LDF Legal Defense Fund

Advancing racial justice since1940

December 15, 2025

Comment Intake—2025 NPRM ECOA
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Via regulations.gov

To Whom It May Concern:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) submits the following comment opposing the Consumer Financial Protection Bureau's (CFPB or the Bureau) proposed changes to Regulation B.[1] More than fifty years after Congress passed the Equal Credit Opportunity Act (ECOA),[2] Black people are still more likely to pay more for a home, car, or small business loan and to be denied a loan in the first place.[3] These racial disparities cost the U.S. economy billions of dollars each year.[4] Despite these stark realities, the CFPB now proposes to revise Regulation B, which describes the obligations of banks and other covered lenders under ECOA, to remove protections against unjustified discriminatory policies (disparate impact discrimination); narrow the definition of prohibited "discouragement" to allow discrimination against prospective applicants; and rescind provisions permitting covered lenders from creating Special Purpose Credit Programs (SPCPs) to expand access to credit to underserved borrowers. These changes are inconsistent with the plain text of ECOA, the statute's legislative history, and numerous court decisions. Moreover, the CFPB has failed to offer a reasoned explanation for why it now seeks to change the federal government's own long-held interpretation of the statute across many administrations. We urge the CFPB to withdraw its proposed rule and maintain the current regulations.

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[1] Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg 50901 (Nov. 13, 2025), https://www.federalregister.gov/documents/2025/11/13/2025-19864/equal-credit-opportunity-act-regulation-b (hereinafter "Proposed Rule").

[2] 15 U.S.C. § 1691 *et seq*.

[3] *E.g., The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.,* 116th Cong. 14-15 (2019) (statement of Aaron Glantz, Senior Reporter, Reveal From the Center for Investigative Reporting), *available at* https://www.congress.gov/116/meeting/house/109303/witnesses/HHRG-116-BA15-Wstate-GlantzA-20190409.pdf; KRISTEN BROADY, ET AL., BROOKING INST., AN ANALYSIS OF FINANCIAL INSTITUTIONS IN BLACK-MAJORITY COMMUNITIES: BLACK BORROWERS AND DEPOSITORS FACE CONSIDERABLE CHALLENGES IN ACCESSING BANK SERVICES (2021), https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/; Mels de Zeeuw & Brett Barkley, *Mind the Gap: Minority-Owned Small Businesses' Financing Experiences in 2018*, CONSUMER & CMTY. CONTEXT, A FED. RESERVE SYST. PUB., Vol. 1, No. 2, p. 16 (Nov. 2019), https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm.

[4] Aria Florant, et al., *The case for accelerating financial inclusion in black communities*, McKinsey Inst. for Black Econ. Mobility Ex. 3 (Feb. 25, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-case-for-accelerating-financial-inclusion-in-black-communities.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest racial justice law organization.[5] Since its inception, LDF has worked to increase fairness and equal opportunity for Black communities in all aspects of the economy. LDF argued the seminal 1971 U.S. Supreme Court case *Griggs v. Duke Power Company*, which recognized that Title VII of the Civil Rights Act of 1964 prohibited disparate impact discrimination.[6] LDF has since argued, and the Supreme Court has recognized, that other federal statutes like the Fair Housing Act (FHA)[7] include these important protections. LDF also participated as an *amicus* in *Alexander v. Sandoval,*[8] where the Supreme Court declined to extend a private right of action for disparate impact under Title VI but left agencies' discriminatory effects regulations untouched.[9] In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black communities economic mobility and opportunity.

I. Congress Intended ECOA to Ensure Robust Enforcement Against Racial Barriers to Credit Access and Implicitly Ratified the Current Version of Regulation B.

Prior to ECOA's passage, Black people had long been excluded from credit access due to government practices like redlining.[10] Private lenders also engaged in numerous discriminatory housing and lending practices, from requiring Black borrowers to make higher down payments and adopt faster repayment schedules, to refusing to approve loans on the basis of applicants' race.[11] Many borrowers of color could only access credit in the form of high-cost loans or contract sales[12] that imposed higher costs in exchange for limited, if any, home equity—if they could access credit at all.[13]

Congress designed ECOA to ensure equal access to credit and encourage lenders to take active steps to increase access to credit for borrowers who had historically been excluded. While the statute initially prohibited discrimination based on a credit applicant's sex or marital status,[14] Congress swiftly amended it to prohibit lenders from discriminating based on race, color, religion, national origin, or age, among other characteristics.[15] It also explicitly permitted creditors to create SPCPs, which offer credit to specific groups and are often targeted at

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[5] LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.
[6] 401 U.S. 424 (1971).
[7] *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) (hereinafter "Inclusive Communities Project").
[8] Brief of NAACP Legal Defense & Educational Fund, Inc., et al., *Alexander v. Sandoval*, No. 99-1908 (Dec. 13, 2000), *available at* 2000 WL 1845997.
[9] 532 U.S. 275, 281 (2001) (hereinafter "Sandoval").
[10] *E.g.,* Testimony of Richard Rothstein, Distinguished Fellow of the Economic Policy Institute and Senior Fellow, Emeritus, NAACP Legal Defense and Educational Fund, Inc. on behalf of himself and Sherrilyn Ifill President and Director-Counsel NAACP Legal Defense and Educational Fund, Inc. Before the U.S. Senate Committee on Banking, Housing & Urb. Affairs, *Separate and Unequal: The Legacy of Racial Discrimination in Housing* 6 (Apr. 13, 2021), https://www.naacpldf.org/wp-content/uploads/LDF-Testimony-Senate-Banking-Racial-Discrimination-in-Housing_FINAL.pdf.
[11] U.S. COMM'N ON CIV. RTS., BOOK 4: HOUSING (1961), https://www2.law.umaryland.edu/marshall/usccr/documents/cr11961bk4.pdf.
[12] Mehrsa Baradaran, *Jim Crow Credit,* 9 UC IRVINE L. REV. 887, 893 (2019), *available at* https://scholarship.law.uci.edu/ucilr/vol9/iss4/4
[13] Lisa Rice & Deidre Swesnik, Nat'l Fair Hous. Alliance, Discriminatory Effects of Credit Scoring on Communities of Color, Symposium on Credit Scoring and Credit Reporting Sponsored by Suffolk University Law School and National Consumer Law Center (Jun. 6-7, 2012), *available at* NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf
[14] Equal Credit Opportunity Act of 1974, Pub. L. No. 93-495, § 502, 88 Stat. 1500, 1521 (1974).
[15] Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94-239, § 701, 90 Stat. 251, 251 (1976).

