



December 15, 2025

2025 NPRM ECOA  
Legal Division Docket Manager  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Equal Credit Opportunity Act (Regulation B); RIN 3170-AB54; Docket No. CFPB-2025-0039; 12 CFR Part 1002 (November 13, 2025)

Dear Ladies and Gentlemen:

Better Markets<sup>1</sup> appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) notice of proposed rulemaking amending Regulation B (the “Proposal”), the implementing regulation of the Equal Credit Opportunity Act (“ECOA”).<sup>2</sup> To summarize our concerns, we believe the proposed revisions to Regulation B would upend 50 years of law, regulation and court precedent while also causing harm to credit creation, wealth building and economic growth, with particular harm caused to traditionally underserved communities. The Proposal also suffers from severe infirmities, including the lack of data or evidence to support the proposed amendments and a lack of consultation with other state and federal agencies tasked with enforcing ECOA. Because of these weaknesses in the rulemaking, we suggest that the Bureau repropose the amendments to provide a chance for more meaningful stakeholder feedback.

## I. The Importance of Access to Credit

The ability to borrow money on terms consistent with one’s ability to pay it back is an essential pathway to a better life. Being able to own a home, pay for an education, or open a new business can mean the difference between living paycheck-to-paycheck and building equity that can lead to true economic security and generational wealth. Access to credit unlocks opportunities that are otherwise only available to people with sky-high incomes or inherited wealth; and in turn, such credit begets even more opportunities. Once individuals and families can establish a stable

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<sup>1</sup> Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

<sup>2</sup> Consumer Financial Protection Bureau. “Equal Credit Opportunity Act (Regulation B).” Proposed Rule, Federal Register/Vol. 90, No. 217. November 13, 2025, available at: <https://www.govinfo.gov/content/pkg/FR-2025-11-13/pdf/2025-19864.pdf>

credit history, they can then access additional credit on better terms, creating a virtuous cycle. And these benefits are not just limited to borrowers: financial institutions are also able to unlock more customers, civic and business institutions benefit from the stability and participation of Americans invested in their communities, and overall economic growth is supercharged. The importance of access to credit is true for all communities across the country and all Americans, regardless of their demographic characteristics or their party affiliation. It is likely also why President recently reiterated that his Administration is guaranteed to fair banking<sup>3</sup> and “believe[s] that affordable homeownership is a fundamental part of the American dream, and we’re working every day to make that dream a reality for millions and millions of Americans.”<sup>4</sup>

## II. History of Unequal Access to Credit

Unfortunately, at times, America has strayed from the ideal of credit access based solely on a borrower’s creditworthiness. For example, in 1934, Congress created the Federal Housing Administration (“FHA”) through the National Housing Act, seeking to boost economic activity and expand opportunity during the Great Depression by providing federal incentives for private lenders to offer lower interest rate mortgage loans for longer, more stable, durations of time. While FHA was successful in meeting its goals for certain populations, the program refused to insure loans in or around Black communities, meaning an entire subgroup of borrowers was locked out of opportunities, creating a long shadow of unequal wealth creation through homeownership.<sup>5</sup> The exclusions created by early FHA policy was why Congress passed the Fair Housing Act of 1968, which prohibited discrimination concerning the sale, rental and financing of housing based on race, religion, national origin or sex.<sup>6</sup>

Later, Congress passed ECOA in 1974 to ensure that women had equal access to credit. As the Smithsonian American Women’s History Museum documents, before the passage of the seminal law, single women needed a male relative to co-sign documents in order to qualify for a loan – even if the woman earned more money than the male co-signer.<sup>7</sup> Married women likewise could not obtain credit cards in their own name and did not accrue a credit history based on their

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<sup>3</sup> Executive Order. “Guaranteeing Fair Banking Access for All Americans.” August 7, 2025. Available at: <https://www.whitehouse.gov/presidential-actions/2025/08/guaranteeing-fair-banking-for-all-americans/>

<sup>4</sup> Griffith, Ken. “Trump Vows To Expand Homeownership to Millions More American Families.” *Realtor.com*, September 9, 2025. Available at: <https://www.realtor.com/news/real-estate-news/trump-vows-to-expand-homeownership-to-millions-more-american-families/>

<sup>5</sup> Gross, Terry. “A ‘Forgotten History’ Of How The U.S. Government Segregated America.” *NPR Fresh Air*, May 3, 2017. Available at: <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> (discussing the book “Color of Law” by Richard Rothstein).

