UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

National Urban League and Massachusetts Association of Community Development Corporations,

Plaintiffs,

v.

Consumer Financial Protection Bureau and Mark Paoletta in his official capacity as Acting Director of the Consumer Financial Protection Bureau,

Defendants.

COMPLAINT

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. More than fifty years after Congress passed the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.*, to combat discrimination in our country's credit markets, people of color, including Black people, are still more likely to be denied loans and to pay more for a home, car, or small business loan that they do secure.[1] Other groups covered by ECOA's protections, including women, also continue to face discrimination in a variety of credit markets.[2]

[1] *See, 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 Ctr. for Investigative Reporting), 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*, 1 CONSUMER & CMTY. CONTEXT, A FED. RSRV. SYST. PUB, Nov. 2019, at 16 https://fraser.stlouisfed.org/title/consumer-community-context-6764/vol-1-2-620674.

[2] Andre Perry, et al., *Black-Owned Businesses in U.S. Cities: The Challenges, Solutions, and Opportunities for Prosperity*, Brookings Metro (Feb. 14, 2022), https://www.brookings.edu/articles/black-owned-businesses-in-u-s-

2. These disparities cost the United States economy billions of dollars each year.[3] For example, a sector-wide model estimated that financial institutions would see an increase of $2 billion in annual incremental revenue if they offered Black customers access to financial products at the same rates as white customers. Another study of 460 financial firms determined these types of firms "are missing at least a $700 billion revenue opportunity each year by not fully meeting the needs of women customers."[4]

3. ECOA and its implementing regulation, Regulation B, were passed and adopted in the 1970s to ensure equal access to credit. Since then, the protections embodied in ECOA and Regulation B have resulted in meaningful reductions in credit discrimination and expanded economic opportunity across the country.

4. Despite these gains, ECOA and Regulation B have not eradicated discrimination in our country's credit markets. Credit discrimination still persists, sometimes in new and more disguised forms.

5. Through a final rule issued on April 22, 2026, the government purports to erase many of Regulation B's protections that have proven critical to ensuring fair access to credit for Black people, other people of color, and women, and to reverse the incremental progress made over the last five decades.

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cities-the-challenges-solutions-and-opportunities-for-prosperity/; Maura L. Scott, et al., *Revealing and Mitigating Racial Bias and Discrimination in Financial Services*, 61 J. MKTG. RSCH. 598, https://doi.org/10.1177/00222437231176470; CFPB, 25 *Supervisory Highlights* 8 (Fall 2021), https://wayback.archive-it.org/23481/20250930010825/https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf; Webinar Slides, Fed. Rsrv. Sys., 2020 Fair Lending Interagency Webinar 36, 39 (Dec. 2020), https://www.consumercomplianceoutlook.org/Outlook- Live/2020/2020-Fair-Lending-Interagency-webinar/.

[3] 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.

[4] Chaitra Chandrasekhar, et al., *Serving Women as Customers*, in Oliver Wyman, *Women in Financial Services 2020: A Panoramic Approach* 19 (2020), https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2019/November/Women-In-Financial-Services-2020.pdf.

6. The government's efforts violate federal law in several respects: the government failed to comply with multiple procedural obligations, the rule conflicts with ECOA, and the agency's acting director lacked legal authority to serve in his position.

7. Plaintiffs National Urban League and Massachusetts Association of Community Development Corporations therefore bring this suit against Defendants Consumer Financial Protection Bureau and Acting Director Mark Paoletta (collectively, "Defendants") for violations of the Administrative Procedures Act, 5 U.S.C. § 706; the Appointments Clause of the United States Constitution, art. II, § 2, cl. 2; and the Federal Vacancies Reform Act, U.S.C. § 3345(a).

INTRODUCTION

8. More than fifty years ago, Congress passed ECOA to combat discrimination against groups historically denied access to our country's credit markets. And for over fifty years, Regulation B, 12 C.F.R. Part 1002, which implements ECOA, has provided critical protections against credit discrimination and dismantled unjustified barriers to credit for Black communities, other communities of color, women, and other protected groups.

9. Despite this substantial progress, persistent discrimination in our country's credit markets costs the American economy billions of dollars each year, reinforces the wealth gap between communities of color and white communities, and exacerbates the disparities in intergenerational wealth between Black and white Americans.[5]

10. On April 22, 2026, under then-Acting Director Russell Vought, the Consumer Financial Protection Bureau ("CFPB") issued amendments to Regulation B (the "Final Rule"), that upend decades of regulatory implementation of ECOA and longstanding reliance interests. These

[5] *See, e.g.*, *id.*

amendments also ignore the substantial work still to be done in combatting discrimination in this country's credit markets.

11. The Final Rule makes three changes.

12. First, the Final Rule purports to remove disparate-impact liability from ECOA's prohibition on discrimination—liability that protects against unjustified discriminatory practices and that has been a critical tool in dismantling discriminatory barriers to credit.

13. Second, the Final Rule dramatically undermines longstanding protections against lenders' discouragement of prospective applicants—protections that prohibit discrimination before a person has formally applied for credit.

14. Third, the Final Rule purports to prohibit for-profit lenders from offering certain types of Special Purpose Credit Programs ("SPCPs")—programs intended to expand access to credit to underserved borrowers facing obstacles to credit.[6]

15. Though the CFPB cannot rewrite ECOA or change its statutory text, the changes to Regulation B constrain and guide the actions of federal enforcement and supervisory agencies. Lenders also rely on Regulation B in the absence of contrary judicial decisions.

16. Despite only providing 32 days, including holidays, for stakeholders to comment, the CFPB received over 64,500 comments on the Proposed Rule. Over 90% of substantive, non-duplicative comments opposed the changes the CFPB proposed.[7] Comments opposing the changes to Regulation B came from a wide variety of organizations and individuals, from a coalition of

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[6] *See* Equal Credit Opportunity Act (Regulation B), 91 Fed. Reg. 21620 (April 22, 2026) (hereinafter "Final Rule") (to be codified at 12 C.F.R. pt. 1002), https://www.govinfo.gov/content/pkg/FR-2026-04-22/pdf/2026-07804.pdf; *see also* Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg 50901 (Nov. 13, 2025), (hereinafter "Proposed Rule"), https://www.govinfo.gov/content/pkg/FR-2025-11-13/pdf/2025-19864.pdf.

[7] Trung Lam et al., *The People of America Said No. CFPB Changed the Rules on Fair Lending Regardless* 2, NAT'L FAIR HOUS. ALL. (June 3, 2026), https://rail.nationalfairhousing.org/wp-content/uploads/2026/06/CFPB-ECOA-Rules-Comment-Analysis_6-03-2026_Final.pdf (quantitatively analyzing comments "making substantive arguments regarding the rule change defined as those 250 or more words long").

state Attorneys General to trade associations to non-profits to individuals who have experienced discrimination in credit markets.

17. The CFPB failed to meaningfully consider or respond to these comments criticizing the proposed changes.

18. Because the framework created by Regulation B has been stable for approximately fifty years, it has created substantial reliance interests for both regulated lenders and borrowers. States and consumers rely on federal financial regulators and the U.S. Department of Justice ("DOJ") to examine credit practices in order to protect consumers from discrimination—and to bring enforcement actions, if necessary. Lenders also rely on these regulations to provide clarity on their legal obligations.

19. The CFPB failed to meaningfully consider these and other reliance interests.

20. The CFPB also failed to meaningfully assess the costs of these changes.

21. The Final Rule is therefore arbitrary and capricious in violation of the APA. It is not the product of reasoned decision-making. The Final Rule ignores and fails to adequately respond to comments, lacks the cost-benefit analysis required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), and lacks the analyses required by the Small Business Regulatory Enforcement Fairness Act of 1996. The CFPB also failed to consult with other agencies as required by the Dodd-Frank Act.

22. The Final Rule, and in particular its discouragement provision, is also contrary to law in violation of the APA because it contradicts the text of ECOA and exceeds the CFPB's rulemaking authority.

23. Finally, the Final Rule was issued without lawful authority for then-Acting Director Russell Vought to serve in his role, rendering the entire rulemaking process invalid under the Federal Vacancies Reform Act and Appointments Clause.

24. Plaintiffs will be irreparably harmed by Defendants' unlawful action. As detailed below, each organization works to ensure that Black Americans and other groups enjoy fair and equal access to credit, and by extension, the opportunity to pursue economic prosperity. Regulation B serves as a critical tool in advancing this work.

JURISDICTION AND VENUE

25. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the claims arise under federal law, including the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

26. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65; 28 U.S.C. §§ 2201-2202; 5 U.S.C. § 705; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

27. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because this action seeks relief against an agency of the United States and an officer of that agency acting in his official capacity and Plaintiff Massachusetts Association of Community Development Corporations resides in this district.

PARTIES

28. Plaintiff **National Urban League** ("NUL") is a 501(c)(3) non-profit corporation headquartered in New York, New York. It is the largest historic civil rights and urban advocacy organization committed to elevating the standard of living for Black Americans, other historically underserved people, and urban communities through economic empowerment. Founded in 1910, NUL is one of the oldest civil rights organizations in existence.

29. NUL has 93 local affiliates in 300 communities across 37 states (including Massachusetts) and the District of Columbia. Affiliates offer various direct services and advocacy to enhance the lives of more than 2 million people annually. Dedicated to economic empowerment, NUL provides programming and advocacy around education and youth development, job training and workforce development, housing counseling, entrepreneurship, health equity, and overall quality of life.

30. NUL also operates the Urban Empowerment Fund, a small business lending subsidiary that provides loans and coaching to businesses in underserved communities.

31. As a creditor, NUL's Urban Empowerment Fund is subject to ECOA and Regulation B.

32. Plaintiff **Massachusetts Association of Community Development Corporations** ("MACDC") is a 501(c)(3) non-profit organization headquartered in Boston, Massachusetts. It is an association of over 90 member organizations, all based in Massachusetts. Its mission is to build and sustain a high-performing and adaptive community development sector that is supported by private and public investment and sound public policies. Founded in 1982, MACDC is committed to racial and economic equity.

33. MACDC's member organizations are all mission-driven non-profit organizations and include community development corporations, community development financial institutions, and impact investing funds. MACDC's member organizations offer credit, technical assistance, training, and counseling to housing developers, prospective homeowners, and small business owners. Many of MACDC's members own properties that provide affordable residential and commercial rents in the communities they serve. Many of MACDC's member organizations partner with traditional lenders, such as for-profit banks, in extending credit to underserved

communities. Some provide certifications that qualify consumers for banks' lending programs. Some have partnered with banks on special purpose credit programs, or SPCPs.

34. As creditors, many of MACDC's members are subject to ECOA and Regulation B.

35. MACDC itself provides technical assistance to member organizations, including direct consulting and advisory support on structural and strategic needs; program-specific technical assistance, including supporting small business counselors on micro-lending; business planning, client assessments, and tracking metrics; and facilitating peer groups of practitioners, including leaders of community development corporations, technical assistance providers, and staff from business support organizations. MACDC provides this assistance through its own staff and external consultants. MACDC also provides training to member organizations and others.

36. Defendant **Consumer Financial Protection Bureau** ("CFPB") is a federal financial regulatory agency headquartered in Washington, D.C. It is charged with administering federal consumer protection laws, including ECOA, and regulating a broad range of consumer financial products and services.

37. Defendant **Mark Paoletta** is the Acting Director of the CFPB. He is sued in his official capacity.

FACTUAL ALLEGATIONS

I. ECOA WAS PASSED AND REGULATION B WAS PROMULGATED TO COMBAT CREDIT DISCRIMINATION, WHICH STILL PERSISTS TODAY.

A. Credit Discrimination Prior to ECOA and Regulation B.

38. Black borrowers have faced persistent barriers to credit access, from the collapse of the Freedman's Bank in 1874, which deprived 63,000 Black depositors of their savings; to Jim Crow's segregation of Black-managed banks from participation in the predominantly white

economy; to modern-day redlining.[8] Prior to ECOA's passage, private lenders 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.[9] The Home Owners' Loan Corporation in the 1930s, for example, restricted access to loans in communities of color.[10]

39. Comments opposing the changes to Regulation B also illustrate the barriers that people of color faced prior to ECOA and Regulation B—and continue to face today. One commenter, for instance, emphasized that "ECOA exists because financial institutions have a long, documented history of denying Black people[,] especially Black women[,] fair access to credit."[11] Another commenter recalled growing up in an "all-white neighborhood," which he later realized resulted from "redlining and restrictive covenants." He explained that "America is not great when businesses can join together to deny any citizen equal access to . . . services because of their race, nationality, skin color, religious beliefs, or gender."[12] Institutional commenters echoed these sentiments, pointing to historical and persistent credit discrimination against Black borrowers.[13]

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[8] *See* Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap,* at 10–39, 45–46, 53–54, 101–14, 134, 245–46, 255–62 (2017) (documenting the persistence of the racial wealth gap through the history of Black banks, and detailing how housing segregation, anti-Black racism, and Jim Crow policies systematically deprived Black Americans of access to credit).

[9] Legal Def. Fund, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-5200 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-5200 (citing U.S. COMM'N ON CIV. RTS., BOOK 4: HOUSING (1961), https://www.usccr.gov/files/historical/1961/61-005-U.pdf).

[10] Nat'l Consumer L. Ctr., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-19688, at 27 (Dec. 15, 2025), https://www.nclc.org/wp-content/uploads/2025/12/NCLC_ECOA-COMMENTS-to-CFPB_2025.pdf (citing Ira Rheingold et al., *From Redlining to Reverse Redlining: A History of Obstacles for Minority Homeownership in America*, 34 CLEARINGHOUSE REV. 642 (2001)).

[11] Renee Dior, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-13231 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-13231.

[12] Mark Larson, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-27235 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-27235.

[13] *See* Nat'l Ass'n of Morg. Brokers, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-4327, at 6–7 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-4327; Pub. Just., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-3881, at 2–6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-3881; Cal. Ass'n of Realtors, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-9296, at 2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-9296.

40. Prior to ECOA's passage, a single woman almost always needed a male relative to co-sign loans, even if the woman made more money.[14] A married woman could not obtain credit cards in her own name, only in her husband's. Even if she secured credit, the credit history accrued only to the husband. And if a couple applied for a mortgage, the bank often ignored the woman's income in deciding how much the couple could afford.

41. Comments submitted by individuals opposing the changes to Regulation B illustrate the barriers that women faced in credit markets before ECOA and Regulation B. One commenter recalled the challenges her mother faced as a widow to obtain credit before ECOA's passage.[15] A woman in her seventies recalled "what it was like to not be able to buy a car on my own, to be told a 4 year college education was for my brother not me," and how difficult it was "to hold down a job, take care of my parents, and feed my kids when the husband/breadwinner I was expected to 'marry and be provided for' didn't quite work out."[16] Another commenter shared that her mother needed her grandfather to co-sign for her first car because her mother was a single woman and not yet married—and stressed the continued need for "federal regulations to continue to protect women and minorities, whether from malice or general thoughtlessness."[17] Another comment highlighted that socioeconomic status does not insulate people from discrimination. The commenter's supervisor at AT&T was unable to a buy a home on her own "even though she was a department supervisor for a Fortune 500 company"—simply "because she was a woman."[18]

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[14] *See* Smithsonian Am. Women's Hist. Museum, *Voices on Independence: Four Oral Histories About Building Women's Economic Power* (Oct. 25, 2024), https://womenshistory.si.edu/blog/voices-independence-four-oral-histories-about-building-womens-economic-power.

[15] Arriana Scarponi, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0001 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-13128.

[16] Anonymous, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-5338 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-5338.

[17] Mia Valdez, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0158 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0158.

[18] Linda Hill, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-11550 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-11550.

B. ECOA's Passage, Amendments to ECOA, and the Promulgation of Regulation B.

42. In the early 1970s, organizations gathered thousands of letters from women around the country decrying their experiences with lenders and began to ratchet up public pressure. In 1974, Congresswoman Leonor Sullivan—the first woman from Missouri to serve in Congress—introduced a bill that would have protected consumers against discrimination on the basis of sex, marital status, race, color, national origin, age, and religion.[19] The bill failed to get out of committee.

43. A narrower set of bills prohibiting lending practices that discriminate on the basis of sex and marital status—but not race or national origin, yet—ultimately became ECOA.[20]

44. When it first enacted ECOA in 1974, Congress recognized the need "to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status."[21]

45. Two years later, in 1976, Congress expanded the categories of protected characteristics. A diverse coalition of elected officials, including Edward Brooke, the first elected Black Senator and a key architect of the Fair Housing Act, built on these initial efforts to secure ECOA's passage.

