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Court Rules That CFPB Fair Lending Enforcement Authority Does Not Extend to Prospective Loan Applicants

By: [Michael Flynn](#)

According to a Chicago federal district court, the Equal Credit Opportunity Act's loan discrimination provisions do not extend to alleged discrimination against prospective applicants. Relying on the express language of the ECOA statute, this ruling rejected a decades-old Regulation B rule that stated that ECOA did apply to conduct toward prospective applicants. Accordingly, the court dismissed the CFPB's discrimination action with prejudice. A copy of the opinion may be found [HERE](#).

The defendants were Townstone Financial Inc. and its chief executive. Townstone ran a radio show on which the chief executive allegedly made disparaging remarks about majority-Black neighborhoods. The CFPB alleged that these comments violated ECOA regulations that prohibited such discriminatory conduct to prospective applicants. The defendants asserted that ECOA's express language established that the Act does not apply to prospective applicants.

In dismissing the action, the court rejected the CFPB's reliance on Regulation B, which starting in 1975 stated that discriminatory discouragement against "applicants or prospective applicants" is prohibited. The court noted that ECOA defines an applicant as "a person who applies to a creditor for credit", and states that it applies in regard to "applicants", but does not say it applies to "prospective applicants". Given that this statutory language was unambiguous, the court did not need to do a complete *Chevron* framework analysis of the CFPB's asserted authority under the statute. Noting that "[t]he CFPB's authority to enact regulations is not limitless", the court dismissed the action with prejudice.

The case is significant in several ways. First, it was the first time the CFPB had brought an ECOA discrimination case against a non-bank mortgage lender. Additionally, the case indicates courts' apparent willingness to restrain the CFPB when it overreaches its statutory authority. Equally significant, if upheld on appeal, the case would seem to limit the scope of the CFPB's discrimination enforcement authority, so as to not include general advertising or other outreach to prospective applicants. The case will remain worth following and paid close attention to as the case moves through the appellate process and other courts consider the rationale of its holding.

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