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December 15, 2025

Acting Director Russell Vought
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Equal Credit Opportunity Act (Regulation B); Docket No. CFPB-2025-0039 or RIN 3170-AB54 (90 Fed. Reg. 50901, Nov. 13, 2025)

Submitted via regulations.gov

Dear Acting Director Vought:

I am writing on behalf of the National Housing Conference (NHC) concerning the Consumer Financial Protection Bureau (CFPB or the Bureau)'s proposed changes to Regulation B (Reg B) of the Equal Credit Opportunity Act (ECOA). The National Housing Conference is deeply concerned by the proposal to overturn fifty years of regulatory application and legislative intent to eliminate disparate impact liability under ECOA, significantly narrow the definition of "discouragement," and largely prohibit Special Purpose Credit Programs (SPCPs) targeted at serving protected groups.

The National Housing Conference is a politically diverse, nonpartisan 501(c)(3) coalition representing housing stakeholders across the industry–including financial institutions, for-profit and nonprofit developers, consumer advocates and civil rights organizations. Since 1931, NHC has played a central role in shaping federal housing policy, contributing to the development of landmark legislation including the National Housing Act of 1937, the Housing and Community Development Act of 1968, the Housing and Economic Recovery Act of 2008, and the Homeowners Assistance Fund of 2021.

We are deeply concerned that the Bureau's proposal contradicts the statute and congressional intent of ECOA, hampering fair lending and private sector innovations that have made lending more accessible and affordable for all communities, including historically underserved groups. NHC believes the proposed Reg B rule change would undermine this administration's goals of improving affordability and creating economic opportunity and growth. We are also concerned that these proposed changes will create regulatory uncertainty for lenders and consumers that will ultimately harm both of them. Without sound regulatory guidance, including accurate and widely accepted data and guidance, lenders will have increased legal risk under the law, as interpreted by future Federal administrations, State attorney's general offices, and private action lawsuits.

Regulatory certainty and consistency

Regulatory certainty and consistency are paramount for businesses as they manage legal liability and financial risks, develop business plans, and explore new product offerings and markets. This proposed change creates unnecessary regulatory complexity and uncertainty for businesses which have established internal compliance regimes and

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practices, as well as product offerings, that align with the last fifty years of ECOA interpretation. Furthermore, the existing interpretation of these provisions under Reg B aligns with other related statutes, such as the Fair Housing Act, and state and local consumer and anti-discrimination protections. Unwinding these policies at the federal level creates confusion for lenders and consumers navigating a complex environment of federal, state, and local laws and regulations, as well as legal precedent.

Most lenders are well intentioned actors who, regardless of the regulatory regime, want to institute policies, procedures, and practices that do not discriminate against potential borrowers, whether by intent or effect. It is in their financial interest to expand markets, sustainably serve more borrowers, and build relationships that encourage repeat customers. Harmonious and well-established regulation and guidance from oversight and enforcement agencies provide businesses with a clear road map of best practices. Reg B also ensures that good actors are not disadvantaged by unscrupulous competitors who may pursue predatory lending with discriminatory effects, or seek to cut costs by completely abandoning internal controls against practices with discriminatory effects.

Equal Access to Credit

Equal access to affordable, accessible lending and homeownership opportunity is critical for building sustainable and thriving communities and strengthening the American economy. The progress made toward fair lending and homeownership opportunities for protected groups thus far is due in large part to the fact that the United States government, through statute, regulation, and legal decisions, established a robust anti-discrimination prevention and enforcement regime that has meaningfully improved access to credit for protected groups. Undoing that framework of protections and guidance risks erasing the advances made toward fair lending and access to affordable homeownership. These protections were put into place after decades of intentional and government-sponsored discrimination against and exclusion of minorities and other protected classes.

Discriminatory intent is often immeasurable or covert, but its impact is not. Equal access to credit and other economic opportunities, such as homeownership, has yet to be achieved, and discrimination is by no means an issue of a bygone era. With the growing role of Artificial Intelligence (AI) and algorithmic underwriting, it is more important than ever that new technologies are well understood and implemented fairly and transparently. In 2022, the Department of Justice and U.S. Department of Housing and Urban Development (HUD) reached a settlement in a case against Meta (Facebook) for discriminatory algorithmic housing ads that targeted users based on Fair Housing Act-protected characteristics including race and sex. That case was originally brought in 2019 under President Trump and HUD Secretary Ben Carson.[1]

[1] Press Release, U.S. Department of Justice, Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook Inc., to Resolve Allegations of Discriminatory Advertising (June 21, 2022), https://www.justice.gov/archives/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known.