46. These additional protected characteristics include race, color, religion, national origin, and age.[22]

47. The 1976 Act also expressly permitted for-profit lenders to maintain "special purpose credit programs" (SPCPs) to serve "economically disadvantaged class[es] of persons"

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[19] *See* Winnie F. Taylor, The ECOA and Disparate Impact Theory: A Historical Perspective, 26 J. L. POL'Y 575, 598–99 (2018).
[20] *Id.* at 599.
[21] *Id.* at 576 n.2.
[22] Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94–239, § 701, 90 Stat. 251, 251 (1976) (codified as 15 U.S.C. § 1691).

with "special social needs." SPCPS are specifically designed to expand access to credit for groups that have faced obstacles to credit. And the 1976 Act authorized the Federal Reserve Board (the "Board") to promulgate standards for administration of SPCPs. That authority has since been transferred to the CFPB.

48. ECOA also required the Board to "prescribe regulations to carry out the purposes" of ECOA that "are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith." 15 U.S.C. § 1691b.

49. Consistent with this obligation, the Board promulgated the first version of Regulation B in 1975. As promulgated, Regulation B: (a) recognized disparate-impact liability under ECOA, (b) protected prospective applicants for credit against discouragement, and (c) set standards for SPCPs.

50. For nearly fifty years, these three key features of Regulation B have remained substantively the same.

51. In amending ECOA several times since its original passage, Congress has taken no steps to override these three key protections established in Regulation B in 1975.

52. Congress has repeatedly rejected measures that narrowed ECOA's protections. This includes Congress's refusal to pass bills, introduced in 1995 and again in 1997, that would have amended the statute to prohibit the use of statistical evidence alone to support impact claims under ECOA.[23]

[23] Credit Opportunity Amendments Act of 1995, H.R. 1699, 104th Cong. (1995); Credit Opportunity Amendments Act of 1997, H.R. 229, 105th Cong. (1997). These proposed restrictions were unsuccessful.

C. ECOA and Regulation B Made Substantial Progress in Dismantling Unjustified Barriers to Credit.

53. ECOA changed the landscape of lending from a subjective process vulnerable to the caprices and prejudices of lenders operating in a largely unregulated market in which discrimination was rampant, to a regulated system more tethered to objective measures of creditworthiness.[24]

54. Federal agencies and private litigants have relied on ECOA and Regulation B as an enforcement mechanism to shape lender behavior, discourage discrimination, and return money to impacted consumers.

55. ECOA and Regulation B have served as important tools in combatting modern-day redlining, whereby lenders refuse to meaningfully serve communities of color with home loan products. For example, DOJ enforcement actions resulted in over $100 million being invested in redlined communities through the agency's Combating Redlining Initiative, which relied on ECOA and Regulation B, to weed out practices that harm Black communities and other communities of color.[25]

56. ECOA and Regulation B have also served as critical tools in other credit markets. In 2022, for example, the Federal Trade Commission, relying on ECOA and Regulation B, settled a case with an auto lender that charged Black drivers higher rates.[26]

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[24] Fed. Rsrv. Regul. Serv.. *Background and Summary of Regulation B,* https://www.federalreserve.gov/frrs/regulations/background-and-summary-of-regulation-b.htm (accessed Sept. 29, 2026) (Federal Reserve's summary of Regulation B specifically Section 202.6(b)(2)).

[25] Kirsten Clarke, U.S. Dep't of Just., C.R. Div., *Fifty Years of Access to Lending Opportunity: Where Are We Now?* (Dec. 2, 2024), https://www.justice.gov/archives/opa/blog/fifty-years-access-lending-opportunity-where-are-we-now.

[26] Fed. Trade Comm'n, Press Release, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking illegal Junk Fees onto Bills and Discriminating Against Black Consumers* (Apr. 1, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills.

57. Empirical evidence shows that ECOA increased homeownership for married couples with a working wife and had a positive impact on women joining the workforce.[27] And prior to ECOA's passage, lenders excluded maintenance payments (such as child support or alimony)—which women were disproportionately likely to receive as compared to men—from determinations of creditworthiness.[28] As a result, creditors regularly denied divorced or separated women reliant on these forms of payment access to credit.[29] ECOA put a stop to such discriminatory practices by requiring lenders to consider "support payments that have been regularly received over a substantial period of time."[30]

58. In short, ECOA and Regulation B have helped to maintain progress in dismantling unjustified barriers to credit, preventing backsliding in the fight against credit discrimination, and addressing new forms of discrimination.

D. Despite the Progress Made, Unjustified Barriers to Credit Persist Today.

59. As of 2023, applicants of color are denied home mortgages at higher rates than white applicants, regardless of credit score, income, size of the loan, and other factors.[31] As of 2022, the Black-white homeownership gap stands at 30 percentage points—wider than it was in 1960, before the passage of the Fair Housing Act and ECOA.[32]

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[27] Alina Kristin Bartscher, *It Takes Two to Borrow: The Effects of the Equal Credit Opportunity Act on Housing, Credit, and Labor Market Decisions of Married Couples*, 36 REV. FIN. STUDS., 155, 176 (2023).
[28] John W. Cairns, *Credit Equality Comes to Women: An Analysis of the Equal Credit Opportunity Act*, 13 SAN DIEGO L. REV. 960, 973 (1976).
[29] *Id.*
[30] *Id.* at 974.
[31] *See* Off. of N.Y. Att'y Gen., *Racial Disparities in Homeownership: How lending practices have prevented New Yorkers of color from purchasing homes and deepened wealth inequality*, at 3, 17, 19–20 (Oct. 31, 2023), https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf; *see also* Amelia Zinn & Liam Reynolds, *How Local Differences in Race and Place Affect Mortgage Lending*, Urban Wire (Nov. 15, 2022), https://www.urban.org/urban-wire/how-local-differences-race-and-place-affect-mortgage-lending.
[32] Caitlin Young, et al., *A Landscape Scan of Homeownership for Households of Color*, URB. INST. (Nov. 9, 2022), https://www.urban.org/sites/default/files/2022-11/A%20Landscape%20Scan%20of%20Homeownership%20for%20Households%20of%20Color.pdf.

60. Mortgage applicants in Black and Hispanic neighborhoods continue to be denied more often than applicants in white neighborhoods. In 2024, for example, the average denial rate nationally was 12% in majority-Black census tracts and 11% in majority-Hispanic census tracts, compared to 6% in majority-white census tracts.[33] From 2004 to 2024, the denial rate for home mortgages has remained roughly double for Black applicants compared to the denial rate for white applicants.[34]

61. As of 2021, Black neighborhoods were less likely to have a bank branch than other neighborhoods, limiting access to financial services.[35] Multiple lawsuits have alleged modern-day redlining by lenders, including banks that avoided offering credit in some of the same neighborhoods that were first redlined in the 1930s.[36]

62. Home loans to Black and Hispanic consumers are more likely to be higher-priced than for non-Hispanic white consumers.[37] In 2022, Black and Hispanic consumers paid higher interest rates than all other racial or ethnic groups for home loans.[38]

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[33] CFPB, *Data Point: 2023 Mortgage Market Activity and Trends,* at 24 (Dec. 13, 2024), https://files.consumerfinance.gov/f/documents/cfpb_2023-mortgage-market-activity-and-trends_2024-12.pdf (all home purchase applications).

[34] *See* Nat'l Consumer L. Ctr. Comment, *supra* note 10, App. C, Fig. 1 (analysis of HMDA denial rates by race).

[35] Broady, *supra* note 1.

[36] Legal Def. Fund Comment, *supra* note 9 at 4 n.32 (citing Press Release, U.S. Dep't of Just., *Justice Department Reaches Significant Milestone in Combating Redlining Initiative After Securing Over $107 Million in Relief for Communities of Color Nationwide* (Oct. 19, 2023), https://www.justice.gov/archives/opa/pr/justice-department-reaches-significant-milestone-combating-redlining-initiative-after).

[37] CFPB, *Data Point: 2019 Mortgage Market Activity and Trends,* at 47–48 & tbl.7 (June 2020), https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf; CFPB, *Data Point: 2020 Mortgage Market Activity and Trends,* at 21–22 (Aug. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf.

[38] CFPB, *Data Point: 2022 Mortgage Market Activity and Trends,* at 22 (Sept. 2023), https://www.consumerfinance.gov/data-research/research-reports/data-point-2022-mortgage-market-activity-trends/.

63. A 1999 study commissioned by the Department of Housing and Urban Development found that Black homebuyers and other homebuyers of color continue to face discrimination in every stage of the mortgage process, from pre-application inquiries to denials.[39]

64. Racial disparities in lending also persist outside of mortgages. For example, Black-owned businesses received loans that were approximately 50% smaller than white-owned businesses through the Paycheck Protection Program, which operated during the height of COVID-19. [40] And a 2024 CFPB study using matched-pair testing showed that Black participants inquiring about small business loans—despite being assigned *stronger* financial profiles than their white counterparts—received less interest in their applications and were more likely to be routed to alternative credit products. [41]

65. Unjustified barriers to credit persist in automobile loans too. In addition to higher denial rates,[42] Black and Hispanic auto borrowers pay substantially higher interest rates even though they default less.[43]

66. Unjustified barriers to credit also persist in farming. In 2022, the CFPB found that "[t]he share of minority representation in farming, particularly that of Black farmers, has declined sharply over the last 100 years[,]" and that "credit discrimination may play a role in this decline."[44]

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[39] Margery A. Turner et al., *What We Know About Mortgage Lending Discrimination in America*, URB. INST. (Sept. 1999), https://www.huduser.gov/portal/sites/default/files/publications/pdf/HUD-8765-3.pdf.

[40] Rachel Atkins et al., *Discrimination in Lending? Evidence from the Paycheck Protection Program*, 58 SMALL BUS. ECON. 843, 843 (2022), https://www.jstor.org/stable/48695601.

[41] CFPB, Off. Rsch. Publ'ns, *Matched-Pair Testing in Small Business Lending Markets*, (Nov. 2024), https://www.consumerfinance.gov/data-research/research-reports/matched-pair-testing-in-small-business-lending-markets/.

[42] Alexander W. Butler et al., *Racial Disparities in the Auto Loan Market*, 36 REV. FIN. STUDS. 1 (Jan. 2023), https://doi.org/10.1093/rfs/hhac029.

[43] *Id.*

[44] Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150, 35224 & nn.402, 404 (May 31, 2023) (citing, *inter alia,* from 1910 to 2017 a decrease from 14 percent to 1.2 percent in the proportion of Black farmers in the United States, and the litigation of Black farmer discrimination claims in *Pigford v. Glickman*, 206 F.3d 1212 (D.C. Cir. 2000), *Garcia v. Vilsack*, 563 F.3d 519 (D.C. Cir. 2009), *Love v. Connor*, 525 F. Supp. 2d 155 (D.D.C. 2007), and *Keepseagle v. Veneman*, No. 99-cv-03119, 2001 U.S. Dist. LEXIS 25220 (D.D.C. Dec. 12, 2001).

In 2013, the Congressional Research Service summarized decades of well-documented allegations of unlawful discrimination against minority and women farmers in the management of USDA programs.[45]

67. Lenders continue to target Black borrowers with less favorable loan terms than white borrowers.[46] Predatory loans arise across the full range of credit products, from mortgages to auto loans, small business loans to small-dollar payday loans.[47]

68. Individual commenters opposing the changes to Regulation B reinforce this empirical evidence with practical observations and examples of continuing discrimination in our

[45] Jody Feder & Tadlock Cowan, *Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case*, Cong. Rsch. Serv. (Feb. 22, 2013), https://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40988.pdf.

[46] *See, e.g.*, *Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 141,148–51 (2d Cir. 2025) (affirming jury award and recognizing the viability of reverse redlining claims under the FHA and ECOA, where "Black borrowers were disproportionately affected by the predatory . . . loans"); Order, *Ramirez v. Greenpoint Mortg. Funding, Inc.*, No. 08-cv-0369 (N.D. Cal. Apr. 12, 2011), Dkt. No. 247 (settling, for $14.75 million, plaintiffs' claims that defendant's discretionary pricing policy resulted in less favorable loan pricing for Black and Hispanic borrowers than similarly situated white borrowers); Order, *Allen v. Decision One Mortg. Co.*, No. 07-cv-11669 (D. Mass. May 13, 2010). Dkt. No. 87 (settling, for $6.5 million, plaintiffs' claims that private banks and lenders' discretionary surcharge of additional points and fees under an otherwise objective risk-based financing rate disproportionately disadvantaged Black borrowers).

[47] *See, e.g.*, Neil Vigdor, *Apple Card Investigated After Gender Discrimination Complaints,* N.Y. TIMES (Nov. 10, 2019), https://www.nytimes.com/2019/11/10/business/Apple-credit-card-investigation.html (investigating allegations of credit discrimination against women in relation to Apple's credit card); Center for Responsible Lending, Payday and vehicle title lending disproportionately harm communities of color, exploiting and perpetuating the racial wealth gap (Nov. 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-cartitle-comm-of-color-nov2020.pdf; Delvin Davis, et al., *Race Matters: The Concentration of Payday Lenders in African-American Communities in North Carolina*, CTR. FOR RESPONSIBLE LENDING (2005), https://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north (finding that, even when controlling for a variety of other factors, African-American neighborhoods had three times as many payday lending stores per capita as white neighborhoods in North Carolina in 2005); Assaf Oron, *Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State*, Department of Statistics, Univ. of Wash. (2006) (concluding based on a study of Washington State payday lenders that "payday businesses do intentionally target localities with a high percentage of African Americans"). Analyses by Professor Ian Ayres of the Yale Schools of Law and Management and Professor of Vanderbilt University's School of Management showed that African Americans were marked up more often than whites and that their average markup was higher. Since the buyer's credit score and other indicia of creditworthiness are already included in the buy rate, the differences in markup were not a reflection of any differences in creditworthiness. *See* Expert Report of Ian Ayres, *Willis v. Am. Honda Fin. Corp*., No. 02-cv-0490 (M.D. Tenn. July 1, 2004), https://www.nclc.org/wp-content/uploads/2023/07/ahfc-ianayresreportexhibits.pdf; Mark A. Cohen, Report on the Racial Impact of AHFC's Finance Charge Markup Policy, at 1–3, *Willis v. Am. Honda Fin. Corp*., No. 02-cv-0490 (M.D. Tenn. June 30, 2004), https://www.nclc.org/wp-content/uploads/2023/07/ahfc-cohenreportappendices-a-c.pdf (finding that Black and Hispanic car buyers faced more frequent and greater mark ups of auto loan interest rates than other car buyers).

credit markets. One commenter explained that racial discrimination "is not ancient history," but "a present-day reality," as "Black women are routinely paid less, charged more, denied more, and scrutinized harder in lending decisions."[48] Characterizing ECOA as "one of the few guardrails standing between the past" credit discrimination and "a repeat" of this discrimination, this commenter pointed out that the proposed changes to ECOA "signal that the government is willing to sacrifice Black women's economic security in favor of institutional convenience."[49] Echoing these concerns, "a middle-aged, single Black woman" emphasized that, in her "lived experience," measures enacted as means of "'clarification' can easily become a loophole that further entrenches systemic inequality."[50]

69. Women continue to face significant unjustified barriers in the credit marketplace.

70. For example, though women have achieved homeownership rates closer to men's in recent years, denial rates for single women are still significantly higher than for single men.[51] Women in opposite-sex couples are disproportionately likely to be left off of a credit application, with the male partner listed as the sole borrower.[52] A woman in that situation may contribute to making the mortgage payments year after year, through the joint household budget, but lack payment history in her credit score. A significant number of women who seek to own the marital

[48] Renee Dior, *supra* note 11.
[49] *Id.*
[50] Anonymous, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-9759 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-9759.
[51] Lew Sichelman, *Single Women Rejected Most Often*, NAT'L MORTG. PRO. (Oct. 1, 2025), https://nationalmortgageprofessional.com/news/singlewomen-rejected-most-often (showing that research from LendingTree finds single women are almost 30% more likely to be denied a mortgage).
[52] Nat'l Consumer L. Ctr., *Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures* (Feb. 2024), https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/.

home after a divorce struggle to refinance (to remove their ex-spouse from the loan) because they have not been recognized as a borrower when they were contributing to payments.[53]

71. Some lenders target women with predatory loan products, such as subprime loans, a practice known as "pinklining."[54] These predatory policies disproportionately harm women of color: One study found that Black women were 256% more likely than white men to receive subprime loans.[55]

72. In short, sex and gender discrimination "haven't disappeared."[56]

73. Technological advances, such as AI and algorithmic assessments of credit worthiness, reinforce the need for ECOA and Regulation B to protect against the evolving permutations of discrimination.[57] These technologies frequently replicate and amplify existing discrimination and bias, denying people of color equal access to credit and other opportunities often on a vast scale and at a rapid pace.[58]

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[53] Sarah Mancini and Alys Cohen, *Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information After a Death or Divorce*, 43 PEPPERDINE L. REV. 345 (2016), available at https://digitalcommons.pepperdine.edu/plr/vol43/iss2/3/.

