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1700 G Street NW
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Re: Comment from NACA regarding the Proposed Rule on the Equal Credit Opportunity Act (Regulation B), Docket No. CFPB–2025–0039, RIN 3170–AB54

Submitted via www.regulations.gov

The National Association of Consumer Advocates (NACA) submits this comment in response to the Consumer Financial Protection Bureau's proposed rule that amends provisions related to disparate impact, discouragement of applicants or prospective applicants, and special purpose credit programs under Regulation B, the regulation implementing the Equal Credit Opportunity Act (ECOA). NACA is a nonprofit organization actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. The proposed rule, which abandons principles of fairness and equality in the lending market, will cause significant damage to borrowers and lenders, triggering uncertain and risky conditions reminiscent of those that emerged in the run-up to the 2007-2008 financial crisis.

Under ECOA, creditors are prohibited from discriminating against applicants, connected to any credit transactions, on the basis of race, sex, color, religion, national origin, marital status, age, where all or part of the applicant's income derives from any public assistance program, or where the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[1]As the bureau is aware, the proposed rule would eviscerate longstanding legal protections established under ECOA and Regulation B for financial products, such as mortgages, car loans, student loans, and credit cards.

The proposed rule would eliminate the ban on disparate impact liability, barring victims of unequal treatment from proving discrimination by demonstrating that a specific practice or policy adversely affects a protected class of people. Second, it would restrict the definition of prohibited "discouragement" to no longer prohibit redlining. And third, it would restrict lenders from establishing Special Purpose Credit Programs (SPCPs), which has been used to promote access to credit in historically marginalized communities. These regulations have created millions of dollars in credit for underserved communities and individuals and opened up business opportunities for lenders. By undoing these protections, the proposed rule would shut out qualified potential homeowners and

[1] 15 U.S.C. § 1691(a). See, also, Consumer Financial Protection Bureau, *Supervisory Highlights*, at 15, Issue 30, Summer 2023, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf.

other borrowers and cut off new lending possibilities for financial institutions, which together will disrupt the consumer lending market.

Discrimination distorts the market. Discriminatory practices that leave out important and large segments of the population cost the U.S economy. For example, a Citigroup study, released in 2020, estimated that failure to address racial gaps between Black and white people cost the U.S. economy up to $16 trillion over the preceding 20 years.[2] Lending discrimination in particular, which leads to forfeiture of homes and a slowed real estate market, affects not only communities of color, it has had market-wide consequences.[3]

Its impact was glaringly evident following the 2007-2009 foreclosure crisis, when discriminatory lending practices, most notably the origination of predatory subprime home loans given disproportionately to borrowers of color, precipitated the economic meltdown.[4] Borrowers with credit scores that qualified them for prime credit were steered into subprime mortgages. Following the financial crisis, U.S. homeownership rates reached record lows between 2010 and 2013.[5] Black and Latino homeownership declined at larger rates than white homeownership, and has not fully recovered.[6] Simultaneously, the discriminatory lending practices that led to foreclosures harmed borrowers, but also caused neighborhood blight, deprived cities and states of tax revenue, and drained public resources, much of which were directed toward bailing out the banking sector.[7]

Non-compliance with ECOA creates legal and reputational risks. Consumer trust in the banking sector since the financial crisis, fell from 53% in 2004 to 22% in 2009, and has remained extremely low, according to recent surveys.[8] In the years since the crisis, the Department of Justice, CFPB, and other regulators sought to tackle discriminatory lending with enforcement actions, supervision, new or updated regulations, and other activities to motivate compliance with ECOA and other anti-discrimination lending laws. Despite consistent law enforcement and regulatory action, a majority of Americans polled in a 2023 survey, said that they believe that the government does not do enough to regulate financial institutions.[9] Rolling back existing regulations would perpetuate even more distrust in the banking sector among the public.

Meanwhile, empirical studies have found that consumer trust is a crucial factor in borrowers' decisions to conduct business with banks.[10] Continued distrust of institutions caused by their non-compliance with anti-discrimination laws or the absence of regulatory safeguards will likely lead to

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[2] CitiGPS, *Closing the Racial Inequality Gaps, The Economic Cost of Black Inequality in the U.S.*, Sept. 2020, https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D

[3] Aleatra P. Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 WM. & MARY BUS. L. REV. 601 (2015), https://scholarship.law.wm.edu/wmblr/vol6/iss2/6.

[4] See, Id. Aleatra P. Williams.

[5] Id. at 618.

[6] Id. at 620.

[7] See, id. at 660.

[8] Samuel Chang, et al, *Trust in Banks and Borrower Behavior: Evidence from Supervisory Actions and Local Information Quality*, Univ. of Chicago, Becker Friedman Institute for Economics Working Paper No. 2025-102, Aug. 08, 2025), available at https://ssrn.com/abstract=5384682.

[9] Id., Samuel Chang, et al.

[10] Id., Samuel Chang, et al. See, also, Tom Groenfeldt, Customer Trust Is The Key For Banks To Build Long-Term Relationships, FORBES, June 16, 2017, https://www.forbes.com/sites/tomgroenfeldt/2017/06/16/customer-trust-is-the-key-for-banks-to-build-long-term-relationships/?sh=652030043060.

less business and profitability, or even institutional failures.[11] For example, in the fall out of the economic meltdown, local governments chose not to do business with certain large banks due to their record of discriminatory lending.[12]

Moreover, the growth of automated systems and algorithms have already shown their tendency to perpetuate discrimination in loan pricing. The developing technology engineered by big data underscores the need for reasonable regulations consistent with upholding the principles of ECOA and other laws, including that of communicating reasons for adverse actions during the lending process.[13] Ensuring ECOA compliance of data-driven systems with its existing regulations will help to preserve the integrity of the credit marketplace.[14] On the other hand, removing ECOA safeguards will make automated systems even more perilous and unpredictable for borrowers and lenders.

