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Sharpen Your Edge: Highlights from The Data Edge

The Data Edge: Key ECOA Developments and Fair Lending Considerations for 2026

June 24, 2026 | Megan Nicholls, Webb McArthur and Erica A.N. Kramer

Recent changes to the Equal Credit Opportunity Act ("ECOA") landscape have generated significant discussion across the consumer financial services industry. During the June installment of *The Data Edge*, Hudson Cook Partners Megan C. Nicholls and Erica Kramer discussed the CFPB's recent Regulation B amendments, the evolving role of disparate impact analysis, and what compliance teams should be considering as they evaluate fair lending and model governance programs.

While federal priorities may have shifted, the webinar highlighted an important theme: strong fair lending governance remains essential.

Disparate Impact Remains Relevant.

One of the most significant developments discussed was the CFPB's final Regulation B rule, which removes the disparate impact framework from ECOA and states that ECOA does not authorize disparate impact liability. Although this represents a meaningful shift in federal policy, companies should not assume disparate impact considerations have disappeared. Several states have adopted or are considering fair lending frameworks that incorporate disparate impact concepts, and future federal administrations could revisit the issue. In addition, a lawsuit has been filed in court challenging the rule.

KEY TAKEAWAY: Organizations should continue monitoring lending outcomes and evaluating potential fair lending risks, including in jurisdictions that have adopted broader state-level protections.

Disparate Treatment Remains a Core Compliance Risk.

The CFPB's rulemaking did not alter ECOA's longstanding prohibition against intentional discrimination. Geographic indicators, customer attributes, and other model inputs should continue to be reviewed carefully to ensure they do not create fair lending concerns.

KEY TAKEAWAY: Organizations should continue focusing on disparate treatment risks, including the use of variables or practices that may serve as proxies for protected characteristics.

Marketing and Customer Communications Still Require Oversight.

The CFPB has adopted a narrower view of discouragement, focusing on statements, communications, or visual images that could lead a reasonable person to believe they would be denied credit or offered less favorable terms because of a protected characteristic.

KEY TAKEAWAY: Even with this narrower interpretation, organizations should continue reviewing advertising, marketing campaigns, and customer-facing communications as part of their fair lending compliance efforts.

Model Governance Remains Critical.

Model governance expectations have not disappeared. Organizations should be able to explain how models operate and demonstrate that governance controls are appropriate for the complexity and risk associated with each model.

Artificial intelligence and automated decisioning tools remain a major area of focus for regulators and industry participants alike. Explainability continues to be an important consideration for both traditional and AI-driven models. Whether organizations develop AI tools internally or purchase them from third-party providers, they should ensure that appropriate governance, testing, monitoring, and documentation controls are in place. Importantly, the use of AI does not eliminate existing compliance obligations. Organizations must still understand how decisions are being made and maintain sufficient oversight to manage legal and regulatory risks.

Additionally, ECOA's adverse action notice requirements remain fully intact. Creditors must still provide meaningful reasons for adverse credit decisions. "Black-box decisioning" approaches that cannot produce understandable reasons for outcomes continue to present significant compliance challenges.

KEY TAKEAWAY: Although some organizations have reduced or paused certain disparate impact testing activities in response to changing federal priorities, companies should continue to maintain robust governance practices, including:

- model validation and monitoring;
- documentation of model development and use;
- review of model inputs and attributes;
- third-party model oversight; and
- ongoing risk assessments.

Looking Ahead.

The current regulatory environment may provide organizations with an opportunity to review and strengthen their fair lending and governance programs. While federal enforcement priorities have evolved, state-level activity, future regulatory changes, and ongoing expectations regarding model governance and explainability mean that compliance teams should remain vigilant.

Organizations that maintain strong policies, procedures, monitoring practices, and governance frameworks will be better positioned to adapt as the regulatory landscape continues to evolve. For questions regarding ECOA, Regulation B, fair lending compliance, model governance, or AI-related compliance considerations, please contact Erica Kramer at ekramer@hudco.com or Meg Nicholls at mnicholls@hudco.com.

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