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NHC supports the development and implementation of new technologies that can improve efficiencies, reduce costs, drive private sector and economic growth, and expand access and affordability for all borrowers. Our top priority is that those benefits are implemented to maximum effect to benefit the most borrowers, renters, potential homebuyers, and homeowners possible, especially in historically underserved communities that offer the most opportunity for increasing responsible rates of homeownership.

While minority homeownership rates have increased since these and other anti-discrimination policies were put into place more than 50 years ago, the homeownership gap between Black and White households is worse than when segregation was legal. In 1960, the Black homeownership rate was 38 percent compared to 65 percent for white households (a 27 point gap), and today (3Q2025) the Black homeownership rate is at 45.7 percent compared to 74 percent for White households (a 28.3 percent gap).[2,3] It is clear that anti-discrimination protections, as well as targeted programs and products, are still necessary to identify and protect against intentional, unintentional, and covert discrimination, and to achieve equality in lending.

As a member of the steering committee for the Black Homeownership Collaborative, a coalition of 125 private sector and nonprofit housing and lending organizations and businesses dedicated to creating 3 million net new Black homeowners by 2030, NHC is concerned that the proposed changes to Reg B will exacerbate existing homeownership gaps for minority households and borrowers.

Enforcement of fair lending laws has historically been a bipartisan issue, with the Department of Justice pursuing cases during the first Trump administration, including the 2018 KleinBank Settlement[4] for redlining in Minneapolis-St. Paul, and the largest redlining settlement in DOJ history against City National Bank for over $31 million[5] concerning discrimination that occurred from 2017 to 2020. Recent enforcement actions demonstrate that discrimination continues through facially neutral policies, such as marketing strategies, branch placement, and algorithmic models that produce systematically discriminatory outcomes. This pattern underscores why disparate impact liability, existing "discouragement" provisions, and SPCPs remain essential, as modern credit discrimination rarely involves explicit statements of intent.

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[2] Urban Institute, Reducing the Racial Homeownership Gap, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap (last visited Dec. 12, 2025)
[3] Homeownership Rate by Race in the United States, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/graph/?g=wZHP (last visited Dec. 12, 2025).
[4] Press Release, U.S. Department of Justice, Civil Rights Division, United States v. KleinBank (D. Minn.), https://www.justice.gov/crt/united-states-v-kleinbank-d-minn (last visited Dec. 12, 2025).
[5] Press Release, U.S. Department of Justice, Office of Public Affairs, Justice Department Secures Over $31 Million from City National Bank to Address Lending Discrimination Allegations (Jan. 31, 2024), https://www.justice.gov/opa/pr/justice-department-secures-over-31-million-city-national-bank-address-lending-discrimination.

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Legislative history

NHC disagrees with the Bureau's novel interpretation of the legal precedent, statute, legislative history, and Congressional intent regarding ECOA. As the Bureau acknowledged in the proposed rule,[6] the House and Senate Committee Reports that accompanied the 1976 ECOA amendment[7] made clear that the Act applies to lending practices that are both intentionally discriminatory and those that have discriminatory effects. Committee reports are often the most important source for determining legislative intent both for agency implementation of enacted law and for legal and judicial interpretation of said law. The Senate Report stated: "In determining the existence of discrimination on these grounds…courts or agencies are free to look at the effects of a creditor's practices as well as the credit's motives or conduct in individual transactions." Both Reports explicitly cite the Supreme Court's ruling in the *Griggs v. Duke Power Co.* case of 1971 (*Griggs*), which found that employment discrimination under Title VII of the Civil Rights Act included both discriminatory intent and effects. Further, the Reports also upheld the burden of proof and "effects test" method established in *Griggs*. These positions were also echoed in Committee and Floor statements as the legislation progressed through Congress, further pointing to the clear Congressional intent to uphold disparate impact liability under ECOA.