economically disadvantaged persons or to meet special social needs.[16] In doing so, Congress made clear that programs that extend credit to borrowers who might otherwise be excluded were lawful, including programs targeted based on race.[17] Congress vested first the Federal Reserve Board and later the CFPB with broad authority to issue regulations "to effectuate the purposes of the [statute], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith."[18] Courts have since found ECOA must be construed broadly to effectuate its purpose of ending discrimination in credit applications.[19]

Congress has ratified the current version of Regulation B, including its protections against disparate impact discrimination and discouragement of prospective borrowers. Regulation B has been in place in substantially the same form since it was first published in 1975.[20] These regulations have included language explicitly prohibiting disparate impact discrimination and discouragement of prospective applicants, and permitting special purpose credit programs since 1977.[21] In 1991, when Congress amended ECOA,[22] it gave the Attorney General the power to bring cases challenging a pattern or practice of discrimination in order to address a lack of appropriate enforcement.[23] Congress specifically mandated the enforcing agency to refer a case to the Attorney General whenever the agency believed a lender "has engaged in a pattern or practice of discouraging . . . applications for credit,"[24] implicitly embracing the definition of discouragement already codified in Regulation B. Later, in 2010, Congress transferred regulatory and enforcement authority by statute from the Federal Reserve to the newly-created CFPB[25]—again, to strengthen federal enforcement power and enhance consumer protections.[26] In each of these subsequent amendments, Congress has never sought to alter or contradict the agencies' interpretations of ECOA. Indeed, the proposed rule runs counter

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[16] Pub. L. No. 94-239, § 701(c), 90 Stat. 251, 251 (1976).
[17] S. REP. 94-589, at 404. *See also* 121 Cong. Rec. 27, 138 (1975) (quoting the Chairperson of the House Subcommittee responsible for drafting the SPCP provision provided example: "When we wrote 701(c)(3) in the Subcommittee last year, we definitely had in mind programs offered by banks and other profitmaking organizations to extend credit to . . . minority groups, but we did want firm standards to be set.") (Rep. Annunzio); 121 Cong. Rec. 16,237, 16,743 (1975) (Rep. Wylie) ("The city of Columbus has been an outstanding and shining example of a community which has made credit money available to minority enterprises under arrangements which encourage the loaning [to] minority businessmen and we want to be sure that such lending practice would not be discouraged . . . . the loan of money to minority enterprises by businessmen to a community is not unlawful per se and can, in effect, be made the basis of affirmative discrimination."), available at: https://www.govinfo.gov/app/details/GPO-CRECB-1975- pt13/.
[18] Pub. L. No. 93-495, § 703, 88 Stat. at 1522.
[19] *E.g. Consumer Financial Protection Bureau v. Townstone Financial, Inc.*, 107 F.4th 768, 776 (7th Cir. 2024)
[20] *Id.* at 771; *see* 40 Fed. Reg. 49,298 (Oct. 22, 1975); 42 Fed. Reg. 1242 (Jan. 6, 1977) (following the amendment of ECOA, amending Regulation B to prohibit discouragement on a "prohibited basis," which the regulations defined as "race, color, religion, national origin, sex, marital status, or age"); 81 Fed. Reg. 25,323, 25,325 (Apr. 28, 2016) (republishing Regulation B after enforcement and rulemaking authority was transferred to the CFPB).
[21] 42 Fed. Reg. 1242 (Jan. 6, 1977).
[22] FDIC Improvement Act of 1991, Pub. L. No. 102-242, § 223, 105 Stat. 2236, 2306 (1991).
[23] S. REP. No. 102-167, at 92–93 (1991) ("The Committee also found problems with fair lending enforcement, even after evidence of discrimination was identified. The regulatory agencies showed great reluctance to take strong action against any depository institution found to be discriminating. ... [T]he Justice Department would likely take a more appropriate approach to remedying discrimination. ... The legislation, therefore, requires the financial regulatory agencies to refer suspected substantive pattern and practice cases of discrimination under the [ECOA] to the Justice Department."); 137 Cong. Rec. S2519 (daily ed. Feb. 28, 1991) (statement of Sen. Dixon) ("The subcommittee heard troubling statistics which showed that blacks and minority neighborhoods got fewer loans and got rejected for loans more often than whites and white neighborhoods—even when incomes were comparable. We also heard about the inadequate regulatory response to this situation.").
[24] 15 U.S.C. § 1691e(g).
[25] Dodd-Frank Wall Street Reform & Consumer Protection Act, Pub. L. No. 111-203, § 1085, 124 Stat. 1376, 2083–84 (2010).
[26] Marc Jarsulic & Lilith Fellowes-Granda, *Project 2025 Would Allow Financial Disaster To Bolster Wall Street's Bottom Line,* CTR. FOR AM. PROGRESS (Jul 1, 2024), https://www.americanprogress.org/article/project-2025-would-allow-financial-disaster-to-bolster-wall-streets-bottom-line/

to the intent behind each of these amendments by weakening the federal government's ability to address discrimination in lending and expand credit access.

Because the framework created by Regulation B has been stable for approximately 50 years, it has created substantial reliance interests for both regulated lenders and borrowers. Borrowers rely on federal financial regulators and the U.S. Department of Justice to examine credit practices in order to protect them from discrimination. Lenders rely on these regulations to provide additional clarity on their legal obligations, easing compliance burdens. As discussed further below, because courts have held ECOA prohibits disparate impact discrimination and discouragement of prospective applicants, the proposed regulations do not change what covered lenders must do to follow the law. However, as the CFPB acknowledges, the proposed rule would harm borrowers while leaving lenders exposed to substantial legal risk as they are forced to interpret the legal landscape without adequate guidance.[27] Ultimately, the proposed rule would weaken the economy as a whole[28] by widening the racial wealth gap[29] and stunting new business development.[30]

II. The CFPB Should Not Weaken ECOA Enforcement, as Black People Continue to Face Racial Discrimination and Other Barriers in Accessing Loans.