<sup>6</sup> 42 USC 3601 et seq.

<sup>7</sup> Smithsonian American Women’s History Museum. “Voices on Independence: Four Oral Histories About Building Women’s Economic Power.” October 25, 2024. Available at: <https://womenshistory.si.edu/blog/voices-independence-four-oral-histories-about-building-womens-economic-power>

repayments.<sup>8</sup> Women were also restricted from including their income on loan applications, for fear that they would become pregnant and leave the workforce.<sup>9</sup> As the Proposal stipulates, Congress addressed this by requiring financial institutions to extend credit without discrimination based on sex or marital status in 1974 and then later amended ECOA to add other categories of prohibited discrimination, including race and age, among others.<sup>10</sup>

In addition to these historical examples, recent history suggests that the country still struggles with unequal access to fairly priced credit on the basis of protected characteristics. For example, research coming out of the 2008 Global Financial Crisis (“GFC”) found that in 2006, Black and Hispanic families making more than \$200,000 a year were more likely on average to be given a subprime loan than a white family making less than \$30,000 a year.<sup>11</sup> According to the same study, “Black borrowers were 2.8 times more likely to be denied for a loan, and Hispanic borrowers were two times more likely. When they *were* approved, Blacks and Latinos were 2.4 times more likely to receive a subprime loan than white applicants.”<sup>12</sup> One of the most troubling revelations of the study is that as a borrower’s income bracket increases, the subprime lending disparity by race grows, meaning that for racial and ethnic minorities, having a high income actually makes them more likely to be offered a subprime loan than their similarly-situated white counterparts.<sup>13</sup>

Under rational economic theory, borrowers with prime credit would demand prime loans, and subprime credit borrowers would need to rely on subprime lending rates for the same opportunities. But as the crisis demonstrated, and as the *Wall Street Journal* noted in 2007, “it turns out that plenty of people with seemingly good credit [were] also caught in the subprime trap.”<sup>14</sup> During the GFC, the reason for this breakdown in rational economic theory was that compensation structures encouraged representatives of financial institutions to extend credit that maximized their short-term fee income, not the sustainability of the loan for the institution or the borrower. Mortgage sellers put these incentives into operation by creating sales pitches and high-

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<sup>8</sup> *Id*

<sup>9</sup> *Id*

<sup>10</sup> *Supra* note 2, at page 3-4

<sup>11</sup> Badger, Emily. “The Dramatic Racial Bias of Subprime Lending During the Housing Boom.” *Bloomberg*, August 16, 2013. Available at: <https://www.bloomberg.com/news/articles/2013-08-16/the-dramatic-racial-bias-of-subprime-lending-during-the-housing-boom?sref=mQvUqJZj> (citing research from Jacob Faber at New York University’s Department of Sociology, which used nationwide Home Mortgage Disclosure Act data from 2006)

<sup>12</sup> *Id*

<sup>13</sup> *Id*

<sup>14</sup> Brooks, Rick and Ruth Simon. “Subprime Debacle Traps Even Very Credit-Worthy.” *Wall Street Journal*, December 3, 2007. Available at: <https://www.wsj.com/articles/SB119662974358911035>

pressure marketing tactics that targeted those from whom they could extract fees, which were disproportionately minority borrowers.<sup>15</sup>

