December 15, 2025

Acting Director Russell Vought
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20503

Re: Comments on Equal Credit Opportunity Act (Regulation B) Proposed Rule, Docket No. CFPB-2025-0039, RIN 3170-AB54

Dear Acting Director Vought:

Thank you for the opportunity to comment on proposed changes to Regulation B to implement the Equal Credit Opportunity Act.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations established in 1968 to advance the consumer interest through research, advocacy, and education. CFA represents more than 200 organizations nationwide through research, advocacy, and service.

Congress passed the ECOA in 1974 to address historical inequities in credit markets. It was initially enacted in response to a specific market practice that prevented women from accessing credit. It prohibited discrimination in credit based on sex or marital status.[1] Two years later, the updated law expanded its anti-discrimination protections to include race, color, religion, national origin, gender, marital status, age, and receipt of public assistance income.[2] Under ECOA, lenders cannot engage in discriminatory practices in any part of their lending programs. Together, ECOA and Regulation B form a

[1] See Pub. L. 93-495, sec. 701(a), 88 Stat. 1500, 1521 (1974)
[2] See ECOA Amendments Act, Pub. L. 94-239, sec. 701(a), 90 Stat. 251, 251 (1976)

critical anti-discrimination framework to ensure fair and equitable access to credit. These protections provide a foundation to ensure that everyone can build wealth, support their families, and grow businesses. By doing so, they benefit our economy, leading to greater financial stability and economic growth.

The Consumer Financial Protection Bureau's (CFPB) proposed rule falls well outside Congress's intent.[3] Congress clearly intended for disparate impact to be a part of ECOA. Following Congress's lead, agencies representing Regulation B have always included disparate impact. To prevent redlining, Congress prohibited discrimination at all stages of credit transactions and required lenders not to discourage prospective applicants. Finally, the CFPB must continue to support lenders that attempt to address historical inequities in credit access by offering special-purpose credit programs (SPCPs).

This comment addresses concerns about discrimination arising from lenders' use of artificial intelligence and machine learning to assess creditworthiness, the necessity of preventing redlining by upholding existing discouragement provisions, and the need for ongoing support for SPCPs.

I. Algorithmic systems present risks for discrimination.

The risk that algorithmic systems can produce biased outcomes that reinforce long-standing inequities in credit access, or introduce new ones, is well established. Although traditional credit models also carry these risks, preventing discrimination in this context presents unique challenges.

Discriminatory outcomes may result from inputs, erroneous design choices, or poor training data. When data are incomplete or unrepresentative, they weaken models and increase the risk of bias. For example, one contributor to bias in mortgage credit access is thinner credit files among a larger share of protected-class applicants.[4] Model inputs may become proxies when they interact with other inputs, even though they may appear neutral on their own. In traditional underwriting systems relying on simple regression, the same factors can lead to discrimination. The difference with AI and machine learning (ML) is that the factors contributing to discrimination are opaque. Without the ability to assess a model's effects, observers will be unable to remedy an AI/ML model.

The CFPB acknowledged these concerns in a joint statement with the Federal Trade Commission and the Equal Employment Opportunity Commission in 2023.[5]

In the past, lenders have built models that led to disparate impacts. One well-known example involved a lender that used standardized test scores from an applicant's incoming college class as a factor in underwriting. Two leading advocacy groups argued that the choice unfairly disadvantaged individuals,

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[3] Consumer Financial Protection Bureau, Proposed Rule: Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50901 (November 13th, 2025)
[4] Blattner, Laura & Scott Nelson. "How Costly is Noise? Data and Disparities in Consumer Credit." Papers 2105.07554, arXiv.org, 2021. https://arxiv.org/pdf/2105.07554.pdf.
[5] Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems. CFPB, Department of Justice, Equal Employment Opportunity Commission, and Federal Trade Commission, April 2023. https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.

given differences in the range of colleges commonly attended by protected-class borrowers.[6] To address their concerns, the lender agreed to a multi-year monitorship, managed by an independent law firm.

Notably, given the complexity of algorithmic underwriting systems, relying solely on disparate treatment as a test of discrimination may be inadequate. As far back as 2020, one online lender claimed that its underwriting system "utilizes a massive Hadoop database composed of more than ten thousand potential data variables related to each of the 2.4 million customers we have served and the about 8.6 million applications that we have processed." The lender acknowledged that it gathered information, not only directly from consumers, but from third-party providers and applicants' website behavior.[7]

Before the CFPB approves this rule, it should explain how it will identify discrimination through disparate treatment when lenders use complex algorithmic models with thousands of data points, operating within dynamic algorithmic frameworks and machine learning systems.

i. The CFPB must retain disparate impact and the effects test in Regulation B.