The CFPB's proposed rule arbitrarily and capriciously seeks to weaken ECOA enforcement despite the ongoing barriers borrowers face. Black people in particular still struggle to access credit on equal terms and at the same rate as white borrowers. While the discriminatory policies are sometimes less explicit than they were prior to ECOA's passage, the harms are no less significant. Even with Regulation B in place, banks and other lenders charge Black borrowers more for loans and deny them credit at higher rates:

- Redlining: Lenders continue to avoid providing credit services to individuals living in communities of color and discourage them from applying for credit in the first place.[31] In 2021, majority Black census tracts were much less likely to have a bank branch than other census tracts.[32] In several cases, banks have allegedly avoided offering credit in some of the same neighborhoods that were first redlined in the 1930s.[33]

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[27] Proposed Rule, *supra* note 1, at 50915-19.

[28] DANA M. PETERSON & CATHERINE L. MANN, CITI GPS, CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S. (2020), https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922 (finding that the United States' aggregate economic output would have been $16 trillion higher since 2000 if we had closed racial gaps in wages, access to higher education, lending, and mortgage access).

[29] Nick Noel, et al., *The economic impact of closing the racial wealth gap*, MCKINSEY & CO. (Aug. 13, 2019), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap (estimating that the racial wealth gap alone will cost the U.S. economy between $1 trillion and $1.5 trillion between 2019 and 2028);

[30] MCKINSEY & CO., UNDERESTIMATED START-UP FOUNDERS: THE UNTAPPED OPPORTUNITY (Jun. 23, 2023), https://www.mckinsey.com/featured-insights/diversity-and-inclusion/underestimated-start-up-founders-the-untapped-opportunity (finding that equal parity in Black and Latino business ownership compared to their share of the population, as well equalization of their business revenues with those of their peers, would generate an additional $1.6 trillion and $2.3 trillion respectively).

[31] *E.g.,* Press Release, U.S. Dep't of Just., Justice Department Secures Over $31 Million from City National Bank to Address Lending Discrimination Allegations (Jan. 23, 2023), https://www.justice.gov/opa/pr/justice-department-secures-over-31-million-city-national-bank-address-lending-discrimination.

[32] KRISTEN BROADY, ET AL., BROOKING INST., AN ANALYSIS OF FINANCIAL INSTITUTIONS IN BLACK-MAJORITY COMMUNITIES: BLACK BORROWERS AND DEPOSITORS FACE CONSIDERABLE CHALLENGES IN ACCESSING BANK SERVICES (2021), https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/.

[33] Press Release, U.S. Dep't of Justice, Justice Department Reaches Significant Milestone in Combating Redlining Initiative After Securing Over $107 Million in Relief for Communities of Color Nationwide (Oct. 19, 2023),

- Mortgage Lending: Underwriting standards fail to account for the cumulative effects of historic and ongoing discrimination. Even when controlling for income, Black mortgage applicants are more likely to be denied credit, often due to factors such as limited positive credit history, higher debt-to-income ratios, or an inability to accumulate a large down payment.[34] These factors are directly linked to historic racism throughout the financial system—racism that, although nominally outlawed, continues to shape credit access today. A 2018 study of 61 metro areas across the country found Black and Latino homebuyers were more likely to be denied a conventional mortgage than their white counterparts, even when they: 1) had the same income; 2) tried to borrow the same amount of money; and 3) wanted to buy in the same neighborhood.[35] A 2022 FDIC study likewise found Black borrowers are more likely to be denied home loans and pay higher interest rates than white borrowers, even when controlling for other factors.[36] A report by the National Association of Real Estate Brokers published the same year found similar results.[37]

  The student loan crisis among Black borrowers illustrates this dynamic. Black borrowers are more likely to rely on student loans, and at higher amounts, and to devote a larger share of their income to student loan repayment.[38] Even when borrowers qualify for income-driven repayment plans with a $0 monthly payment, that $0 obligation is not fully recognized in underwriting for mortgages backed by the Federal Housing Administration,[39] which Black borrowers disproportionately rely on.[40] As a result, these borrowers face compounded barriers: they struggle to save for down payments while simultaneously failing to meet debt-to-income requirements, even when their income would otherwise support a mortgage payment. These challenges persist alongside labor market disparities that further constrain wealth-building opportunities. It is likely that

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https://www.justice.gov/opa/pr/justice-department-reaches-significant-milestone-combating-redlining-initiative-after.

[34] Laurie Goodman & Jun Zhu, *How People-Based Special Purpose Credit Programs Can Reduce the Racial Homeownership Gap*, URBAN INST. (Apr. 22, 2022), https://www.urban.org/urban-wire/how-people-based-special-purpose-credit-programs-can-reduce-racial-homeownership-gap.

[35] *The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.*, 116th Cong. 14-15 (2019) (statement of Aaron Glantz, Senior Reporter, Reveal From the Center for Investigative Reporting), *available at* https://www.congress.gov/116/meeting/house/109303/witnesses/HHRG-116-BA15-Wstate-GlantzA-20190409.pdf.

[36] Stephen Popick, *Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data*, FED. DEPOSIT INS. CO. (June 2022), https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

[37] Debra Kamin, *Discrimination Seeps Into Every Aspect of Home Buying for Black Americans*, N.Y. TIMES (Nov. 29, 2022), https://www.nytimes.com/2022/11/29/realestate/black-homeowner-mortgage-racism.html?smid=tw-nytimes&smtyp=cur. *See generally* JAMES H. CARR & MICHAEL ZONTA, NATIONAL ASS'N OF REAL ESTATE BROKERS, INC., 2025 STATE OF HOUSING IN BLACK AMERICA: INCREASING HOMEOWNERSHIP IN AN UNCERTAIN ECONOMIC CLIMATE (2025), https://irp.cdn-website.com/33c9b1a8/files/uploaded/2025+State+of+Housing+in+Black+America+Report+Web+Based+Version.pdf.

