

Global Markets Advisory Committee, through the CFTC website at <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Brigitte Weyls, Designated Federal Officer, via the contact information listed below to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, <https://www.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Brigitte Weyls, GMAC Designated Federal Officer, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, IL 60604, (312) 596-0700; or Philip Raimondi, GMAC Alternate Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC, (202) 418-5000.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation. The meeting will also be open to the public via teleconference.

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*Call-In/Webinar ID:* 161 832 1892.

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Members of the public may also view a live webcast of the meeting via the [www.cftc.gov](https://www.cftc.gov) website. The meeting agenda may change to accommodate other Committee priorities. For agenda updates, please visit <https://www.cftc.gov/About/AdvisoryCommittees/GMAC>.

After the meeting, a transcript of the meeting will be published through a

link on the CFTC's website, <https://www.cftc.gov>. Persons requiring special accommodations to attend the meeting because of a disability should notify the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Authority:* 5 U.S.C. 1001 *et seq.*

Dated: October 12, 2023.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

[FR Doc. 2023-22944 Filed 10-17-23; 8:45 am]

**BILLING CODE 6351-01-P**

## CONSUMER FINANCIAL PROTECTION BUREAU

### Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Notice of joint statement.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB) and the Department of Justice (DOJ) have released a joint statement to assist creditors and borrowers in understanding the potential civil rights implications of a creditor's consideration of an individual's immigration status under the Equal Credit Opportunity Act (ECOA).

**DATES:** This information is current as of October 12, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Sonia Lin, Office of Consumer Populations, [sonia.lin@cfpb.gov](mailto:sonia.lin@cfpb.gov). If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Consumer Financial Protection Bureau (CFPB) and Department of Justice (DOJ) (collectively, the agencies) jointly issue this statement<sup>1</sup> to assist creditors and borrowers in understanding the potential civil rights implications of a creditor's consideration of an individual's immigration status under the Equal Credit Opportunity Act (ECOA). ECOA does not expressly prohibit consideration of immigration status, and, as explained further below, a creditor may consider an applicant's immigration status when necessary to ascertain the creditor's rights regarding repayment. However, creditors should be aware that unnecessary or overbroad

<sup>1</sup> This document is for informational purposes only. It does not impose any legal requirements, nor does it restrict the agencies' exercise of their authorities or confer rights of any kind, and it is not enforceable.

reliance on immigration status in the credit decisioning process, including when that reliance is based on bias, may run afoul of ECOA's antidiscrimination provisions, and could also violate other laws.

## I. ECOA and Regulation B

The agencies are charged with enforcing the antidiscrimination provisions of ECOA, requirements that are essential for ensuring fair, competitive and nondiscriminatory lending markets.<sup>2</sup> ECOA prohibits discrimination by a creditor in any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, age, an applicant's receipt of public assistance, or the good faith exercise of an applicant's rights under the Consumer Credit Protection Act. 15 U.S.C. 1691. Discouraging applications for credit on a prohibited basis is also prohibited.

ECOA is implemented by regulations found at 12 CFR part 1002, commonly known as "Regulation B." ECOA and Regulation B apply to all types of credit, including both personal credit and business credit. Among other things, Regulation B sets forth "[r]ules concerning evaluation of applications" for credit. 12 CFR 1002.6. Under Regulation B, creditors shall not consider race, color, religion, national origin, or sex in any aspect of a credit transaction. 12 CFR 1002.6(b)(9).<sup>3</sup> Subject to that restriction, "a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis." 12 CFR 1002.6(a).

Thus, while ECOA and Regulation B do not expressly prohibit consideration of immigration status, they do prohibit creditors from using immigration status to discriminate on the basis of national origin, race, or any other protected characteristic.<sup>4</sup> Regulation B notably

<sup>2</sup> The CFPB enforces ECOA with respect to any person subject to ECOA's coverage, with limited exclusions under the Consumer Financial Protection Act. 15 U.S.C. 1691c(a)(9). The DOJ enforces ECOA where there is evidence of a "pattern or practice" of discrimination. 15 U.S.C. 1691e(h).