Since then, there have been multiple cases brought by organizations, individuals, and federal agencies alleging discrimination based on disparate impact under ECOA and Reg B. Several U.S. District Courts and U.S. Circuit Courts have upheld the interpretation of discrimination under ECOA and Reg B as including disparate impact.[8] In addition, federal agencies have continued to uphold this interpretation over the years. In fact, the standing interpretation and application of disparate impact under Reg B was reiterated by the Federal Trade Commission's Bureau of Consumer Protection during the first Trump administration in a December 8, 2020 response to a CFPB request for information.

Congress has also made multiple amendments to ECOA over the years, including with the Women's Business Ownership Act of 1988 and Dodd-Frank Act of 2010, and at no point did Congress take any action to amend the definition of discrimination under ECOA to exclude "effects." It is more than reasonable to assume that Congress was well aware of the Supreme Court interpretation, 1976 Report language, Reg B language, and various legal cases and enforcement actions taken that relied on the disparate impact interpretation of ECOA.

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[6] Press Release, U.S. Department of Justice, Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formerly Known as Facebook Inc., to Resolve Allegations of Discriminatory Advertising (June 21, 2022), https://www.justice.gov/archives/opa/pr/justice-department-secures-groundbreaking-settlement-agreement-meta-platforms-formerly-known.

[7] Joseph R. Procaccini, Comment, Protecting Consumers from Blind Disparate Impact in the Consumer Financial Protection Bureau's Fair Lending Enforcement, 9 Harvard Law & Policy Review 463, 475 (2015); H.R. Rep. No. 94-210, at 5 (1975); S. Rep. No. 94-589, at 4-5 (1976).

[8] See, e.g.: *Ramirez v. GreenPoint Mortgage Funding, Inc.,* 633 F. Supp. 2d 922 (N.D. Cal. 2008); *Taylor v. Accredited Home Lenders, Inc.*, 580 F. Supp. 2d 1062 (S.D. Cal. 2008); *Miller v. Countrywide Bank, N.A.,* 571 F. Supp. 2d 251 (D. Mass. 2008); *Garcia v. Johanns,* 444 F.3d 625 (D.C. Cir. 2006); *Osborne v. Bank of America,* 234 F. Supp. 2d 804 (M.D. Tenn. 2002); *Saint-Jean v. Emigrant Mortgage Co., Inc.*, No. 22-3094 (2nd Cir. 2025).

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That same logic can also be applied to the "discouragement" provisions and SPCPs. Were intent to have changed, there has been ample opportunity for Congress to express that view and amend the statute. There is clear, longstanding Congressional intent for this vital fair lending law that remains in effect. The Bureau does not have the discretion to disregard that legislative history. In addition, the Supreme Court decision in the *Loper Bright Enterprises v. Raimondo* case of 2024 ended the requirement for courts to defer to federal agencies' interpretations of ambiguous statutes and instead defer to judicial interpretation.[9] Judicial interpretation on these ECOA provisions has been clear and consistent in federal courts across the country.

Analysis of Specific Provisions

I. Disparate Impact

Proposal: The Bureau is proposing eliminating the application of disparate impact liability, or the "effects test," from § 1002.6(a) and the accompanying commentary.

Analysis: NHC believes the statute, Congressional intent, and legal precedent are extremely clear that disparate impact liability is cognizable under ECOA. We disagree with the Bureau's conclusions and proposed elimination of disparate impact liability under ECOA. NHC is concerned about the regulatory uncertainty and upheaval this proposal poses to lenders who must make daily credit decisions while facing potential legal exposure from multiple enforcement mechanisms. In the absence of clear guidance and expertise from the relevant agencies, including CFPB, lenders may have to increase investments in internal controls to off-set increased risk of litigation. We are also concerned that both discriminatory disparate treatment and impact will increase, and access to credit for protected groups will decrease. In the vacuum created by the Bureau's retreat from the accepted interpretation of discrimination under ECOA of the last fifty years, as well as the abandonment of its oversight and enforcement duties to both consumers and the market, bad actors will become more aggressive, introducing more risk and undermining the stability of the overall market and economy.

Recommendation: NHC recommends the CFPB rescind the proposed elimination of disparate impact liability in Regulation B.