To put this into concrete terms, a number of examples from the GFC are useful to describe. One illustrative study, for example, documents the social structures and sales practices that contributed to the crisis, which was based on a review of depositions, declarations, and related exhibits submitted by borrowers, loan originators, investment banks, and others in post-GFC fair lending cases.<sup>16</sup> The authors in the study recount a Wells Fargo loan officer that characterized their lending division as “essentially putting ‘bounties’ on minority borrowers who were then aggressively targeted by the subprime lending division.”<sup>17</sup> Lenders also turned to data sources that helped them identify borrowers with a lack of financial sophistication combined with a desire for credit, which often had an overlay with disproportionately Black borrowers.<sup>18</sup> Mortgage originators also purchased lists of customers who had “financed the purchase of goods, such as furniture or jewelry, at stores in Black and Latino communities” so that bank branch managers could obtain lists of customers who had already taken out high-cost loans so that they could solicit them for additional high-cost refinancing.<sup>19</sup>

As these examples document, lenders used a sophisticated combination of tactics to target borrowers that they thought were ripe for taking out high-cost, subprime credit, regardless of whether they qualified for lower-cost loans. They used social and spatial tactics to find these individuals and households, often using proxies for race rather than race itself. The fact that this occurred so recently and at such scale underscores the enduring need for ECOA and its enforcement.

### **III. Disparate Impact Under ECOA**

#### *Unsupported Reasoning*

As distant and recent history documents, unequal access to credit was, and remains, a problem requiring robust regulation, supervision and enforcement to address. This imperative was recognized by the Federal Reserve Board (“Fed” or “Board”) nearly 50 years ago in implementing the first set of regulatory guardrails to effectuate ECOA. As the Proposal itself documents, the Fed relied on both the House and Senate Committee reports following passage of the Act to provide

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<sup>15</sup> Apgar, William C, Christopher E. Herbert and Priti Mathur. “Risk or Race: an assessment of subprime lending patterns in nine metropolitan areas.” *U.S. Department of Housing and Urban Development*, August 2009. Available at: [https://www.huduser.gov/Publications/pdf/risk\\_race\\_2011.pdf](https://www.huduser.gov/Publications/pdf/risk_race_2011.pdf)

<sup>16</sup> Steil, Justin P., Len Albright, Jacob S. Rugh and Douglas S. Massey. “The Social Structure of Mortgage Discrimination.” *Hous Stud.* 2017 Nov 3;33(5):759–776. doi: [10.1080/02673037.2017.1390076](https://doi.org/10.1080/02673037.2017.1390076)

<sup>17</sup> *Id*

<sup>18</sup> *Id*

<sup>19</sup> *Id*

that ECOA's provisions covered a "disparate impact" theory of liability.<sup>20</sup> Meaning, not just the stated intent of the creditor to engage in overt discrimination or disparate treatment would be considered, but the totality of factors related to their motives or conduct in individual transactions that create a disparate impact.<sup>21</sup>

These rulemaking decisions made 50 years ago, which were reinforced by congressional reports, were further buttressed in the intervening decades. For example, disparate impact has been included in Regulation B official commentary since 1985<sup>22</sup> and 10 agencies tasked with enforcing ECOA issued an interagency Policy Statement on Discrimination in Lending incorporating disparate impact in 1994.<sup>23</sup> Since that time more than 30 years ago, disparate impact has been incorporated into examination procedures of federal financial regulators. And with the creation of the CFPB in 2011, the Bureau has reaffirmed disparate impact theory of liability in examination procedures and supervisory and enforcement work.<sup>24</sup>

Against this long history of legal interpretation made tangible through regulation and supervisory and enforcement procedures, the Bureau in this Proposal proceeds to second-guess the 50-year-old implementation of ECOA, discarding the explicitly stated legislative intent expressed by the Act's authors and the regulators' half century of deference to that stated intent. Instead, the Bureau has decided that because ECOA included no explicit reference to effects-based claims, the Board's 50-year interpretation of the law, reaffirmed by other agencies, must be in error.