<sup>3</sup> The list of prohibited bases in 12 CFR 1002.6(b)(9) does not include all characteristics protected under ECOA. The limited circumstances for considering certain other prohibited bases, such as age and marital status, are discussed elsewhere in 12 CFR 1002.6(b).

<sup>4</sup> See *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 92, 94 (1973) (noting that title VII, which prohibits employment discrimination, "prohibits discrimination on the basis of citizenship whenever it has the purpose or effect of discriminating on the basis of national origin"). Courts have generally

provides that a “creditor may consider [an] applicant’s immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor’s rights and remedies regarding repayment.” 12 CFR 1002.6(b)(7). Regulation B does not, however, provide a safe harbor for all consideration of immigration status.

## II. Issues Related to ECOA, Regulation B and Noncitizen Borrowers

While Regulation B describes certain conditions under which creditors may consider immigration status, creditors should remain cognizant that ECOA and Regulation B expressly forbid discrimination on the basis of certain protected characteristics, including race and national origin. Immigration status may broadly overlap with or, in certain circumstances, serve as a proxy for these protected characteristics. Creditors should therefore be aware that if their consideration of immigration status is not “necessary to ascertain the creditor’s rights and remedies regarding repayment” and it results in discrimination on a prohibited basis, it violates ECOA and Regulation B.

Accordingly, creditors must ensure that they do not run afoul of ECOA’s nondiscrimination provisions when considering immigration status. As a general matter, creditors should evaluate whether their reliance on immigration status, citizenship status, or “alienage” (*i.e.*, an individual’s status as a non-citizen) is necessary or unnecessary to ascertain their rights or remedies regarding repayment. To the extent that a creditor is relying on immigration status for a reason other than determining its rights or remedies for repayment, and the creditor cannot show that such reliance is necessary to meet other binding legal obligations, such as restrictions on dealings with citizens of particular countries, 12 CFR part 1002, supp I. ¶ 2(z)–2, the creditor may risk engaging in unlawful discrimination, including on the basis of race or national origin, in violation of ECOA and Regulation B.

For example, if a creditor has a blanket policy of refusing to consider applications from certain groups of noncitizens regardless of the credit qualifications of individual borrowers within that group, that policy may risk violating ECOA and Regulation B. This risk could arise because some individuals within those groups may

have sufficient credit scores or other individual circumstances that may resolve concerns about the creditor’s rights and remedies regarding repayment.

In addition, the overbroad consideration of certain criteria—such as how long a consumer has had a Social Security Number—may implicate or serve as a proxy for citizenship or immigration status, which in turn, may implicate a protected characteristic under ECOA like national origin or race. Such overbroad policies may harm applicants with these protected characteristics without being necessary to ascertain the creditor’s rights and remedies for repayment or to meet other binding legal obligations. 12 CFR 1002.6(b)(7); 12 CFR part 1002, supp I. ¶ 2(z)–2. Any claims that such policies are necessary to preserve the creditor’s rights and remedies regarding repayment or to meet other binding legal obligations should be supported by evidence and cannot be a pretext for discrimination.

Similarly, if a creditor requires documentation, identification, or in-person applications only from certain groups of noncitizens, and this requirement is not necessary for assessing the creditor’s ability to obtain repayment or fulfilling the creditors’ legal obligations, that policy may violate ECOA and Regulation B by harming applicants on the basis of national origin or race.

In addition to potential violations of ECOA and Regulation B, creditors should be mindful of their obligations under 42 U.S.C. 1981 (section 1981).<sup>5</sup> Section 1981 provides, in relevant part, that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens[.]” 42 U.S.C. 1981(a), and has long been construed to prohibit discrimination based on alienage.<sup>6</sup> To the extent that a

<sup>5</sup> Neither the CFPB nor the DOJ has enforcement or regulatory authority with regards to section 1981, and therefore discussion of this statute is limited to discussing its interaction with ECOA and relevant court decisions.