Disparate impact has been a critical regulatory tool for financial regulators when identifying discriminatory policies. Despite that, the CFPB proposes to change Regulation B, the implementing regulation for ECOA, "to provide that ECOA does not authorize disparate-impact liability." The CFPB should reverse course to retain this critical tool.

One area where this is especially urgent involves the use of algorithmic models in credit underwriting. Given the complexity of many models that use algorithmic underwriting, discrimination assessments of algorithmic models must often be conducted using outcomes-based approaches.

The risk that algorithmic systems will produce biased outcomes—perpetuating or intensifying existing societal inequities—is well established. Algorithmic discrimination occurs when an automated decision-making system consistently produces unfair or inaccurate outcomes for members of a protected class. Discriminatory outcomes can arise from multiple sources, including the data used as inputs and model design choices that make bias difficult to detect. Machine learning systems can evolve rapidly, requiring assessments to keep pace with new iterations. While discrimination risks exist in traditional models, they are amplified in machine learning systems that process vast amounts of data through opaque, non-interpretable methods.

These heightened risks underscore the need for outcomes-based approaches, such as the disparate impact framework, that evaluate the actual effects of automated credit practices rather than relying on assumptions about model inputs or design intent.

Facially neutral inputs may appear fair, but when used in dynamic models, they can yield unfair results. Some companies have already developed algorithmic systems that incorporate thousands of inputs. The risk of inadvertently incorporating such proxies is substantial. The limited transparency of many complex

[6] NAACP Legal Defense Fund & Student Borrower Protection Center. (2020, December 1). NAACP Legal Defense and Educational Fund and Student Borrower Protection Center Announce Fair Lending Testing Agreement with Upstart Network. https://www.naacpldf.org/press-release/naacp-legal-defense-and-educational-fund-and-student-borrower-protection-center-announce-fair-lending-testing-agreement-with-upstart-network/

[7] Elevate Credit. (2020). Annual Report for the Year Ending December 31, 2019 (Nos. 10-k). Securities and Exchange Commission. https://www.sec.gov/Archives/edgar/data/1651094/000165109420000010/elevate10-kx2019.htm

models makes it even more important to measure results directly through empirical, outcomes-focused testing that reflects how a model performs across different protected groups.

ii. Statistical evidence of disparate impacts creates natural signals to encourage lenders to seek less discriminatory alternatives.

Regulation B under the Equal Credit Opportunity Act (ECOA) prohibits discrimination based on a prohibited characteristic in any aspect of a credit transaction and requires creditors to avoid practices that result in disparate impact unless they are demonstrably necessary and no less discriminatory alternative exists.[1] To meet these obligations, institutions cannot rely solely on assurances about model architecture or the absence of protected traits in the input data. Instead, they must employ robust, outcomes-based assessments to detect disparate impacts and evaluate whether less discriminatory alternatives are available. Without such testing, the deployment of AI and ML will continue to pose substantial risks of inaccurate decisions, unfair pricing, and financial exclusion for protected classes.

The effects test is an essential component of the disparate treatment theory.[8] Unlike disparate treatment, disparate impact addresses cases where lenders attempt to refute liability for discrimination by claiming "fairness through unawareness." In a regime that limits liability to evidence of disparate treatment, lenders deploying discriminatory algorithms will be shielded from accountability by algorithmic opacity.

Additionally, when the standard is clearly communicated to industry, firms can comply without incurring high costs. The method is especially well-suited for algorithmic models, as tests for disparate impact can be conducted at each model iteration, with the marginal cost of each test close to zero.

In fact, well-intentioned lenders can rely on the disparate impact standard to improve their models.[9] While over-reliance on narrow thresholds can lead to gamification, comparisons between protected and non-protected class groups yield straightforward conclusions. When lenders understand that regulators consider disparate impacts, they can easily vet their models, thereby gaining certainty.

iii. Algorithmic models can be refined to find fairer alternatives.

Algorithmic modeling usually involves three steps: identifying data for model inputs, developing models (sometimes using machine learning), and deployment. During deployment, models can be monitored and, if necessary, adjusted based on observed results. Model changes may be necessary when real-world factors change, such as during the COVID-19 pandemic.

