What Trump’s Order on Disparate-Impact Liability Means for Banks and Financial Institutions

Banking Brief: Financial Services Insights

By Larry Tomlin on May 6, 2025

On April 23, 2025, President Donald J. Trump signed an executive order titled “Restoring Equality of Opportunity and Meritocracy.” This order states that the U.S. aims to limit the use of disparate-impact liability in order to stay aligned with the Constitution, federal civil rights laws, and core American values.

For banks and other financial organizations, this signals a big change in how they will be regulated.

What Is Disparate Impact?

Disparate impact is a legal concept that can make the practices of financial institutions, which are neutral on the surface, illegal if they have a discriminatory effect on a protected group. For example, there would potentially be a disparate impact if a financial institution adopted a policy to not extend loans for single-family residences for less than a certain dollar amount.

In order to be liable for discrimination, regulators do not have to prove that a financial institution acted with discriminatory intent, only that its actions had a discriminatory effect on a protected group. This concept has been long used under laws like the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA), and it has been the foundation for enforcement actions by bank regulatory agencies, HUD, and the DOJ.

To avoid liability under disparate impact, financial institutions needed to check not only for intent to discriminate but also how their lending practices affected protected groups. Financial institutions could face legal or regulatory issues for practices that statistically hurt minorities, even if those practices were intended to be racially neutral.

What's Changing Now?

The order includes several points:

- Government agencies need to focus less on enforcing laws that include disparate-impact liability.
- Any regulations involving this kind of liability must be changed or removed.
- Ongoing enforcement actions based on disparate-impact liability should be reassessed in line with the order.
- The attorney general and other government bodies must determine if federal laws can override state laws that impose disparate-impact liability and act accordingly.

What Does This Mean for Financial Institutions?

At first, it might seem like getting rid of disparate impact could lower legal risks. But with its elimination comes new concerns:

1. **Legal Uncertainty**. An executive order directs how federal agencies enforce the law, but it is not a law itself and does not cancel existing legal requirements. Courts have accepted disparate impact in major laws like the FHA and ECOA. If financial institutions abandon their testing for impact or fair lending reviews, they may find themselves subject to private lawsuits.
2. **Potential Reputation Risk**. Even with the order in place, the general public remains attentive to the issues racial equity and fairness in lending. So, differences in approval rates or loan terms might still lead to public backlash, lawsuits, or action from shareholders.
3. **Changes to Internal Controls**. Financial institutions should think carefully about any changes they make to their internal controls and evaluations for fair lending because of the order. Removing disparate impact analysis might create gaps in their compliance efforts.

This order is important, but it does not give financial institutions a free pass to overlook fairness and compliance. Financial institutions should continue to avoid practices that could unfairly harm underserved communities. Further, financial institutions should continue to assess their lending practices for both a discriminatory intent and a disparate impact.

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