<sup>6</sup> See, e.g., *Anderson v. Conboy*, 156 F.3d 167, 173 (2d Cir. 1998) (explaining that “use of ‘persons’ rather than ‘citizens’ was deliberate” as Congress changed a previous version of the statute that mentioned “all citizens” to “all persons” in order to “alleviate the plight of Chinese immigrants . . . burdened by state laws” in addition to African Americans); *Duane v. GEICO*, 37 F.3d 1036, 1043 (4th Cir. 1994) (“under the plain language of the provision, ‘all persons,’ blacks and aliens, receive the same protection against discrimination”); *Sagana v. Tenorio*, 384 F.3d 731, 739 (9th Cir. 2004), *as amended* (Oct. 18, 2004) (“§ 1981 prohibits alienage discrimination”); *but see Resendiz v. Exxon Mobil Corp.*, 72 F.4th 623, 627

creditor’s consideration of immigration status would violate Section 1981, courts have made clear that the limited consideration of immigration status that is permissible under ECOA and Regulation B does not conflict with Section 1981, creditors must therefore comply with both statutes.<sup>7</sup> Indeed, far from conflicting, courts have observed that ECOA’s prohibition of national origin discrimination and Section 1981’s prohibitions complement one another<sup>8</sup> and that discrimination that arises from overbroad restrictions on lending to noncitizens may violate either or both statutes.<sup>9</sup>

## Conclusion

ECOA and other laws protect consumers and help ensure fair lending and credit opportunities for qualified borrowers. Creditors should be mindful of those obligations as they relate to noncitizen borrowers and ensure that

(4th Cir. 2023) (explaining that, although the Supreme Court has not said that Section 1981 protects against alienage-based discrimination, “the Fourth Circuit has squarely done so” in *Duane*).

<sup>7</sup> See, e.g., *Perez v. Wells Fargo & Co.*, No. 17–CV–00454–MMC, 2017 WL 3314797, at \*3 (N.D. Cal. Aug. 3, 2017) (denying motion to dismiss for Section 1981 claim and rejecting contention that ECOA superseded Section 1981, noting that, although ECOA was a more specific statute, ECOA did not conflict with the section 1981 claims because “[a] creditor can comply with § 1981 and the ECOA by not discriminating on the basis of any of the categories listed in the two statutes”); *Juarez v. Soc. Fin., Inc.*, No. 20–CV–03386–HSG, 2021 WL 1375868, at \*7 (N.D. Cal. Apr. 12, 2021) (same) (also explaining that Regulation B “does not empower a creditor to decline credit solely on the basis of immigration status”); *Garcia v. Harborstone Credit Union*, No. C21–5148 BHS, 2021 WL 3491745, at \*3 (W.D. Wash. Aug. 9, 2021) (ECOA does not preclude Section 1981 claim for alienage discrimination); *Maystrenko v. Wells Fargo, N.A.*, No. 21–CV–00133–JD, 2021 WL 5232221, at \*4 (N.D. Cal. Nov. 10, 2021) (same); *Camacho v. Alliant Credit Union*, No. 22–CV–01690–BLF, 2023 WL 149999, at \*3 (N.D. Cal. Jan. 10, 2023) (same).

<sup>8</sup> See, e.g., *Juarez*, 2021 WL 1375868, at \*7 (ECOA was “not intended to limit any of the broad protections afforded by § 1981[.]” but rather to “expand protections against credit discrimination.”) (citing *Perez*, 2017 WL 3314797, at \*2–4); *Maystrenko*, at \*4 (noting that ECOA prohibits discrimination in lending on the basis of race, color, religion, national origin, and other grounds, 15 U.S.C. 1691(a), and section 1981 prohibits alienage discrimination).

