4810-AM-P

CONSUMER FINANCIAL PROTECTION BUREAU

Withdrawal of Joint Statement on the Equal Credit Opportunity Act and Noncitizen Borrowers

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of withdrawal.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) and Department of Justice (DOJ) are withdrawing a joint statement issued in October 2023 regarding the implications of a creditor's consideration of an individual's immigration status under the Equal Credit Opportunity Act (ECOA).

DATES: The statement published on October 18, 2023, at 88 FR 71845, is withdrawn as of [INSERT DATE OF *FEDERAL REGISTER* PUBLICATION].

FOR FURTHER INFORMATION CONTACT: Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700 or https://reginquiries.consumerfinance.gov/. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Bureau (Bureau) and Department of Justice (DOJ), (collectively, the agencies) are charged with enforcing the antidiscrimination provisions of the Equal Credit Opportunity Act (ECOA).[1] ECOA prohibits discrimination by a creditor in any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, age, an applicant's receipt of public assistance, or the good faith exercise of an applicant's rights under the Consumer Credit Protection Act. 15 U.S.C. 1691. On October 12, 2023, the agencies published a joint statement (the joint statement) cautioning that creditor policies related to an applicant's immigration or citizenship status could, in certain circumstances, run afoul of ECOA's and Regulation B's prohibition of discrimination

[1] The Bureau enforces ECOA with respect to any person subject to ECOA's coverage, with limited exclusions under the Consumer Financial Protection Act. 15 U.S.C. 1691c(a)(9). DOJ enforces ECOA where there is evidence of a "pattern or practice" of discrimination. 15 U.S.C. 1691e(h).

on the basis of protected classes, including race and national origin.[2] The agencies now hereby withdraw the joint statement for the following reasons.[3]

The joint statement did not purport to interpret ECOA or Regulation B, which generally permit creditors to consider immigration or citizenship status. The joint statement further acknowledged that Regulation B expressly permits consideration of immigration or citizenship status for certain purposes. However, by focusing primarily on risks that could arise if such consideration were used to discriminate on a protected basis, the joint statement may have created the impression that either ECOA or the statement itself imposes limitations on the consideration of immigration or citizenship status when evaluating an application for credit. No such limitation exists, and this withdrawal is intended to correct any such misimpression.

Separately, as announced in the Bureau's guidance withdrawal notification published in the *Federal Register* on May 12, 2025, which withdrew various guidance documents issued by the Bureau since 2011, the Bureau has revised its policies regarding the issuance of guidance documents.[4] Under the revised policy, the Bureau avoids issuing guidance that is not necessary or would increase compliance burdens. The Bureau concludes that additional guidance on this topic beyond what Regulation B provides is unnecessary and, to the extent that the joint statement was understood to require new or increased compliance efforts, it is appropriate for recission under the Bureau's revised policy.

I. ECOA and Regulation B

Nothing in ECOA or Regulation B prohibits the consideration of an applicant's immigration or citizen status. To the contrary, Regulation 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." 12 CFR 1002.6(a). More specifically, it states that "[a] creditor may take

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[2] A notice of the statement was also published in the *Federal Register*. 88 FR 71845 (Oct. 18, 2023).
[3] This notice is issued under the Bureau's authority to provide guidance regarding ECOA and Regulation B, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This notice does not have the force or effect of law, and it has no legally binding effect, including on persons or entities outside the Federal government.
[4] 90 FR 20084 (May 12, 2025).

the applicant's immigration status into account," 12 CFR part 1002, supp I. ¶ 2(z)-2, and "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." 12 CFR 1002.6(b)(7). The joint statement's exclusive emphasis on the risks of such consideration, however, may have created the misimpression that ECOA or Regulation B prohibit or otherwise limit the consideration of immigration or citizenship status by a creditor evaluating an application for credit.

