Petition of America First Legal Foundation for Rulemaking

Petition to Rescind Rule Collecting Race and Sex Information in Home Mortgage Applications

PETITION FOR RULEMAKING

SUMMARY OF PETITION

1. This petition for rulemaking is submitted pursuant to 5 U.S.C. § 553(e) and 11 C.F.R. § 200.2, which grants any interested person the right to petition a federal agency for the issuance, amendment, or repeal of a rule. America First Legal Foundation ("AFL") respectfully requests that the Consumer Financial Protection Bureau rescind Regulation C, 12 C.F.R. § 1003—which requires mortgage lenders to collect and report data about mortgage applicants' ethnicity, race, and sex—and Appendix B to Part 1003—which outlines the form and instructions for mortgage lenders to track this data. The disclosure of this information leaves applicants vulnerable to race- and sex-based discrimination by government and private actors in violation of federal civil rights law and the Constitution. The Bureau's prompt rescission of this rule is essential to fair, merit-based lending.

STATEMENT OF INTEREST

2. AFL is a national, 501(c)(3) nonprofit organization working to promote the rule of law, prevent executive overreach, protect our citizens' civil rights, and promote public understanding of the Constitution and the laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution, laws, and citizens of the United States.

JURISDICTION & AUTHORITY

3. The Home Mortgage Disclosure Act[1] requires mortgage lenders to collect and report data about their mortgage applications.[2] As originally enacted in 1975,

[1] 12 U.S.C. § 2801 *et seq*.
[2] 12 U.S.C. § 2803(a)(1).

HMDA required covered lenders to disclose limited mortgage lending data to facilitate public oversight, with later amendments expanding both the scope of required data and the agencies responsible for enforcement. Originally, Congress assigned enforcement to multiple federal agencies based on the type of institution.[3] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transferred rulemaking authority from the Federal Reserve Board to the newly created Consumer Financial Protection Bureau ("CFPB" or "the Bureau").[4] Congress designated the Consumer Financial Protection Bureau to enforce this law.[5] To enforce the HMDA, the Bureau implemented 12 C.F.R. § 1003, known also as "Regulation C,"[6] which requires mortgage lenders, in part, to "collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B to this part."[7] Appendix B outlines instructions for gathering this information.[8] Applicants primarily provide this information using a standardized form, which the institution reports to the CFPB.[9]

BACKGROUND

4. Congress passed the Home Mortgage Disclosure Act in 1975 to remedy racial disparities in housing, especially in urban areas.[10]

5. The purposes for collecting ethnicity, race, and sex data were—and still are—to: (1) help determine whether financial institutions are serving the housing needs of their communities; (2) assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and (3) assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[11] Immediately after the Act's passage, the data was used to identify and clamp down on lending discrimination against African Americans.[12]

6. To accomplish these goals, government agencies review the data for disparate impacts on protected classes. For example, Federal Reserve analysts scrutinize the race data to determine whether it indicates practices that violate the Equal Credit Opportunity Act, a federal civil rights law designed to stamp out

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[3] *See* Pub. L. 94-200, 89 Stat. 1126 (1976).
[4] National Credit Union Association, *Home Mortgage Disclosure Act (Regulation C)*, NCUA (last visited Jan. 7, 2026), https://perma.cc/WB4D-U7V4.
[5] *Id*.
[6] 12 C.F.R. § 1003.1(a) (2025).
[7] 12 C.F.R. § 1003.4(b)(1) (2025).
[8] *See* 12 C.F.R. § 1003 app. B.
[9] *Id.*
[10] *See* Joshua Ingber, *A Brief History of the HMDA and Fair Lending*, SUMMIT (October 2, 2015), https://perma.cc/ALN5-RVCN.
[11] 12 C.F.R. § 1003.1(b)(1)(i)–(iii) (2025); 12 U.S.C. § 2801(b).
[12] Ingber, *supra* note 8.

disparate impact in lending.[13] Likewise, bank regulators have used the data to "identify institutions, loan products, or geographic areas that show racial disparities significant enough to require investigation under antidiscrimination statutes."[14]

7. In other words, government bureaucrats use Regulation C to justify policing mortgage lenders for failing to balance their books based on race and sex. Regulation C is essentially a surveillance tool that pressures lenders to compromise between doing business with reliable borrowers and selecting borrowers to meet government-mandated racial and sexual balancing. This burden stifles free enterprise and prioritizes social engineering over merit-based lending.

