

## **Alert** | Financial Regulatory & Compliance



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### **CFPB Advisory Opinion Clarifies that ECOA Applies Throughout Credit Lifecycle**

On May 9, 2022, the Consumer Finance Protection Bureau (CFPB or the Bureau) issued an **advisory opinion** to clarify that the Equal Credit Opportunity Act (ECOA) and Regulation B (Reg B) protect individuals and businesses against discrimination in “all aspects of a credit arrangement.” According to CFPB Director Rohit Chopra, the protections afforded under ECOA and Reg B do not “vanish” after the application process. The opinion comes at a time when the Bureau has heightened its focus on ensuring fairness and racial equality in both credit and non-credit aspects of consumer finance.

#### **Relevant Background**

ECOA, enacted in 1974 and amended in 1976, bans discrimination based on race, color, religion, national origin, sex, marital status, and age. In drafting ECOA, Congress emphasized that prohibition on discrimination “applies to all credit transactions including the approval, denial, renewal, continuation, or revocation of any open-end consumer credit account.” S. Rep. 93-278, at 27. ECOA also requires creditors who deny or revoke credit to provide notice to applicants. The Board of Governors of the Federal Reserve System (the Board) issued Reg B after ECOA passed. Reg B clarifies that applicants are protected from discrimination in any aspect of a credit transaction.

The Dodd Frank Act, in turn, authorizes the Bureau to interpret ECOA and Reg B “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” 12 U.S.C. 5512(b)(1).

The CFPB, under the Biden administration, has increased its supervisory and enforcement scrutiny of anti-discrimination, **broadening its reach to non-credit products**. The advisory opinion tracks arguments recently made by the Bureau, the Federal Trade Commission, the Federal Reserve Board of Governors, and the U.S. Department of Justice in an amicus brief filed in a Seventh Circuit case.

### Analysis of the Advisory Opinion

The advisory opinion clarifies that ECOA protects borrowers with existing credit. In particular, the Bureau stresses that ECOA prohibits lenders from discriminating against borrowers by lowering their credit limits or subjecting them to more aggressive collection practices. As a corollary, the Bureau also clarifies that lenders must provide borrowers with adverse action notices under ECOA when they change existing accounts negatively, terminate accounts, or otherwise make an unfavorable decision against a borrower.

Although, in practice, the CFPB has long scrutinized all aspects of the credit lifecycle to prevent discrimination, the May 9 advisory opinion formalizes the Bureau's position and may intend to blunt industry efforts to construe ECOA more narrowly and inform supervised entities of the Bureau's compliance expectations. Lenders, to the extent they have not already done so, may wish to analyze their fair lending programs to determine whether any enhancements are warranted given the Bureau's May 9 advisory opinion.

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