II. Discouragement of Applicants

Proposal: The proposed rule amends the prohibition on discouraging applicants or prospective loan applicants in § 1002.4(b) by defining "oral or written statements," which includes spoken or written words and visual images including symbols, photographs, or videos, which would include marketing campaigns and advertisements. The Bureau also proposes replacing "acts or practices" in the text of the Federal Reserve Board's comment 4(b)-1 with "oral or written statements." The proposed rule would also define prohibited discouragement as discouraging written or oral statements direct at consumers, meaning

[9] Loper Bright Enterprises v. Raimondo, 603 U.S. 363 (2024), https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

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encouraging statements that are only targeted at another group of consumers (such as those who are not a protected group) would not be considered discouragement. The rule also states that "selective encouragement," such as advertising that only targets White consumers even at the exclusion of protected groups, would not be prohibited. Additionally, the proposed rule would no longer prohibit discouraging statements that imply or suggest a discriminatory preference or policy of exclusion; it would solely prohibit statements that explicitly express discriminatory preferences or policies of exclusion.

Analysis: NHC opposes the proposed changes to prohibited discouragement, finding that it is inconsistent with the text and spirit of ECOA. The existing discouragement prohibitions are critical to ensuring protected classes have equal opportunity to apply for and attain credit. Exclusion is a form of discrimination. The proposed change would mean lenders could solely advertise and locate branches in White communities. While branches are becoming less relevant with the growth of mobile and electronic banking, many older borrowers[10], mortgage applicants,[11] and small business borrowers[12] still use in-person banking. It also would remove protections that prevent redlining and discriminatory or unequal advertising, a risk that continues to grow with emerging technologies such as AI and digital, algorithmic targeting. The Bureau has not provided any evidence as to why these changes are necessary or productive for either consumers or lenders.

Recommendation: NHC recommends the Bureau rescind this guidance.

III. Special Purpose Credit Programs

Proposal: The Bureau proposes prohibiting for-profit entities from offering SPCPs for which borrower eligibility is determined on the basis of race, color, national origin, or sex (or any combination thereof). It would still allow SPCPs that determine eligibility on the remaining prohibited bases of religion, marital status, age, or income derived from public assistance. The proposed rule change would also establish new restrictions, including strict and burdensome documentation and evidence requirements for permissible SPCPs. Specifically, the Bureau proposes requiring the SPCP's written plan to explain the evidence showing why the SPCP is necessary, why the particular class of persons needs the program, why meeting the social need requires an SPCP established based on common characteristics that would otherwise be prohibited, and why meeting that need cannot be accomplished in another way. The eligibility standard would also narrow to only borrowers who would "actually" (instead of "probably") not receive credit under an organization's "actual" (instead of "customary") credit standards, also striking eligibility for borrowers who would otherwise receive credit on "less favorable terms."

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[10] American Bankers Association, 2024 Consumer Survey: Banking Methods (2024), https://www.aba.com/about-us/press-room/press-releases/consumer-survey-banking-methods-2024.
[11] Susan Houle, A Better Borrower Experience: Bringing Open Banking to Branches, Banking Strategies (Jan. 17, 2025), https://www.bai.org/banking-strategies/a-better-borrower-experience-bringing-open-banking-to-branches/.
[12] Haley Lapin, FDIC Survey: Bank Branches Remain Vital Part of Small Business Lending, American Bankers Association Banking Journal (Oct. 31, 2024), https://bankingjournal.aba.com/2024/10/fdic-survey-bank-branches-remain-vital-part-of-small-business-lending/.

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Analysis: NHC strongly opposes the proposed prohibitions of and restrictions on Special Purpose Credit Programs. The vast majority of SPCPs are offered by for-profit organizations, and therefore these highly prohibitive proposals would effectively end the program. ECOA is extraordinarily clear in its statutory authorization of SPCPs and provides a safe harbor to lenders to offer them based on eligibility criteria that would otherwise be considered prohibited.[13] SPCPs have also provided lenders with an innovative tool to extend affordable credit into new markets, thereby growing their own businesses in a fair and safe way, expanding access to credit to underserved communities, and strengthening local economies.

The Bureau also incorrectly asserts that there is no evidence of discrimination in the market, and therefore there is no need for SPCPs. It also suggests that SPCPs are a violation of the constitution, and constitute discrimination, citing wholly unrelated recent Supreme Court decisions. The Bureau's justification presents an almost impossible burden of proof to demonstrate that a borrower under a SPCP would not receive a loan without this program. The Bureau also proposes unilaterally overriding the statute clearly authorizing SPCPs based on an assertion that discrimination in lending no longer exists without providing any evidence to support that justification. Significant racial and gender disparities in mortgage lending, consumer lending, and homeownership alone prove this to be incorrect. These protected groups not only have less access to credit, but that credit tends to be more expensive, more frequently denied, and offered on far less favorable terms. SPCPs present a meaningful way to promote equality and reduce wealth and homeownership gaps,[14] which is precisely the intent of ECOA.