[54] Suparna Bhaskaran, *Pinklining: How Wall Street's Predatory Products Pillage Women's Wealth, Opportunities & Futures,* Cmtys. United NJ, ACCE Inst. and ISAIAH, at 13–22 (2016), https://d3n8a8pro7vhmx.cloudfront.net/acceinstitute/pages/100/attachments/original/1466121052/acce_pinklining_VIEW.pdf?1466121052&utm_source=MECEP+Matters+July+2016&utm_campaign=July+2016+MECEP+Matters&utm_medium=email.

[55] *See* Stacy Jackson, *Black Women Homebuyers Still Facing Systemic Roadblocks*, BLACK ENTER. (Feb. 22, 2024), https://www.blackenterprise.com/black-women-homebuyers-systemic-roadblocks-homeownership/ (citing Sarah Javaid & Talia Gossman, *Homeownership—A Pathway to Wealth Building—Is Still Out of Reach For Many Women of Color*, NAT'L WOMEN'S L. CTR., (Nov. 2023), https://nwlc.org/wp-content/uploads/2023/11/2023_NWLC_Homeowner_Brief_Accessible.pdf.).

[56] *Id*.

[57] *See, e.g.*, Consumer Fed'n of Am., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-13228, at 2–6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-13228; Ams. for Fin. Reform Educ. Fund, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-9457, at 2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-9457; Ctr. for Democracy & Tech., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-12074, at 2, 5 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-12074.

[58] Meredith Broussard, *Artificial Unintelligence: How Computers Misunderstand the World* 115 (2018); U.S. Gov't Accountability Off., GAO-25-107201, *Property Technology for Homebuying: Products Present Benefits and Risks Amid Evolving Federal Oversight* (Sept. 2025), https://files.gao.gov/reports/GAO-25-107201/index.html?_gl=1*5gh9fd*_ga*MTY3MDUxNDM4Mi4xNzg3NTMyMjgx*_ga_V393SNS3SR*czE3ODc1MzIyODAkbzEkZzEkdDE3ODc1MzIzMTMkajI3JGwwJGgw#_ftn3.

74. But as explained above, without the protections of ECOA and Regulation B, credit discrimination would be even more widespread today.[59]

75. These protections have increased equal opportunity in the country's credit markets. Enforcement of ECOA contributed to a boom in small businesses from the 1980s through the early 2000s, with women-owned businesses representing "the fastest growing segment in the U.S. economy," and the proliferation of "over four million minority-owned businesses" in the United States in 2009.[60]

76. Access to credit, one individual commenter emphasized, "shapes whether my children grow up in stable housing, have educational opportunities, and see wealth building within their own family."[61] "Weakening ECOA protections today," this commenter concluded, "will lock in the barriers I face and pass them on to the next generation."[62]

77. In other words, the full protections of ECOA and Regulation B are just as important today as they were when ECOA was originally passed and Regulation B originally promulgated.

II. THE CFPB'S UNLAWFUL CHANGES TO DISPARATE-IMPACT LIABILITY

A. For Fifty Years, Regulation B Recognized that ECOA Includes Disparate-Impact Liability.

78. ECOA's operative anti-discrimination provision—prohibiting discrimination "on the basis of" a protected characteristic—is not textually limited to intentional discrimination.

79. Nowhere else does ECOA's text limit this operative provision to intentional discrimination, either.

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[59] Dubravka Ritter, Payment Cards Center, Fed. Rrsv. Bank of Phila., *Do We Still Need the Equal Credit Opportunity Act* 37–38 (Sept. 2012), https://www.philadelphiafed.org/-/media/FRBP/Assets/Consumer-Finance/Discussion-Papers/D-2012-equal-credit-opportunity-act.pdf?sc_lang=en.

[60] U.S. Senate Comm. on Small Bus. Entrepreneurship, *Women and Minority Entrepreneurship*, https://www.sbc.senate.gov/public/index.cfm/womenminorityentrepreneurship.

[61] N. Lewis, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-26322 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-26322.

[62] *Id.*

80. "On the basis of" is the same language that the Supreme Court used to describe Title VII's inclusion of disparate-impact liability in *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

81. Congress modeled ECOA's language on the reasoning used in *Griggs*.[63]

82. Consistent with ECOA's statutory language and congressional intent, Regulation B has recognized disparate-impact liability since the Board finalized the rule in 1977.

83. In 1985, the Board republished Regulation B, including existing Board interpretations, and codified in the Code of Federal Regulation Official Staff Commentary on ECOA, which included burdens of proof for disparate-impact claims.[64]

84. Until the Final Rule was proposed, federal agencies uniformly recognized disparate-impact liability under ECOA.[65]

B. The Final Rule's Changes.

85. The Final Rule purports to eliminate disparate-impact liability under ECOA.

86. The Final Rule states that ECOA "does not provide that the 'effects test' applies for determining whether there is discrimination in violation of [ECOA],"[66] and that ECOA "does not provide for the prohibition of practices that are facially neutral as to prohibited bases, except to the extent that facially neutral criteria function as proxies for protected characteristics designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics."[67]

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[63] Amendments to Regulation B to Implement the 1976 Amendments to the Equal Credit Opportunity Act, 42 Fed. Reg. 1242, 1255 (Jan. 6, 1977) (codified at 12 C.F.R. pt. 1002).
[64] *See* Revision of Regulation B, Official Staff Commentary, 50 Fed. Reg. 10890–01, 10912 (Mar. 18, 1985) (codified at 12 C.F.R. pt. 1002, Supp. I, comment 6(a)-2).
[65] *See* Policy Statement on Discrimination in Lending, 59 Fed. Reg. 18266, 18268–69 (Apr. 15, 1994).
[66] Final Rule at 21668.
[67] *Id.* at 21670 (codified at 12 C.F.R. pt. 1002, Supp. I, comment 6(a)-2).

87. The Final Rule primarily justifies this change by arguing that "the best reading" of the statutory text is that "ECOA does not authorize disparate-impact liability."[68] In reaching this conclusion, the CFPB determined that it need not weigh all the other factors normally considered in statutory construction, such as statutory purpose.[69]

88. The CFPB also argues that disparate-impact liability may cause creditors to avoid adopting policies that benefit all borrowers because of concerns about disparate-impact liability.[70]

89. The CFPB also states it is "concerned" that disparate-impact compliance may cause lenders to engage in intentional discrimination in violation of the Constitution. [71] The CFPB also states that disparate-impact liability "encourages and, in some cases, may require covered entities to engage in the intentional use of balancing to eliminate disparate outcomes by treating individuals" based on protected characteristics—in other words, that disparate-impact compliance may result in more credit discrimination.[72]

C. The CFPB's Failure to Respond to Comments or Substantiate Its Reasoning.

1. Impact on Credit Markets and Reliance Interests.

90. The CFPB cited no evidence that disparate-impact liability benefits certain borrowers at the expense of others. On the contrary, commenters submitted evidence showing that disparate-impact compliance removed arbitrary and unnecessary credit barriers to all borrowers.

91. As explained in more detail below, commenters highlighted that elimination of disparate-impact liability will result in more credit discrimination. In practice, ensuring equal access to credit requires the elimination of unnecessary and discriminatory credit barriers. Today,

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[68] Final Rule at 21634; *see also, e.g.*, *id.* ("The [CFPB] has determined that the best interpretation of ECOA is that it does not authorize disparate-impact claims.").
[69] *Id.* ("[T]he [CFPB] has determined that, in light of the statutory language, it is not necessary to consider other factors, including the statutory purpose of ECOA.").
[70] *Id.* at 21635.
[71] *Id.* at 21636.
[72] *Id.*

the proliferation of automated models and targeted digital advertising that decide who gets credit offers, which applicants are approved, and the price each pays for credit increase opportunities for unintended, yet still pernicious, credit discrimination. Without disparate-impact liability, discriminatory outcomes are likely to arise from models built with data that can bake in prior discrimination and disparities.

92. As commenters explained, businesses also benefit from the increased income generated from expansion of credit markets to include all credit-worthy applicants—benefits that the CFPB ignored.[73]

93. Commenters also explained that the Final Rule will lead to lenders abandoning efforts to eliminate policies with a disproportionate effect on protected classes because the CFPB may now view those efforts as a new form of intentional discrimination—a substantial harm that the CFPB failed to consider.[74]

94. Commenters identified other harms from the elimination of disparate-impact enforcement, which the CFPB declined to address or did not substantively address. Commenters explained, for example, that eliminating disparate-impact liability would make addressing racial discrimination by algorithmic or AI models either difficult or impossible.[75]

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[73] *See, e.g.*, Hope Enter. Corp. et al., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-3777, at 2, 6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-3777; Fair Hous. Advocs. of N. Cal., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-12508, at 6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-12508 (citing research demonstrating "that discrimination causes economic inefficiencies, while fair practices for all benefits businesses); Nat'l Ass'n of Hisp. Real Est. Pros., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-17175, at 1 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-17175.

[74] *See* Consumer Bankers Ass'n, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-10998, at 4 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-10998; Mike Flood- U.S. Chamber of Com., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0078, at 6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0078.

[75] Ams. for Fin. Reform Educ. Fund Comment, *supra* note 57; 9 Nat'l & State Consumer Advocs. Orgs., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0132 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0132; Ctr. for Democracy & Tech. Comment, *supra* note 57;

95. As with many comments, the Final Rule summarizes these comments but does not address them.[76] Instead, the Final Rule asserts that Congress did not authorize disparate-impact analysis and further stating without evidence that AI unfettered by disparate-impact analysis might expand access to credit.[77]

96. Attorneys General from 21 states submitted a comment arguing that the elimination of disparate-impact enforcement will encourage discrimination.[78] The Attorneys General cited the "discretionary pricing policy" that "was facially race-neutral but led to Black and Hispanic borrowers paying higher interest rates and fees for their mortgages than their white counterparts," which precipitated, in part, the 2008 subprime mortgage crisis.[79] Elimination of disparate impact, the Attorneys General warned, empowers lenders to "experiment with the same strategies that led not only to pervasive mortgage lending discrimination but also to the 2008 financial crisis," a possibility that the CFPB's reasoning fails to acknowledge.[80]

97. The National Consumer Law Center highlighted the importance of ECOA's disparate-impact and discouragement provisions for small dollar loan lending, including credit

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Consumer Fed'n of Am. Comment, *supra* note 57; Innovation Council, Comment on Changes to Regulation B of the Equal Credit Opportunity Act,, Comment ID CFPB-2025-0039-17851 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-17851; Lawyers' Committee for Civil Rights Under Law, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-11950 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-11950; Nat'l Ass'n of Hisp. Real Est. Pros. Comment, *supra* note 73; Pub. Just. Comment, *supra* note 13; Restored Citizens Faith Found, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0045 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0045; The Greenlining Institute, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-17514 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-17514.

[76] Final Rule at 21636 ("[T]he fact that neutral policies and procedures resulting in a disparate impact on a prohibited basis will not give rise to liability under the Act is a choice of Congress and a necessary result of aligning Regulation B with the language of the statute.").

[77] *Id.* at 21660 ("For example, covered persons can experiment more with risk-based pricing and automated underwriting with reduced risk of facially neutral policies with disproportionate effects triggering liability without intent.").

[78] Multistate Att'ys Gen., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0060, at 3 (Dec. 12, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0060.

[79] *Id.* at 6.

[80] *Id.* at 6–7.

card, payday, and small dollar lending made online or via mobile apps[81]—additional issues that the CFPB failed to meaningful address.

98. Other commenters urged the CFPB to consider alternatives to its disparate-impact proposal. For example, the Appraisal Regulation Compliance Council observed that eliminating Regulation B's disparate-impact provisions "without establishing a replacement oversight structure risks creating a regulatory vacuum" in appraisals, undermining the reliability of underwriting and pricing for borrowers.[82] The CFPB gave no meaningful consideration to any option short of outright removal of disparate-impact liability.

99. Similarly, the National Fair Housing Alliance's comment highlighted the necessity of disparate-impact liability to address discrimination in automated credit decision-making, provided evidence countering the CFPB's contention that disparate impact discourages innovation, and supplied studies and case law demonstrating how the CFPB's proposed changes would enable redlining and other forms of pre-application discrimination in the context of home mortgages, and discourage applications through insufficient outreach or unequal treatment.[83] The CFPB did not meaningfully respond to these concerns.

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[81] Nat'l Consumer L. Ctr. Comment, *supra* note 10, at 51 (citing Catherine Ruetschlin, Demos, Dedrick Asant-Muhammad, NAACP, *The Challenge of Credit Card Debt for the African American Middle Class* (Dec. 2013), https://www.demos.org/sites/default/files/publications/CreditCardDebt-Demos_NAACP_0.pdf (finding that, though moderate income Black households had similar rates of default and late payments compared to moderate income white households, Black households were more likely to have a credit card cancelled, experience credit limit reduction, or undergo credit card denial in the three years after the Great Recession); and Delvin Davis, et al., *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, CENTER FOR RESPONSIBLE LENDING (2005) (surveying 2025 demographic data from North Carolina and finding that, holding factors other than race constant, "African-American neighborhoods ha[d] three times as many payday lending stores per capita as white neighborhoods"), https://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north).

[82] Appraisal Regul. Compliance Council, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-13509, at 2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-13509.

[83] *Id.* at 39–43.

100. A diverse group of nonprofit and for-profit stakeholders—including the Consumer Federation of America,[84] Legal Aid D.C.,[85] the National Association of Hispanic Real Estate Professionals,[86] the National Association of Realtors,[87] Public Justice,[88] a coalition of California nonprofits,[89] and Unidos U.S. and Inclusive Action for the City[90]—echoed these concerns, pointing out that the proposed changes will disrupt markets because of longstanding reliance on the provision. The CFPB did not meaningfully respond to these concerns.

101. The CFPB also failed to respond to comments highlighting the costs of eliminating disparate-impact liability for borrowers in rural areas, where "lower numbers of lenders, lower success at attracting private investment, and a higher proportion of high interest lending result from structural issues and neutral policies"—which could potentially be challenged under a disparate impact theory, but likely not under an intentional discrimination theory.[91]

102. The CFPB recognized that "[t]he proposed rule may result in consumers not applying for credit and facing greater barriers to accessing credit than they otherwise would have under the existing rule."[92] The CFPB also recognized this would particularly affect "elderly, minority, and low-income consumers" who are "more likely to rely on brick-and-mortar branch

[84] Consumer Fed'n of Am. Comment, *supra* note 57, at 5–6.
[85] Legal Aid DC, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-25226, at 2–4 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-25226.
[86] Nat'l Ass'n of Hisp. Real Est. Pro. Comment, *supra* note 73 at 2.
[87] Nat'l Ass'n of Realtors, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-29827, at 1–2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-29827.
[88] Pub. Just. Comment, *supra* note 13 at 2–6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-3881.
[89] Rise Econ., et al., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-16682, at 2–3 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-16682.
[90] UnidosUS and Inclusive Action for the City, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-28383, at 5–7 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-28383.
[91] Hous. Assistance Council, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-14862, at 4 (Dec. 15, 2025) https://www.regulations.gov/comment/CFPB-2025-0039-14862.
[92] Proposed Rule at 50916; *see also* Final Rule at 21644 (same).

services" and "may no longer be able to easily access financial services or products."[93] But the CFPB did not meaningfully consider these costs.