The Bureau clings to unsupported judgements about how it posits the Supreme Court may interpret a disparate impact cause of action under ECOA based on previous cases. However, the Bureau's own Proposal then concedes that the Supreme Court's most recent consideration of disparate impact in *Inclusive Communities* authorized disparate impact claims in the Fair Housing Act under Section 805(a) even though that statute, like ECOA, also did not include explicit effects-

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<sup>20</sup> *Supra* note at 2, page 7

<sup>21</sup> *Id*

<sup>22</sup> Federal Reserve System. "Equal Credit Opportunity; Revision of Regulation B; Office Staff Commentary." Final Rule Vol. 50/No. 224. November 20, 1985, available at: <https://www.govinfo.gov/content/pkg/FR-1985-11-20/pdf/FR-1985-11-20.pdf>

<sup>23</sup> Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight, Department of Justice, Department of the Treasury – Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Trade Commission and National Credit Union Administration. "Policy Statement on Discrimination in Lending." Final Rule/Vol. 59, No. 73. April 15, 1994, available at: <https://www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm>

<sup>24</sup> Consumer Financial Protection Bureau. "Supervision and Examination Manual – Version 2." October 2012. Available at: [https://files.consumerfinance.gov/f/201210\\_cfpb\\_supervision-and-examination-manual-v2.pdf](https://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf); and Consumer Financial Protection Bureau. "CFPB Bulletin 2012-04 (Fair Lending)." April 18, 2012. Available at: <https://www.govinfo.gov/content/pkg/GOVPUB-FR-PURL-gpo73671/pdf/GOVPUB-FR-PURL-gpo73671.pdf>

based language.<sup>25</sup> The CFPB then concludes that ignoring the decision in *Inclusive Communities* is justifiable based on the Supreme Court’s “limited explanation” for their reasoning.<sup>26</sup>

In short, the Bureau ignores legislative intent from 1974, regulatory implementation from 1976, decades of intervening regulations and case law and a Supreme Court case from a decade ago in order to justify a change in policy. The Bureau’s only supporting justification appears to be their own tortured and novel reading of the Act and hypothetical Supreme Court opinions that they imagine may one day be decided.

### *Dismissing Reliance Interests*

The Bureau also justifies its policy shift on disparate impact theory of liability by downplaying the harm to reliance interests of borrowers and creditors.<sup>27</sup> Specifically, the Proposal contends that the loss of disparate impact claims are neutralized by the fact that consumers would still be protected from acts of intentional discrimination and creditors could just adopt facially neutral policies.<sup>28</sup> However, the very point of an effects-based test for discrimination is, according to the Supreme Court, to “counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”<sup>29</sup> Borrowers would undoubtedly be harmed by a change in regulation that now allowed “disguised animus” to manifest as lending discrimination. And the Proposal does not endeavor to quantify any cost to creditors that may have long ago established policies and procedures to comply with ECOA that would now need to be readjusted by an estimated date of February 11, 2026, if the effective date suggestion in the Proposal holds.<sup>30</sup> Even if this proposal is finalized, ECOA is still enforced by prudential regulators, the Department of Justice, and state attorneys general. The law also contains a private right of action. The idea that creditors can merely change policies in the next 60 days to satisfy all of these legal obligations lacks credibility.

## **IV. Discouragement**

The Bureau’s Proposal also seeks to narrow Regulation B to limit the circumstances in which a creditor would be considered to have discouraged a reasonable person from applying for credit on the basis of a protected characteristic.<sup>31</sup> Specifically, the Bureau proposes to: (1) limit

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<sup>25</sup> *Supra* note 2, page 15-16

<sup>26</sup> *Id*, page 16

<sup>27</sup> *Id*, page 20

<sup>28</sup> *Id*

<sup>29</sup> *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 540 (2015), available at <https://supreme.justia.com/cases/federal/us/576/519/>

<sup>30</sup> *Supra* note 2, page 49

<sup>31</sup> *Id*, page 23-31

discouragement's scope to oral or written communications (i.e., now eliminating considerations like the physical presence of branches or special events); and (2) to exclude "selective encouragement" from Regulation B (i.e., now requiring explicit statements that would lead an applicant to believe they would be denied credit, rather than encompassing proactive statements only targeted to one group).

The logical outgrowth of this approach would condone conduct such as a financial institution hosting exclusively hosting open houses at White Nationalist events or a bank hanging up a banner outside its headquarters saying, "We Love White People, Come Apply for a Mortgage!" Obviously, the impression created by either of these acts would have a chilling effect on applications for credit submitted by individuals outside of the target demographic.