When a model appears to produce disparate impacts, techniques exist to seek a less discriminatory alternative. Through iterative reviews, models can be altered to re-assess their fairness. The marginal costs of searches are low. Moreover, because machine-learning models can be rapidly iterated and optimized, identifying and deploying LDAs is now substantially less burdensome than in the past. "Model multiplicity," a term describing how different models can achieve comparable predictive performance, shows that when an algorithm exhibits disparate impact, other models almost always exist that perform

[8] 12 CFR §1002.6(a) and comment: *Rules Concerning Evaluation of Applications in Supplement I to Part 1002 - Official Interpretations*. CFPB. https://www.consumerfinance.gov/rules-policy/regulations/1002/interp-6/.
[9] Townson, S. (2020, November 6). AI Can Make Bank Loans More Fair. Harvard Business Review. https://hbr.org/2020/11/ai-can-make-bank-loans-more-fair

equally well while producing fewer discriminatory effects.[10] In short, model multiplicity demonstrates that meaningful tradeoffs between accuracy and fairness are rarely necessary.

Thus, the central issue now is not whether LDAs exist, but how institutions should systematically search for, evaluate, and implement them. Luckily, statistical techniques exist to identify inputs that contribute to bias, enabling compliance teams to redesign their model inputs.[11] The research that led to these techniques, known as Shapley values, won the Nobel Prize in Economics. In game theory, Shapley values were used to determine which variable or variables contributed to an outcome. When an algorithm has been shown to produce disparate impacts, Shapley values can be used to decompose the model and identify the problematic proxies.[12] The essential point is that financial institutions can remediate a discriminatory model, either independently or through a third party.

iv. Model multiplicity makes it possible for lenders to avoid disparate impacts while simultaneously optimizing for profitability.

With model multiplicity, there is no "fairness tradeoff." When seeking to comply with ECOA, most modelers aim to find a fair algorithm that still maximizes a lender's profitability. Research shows that models are smart enough to find LDAs that can simultaneously serve the goals of profit and fairness.[13] In fact, some scientists point out that because AI models can identify additional applicants eligible for credit, they can enhance a lender's overall profitability.[14]

New model iterations can increase profitability, as well as fairness, by:

- Finding additional credit-worthy applicants to increase scale and overall profitability. For example, fintech lenders using AI have expanded the amount of credit available to low- and moderate-income consumers and those with below-prime credit scores. Many consumers used those loans to refinance higher-cost outstanding debt.[15]
- Offering tools to give financial institutions the ability to explain their models to regulators, with a resulting decrease in compliance costs.
- Detecting biased models and suggesting choices that still meet profitability objectives.

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[10] Black, Emily, John Logan Koepke, Pauline T. Kim, Solon Barocas, and Mingwei Hsu. "Less Discriminatory Algorithms (October 2, 2023)." Georgetown Law Journal, Vol. 113, No. 1, 2024, Washington University in St. Louis Legal Studies Research Paper Forthcoming. https://ssrn.com/abstract=4590481.
[11] Mazzanti, S. (2021, April 21). SHAP explained the way I wish someone explained it to me. Towards Data Science. https://towardsdatascience.com/shap-explained-the-way-i-wish-someone-explained-it-to-me-ab81cc69ef30
[12] SHAP. (n.d.). An introduction to explainable AI with Shapley values—SHAP latest documentation [GitHub]. Retrieved May 22, 2023, from https://shap.readthedocs.io/en/latest/example_notebooks/overviews/An%20introduction%20to%20explainable%20AI%20with%20Shapley%20values.html
[13] Nikita Kozodoi, Johannes Jacob, & Stefan Lessmann. (2021). Fairness in Credit Scoring: Assessment, Implementation, and Profit Implications. European Journal of Operational Research, 295(1). https://doi.org/10.1016/j.ejor.2021.06.023
[14] Nicholas Schmidt & Bryce Stephens. (2019). An Introduction to Artificial Intelligence and Solutions to the Problems of Algorithmic Discrimination. Algorithmic Discrimination, 73(2), 130–145. https://arxiv.org/ftp/arxiv/papers/1911/1911.05755.pdf
[15] Eldar Beiseitov. (2022, September 29). The Role of Fintech in Unsecured Lending to Low and Moderate Income Individuals. https://www.newyorkfed.org/medialibrary/media/newsevents/events/regional_outreach/2022/092922/2022-09-29-eldar-beiseitov-fintech-personal-loans-ny-fed

Doing so does not require a financial institution to have a well-resourced modeling department. Instead, some financial institutions contract with independent modeling firms to find such models.[16]

Additionally, AI tools can address compliance costs. For example, explanatory techniques help lenders to provide clear explanations for adverse action notices. There is an urgent need to ensure that, with the adoption of AI and ML in underwriting, systems evolve to address new challenges in explaining adverse actions.[17] At the moment, adverse-action notices rely on a small number of codes to explain decisions – perhaps fewer than ten. When models use thousands of inputs and apply them in dynamic models, this is entirely inadequate. With explanatory techniques, consumers and small businesses can learn the steps to take to qualify for future credit. These techniques are within reach, can be implemented at very low cost, and support financial literacy goals.