[38] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers Are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, STUDENT BORROWER PROT. CTR. (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/; UMAIR TARBHAI & ETHAN POLLACK, JOBS FOR THE FUTURE, RACIAL DISPARITIES IN STUDENT LOAN AFFORDABILITY (2024), https://files.eric.ed.gov/fulltext/ED660483.pdf

[39] U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2021-13: Student Loan Payment Calculation of Monthly Obligation (Jun. 17, 2021), https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-13hsgml.pdf

[40] Natalie Cheng, *2021: As Non-CRA-Regulated Mortgage Lending Increases, Black, Latino, and Lower-Income Groups Receive Higher Cost Loans*, WOODSTOCK INST. (Mar. 28, 2023), https://woodstockinst.org/research/webinar-costlier-loans-for-blacks-and-latinos/

the crisis will worsen given the substantial changes made to the student loan system in the One Big Beautiful Bill Act.[41]

- Small Business Lending: According to the Federal Reserve, creditworthy Black-owned firms were seven percent less likely to get approved for business loans overall, and 20 percent less likely to obtain credit at large and small banks, than other businesses, even when controlling for business characteristics and performance.[42] When Black-owned businesses are approved for financing, it is often at substantially lower levels than white-owned businesses. For example, the Federal Reserve found only approximately 14 percent of Black small business owners small business owners received all the financing they sought from banks in 2021, compared to 34 percent of white small business owners.[43] Most recently, the majority of Black-owned businesses struggled to access critical pandemic funding through the $800 billion Paycheck Protection Program because of structural barriers and the use of banks as intermediaries.[44]

- Automobile Lending: Automobile lenders' approval rates of Black and Latino applicants' is 1.5 percentage points lower than the approval rates for other, equally creditworthy applicants.[45] These borrowers pay more on average for these loans even though they are less likely to default.[46]

- High-Cost Small Dollar Lending: Payday lenders are more likely to be located in Black and Latino neighborhoods and borrowers of color make up almost half of all payday loan users.[47] These predatory loans trap borrowers in a cycle of debt that is almost impossible to escape and too often leads to extreme financial and personal hardship.

The CFPB provides no data showing that gaps in credit access for Black and other underserved borrowers have closed, because that data does not exist. Given the ongoing discrimination faced by Black borrowers, the CFPB and other federal financial regulators should be stepping up enforcement actions, not rolling back protections.

Regulation B's protections against disparate impact discrimination and discouragement are even more important as lenders increasingly use AI and other algorithmic decision-making systems to make credit determinations. These technologies frequently replicate and amplify existing discrimination and bias, denying Black people equal access to credit and other

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[41] *See Public Funds, Private Politics: Examining Bias in the Truman Scholarship Program*: *Hearing Before House Subcommittee on Higher Education and Workforce Development* 119th Cong. (Dec. 3, 2025) (written testimony of Ashley Harrington, Senior Policy Counsel, NAACP Legal Defense & Educational Fund, https://docs.house.gov/meetings/ED/ED13/20251203/118716/HHRG-119-ED13-Wstate-HarringtonA-20251203.pdf (highlighting the costs and implications of the One Big Beautiful Bill Act, which represent an alarming shift in U.S. higher education policy, including $300 billion in cuts and changes to the higher education funding system and threaten to make college less accessible and more financially precarious for millions of students, particularly for Black students, low-income students, and other students of color).

[42] PETERSON & MANN, *supra* note 29. *https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922supra* note 29.

[43] ANN MARIE WIERSCH, ET AL., U.S. FED. RESERVE SYS., THE SMALL BUSINESS CREDIT SURVEY 2022 REPORT ON EMPLOYER FIRMS 18 (2022).

[44] Sergey Chernenko et. al., *Applications or Approvals: What Drives Racial Disparities in the Paycheck Protection Program?*, FED. RESERVE BANK OF NEW YORK STAFF REPORTS, no. 1060 (May 2023; revised July 2024).

[45] Alexander W. Butler, et al., Racial Discrimination in the Auto Loan Market, 36 REV. FINANCIAL STUDIES 1 (2023), https://doi.org/10.1093/rfs/hhac029.

[46] *Id.*

[47] Raphaël Charron-Chénier, *Predatory Inclusion in Consumer Credit: Explaining Black and White Disparities in Payday Loan Use*, 35 SOCIOL. FORUM 370 (2020), https://doi.org/10.1111/socf.12586

opportunities often on a vast scale at a rapid pace.[48] For example, advertising delivery algorithms can target advertisements to particular groups based on race, gender, or other characteristics,[49] which can violate ECOA by denying borrowers information about credit opportunities, targeting borrowers for predatory products or services, discouraging potential borrowers, or offering different prices or conditions to some borrowers.[50] Similarly, where a person attended college should not decide the terms of a loan—but a company called Upstart incorporated where the borrower attended college and the average SAT and ACT scores for different colleges and universities into their algorithm.[51] Upstart's algorithm divided schools into tiers based on standardized test scores.[52] The higher the incoming class's average standardized test scores, the higher the school's tier, and the more favorable the terms offered to alumni who attended that school.[53] Because of embedded biases in standardized testing and higher education admissions, schools with higher percentages of students of color were assigned to lower tranches.[54] Ninety-five percent of Historically Black Colleges and Universities (HBCUs) were in the bottom rankings; just two were in the top tier.[55] As a result, a hypothetical graduate of the nationally-known HBCU Howard University who applied for a loan through Upstart's lending platform was charged nearly $3,499 more over the life of a five-year loan when compared to a similarly-situated graduate of New York University, a predominantly white institution.[56] After LDF and the Student Borrower Protection Center sent a demand letter outlining how its algorithm likely violated the Equal Credit Opportunity Act and the Fair Housing Act, Upstart agreed to a fair lending monitorship.[57] The CFPB should be expanding its guidance, regulations, and enforcement to address the harms created by AI and other algorithmic technologies, not rolling back longstanding, critical protections.

III. The Proposed Changes to Regulation B are Contrary to Law.

The CFPB's proposed rule contradicts ECOA's statutory text, legislative history, and binding precedent without an adequate or reasoned explanation for the changes. It should be withdrawn.

