Executive Orders & the Evolving Regulatory Landscape

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Objectives:

- Summarize key Executive Orders affecting financial institutions
- Discuss practical impacts on “DEI” and related activities
- Explain what has not changed under federal law
- Identify governance and risk management considerations

Regulatory Whiplash

Financial institutions are navigating contradictory signals about the same underlying conduct — regulatory whiplash.

Federal deregulatory push — Executive Orders narrowing disparate-impact liability, scrutinizing "DEI" programs, and promoting "merit-based" opportunity standards (EO 14173, 14281, 14398).

State and local pushback — State AGs and legislatures (e.g., New Jersey, Illinois, a 14-state coalition) are codifying and actively defending disparate-impact liability.

Private plaintiffs and advocacy groups — Continuing litigation and public pressure regardless of the federal posture of the moment.

Key takeaway: The same practice can draw scrutiny from opposite directions. Documented, individualized criteria is the throughline of protection. Think of risks holistically, across federal/state and future administrations. Don't chase tea-leaves.

Examples

Special Purpose Credit Programs

- 2021 to 2022: HUD issues guidance concluding SPCPs don't violate the Fair Housing Act. Agencies issue statements supporting SPCPs.
- Lenders, responding to government and private lawsuits, adopt SPCPs.
- 2026: CFPB amends Reg. B to eliminate SPCPs. HUD investigates SPCPs operated during last administration.

Immigration status

- 2018 to present: Litigation focused on denials of credit based on citizenship and immigration status.
- 2023: CFPB and DOJ issue statement cautioning against use of immigration status to deny credit.
- 2026: CFPB issues statement suggesting that lenders should consider immigration status.

Advertising

- 2019: Agencies warn against fair lending implications of targeted, internet marketing.
- 2022: DOJ settles with Meta over discriminatory advertising. CFPB investigates lender advertising.
- 2026: CFPB significantly limits applicability of ECOA to targeted, internet marketing.

Disparate impact

- Biden Administration: Focus on disparate impact, including risks raised by automated credit models.
- Trump Administration: Rejection of disparate impact.

The Big Picture

Executive Orders illustrate changed federal priorities, and changes to Reg. B now prohibit certain programs, but underlying civil rights laws remain.

Financial institutions remain subject to:

- ECOA
- FHA
- Civil Rights Act
- HMDA
- CRA
- ADA
- State anti-discrimination laws

Key takeaway: Enforcement priorities may shift, but many underlying obligations remain.

DEI-Related Executive Orders

DEI-Related Executive Orders generally:

- Eliminate certain federal DEI initiatives
- Rescind prior DEI-related Executive Orders
- Increase scrutiny of programs using protected characteristics
- Direct agencies to identify potentially unlawful discriminatory practices

Focus areas:

- Hiring, promotions, supplier diversity, training, scholarships, affinity groups, contracting

Impact on Financial Institutions

Regarding DEI, review programs involving:

- Hiring and recruiting
- Leadership development
- Internship selection
- Customer assistance programs
- Marketing and community outreach
- Supplier diversity
- Special lending programs

Question: Are programs legally supportable and appropriately structured?

What Has NOT Changed

Statutory law (ECOA, FHA, ADA, CRA, HMDA, state law, etc.)

State and private plaintiff priorities

Continue fair lending monitoring, complaint management, statistical analysis, and compliance oversight

Reg B Changes

CFPB recently amended Reg. B

- Takes the position that disparate impact is not available under ECOA
- Narrows when Reg. B prohibits lenders from discouraging prospective applicants, including in advertising
- Prohibits private institutions from offering Special Purpose Credit Programs that consider race, national origin, and/or sex, and limits the ability to create SPCPs for other protected classes

Countervailing factors

- Over federal laws (e.g., FHA)
- Judicial interpretations of ECOA
- State law
- Judicial challenge to changes
- Future administrations (enforcement and rule changes)
- Ensuring action plans are effective and responsive to risks

ITIN/Lawful Status EOs

Executive Order 14406: Restoring Integrity to America's Financial System

- Asserts that lending to people without legal work authorization creates an ability to repay "deficiency" and vulnerability within the financial system

CFPB/banking agencies issue guidance suggesting institutions should consider possible deportation/loss of employment for individuals without lawful status

Areas implicated:

- ATR (mortgage, credit cards)
- Safe and sound lending
- BSA/AML

ITIN/Lawful Status EOs

Litigation/Legal Risk:

- Section 1981 of the Civil Rights Act (alienage)
- State laws that protect immigration status (including CA Unruh Act)
- *See, e.g.*, *Arauz v. Truist et al.* (N.D. Okla.) (class action challenging denial of loans based on citizenship/immigration status)

ATR and Safety & Soundness Risks:

- General likelihood of job loss across borrowers is greater than the likelihood of deportation among the non-permanent immigrant population
- Some data suggest that ITIN borrowers repay at higher rates than SSN borrowers
- Credit risk and other existing processes likely would have identified if there were areas of significant risk and adjusted underwriting requirements accordingly

BSA/AML:

- Sound BSA/AML practices are based on holistic, individualized review, without taking any single factor in isolation

ITIN/Lawful Status EOs

Potential approaches:

- No additional action is mandatory based on guidance. However, some steps can be warranted.
- Policy & Procedure review:
  - Ensure complete understanding of how ITIN and/or immigration status is considered or used by the institution
  - Portfolio review?