While the use of artificial intelligence may have positive effects, it is vital to ensure that systems are in place to prevent it from moving markets in ways that violate our laws and values. Effective AI and responsible AI are interdependent. It echoes a well-worn truth about machines from another era: "the better a car's brakes, the faster you can drive it safely."[18] Compliance with fairness laws is not an obstacle to innovation. Disparate impact is a necessary tool to ensure that innovative practices move forward without compromising the wishes of Congress and the deeply held values of the people of our nation for economic fairness.

II. ECOA applies to discouragement of prospective applicants.

Congress sought to address discouragement when it enacted the ECOA in 1974. Congress prohibited lenders from discriminating against applicants "with respect to any part of a credit transaction." To accomplish that purpose, it is vital to prevent lenders from discouraging prospective applicants.

In 1991, when Congress amended ECOA to instruct agencies to refer cases to the Attorney General, it affirmed the place of discouragement, writing "Each agency…shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 1691(a) of this title."[19] It also touched on the role of advertising, noting that "discouraging applicants on a prohibited basis and advertising which implies a discriminatory preference are also prohibited."[20]

The CFPB, in its proposed rule, argues that the discouragement provision has been interpreted too broadly, with the effect of an "unnecessary chilling effect on creditors' business practices and exercise of their rights to speak about matters of public interest. The CFPB's viewpoint clearly contradicts Congress's intent and upends decades of regulatory precedent.

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[16] For example, see: Fair-play.ai. (2019). Fairness Infrastructure for Lending. Federal Reserve Branch of Philadelphia. https://www.philadelphiafed.org/-/media/frbp/assets/events/2021/banking/fairplay-fintech-partnership-symposium-slides.pdf

[17] Consumer Financial Protection Bureau. (2020, October 5). Tech Sprint on Electronic Disclosures of Adverse Action Notices [Innovation at the Bureau]. https://www.consumerfinance.gov/rules-policy/innovation/cfpb-tech-sprints/electronic-disclosures-tech-sprint/

[18] Acting Comptroller of the Currency Michael J. Hsu. (2023, June 16). "Tokenization and AI in Banking: How Risk and Compliance Can Facilitate Responsible Innovation" [Remarks]. American Bankers Association (ABA) Risk and Compliance Conference. https://www.occ.gov/news-issuances/speeches/2023/pub-speech-2023-64.pdf

[19] FDIC Improvement Act of 1991

[20] S. Rep. No. 102-167, at 86 (1991).

i. Redlining occurs when a lender discourages prospective applicants from seeking credit.

Redlining is the practice of intentionally denying communities access to credit. Steering is the practice of intentionally directing prospective applicants toward specific products or services and away from others, based on attributes that place them in a protected class. Both redlining and steering can occur before a loan application is completed.

In practice, a large share of redlining occurs through pre-application discouragement. For example, lenders can discourage applicants by not placing branches near where they live, not hiring loan officers who are representative of protected classes or selectively excluding some communities from receiving advertisements. These practices have not faded away.

- For example, in 2022, the Department of Justice and the CFPB reached a settlement with a Philadelphia-area mortgage lender. The lender concentrated all of its offices in majority-white neighborhoods, did not encourage its officers to serve communities of color, and shared internal messages denigrating people of color.[21]
- In 2023, the Department of Justice reached a settlement with a California bank over its redlining in Los Angeles. The bank placed only 3 of its 37 Los Angeles branches in majority Black or Latino neighborhoods, even though more than half of the census tracts in Los Angeles County were majority-minority. The bank did not train loan officers to identify customers in these neighborhoods, ignored internal reports of noncompliance with fair lending laws, and relied on relationship managers who were disproportionately white.[22]
- In 2024, the DOJ and the CFPB reached a settlement with a Wisconsin mortgage lender for its practices in Birmingham, Alabama. Even though much of metro Birmingham is made up of majority-Black neighborhoods, the lender located all of its offices in majority-white areas. It targeted its advertising at white communities and relied on loan officers in those communities to generate most of its mortgage loan applications. The settlement noted that the company could not justify its practices on a legitimate, non-discriminatory basis.[23]

These are only three recent examples of a long-standing pattern in our economy of lenders focusing their marketing and loan production solely on white communities.