When an agency substantially alters an existing regulation, it must provide a reasoned explanation for the change.[58] In particular, when rescinding a rule, an agency must explain its departure from the prior policy and show the new policy is supported by "good reasons" and better, in the agency's belief, than the previous policy, particularly in light of any serious reliance interests at stake.[59] However, the CFPB offers little explanation, data, or research for the

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[48] Meredith Broussard, ARTIFICIAL UNINTELLIGENCE: HOW COMPUTERS MISUNDERSTAND THE WORLD 115 (2018).
[49] *See* Levi Kaplan, et al., *Measurement and Analysis of Implied Identity in Ad Delivery Optimization*, PROC. OF 22ND ACM INT. MEASUREMENT CONF. 195, 195–96 (2022)
[50] *See also* Carol A. Evans & Theresa Miller, Fed. Reserve Bd., *From Catalogs to Clicks: The Fair Lending Implications of Targeted, Internet Marketing,* COMPLIANCE OUTLOOK 2019, vol. 3, https://www.consumercomplianceoutlook.org/2019/third-issue/from-catalogs-to-clicks-the-fair-lending-implications-of-targeted-internet-marketing/.
[51] Student Borrower Protection Ctr., EDUCATIONAL REDLINING 16 (2019), https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf (EDUCATIONAL REDLINING); Letter from LDF & Student Borrower Protection Ctr. to Dave Girouard, CEO of Upstart Network, Inc. (Jul. 30, 2020), https://www.naacpldf.org/wp-content/uploads/2020-07-30-FINAL-Demand-Letter.pdf.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*; Press Release, LDF & Student Borrower Protection Ctr., NAACP Legal Defense and Educational Fund and Student Borrower Protection Center Announce Fair Lending Testing Agreement with Upstart Network (Dec. 1, 2020), https://protectborrowers.org/naacpldf-sbpc-upstart-agreement/
[58] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983)
[59] *FCC. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

changes. While the CFPB cites two recent executive orders in its preamble to the proposed rule,[60] it does not claim—as it cannot—that a mere change in the policy position of the administration is sufficient to justify disturbing the substantial reliance interests created by the prior rule. Moreover, the limited "reasons" the CFPB provides for the change, ignore, or misstate case law.

A. Disparate Impact

Courts have long recognized that ECOA supports claims based on both disparate treatment and unjustified discriminatory effects, or disparate impact.[61] The proposed rule's authorization of disparate impact discrimination is inconsistent with this longstanding precedent and would undermine the CFPB's ability to carry out the purposes of ECOA. While the CFPB argues the statute lacks "effects based language," it can point to nowhere in the statute, the legislative history, or the court decisions interpreting the Act that supports the idea that ECOA requires express intent to discriminate on the part of the credit provider.

The plain text of ECOA broadly prohibits discrimination, including unjustified discriminatory effects. ECOA states it is unlawful for any "creditor to discriminate" against an applicant "with respect to any aspect of a credit transaction" on the basis of race or other protected characteristics.[62] ECOA defines "creditor" broadly to include "any person who regularly arranges for the extension, renewal, or continuation of credit."[63] As with disparate impact claims under the FHA, under the current rules, a plaintiff states a disparate impact claim under ECOA by showing a facially neutral policy or practice causes a significant adverse or disproportionate effect on members of a protected class.[64] However, a lender is only liable if the policy is "not justified by a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact."[65] This broad understanding of discrimination reflects the prevailing legal framework at the time ECOA was enacted in 1974 and amended in March 1976—before *Washington v. Davis*.[66] At the time, courts had not firmly established the distinction between impact and intent in Equal Protection Clause case law[67] or the civil rights statutes giving life to its principles, and lower courts still held the Constitution forbade both forms of discrimination.

Beginning in 1979, just three years after its passage, numerous courts have held ECOA authorizes disparate impact liability,[68] relying on the statute's broad prohibition against discrimination "with respect to any aspect of a credit transaction" and its focus on outcomes, not merely intent.[69] This interpretation is well-established in federal case law and is consistent with

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[60] Proposed Rule, *supra* note 1, at 50902.
[61] *See, e.g., Miller v. Am. Exp. Co.*, 688 F.2d 1235, 1239 (9th Cir. 1982) (internal citations omitted) (holding that ECOA prohibits disparate impact discrimination, citing to prior case law and ECOA's legislative history); (applying ADEA, Title VII, and FHA's disparate impact framework to ECOA claim); *Miller v. Countrywide Bank, N.A.*, 571 F. Supp. 2d 251, 255 (D. Mass. 2008) (same); *Powell v. Am. Gen. Fin., Inc.*, 310 F. Supp. 2d 481, 487 (N.D.N.Y. 2004) (same); *see also* note 71 and accompanying text.
[62] 15 U.S.C. § 1691(a)(1).
[63] 15 U.S.C. § 1691(e).
[64] *See Taylor v. Accredited Home Lenders, Inc.*, 580 F. Supp. 2d 1062, 1068 (S.D. Cal. 2008) (applying ADEA, Title VII, and FHA's disparate impact framework to ECOA claim).
[65] 12 C.F.R. Part 202 comment 6(a)-2.
[66] 426 U.S. 229 (1976).
[67] Olantude C.A. Johnson, *The Agency Roots of Disparate Impact*, 49 HARV. C.R.-C.L. L. REV. 125, 138 (2014).
[68] *Vander Missen v. Kellogg-Citizens Nat. Bank of Green Bay*, 481 F. Supp. 742, 745–46 (E.D. Wis. 1979) (noting ECOA's legislation history and implementing regulation).
[69] *See* 15 U.S.C. § 1691(a).

the consensus reflected in judicial decisions across multiple circuits.[70] No court has held ECOA only prohibits disparate treatment.

The legislative history of ECOA further confirms this interpretation, which the Bureau expressly acknowledges. Congress intended ECOA to reach not only overtly discriminatory conduct, but also neutral policies that unnecessarily produce discriminatory effects. For example, as the Senate report on the 1976 amendments to the bill explained, "In determining the existence of discrimination . . . *courts or agencies are free to look at the effects of a creditor's practices* as well as the creditor's motives or conduct in individual transactions" (emphasis added).[71] The Senate went on to reference Title VII's prohibition on disparate impact discrimination, as interpreted by *Griggs*.[72] Congress thus intended to empower enforcement agencies to address systemic barriers to credit access that could not be remedied through intent-based enforcement alone.