103. As comments explain, lenders have spent decades developing tools and methods to comply with ECOA's disparate-impact provisions. Altering these compliance systems will require significant resources and time—making it unlikely that lenders were able to overhaul their systems by the Final Rule's effective date.[94]

104. These compliance systems also benefit lenders, as expanding access to credit enables creditors to increase their profits by reaching new markets—a goal the Final Rule disrupts.[95]

105. As highlighted in the Attorneys General comment, states also have "serious reliance interest . . . in a strong federal mechanism to address discrimination in the credit market."[96]

106. The Final Rule acknowledged and summarily dismissed reliance interests, stating the CFPB "concludes that the need to align Regulation B with ECOA's statutory language is paramount and that any reliance interests . . . are insufficient compared with the importance of conforming Regulation B to the statutory language."[97]

107. The CFPB concludes that "consumers will remain protected under ECOA from disparate treatment,"[98] but this is simply a recitation of the changes made—not a replacement for

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[93] *Id*.
[94] Better Mkts., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-27951, at 6 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-27951.
[95] *See, e.g.*, Beneficial State Found., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-27755, at 2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-27755 (explaining how disparate-impact analysis helps lenders identify where borrowers might confront unnecessary barriers to credit, enabling them to adjust borrowing requirements to expand their customer base while maintaining portfolio quality); BLDS, LLC, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-27221, at 2 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-27221 ("[D]isparate impact has provided a framework for lenders to identify and take advantage of these opportunities [to alter procedures to attract qualified borrowers], thereby eliminating unnecessary barriers to credit.").
[96] Multistate Att'ys Gen. Comment, *supra* note 78, at 8.
[97] Final Rule at 21636.
[98] *Id.*

the protections that the CFPB removed from Regulation B. These changes constrain and guide the actions of federal enforcement and supervisory agencies and also impact the decisions of lenders, which rely on the CFPB's interpretation of ECOA.

108. The CFPB states that creditors "will have greater flexibility to adopt facially neutral policies and procedures,"[99] but it does not explain why creditors' ability to adopt "facially neutral policies and procedures" that erect discriminatory barriers against protected classes would serve the core purpose of ECOA or protect the interests of the consumers and businesses.

109. The Final Rule purports to support its departure from decades of practice by speculating that the prospect of disparate-impact liability "may" or "could" deter creditors from adopting policies that "may generally expand access to credit . . . because of concerns about potential disparate-impact liability."[100] But the CFPB fails to support this speculation with examples or data.

2. Explanation of Departure from Prior Interpretations.

110. The CFPB relies on its refrain that the "best reading" of ECOA is that the statutory text does not authorize disparate-impact liability. In so relying, the CFPB fails to substantively engage with comments analyzing ECOA's effects-based language, Supreme Court interpretations of similar language, and ECOA's statutory purpose.

111. The CFPB did not meaningfully engage with comments explaining that ECOA's "on the basis of" language tracks the Supreme Court's reasoning in analyzing Title VII in *Griggs*, repeating only that the "best reading" of the statute does not include disparate-impact liability.[101]

[99] *Id.*
[100] *Id.* at 21625.
[101] *Id.* at 21630.

112. Nor did the CFPB meaningfully engage with comments highlighting the textual similarity between ECOA's "on the basis of" language and the language of two other statutes authorizing disparate-impact claims, the Americans with Disabilities Act and the Equal Pay Act. The CFPB pointed to differences in the text of *other* portions these two statutes, failing to engage with the identical "on the basis of" language.[102]

113. The CFPB did not meaningfully engage with comments pointing to ECOA's legislative history as embracing disparate-impact liability or to Congress's effective ratification of judicial interpretations encompassing disparate-impact liability, either.[103]

114. The CFPB did not respond to comments explaining that Congress rejected two proposals to explicitly narrow ECOA to cover only intentional discrimination.[104]

115. The CFPB gave no weight to interpretative agencies' uniform application of ECOA, stretching back to the 1976 Act, because prior agency interpretations cited to legislative history rather than relying strictly on statutory text. [105]

116. Commenters, citing case law and studies, underscored how disparate-impact analysis, as used in practice, does not encourage or require any claimed racial balancing or violate the Constitution.[106] The CFPB ignored these comments and provided no examples of lenders "engag[ing] in the intentional use of balancing" in violation of the Constitution, either.

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[102] *Id* at 21631.
[103] *Id.* at 21635.
[104] *Id*. at 21627.
[105] *Id.* at 21635.
[106] Nat'l Fair Hous. All. ("NFHA"), Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-3486, at 17–18 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-3486.

III. THE CFPB'S UNLAWFUL NARROWING AND REINTERPRETATION OF "DISCOURAGEMENT" OF PROSPECTIVE APPLICANTS

A. For Fifty Years, Regulation B Made Clear that ECOA Prohibits Discouragement.

117. Regulation B's discouragement provisions long prohibited pre-application discrimination. Prohibiting pre-application discrimination is critical because, without these protections, creditors shift discriminatory practices from the application process to earlier in the credit pipeline.

118. For example, Regulation B's discouragement provision has prohibited modern-day "redlining," where lenders avoid serving communities of color and discourage applications from those communities.[107] Federal agencies and financial regulators have long relied on circumstantial and comparative evidence of discrimination. Such evidence includes bank service areas that exclude communities of color; refusals to advertise or locate branches or loan officers in communities of color; and significant disparities in receipt of applications and originations in communities of color, particularly as compared to peer lenders.[108] Such facts, Regulation B's discouragement provision recognized, can serve as probative evidence of lending discrimination.[109]

119. Shifting discrimination to earlier in the credit pipeline also makes it more difficult for any individual to recognize that he or she has been discriminated against. Prohibitions on discouragement therefore prevent lenders from hiding discriminatory practices or shielding such practices from liability.

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[107] *Id*. at 33–36.
[108] *Id*. at 34 (citing Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, National Credit Union Administration, Interagency Fair Lending Examination Procedures (Aug. 2009)).
[109] *Id*.

120. ECOA expressly empowered the Board (and now the CFPB) to promulgate regulations that "are necessary or proper to effectuate the purposes of [ECOA], to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith." 15 U.S.C. § 1691b.

121. For decades, Regulation B has prohibited precisely this type of discouragement to prevent the "circumvention" and "evasion" of ECOA.

122. Prohibitions on redlining are particularly critical given Black people's long exclusion from credit access because of government-supported redlining.[110]

123. In some markets and parts of the country, a dual credit market has developed, where prime lenders focus their marketing efforts primarily in white neighborhoods providing market-rate products, while subprime lenders focus their marketing efforts on communities of color (often as the sole option for borrowers, given the lack of bank branches in these neighborhoods).[111] Regulation B has functioned as a tool against this type of discrimination.

124. The Board recognized the need for these provisions when promulgating earlier versions of the rule. The Board also recognized the need for these provisions when issuing Official Staff Commentary in 1985, which codified existing Board interpretations. And the CFPB republished Regulation B in 2011 with no material change to the discouragement provision.

125. The Board also recognized the dangers of acts and practices that discourage prospective applicants, such as discriminatorily selective advertising. It recognized that it would

[110] Legal Def. Fund Comment, *supra* note 9 (citing, 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).

[111] Nat'l Consumer L. Ctr. Comment, *supra* note 10, at 28 (citing FDIC National Survey of Unbanked and Underbanked Households, FDIC 2, 6–7, 37 (2021), https://www.fdic.gov/analysis/household-survey/2021report.pdf).

be unlawful, "[f]or example, if a creditor advertises only for deposits in minority areas but directs loan advertising only to white neighborhoods"—a violation that would require the creditor to remediate by, among other things, "extend[ing] similar loan advertising to the minority areas."[112] Accordingly, for decades, Regulation B prohibited "oral or written statement[s], in advertising or otherwise . . . that would discourage on a prohibited basis a reasonable person from making or pursuing an application."[113]

126. In the 1985 Official Staff Commentary codifying existing Board interpretations, the Board confirmed that "[i]n keeping with the purpose of the [A]ct—to promote the availability of credit on a nondiscriminatory basis—[§ 1002.4(b)] covers acts or practices directed at prospective applicants."[114] The Official Staff Commentary provided examples of practices prohibited under § 1002.4(b), including "[the] use of words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference or a policy of exclusion in violation of the Act."[115]

B. The Final Rule's Changes to Discouragement.

127. The Final Rule narrows the definition of discouragement in four ways.

128. First, the Final Rule narrows discouragement to encompass only spoken or written words, or visual images—and not other acts or practices.[116] The Final Rule states, for example, that "decisions about where to locate branch offices, where to advertise, or where to engage with the community through open houses or similar events . . . even if they had some communicative

[112] Equal Credit Opportunity Joint Notice of Proposed Enforcement Guidelines, 43 Fed. Reg. 29256, 29257 (July 6, 1978).
[113] 12 C.F.R. § 1002.4(b) (West 2025).
[114] Equal Credit Opportunity, Revision of Regulation B, Official Staff Commentary, 50 Fed. Reg. 48050 (Nov. 20, 1985) (codified at 12 C.F.R. pt. 1002, Supp. I, comment 4(b)-1).
[115] *Id*., 12 C.F.R. pt. 1002, Supp. I, Paragraph 4(b)-1.ii.
[116] Final Rule, at 21668 (modifying 12 C.F.R. § 1002.4(b)).

effect that some consumers could arguably find discouraging" no longer constitute discouragement.[117]

129. Second, the Final Rule narrows discouragement: from something that "would discourage on a prohibited basis a reasonable person from making or pursuing an application[,]" to something the creditor "knows or should know would cause a reasonable person to believe that the creditor would deny their credit application, or would grant it on less favorable terms, because of" the applicant or prospective applicant's prohibited-basis characteristics.[118]

130. Third, the Final Rule states that *encouraging* one group cannot constitute *discouragement* of another.[119]

131. Finally, through new explanatory comments to Regulation B, the Final Rule purports to eliminate as a potential form of unlawful discouragement all (a) "[s]tatements in support of local law enforcement"; (b) "[s]tatements 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"; and (c) "[s]tatements encouraging consumers to seek out resources to develop their financial literacy."[120]

132. The Final Rule's rationale for altering the existing rule is simply that "the CFPB has preliminarily determined that . . . the provision has been interpreted to prohibit conduct that it is not necessary or proper to prohibit."[121]

133. Regarding the standard for discouragement, the Final Rule states that "§ 1002.4(b) has been interpreted to apply to [improper] scenarios"[122]; regarding the definition of "oral or

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[117] *Id.* at 21645.
[118] *Id.* (modifying 12 C.F.R. § 1002.4(b) and adding Paragraph 4(b)-1).
[119] *Id.* at 21669 (modifying 12 C.F.R. pt. 1002, Supp. I, comment 4(b)-1).
[120] *Id*. at 21669–70 (modifying 12 C.F.R. § 1002.4(b), and adding 12 C.F.R. pt. 1002, Supp. I, comment 4(b)-1.ii.B, C, D).
[121] *Id*. at 21638.
[122] *Id.* at 21646.

written statement," it states that the language "acts or practices . . . has resulted in § 1002.4(b) being interpreted overly broadly"[123]; and regarding the issue of selective encouragement, it states that "Section 1002.4(b) has been interpreted to prohibit the selective encouragement of certain consumers."

134. The Final Rule also raises the possibility that the discouragement provision may "constrain free speech and commercial activity in ways that are unwarranted."[124] The Final Rule states, without providing examples, that "[c]onstraints on these types of business practices and statements, as currently exist, harm the marketplace by unnecessarily regulating business practices and limiting expression."[125]

C. The CFPB's Failure to Respond to Comments or Substantiate Its Reasoning.

135. Despite claiming that the discouragement provision has been applied improperly or overly broadly, the Final Rule cites no study, policy document, academic paper, or even a legal pleading in which these purported misinterpretations have appeared. Indeed, it offers no evidence whatsoever that any such "interpret[ations]" have been asserted by any party at any time.

136. For example, the assertion that "§ 1002.4(b) has been interpreted to apply to scenarios that should not be characterized as prohibited" is not accompanied by any explanation of how, when, or by whom § 1002.4(b) has purportedly been so interpreted, or what "scenarios" those might be, beyond a circular assertion that they are "scenarios that . . . do not involve statements" that the revised text of the rule would prohibit.

137. Commenters, relying on extensive data and studies (including the CFPB's own) demonstrated that pre-application discouragement is often effectuated through "acts or practices,"

[123] *Id.* at 21645.
[124] *Id.* at 21638.
[125] *Id.* at 21645.

not just statements, and that assessing potential discouragement is highly fact-intensive, hinging on specific contexts, such as comparing putative discouragement of one group to purported encouragement of another group.[126]

138. The CFPB rejected, without any substantive analysis, comments pointing out that the elimination of "practices" such as location of branches from Regulation B's discouragement provision will encourage redlining. The CFPB responded only that the discouragement provision will continue to address pre-application discrimination—without confronting the fact that the changes to Regulation B dramatically narrow the type of evidence that might support a showing of this kind of discrimination.[127]

139. Without explanation, the CFPB lists acts that "may have some communicative effect"—such as determining where to advertise—and characterizes prohibition of these acts as "overly broad." Reasoning that such acts and practices "do not constitute 'oral or written statements,'" the CFPB describes these practices without in any way justifying their exclusion from the discouragement provision's ambit.[128] The CFPB also ignores comments that this kind of conduct can be used to evade ECOA.

140. The CFPB ignored multiple comments showing that pre-application discouragement is persistent, particularly for people of color.[129] These comments explained that discriminatory discouragement of small business entrepreneurs is widespread, with entrepreneurs

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[126] *See* NFHA Comment, *supra* note 106, at 33–37, 39–46.
[127] Final Rule at 21662.
[128] *Id*. at 21643–44.
[129] *See, e.g.*, NFHA Comment, *supra* note 106, at 36 (citing Andre Perry, et al., *Black-owned Businesses in U.S. Cities: The Challenges, Solutions, and Opportunities for Prosperity*, BROOKINGS METRO (Feb. 14, 2022), https://www.brookings.edu/wp-content/uploads/2022/02/Black-business-report_PDF.pdf; Maura L. Scott, et al., *Revealing and Mitigating Racial Bias and Discrimination in Financial Services*, J. OF MKTG. RSCH. 3, https://doi.org/10.1177/00222437231176470; CFPB, *Supervisory Highlights 8* (Fall 2021), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf; Federal Reserve System, 2020 Fair Lending Interagency Webinar 36, 39 (Dec. 2020), https://www.consumercomplianceoutlook.org/Outlook-Live/2020/2020-Fair-Lending-Interagency-webinar/).

of color, women, and religious-affiliated entities facing heightened obstacles in their search for credit.[130] Pre-application discouragement persists as one of the contributing forces to a market in which historically underserved communities of color are disproportionately unbanked at every income level and relegated to subprime credit alternatives.[131]

141. Individual comments raised particular concerns about these changes' impact on Black people, especially Black women—additional comments with which the CFPB did not substantively engage. One commenter made the common-sense observation that "[a] lender does not need to use slurs to make a Black woman feel unwelcome," as "[b]eing repeatedly questioned, pushed aside, or told to apply somewhere else sends a clear message that our applications are not wanted and our business does not matter."[132] Another commenter observed that "[l]enders don't have to put 'No Black people allowed' on their application forms anymore," since "algorithms and criteria like arbitrary minimum credit score cutoffs, or strict geographic limitations that mirror historical redlining" can still enable lenders to discriminate based on race or other protected characteristics.[133] "For many Black women," this commenter explained, "the subtle messaging, the dismissive tone from loan officers, or the endless 'extra' documentation requests are not subtle at all—they are active discouragement."[134]

142. Other comments—including from Americans for Financial Reform, the NAACP Legal Defense and Educational Fund, the National Consumer Law Center, the Association for

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[130] *See* NFHA Comment, *supra* note 106, at 36; Main St. All., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-15943, at 2–4 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-15943.

[131] *FDIC National Survey of Unbanked and Underbanked Households*, FDIC 2, 6–7, 37 (2021), https://www.fdic.gov/analysis/household-survey/2021report.pdf; Lisa Rice, *Missing Credit: How the U.S. Credit System Restricts Access to Consumers of Color*, NAT'L FAIR HOUS. ALL. (Feb. 26, 2019), https://nationalfairhousing.org/wp-content/uploads/2019/04/Missing-Credit.pdf; Lisa Rice & Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 Suffolk U. L. Rev. 935 (2013).

[132] N. Lewis, *supra* note 61.

[133] Anonymous, Comment ID CFPB-2025-0039-9579, *supra* note 50.

[134] *Id.*

Computing Machinery, and others—also explained that the changes to disparate impact and discouragement would weaken protections and aid the circumvention of ECOA, given that lenders increasingly use AI and other algorithmic decision-making systems to make credit determinations.[135] The CFPB failed to meaningfully respond to these comments.

143. The comment from Housing Opportunities Made Equal of Virginia and Legal Aid Justice Center explained that the reduced protections in the Final Rule would allow banks and other financial institution to "provid[e] inferior service or loan products in certain neighborhoods or "fail[] to market loans" to non-English language immigrants.[136] The CFPB failed to meaningfully respond to these comments.