SUPREME COURT PRECEDENT

8. "[T]he Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class."[15] In *Students for Fair Admissions v. Harvard,* the Supreme Court of the United States ruled that private universities cannot use race-conscious admission practices. It extended the maxim that "the Constitution … forbids … discrimination by the General Government, or by the States, against any citizen because of his race"[16] to both government and private actors alike. As Justice Thomas explained in his concurrence, "all forms of discrimination based on race—including so-called affirmative action—are prohibited under the Constitution."[17]

9. Regulation C is not merely passive data collection. It is a means for federal agencies, such as the Bureau, to divvy up mortgage applicants based on race and sex. This raises Equal Protection issues, given that the Bureau uses this data "to assist public officials in distributing public-sector investment so as to attract private investment."[18] Often, this takes the form of race- and sex-conscious community development grants awarded by the government and private investors.[19] For example, the CFPB's 2023 Voluntary Review of the

[13] Winnie F. Taylor, *Proving Racial Discrimination and Monitoring Fair Lending Compliance: The Missing Data Problem in Nonmortgage Credit*, 31 REV. BANKING & FIN. L. 199, 202 (2011–2012); *see also Cherry v. Amoco Oil Co.*, 490 F. Supp. 1026, 1030 (N.D. Ga. 1980) (recognizing that Equal Credit Opportunity Act plaintiffs must rely on disparate treatment and disparate impact proof methods because blatant evidence of racial discrimination in the credit context is rare).
[14] *Id*. at 203.
[15] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll*., 600 U.S. 181, 223 (2023).
[16] *Id*. at 205 (citing Bolling v. Sharpe, 347 U.S. 497, 499 (1954).
[17] *Id*. at 232 (Thomas, J., concurring).
[18] 12 C.F.R. § 1003.1(b)(1)(ii) (2025).
[19] CONSUMER FIN. PROT. BUREAU, REPORT ON THE HOME MORTGAGE DISCLOSURE ACT RULE VOLUNTARY REVIEW (2023) at 3, https://perma.cc/HU3B-3SZ5 ("Public officials use the information available through HMDA to develop and allocate housing and community development investments.").

HMDA Rule emphasizes how this data enhances its ability to detect patterns in underserved communities, such as minority tracts or areas with high concentrations of certain racial groups.[20] The CFPB report confirms that public officials rely on HMDA to "develop and allocate housing and community development investments," often targeting areas with identified racial or sex-based disparities.[21] Both discriminate in their investments based on and because of the race and sex data mandated by Regulation C.[22] When federal agencies rely on Regulation C-mandated race and sex data to target public investment and influence private capital flows, they engage in race- and sex-based governmental discrimination, triggering Equal Protection scrutiny.

10. Under *Students for Fair Admission,* this data collection is a government action subject to strict scrutiny that must be narrowly tailored and serve a compelling government interest. Because Regulation C arose to remedy past housing discrimination,[23] it is a vestige of affirmative action. Now that *Students for Fair Admission* has declared affirmative action outdated, the Bureau lacks a compelling government interest to justify maintaining its data collection.

EXECUTIVE ORDER 14,281: RESTORING EQUALITY OF OPPORTUNITY AND MERITOCRACY

11. In April 2025, President Trump responded to the widespread support for eliminating the government's race- and sex-conscious policies by signing Executive Order 14,281, titled "Restoring Equality of Opportunity and Meritocracy."[24]

12. The Executive Order explains that "[a] bedrock principle of the United States is that all citizens are treated equally under the law."[25] This principle "promises that people are treated as individuals, not components of a particular race or group. It encourages meritocracy and a colorblind society, not race- or sex-based favoritism."[26]

13. However, "a pernicious movement endangers this foundational principle, seeking to transform America's promise of equal opportunity into a divisive

[20] *See* Consumer Fin. Prot. Bureau, *Report on the Home Mortgage Disclosure Act Rule Voluntary Review* 52 (Mar. 2023), https://perma.cc/F5PP-CL6A.
[21] *Id.* at 10.
[22] Such discrimination in grant awards also poses issues under 42 U.S.C. § 1981, which forbids racial discrimination in making and enforcing contracts.
[23] *See* Ingber, *supra* note 8.
[24] Exec. Order No. 14,281, 90 Fed. Reg. 17,537 (April 23, 2025).
[25] *Id.*
[26] *Id.*

pursuit of results preordained by irrelevant immutable characteristics, regardless of individual strengths, effort, or achievement."[27]

