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CFPB finalizes changes to Regulation B

Initial perspectives on the Consumer Financial Protection Bureau (CFPB) proposal to update ECOA requirements under Regulation B

On April 22, 2026, the CFPB published a final rule which amends provisions related to disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs (SPCPs) under Regulation B, the regulation implementing the Equal Credit Opportunity Act (ECOA).[1] The CFPB received approximately 64,500 comments on the proposed rule, mostly from individuals, as well as consumer advocate and policy organizations, industry participants, state attorneys general, and members of congress. The final rule will become effective on July 21, 2026.

5 insights you should know

1. **Removing disparate impact liability under ECOA**: The final rule removes language in Regulation B that previously said disparate impact liability (referred to as the "effects test" in the rule) applies under the ECOA. The final rule adds language explicitly stating the ECOA does not recognize the "effects test," which the CFPB concluded was erroneously included in 1976, based on legislative history and not legislative text.

2. **Clarifying the prohibition on discouraging statements to (potential) applicants**: The final rule adds language to clarify that discouraging statements under ECOA arise in the form of spoken or written words, or visual images, and removes references to "acts or practices." Additionally, the final rule notes that encouraging statements directed at one group of consumers does not constitute discouragement of other (prospective) applicants who were not the intended audience.

3. **Narrowing the standard for showing discouragement**: The final rule adds language that a statement is prohibited discouragement only if a creditor "knows or should know" that the statement would cause a reasonable person to be discouraged. Additionally, the final rule narrows the prohibition to statements that *themselves* would cause a reasonable person to think the creditor would decide differently based on a prohibited characteristic.

4. **Prohibited and restricted criteria for SPCPs**: Under the previous framework, SPCPs could allow creditors to consider prohibited basis information in credit transaction to meet social needs and help economically disadvantaged class of persons. The final rule amends the eligibility criteria for SPCPs offered or participated in by a for-profit organization to be (i) *prohibited* from using race, color, national origin, or sex; and (ii) *restricted* in using religion, marital status, age, or income derived from a public assistance program as eligibility criteria.

5. **Determining the need for SPCPs:** Under the final rule, SPCPs, regardless of criteria used, would need to update their written plans to provide evidence of the need for the SPCP. The written plan would need to explain why, under the for-profit organization's standards of creditworthiness, the class of persons would not receive such credit in the absence of the program.

5 considerations to evaluate

1. **Review fair lending compliance**: Financial institutions should evaluate current fair lending policies and procedures, especially those that have been designed to identify, prevent, or mitigate disparate impact risks under ECOA. However, it's important to remain aware of state or other federals laws that may continue to recognize disparate impact.

2. **Evaluate marketing and communications**: Financial institutions should consider evaluating their current marketing strategy and evaluate how the final rule may potentially change the institution's communications (e.g., consider the use of encouraging statements towards certain consumer groups). Additionally, firms may want to update procedures and internal guidance regarding acceptable and unacceptable communications with (potential) applicants based on the CFPB's new rule.

3. **Maintain strong controls on communications**: Even with the final rule's revision to the discouragement standard, financial institutions should continue investing in strong controls around all forms of applicant communications. While the new standard may lower the likelihood of regulatory criticism for discouragement, reputational risk remains significant. Potentially insensitive or exclusive statements can still erode customer trust, invite public criticism, or damage relationships with key stakeholders, regardless of legal exposure.

4. **Assess impact to SPCP criteria**: Creditors who have a SPCP should evaluate how the final rule may impact the design and operation of such program. This review should include a detailed analysis of existing SPCP eligibility criteria and considerations for how creditors may explore alternative, permissible approaches to achieve the program's goals while remaining compliant with ECOA. In parallel, it's crucial to develop a communication plan for stakeholders to explain any modifications to the SPCP.

5. **Conduct research on the needs of the SPCP's class**: Creditors who have a SPCP should initiate research to demonstrate the needs of the SPCP's class. Such research may require significant time and resources and SPCPs should be prepared to update written plans accordingly. Needs determination may be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies.

Endnotes

1. Consumer Financial Protection Bureau (CFPB), "Equal Credit Opportunity Act (Regulation B)," *Federal Register*, April 22, 2026.

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