144. Commenters also presented extensive evidence demonstrating that technological advances empower lenders to engage in targeted digital advertising.

145. As commenters explained, these technologies permit companies to precisely target digital marketing in the pre-application posture based on geographic location and information closely linked with demographics—including steering certain consumers to inferior products and others to market-rate products.[137] Both DOJ and private litigants have successfully challenged these practices.[138]

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[135] *See* Americans for Fin. Reform Comment, *supra* note 57; Legal Def. Fund Comment, *supra* note 9; Nat'l Consumer L. Ctr. Comment, *supra* note 10; The Ass'n for Computing Mach., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-26644 (Dec. 16, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-26644; BLDS, LLC Comment, *supra* note 95,; Ctr. for Democracy & Tech. Comment, *supra* note 57.

[136] Hous. Opportunities Made Equal of Va., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-16835 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-16835.

[137] *Id.* at 41 (citing Jason Cover, *Digital Targeted Marketing, Business Regulation & Regulated Industries* (Feb. 9, 2022), https://businesslawtoday.org/2022/02/digital-targeted-marketing-fair-lending-clickbait/).

[138] *Id.* (citing *Nat'l Fair Hous. All. et al. v. Facebook, Inc.*, No. 1:18-cv-02689-JGK (S.D.N.Y. June 25, 2018); Facebook Settlement, NFHA (Mar. 14, 2019), https://nationalfairhousing.org/facebook-settlement/#:~:text=NFHA%20and%20the%20other%20plaintiffs,%2C%20Hispanics%2C%20and%20Asian%20Americans; Consent Order, *In re Facebook, Inc.*, No. 18-2-18287-5SEA (Wa. Super. Ct., July 24, 2018), Dkt. No. 4; Dep't of Just., *Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook, to Resolve Allegations of Discriminatory Advertising* (June 21, 2022),

146. The CFPB's explanation for the change ignores other protections in Regulation B that the Final Rule removed. The CFPB states that the change will now permit lenders to *reach* underserved communities "by explicitly permitting lenders to make encouraging statements directed at any group of consumers."[139] But creditors were already permitted to encourage consumers to apply for credit if the purpose was to avoid unnecessarily excluding certain consumers. Until the Final Rule became effective, Regulation B allowed creditors to "affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor."[140]

147. And in concluding that "encouragement" of one group cannot constitute "discouragement" of another, the CFPB ignored comments collecting studies showing just the opposite. This includes a 2019 matched-pair study showing lenders provided substantially more encouragement and assistance to white testers presenting as small business owners than to Black testers[141] and a 2024 CFPB with similar results.[142] The CFPB declined to engage with this evidence.

148. The CFPB's cursory reference to First Amendment concerns provides no examples of curtailed speech or explanation of why the CFPB maintained the provision's applicability to oral and written statements—only removing acts and practices.

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https://www.justice.gov/opa/pr/justice-department-secures-groundbreaking-settlementagreement-meta-platforms-formerly-known); *see also* Relman Colfax PLLC, Fair Lending Monitorship of Upstart Network's Lending Model: Fourth and Final Report (Mar. 27, 2024), https://www.relmanlaw.com/media/cases/1511_Upstart%20Final%20Report.pdf (analyzing, pursuant to an agreement by LDF, the Student Borrower Protection Center, and Upstart Network, Inc., Upstart Network Inc.'s compliance with fair lending laws).

[139] Final Rule at 21644.

[140] 12 C.F.R. pt. 1002, Supp. I, comment 4(b)-2.

[141] *See* NFHA Comment, *supra* note 106 at 40 (citing Sterling A. Bone et al., *Shaping Small Business Lending Policy Through Matched-Pair Mystery Shopping*, 38 J. OF PUB. POL'Y & MKTG 391-99 (July 2019), https://journals.sagepub.com/doi/epub/10.1177/0743915618820561).

[142] *Id.* (citing CFPB, *Matched-Pair Testing in Small Business Lending Markets*, *supra* note 41).

149. The Final Rule also fails to explain how to prove a violation under the new "knows or should know" standard in the discouragement provision, which is inconsistent with the standard in the Fair Housing Act's prohibition on discriminatory advertisements and statements. The Fair Housing Act standard focuses on an "ordinary" reader or listener's perception of the statement as opposed to the advertiser or speaker's intent.[143] The Final Rule failed to address comments raising these issues, deeming it unnecessary "to provide additional clarification" because "the term 'knows or should know' is a common term."[144]

150. The Final Rule also ignored comments explaining that the change to a "knows or should know" standard permits lenders to discriminate as long as they subjectively did not intend to do so—an interpretation at odds with longstanding understandings of ECOA's protections.[145]

151. The Bureau also failed to consider the reliance interests of consumers, organizations, communities, financial institutions, and other federal agencies, as well as state and local governments—who have for five decades relied on the well-settled and consistent discouragement provisions the Final Rule dismantled, and who will suffer adverse financial impacts because of this change.[146]

D. Inconsistency with ECOA's Text and Purpose.

152. The changes to the discouragement provision conflict with ECOA's text and purpose.

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[143] 42 U.S.C. § 3604(c); *see, e.g.*, *Jancik v. Dep't of Hous. & Urb. Dev.*, 44 F.3d 553, 556 (7th Cir. 1995).
[144] Final Rule at 21647.
[145] NFHA Comment, *supra* note 106 at 44.
[146] *See, e.g.*, Nat'l Cmty. Reinvestment Coal., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0053, at 4–6 (Dec. 12, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0053; Restored Citizen Faith Found., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0045, at 2 (Dec. 11, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0045; Rise Econ. Comment, *supra* note 89 at 1–2; Woodstock Inst., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-10446, at 2–3 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-10446.

153. As explained above, ECOA mandates that the Bureau "shall prescribe regulations to carry out the purposes" of the Act, including regulations "to prevent circumvention or evasion" of the purposes of ECOA.[147]

154. After the Board enacted Regulation B's expansive discouragement provisions, Congress ratified and extended the power of these provisions in 1991 by requiring a referral to DOJ where there was reason to believe that a creditor engaged in a "pattern or practice of *discouraging* or denying applications for credit."[148]

155. The CFPB acknowledged that under the Final Rule, "[c]ertain groups of consumers may be excluded from advertising campaigns or lenders may choose to engage less with certain groups of consumers."[149] The CFPB also acknowledged that under the Final Rule, creditors may choose to exclude "certain groups" of consumers through advertising.[150]

156. But the CFPB failed to respond to comments to explain how *avoiding* serving certain groups and communities could be reconciled with ECOA's command that implementing regulations *prevent* evasion and circumvention of ECOA's purpose.

157. The CFPB also failed to explain how changing the standard for discouraging statements would be consistent with Congress's acknowledgement that under the regulation, "advertising which *implies* a discriminatory preference [is] also prohibited."[151]

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[147] 15 U.S.C. § 1691b(a).
[148] FDIC Improvement Act of 1991, Pub. L. No. 102-242, § 223, 105 Stat. 2236, 2306 (1991) (emphasis added), *codified at* 15 U.S.C. § 1691e(g).
[149] Final Rule at 21644.
[150] *Id.*
[151] *See, e.g.*, S. Rep. No. 102-167, at 86 (1991) (considering that under ECOA regulations, "[d]iscouraging applicants on a prohibited basis and advertising which *implies* a discriminatory preference are also prohibited") (emphasis added).

E. Exceeding the CFPB's Authority.

158. The Final Rule's attempt to shape what can and cannot constitute evidence of discrimination—for example, by creating supposed safe harbors for statements about crime statistics or statements purportedly encouraging one group—also exceeds the statutory authority of the CFPB. *See* 28 U.S.C. § 2072 (delegating to the Supreme Court the "power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals").

IV. THE CFPB'S UNLAWFUL PROHIBITION ON MANY SPECIAL PURPOSE CREDIT PROGRAMS

A. ECOA Contemplates the Broad Use of SPCPs, and Regulation B Has Authorized SPCPs for Nearly 50 Years.

159. ECOA has long expressly authorized for-profit lenders to create SPCPs for members of a protected class if that SPCP meets special social needs. This provision is consistent with ECOA's purpose: to promote credit access for all creditworthy individuals, including those from groups historically denied credit.

160. As enacted in 1977, Regulation B expressly permitted for-profit lenders to offer SPCPs to members of a protected class provided that:

> (i) The program is established and administered pursuant to a written plan that
>
> > (A) identifies the class or classes of persons that the program is designed to benefit and
> >
> > (B) sets forth the procedures and standards for extending credit pursuant to the program; and
>
> (ii) The program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to

> other applicants applying to the organization for a similar type and amount of credit.[152]

The Board's Official Commentary, codified in Regulation B, provided requirements, including documentation, for lenders seeking to establish these programs.

161. The provisions were unchanged for decades.

B. The Final Rule's Changes to SPCPs.

162. The Final Rule makes three changes to Regulation B's SPCP provisions for for-profit lenders. Together, the changes make it exceedingly difficult for a for-profit lender to offer any type of SPCP.

163. First, the Rule removes race, color, national origin, and sex as permissible bases.[153] This leaves marital status, religion, age, and receipt of public assistance as protected characteristics that remain as permissible bases.

164. Second, the Rule narrows eligibility on the remaining bases, permitting lenders to offer an SPCP only if a lender would refuse credit to *all* members of the group. [154]

165. Third, the Final Rule imposes additional, strict procedural requirements,[155] requiring creditors to "provide evidence for *each* participant who receives credit through the program that, in the absence of the program, the participant would not receive such credit as a result of those specific characteristics."[156]

166. The Final Rule leaves unchanged Regulation B's other SPCP provisions applicable to other creditors, such as non-profit organizations.[157]

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[152] 42 Fed. Reg. at 1256–57, *codified at* 12 C.F.R. § 1002.8(a).
[153] Final Rule at 21669 (adding new 12 C.F.R. § 1002.8(b)(3)).
[154] *Id.* at 21668–70 (modifying 12 C.F.R. § 1002.8(a)(3)(ii), and 12 C.F.R. pt. 1002, Supp. I, comment 8(a)-5, and adding 12 C.F.R. § 1002.8(a)(3)(i)(D), and 12 C.F.R. § 1002.8(b)(4)).
[155] *Id.* at 21668 (adding 12 C.F.R. § 1002.8(a)(3)(i)(E)).
[156] *Id.* at 21655 (emphasis added).
[157] *See* 12 C.F.R. § 1002.8(a)(1), (2).

167. The CFPB justifies the elimination of nearly all for-profit organizations' SPCPs by stating they are "beyond what is presently necessary to meet the expressly limited congressional intent,"[158] and operate "counter to ECOA's purpose of preventing discrimination."[159] According to the CFPB, "significant changes in the legal landscape and in credit markets" mean that such SPCPs based on certain prohibited bases no longer serve the particular social needs envisioned in the 1976 Act.[160] The CFPB specifically points to the enactment of additional fair lending statutes, such as the Home Mortgage Disclosure Act, the Community Reinvestment Act, and state laws addressing credit discrimination.[161]

168. In explaining the effective elimination of for-profit organization SPCPs, the CFPB determined "there is no evidence (submitted by commenters or otherwise) of any credit markets in which consumers 'would effectively be denied credit' because of their race, color, national origin, or sex in the absence of SPCPs offered or participated in by for-profit organizations."[162]

169. The CFPB construes ECOA's "effectively be denied credit" language to mean that, when ECOA was enacted, Congress intended to permit SPCPs only when no credit was available to a protected group at all.

C. The CFPB's Failure to Respond to Comments or Substantiate Its Reasoning.

1. Impact on Credit Markets.

170. The CFPB fails to substantially engage with a large volume of comments identifying the continuing need for SPCPs[163] and ignores its own enforcement activity and research on the question.[164]

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[158] Final Rule at 21652.
[159] *Id*. at 21654.
[160] *Id.* at 21653–54.
[161] *Id.*
[162] *Id.* at 21654.
[163] *See, e.g.*, NFHA Comment, *supra* note 106, at 55–63.
[164] *Id.* at 61–62.

171. As comments explained, the CFPB failed to support the prohibitions of certain SPCPs with any "data, academic literature, qualitative evidence based on stakeholder interviews or paired testing, history of cases brought by the [CFPB] or other federal or state law enforcement agencies, or engagement with research following the 2008 [global financial crisis] and 2020 COVID-19 pandemic."[165]

172. These changes are inconsistent with the CFPB's previous acknowledgment that SPCPs are effective in closing credit gaps, and thus advance ECOA's purpose.[166] The Final Rule does not dispute that SPCPs have provided substantial benefits to the borrowers they serve, nor does it allege any concrete harm to those ineligible for a particular SPCP loan. The Final Rule essentially eliminates this provision of Regulation B without responding to evidence supporting the benefits of SPCPs.

173. Various industry commenters expressed support for SPCPs,[167] but these comments were disregarded without reasoned explanation.

174. The CFPB also failed to consider reliance interests, including those of individuals and businesses who rely on these programs for credit and organizations that partner with for-profit lenders to extend credit such as MACDC member organizations.

175. The CFPB failed to address comments demonstrating the importance of SPCPs to certain communities.

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[165] Better Mkts. Comment, *supra* note 94.

[166] Susan M. Bernard & Patrice Alexander Ficklin, *Expanding Access to Credit to Underserved Communities,* CONSUMER FIN. PROT. BUREAU. (July 31, 2020), https://web.archive.org/web/20260325041444/https://www.consumerfinance.gov/about-us/blog/expanding-access-credit-underserved-communities/.

[167] *See, e.g.*, BLDS, LLC Comment, *supra* note 95, at 8.; Inclusiv, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0043 at 3–4 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0043; Indep. Cmty. Bankers of Am., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-28761 at 3–4 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-28761.

176. For example, the Alaska Public Interest Research Group shared that rural Native Alaskan communities rely on SPCPs to assist a population traditionally denied access to credit for homeownership and home restoration.[168]

177. Other comments explained that SPCPs can assist lenders in meeting their obligations under the Community Reinvestment Act,[169] and that SPCPs enhance the credit market by "expanding [credit] access to first-generation homeowners, communities affected by historic redlining, [and] entrepreneurs facing documented credit disparities."[170]

178. And the Final Rule failed to consider the costs to residents of the South, a region where SPCPs serve as an especially effective means of expanding credit access. As explained in comments, residents of the South typically have lower credit profiles than those living in the rest of the nation, and, because of the wrongful exclusion of prior generations from homeownership programs, are disproportionately unable to rely on family members for financial assistance when buying a home.[171]

179. The Housing Policy Council explained that the revised SPCP provision imposed "excessively burdensome" requirements "without countervailing benefits," and sought clarity

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[168] *See* Alaska Pub. Int. Rsch. Grp., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-16896 at 1 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-16896.

[169] Consumer Bankers Ass'n Comment, *supra* note 74 at 7 (Dec. 15, 2025); Kan. Bankers Ass'n, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0062, at 1 (Dec. 12, 2025), Regulations.gov.

[170] Consumer Reports, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-17229 at 3 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-17229.

[171] Fair Hous. Advoc. of N. Cal. Comment, *supra* note 73 at 2, 5–6; *see also* Hope Enter. Corp. Comment, *supra* note 73 at 2–7 (providing data illustrating mortgage inequities in the South); UnidosUS & Inclusive Action for the City Comment, *supra* note 90, at 6 (discussing studies illustrating SPCPs' particular efficacy in southern states, where people "typically have lower credit profiles than people in the rest of the United States") (citing "*NFHA Denounces Proposed CFPB Rule Change Eliminating Fair Access to Lending for Women, Underserved Communities*," NAT'L FAIR HOUS. ALL. (Nov. 13, 2025), https://nationalfairhousing.org/nfha-denounces-proposed-cfpb-rule-change-eliminating-fair-access-to-lending-for-women-underserved-communities/).

regarding whether geography constituted a prohibited basis under the revised rule.[172] The CFPB did not respond.