The Bureau has, in the past, recognized the value of the discouragement provisions of ECOA as currently constituted. Under the tenure of CFPB Director Kraninger, the Bureau brought the case of *Townstone v. CFPB*, which involved a Chicago-based mortgage lender making racist remarks on a radio show that the Bureau alleged would make it unlikely for a Black applicant to apply for credit.<sup>32</sup> Corroborating these statements was Townstone's Home Mortgage Disclosure Act data, which revealed that it received significantly fewer mortgage applications from Black households and fewer mortgage applications in majority-Black and high-Black neighborhoods.<sup>33</sup> The Seventh Circuit Court of Appeals affirmed the CFPB's interpretation of ECOA, with the enforcement action being closed out in November 2024 through a voluntary settlement between the parties.<sup>34</sup> The Bureau then tried to reopen the November 2024 settlement, going to the U.S. District Court for the Northern District of Illinois in an attempt to vacate it.<sup>35</sup> The Court denied the Bureau's attempt, rejecting the arguments made by the CFPB, including claims that the enforcement action infringed upon free speech.<sup>36</sup> This recent case underscores the necessity of Regulation B as currently constituted and the error of the amendments suggested in the Proposal.

## V. Special Purpose Credit Programs

The Proposal also seeks to amend Regulation B as it relates to ECOA Section 701(c)(3), essentially making it impossible for for-profit Special Purpose Credit Programs ("SPCP") to fulfill

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<sup>32</sup> *Consumer Financial Protection Bureau v. Townstone Financial, Inc.*, 104 F.4<sup>th</sup> 768 (7<sup>th</sup> Cir. 2024).

<sup>33</sup> *Id*

<sup>34</sup> *Consumer Financial Protection Bureau v. Townstone Financial Inc.*, No. 1:20-cv-04176 (N.D. Ill. Nov. 7, 2024) (*Stipulated Final Order*). [https://files.consumerfinance.gov/f/documents/cfpb\\_Townstone-Stipulated-Final-Judgment-and-Order\\_2024\\_11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_Townstone-Stipulated-Final-Judgment-and-Order_2024_11.pdf)

<sup>35</sup> Consumer Financial Protection Bureau. "CFPB Seeks to Vacate Abusive, Unjust Case Against Townstone." *Press Release*, March 28, 2025. Available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-to-vacate-abusive-unjust-case-against-townstone/>

<sup>36</sup> Hall, Stephen. "Court Rejects CFPB Attempt to Undo Anti-Discrimination Court Case." *Better Markets*, June 12, 2025. Available at: <https://bettermarkets.org/newsroom/court-rejects-cfpb-attempt-to-undo-anti-discrimination-court-case/>

their statutory promise of providing credit to traditionally underserved groups while not constituting discrimination under ECOA.<sup>37</sup> The Bureau in the Proposal attempts to essentially prohibit certain SPCPs from operating even though Congress explicitly authorized the programs when enacting ECOA. This flouting of the plain language of ECOA by the Bureau is particularly novel given that in the disparate impact section of the Proposal the CFPB insists on the primacy of statutory text, not regulatory interpretation.<sup>38</sup>

In justifying these new prohibitions, the Bureau contends that the country has essentially outgrown the need for SPCPs because credit discrimination based on race, color, national origin or sex is no longer a matter of ongoing concern.<sup>39</sup> The Proposal does this without any sort of grappling with data, academic literature, qualitative evidence based on stakeholder interviews or paired testing, history of cases brought by the Bureau or other state and federal law enforcement agencies, or engagement with research following the 2008 GFC<sup>40</sup> and 2020 COVID-19 pandemic.<sup>41</sup> Such sweeping comments made unsupported by evidence clearly do not satisfy the rigorous standards required for rulemaking under the Administrative Procedure Act (“APA”).