In response to these problems, regulators have consistently included prospective applicants within the scope of the discouragement provision.

The Federal Reserve, at the time the agency responsible for writing Regulation B, stated that "A creditor shall not make any statements to applicants or *prospective* applicants which would, on the basis of sex or marital status, discourage a *reasonable person* from applying for credit or pursuing an application for

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[21] United States Department of Justice. (2022, July 27). Justice Department and Consumer Financial Protection Bureau Secure Agreement with Trident Mortgage Company to Resolve Lending Discrimination Claims. https://www.justice.gov/archives/opa/pr/justice-department-and-consumer-financial-protection-bureau-secure-agreement-trident-mortgage

[22] United States Department of Justice. (2023, January 17). United States v. City National Bank (C.D. Cal.). https://www.justice.gov/crt/case/united-states-v-city-national-bank-cd-cali

[23] Willis, J. R., Lori Sommerfield, Chris. (2024, October 17). DOJ and CFPB Announce Landmark Redlining Settlement With Fairway Independent Mortgage Corporation. Consumer Financial Services Law Monitor. https://www.consumerfinancialserviceslawmonitor.com/2024/10/doj-and-cfpb-announce-landmark-redlining-settlement-with-fairway-independent-mortgage-corporation/

credit."[24] A reasonable person, in the process of finding a potential mortgage lender, would connect a lender's marketing materials to its business practices. When those materials clearly disparage members of a protected class, a reasonable person in that class would be discouraged from applying.

Logically, the Federal Reserve prohibited a lender from making "any oral or written statement….to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application."[25] The Fed specified that information requests whose sole purpose would be to disqualify prospective applicants on the basis of their protected-class attributes constituted a form of discouragement and a noncompliant practice.

These viewpoints have been upheld in recent court decisions. In *Townstone,* the Seventh Circuit concluded that when interpreting ECOA's text as a whole, the Act prohibits not just "outright discrimination" against applicants, but also the "discouragement of prospective applicants for credit."[26] The Court added, "when the text of the ECOA is read as a whole, it is clear that Congress authorized the imposition of liability for the discouragement of prospective applicants. Regulation B's prohibition on discouraging prospective applicants is therefore consistent with the ECOA's text and purpose."[27]

The current proposed changes to ECOA are at odds with Congress's clear intent. The CFPB should explain why it can ignore Congress and the Seventh Circuit.

ii. In fact, the CFPB should increase the use of discouragement to correct discriminatory practices in digital marketing.

The CFPB seeks to narrow the definition of an "oral or written statement" to exclude communications made that are not spoken or written words or visual images. This would exempt lenders from liability for using digital marketing tools to target communications in ways that discourage protected-class members from obtaining credit.

This revision is a step in the wrong direction. Emerging digital advertising tools should prompt the CFPB to expand its supervision and enforcement of practices contributing to discouragement. Increasingly, digital advertising is a primary channel through which lenders acquire customers. Unlike traditional mass media, digital advertising targets 'an audience of one' using novel technologies to track website visits, purchase histories, and latent consumer demand.[28] Advertisers can derive insights from data to build unique customer scores, using thousands of data points to estimate a borrower's suitability for loans, accounts, or other services. Naturally, at no point does a lender – even one with a discriminatory intent –

[24] 40 Fed. Reg. 49,298, 49,307
[25] 12 CFR § 202.4 (b) and § 202.5(a)
[26] Consumer Financial Protection Bureau v. Townstone Financial and Barry Sturmer, No. No. 23-1654 (United State Court of Appeals for the Seventh Circuit July 11, 2024). Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:20-cv-04176 — Franklin U. Valderrama, Judge. https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D07-11/C:23-1654:J:Ripple:aut:T:fnOp:N:3234335:S:0
[27] Consumer Financial Protection Bureau v. Townstone Financial and Barry Sturmer, No. No. 23-1654 (United State Court of Appeals for the Seventh Circuit July 11, 2024). Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:20-cv-04176 — Franklin U. Valderrama, Judge. https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D07-11/C:23-1654:J:Ripple:aut:T:fnOp:N:3234335:S:0
[28] Summers, C. A., Smith, R. W., & Reczek, R. W. (2016). An Audience of One: Behaviorally Targeted Ads as Implied Social Labels. Journal of Consumer Research, 43(1), 156–178. https://doi.org/10.1093/jcr/ucw012

need to specify its demographic preference. By excluding communications that are not words or images, the CFPB would significantly weaken its ability to identify discriminatory digital advertising practices.

