



December 15, 2025

Comment Intake – 2025 NPRM ECOA
c/o Legal Division Docket Manager
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

To Whom It May Concern:

The Housing Policy Council¹ (HPC) appreciates the opportunity to respond to the Consumer Financial Protection Bureau’s (CFPB or Bureau) notice of proposed rulemaking under the Equal Credit Opportunity Act (ECOA)/Regulation B (Proposed Rule).² HPC members strongly support lending equality and efforts to prevent discrimination.

Our comments focus on the three main aspects of the Proposed Rule, as well as the proposed effective date. In short:

- The Proposed Rule’s removal of the disparate impact theory under Regulation B will not have a material impact on the mortgage market. Nevertheless, to align with *Loper Bright*, we recommend that the Bureau finalize its proposed alternative for disparate impact, by removing the effects test but not adding a statement that disparate impact is not cognizable under ECOA.
- We support the Bureau narrowing the scope of discouragement to better align with the language, intent, and purpose of ECOA, and we offer a few recommendations to strengthen that alignment.
- We believe the proposed Special Purpose Credit Program written plan requirements are excessively burdensome without countervailing benefits.
- We recommend that the Bureau extend the proposed effective date to at least one year after the final rule is published in the Federal Register.

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolycouncil.org.

² Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50901 (Nov. 13, 2025).

Disparate Impact

As a foundational matter, HPC is a residential mortgage trade association, and as such, it is our view that the Proposed Rule's removal of the disparate impact theory or "effects test" under Regulation B will not have a material impact on our segment of the market. Other federal laws (e.g., Fair Housing Act) and certain state laws applicable to mortgage lending have a disparate impact test (e.g. New York and Massachusetts). Therefore, residential mortgage lenders will not see a material change or reduction in compliance obligations or costs. The CFPB acknowledges this in its Section 1022(b) analysis – "covered persons are still liable under other antidiscrimination statutes such as the FHA and state laws similar to ECOA, so the incentives for covered persons to implement policies or engage in practices that lead to disparate impact may be limited."³ We agree with this statement.

HPC recommends that the CFPB finalize its proposed alternative for disparate impact, by removing the effects test but not adding a statement that disparate impact is not cognizable under ECOA. We agree with the CFPB's reasoning for that alternative – as the Supreme Court made clear in *Loper Bright*, courts are the ultimate arbiters of statutory meaning, particularly when it comes to the availability of a particular cause of action under a statute. To align with the Court's ruling, we suggest that the CFPB remove the effects test and references to it, without adding statements on whether such a test is cognizable under ECOA.

Finally, we are concerned about the implications of the Bureau's views of disparate-impact liability. The preamble includes broad language about the potential implications of a regime with disparate-impact liability, including that such a regime may lead creditors to make policy changes that disadvantage certain protected classes in an effort to reduce the disadvantages for others.⁴ As the Bureau recognizes, creditors are subject to other federal and state laws which include disparate impact liability. Therefore, even if the Proposed Rule is finalized as proposed, such creditors will be obligated to consider the impact of facially neutral policies and procedures and make the appropriate adjustments based on that evaluation. Moreover, as part of ongoing efforts to grow their markets and expand access to credit and homeownership, members may continue to evaluate the demographic impacts of their policies and procedures to help inform business and community reinvestment strategies. We ask the CFPB to specifically acknowledge that creditors would retain the flexibility to utilize such practices – both for complying with other laws and for addressing their business and community reinvestment priorities – if the Bureau's proposal on disparate impact is finalized.

³ 90 Fed. Reg. 50901, 50916.

⁴ 90 Fed. Reg. 50901, 50905-06.

Discouragement

We appreciate the Bureau's efforts to refine the discouragement provision (§ 1002.4(b)) and its accompanying commentary to better align it with statutory intent and to prevent the circumvention or evasion of ECOA's purpose.

We support the Bureau narrowing the scope of Regulation B to better align with the language, intent, and purpose of ECOA. In particular, HPC supports the CFPB focusing the discouragement provision on actual oral or written statements creditors make to applicants or prospective applicants, such as in advertising/marketing, that the creditor knows or should know would discourage a reasonable person from applying for credit. The CFPB notes in the preamble that Reg B has been interpreted overly broadly to apply to other business practices that, though they have some communicative effect, do not reflect the circumvention or evasion of ECOA's prohibition against discrimination. Such practices include, for example, business decisions about where to locate branch offices or hold open houses or similar events. Similarly, we support the proposal's revision to provide that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to those consumers who were not the intended recipients of the statements.