Not only would such a limitation be inconsistent with Regulation B, but the illustrative scenarios described in the joint statement may also create confusion as to how creditors may consider immigration status while managing credit and compliance risks. For example, the joint statement posited a practice in which considering how long a credit applicant had a Social Security Number could be used as a proxy for the applicant's national origin or race, which would then be prohibited discrimination. This example may have been perceived as discouraging the collection and assessment of such identifying information when in fact it can be important to a creditor's compliance with anti-money laundering or Know Your Customer requirements.[5]

Similarly, the joint statement suggests that applying a blanket underwriting policy for certain groups of non-citizens may constitute discrimination in violation of ECOA if not strictly necessary for assessing the creditor's ability to obtain repayment or meet legal obligations. This example could be read as positing a bright-line, one-size-fits-all approach to underwriting noncitizens as necessary for ECOA compliance. There is no such requirement in ECOA or Regulation B, and focusing exclusively on compliance risks ignores that creditors may legitimately use additional information in particular circumstances to fully assess underwriting risks related to providing credit to those without lawful status or who are otherwise unauthorized to work in the United States. A credit applicant's immigration or citizenship status may present

[5] *See, e.g.*, 31 U.S.C. 5318(l) (directing the Secretary of the Treasury to promulgate regulations defining bank customer identification requirements); 31 CFR 1020.220(a) (providing customer identification requirements).

underwriting risks that typical assessments of financial capacity alone will not fully resolve. As Regulation B acknowledges, this is something creditors may legitimately consider. To the extent the joint statement suggested, or could be read to suggest, that the practices it describes are presumptively discriminatory in violation of ECOA, such a presumption would not be supported by ECOA or Regulation B.

The joint statement further assessed the interaction between 42 U.S.C. 1981 (section 1981) and ECOA. While the joint statement described how courts have approached the interaction between Regulation B and credit discrimination claims under section 1981 based on citizenship or alienage, the agencies did not purport to interpret the scope of liability under section 1981, nor do they purport to do so now. The agencies' withdrawal of the joint statement serves to address any misimpression that the joint statement has interpreted section 1981 to confer any liability under the statute that has not already been recognized by courts.

II. Other Considerations

While the Bureau has authority to issue guidance regarding the statutes and regulations it administers, the Bureau has determined that the joint statement is not consistent with its revised policy on the issuance of guidance. As described in its May 2025 guidance withdrawal notification, the Bureau's revised policy is to issue guidance only where necessary and where doing so would reduce compliance burdens. Given that it is the responsibility of Congress and the President in the legislative process to define or expand the contours of civil rights protections, the agencies have determined that the joint statement is not necessary. Additionally, the joint statement does not mitigate any unnecessary compliance burdens. Therefore, having completed its review, the agencies have determined that the joint statement does not meet the Bureau's current standards for the issuance of guidance.

Finally, consistent with its May 2025 guidance withdrawal notification, the agencies do not believe that reliance interests compel the retention of the joint statement. Parties understand that such statements are non-binding. Creditors who have structured their operations consistent

with the joint statement's comments on compliance risks can continue to operate in that manner without penalty and, given that the joint statement was non-binding on the public or courts, consumers' rights under ECOA are unchanged.[6]

For these reasons, the agencies are exercising their discretion to withdraw the October 12, 2023, notice titled: *Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act*.

III. Regulatory Matters

The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is a "significant regulatory action" under E.O. 12866, as amended.

Pursuant to the Congressional Review Act, the Bureau will submit a report containing this notice of withdrawal and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States. OMB has designated this notice of withdrawal as not a "major rule" as defined by 5 U.S.C. 804(2).

Russell Vought,

Acting Director, Consumer Financial Protection Bureau.

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[6] Although ECOA section 706(e), 15 U.S.C. 1691e(e), provides that no provision of ECOA imposing any liability applies to any act done or omitted in good faith in conformity with any Bureau rule, regulation, or interpretation, the joint statement was not any such rule or interpretation and therefore did not shield any creditor conduct from liability. The withdrawal of that statement likewise does not subject regulated entities to new liability, create rights or obligations from which legal consequences flow, or implicate reliance interests sufficient to justify retaining the joint statement.