

Fair Lending and UDAAP Compliance

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How has the federal regulatory approach to the disparate impact theory changed in 2025?

- In April 2025, President Trump issued Executive Order (EO) 14281, Restoring Equality of Opportunity and Meritocracy. EO 14281 directs agencies to eliminate the use of disparate impact liability in all contexts.
- In July 2025, the OCC issued Bulletin 2025-16 removing references to disparate impact liability from its “Fair Lending” booklet in the Comptroller’s Handbook. The Bulletin instructs examiners that they should no longer examine for disparate impact risk, internal disparate impact risk analysis, or disparate impact assessment procedures.
- In August 2025, the FDIC followed suit, removing reference to disparate impact from its examination manual.
- Compliance implications: Disparate impact remains relevant for private lawsuits and states may retain or expand focus on disparate impact during examinations.

Emigrant Mortgage Company, Inc. v. Jean Robert Saint-Jean, et al.

- A petition for certiorari was filed in August 2025 in a Fair Housing Act case asking the Supreme Court to review a decision of the Second Circuit Court of Appeals.
- Question 1 concerns equitable tolling of time-barred Fair Housing Act claims.
- Question 2 concerns the legal standard for disparate impact claims and requirement to establish a disproportionate adverse effect.
- Question 3 concerns the robust causality requirement and whether the disparate-impact standard announced in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project* has proven unworkable.

How has the federal regulatory approach to the CRA in 2025?

- In March 2025, the Fed, OCC, and FDIC announced plans to rescind the updated CRA rules that had broadened requirements to reflect online banking and expanded geographic assessments, returning to the prior CRA framework looking at locations of physical branch locations in determining assessment areas.
- Compliance implications: Compliance with the CRA remains and depositories will likely want to continue being able to articulate a coherent explanation of where they conduct their activities.

CFPB and HUD rescission of fair lending guidance and impact on compliance programs

- **HUD**

- March 2025: HUD rescinded three mortgagee letters that addressed fair lending considerations in the appraisal context (ML 2021-27, ML 2024-16, ML 2024-07).
- September 2025: FHEO withdrew several guidance documents, including:
 - Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb. 11, 2021)
 - FHEO Statement on the Fair Housing Act and Special Purpose Credit Programs (Dec. 7, 2021)
 - Application of FHA Standards to Use of Criminal Records by Providers of Housing & Real-Estate Related Transactions (June 10, 2022)
 - Implementation of OGC Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records (June 20, 2022)
 - FHEO Memorandum on Source of Income Testing Activities under the Fair Housing Assistance Program (Feb. 12, 2024)
 - Guidance on the Application of the Fair Housing Act to the Advertising of Housing, Credit, and Other Real Estate-Related Transactions through Digital Platforms (April 29, 2024)

CFPB and HUD rescission of fair lending guidance and impact on compliance programs (cont.)

- **CFPB**

- May 2025: CFPB withdrew fair lending and other guidance, interpretive rules, policy statements, and advisory opinions
- ECOA (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements, 87 Fed. Reg. 30097
- Circular 2022-03: Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms, 87 Fed. Reg. 35864
- Circular 2023-03: Adverse Action Notification Requirements and Proper Use of Sample Forms, 89 Fed. Reg. 27361
- CFPB Bulletin 2012-04 (Fair Lending), Lending Discrimination

How have courts responded to federal authorities' motions to terminate consent orders?

- Courts have expressed some reluctance to undo previously entered consent orders and settlements.
- In June 2025, the Northern District of Illinois rejected the CFPB's and Townstone Financial's joint motion to vacate the settlement reached with Townstone.
 - CFPB has moved forward with terminating consent orders in administrative proceedings where court approval is unnecessary.
- In July 2025, the Eastern District of Pennsylvania denied the DOJ's motion to end ongoing supervision of ESSA Bank under consent order with the bank.
- DOJ's motion to terminate the consent order with Lakeland Bank remains pending.
- Compliance implications: Courts' approach to continuing enforcement of consent orders based on the importance of stability of the legal landscape also likely indicates an ongoing commitment to vindicate rights under fair lending laws.

What other recent federal rulemaking activity could affect fair lending compliance?

- In the winter/spring of 2025, HUD withdrew the 2023 proposed Affirmatively Furthering Fair Housing (AFFH) rule and replaced it with an interim approach with a lighter self-certification model affecting how municipalities document fair-housing efforts.
- In May 2025, CFPB withdrew its 2012 bulletin on loan originator compensation; the CFPB has also submitted an action to the OMB indicating its intent to consider rescinding or revising parts of the LO comp rule itself through formal rulemaking; the Dodd-Frank Act provisions governing LO comp would remain in place.
- FHFA has proposed to repeal the Fair Lending, Fair Housing, and Equitable Housing Finance Plans regulation; if finalized, the repeal would remove Fannie Mae and Freddie Mac's obligations to submit and implement these types of plans. Comment period closed on September 26, 2025.
- In June 2025, HUD announced its intention to reconsider its disparate-impact rule, "Reinstatement of HUD's Discriminatory Effects Standard," 88 Fed. Reg. 19450
- Compliance implications: Even if regulations are rescinded or repealed, underlying fair lending obligations set by statute remain, and state regulators and private plaintiffs will likely take up the mantle of seeking to exert rights under fair lending statutes.

How have state AGs taken up fair lending and consumer protection enforcement as federal oversight has changed?

- In July 2025, the Massachusetts AG entered into an assurance of discontinuance with a lender over underwriting practices that allegedly violated UDAP and federal fair lending laws, specifically concerning AI/algorithmic models.
- New York's soon-to-be enacted FAIR Business Practices Act would expand state consumer protection law (General Business Law §349) to give the New York AG authority to bring enforcement actions to prevent allegedly “unfair” and “abusive” practices in addition to “deceptive” practices, giving the AG broader power over fees and terms that the AG may believe result in higher cost loans.
- In January 2025, the California Unruh Civil Rights Act was amended to clarify that traits associated with race, including hair texture and hairstyles, are included as part of the definition of race, adding additional protections in the housing contexts.
- Compliance implications: State enforcement activity is likely to continue to increase and maintaining robust compliance procedures will continue to remain important.

- **Now that we are three quarters into the Trump Administration, how should fair lending compliance programs for residential mortgage business lines shift, if at all, in response to changes in executive policies and agency directives?**



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