14. A key tool of this movement is "disparate-impact liability, which holds that a near insurmountable presumption of unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups, even if there is no facially discriminatory policy or practice or discriminatory intent involved."[28]

15. In support of this vital objective, the Executive Order directs several essential actions to be taken by various entities within the Executive Branch. Relevant here, Section 2 of the Order declares that "[i]t is the policy of the United States to eliminate the use of disparate-impact liability *in all contexts* to the maximum degree possible to avoid violating the Constitution, federal civil rights laws, and basic American ideals."[29]

16. By requiring the collection and disclosure of ethnic, racial, and sexual demographic data in mortgage applications, Regulation C invites government bureaucrats and ECOA plaintiffs to scour the records searching for "possible discriminatory lending patterns"[30] upon which they can predicate disparate impact actions. Therefore, Regulation C facilitates objectives contrary to the Order.

STATUTORY LIMITS ON DISCLOSURE AUTHORITY AND ENFORCEMENT

17. The Home Mortgage Disclosure Act requires covered lenders to disclose certain aggregated data about their mortgage lending, including information "grouped according to census tract, income level, racial characteristics, age, and gender."[31] This statutory language—focused on institutional disclosure of aggregated lending patterns—does not authorize the Bureau to establish a comprehensive regime for the collection of sensitive personal information directly from mortgage applicants. The statute's text distinguishes between what lenders must disclose (information they have compiled) and what applicants must provide (information they may decline to furnish). Nothing in HMDA's text requires lenders to collect demographic information; the statute requires only that lenders disclose such information to the extent they possess it.

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[27] *Id.*
[28] *Id.*
[29] *Id.* (emphasis added).
[30] 12 C.F.R. § 1003.1(b)(1)(iii) (2025).
[31] 12 U.S.C. § 2803(b)(4).

18. Regulation C, however, goes far beyond this statutory framework, requiring data collection that enables discrimination on race and sex. The regulation requires lenders to "collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B to this part."[32] Appendix B prescribes detailed demographic categories far exceeding the statute's reference to "racial characteristics" and imposes specific collection procedures, including the use of visual observation and surname analysis when applicants decline to self-identify.[33] While HMDA authorizes the Bureau to prescribe regulations governing the format and manner of institutional disclosures,[34] it does not authorize the Bureau to mandate a standardized, applicant-facing demographic data collection regime. By requiring lenders to solicit specific demographic information using Bureau-prescribed forms and methods—and, critically, by requiring lenders to assign demographic categories through visual observation when applicants exercise their right not to respond—Regulation C transforms what Congress framed as an institutional disclosure requirement into a federal mandate for the collection and categorization of sensitive personal data.

19. The statute's enforcement scheme confirms this distinction. HMDA provides no private right of action and imposes no penalties on lenders for failing to obtain demographic information from applicants who decline to provide it.[35] Instead, enforcement targets institutional failures to compile and disclose data that the institutions possess.[36] This structure reflects Congress's intent that demographic disclosure serve as a tool for identifying lending patterns in the aggregate, not as a mandate for standardized collection of personal information from individual applicants. Where the statute is silent on collection methodology but explicit about disclosure obligations, the Bureau's authority extends to regulating how institutions report data they possess—not to compelling a uniform federal system for extracting that data from mortgage applicants in the first instance.

REQUESTED ACTION

20. To promote equality of opportunity and meritocracy, the Bureau should initiate the process to rescind Regulation C's collection of mortgage applicants' ethnic, racial, and sexual data. The Bureau should rescind Appendix B along with it.

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[32] 12 C.F.R. § 1003.4(b)(1).
[33] 12 C.F.R. pt. 1003, app. B.
[34] *See* 12 U.S.C. § 2803(h)(1)(A).
[35] *See* 12 U.S.C. §§ 2803–2805.
[36] 12 U.S.C. § 2804.

CONCLUSION

21. The Bureau must rescind Regulation C and Appendix B to comply with the Constitution. The continued collection of ethnic, racial, and sex data is a vestige of affirmative action. It wrongfully pressures lenders to forgo merit-based lending, enables the government and private investors to discriminate based on racial and sexual bias, and violates civil rights laws and the Constitution. For these reasons, AFL respectfully requests that the Bureau rescind Regulation C's collection of mortgage applicants' ethnic, racial, and sex data and Appendix B along with it.

22. Please confirm receipt of this petition and advise on the timeline and process for the Bureau's consideration. We stand ready to provide additional information or participate in any public comment process that may follow.

Respectfully submitted,

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