



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

December 15, 2025

*Re: Proposed Rule on Disparate Impact under Equal Credit Opportunity Act; Docket No. CFPB–2025–0039 or RIN 3170–AB54*

To whom it may concern:

Americans for Financial Reform Education Fund (AFREF) opposes the proposed Consumer Financial Protection Bureau (CFPB) rule that would undermine civil rights and fair lending law by dramatically weakening the regulations under the Equal Credit Opportunity Act (ECOA).<sup>1</sup> Americans for Financial Reform Education Fund (AFREF) is a nonpartisan and nonprofit coalition founded by more than 200 civil rights, consumer, labor, investor, faith-based, and civic and community groups and is dedicated to advocating for policies that shape a financial sector that serves workers, communities and the real economy, and provides a foundation for advancing economic and racial justice ; this requires robust enforcement of fair lending and civil rights laws and regulations.

AFREF has joined a comment letter submitted by a group of civil rights, consumer, and other organizations which addresses the Bureau’s proposed changes to Reg. B in detail, and shows how the changes are inconsistent with ECOA. The letter also points out other significant deficiencies with the proposal. We submit this supplementary comment to further underline a few concerns.

ECOA makes it unlawful for “any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract.” The amendments in the proposed rule withdraw a very substantial part of that protection. They run counter to the language, congressional intent, and historical interpretation of the statute, they would leave protected class consumers and small businesses much more vulnerable to harmful discrimination, and they are likely to harm the broader economy by unfairly excluding people and businesses from access to credit or limiting them to credit provided on less favorable terms, and thereby curtailing economic opportunities.

#### *1. Ending disparate impact liability*

The proposed rule would do away with disparate impact liability under ECOA, saying instead that only practices that are “designed or applied with the intention of advantaging or disadvantaging

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<sup>1</sup> Consumer Financial Protection Bureau. Proposed Rule. [Equal Credit Opportunity Act \(Regulation B\)](#). 90 Fed. Reg. 217. November 13, 2025 at 50901 et seq.

individuals based on protected characteristics” are prohibited. This would enormously narrow the scope of protections, require proof of intent to discriminate — which in many cases is impossible to secure even where there are evident discriminatory impacts, and bless practices that manifestly and repeatedly harm members of protected classes. Historical and continuing discrimination mean that members of protected classes may be differentially impacted by facially neutral practices; eliminating disparate impact liability would help lock in inequities to the long-term detriment of all consumers.

This proposed elimination of disparate impact liability and insistence on intent is even more damaging in the context of technological developments including AI, which mean that systems using untransparent algorithms and information shaped by a history of various forms of discrimination are increasingly driving credit decisions. The data elements and the model weights that the AI credit determination systems use can incorporate known and unknown structural racial biases. Existing credit bureau data have demonstrated problems with racial biases that can mean that people of color are more likely to be rejected for credit applications, pay higher prices for credit approvals, and receive less favorable terms for approved loans. AI models also can use unknown (and often undisclosed) supplementary data (such as e-commerce transaction data, subscription data, and internet protocol data) that apply unknown model weights that can replicate or amplify these racial biases. A rule that prohibits only practices that “intend to advantage or disadvantage” could not address these serious issues.

## *2. Starkly limiting the prohibition on discouraging applicants or prospective applicants*

The proposed rule would limit the prohibition on discouragement to cover only actual oral or written statements or visual images directed to applicants or prospective applicants that are discouraging to them. And it would raise the bar on what constitutes “discouraging” including by requiring that a creditor knows or should know that a statement is discouraging, and that the statement “would cause a reasonable person to believe that the creditor would deny, or would grant on less favorable terms, a credit application...because of... prohibited basis characteristics.” The proposal would expressly permit marketing and other “encouraging” statements to certain applicants or prospective applicants, including in situations where members of a protected class or classes did not receive marketing and others did; products and services could be exclusively marketed to some communities or kinds of people. It would also permit decisions about bank branch locations that leave members of protected classes — including for example seniors who may be particularly reliant on them — with less access to brick-and-mortar facilities.

These proposed limits essentially bless redlining and other similar practices that can — and repeatedly have — left members of protected classes excluded from access to credit on favorable terms and in contexts that allow people to build wealth, and instead limited them to more costly and even predatory options.