Likewise, the Proposal introduces new “restrictions” for SPCPs based on credit provision to individuals based on religion, marital status, age, or income derived from a public assistance program.<sup>42</sup> The Bureau provides no justification for why SPCPs targeting certain groups of persons with common characteristics should be prohibited, while others should simply be subject to additional restrictions in program design. It is both inappropriate and unsupported by data for the Bureau to create a sorting mechanism for which groups of persons with protected characteristics under the law should continue to have access to SPCPs (albeit narrowed) and which should not.

## VI. Consumer Financial Protection Act Section 1022(a) Analysis

Pursuant to requirements in Section 1022(a) of the Consumer Financial Protection Act (“CFPA”), the Bureau attempts quantify the potential benefits, costs and impacts of the Proposal.

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<sup>37</sup> Specifically, the Proposal prohibits SPCP credit provision on the basis of race, color, national origin or sex and creates restrictions on credit provision to individuals based on religion, marital status, age, or income derived from a public assistance program. See *supra* note 2, page 32

<sup>38</sup> In justifying the Proposal’s rejection of disparate impact liability, the Bureau notes that legislative history and past regulatory interpretation is irrelevant because, “consistent with Supreme Court precedent, the most important consideration is the statutory language.” *Supra* note 2, at page 20

<sup>39</sup> *Supra* note 2, pages 34-36

<sup>40</sup> *Supra* notes 9, 12 and 13

<sup>41</sup> Liu, Sifan and Joseph Parilla. “New Data Shows Small Businesses in Communities of Color Had Unequal Access to Federal COVID-19 Relief.” *Brookings Institution*, September 17, 2020. Available at: <https://www.brookings.edu/articles/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/>

<sup>42</sup> *Supra* note 2, page 32

However, the Proposal acknowledges that these estimates are guided by “general economic principles, together with the limited data available” because precise numbers are unavailable.<sup>43</sup>

Specifically, the Bureau posits that there will be benefits to covered institutions, though acknowledges that it is “unaware of any data that would enable reliable quantitative estimation of these benefits.” Likewise, the Bureau is “unaware of any data that would help to quantify [the] costs to covered institutions.”<sup>44</sup> The Bureau is similarly “unable to quantify [the] potential benefits [to consumers] because it lacks relevant data,” and has no data on the costs to consumers.<sup>45</sup> In grasping for estimates of potential costs, the Bureau invokes separate rulemakings that have very different mandates than the Proposal, impose new requirements rather than revise longstanding, 50-year old requirements and are not complicated by overlapping state and federal laws, as is the case with ECOA.<sup>46</sup> In short, these benchmarks for comparison are severely flawed in establishing a cost or benefit baseline for the Proposal.

All told, the Bureau is unable to tether the Proposal to any reliable economic data across all three of the proposed amendments to Regulation B. This severe lack of information about consumer and market effects should, in and of itself, require the Bureau to reissue the rulemaking to incorporate any data submitted by commenters and to allow another round of public comment on the estimates received.

The infirmity of the Bureau’s approach is exacerbated by the fact that while the Bureau notes that it “offered to consult with the appropriate agencies” under CFPA Section 1022(b)(2)(B), it appears that none of the relevant agencies actually engaged in that consultation.<sup>47</sup> Given the number of prudential and other regulators that have a responsibility to enforce ECOA, and previous interagency action on ECOA,<sup>48</sup> this lack of consultation is significant, will create tremendous uncertainty regarding supervisory expectations, and again requires the CFPB to re-propose the rule after receiving more and better comments from interagency stakeholders.

## VII. Other Process Concerns

### *Uncertain Future for the Bureau*

Proposing regulatory amendments of this scale creates uncertainty that is exacerbated by the current state of limbo faced by the Bureau. Acting Director Vought has signaled his intention

