OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Whether the Equal Credit Opportunity Act Creates Disparate-Impact Liability

50 Op. O.L.C. __ (June 12, 2026) · Decided June 12, 2026

SUMMARY

This memorandum opinion for the General Counsel of the Federal Trade Commission concludes that the Equal Credit Opportunity Act does not create disparate-impact liability. It interprets the statute as prohibiting intentional discrimination because ECOA focuses on an actor's intent and lacks results-oriented language comparable to provisions in Title VII, the ADEA, and the Fair Housing Act. The opinion also discusses relevant Supreme Court precedent, agency interpretations, legislative history, and the effect of Loper Bright Enterprises v. Raimondo.

CASE DETAILS

COURT	Office of Legal Counsel, U.S. Department of Justice
WRITING FOR THE COURT	Spencer Churchill
DECIDED	June 12, 2026
DISPOSITION	other
PROCEDURAL POSTURE	The General Counsel of the Federal Trade Commission requested an Office of Legal Counsel opinion on whether the Equal Credit Opportunity Act permits disparate-impact liability.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

statutory interpretation · plain meaning rule · legislative history · legislative intent · consumer protection

PRACTICE AREAS

statutory interpretation · consumer protection · civil rights · administrative law

QUESTIONS PRESENTED

1. Whether the Equal Credit Opportunity Act creates liability for disparate impacts caused by facially neutral credit practices.
2. Whether ECOA's text, structure, statutory history, legislative history, and statutory purpose support extending liability beyond intentional discrimination.

3. Whether prior agency interpretations and legislative history can establish disparate-impact liability despite ECOA's lack of results-oriented statutory language.

HOLDINGS

1. The Equal Credit Opportunity Act does not create liability for unintended disparate impacts; it prohibits only intentional discrimination.
2. ECOA's exemptions, amendments, legislative history, and broad statutory purpose do not overcome the statute's text and do not support disparate-impact liability.
3. Evidence of disparate impact may be relevant as evidence suggesting intentional discrimination, but disparate impact alone is insufficient to establish ECOA liability.

KEY QUOTATIONS

> *"The Equal Credit Opportunity Act does not create disparate-impact liability."* (at 1)

> *"ECOA's mandate that creditors not "discriminate" either "based on" or "because" of protected characteristics is best understood to prohibit only intentional discrimination, not unintended disparate impacts."* (at 19)

> *"For all these reasons, the best reading of ECOA is that it prohibits only intentional discrimination and does not provide for disparate-impact liability."* (at 19)

FACTUAL BACKGROUND

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on specified protected grounds. Federal agencies and some lower courts had interpreted ECOA, largely based on legislative history and agency interpretations, to permit disparate-impact claims. The opinion evaluates ECOA's text, structure, statutory history, and legislative history in light of Supreme Court precedent governing when antidiscrimination statutes permit disparate-impact liability.

PROCEDURAL HISTORY

The opinion was issued by the Office of Legal Counsel in response to a request from the Federal Trade Commission. It also discusses an earlier informal request from the Consumer Financial Protection Bureau and explains that, after Loper Bright Enterprises v. Raimondo eliminated Chevron deference, OLC was addressing ECOA's best statutory meaning for the first time.

DISPOSITION

other

CASES CITED

- Griggs v. Duke Power Co., 401 U.S. 424, 426 n.1, 432 (1971)

- Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc., 576 U.S. 519, 524-25, 531-39, 545-46 (2015)
- Smith v. City of Jackson, 544 U.S. 228, 235-40 (2005)
- Ricci v. DeStefano, 557 U.S. 557, 577-78, 595 (2009)
- Bd. of Educ. v. Harris, 444 U.S. 130, 140-43 (1979)
- Raytheon Co. v. Hernandez, 540 U.S. 44, 53 (2003)
- Teamsters v. United States, 431 U.S. 324, 335-36 n.15 (1977)
- Murray v. UBS Sec., LLC, 144 S. Ct. 445, 453 (2024)
- Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 176 (2009)
- Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 63-64 & n.14 (2007)
- Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 174 (2005)
- Burrage v. United States, 571 U.S. 204, 211-15 (2014)
- Ky. Ret. Sys. v. EEOC, 554 U.S. 135, 142-43 (2008)
- Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 421 F.3d 170, 177 (3d Cir. 2005)
- Marietta Mem'l Hosp. Emp. Health Benefit Plan v. DaVita Inc., 142 S. Ct. 1968, 1972-74 (2022)
- Garcia v. Johanns, 444 F.3d 625, 633 & n.9 (D.C. Cir. 2006)
- Bhandari v. First Nat'l Bank of Com., 808 F.2d 1082, 1101 (5th Cir.), on reh'g, 829 F.2d 1343 (5th Cir. 1987), cert. granted, judgment vacated, 492 U.S. 901 (1989), and en banc opinion reinstated, 887 F.2d 609 (5th Cir. 1989)
- Golden v. City of Columbus, 404 F.3d 950, 963 & n.11 (6th Cir. 2005)
- Miller v. Am. Express Co., 688 F.2d 1235, 1237-40 (9th Cir. 1982)
- Azar v. Allina Health Servs., 139 S. Ct. 1804, 1814 (2019)
- FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd., No. 24-345, 2026 WL 1686059, at *8 (U.S. June 11, 2026)
- State Farm Fire & Cas. Co. v. United States ex rel. Rigsby, 580 U.S. 26, 37 (2016)
- Jones v. United States, 526 U.S. 227, 237-38 (1999)
- Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011)
- Stanley v. City of Sanford, 145 S. Ct. 2058, 2067 (2025)
- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2258, 2266 (2024)
- Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844 (1984)
- Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019)
- Chamber of Com. v. CFPB, 691 F. Supp. 3d 730, 740 (E.D. Tex. 2023)