These proposed limits also are even more damaging in the context of technological developments which enable targeted marketing that can be close to invisible to anyone outside the target audience, enhancing the danger of such outcomes.

## *3. Harmful impacts on small businesses as well as on individual consumers*

It is important to note that the withdrawal of protection from discrimination through the proposed amendments to regulation B would impact small businesses as well as individual consumers. Small

businesses and farms generate economic growth, create jobs, and build household wealth for families and for communities. But studies have repeatedly found that Black, Latine, and Asian and women small business owners had lower access to capital, are charged higher interest rates, receive lower loan amounts, and have higher loan rejection rates than comparably creditworthy white small business owners.<sup>2</sup> Black, Latine, Indigenous, Asian, and women farmers have also faced longstanding barriers to accessing farm credit and discrimination accessing farm credit on equitable terms.<sup>3</sup> Ending disparate impact liability and giving a green light to redlining will allow these problems to persist and grow.

#### *4. Effectively prohibiting special purpose credit programs (SPCPs) offered or participated in by for-profit organizations.*

SPCPs have been used by lenders in collaboration with not-for-profit organizations to increase access to homeownership through downpayment and other assistance to households historically excluded from opportunities to build generational wealth that can otherwise help households purchase a first home. The proposal would shut them down.

#### *5. Consideration of costs and benefits, insufficient time for public comments*

The proposal makes a totally inadequate effort to consider the costs for consumers or for small businesses of dramatically curtailing the reach of ECOA anti-discrimination protections, or the impacts that might have. For that matter, it is deficient in detailed consideration of both costs and benefits across the board, repeatedly stating that “due to lack of available data, the Bureau cannot provide quantitative estimates” while also relying on very cursory qualitative discussions. As a result, it fails to comply with a set of regulatory requirements including Section 1022(b)(2) of the CFPB. It is particularly notable that the proposal does not appear to consider the impacts of the disparate impact and discouragement changes on small business customers, and that the Bureau appears to have determined that it did not need to do an initial regulatory flexibility analysis by ignoring this set of impacts.

The very short 30-day comment period on the proposed rule generally provides inadequate time for public interest commenters to respond to this very consequential proposal. The limited time is particularly inadequate for public interest commenters to fill in the blanks left by the proposals very general and limited consideration of costs to consumers, or to provide evidence regarding the assertions of benefits that will be passed through to consumers.

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<sup>2</sup> de Zeeuw, Mels G. and Victor E. da Motta. Federal Reserve Bank of San Francisco. “[Minority-owned enterprises and access to capital from Community Development Financial Institutions.](#)” *Community Development Innovation Review*. May 19, 2021 at 6 to 7; Robb, Alicia. Robb Consulting for the U.S. Small Business Administration. “[Financing Patterns and Credit Market Experiences: A Comparison by Race and Ethnicity for U.S. Employer Firms.](#)” February 2018 at 35 and 36; Wells Fargo. “[2025 Report: The Impact of Women-Owned Businesses.](#)” 2025 at 13; Federal Reserve Banks. “[2024 Chartbook on Firms by Gender of Ownership.](#)” 2024 at 13, 24, and 32.

<sup>3</sup> de Sam Lazaro. Fred an Simeon Lancaster. “[Historically denied ‘pivotal’ loans, Black farmers still struggle to get support.](#)” *PBS Newshour*. December 7, 2021; Rosenberg, Nathan. “[How USDA distorted data to conceal decades of discrimination against Black farmers.](#)” *The Counter*. June 26, 2019; Matin, Michel. “[USDA awards Native Americans millions in discrimination suit.](#)” *NPR*. October 21, 2010; LaFraniere, Sharon. “[U.S. opens spigot after farmers claim discrimination.](#)” *New York Times*. April 25, 2013; U.S. Department of Justice and U.S. Department of Agriculture. [Press release]. “[USDA notice to women and Hispanic farmers and ranchers: Compensation for claims of discrimination.](#)” July 7, 2011; Robinson, Jessica. “[Women, Hispanic farmers say discrimination continues in settlement.](#)” *Boise Public Radio*. November 13, 2012.

We appreciate your consideration of these views.

Sincerely,

Americans for Financial Reform Education Fund