



Dec 15, 2025

Comment Intake –2025 NPRM ECOA
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Submitted via Regulations.gov

Re: Equal Credit Opportunity Act (Docket No. CFPB-2025-0039, RIN 3170-AB54)

We appreciate the opportunity to comment on the Consumer Financial Protection Bureau’s notice of proposed rulemaking revising Regulation B with respect to (1) disparate impact, (2) discouragement, and (3) special purpose credit programs (SPCPs). Our organization supports strong consumer protections and works to ensure fair access to credit markets, particularly for communities that continue to face persistent and measurable barriers to credit.

While we recognize the Bureau’s stated rationale for clarifying certain regulatory provisions, we are concerned that the proposed rule would significantly weaken long-standing and essential elements of ECOA’s fair lending framework. In particular, the removal of disparate-impact liability, the narrowing of discouragement protections, and the substantial restrictions on SPCPs risk undermining decades of progress in combating discrimination in lending.

Below, we provide high-level comments focused on the consumer impact of the proposed rule, the ongoing relevance of disparate impact doctrine, and the likely effects on vulnerable populations.

1. Disparate Impact Remains Essential to Identifying and Preventing Discrimination

For nearly five decades, Regulation B has recognized disparate-impact liability as a valid means of identifying policies that have discriminatory effects—even when lenders did not intend harm. Removing this doctrine would eliminate one of ECOA’s most important tools for detecting discrimination that is otherwise invisible or difficult to prove.

Despite progress in lending markets, substantial disparities persist in mortgage approvals¹, interest rates, auto financing², and small business credit³. Research consistently shows that these gaps cannot be fully explained by neutral credit factors alone. These disparities frequently emerge from credit scoring inputs, automated underwriting models⁴, and appraisal gaps—not explicit intent. As underwriting becomes more automated and reliant on complex models, the risk increases that facially neutral criteria will reproduce historical inequities.

The existing disparate-impact standard is narrow, balanced, and well-established. It requires proof of a specific policy, a robust causal connection, and an opportunity for lenders to demonstrate legitimate business necessity. It does not require racial quotas or outcomes-based balancing. Rather, it ensures that when less discriminatory alternatives exist, consumers have a pathway for redress and the marketplace becomes more efficient and fair.

Removing disparate impact would weaken accountability and create uncertainty for both lenders and consumers, particularly in credit markets where differences in outcomes remain stark.

2. Discouragement Protections Are Critical to Ensuring Equal Access to Apply for Credit

ECOA protects individuals not only at the point of approval or denial, but also at the moment they interact with a creditor. The discouragement rule serves this purpose by ensuring that consumers are not deterred from applying based on prohibited characteristics.

The proposed rule significantly narrows this protection by requiring that a creditor “know or should know” that a statement would lead a consumer to believe they will be denied due to a protected trait. This standard may fail to capture the subtle but powerful ways discouragement

¹ **Urban Institute (2023)** found Black mortgage applicants were 2.5× more likely to be denied than White applicants even after controlling for debt-to-income ratios and loan characteristics.

² **CFPB enforcement actions** (Ally Financial, 2013; Honda, 2015; Toyota Motor Credit, 2016) concluded that discretionary dealer markups resulted in statistically significant disparate impacts on Black, Hispanic, and Asian borrowers, increasing costs by hundreds of dollars per loan. These disparities occurred without evidence of intentional discrimination, illustrating precisely why disparate-impact analysis is necessary.

³ **Federal Reserve Small Business Credit Survey (2023)** shows minority-owned businesses face higher denial rates even at comparable credit profiles.

⁴ **CFPB’s 2023 report on AI and alternative data** warns that machine-learning models may rely on proxies (e.g., geography, education, digital footprint data) that disproportionately affect minority consumers.

still occurs—for example, through selective steering⁵, coded language, or marketing practices⁶ that systematically dissuade certain groups from applying.

Discouragement often happens before consumers realize it, and individuals with the least experience or financial sophistication—first-time homebuyers, rural borrowers, immigrant communities, and low-income families—are especially vulnerable. Narrowing the standard could unintentionally shield conduct that meaningfully reduces the number of applicants from protected groups.

Maintaining strong discouragement protections aligns with ECOA's central purpose: ensuring that all consumers have an equal chance to seek credit.

3. Restrictions on Special Purpose Credit Programs Could Eliminate a Vital Tool Congress Explicitly Authorized

Special Purpose Credit Programs (SPCPs) serve a narrow but important role in addressing persistent barriers to credit that historically excluded or disadvantaged certain communities. Congress intentionally allowed lenders to design programs that use protected characteristics when necessary to meet “special social needs,” subject to safeguards and transparency.

The proposed rule would prohibit for-profit SPCPs from using race, color, national origin, or sex as eligibility criteria and would impose highly individualized evidentiary burdens that would be nearly impossible for lenders to meet in practice. These changes would make it extremely difficult to operate programs intended to expand access to first-generation homeowners, communities affected by historic redlining⁷, or entrepreneurs facing documented credit disparities.

Evidence from Home Mortgage Disclosure Act (HMDA) data, small business lending research, and supervisory findings continues to show significant gaps in credit access. SPCPs—used responsibly and with clear regulatory parameters—are one of the few tools lenders have to address these inequities proactively and transparently. Limiting or effectively eliminating SPCPs would reduce innovation in fair lending and restrict options for consumers who remain underserved.

⁵ Even as recently as October 2024, [DOJ and CFPB](#) matters have shown that mortgage lenders are still steering first-time homebuyers from majority-Black neighborhoods into FHA loans despite eligibility for conventional products.

⁶ [Research](#) has found that communities with higher proportions of low-income, disabled, and racially diverse individuals lost branches at a disproportionate rate. For instance, one study found that from 2008-2016, 25% of all rural branch closures were in majority-minority census tracts, with populations in these “deserts” having a significantly higher representation of Hispanic and Native American individuals.

⁷ Homeownership gaps remain extremely large: The Black-White homeownership gap is wider today than in 1968 ([Urban Institute, 2022](#))

⁸ Historic redlining effects persist, with formerly redlined neighborhoods still experiencing lower home values, fewer lenders, and higher denial rates ([HOLC mapping studies: NCRC 2021](#)).

Conclusion and Recommendations

Collectively, the proposed changes would substantially narrow ECOA's protections at a time when consumers rely more than ever on automated underwriting, complex credit models, and digital lending environments. Removing disparate-impact liability, narrowing discouragement, and restricting SPCPs could make it harder to detect discriminatory outcomes and reduce access to credit for communities that continue to face structural barriers.

We respectfully urge the Bureau to:

- **Retain disparate-impact liability** as an established and essential means of identifying discriminatory effects.
- **Preserve the existing discouragement standard**, which remains vital to preventing front-end exclusion from credit markets.
- **Maintain current flexibility for SPCPs**, consistent with congressional intent and the need to address persistent inequities in credit access.

We appreciate the Bureau's careful consideration of these issues and welcome continued engagement to ensure ECOA remains a robust and effective tool for promoting fair, equitable access to credit.

Sincerely,

Consumer Reports