

CFPB and DOJ Withdraw Joint Statement on ECOA and Noncitizen Borrowers*

On January 12, 2026, the CFPB and the DOJ (the “Agencies”) withdrew a 2023 joint statement regarding the implications of a creditor’s consideration of an individual’s immigration status under the Equal Credit Opportunity Act (ECOA) (“2023 Joint Statement”). 91 FR 1138.

Under ECOA and its implementing Regulation B, creditors may not discriminate in any credit transaction on the basis of race, color, religion, national origin, sex, marital status, and age. Notably, Regulation B provides that a creditor may consider an applicant’s immigration status and any additional information that may be necessary to ascertain the creditor’s rights and remedies regarding repayment. The 2023 Joint Statement advised institutions that Regulation B does not provide a safe harbor for consideration of immigration status in all circumstances. It noted that immigration status may broadly overlap with or serve as a proxy for protected characteristics. Thus, lenders should be aware that if their consideration of immigration status is not necessary to ascertain the credit’s rights and remedies regarding repayment and results in discrimination on a prohibited basis, it violates ECOA and Regulation B.

In the notice of withdrawal, the Agencies noted that by focusing primarily on risks that could arise if consideration of immigration or citizenship status were used to discriminate on a protected basis, the 2023 Joint Statement may have created the impression that either ECOA or the 2023 Joint Statement itself imposes limitations on the consideration of immigration or citizenship status when evaluating an application for credit. The Agencies emphasized that no such limitation exists, and that the withdrawal of the 2023 Joint Statement is intended to correct any such misimpression.

Note that creditors in California are prohibited from discriminating against a person based on their primary language, citizenship, or immigration status under the Unruh Civil Rights Act, California Civil Code Section 51. Thus, due consideration should be given to the Unruh Civil Rights Act as a creditor designs its lending policies. The withdrawal of the 2023 Joint Statement would not relieve a California creditor of its obligations to comply with the Unruh Civil Rights Act.

Contact Harry Khalsa at HKhalsa@ABLAWYERS.com or Andrew Litchy at ALitchy@ABLAWYERS.com with any questions on the withdrawal of the 2023 Joint Statement, or any fair lending questions you may have.

* Janet Bonnefin has retired from the firm.

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