Research demonstrates that Black borrowers pay approximately 6.1 basis points more in interest rates than comparable white borrowers,[15]with similar disparities for Hispanic borrowers who paid 6.4 basis points more. In the case of New York, Black and Latino borrowers were found to face an estimated $200 million more in interest and other costs over the life of their loans between 2018 and 2021 compared to White borrowers.[16] Female borrowers also face systematic disadvantages. Based on data from 2004 through 2014, female borrowers paid approximately 7 basis points more in interest rates than male borrowers and received credit scores of 6 to 8 points lower than men, even after controlling for credit risk variables[17,18], which can lead to higher interest rates, restricted credit limits, and decreased loan approval opportunities. SPCPs present a meaningful way

[13] 15 U.S.C. § 1691(a)-(c).
[14] National Fair Housing Alliance, Using Special Purpose Credit Programs to Expand Equality, https://nationalfairhousing.org/resource/using-special-purpose-credit-programs-to-expand-equality/ (last visited Dec. 12, 2025).
[15] Stephen Popick, Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data, Federal Deposit Insurance Corporation (June 2022), https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf.
[16] N.Y. State Office of the Attorney General, Racial Disparities in Homeownership (Oct. 2023), https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf.
[17] Urban Institute, Women Are Better Than Men at Paying Their Mortgages (2016) (prepared for Fannie Mae), https://www.urban.org/research/publication/women-are-better-men-paying-their-mortgages.
[18] Zilong Liu & Hongyan Liang, Are Credit Scores Gender-Neutral? Evidence of Mis-calibration from Alternative and Traditional Borrowing Data, 47 J. Behav. & Experimental Fin. 101081 (2025).

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to promote equality and reduce wealth and homeownership gaps,[19] as explicitly authorized in ECOA for that purpose.

In addition, the Bureau provides no justification or statutory basis for the proposed prohibition of SPCPs to some protected classes (sex, race, color, national origin) and not others (marital status, religion, age, or income derived from public assistance). As noted, CFPB does not have the authority to unilaterally rewrite ECOA or pick and choose which statutorily identified protected groups to include. The proposal is unsupportable.

Recommendation: NHC recommends CFPB rescind the proposed changes to SPCPs under Reg B in their entirety.

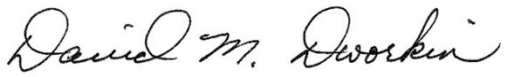
Conclusion

The National Housing Conference supports thoughtful regulatory reform advanced through a transparent, deliberative, and consultative process that creates efficiencies, reduces barriers, improves transparency, and ensures government is acting in the best interest of the public. We do not believe the Bureau's proposed changes to ECOA Reg B, however, meet that standard, nor do we believe that the CFPB undertook the proper statutorily required process for consultation, notice, or review regarding these proposed changes. [20] We are deeply concerned by the severe, sweeping changes proposed by the Bureau that would overturn decades of accepted legal precedent, regulation, and Congressional intent, and completely contradict and disregard longstanding, explicit statute.

Discrimination, both intentional and not, remains pervasive and persistent, despite significant advances over the past 50 years. Eliminating the means by which we measure, identify, protect against, and act upon discrimination in lending does not eliminate discrimination; it only makes it invisible and unchecked. We write to express our strong opposition to the changes to Reg B as proposed in the November 13, 2025 rule (Docket No. CFPB-2025-0039) and respectfully request that you do not finalize the proposed rule.

Thank you for the opportunity to comment, and for your consideration of our views. We look forward to engaging on this and other opportunities in the future.

Sincerely,



David M. Dworkin
President and CEO

[19] National Fair Housing Alliance, Using Special Purpose Credit Programs To Expand Equality, https://nationalfairhousing.org/resource/using-special-purpose-credit-programs-to-expand-equality/ (last visited Dec. 12, 2025).
[20] 12 U.S.C. § 5512(b)(2)(B)