The Supreme Court's reasoning in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project,*[73] when the Court last considered whether a federal statute prohibits disparate impact discrimination, further supports this conclusion. There, the Court recognized disparate impact liability is essential to fulfilling the FHA's remedial purpose by addressing structural discrimination that evades proof of intent.[74] ECOA, like the FHA, was enacted to dismantle entrenched barriers to opportunity and should be interpreted in light of that purpose.

Nor is the CFPB's new interpretation of ECOA required in order to avoid constitutional concerns. The Supreme Court has never held that a prohibition on disparate impact discrimination is unconstitutional or that it requires impermissible race-based decisions. In fact, the Supreme Court has explicitly upheld the disparate impact theory of discrimination as

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[70] *Garcia v. Johanns*, 444 F.3d 625, 633 n.9 (D.C. Cir. 2006) ("[a]ssuming without deciding that a disparate impact claim is cognizable under ECOA"); *Golden v. City of Columbus*, 404 F.3d 950, 963 n. 11 (6th Cir.2005) (assuming that "disparate impact claims can permissible under ECOA"); *Midkiff v. Adams Cnty. Reg'l Water Dist.*, 409 F.3d 758, 772 (6th Cir. 2005) (same); *Bhandari v. First Nat'l Bank of Commerce*, 808 F.2d 1082, 1101 (5th Cir.1987), vacated and remanded on other grounds, 492 U.S. 901 (1989) (stating that national origin discrimination under ECOA can be shown "by analogy to *Griggs v. Duke Power* and its progeny" based on showing the effect of a credit policy); *Haynes v. Bank of Wedowee*, 634 F.2d 266, 270 (5th Cir. 1981) (agreeing that disparate impact claims are cognizable under ECOA); *Miller*, 688 F.2d at 1239 (internal citations omitted) (holding that ECOA prohibits disparate impact discrimination, citing to prior case law and ECOA's legislative history); *Palmer v. Homecomings Fin. LLC*, 677 F. Supp. 2d 233, 240 (D.D.C. 2010) ("There appears to be agreement among the federal courts that disparate impact claims are permissible under the ECOA."); *Taylor,* 580 F. Supp. 2d at 1067; *Miller,* 571 F. Supp.2d 251; *Powell*, 310 F. Supp.2d at 487 (recognizing disparate impact claim under ECOA); *Coleman v. Gen. Motors Acceptance Corp.*, 196 F.R.D. 315, 325 (M.D. Tenn. 2000) (collecting authorities), *vacated on other grounds*, 296 F.3d 443 (6th Cir. 2002); *A.B. & S. Auto Serv., Inc. v. S. Shore Bank of Chicago*, 962 F. Supp. 1056, 1060 (N.D.Ill.1997); *Cherry v. Amoco Oil Co.*, 490 F. Supp. 1026, 1030 (N.D. Ga. 1980); *Vander Missen*, 481 F. Supp. at 745; *Duarte v. Quality Loan Serv. Corp.*, No. 217CV08014ODWPLA, 2018 WL 2121800, at *4 (C.D. Cal. May 8, 2018) ("ECOA allows for a cause of action for either overtly discriminatory policies or facially neutral policies that have a discriminatory effect."); *Hernandez v. Sutter W. Cap.*, No. C 09-03658 CRB, 2010 WL 3385046, at *4 (N.D. Cal. Aug. 26, 2010) (providing the pleading standard "[t]o state a claim for disparate impact discrimination under the FHA or the ECOA"); *Barrett v. H & R Block, Inc.*, 652 F. Supp. 2d 104, 108 (D. Mass. 2009) (listing cases); *Ramirez v. GreenPoint Mortg. Funding, Inc.*, 2008 WL 2051018 (N.D. Cal. 2008) (finding disparate impact claims cognizable under both the FHA and the ECOA); *Masudi v. Ford Motor Credit Co.*, 2008 WL 2944643 (E.D.N.Y. 2008) (recognizing the ECOA allows disparate impact actions); *Zamudio v. HSBC North America Holdings, Inc.*, 2008 WL 517138 (N.D. Ill. 2008) (filing disparate impact claims are available under both the ECOA and the FHA); .

[71] S. REP. No. 94-589, 94th Cong., 2d Sess. 4, *reprinted in* 1976 U.S. Code Cong. & Ad. News 403, 406. *See also* H. REP. No. 94-210, at 5 (1975).

[72] S. REP. No. 94-589, 94th Cong., 2d Sess. 4.

[73] 576 U.S. 519 (2015).

[74] *Id.* at 521 ("Recognition of disparate-impact claims is also consistent with the central purpose of the FHA, which, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of the Nation's economy.").

recently as 2015.[75] Moreover, properly applied, disparate impact liability does not require racial balancing and is fully consistent with constitutional constraints. In general, the unlawful discriminatory effects of race-neutral policies are addressed through equally race-neutral means. Although the Bureau references *Students for Fair Admissions v. Presidents and Fellows of Harvard College* and *University of North Carolina, et al.* (*SFFA*),[76] this case was limited to the explicit use of race in higher education admissions[77] and did not hold that disparate impact theory is unconstitutional or even address ECOA or disparate impact liability. The CFPB cannot use this case or other irrelevant cases to arbitrarily apply its own newly proposed reasoning to a policy that has been consistently upheld by courts and ratified by Congress.

As noted above, disparate impact enforcement is particularly critical in today's credit markets, given the increasing reliance on artificial intelligence and algorithmic decision-making systems.[78] These systems often replicate or exacerbate historical inequities through proxy variables and opaque modeling, making intent-based enforcement alone insufficient to prevent discrimination.

The Bureau's cost-benefit analysis also weighs strongly in favor of retaining disparate impact regulations. Covered financial institutions will not realize meaningful compliance savings from eliminating these rules, because they remain subject to binding judicial precedent recognizing disparate-impact liability under ECOA as well as the requirements of other federal and state fair lending laws, regardless of the CFPB's unlawful regulatory posture. In contrast, the CFPB itself acknowledges that the proposal will harm consumers and may result in increased credit denials.[79] There is no evidence that any marginal compliance savings would be passed on to consumers.

In short, the proposal's retreat from disparate impact enforcement conflicts with statutory text, legislative history, and settled case law. It would also materially impair ECOA's core purpose of ensuring equal access to credit.

