



CFPB AND DOJ ISSUE STATEMENT ON IMMIGRATION STATUS DISCRIMINATION UNDER ECOA

The Consumer Financial Protection Bureau and the U.S. Department of Justice have issued a joint statement to remind financial institutions that the Equal Credit Opportunity Act ("ECOA") prohibits discrimination based on national origin, race, and other covered characteristics, regardless of the immigration status of the credit applicant. Although the ECOA's implementing regulation (Regulation B) allows consideration of immigration status or permanent residency in the determination of creditor rights and remedies concerning repayment, the agencies warn that Regulation B does not provide a safe harbor for all considerations of immigration status. A financial institution that maintains a blanket policy of denying credit to applicants based solely on their immigration status without considering additional circumstances or demonstrated ability to pay may violate the ECOA.

The agencies further advise that reliance on certain criteria, such as the length of time an applicant has had a Social Security Number, may run afoul of the law by serving as a proxy for citizenship or immigration status which implicates protected characteristics like national origin or race. In addition to consumer protections under the ECOA and Regulation B, the agencies remind financial institutions that 42 U.S.C. § 1981 provides that "[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts" and has been construed to prohibit discrimination based on alienage.

Many states impose substantially similar or broader protections under their own anti-discrimination statutes. Having highlighted the issue, follow-on enforcement activity is to be expected. A review of existing procedures is advisable as a prudent step to avoid challenges. We are happy to assist! ☐

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