CFPB Affirms that ECOA Protects Consumers After Receiving Credit

Article By

Moorari Shah
A.J. S. Dhaliwal
Sherwin F. Root

Sheppard, Mullin, Richter & Hampton LLP
Consumer Finance and Fintech Blog

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On May 9, the CFPB released an advisory opinion affirming that ECOA and its implementing rule, Regulation B, protect not only those persons actively seeking credit, but also those who have sought and received credit. The CFPB stated in the opinion that “[d]espite this well-established interpretation, the Bureau is aware that some creditors fail to acknowledge that ECOA and Regulation B plainly apply to circumstances that take place after an extension of credit has been granted, including a revocation of credit or an unfavorable change in the terms of a credit arrangement.” In addition, the Bureau states that it is “aware that some creditors fail to provide applicants with required notifications that include a statement of the specific reasons for the adverse action taken or disclose an applicant’s right to such a statement.”

The opinion also points out that ECOA protects applicants from discrimination “with respect to any aspect of a credit transaction,” not merely the application process,
and that “applicant” is defined in ECOA to include persons who have applied for and received credit, not merely persons who are applying for credit. The opinion also states that this issue has been considered in only a single United States Court of Appeals case, which agreed that the law protects existing borrowers. While certain United States District Court opinions have interpreted ECOA more narrowly, the CFPB said it is not persuaded by those opinions. “No court of appeals has endorsed these district courts’ narrow reading,” the opinion said. “These district court decisions read ‘applicant’ in isolation instead of reading this statutory term in context, as required by the [U.S.] Supreme Court.”

CFPB Director Rohit Chopra said in a related statement that “today’s advisory opinion and accompanying analysis makes clear that anti-discrimination protections do not vanish once a customer obtains a loan.”

Putting It Into Practice: Loan servicers in particular must be aware that the anti-discrimination provisions in ECOA/Regulation B apply to actions they are taking or failing to take, which includes providing adverse action notices under appropriate circumstances. Servicers should review their policies and procedures to determine that they are compliant with the advisory opinion.

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