The Department of Justice's 2022 settlement with Meta Platforms ("Meta") for violations of the Fair Housing Act on its Facebook platform is an analog from housing law that shows how digital advertising can affect the availability of credit. Facebook's Special Ad Audience tool used an algorithmic model that enabled advertisers to target specific individuals, even when those characteristics were prohibited under the Fair Housing Act.[29] The DOJ settlement was the second in four years; three years earlier, Facebook (not yet Meta) reached a private settlement with a group of fair housing organizations and individuals over similar practices on Facebook, Instagram, and Messenger. The plaintiffs asserted that Facebook's platforms allowed advertisers to buy ads for housing, employment, and credit, using the Lookalike Audience tool, which enabled them to exclude members of protected classes from seeing ads.[30] The settlement required Meta to develop a new algorithmic system to reduce variation in ad delivery between protected-class groups and others.[31]

It is essential that lenders cannot shift responsibility for digital discrimination to digital platforms. Through its supervisory powers, the CFPB should hold financial institutions accountable for their digital marketing. The CFPB should ensure that financial institutions:

- Continuously review their marketing materials offered online, in emails or texts, or on digital platforms for potential disparate impacts.
- Test the effects of their search engine advertisement purchases. Search engine bidding for keywords constitutes a ripe environment for targeted marketing that excludes protected classes from being aware of credit. They should also review the geographic reach of their digital marketing. This should include instances where protected classes and regions with high shares of protected classes receive credit on less favorable terms than comparison groups.
- Monitor and track complaints they receive, either directly or from the CFPB's consumer response office. As a practice, when complaints become significant, senior management and the Board of Directors should be aware of the problem. Submit data in supervisory examinations to demonstrate that their advertisements are reaching protected classes.

Congress added language clarifying that the Federal Reserve should issue regulations to "prevent circumvention or evasion" by lenders of the Act's purposes.[32] Digital marketing tools permit lenders to circumvent or evade the requirements of ECOA and Regulation B. The CFPB must respond to these emerging technologies to prevent digital redlining.

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[29] United States Department of Justice. (2022, June 21). Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook, to Resolve Allegations of Discriminatory Advertising. Office of Public Affairs. https://www.justice.gov/archives/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known

[30] National Fair Housing Alliance. (2019, March 14). Facebook Settlement: Civil Rights Advocates Settle Lawsuit with Facebook: Transforms Facebook's Platform Impacting Millions of Users. NFHA. https://nationalfairhousing.org/facebook-settlement/

[31] United States Department of Justice. (2023, January 9). Justice Department and Meta Platforms Inc. Reach Key Agreement as They Implement Groundbreaking Resolution to Address Discriminatory Delivery of Housing Advertisements. Office of Public Affairs. https://www.justice.gov/archives/opa/pr/justice-department-and-meta-platforms-inc-reach-key-agreement-they-implement-groundbreaking

[32] 5 U.S.C. § 1691b(a

Ultimately, lenders are responsible for how their marketing reaches the public. Platforms can help by providing tools to review marketing activity, but financial institutions must proactively prevent digital redlining. All of this should demonstrate that the discouragement provision is, if anything, needed more than ever before. The CFPB should hold lenders accountable when they use digital marketing to avoid protected classes. It is unwarranted for the CFPB to eviscerate it.

III. The CFPB must preserve support for special-purpose credit programs (SPCPs).

Congress specifically authorized "credit assistance program [s]" for economically or socially disadvantaged consumers and commercial enterprises. The language in ECOA is clear: it is not discrimination for a creditor to extend credit "for any special purpose credit program offered by a profit-making organization to meet special social needs."[33] Over time, lending programs to benefit applicants have been supported in Regulation B, and further clarity has been offered to show that they do not violate other anti-discrimination statutes, including the Fair Housing Act and the Civil Rights Act of 1866.[34]

Traditionally, the CFPB has encouraged lenders to offer SPCPs. To proactively promote SPCPs, the CFPB has provided lenders with materials clarifying how they can offer these programs in compliance with Regulation B. As recently as December 2020, the CFPB issued an advisory opinion that gave lenders explicit permission to design SPCPs. The CFPB issued the AO "to address this regulatory uncertainty in the hope that broader creation of special purpose credit programs by creditors will help expand access to credit among disadvantaged groups and will better address special social needs that exist today."[35] The regulatory clarity provided by this AO preceded the offering of several new SPCP programs.[36]

In the proposed rule published in the Federal Register, the CFPB tacks away from the long-standing, bi-partisan support for SPCPs, by stating that "it is not aware of any credit markets in which consumers would be 'effectively denied credit' because of their race, color, or because of their race, color, national origin, or sex in the absence of SPCPs offered or participated in by for-profit organizations."

i. Due to the conditions outlined in the proposed rule for submitting a written plan for a proposed SPCP, financial institutions will be reluctant to deploy these essential programs.