B. Discouragement

The CFPB proposes to significantly narrow the definition of "discouragement" to permit discriminatory lending activities that have long been prohibited. Regulation B currently provides that, "[a] creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application."[80] The current rule reflects a basic truth: because you cannot apply for an opportunity you do not see, discriminatory advertising and similar practices place practical barriers in front of Black and other historically excluded borrowers that prevent them from accessing credit.

The CFPB proposes to limit these protections only to people who have actually "requested or received an extension of credit" and exclude prospective borrowers.[81] This proposal explicitly contradicts circuit court precedent. In *CFPB v. Townstone Financial, Inc.*, the CFPB brought an enforcement action against a Chicago-area lender, Townstone, after its owner made consistent remarks on Townstone's radio show and podcast demonstrating bias

[75] *Id.*
[76] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).
[77] *Id.*
[78] Nat'l Fair Housing Alliance, Comment Letter on Equal Credit Opportunity Act (Regulation B) Proposed Rule (Dec. 15, 2025).
[79] Proposed Rule, *supra* note 1, at 50916.
[80] 12 C.F.R. § 1002.4(b)
[81] Proposed Rule, *supra* note 1, at 50922.

against Black people that discouraged Black borrowers from applying for credit.[82] The U.S. Court of Appeals for the Seventh Circuit held that ECOA prohibits discouragement of prospective applicants in addition to borrowers who have submitted credit applications.[83] No circuit court or the Supreme Court has held otherwise. Yet, contrary to the Seventh Circuit's holding, the proposed changes to the discouragement provision would exclude statements directed at prospective borrowers and explicitly permit statements similar to those made on Townstone's radio show.

The proposed rule also unnecessarily restricts what circumstantial evidence the CFPB can use to establish discouragement to exclude factors federal enforcement agencies commonly rely on to establish intent. Under the CFPB's proposal, Regulation B would permit lenders to discriminate when determining "where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events."[84] The proposed rule would also permit loan officers to use coded language to discourage borrowers, such as "recommending that, before buying a home in a particular neighborhood, consumers investigate, for example, the neighborhood's schools, its proximity to grocery stores, and its crime statistics."[85] Federal agencies have long relied on these factors to establish intentional discrimination in redlining cases. For example, in *CFPB v. Fairway Independent Mortgage Company,* the CFPB, along with the Department of Justice, alleged that a lender in Birmingham, Alabama discouraged Black borrowers by operating branches only in white neighborhoods, relying on business referrals from white neighborhoods, and advertising predominantly to white neighborhoods—even though there was no reasonable explanation for Fairway to focus on or operate in only white neighborhoods.[86] Generally, courts allow parties to rely on a wide range of activity as circumstantial evidence of discriminatory intent. There is no reason to restrict what evidence the CFPB can rely on to demonstrate discrimination by banks.

Finally, the proposed rule would permit banks to encourage specific borrowers to apply for credit.[87] The CFPB explicitly admits this proposal could encourage reverse redlining by encouraging lenders to only advertise to their preferred racial or other groups.[88] Notably, the CFPB's position stands in contrast to agencies like the U.S. Department of Housing and Urban Development (HUD), which recently argued that advertising to particular racial groups can constitute discrimination even if the goal is to ensure equal access to information.[89] While LDF does not agree with HUD's claim, the CFPB does not explain why ensuring Black people and other underrepresented racial groups are aware of opportunities offered to other groups is discriminatory while advertising to only preferred racial groups is permissible.

As with the proposed disparate impact rule changes, these changes do not alter banks' legal obligations but will inflict devastating harm on consumers who could lose access to bank

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[82] For example, the head of Townstone repeatedly disparaged Black neighborhoods, stating "it's crazy [there] on weekends," it's "hoodlum weekend" between Friday and Monday, the police are keeping the neighborhood from "turning into a real war zone"). *Id.* at 772. In one instance, he encouraged listeners to take down Confederate flags before selling their homes. *Id.*

[83] 107 F.4th at 776.

[84] Proposed Rule, *supra* note 1, at 50907.

[85] *Id.* at 50922.

[86] Compl., *CFPB v. Fairway Independent Mortgage Co.*¸ no. 24-cv-01405-SGC (N.D. Al. Oct. 15, 2024), https://www.justice.gov/d9/2024-10/complaint_-_consumer_financial_protection_bureau_v_fairway_independent_mortgage.pdf.

[87] *Id.*

[88] Proposed Rule, *supra* note 1, at 50916 (". . . [C]overed persons may exclude certain groups of consumers from advertising campaigns or may choose to engage less with certain groups of consumers. As a result, some consumers may not be aware of credit products from all available covered persons.").

[89] Rescission of Affirmative Fair Housing Marketing Regulations, 90 Fed. Reg. 23491, 23492 (Jun. 3, 2025), https://www.federalregister.gov/documents/2025/06/03/2025-09991/rescission-of-affirmative-fair-housing-marketing-regulations.

branches, fail to learn about credit opportunities, and lose access to credit over all.[90] The CFPB concedes that the proposed changes will harm "elderly, minority, and low-income consumers" more because these consumers "are more likely to rely on brick-and-mortar branch services instead of online or mobile banking."[91] The CFPB also concedes that lenders will still face legal risks under the FHA and other statutes, diminishing the benefits to covered institutions.[92]

C. Special Purpose Credit Programs

When Congress amended ECOA in 1976, it authorized SPCPs in recognition that prohibiting discrimination alone was insufficient to expand meaningful access to credit.[93] Congress understood that identifying and remedying both intentional and unintentional discrimination was necessary, but not sufficient, and that lenders must also be empowered to proactively create pathways to credit for underserved populations.[94] SPCPs were expressly authorized to serve that purpose.

Importantly, Congress permitted SPCPs to consider race, color, national origin, and sex and properly constructed programs taking these characteristics into account are lawful under ECOA and other civil rights and fair lending laws.[95] Specifically, Congress authorized for-profit entities to establish SPCPs "to meet special social needs," subject to standards prescribed by regulation, and made clear that such programs would not violate ECOA's prohibition on racial discrimination.[96] The Bureau's existing regulations and guidance implement this statutory directive by setting forth clear requirements for SPCPs, including the adoption of a written plan supported by factual evidence demonstrating the need for the program.[97] While Congress authorized SPCPs, it did not mandate their creation, and Regulation B likewise does not require lenders to establish such programs. Rather, it provides a framework describing how SPCPs may be legally structured and implemented if a lender elects to do so. This framework is fully consistent with ECOA's text, legislative history, and applicable judicial precedent.

