to discredit the 2023 joint statement as creating confusion that the ECOA or Reg. B prohibits the consideration of immigration or citizenship status by a creditor evaluating an application for credit. To the contrary, the published withdrawal statement emphasized the legitimacy of consideration of immigration status to fully assess underwriting risks related to providing credit to those without lawful status or who are otherwise unauthorized to work in the U.S.

Although the guidance withdrawal is consistent with the administration's, and, consequently, the current CFPB's, approach to guidance, this withdrawal might, ironically (given its stated purpose), effectively allow discrimination, or, at the very least, have a discriminatory impact, based upon race and national origin. When coupled with ICE raids in a growing number of states across the country resulting in the imprisonment or deportation of non-violent non-citizens who would have otherwise qualified for credit and paid according to the terms of the transaction, the notion that someone is a non-citizen may have a greater impact on that person's ability to pay than it did before. As a result, credit may be significantly (although arguably legally) constricted for non-citizens, at least in part because of their national origin.

Over the years, creditworthy non-citizens have typically had no trouble buying and obtaining financing for vehicles or obtaining other extensions of credit. In fact, many government programs offer incentives

for creditors to engage in banking and credit transactions with underserved communities. We have invited non-citizens to join in what can be one of the most American opportunities for growth—buying a house or buying a car—and doing so on credit. The withdrawal of this guidance may have the opposite effect.

So, what does a creditor do? Creditors may modify their programs. However, you should only do so under the advice of knowledgeable counsel. You also don't have to change anything. We note that a creditor cannot be penalized simply for continuing to rely on withdrawn guidance. Creditors that have structured their operations consistent with the joint statement's comments on compliance risks can continue to operate in that manner without penalty, and because the joint statement was non-binding on the public or courts, consumers' rights under the ECOA are unchanged. ❌

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