ECOA enforcement will continue even if CFPB's proposal goes into effect. Despite the CFPB's current plan to shut down enforcement and pare back regulatory protections, pervasive discriminatory conduct by banks and lenders will still attract regulatory action and enforcement for non-compliance. Any attempted rule changes would not minimize lenders' legal risks. Private parties and state attorneys general can and will continue to enforce ECOA and other federal and state civil rights laws.

For example, in July, the Massachusetts Office of the Attorney General announced a settlement with a student loan lender resolving allegations that the company's lending practices, which included "generating inaccurate and non-specific adverse action notices (and) automatically denying loan applications based on immigration status," violated ECOA.[15] The Massachusetts AG alleged that the lender failed to protect against disparate outcomes in underwriting consumers' applications for credit in its algorithmic and judgmental underwriting practice.[16] According to the AG, the student loan lender would automatically deny applications based on immigration status creating a risk of a disparate outcome against applicants on the basis of national origin, in violation of ECOA.[17]

Proposed rule seeks to remove protections and legal guidance during affordability crisis. Finally, the CFPB should not abandon the U.S. lending market by withdrawing critical regulations,

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[11] Amalie Zinn, *Building Trust in the Financial System Is Key to Closing the Racial Wealth Gap*, June 15, 2023, https://www.urban.org/urban-wire/building-trust-financial-system-key-closing-racial-wealth-gap

[12] Emily Mills, *Summit County stops doing business with Wells Fargo over 'discriminatory lending practices,* AKRON BEACON JOURNAL,' April 23, 2021. "Summit County Council this week chose not to use Wells Fargo Financial Leasing Inc. to finance leases for copiers after some officials raised concerns about the company's "history of discriminatory lending." https://www.beaconjournal.com/story/news/local/2021/04/23/summit-county-ohio-wells-fargo-financial-leasing-discriminatory-lending-practices/7301381002/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z118445d00----v118445d--94--b--94--&gca-ft=153&gca-ds=sophi.

[13] Robert Bartlett, et al, *Consumer-Lending Discrimination in the FinTech Era*, No. 2019, https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf?_gl=1*1rvkyf4*_gcl_au*MTczOTM3OTMxMy4xNzY1MzA1MzY3*_ga*MTkzMTY2NTcwNC4xNzY1MzA1MzY3*_ga_EW2RSBHHX6*czE3NjUzMDUzNjckbzEkZzEkdDE3NjUzMDUzODkkajM4JGwwJGgw.

[14] Mark Miller, *Balancing Act: Ensuring ECOA Adverse Action Compliance in the Age of AI Algorithms for Credit Decision-Making*, Feb. 28, 2024, https://www.bankingexchange.com/news-feed/item/9918-balancing-act-ensuring-ecoa-adverse-action-compliance-in-the-age-of-ai-algorithms-for-credit-decision-making.

[15] In the matter of Earnest Operations LLC, *Assurance of Discontinuance*, Mass. Sup. Ct., July 10, 2025. See, also, *AG Campbell Announces $2.5 Million Settlement With Student Loan Lender For Unlawful Practices Through AI Use*, *Other Consumer Protection Violations*, https://www.mass.gov/news/ag-campbell-announces-25-million-settlement-with-student-loan-lender-for-unlawful-practices-through-ai-use-other-consumer-protection-violations.

[16] Id. at 2-3.

[17] Id. at 2.

particularly when the country is facing a housing crisis on multiple levels.[18] Amid ongoing lending discrimination, record-breaking housing costs, unaffordable rental units, and skyrocketing home sale prices are also burdening renters, prospective home buyers, and homeowners. Moreover, landlords, lenders, and others are using automated systems, complex algorithmic formulas, and other artificial intelligence tools to target or exclude certain applicants, further denying housing and credit opportunities or resulting in increased housing costs. It is imperative that the CFPB carry out its statutory mission to protect consumers in the financial markets during these rapidly changing and difficult times.

Conclusion

ECOA compliance and non-discriminatory lending practices that provide consistent, transparent criteria for credit decisions support a level playing field for borrowers that have been historically excluded from the market. Fair lending rules also encourage lenders to focus on objective indicators with consistent underwriting, which helps lenders to manage and reduce their legal and financial risk. Accordingly, a system that is set up with rules and guidance under ECOA and other anti-discrimination laws to facilitate fair and equal treatment of borrowers, means "more customers, more loans, and better returns for banks."[19]

Undoing ECOA regulations, on the other hand, will invite unpredictability and bring drastically higher costs to the market for both borrowers and financial institutions. Lenders that deny credit for qualified borrowers based on irrelevant characteristics, whether through disparate treatment or impact, rather than on risk and merit, miss profitable opportunities. Undermining protections will also make lenders vulnerable to more private and public enforcement when they violate the law and harm borrowers, as they likely will do without the benefit of predictable regulations and guidance.

For these reasons, we strongly oppose the proposed rule and urge its immediate rescission.

For further discussion on this comment, please contact Christine Hines, NACA's Senior Policy Director, at Christine @ consumeradvocates.org.

Thank you for considering our views.

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[18] See e.g., The National Low Income Housing Coalition, *The Gap, A Shortage of Affordable Homes*, https://nlihc.org/gap, March 2025. See, also, The National Low Income Housing Coalition, *Out of Reach, The High Cost of Housing*, 2025, https://nlihc.org/oor.

[19] Michael S. Barr, Remarks at the "Banking on Financial Inclusion" Conference at the Hope Economic Mobility Forum at Jackson State University, Feb. 7, 2023, https://www.federalreserve.gov/newsevents/speech/files/barr20230207a.pdf.