There may be future regulatory action (e.g., BSA/AML rulemaking)

Debanking

Executive Order 14331 (Aug. 7, 2025)

- Asserts that financial institutions have restricted access on the basis of political or religious beliefs or lawful business activities

OCC Preliminary Findings (Dec. 2025)

- Alleges that certain banks made “inappropriate” distinctions based on business activities such as industry sectors
- No findings of illegal conduct. No findings related to religious discrimination

Continue to review and document legitimate justifications for criteria

Other Fair Lending Issues

Fair Lending supervision and enforcement continues

- Recent CFPB report noted NCUA and OCC referrals to DOJ related to mortgage lending, public assistance, age, and marital status discrimination
- Other agencies cited 140 institutions with ECOA/Reg. B violations in 2025 ranging from adverse action to appraisal violations

Redlining and other forms of discrimination

- Agencies have removed references to disparate impact, but the OCC has confirmed that fair lending assessments will continue to analyze HMDA data and involve risk-based fair lending analyses

Fair Lending Remains a Priority

Continue monitoring:

- Underwriting
- Pricing
- Redlining
- Servicing
- Exceptions
- Statistical testing

Expect continued examinations and enforcement actions by federal and state regulators

Ensure action plans and other correction measures are effective

False Claims Act

DOJ Civil Rights Fraud Initiative

- Launched in 2025. Relies on the False Claims Act to pursue federal funding recipients for alleged civil rights law violations
- Settlements with IBM, Deloitte, and Accenture related to allegations regarding DEI employment practices (e.g., workforce composition goals, promotion and development pipelines, etc.)

Understand receipt of federal funding and related certifications

Boards and management should:

- Inventory “DEI” or related programs
- Review legal authority
- Update policies
- Review and, as appropriate, analyze product offerings, requirements, and performance
- Maintain strong fair lending compliance
- Coordinate Legal, HR, Compliance, and Risk functions

Key Takeaways

- EOs illustrate changed federal priorities, but they do not change the law
- Regulatory guidance illustrates shifting priorities but does not always require immediate steps to change practices
- Anti-discrimination statutes remain in effect; state priorities have not changed and private plaintiffs are still pursuing cases
- Fair lending obligations remain unchanged
- Review DEI and related initiatives through a legal and risk management lens
- Well-documented, business-driven programs and policies remain the strongest defense

Appendix

EO 14151 — Ending Radical and Wasteful Government DEI Programs and Preferencing (January 20, 2025)

- This is the foundational federal-government DEI order. It directs termination of federal DEI/DEIA mandates, programs, preferences, activities, grants, and related initiatives.
  - White House – EO 14151
  - Federal Register – EO 14151

EO 14173 — Ending Illegal Discrimination and Restoring Merit-Based Opportunity (January 21, 2025)

- This is probably the **most important DEI/civil-rights EO for private-sector financial institutions**. It directs agencies to combat what the Administration considers illegal private-sector DEI preferences and revoked EO 11246's affirmative-action framework for federal contractors. It also calls for identification of potentially unlawful DEI practices in major private-sector institutions.
  - White House – EO 14173

Appendix

EO 14281 — Restoring Equality of Opportunity and Meritocracy (April 23, 2025)

- This is the **critical disparate-impact order**. It expressly establishes federal policy to eliminate the use of disparate-impact liability "in all contexts to the maximum degree possible" and directs agencies including DOJ, HUD, CFPB, FTC and EEOC to review regulations, guidance and enforcement positions based on disparate impact. This is directly relevant to **ECOA/Reg. B, FHA/fair lending, employment and other civil-rights enforcement.**
  - White House – EO 14281
  - Federal Register – EO 14281

Appendix

EO 14331 — Guaranteeing Fair Banking for All Americans (August 7, 2025)

- This is the **central debanking EO**. It targets "politicized or unlawful debanking" and directs banking regulators to remove reputation-risk concepts that could facilitate debanking, examine institutions for improper practices, and ensure decisions are based on individualized, objective, risk-based criteria rather than political or religious beliefs or lawful business activities. The SBA provisions also directly affect participating financial institutions.
  - White House – EO 14331
  - Federal Register – EO 14331

Appendix

EO 14398 — Addressing DEI Discrimination by Federal Contractors (March 26, 2026)

- This is an important **2026 expansion of the contractor-DEI regime**. It requires federal contracts to include provisions prohibiting racially discriminatory DEI activities and makes compliance material to government payment decisions, expressly invoking **False Claims Act exposure**. This matters significantly to banks and other institutions that are federal contractors or subcontractors.
  - White House – March 26, 2026 EO 14398

Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (January 20, 2025)

- It establishes the Administration's federal definition and treatment of sex and affects interpretation/enforcement of sex-discrimination requirements.
  - White House – January 20, 2025

Appendix

Ending Radical Indoctrination in K-12 Schooling (January 29, 2025)

- Less relevant to banks, but significant to the Administration's interpretation of Title VI, Title IX and "discriminatory equity ideology."
  - White House – January 29, 2025

Additional Measures to Combat Anti-Semitism (January 29, 2025)

- Relevant to federal civil-rights enforcement, particularly Title VI and discrimination against Jewish individuals.
  - White House – January 29, 2025

Initial Rescissions of Harmful Executive Orders and Actions (January 20, 2025)

- Important because it rescinded numerous Biden equity and DEI executive actions and provides some of the legal/policy foundation for the later Trump orders.
  - White House – January 20, 2025

Appendix

EO 14159 – Protecting the American People Against Invasion (January 20, 2025)

- Declared it the policy of the United States to faithfully execute the immigration laws against all inadmissible and removable aliens.
  - Protecting The American People Against Invasion – The White House

EO 14406 – Restoring Integrity to America's Financial System (May 19, 2026)

- Directed regulators to take a whole of government approach to address risks associated with the exploitation of the U.S. financial system by non-work authorized populations and their employers.
  - Restoring Integrity to America's Financial System – The White House