



Trump's New Executive Order Targeting Disparate Impact Liability May Target Fair Lending as Well

Apr 29, 2025

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Authors:

[Emilia R. Rubin](#)
[Melody Charlton](#)

On April 23, 2025, President Trump issued an [executive order](#) (EO) titled "Restoring Equality of Opportunity and Meritocracy," which seeks to eliminate disparate impact liability, denouncing it as a threat to equal opportunity under the law. Disparate impact is a theory that provides relief in cases where a policy or practice that appears neutral has an adverse impact on protected classes, such as race and gender. It is codified under the Civil Rights Act of 1964 and also recognized in other contexts, including fair lending.

As indicated in the Consumer Financial Protection Bureau's (CFPB) Official Interpretations of Regulation B, the implementing regulation for the Equal Credit Opportunity Act (ECOA), "disparate impact" in the lending context occurs when a creditor employs facially neutral policies or practices that have an adverse effect or impact on a member of a protected class, unless it meets a legitimate business need that cannot reasonably be achieved by means that are less disparate in their impact (often referred to as the "effects test"). See, e.g., [12 CFR Part 1002 Supp. I, Official Interpretations, Sec. 1002.6\(a\)-2](#).

President Trump's EO characterizes disparate impact as holding that "a near insurmountable presumption of unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups," and "runs contrary to equal protection under the law," therefore violating the U.S. Constitution.

The EO goes on to state that the threat of disparate impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers.

As such, the EO requires agencies to deprioritize enforcement of all statutes and regulations to the extent they include disparate impact liability. It disapproves of multiple regulations promulgated

under Title VI and Title VII of the Civil Rights Act of 1964 and requires the U.S. attorney general to “repeal or amend all Title VI (racial nondiscrimination) regulations that contemplate disparate-impact liability.” While the EO does not repeal civil rights statutes, it specifically targets the key method of remedying policies and practices that—while appearing to be racially neutral—adversely, and often disproportionately, affect protected classes.

The EO also directs the administration to assess all pending investigations, lawsuits, and consent judgements that rely on a theory of disparate impact liability and “take appropriate action.” Given this directive, the EO has a much broader reach, which could impact fair lending enforcement under the ECOA.

This EO comes after several recent events during the second Trump administration that would suggest de-prioritization of enforcement of fair lending principles, including the CFPB’s [plans to revise its small business lending final rule under Regulation B](#) (aka Rule 1071) that implements the ECOA.

It is too soon to tell the impact this EO will have on fair lending. However, it is unlikely ECOA enforcement will be left unscathed.

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