Traditionally, when lenders have crafted their written plans for their SPCPs, they have had leeway to show that the program would "benefit a class of persons who would otherwise be denied credit or would receive it on less favorable terms -"[37] the test that Congress itself established. Critically, lenders could propose an SPCP without admitting culpability for prima facie discrimination.

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[33] 15 U.S. Code § 1691 (c)(3)

[34] National Fair Housing Alliance & Relman Colfax PLLC. (2020). Special Purpose Credit Programs How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem. https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf

[35] Kathleen Kraninger. (2020, December 21). Consumer Financial Protection Bureau Issues Advisory Opinion to Help Expand Fair, Equitable, and Nondiscriminatory Access to Credit. Consumer Financial Protection Bureau. https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_special-purpose-credit-program_2020-12.pdf

[36] For example: JPMorgan Chase. (2023, February 23). *Chase to Hire Over 500 Small Business Bankers*. https://www.jpmorganchase.com/newsroom/press-releases/2023/chase-to-hire-over-500-small-business-bankers or TDNorth. (2024, January 24). *TD Bank Targets $20 Billion to Spark Economic Opportunities for Low- and Moderate-Income, Diverse and Underserved Communities across 15 States and Washington, D.C.* https://stories.td.com/us/en/article/community-impact-plan-press-release.

[37] § 1002.8 (3)(ii)

Historical evidence of disparities has been enough to meet the test. In submitting their written plans, banks have designed SPCPs to fill credit gaps resulting from historical inequities in access outside their institution's footprint. Programs have sought to "close racial inequality gaps," "advance inclusive economic recovery," "promote racial, ethnic, and gender equity," "advance inclusive economic equity," and "boost economic activity," among many examples.[38]

These conditions effectively require a lender to admit, in writing, that it discriminates against protected classes. It creates a perverse logic: a lender must be consciously aware of the harms it is causing as a condition of being permitted to address them. The record of long-standing systemic discrimination in lending should be sufficient for lenders to offer an SPCP. By requiring lenders to state in their written plans that their policies are discriminatory, the CFPB's policies will disrupt programs that, if permitted to continue, would have helped people to buy homes and operate businesses.

The CFPB is ignoring Congress's clear intent when it raises the evidentiary standards for an SPCP. Congress said lenders would not violate discrimination laws when designing programs to meet special social needs. This proposal effectively undoes that statutory provision.

ii. The proposal would upend existing SPCPs, undermining investments made by for-profit lenders to meet special social needs. The new policy will reduce job creation, small-business formation, and local economic development.

Research confirms that redlining has persistent effects on a region's economic and social vitality. When credit is denied to a community, it has lasting and damaging effects. Research has linked 1930s redlining maps to economic and health disparities that exist in these communities today.[39][40]

The CFPB will radically reorganize the required proof in written plans where lenders demonstrate why an applicant would not receive credit, or receive it on less favorable terms. It proposes that a for-profit lender would have to 1) show that "under the organization's standards for creditworthiness, the class of persons would not receive such credit in the absence of the program, and 2) provide evidence for each participant that in the absence of the program the participant would not receive such credit as a result of the protected class status that makes it eligible for the SPCP."

In essence, the proposal requires a lender to notify its regulator of a discriminatory underwriting policy. Logically, no lender will make such a statement. It would expose the lender to significant liability, as well as compromise its reputation.

Unless the CFPB reverses course and withdraws this proposal, it will compel lenders to suspend existing programs. In doing so, it will undermine the benefits of credit for household financial stability and small business growth. Indeed, lenders will become reluctant to maintain existing loans and lines of credit. Out of fear of upsetting their regulator, some lenders may pull back their loans where possible, even if it

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[38] Patrice Alexander Ficklin & Charles L. Nier, III. (2021). The Use of Special Purpose Credit Programs to Promote Racial and Economic Equity. https://nationalfairhousing.org/wp-content/uploads/2021/06/racial-justice-in-housing-finance-series-2021_PRRAC.pdf
[39] Bruce Mitchell, PhD & Juan Franco. (2018). HOLC "redlining" maps: The persistent structure of segregation and economic inequality. https://ncrc.org/holc/
[40] Jason Richardson, Bruce C. Mitchell, PhD; Helen C.S. Meier, PhD; Emily Lynch; & Jad Edlebi. (2020). Redlining and Neighborhood Health. National Community Reinvestment Coalition. https://ncrc.org/holc-health/

means taking losses on their investments in the programs. In communities where lenders have advertised their SPCPs, financial institutions will be required to inform customers that their policies have changed.