HPC supports the removal of the commentary language "express, imply, or suggest" (comment 4(b)-1.ii). This language is undefined and has been used in ways that do not align with the intent and purpose of ECOA. We are supportive of the new language that refers only to statements that express a discriminatory preference or policy of exclusion.

Finally, we ask the CFPB to retain commentary on affirmative solicitation (comment 4(b)-2). The CFPB is proposing to strike comment 4(b)-2 which provides that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor. The CFPB is proposing to strike it as unnecessary, although it notes that no substantive change is intended. We ask the CFPB to retain this commentary. It is a helpful and clarifying statement that affirms that it is permissible to target marketing to traditionally disadvantaged groups, who may be less aware of and/or receptive to the credit offerings of the creditor.

Special Purpose Credit Programs

The CFPB noted that while special purpose credit programs (SPCPs) became more prevalent over the last five years, the volume of mortgages originated under SPCPs is modest. Regardless, HPC members support their SPCPs and recognize the positive impact the programs have had in communities across the country.

The restrictions and requirements proposed would substantially limit SPCPs in the future. We do not believe the majority of existing or historic SPCPs would meet these new standards, even though very few of them were based solely on the race of the applicant. The costs and burden of either unwinding existing SPCPs or aligning new SPCPs to meet the proposed requirements likely would be cost prohibitive and would functionally eliminate them. We are concerned that the onerous requirements being imposed on private sector parties is not aligned with intent of directives from the White House, including E.O. 14219 which requests agencies to identify regulations that impose significant burden and costs upon private parties that are not outweighed by public benefits. We do not believe the CFPB has shown that these new costs are outweighed by public benefits.

Lastly, we ask the Bureau to clarify its views on geographically based SPCPs. Such SPCPs are not based on the race (or other protected characteristic) of an applicant but rather target geographic locations like majority-minority or low-to-moderate census tracts (a designation that numerous federal agencies use). For example, the Federal Housing Finance Agency in its recent GSE Housing Goals proposed rule reaffirmed this approach of encouraging lending in majority-minority census tracts. We ask the CFPB to clarify that geographically-based SPCPs that may utilize data about particular geographic areas to determine the parameters of the program are permissible under Regulation B, so long as the SPCP does not use the race, color, national origin, or sex, or any combination thereof, of the applicant.

More generally, mortgage lenders regularly maintain programs that use facially neutral eligibility criteria (such as income and geography) that happen to correlate with protected characteristics. Such programs can help lenders meet community reinvestment goals, grow their markets, responsibly expand access to credit, and make homeownership available to more Americans. It is our understanding that programs of this nature, whether structured as SPCPs or not, would remain permissible under Regulation B even if the CFPB finalizes its proposed changes to the SPCP provisions of the regulation.

Effective Date

We ask the CFPB to extend the proposed effective date to at least one year after the final rule is published in the Federal Register.

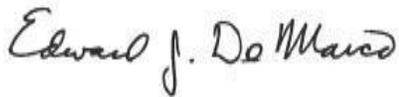
As a result of the new SPCP written plan requirements, creditors will need to expend significant time and resources to retool offerings and possibly wind down SPCPs that no longer conform to Regulation B. If more time is not given, there is a risk of small-scale disruptions in markets where existing programs are used. Of note, creditors need time to clear a pipeline of prospective borrowers who will have received advertising for products that will no longer be available if they are unexpectedly pulled from the market; this also may raise other compliance risks, such as claims of Unfair Deceptive Abusive

Acts and Practices (UDAAP) violations. Consistent with previous HPC comments on regulatory change, revising policies, changing processes and practices, training staff, adapting technology systems, and altering marketing campaigns takes time. Compliance with the new ECOA regulation is no different and therefore, we ask for additional time for this rule to take effect.

Conclusion

We appreciate the opportunity to comment on the Proposed Rulemaking and thank you for your consideration of HPC's recommendations.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E" and "D".

Edward J. DeMarco
President
Housing Policy Council