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Banks Slow to Follow Trump's Lead on Disparate Impact

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Chris J. Willis

Chris Willis, co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice Group, was quoted in the May 1, 2025 *American Banker* article, "Banks Slow to Follow Trump's Lead on Disparate Impact."

"This disparate impact regulation has been a real exciting political football match," said Chris Willis, a partner at the law firm Troutman Pepper Locke who advises financial firms facing government investigations.

According to Willis, the back-and-forth has taught many banks to tune out all the changes, for their own sake. One particular concern involves relatively long statutes of limitations. If a future Democratic administration begins enforcing disparate impact again, federal regulators may hold banks liable for policies they had in place several years ago. And even if the policies were only in effect during the anti-disparate-impact Trump era, Willis said, that excuse is unlikely to work in court.

"There's a limit for institutions that take a long view of their business operations and of their regulatory compliance," he said. "They don't feel they can realistically change the direction of their operations so wildly every four years or eight years."

The other problem for banks is that changing their lending policies so frequently would simply be bad for business.

"If you go to the business and say, 'OK, all this stuff in underwriting we told you not to do it is now fair game, but you may have to turn it off again in four years,'" Willis said, "the business doesn't want to do that, because that's very disruptive to them. … They don't want to be flipping back and forth like a weather vane in the political winds."

What, then, will be the impact of Trump's order? For larger, more established lenders, Van Tol said, the recurring swings of the political pendulum may have a "mitigating effect" on how much they change their practices.

"Highly regulated institutions — banks, brand-name mortgage companies — will be more likely to continue with an approach that considers disparate impact," he said.

But for smaller firms, it may be a different story.

"What sometimes happens is … startup companies, less well-known companies, sort of fly-by-night operations, begin to take advantage of the fact that the government's no longer really enforcing to this standard," he said. "So you could start to see more discrimination at the edges of the market, and that's likely to be one of the outcomes of the executive order."

Another factor to consider is that Trump's April 23 executive order does not change the law. It only changes — for the time being — how certain laws are enforced by the federal government. And, importantly for banks, the government is not the only plaintiff that can sue for discrimination.

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