180. Commenters also identified the need for safe-harbor provisions for certain SPCPs if the CFPB went forward with its proposal—which the CFPB ignored. The American Financial Service Association expressed concern that the Proposed Rule "narrow[s] th[e] statutory authority and constrain[s] lenders' ability to design effective, evidence-based SPCPs" and asked that the CFPB create a "clear safe harbor protecting programs and credit extensions made under the current rules."[173] International Bancshares Corporation and the Mid-Size Bank Coalition of America also identified the need for a safe harbor "to expressly permit SPCPs that are designed to serve specific geographies or income bands, even if those geographies or income bands disproportionately consist of members of a protected class" because it would allow lenders "to expand access to credit for underserved communities without fear of unintended regulatory exposure."[174] The Community Bankers Association of Illinois explained that SPCPs provided by community banks are different from larger financial institutions because they "serve a more limited geographic area and use these types of [SPCPs] to be more responsive to the needs of their communities" and requested an exemption for such banks.[175]

181. Industry groups and trade associations raised other concerns in their comments about serious disruptions posed by changes to Regulation B's SPCP provisions—additional concerns that the CFPB ignored. Multiple commenters requested a later effective or compliance

[172] Hous. Pol'y Council, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-24455, at 1 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-24455.
[173] Am. Fin. Services Ass'n, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-16611 at 3 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-16611.
[174] Int'l Bancshares Corp., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-32320, at 2 (Dec. 12, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-32320.
[175] Cmty. Bankers Ass'n of Ill., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0031 at 2–3 (Dec. 8, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0031.

date. The Kansas Banking Association, for example, explained its members would need more than the proposed 90 days to wind down such programs.[176] The Housing Policy Council called on the CFPB to "extend the proposed effective date to at least one year" after the Final Rule's publication.[177]

182. The CFPB did not meaningfully respond to comments that the changes would effectively eliminate all SPCPs offered by for-profit lenders.[178]

183. The Final Rule provides no explanation why the new restrictions apply only to SPCPs offered by for-profit lenders, as opposed to, for example, programs offered by non-profits.

2. Explanation of Departure from Prior Interpretations.

184. The CFPB's statement that changes in the "legal landscape and in credit markets" mean that SPCPs are no longer necessary lacks any reasoned explanation.

185. The passage of additional federal and state statutes does not mean Regulation B's SPCP provisions have become unnecessary. Neither the Home Mortgage Disclosure Act nor the Community Reinvestment Act—both of which the CFPB points to—prohibit discrimination. The CFPB also fails to meaningfully respond to comments highlighting that the existence of other antidiscrimination laws says nothing about the continued existence of discrimination.[179]

186. As for the CFPB's conclusion that ECOA's SPCP provision was intended to address only complete market exclusion, the CFPB's reasoning is contrary to the historical record, as commenters pointed out.

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[176] *See* Kan. Bankers Ass'n Comment, *supra* note 169.
[177] Hous. Pol'y Council Comment, *supra* note 172 at 4.
[178] Nat'l Hous. Conf., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-25228 (Nov. 13, 2025), at 6–8 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-25228; Consumer Reports Comment, *supra* note 170 at 3.
[179] *See* Final Rule at 21629–30.

187. The CFPB provides no evidence this categorical exclusion ever existed, pointing only to two out-of-context phases from different legislative record sources.[180]As the Final Rule itself notes, legislators supported enactment of ECOA and the SPCP provisions because they were aware of "'*instances* of discrimination against minorities'" and the "'*strong probability* of race discrimination in mortgage credit,'" not categorical exclusion.[181] The CFPB's assertions of complete market-wide discrimination prior to ECOA's passage are undercut by its acknowledgment that, at the time of ECOA's enactment, certain lenders "sought to fill the [credit] gap by making credit available especially" to protected group members, demonstrating the availability of some credit to them.[182]

188. The Bureau also ignored comments pointing out that no evidence supports the Bureau's statement that this categorical exclusion ever existed.[183]

189. The CFPB also fails to provide any evidence of complete market exclusion for any of the bases that the CFPB chose to retain for SPCPs, such as religion or marital status.

190. The CFPB also failed to provide a reasoned explanation for retaining bases such as religion or marital status while eliminating bases such as race. The Bureau pointed to constitutional concerns for the elimination of certain classes, but expressly "decline[d] . . . to reach a conclusion" about those concerns. [184] The CFPB failed to engage with comments showing why the SPCP provision does not raise constitutional concerns.

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[180] *See* Final Rule at 21654 nn.171–72 (citing S. Rep. No. 94-589, at 7 (1976) and H. Rep. No. 94-879, at 8 (1976)).
[181] *Id.* at 21654 nn. 164–165 (quoting S. Rep. No. 94-589, at 3 (1976), Credit Discrimination: Hearing on H.R. 14856 and H.R. 14908 Before the H. Subcomm. on Consumer Affs. of the H. Comm. on Banking and Currency, 93d Cong., at 150–51) (emphasis added).
[182] *Id.* at 21654 n. 166.
[183] *See, e.g.*, BLDS, LLC, Comment, *supra* note 95, at 8; Better Mkts. Comment, *supra* note 94 at 7–8.
[183] Final Rule at 21653.
[184] Final Rule at 21653.

V. THE CFPB FAILED TO COMPLY WITH PROCEDURAL REQUIREMENTS IN PROMULGATING THE FINAL RULE.

191. The CFPB's rulemaking process was procedurally defective because the agency failed to: (A) meaningfully respond to significant comments, in violation of the Administrative Procedure Act (APA), (B) provide adequate time for notice and comment, in violation of the APA, (C) meaningfully weigh the rule's costs and benefits, in violation of the APA and the Dodd-Frank Act, (D) comply with the Regulatory Flexibility Act, and (E) consult with appropriate agencies, in violation of the APA and Dodd-Frank Act.

A. The CFPB Failed to Respond to Significant Comments.

192. The CFPB failed to consider and respond to significant comments received during the public comment period, as required by the APA.

193. Though the CFPB summarized some of the comments submitted, it failed to meaningfully consider the majority of significant comments and provided explanations without any reasoned support.

194. The CFPB made no changes to the Final Rule, despite receiving approximately 64,500 comments during a comparatively short comment period.

B. The CFPB Failed to Provide Adequate Time for Notice and Comment.

195. The APA requires that agencies afford an opportunity for public participation through submission of written data, views, or arguments.[185]

196. The CFPB limited notice and comment on the Proposed Rule to 32 days, which was not sufficient, given the magnitude of the changes proposed.

197. Organizational commenters requested an extension of the comment period, pointing to the need to submit data, views and arguments on a change of this magnitude; the

[185] 5 U.S.C. § 553(c).

intervening Thanksgiving holiday; and this comment period overlapping with another for a different CFPB rule change.[186]

198. The CFPB's receipt of 64,500 comments does not mean that commenters nonetheless managed to meaningfully and fully voice opposition. The compressed period prevented commenters from compiling and analyzing data on gaps identified by the CFPB in its Proposed Rule. [187]

199. The CFPB nonetheless faulted commenters for not providing additional data sources or analyses to illuminate the CFPB's analyses.[188]

200. In comparison, when the Federal Trade Commission released in January 2023 a proposed rule that would ban all non-compete clauses in companies across the country, the agency ultimately received comments for a 90-day period, which included extending the deadline after receiving significant feedback that the period was too short (in part because the initial period limited the ability of commenters to analyze the economic impacts of such a sweeping change).[189]

C. The CFPB Failed to Meaningfully Analyze the Rule's Costs and Benefits.

201. Both the Dodd-Frank Act and the APA require the CFPB to consider the potential benefits, impacts, and costs of the Final Rule. Under Section 1022(b) of the Dodd-Frank Act, the CFPB must assess "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services," "the

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[186] *See, e.g.*, Ctr. for Responsible Lending, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0019, at 1–2 (Nov. 25, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0019 (requesting that the CFPB extend the comment period "by at least 90 days beyond the [announced] deadline" due to the dramatic nature of the changes, the apparent inconsistency between the NPRM and ECOA's text, legislative history, and relevant Supreme Court precedent, and rapid technological changes in the financial services industry); Leadership Council on Civil and Hum. Rts., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0021, at 2 (Nov. 25, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0021.

[187] Proposed Rule at 50915, 50910.

[188] Final Rule at 21667.

[189] *See* 89 Fed. Reg. 38342 (containing the final rule and analysis of comments).

impact on depository institutions and credit unions with $10 billion or less in total assets" and "the impact on consumers in rural areas."

202. Many MACDC member organizations, as well as NUL's Urban Empowerment Fund, are "covered" entities, subject to ECOA and Regulation B.

203. The CFPB failed to meaningfully attempt to quantify costs or benefits, ignored existing data and studies that would have informed that analysis, and failed to consider or respond to the foreseeable costs and effects (including those related to specific industries and geographies), as well as reliance interests.

1. The CFPB Ignored Obvious Data Sources to Assess Costs and Benefits.

204. The CFPB justifies its failure to provide quantitative estimates of potential cost savings and benefits by pointing to a lack of available public data, even though many comments provide quantitative data and the CFPB has collected such data itself.[190]

205. For example, the CFPB acknowledged, but did not respond to, commenters' suggestion[191] that it consult data from the Federal Housing Finance Agency and Government-Sponsored Enterprises data to accurately quantify the costs of the Final Rule's SPCP provision.[192] The CFPB did so because it "[did] not believe" that this data "would have provided additional useful information to quantify the costs to consumers . . . beyond the publicly available information."[193]

206. Commenters identified other data and evidence sources the CFPB could have explored to inform its analysis, such as data from the FDIC's BankFind suite, demographic data

[190] Final Rule at 21659.
[191] Ctr. for Mortg. Access, Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-11841, at 2–3 (Dec. 15, 2025) https://www.regulations.gov/comment/CFPB-2025-0039-11841.
[192] *See* Final Rule at 21666.
[193] *Id.*

from the U.S. Census, and the CFPB's and other regulatory agencies' supervisory and enforcement data.[194] One comment explained that the CFPB could model likely effects of the rule change if it lacked data to predict those effects.[195] The CFPB failed to explore any of these sources and instead dismissed these suggestions largely on the grounds that they would not be comprehensive.[196]

2. The CFPB Overstated Potential Benefits to Covered Entities.

207. Regarding potential benefits for covered entities, the CFPB points to the deregulatory nature of the Final Rule to claim it will limit lenders' legal liability, reduce their compliance burden, and increase their profitability by allowing additional operational flexibility. But the CFPB does little to provide any reasoning for these broad assumptions or contend with comments that undercut such assumptions.[197]

208. Commenters noted that the Final Rule creates an incongruent set of standards across the housing market because it does not reflect the standard applied through the Fair Housing Act.[198] Creditors may now have to use one set of compliance rules for mortgage lending (to comply with the FHA) and a different set of rules for non-mortgage lending (to comply with ECOA).

209. The CFPB also failed to meaningfully consider increased compliance burden and risk. Commenters noted that "the industry will be placed in the impossible position of either complying with the rule, but risking lawsuits by private parties and states; or complying with the law and risking lawsuits by federal agencies."[199] Comments make clear that the Final Rule

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[194] *See* Ctr. for Mortg. Access Comment, *supra* note 191, at 3; Consumer Reports Comment, *supra* note 170, at 3; Nat'l Ass'n of Mortg. Bankers, Comment on Changes to Regulation B of the Equal Credit Opportunity Act Comment ID CFPB-2025-0039-12352 at 1 (Dec.15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-12352.
[195] Ctr. for Responsible Lending, Comment, *supra* note 186.
[196] Final Rule at 21662, 21666.
[197] Nat'l Ass'n of Realtors Comment, *supra* note 87, at 2.
[198] *Id*.
[199] Fair Hous. Advoc. of N. Cal. Comment, *supra* note 73, at 6.

"increases lenders' legal risks, complexities, and costs, which will ultimately increase costs for consumers."[200]

210. The CFPB speculates about other benefits, including the supposed ability to offer certain products to targeted customers they could not before (without any explanation of the products or why the targeting was previously prohibited).[201]

3. The CFPB Ignored or Downplayed Obvious Costs to Covered Entities.

211. The CFPB downplayed the potential costs of compliance to covered entities. The CFPB focused on a one-time cost to modify compliance systems,[202] ignoring that the Final Rule creates conflicting legal obligations. The CFPB also failed to account for reliance interests on a stable regulatory system.

212. Specifically, the CFPB failed to account for the significant uncertainty it introduced by suggesting that disparate-impact liability encourages or requires entities to engage in the intentional use of racial balancing and by refusing to provide covered entities assurance that it would not penalize them for taking action to comply with overlapping laws, such as the Fair Housing Act, that do provide for disparate-impact liability. Commenters specifically identified the potentially conflicting standards,[203] which the CFPB failed to analyze in any meaningful way.[204]

213. The Final Rule also ignored comments identifying the benefits of compliance with the disparate-impact and discouragement provisions of the prior rule, including better market

[200] Rise Econ. Comment, *supra* note 89 at 2–3.
[201] Final Rule at 21661–62.
[202] *Id.* at 21660–61.
[203] *Id.* at 21628.
[204] *Id.* at 21661.

opportunities and community trust.[205] In fact, the CFPB claimed that "there is *no* loss of potential benefits to covered persons from avoiding discouragement."[206]

4. The CFPB Ignored or Downplayed Obvious Costs to Consumers.

214. The CFPB failed to meaningfully consider the significant costs to consumers despite acknowledging the possibility of those costs.

215. The CFPB acknowledged, for example, that consumers might choose not to apply for credit at all and that lenders might choose to discourage consumers before they even apply. [207]

216. In response to comments that consumers may pay higher prices because disparate-impact liability incentivizes lenders to expand product markets and may save in costs from liability arising from unintentional discrimination, the CFPB downplayed the possibility by pointing to the continued viability of claims under other statutes as the Fair Housing Act.[208] Here, the CFPB demonstrated an internally inconsistent position. The *costs* of increased discriminatory exclusions (i.e., those with a disparate impact) will be minimal because other statutes will offer protections, but lenders will realize significant *benefits* in terms of increased flexibility—which is possible only if lenders are not constrained by other statutes.

217. Commenters identified other costs, including impacts on the elderly, limited credit in certain neighborhoods, creating barriers to homeownership for certain groups, and facilitating automated systems founded on inaccurate data leading to higher, unjustified costs on Black people and other people of color.[209]

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[205] *See, e.g.*, Fair Hous. Advoc. of N. Cal. Comment, *supra* note 73, at 6; Hope Enter. Corp. Comment, *supra* note 73, at 6; Nat'l Ass'n of Consumer Advocs., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-29481, at 2–3 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-29481.
[206] Final Rule at 21662 (emphasis added).
[207] *See, e.g.*, Final Rule at 21661–62.
[208] *Id*. at 21661.
[209] *See, e.g.*, NFHA Comment, *supra* note 106, at 15–21.

218. The CFPB failed to consider or meaningfully respond to these costs.

5. The CFPB Speculated About Benefits to Consumers.

219. As for benefits to consumers, the CFPB claimed, without support, that the Final Rule *might* result in lower prices to consumers if covered entities pass through lower costs or might result in faster application processes and product variety.[210] But as explained above, lenders are unlikely to enjoy significant cost savings, and there is no evidence that they pass any such savings along to consumers.[211] The CFPB did not explain or provide any evidence to support claims of faster processing or product variety.

220. As for SPCPs and consumers, the CFPB ignored comments contradicting the agency's claim that the relevance of such programs is low (and that potential costs are comparatively low). [212] Comments showed that these programs have grown in recent years, with Fannie Mae and Freddie Mac alone purchasing mortgages that paid out more than $80 million in lender credits between 2022 and 2024.[213]

6. The CFPB Ignored Costs to Specific Markets, Geographies, and Borrowers, as Well as Other Costs Identified in Comments.

221. The CFPB ignored comments identifying costs for borrowers in rural areas[214]; specific geographical markets, including the South[215]; and certain groups of borrowers, such as

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[210] Final Rule at 21661 (emphasis added).
[211] *See id.* at 47 (citing Ryan Westphal, *What You Don't Know Can't Pass Through: Consumer Beliefs and Pass-Through Rates* (Oct. 2023), https://dx.doi.org/10.2139/ssrn.4693216).
[212] Final Rule at 21666.
[213] *Id.* at 68 (citing Fed. Hous. Fin. Agency, Fair Lending, Fair Hous., and Equitable Hous. Fin. Plans, 90 Fed. Reg. 35475, 35481 (July 28, 2025)).
[214] *See* Hous. Assistance Council Comment, *supra* note 94, at 1–3.
[215] Fair Hous. Advoc. of N. Cal. Comment, *supra* note 73 at 2, 5–6; *see also* Hope Enter. Corp. Comment, *supra* note 73 at 2–7 (providing data illustrating mortgage inequities in the South); UnidosUS and Inclusive Action for the City, *supra* note 90, at 6 (discussing studies illustrating SPCPs' particular efficacy in southern states, where people "typically have lower credit profiles than people in the rest of the United States") (citing "NFHA Denounces Proposed CFPB Rule Change Eliminating Fair Access to Lending for Women, Underserved Communities," Nat'l Fair Hous. All. (Nov. 13, 2025), https://nationalfairhousing.org/nfha-denounces-proposed-cfpb-rule-change-eliminating-fair-access-to-lending-for-women-underserved-communities/.