The Bureau now proposes to disregard the plain text of the statute by significantly restricting these programs. Notably, the proposed rule targets only one of the three categories of SPCPs authorized by statute—those established by for-profit entities—and only with respect to race and certain other protected characteristics. Because the overwhelming majority of SPCPs are established by for-profit entities, the proposal would directly impact or effectively eliminate most existing and future programs benefiting these groups.

Moreover, for the limited set of characteristics the Bureau would continue to permit as a common basis for an SPCP—marital status, religion, age, and receipt of public assistance[98]—the proposal would create new obligations for participating entities, substantially increasing their

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[90] Proposed Rule, *supra* note 1, at 50916-17.
[91] *Id.* at 50917.
[92] *Id.*
[93] Pub. L. No. 94-239, § 701(c), 90 Stat. 251, 251 (1976).
[94] S. REP. No. 94-589 at 404 (1976) (acknowledging "the utility and desirability of 'affirmative action' type credit programs whether offered under governmental auspices or by private credit grantors"). *See also* Proposed Rule, *supra* note 1, at 50910 ("Congress additionally "authorize[d] the Board to prescribe standards [by which] profit-making organizations (commercial creditors)" could offer programs, with the expectation that they be "designed to increase access to the credit market by persons previously foreclosed from it" and that, "without such exemption the consumers involved would effectively be denied credit." (internal citations omitted)).
[95] *See, e.g.,* Bd. of Governors of the Fed. Res. Sys. et al., Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B (Feb. 22, 2022), https://www.occ.gov/news-issuances/bulletins/2022/bulletin-2022-3a.pdf.
[96] 15 U.S.C. § 1691(c).
[97] 12 C.F.R. § 202.8.
[98] Proposed Rule, *supra* note 1, 50909.

burden by requiring individualized assessments for every participant to prove that they would not otherwise receive credit *from the lender* based solely on their membership in the protected class.[99] There is no statutory basis for these changes. To the contrary, they conflict with both the text of ECOA and Congress' clear intent to encourage, not constrain, the responsible use of SPCPs to expand access to credit. Yet the Bureau proposes to make the provision of SPCPs so burdensome that lenders will no longer be able to justify offering them.

In addition to the proposal's lack of statutory or legal bases, it is deeply troubling that the CFPB asserts it lacks data demonstrating ongoing lending disparities.[100] As noted above, this claim is contradicted by extensive evidence, including numerous reports issued by the CFPB itself, findings from other federal regulators, and the Bureau's own enforcement actions, all of which document persistent inequities in credit access—particularly for Black borrowers.[101] These disparities are also reflected in broader housing outcomes. The racial homeownership gap is wider today than it was prior to the enactment of the FHA.[102] As of 2021, the Black homeownership rate stood at approximately 44 percent, compared with roughly 73 percent for white households.[103] Since 1970, Black homeownership growth has been difficult to sustain. Black borrowers and other communities of color were also disproportionately harmed by the 2008 housing crisis, losing more than one trillion dollars in wealth—losses that have largely not been recovered.[104]

Researchers have also documented the limitations of purely place-based SPCPs and investment programs in reducing the racial homeownership gap.[105] Studies show that programs designed to increase Black homeownership are most effective when they are people-based—an approach expressly permitted under ECOA—because it more directly targets the populations facing structural barriers to credit access.[106] Until relatively recently, however, few for-profit SPCPs existed, in large part because federal regulators failed to clearly communicate the scope of ECOA and the ability of lenders to lawfully establish such programs.[107] As a result, the "special social need" that Congress intended SPCPs to address persists, and it does not support the Bureau's proposed restrictions.

Although Congress authorized SPCPs, it did not mandate their creation, and neither ECOA nor Regulation B requires lenders to establish such programs.[108] Regulation B merely sets forth the conditions under which SPCPs may be lawfully structured and implemented if a lender chooses to offer them. The CFPB's proposal transforms this permissive framework into a deterrent regime that discourages participation altogether. In fact, the Bureau acknowledges that the proposal would eliminate or significantly reduce the benefits of SPCPs, directly undermining their economic viability.[109]

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[99] *Id.* at 50912.
[100] *Id.* at 50910.
[101] Nat' Fair Housing Alliance, *supra* note 80.
[102] Urban Inst., Reducing the Racial Homeownership Gap, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap (last visited Dec. 15, 2025).
[103] Goodman & Zhu, *supra* note 35.
[104] Ctr. for Responsible Lending, 2013 Update: The Spillover Effects of Foreclosures (Aug. 2013), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf.
[105] Goodman & Zhu, *supra* note 35.
[106] *Id.*
[107] *See* Orla McCaffrey, *Banks expanding special-purpose credit programs,* Am. Banker (Dec. 27, 2022), https://www.americanbanker.com/news/banks-expanding-special-purpose-credit-programs.
[108] *See* 15 U.S.C. § 1691(c); 12 C.F.R. § 202.8.
[109] Proposed Rule, *supra* note 1, at 50918-19.

IV. Conclusion

Ensuring equal access to credit is not only a legal mandate; it will also strengthen economic stability and growth for all.[110] The proposed changes to Regulation B directly conflict with the text, legislative history, intent, and court interpretations of ECOA. They would harm consumers, undermine lenders' ability to address documented inequities, and provide no demonstrated benefit to the credit market. Rather than unlawfully restricting ECOA enforcement, the CFPB should expand it. The CFPB should also support and encourage the responsible use of SPCPs as one of the most effective tools available to promote equitable access to credit and to foster a stable, inclusive, and healthy credit system.

Thank you for the opportunity to comment. If you have any questions, please contact Ashley Harrington, Senior Policy Counsel (aharrington@naacpldf.org), and Amalea Smirniotopoulos, Senior Policy Counsel and Co-Manager of the Equal Protection Initiative (asminiotopoulos@naacpldf.org).

Sincerely,

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[110] PETERSON & MANN, *supra* note 29.