The formation of new small businesses and the growth of existing ones have positive effects on employment. The CFPB will stifle economic growth with this new policy. The CFPB should demonstrate that denying credit in communities will not have these effects. It will not demonstrate that credit does not lead to job growth. The CFPB should explain why it is good policy to dampen employment, small-business formation, and local economic development.

Iii. For years, private industry has supported the deployment of SPCPs.

Lenders and commercial companies that rely on consumer and small-business credit to operate benefit from SPCPs.

The National Association of Realtors passed a policy supporting the use of SPCPs and encouraged the Federal Housing Finance Agency to continue purchasing SPCP loans. It noted that FHFA acquired 14,968 mortgages originated through SPCPs in 2023 alone.[41] In 2022, the Mortgage Bankers Association, in coordination with the National Fair Housing Alliance, published a toolkit designed to help lenders develop SPCPs.[42] The popular HGTV show "Bargain Block" highlighted the work of a credit union whose SPCP sought to expand access to credit for homebuyers in communities unable to obtain credit due to appraisal gaps.[43] In announcing an SPCP for small businesses in historically underserved areas, the CEO of the small business unit of JPMorgan Chase Bank commented that "We want to do our part to create more parity by saying yes to more business owners in these areas so they can grow and thrive, and their communities can benefit in turn."[44]

Many recent SPCPs have offered credit to households and small businesses in communities where credit has been historically scarce. For example, one lender introduced an SPCP in January 2024 in five East Coast cities, offering home mortgages with low down payments to low- to moderate-income (LMI) and minority borrowers, as well as to households in LMI and majority-minority census tracts.[45] The lender intended this program to result in $10 billion in new loan originations. When it introduced a new SPCP for small businesses in majority-Black and Latino communities, a bank hired 500 small-business bankers.[46]

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[41] National Association of Realtors. (2025, March 28). FHFA's Recent Directive on Special Purpose Credit Programs. Washington Report. https://www.nar.realtor/washington-report/fhfas-recent-directive-on-special-purpose-credit-programs

[42] National Fair Housing Alliance & Mortgage Bankers Association. (2022). NFHA and MBA Launch Online Toolkit to Help Lenders Develop Special Purpose Credit Programs for Underserved Communities [Toolkit]. https://nationalfairhousing.org/resource/nfha-and-mba-launch-online-toolkit-to-help-lenders-develop-special-purpose-credit-programs-for-underserved-communities/

[43] Frank Gargano. (2023, February 17). A credit union teams with HGTV house flippers to revitalize Detroit. American Banker. https://www.americanbanker.com/creditunions/news/a-credit-union-teams-with-hgtv-house-flippers-to-revitalize-detroit

[44] JPMorgan Chase. (2022, November 18). Chase takes nationwide action to expand credit access for small businesses through Special Purpose Credit Program in historically underserved areas. Business Banking. https://media.chase.com/news/chase-takes-nationwide-action-to-expand-credit-access-for-small-businesses-through-special-purpose-credit-program-in-historically-underserved-areas

[45] TDNorth. (2024, January 24). TD Bank Targets $20 Billion to Spark Economic Opportunities for Low- and Moderate-Income, Diverse and Underserved Communities across 15 States and Washington, D.C. https://stories.td.com/us/en/article/community-impact-plan-press-release

[46] JPMorgan Chase. (2023, February 23). Chase to Hire Over 500 Small Business Bankers. https://www.jpmorganchase.com/newsroom/press-releases/2023/chase-to-hire-over-500-small-business-bankers

Conclusion

In conclusion, the changes the CFPB proposes in its rules contradict the values of the American public, the lenders that serve them, and the instructions of Congress. Before finalizing the proposal, the CFPB should explain how these policies are appropriate, given legislative history and long-standing regulatory interpretation.

Additionally, the CFPB should follow established rulemaking procedures. The CFPB has not conducted a relevant cost-benefit analysis, has deprived the public by failing to provide adequate time for notice and comment, has ignored the requirement that its director receive confirmation before finalizing changes to a regulation, and has violated the Regulatory Flexibility Act by failing to convene a small-business advocacy review panel.

The CFPB must withdraw its proposal.

Sincerely,

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