Black farmers and small businesses.[216] In fact, the CFPB ignored these costs altogether.

222. The CFPB based its exclusion of small businesses primarily on the theory that small businesses are not "individuals" and thus are not consumers as contemplated by the Dodd-Frank Act.

223. However, in a different proposed rule issued on the same day to implement a separate section of ECOA, the CFPB included small business as a part of its Dodd-Frank analysis because only considering "the costs and benefits to individual consumers . . . would not meaningfully capture the costs and benefits of the rule."[217] The agency has regularly considered costs to such borrowers where a potential regulation will have a substantial impact on small businesses in their capacity as credit consumers.

224. The CFPB also attempted to justify the exclusion of small businesses from its analysis on the grounds that "the analysis for consumers would apply similarly to the small business applicants,"[218] ignoring comments explaining the unique challenges and harms small businesses face when they are denied credit or offered credit only on unfavorable terms due to discrimination.

225. And as explained above, the Final Rule did not address the costs associated with conflicting standards between the Fair Housing Act and ECOA.[219]

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[216] *See* Main St. All. Comment, *supra* note 130, at 2 (explaining how each of the changed provisions would make it harder for Black small business to access credit"). The National Housing Conference comment provided data regarding "the homeownership gap between Black and White households is worse than when segregation was legal" and that regulatory uncertainty, undermine affordability and economic growth and opportunity, and harm both consumers and lenders in the housing market. Nat'l Hous. Conf. Comment, *supra* note 178, at 3 (citing URBAN INST., *Reducing the Racial Homeownership Gap*, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap (last visited July 14, 2026) and Fed. Res. Bank of St. Louis, Homeownership Rates by Rate in the United States, https://fred.stlouisfed.org/graph/?g=wZHP (last visited July 14, 2026)).

[217] Small Business Lending Under the Equal Credit Opportunity Act, 91 Fed. Reg. 23530, 23578 (May 1, 2026).

[218] Final Rule at 21660.

[219] *See, e.g.*, BLDS, LLC Comment, *supra* note 95, at 6 (noting that because the federal FHA and various state lending laws authorize disparate impact claims, the NPRM "risks creating inconsistent regulatory schemes," thereby disrupting lenders' longstanding compliance efforts).

D. The CFPB Failed to Comply with the Regulatory Flexibility Act.

226. The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act ("SBREFA") of 1996, required the CFPB to consider the potential impact of its regulations on "small entities[,]" which includes small businesses, small governmental units, and small not-for-profit organizations.[220] The RFA also required the CFPB to: solicit comments from small entities[221]; ensure small entities' opportunity to participate[222]; convene a SBREFA panel that consults with small entities likely subject to the Final Rule to consider the rule's impacts[223]; prepare an initial regulatory flexibility analysis ("IFRA") describing the rule's impact and alternatives[224]; and prepare a Final Regulatory Flexibility Analysis ("FRFA") describing the rule's impact and reasoning for rejecting alternatives.[225]

227. The CFPB did none of these things.

228. Many of MACDC's members, as well as NUL's Urban Empowerment Fund, are "small entities."

229. Many of MACDC's members, as well as NUL's Urban Empowerment Fund, are lenders whose credit activity is covered by ECOA and Regulation B.

230. The CFPB purported to exempt the rulemaking here from its SBREFA panel, IFRA, and FRFA obligations by relying on a RFA exception requiring a certification that the rule will not have a significant economic impact on a substantial number of small entities, and with "a statement providing the factual basis for such certification."[226]

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[220] 5 U.S.C. § 601 *et seq.*
[221] *See generally* 5 U.S.C. § 609.
[222] *Id.*
[223] 5 U.S.C. § 609(b).
[224] *See generally* 5 U.S.C. § 603.
[225] *See generally* 5 U.S.C. § 604.
[226] 5 U.S.C. § 605(b).

231. The CFPB's purported certification was a conclusory statement that the agency did not expect the rule "to impose significant economic impacts on small entities."[227] It did not contain any facts or support, instead citing to other portions of the Proposed Rule concerning SPCPs.

232. For the changes to the SPCP provisions, meanwhile, the CFPB did not estimate the number of impacted small-business creditors, including MACDC member organizations or NUL's Urban Empowerment Fund, or the economic impact on these creditors. Nor did the CFPB assess the impact on entities *relying* on credit through SPCPs, such as small businesses owned by Black people and other people of color.

233. Commenters raised these issues. Several commenters underscored the CFPB's failure to "make any meaningful effort to consult with small businesses despite the significant impact that dramatically overhauling longstanding disparate-impact regulations will have on small business lending (and borrowing) activities." [228]

234. Commenters also identified the costs from the proposed changes, including changes to compliance systems. For example, one comment to the Proposed Rule explained that, "[e]ven modest per-entity compliance costs, multiplied across this population, readily exceed nine figures in aggregate."[229] The RFA certification ignores these costs.

235. The CFPB's certification also ignores costs to other entities, such as small businesses owned by Black people, other people of color, and women—businesses that are more likely to experience discrimination.

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[227] Final Rule at 21667.

[228] Ctr. for Consumer Law & Econ. Just., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0132 at 13 (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0132; *see also* Ctr. for Responsible Lending Comment, *supra* note 186 at 1–5 (outlining the legal deficiencies with the CFPB's failure to conduct the analysis required under the RFA to determine impacts on small entities, including small businesses).

[229] Citizens Rulemaking All., Comment on Changes to Regulation B of the Equal Credit Opportunity Act, Comment ID CFPB-2025-0039-0006 at 1 (Nov. 14, 2025), https://www.regulations.gov/comment/CFPB-2025-0039-0006.

236. Census Bureau data shows that as of 2022, Black and Hispanic individuals owned 11% of all employer firms and 31% of non-employer firms, while women owned 22.3% of employer firms and 42.1% of non-employer firms.[230] These percentages, and the corresponding absolute number of firms, is substantially larger than in 2019, suggesting that the share of Black-, Hispanic-, and women-owned firms is likely to increase in the future—at least, absent the changes made by the Final Rule.[231] Commenters explained to the CFPB that many studies, including those conducted by the CFPB itself, show that discrimination and discouragement are rampant within the small business credit market.[232] The certification analyzes none of these considerations or comments.

237. The CFPB failed to quantify the number of small entities that could be affected by the Final Rule, estimate how many benefit from the baseline protections provided by Regulation B, or estimate the monetary impact on those entities in relation to all of the changes in Regulation B using statistical techniques and the empirical evidence, including published research and the CFPB's experience in supervising the small business credit market.

238. The purported RFA certification states that "[t]he [CFPB] is not aware of any small governmental units or not-for-profit organizations to which this final rule would apply."[233] The CFPB ignored not-for-profit organizations, which are regular credit applicants to which the Final Rule's provisions apply, or non-profit creditors such as many MACDC member organizations and NUL's Urban Empowerment Fund to which the Final Rule's provisions apply.

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[230] U.S. Census Bureau, Press Release, *Census Bureau Releases New Data on Minority-Owned, Veteran-Owned, and Women-Owned Businesses* (Dec. 19, 2024), https://www.census.gov/newsroom/press-releases/2024/employer-businesses.html; U.S. Census Bureau, Press Release, *Census Bureau Releases Demographic Characteristics of Nonemployer Business Owners* (Aug. 8, 2024), https://www.census.gov/newsroom/press-releases/2025/nonemployer-business-characteristics.html.
[231] The 2019 figures are reported in the CFPB's 2023 Small Business Data Collection Rule. 88 FR 35150, 35155–56 (May 31, 2023).
[232] Ctr. for Responsible Lending Comment, *supra* note 186 at 3–4.
[233] Final Rule at 21667 n.213.

239. The CFPB also claims states that "[c]ommenters did not provide or suggest any additional data or analyses that would improve or change the [CFPB]'s analysis."[234] This is not true. As explained above, commenters provided significant data on the continued discriminatory harms suffered by credit applicants, including small-business applicants, and on the continued need for SPCPs.[235]

E. The CFPB Failed to Consult with the Appropriate Agencies Prior to Proposing the Rule.

240. The Dodd-Frank Act also requires the CFPB to "consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies."[236]

241. The preamble to the Final Rule asserted only that the CFPB "consulted or offered to consult with other agencies as required by the Dodd-Frank Act and ECOA, and considered the feedback the agencies provided,"[237] but provided no description or evidence of any such consultations or feedback from consultations regarding the Proposed Rule's consistency with prudential, market, or systemic objectives administered by such agencies.

242. Prudential regulators and other federal agencies—such as the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Trade Commission, the Federal Housing Finance Agency, the Department of Transportation, the Department of Agriculture, the Securities and Exchange Commission, and the Small Business Administration—have decades of experience

[234] *Id*. at 21667.
[235] *See, e.g.*, NFHA Comment, *supra* note 106, at 58–63.
[236] 12 U.S.C. § 5512(b)(2)(B).
[237] Final Rule at 21624.

related to ECOA and Regulation B. They also have relevant prudential, market, and systemic objectives within their respective jurisdictions.

243. To the extent the CFPB *notified* prudential regulators and other agencies about the proposed changes to Regulation B, it did not affirmatively solicit advice or opinions on the changes, provide them an opportunity to express opinions, or consider such advice or opinions.

VI. THE FINAL RULE IS INVALID BECAUSE MR. VOUGHT LACKED LAWFUL AUTHORITY TO PROMULGATE IT.

244. Mr. Vought issued the Final Rule in the absence of being a lawfully appointed or designated CFPB Director. The Final Rule is therefore invalid.

245. Mr. Vought assumed the role of Acting Director in February 2025 without being confirmed by the Senate.

246. The Constitution requires that the President obtain "the Advice and Consent of the Senate" before appointing "Officers of the United States."[238] The Director of the CFPB is a principal officer of the United States requiring Senate confirmation.

247. President Trump purported to appoint Mr. Vought as an Acting Director under the authority of the FVRA, which allows the President to temporarily fill a role for which Senate confirmation is required when the prior office holder "dies, resigns, or is otherwise unable to perform the functions and duties of the office."[239] Such assignment under the FVRA is temporary, lasting up to 210 days.[240]

248. None of the FVRA's provisions permitting the President to appoint an office outside the advice-and-consent process apply to Mr. Vought. And the FVRA gives the President

[238] U.S. Const. art. II, § 2, cl. 2.
[239] 5 U.S.C. § 3345(a).
[240] *Id*. § 3346.

no authority to appoint a temporary head where the vacancy is of the President's own making rather than outside the President's control.

249. The prior Senate-confirmed Director of the CFPB, Rohit Chopra, did not die or resign. And he was not "unable to perform the functions and duties of the office"; he performed his duties for the first week of the current administration.[241]

250. Mr. Chopra served as Director of the CFPB until February 1, 2025, when he was terminated by President Trump.

251. Mr. Vought acted as Acting Director of the CFPB through August 1, 2026, when Mark Paoletta took over the position.

252. Mr. Vought signed both the Proposed Rule and the Final Rule.

253. The Final Rule was issued by an Acting Director who had no lawful authority to lead the CFPB or engage in rulemaking.

254. Commenters raised this concern, to which the CFPB did not respond.

VII. PLAINTIFFS ARE HARMED BY THE FINAL RULE.

255. The Final Rule harms NUL and MACDC directly and through the impact on NUL's affiliates and subsidiary, the Urban Empowerment Fund, as well as MACDC's member organizations.

256. The Final Rule is causing, and will cause, economic harm to Plaintiffs through increased costs, including for those organizations that are regulated entities under ECOA and Regulation B.

[241] *Id*. § 3345 (a).

257. The Final Rule deprives Plaintiffs of the ability to continue performing work central to their organizational missions, forces them to divert scarce financial resources, and jeopardizes their ability to provide critical services.

258. Plaintiffs did not get to meaningfully participate in the rulemaking process, despite an NUL subsidiary and many MACDC member organizations qualifying as "small entities" under the RFA and as regulated entities under ECOA and Regulation B. Among other things, the CFPB failed to solicit comments from "small entities" or ensure their opportunity to participate, and opened the public comment period for an artificially shortened period.

A. National Urban League.

259. The **National Urban League**'s mission is to help those in underserved communities achieve their highest true social parity, economic self-reliance, power, and civil rights. NUL promotes economic empowerment through education and job training, housing and community development, workforce development, entrepreneurship, health, and quality of life. NUL offers direct services in conjunction with **NUL affiliates** across the country. As described above, NUL also operates the Urban Empowerment Fund, a small business lending subsidiary that provides loans and coaching to businesses in underserved communities to help those businesses prosper, grow, create jobs, and generate individual and community wealth.

260. NUL's Entrepreneurship Center Program supports the development and growth of minority entrepreneurs to create jobs in sustainable businesses. The program focuses on accelerating the growth of Black-owned small businesses and entrepreneurs. Twenty NUL affiliates receive funding from NUL's Entrepreneurship Center Program to, among other things, provide management counseling, mentoring, and training services. Initiatives include the Urban Capital Readiness Program, run through multiple NUL affiliate entrepreneurship centers, designed to close gaps in entrepreneurial opportunities through capacity-building and networking

opportunities with capital providers—which fuels business ventures and sustainable growth through facilitating access to capital. In 2025 alone, the program served approximately 26,000 participants.

261. NUL also provides homeownership education and counseling, mortgage education and counseling, and advising on fair housing and predatory lending. Through a network of 27 NUL affiliates, NUL has served over 300,000 participants since 2009. NUL's network of housing counseling agencies also assists low- and moderate-income families to reach financial stability, increase their net worth, and become financially secure and upwardly mobile. Services delivered include financial counseling, which offers access to well-priced financial products and services.

262. NUL also operates the Virtual Financial Empowerment Center, complementing in-person counseling at affiliates with over 30 virtual financial empowerment programs. In its first years of operation, the Virtual Financial Empowerment Center has served over 600 participants annually.

263. The substantial changes to Regulation B impair NUL's and affiliates' core services, requiring evaluation and modification of programming to align counseling, advice, and materials with Regulation B. These changes are particularly pronounced for credit counseling. As discussed above, the Final Rule will lead (in individual states and across the country) to fewer affordable credit opportunities for Black borrowers and other borrowers from historically underserved communities, and predatory products will increase in prevalence. Counselors will need to carefully vet types of credit products and referrals to traditional lenders, including those relevant to NUL's and NUL affiliates' focus on reverse mortgages, fair housing, preparation for buying a home, and default and foreclosure prevention. This impairment of NUL's activities frustrates NUL's and affiliates' missions.

264. Evaluation and modification of programming requires NUL to divert resources from other NUL activities, such as advising individuals facing homelessness or assisting clients with tenant and landlord issues. This diversion of resources also frustrates NUL's and affiliates' missions.

265. As a regulated entity under ECOA and Regulation B, NUL's **Urban Empowerment Fund** will incur costs resulting from the changes to Regulation B.

266. This includes reconciling the Fund's obligations under Regulation B with its obligations under other laws.

267. Until recently, prospective homeowners and small business owners served by NUL were eligible to participate in SPCPs offered by for-profit lenders across the country, including in communities where the Fund extends credit.[242] Under the Final Rule, the programs are now prohibited, and for-profit lenders have stopped extending new credit under these programs.

268. As described above, for-profit lenders will offer fewer affordable credit products to the communities that mission-driven lenders serve, including products that complement—or that are offered in partnership with—products from mission-driven lenders. This means that NUL and the Fund will be able to serve fewer borrowers. This impairment of the Fund's lending activity frustrates the mission of both NUL and the Fund.

269. For-profit lenders will be less likely to partner with NUL and other mission-driven organizations on initiatives to address racial disparities, thereby reducing NUL's funding and number of borrowers to whom NUL can provide counseling and other technical assistance. The impairment of these activities also frustrates the mission of both NUL and the Fund.

[242] *See generally* Partnership for Financial Equity, Special Purpose Credit Programs: A Tool for Greater Equity 5 (Dec. 2023), https://financialequity.net/wp-content/uploads/2023/12/SPCPs-A-Tool-for-Greater-Equity-final.pdf.

