FDIC Modifies Its Examination Manual to Remove Disparate Impact Liability, in Line with Recent Executive Order

Sep 18, 2025

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The Federal Deposit Insurance Corporation (FDIC) announced in a Financial Institution Letter (FIL-41-2025) on August 29, 2025, that it has removed all references to disparate impact from its *Consumer Compliance Examination Manual* (the "Manual"). Disparate impact is a theory of liability which occurs when a facially neutral policy, practice, test, or procedure produces a statistically significant adverse effect on, or disproportionately excludes or burdens certain persons on a prohibited basis (race, color, religion, sex, national origin, disability, age, or other protected characteristic under applicable law), even if there was no discriminatory intent.

The Manual updates impact Section IV-Fair Lending Laws and Regulations and Section VII-1.1 Unfair, Deceptive, and Abusive Practices – Federal Trade Commission Act/Dodd-Frank Act. The Manual's "Types of Lending Discrimination" section, which previously listed the three "recognized methods of proof of lending discrimination" under the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA), has been changed to clarify that the FDIC evaluates potential discrimination only through either overt evidence or comparative evidence of disparate treatment.

The removal of disparate impact from the Manual impacts the FDIC's fair lending examination procedures provided in the Fair Lending Appendix, which previously directed examiners to consider disparate impact throughout their examination. For example, the "Automated Underwriting and Credit Scoring" procedures that evaluate and monitor how credit scoring is used within an institution previously guided examiners to consider, and request to obtain, monitoring reports concerning disparate impact from institutions using customized credit scoring models and from those using judgmental underwriting systems that include standard credit scores. The procedures also provided "Special Analyses" for disproportionate adverse impact violations, which were removed from the appendix in the Manual update.

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The FDIC's removal of disparate impact from its Manual comes just over a month after the Office of the Comptroller of the Currency (OCC) published a bulletin (OCC Bulletin 2025-16) announcing it removed references to supervising banks for disparate impact liability from the "Fair Lending" booklet of the *Comptroller's Handbook*.

Both the FDIC's and the OCC's changes appear to be a response to President Trump's April 23, 2025 executive order calling on agencies to deprioritize the enforcement of disparate impact liability, while requiring the U.S. Attorney General's Office to "repeal or amend all Title VI (racial nondiscrimination) regulations that contemplate disparate-impact liability."

However, supervised institutions should note that disparate impact is only one method examiners have used to evaluate fair lending under the ECOA and FHA. Both the FDIC and the OCC continue to review for disparate treatment when conducting fair lending examinations. Additionally, institutions must continue to consider disparate impact liability under state law.

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