<sup>9</sup> Supreme Court precedent makes clear that “when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.” *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976) (explaining that unless there is an “irreconcilable conflict” in the sense that there is a positive repugnancy between [statutes]” both are regarded as effective).

interpreted prohibitions under title VII and ECOA consistently. See, e.g., *Garcia v. Johannis*, 444 F.3d 625, 632 (D.C. Cir. 2006); *Mays v. Buckeye Rural Elec. Coop., Inc.*, 277 F.3d 873, 876 (6th Cir. 2002).

credit decisions are based on non-discriminatory criteria.

**Rohit Chopra,**

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023-22968 Filed 10-17-23; 8:45 am]

BILLING CODE 4810-AM-P

**DEPARTMENT OF EDUCATION**

[Docket No.: ED-2023-SCC-0147]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidated State Plan**

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before November 17, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Melissa Siry, (202) 260-0926.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Consolidated State Plan.

*OMB Control Number:* 1810-0576.

*Type of Review:* Extension without change of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 52.

*Total Estimated Number of Annual Burden Hours:* 108,155.

*Abstract:* This collection, currently approved by OMB under control number 1810-0576, covers the consolidated State plan (previously known as the consolidated State application), as well as assessment peer review guidance. Section 8302 of the ESEA, as amended by the ESSA, permits each SEA, in consultation with the Governor, to apply for program funds through submission of a consolidated State plan (in lieu of individual program State plans). The purpose of consolidated State plans as defined in ESEA is to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery; to enhance program integration; and to provide greater flexibility and less burden for State educational agencies. This is a request for extension without change for this collection.

Dated: October 12, 2023.

**Kun Mullan,**

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-22939 Filed 10-17-23; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings # 1**

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23-2334-003.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 2198R34 Kansas Power Pool NITSA NOA to be effective 9/1/2023.

*Filed Date:* 10/12/23.

*Accession Number:* 20231012-5008.

*Comment Date:* 5 p.m. ET 11/2/23.

*Docket Numbers:* ER23-2407-000.

*Applicants:* Strauss Wind, LLC.

*Description:* Second Supplement to July 14, 2023, Strauss Wind, LLC tariff filing.

*Filed Date:* 10/2/23.

*Accession Number:* 20231002-5387.

*Comment Date:* 5 p.m. ET 10/19/23.

*Docket Numbers:* ER23-2443-001.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Tariff Amendment: 2023-10-12 SA 4126 Deficiency Response METC-Wolverine-MPPA-Eagle GIA (J1389) to be effective 9/19/2023.

*Filed Date:* 10/12/23.

*Accession Number:* 20231012-5100.

*Comment Date:* 5 p.m. ET 11/2/23.

*Docket Numbers:* ER23-2749-000.

*Applicants:* AEUG Union Solar, LLC.

*Description:* Supplement to August 31, 2023 AEUG Union Solar, LLC tariff filing.

*Filed Date:* 10/10/23.

*Accession Number:* 20231010-5398.

*Comment Date:* 5 p.m. ET 10/31/23.

*Docket Numbers:* ER24-76-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revised SA No. 1313 NITSA Among PJM and Central Virginia Electric Cooperative to be effective 12/1/2023.

*Filed Date:* 10/12/23.

*Accession Number:* 20231012-5000.

*Comment Date:* 5 p.m. ET 11/2/23.

*Docket Numbers:* ER24-77-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023-10-12 SA 2523 ITC-Pheasant Run 5th Rev GIA (J075 J466) to be effective 10/6/2023.

*Filed Date:* 10/12/23.

*Accession Number:* 20231012-5055.

*Comment Date:* 5 p.m. ET 11/2/23.

*Docket Numbers:* ER24-79-000.

*Applicants:* New York State Electric & Gas Corporation, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii): NYISO-NYSEG Joint 205: Amended SGIA for Scipio Solar Project SA2527 (CEII) to be effective 9/27/2023.

*Filed Date:* 10/12/23.

*Accession Number:* 20231012-5075.

*Comment Date:* 5 p.m. ET 11/2/23.

*Docket Numbers:* ER24-80-000.

*Applicants:* Essential Power Newington, LLC.