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<sup>43</sup> *Id*, page 51

<sup>44</sup> *Id*, page 52

<sup>45</sup> *Id*, page 53

<sup>46</sup> *Id*, page 55-56

<sup>47</sup> *Id*, page 13

<sup>48</sup> *Supra*, note 23

to shut the CFPB down by the end of the year due to the Office of Legal Counsel's ("OLC") interpretation that the Federal Reserve System currently lacks "combined earnings" from which the Bureau can draw.<sup>49</sup> However, shortly after Acting Director Vought filed that submission to the U.S. District Court for the District of Columbia, the Federal Reserve returned to profitability in a manner that would seem to undermine Vought and the OLC's arguments.<sup>50</sup> Separately, the National Treasury Employees Union's ("NTEU") litigation against the Bureau opposing widespread reductions-in-force remains pending, with an outstanding request for the full U.S. Court of Appeals for the District of Columbia Circuit to reconsider a three-judge panel's prior decision.<sup>51</sup>

In summary, the CFPB's future currently faces a great amount of uncertainty. What is clear is that the Administration's intention is to dismiss nearly all the Bureau's staff, if permitted by the courts. Given the policy, legal, supervisory and enforcement ramifications of a proposal as far-reaching and complex as this one, it seems improper to undertake this rulemaking effort at this time when the agency is in flux.

#### *Insufficient Comment Period*

The CFPB has proposed the most sweeping changes to implementation of ECOA in 50 years with a mere 30-day comment period. If the Bureau is intent on upending decades of law, regulation and case law, it should do so with careful study and deliberation and not rushed proposals. We argue here that a 30-day comment period is insufficient to satisfy requirements under the APA.

### **VIII. Conclusion**

Ensuring robust regulation, supervision and enforcement of ECOA is about guaranteeing that all Americans have a right to thrive in an economy free from discrimination. But it is also about ensuring that our entire economy benefits from wealth-creation and that growth is not distorted by biases that have nothing to do with creditworthiness. For example, one study by economists at Citigroup found that racial disparities in wages, education, housing and investment have cost the United States around \$16 trillion in lost Gross Domestic Product over a 20-year

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<sup>49</sup> Consumer Financial Protection Bureau. " CFPB Notifies Court it Cannot Lawfully Draw Funds from the Federal Reserve." November 11, 2025. Available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-notifies-court-it-cannot-lawfully-draw-funds-from-the-federal-reserve/>

<sup>50</sup> Reiter, Aiden and Kyle Cheney. "Profitability at the Fed puts Vought's efforts to dismantle the CFPB in jeopardy." *Politico*, December 5, 2025. Available at: <https://subscriber.politicopro.com/article/2025/12/profitability-at-the-fed-puts-voughts-efforts-to-dismantle-the-cfpb-in-jeopardy-00679544>

<sup>51</sup> Moran, Eamon K. and Ashley Feighery. "CFPB Employees Union Requests D.C. Circuit to Reconsider Order Vacating Injunction." *Holland & Knight*, October 8, 2025. Available at: <https://www.hklaw.com/en/insights/publications/2025/10/cfpb-employees-union-requests-dc-circuit-to-reconsider-order>

period.<sup>52</sup> Adding in gender, the Federal Reserve Bank of San Francisco calculated that the gap between white men and everybody else cost our economy \$71 trillion over the past 30 years.<sup>53</sup> These drags on wealth creation harm every American, as well as the United States' global competitiveness. The Bureau must consider both the personal harm to individuals and households from the Proposal's pullback on equal credit access, as well as the macroeconomic impacts on the entire economy.

Sincerely,

*Amanda Fischer*

Amanda L. Fischer  
Policy Director & COO  
[afischer@bettermarkets.org](mailto:afischer@bettermarkets.org)

Better Markets, Inc.  
2000 Pennsylvania Avenue, NW  
Suite 4008  
Washington, DC 20006  
(202) 618-6464  
<http://www.bettermarkets.org>

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<sup>52</sup> Peterson, Dana and Catherine Mann. "Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S." *Citigroup Inclusive Economic Growth Series*, September 22, 2020. Available at: <https://www.citigroup.com/global/insights/closing-the-racial-inequality-gaps-20200922>

<sup>53</sup> Buckman, Shelby R., Laura Y. Choi, Mary C. Daly, Lily M. Seitelman. "The Economic Gains from Equity." *Federal Reserve Bank of San Francisco*, January 19, 2021. Available at : <https://www.frbsf.org/our-district/about/sf-fed-blog/economic-gains-from-equity/>