270. NUL and the Fund will also need to divert resources to raise additional capital, provide additional counseling and technical assistance on alternative approaches to bridge the gap in available funding, and see their missions frustrated in serving these communities.

271. Finally, the Fund was denied a meaningful opportunity as both a "small entity" under the RFA and regulated entity under ECOA and Regulation B to meaningfully participate in the rulemaking process. The CFPB also failed to account for the impact of Regulation B's changes on entities such as the Fund.

B. Massachusetts Association of Community Development Corporations.

272. **MACDC**'s mission is to build and sustain a high-performing and adaptive community development sector that is supported by private and public investment and sound public policies, including by offering critical services to its member organizations. MACDC also developed the MACDC Racial Equity Pledge, which commits signatories to addressing the many forms of racism and to dismantle racial inequities. Over 30 member organizations have signed the pledge.

273. Many **MACDC member organizations** provide credit to individuals and businesses that for-profit lenders have historically underserved, typically in disinvested communities.

274. As regulated entities under ECOA and Regulation B, many MACDC member organizations are incurring and will incur costs (such as administrative, compliance, and other costs) resulting from the changes to Regulation B.

275. These costs include reconciling MACDC member organizations' obligations under Regulation B with their obligations under other laws.

276. MACDC member organizations often partner with traditional, for-profit lenders to extend credit to historically underserved communities. This work has included providing training

and education to consumers and certifying completion of that programming, which makes consumers eligible for credit products from for-profit lenders for which they may otherwise be ineligible; extending credit to supplement credit from for-profit lenders to fully meet the needs of prospective homebuyers, developers, and small business owners; and other efforts to increase investments in these communities, such as partnering on an SPCP offered by a for-profit lender.

277. Until recently, prospective homeowners and small business owners served by MACDC member organizations were eligible to participate in SPCPs offered by for-profit lenders across Massachusetts, including through a small business lending program offered by Eastern Bank serving businesses owned by people of color and women.[243] Other SPCPs likewise expanded access to credit for the communities that MACDC member organizations serve, such as the Federal Home Loan Bank of Boston's "Lift Up Homeownership" program, meant to assist people of color purchasing their first home in Massachusetts and five other New England states, and a program offered by JP Morgan Chase designed to improved credit access for small business owners in historically underserved areas. Under the Final Rule, the programs are now prohibited, and Massachusetts lenders are no longer extending new credit under such programs.[244]

278. Under the Final Rule, for-profit lenders will offer fewer affordable credit products (including SPCPs) to the communities that mission-driven lenders serve, including products that complement—or that are offered in partnership with—products from mission-driven lenders. This is because the Final Rule creates an outright ban on certain products and also disincentives for-profit lenders seeking to reduce disparities in access to credit.

279. Because the Final Rule will result in fewer affordable products offered by traditional lenders in the communities mission-driven lenders serve, MACDC member

[243] *Id*. at 5.
[244] *Id.* at 6–8.

organizations will serve fewer borrowers—being forced to offer larger loans to a smaller set of borrowers (versus offering smaller loans to a larger set of borrowers). This impairment of member organizations' lending activity frustrates these organizations' missions of developing the communities they serve.

280. In addition to diverting capital to serve fewer borrowers with larger loans, MACDC member organizations will also need to divert resources (including staff) from core activities that serve these communities. Instead of staff members providing technical assistance to assist a small business with marketing or strategy, for example, member organizations will need to expend resources in seeking additional capital from funders and providing additional counseling and technical assistance to help the individuals they serve seek additional capital (including modifying the types of lenders to which they refer individuals).

281. **Franklin County Development Corporation** (FCCDC) is an example of an MACDC member organization negatively impacted by the changes to Regulation B.

282. FCCDC is a 501(c)(3) non-profit organization focused on small business development in the western part of the state, with the mission of stimulating a more vital rural economy. FCCDC provides technical assistance, credit, grants, and commercial and individual space to small businesses. FCCDC has a racial justice focus and seeks to serve groups historically excluded from the country's credit markets.

283. FCCDC partners with traditional lenders in extending credit to small businesses. In some instances, for example, FCCDC extends a loan to a small business in conjunction with a bank extending a loan.

284. FCCDC also extends credit through loans to small businesses for working capital or equipment when traditional lenders decline to do so altogether based on these businesses'

limited collateral, shorter operating histories, or other barriers. For example, when a bank attempted to foreclose on one of the oldest Black-owned farms in Massachusetts, FCCDC stepped in to provide a short-term loan that maintained the farm's operations. FCCDC also partners with the Black Farmer Fund—which invests in Black-owned agricultural systems in the Northeast—to extend credit to farm and food businesses.

285. Because Regulation B purports to eliminate disparate-impact liability and prohibits many SPCPs, for-profit lenders will pull back the credit they will extend in the communities FCCDC serves. Partnerships with funders like the Black Farmer Fund will become more difficult to secure, given the CFPB's statement that serving protected classes may now constitute intentional discrimination. The decrease in credit from other lenders to the communities that FCCDC serves means that FCCDC will see increased need for support from small businesses.

286. With less affordable credit in the market to complement its own support for small businesses, FCCDC will be able to serve fewer borrowers. This impairment of FCCDC's lending activity frustrates FCCDC's mission of developing the communities it serves.

287. A reduction in available, affordable credit also means that FCCDC will likely need to confront higher-risk profiles of credit applicants who have fewer supplemental funding sources (including loans offered by banks in collaboration from FCCDC funding) and see its limited resources strained.

288. FCCDC will need to divert resources from its core organizational activities—for example, reassigning staff from conducting outreach to prospective borrowers and directly serving borrowers, to seeking additional sources of funding. FCCDC will see its mission frustrated because it will not be able to completely fill this gap.

289. FCCDC also supports small businesses through one-on-one business planning, counseling, and loan-readiness assistance.

290. The changes to Regulation B, particularly the discouragement provision, will likely increase marketing of predatory products to the communities that FCCDC serves, requiring FCCDC to divert resources (such as funding for a new loan to a small business to support its expansion) to refinance predatory loans or to otherwise assist small businesses.

291. FCCDC also supports small businesses through one-on-one business planning, counseling, and loan-readiness assistance.

292. FCCDC is now expending resources to review its planning, counseling, and loan-readiness assistance to identify changes necessary to align its programming with the changes to Regulation B. This includes, for example, training and technical assistance on: predatory marketing and targeting, which will increase with the loosening of restrictions on discouragement, and on alternative approaches to bridge the gap in available funding, given that the Final Rule disincentivizes lenders from seeking to reduce disparities in access to credit (including an outright ban on certain SPCPs). Demand will increase for guidance on these changes. This will leave FCCDC with fewer resources to, for example, conduct outreach to other small businesses in the communities it serves.

293. Through its racial justice work, FCCDC provides training to traditional lenders, small businesses, and others on racial discrimination in credit markets, including on how to address redlining and implicit bias.

294. Regulation B's changes to disparate-impact liability and discouragement mean that FCCDC will need to divert resources to evaluate and modify this training (including preparing for questions about changes to Regulation B) to ensure compliance with ECOA and other laws.

295. In addition to harming MACDC's member organizations, Regulation B harms **MACDC** itself.

296. MACDC's work also includes technical assistance and training for members and others, which advances MACDC's mission and reinforces its commitment to racial and economic equity.

297. MACDC, for example, provides professional development support through the Mel King Institute for Community Building, which offers training to community development professionals, volunteers, and board members; other non-profit organizations; members of municipal, local, and state government; professionals from commercial realties and banks. In fiscal year 2026, the Institute trained 807 attendees and offered 70 training courses. The Institute also offers multiple certificate tracks, including the Small Business Technical Assistance Program, which covers the small business ecosystem, business planning, financial forecasting, marketing, and the legal landscape. The Institute charges (with subsidized rates available) for individual courses and participation in its certificate programs.

298. MACDC is now expending resources to review its technical assistance and training to identify changes necessary to align its programming with the changes to Regulation B. As with FCCDC, these changes will require MACDC to divert resources to modify its technical assistance and training to align its counseling, advice, and materials with Regulation B. This includes, for example, training and technical assistance on predatory marketing and approaches to bridge the gap in available funding. Demand will increase for guidance on these changes.

299. Finally, MACDC member organizations were denied a meaningful opportunity as both "small entities" under the RFA and regulated entities under ECOA and Regulation B to

meaningfully participate in the rulemaking process. The CFPB also failed to account for the impact of Regulation B's changes on entities such as MACDC member organizations.

CAUSES OF ACTION

COUNT I

Arbitrary and Capricious Rulemaking (disparate impact, discouragement, and SPCPs)

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

300. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

301. The APA requires a reviewing court to "hold unlawful and set aside" agency action that is "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A).

302. The Final Rule is a "final agency action for which there is no other adequate remedy in a court" and is "subject to judicial review." 5 U.S.C. § 704.

303. Agency action is arbitrary and capricious if the agency "failed to consider . . . important aspects of the problem" it seeks to address. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal*. 591 U.S. 1, 20 (2020) (citation omitted). "When an agency changes course, . . . it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Id.* at 30 (internal quotation marks and citation omitted). The APA requires that an agency engage in "reasoned decisionmaking." *Id.* at 16. (internal quotation marks and citation omitted).

304. The Final Rule is arbitrary and capricious for multiple reasons, including the following.

305. The CFPB removed Regulation B's disparate-impact provision without: a reasoned explanation; responding to significant comments; meaningful consideration of reliance interests;

meaningful consideration of alternatives; or meaningful consideration of comments and other data and research (including the CFPB's own) demonstrating the need for disparate-impact liability.

306. The CFPB narrowed Regulation B's discouragement provision without: a reasoned explanation; responding to significant comments; meaningful consideration of reliance interests; meaningful consideration of alternatives; or meaningful consideration of comments and other data and research (including the CFPB's own) demonstrating the need for the prior provision's protections.

307. The CFPB removed a significant portion of Regulation B's SPCP provision without: a reasoned explanation; responding to significant comments; meaningful consideration of reliance interests; meaningful consideration of alternatives; or meaningful consideration of comments and other data and research (including the CFPB's own) demonstrating the need for SPCPs offered by for-profit lenders for all protected characteristics.

COUNT II

Cost-Benefit Analysis that is Arbitrary, Capricious, and Contrary to Law (disparate impact, discouragement, and SPCPs)

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), and Dodd-Frank Act, 12 U.S.C. § 5512

308. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

309. The APA requires a reviewing court to "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

310. The Final Rule is a "final agency action for which there is no other adequate remedy in a court" and is "subject to judicial review." 5 U.S.C. § 704.

311. Agency action is arbitrary and capricious if the agency "failed to consider . . . important aspects of the problem" it seeks to address. *Regents of the Univ. of Cal.*, 591 U.S. at 20 (citation omitted). "When an agency changes course, . . . it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Id.* at 30 (internal quotation marks and citation omitted). The APA requires that an agency engage in "reasoned decisionmaking." *Id.* at 16. (internal quotation marks and citation omitted).

312. The Dodd-Frank Act requires that, in prescribing rules under federal consumer financial laws, the CFPB shall consider: (i) "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule" and (ii) "the impact of proposed rules on covered persons, . . . and the impact on consumers in rural areas[.]" 12 U.S.C. § 5512(b)(2).

313. The CFPB's cost-benefit analysis was arbitrary, capricious, and contrary to the Dodd-Frank Act for multiple reasons, including the following.

314. The CFPB failed to meaningfully consider the likely costs of the Final Rule to consumers and covered entities and did not rely on data or evidence about these costs.

315. The CFPB failed to conduct a quantitative or qualitative analysis of benefits and costs of the Final Rule.

316. The CFPB failed to assess the likely impact on non-profit lenders, including MACDC member organizations and the Urban Empowerment Fund.

317. The CFPB failed to create a meaningful opportunity for small entities to participate in the rulemaking process, including MACDC member organizations and the Urban Empowerment Fund.

318. The CFPB failed to assess the likely impact on consumers in rural areas.

COUNT III

Failure to Observe Procedures Required by Law
(disparate impact, discouragement, and SPCPs)

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D),
and the Regulatory Flexibility Act, 5 U.S.C. § 605(b), 5 U.S.C. § 601 *et seq*.

319. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

320. The APA requires a reviewing court to "hold unlawful and set aside" agency action that is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

321. The Final Rule is a "final agency action for which there is no other adequate remedy in a court" and is "subject to judicial review." 5 U.S.C. § 704.

322. The CFPB is a covered agency under the RFA. 5 U.S.C. § 609(d).

323. The RFA provides that "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" the agency does not have to convene an SBREFA panel, prepare an IRFA, or prepare a FRFA. 5 U.S.C. § 605(b).

324. The CFPB failed to properly certify the Proposed and Final Rule in accordance with the RFA.

325. The CFPB was required to convene an SBREFA panel, which it failed to do. 5 U.S.C. § 609(b)

326. The CFPB was required to prepare an IRFA, which it failed to do. 5 U.S.C. § 603.

327. The CFPB was required to prepare a FRFA, which it failed to do. 5 U.S.C. § 604.

328. Because the CFPB failed to prepare a FRFA, it did not provide "either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable." 5 U.S.C. § 607.

329. The CFPB was required to provide an adequate notice-and-comment period and respond to significant comments, which it failed to do.

330. The CFPB failed to assess the likely impact on non-profit lenders, including MACDC member organizations and the Urban Empowerment Fund.

331. The CFPB failed to create a meaningful opportunity for small entities to participate in the rulemaking process, including MACDC member organizations and the Urban Empowerment Fund.

332. Under the Dodd-Frank Act, the CFPB was also required to meaningfully consult with appropriate prudential regulators or other federal agencies, which it failed to do. The CFPB did not affirmatively solicit advice or opinions from regulations and agencies on the changes, provide them an opportunity to express opinions, or consider such advice or opinions.

COUNT IV

Non-Statutory Review of Agency and Official Action and Agency Action in Excess of Statutory Authority (disparate impact, discouragement, and SPCPs)

Violation of the Appointments Clause, U.S. Const. art. II, § 2, cl. 2,
Federal Vacancies Reform Act, 5 U.S.C. § 3348(d)(2),
and Administrative Procedure Act. 5 U.S.C. § 706(2)(C)

333. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

334. President Trump was required to obtain "the Advice of Consent of the Senate" before appointing Mr. Vought to serve as head the CFPB—i.e., as an "Officer[] of the United States. U.S. Const. art. II, § 2, cl. 2. He failed to do so.

335. Though President Trump was permitted by the Federal Vacancies Reform Act to temporarily appoint someone to lead the CFPB without Senate confirmation under certain exceptions, none of those applied here. Mr. Vought's predecessor did not "die[], resign[], or [become] otherwise unable to perform the functions and duties of the office." 5 U.S.C. § 3345(a).

336. Because Mr. Vought was serving as Acting Director in violation of the Constitution and FVRA, his actions were *ultra vires* and void.

COUNT V

Agency Action Contrary to Law (discouragement)

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

337. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

338. The APA requires a reviewing court to "hold unlawful and set aside" agency action that is "not in accordance with law." 5 U.S.C. § 706(2)(A).

339. The Final Rule is a "final agency action for which there is no other adequate remedy in a court" and is "subject to judicial review." 5 U.S.C. § 704.

340. The Final Rule's provisions against discouraging prospective applicants are contrary to ECOA. 15 U.S.C. §§ 1691, 1691b, 1691e.

COUNT VI

Agency Action in Excess of Statutory Authority (discouragement)

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

341. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

342. The APA requires a reviewing court to "hold unlawful and set aside" agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

343. The Final Rule is a "final agency action for which there is no other adequate remedy in a court" and is "subject to judicial review." 5 U.S.C. § 704.

344. The Final Rule's amendments to the discouragement provisions purport to create exceptions to liability for violations of ECOA—or to otherwise exclude as admissible forms of evidence—certain statements, acts, and practices. The CFPB lacks authority to create these types of safe harbors or otherwise alter evidentiary rules. *See* 28 U.S.C. § 2072.

PRAYER FOR RELIEF

Plaintiffs ask that this Court:

a. Declare the Final Rule to be arbitrary, capricious, and otherwise contrary to law;

b. Declare that the Final Rule was issued without observance of procedure required by law and in excess of the CFPB's authority;

c. Vacate the Final Rule;

d. Find the Final Rule void and with no effect, as Mr. Vought acted with no lawful authority;

e. Award Plaintiffs their reasonable costs and attorneys' fees; and

f. Enter all other appropriate relief.

Dated: October 29, 2026

Respectfully submitted,

/s/ Shennan Kavanagh

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** pro hac vice application forthcoming*

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