

# United States Senate

WASHINGTON, DC 20510

February 3, 2026

Acting Director Russell Vought  
Consumer Financial Protection Bureau  
1700 G St. NW  
Washington DC 20552

Dear Acting Director Vought:

We write today to urge you to rescind the Consumer Financial Protection Bureau (CFPB)'s proposed rule to end the Equal Credit Opportunity Act (ECOA)'s disparate impact test, which would prohibit the agency from blocking lending policies that have an unfair impact on historically discriminated-against groups. Despite what you claimed in an op-ed last week<sup>1</sup>, this would open the floodgates for discrimination in all consumer lending, including mortgages, credit cards, and car loans.<sup>2</sup> It would also stop lenders from establishing Special Purpose Credit Programs (SPCP), which are designed to expand homeownership access those same marginalized communities.<sup>3</sup> This proposal would gut longstanding civil rights protections, widen the wealth gap, and increase housing, credit card, car loan, and other borrowing costs by undermining ECOA's core purpose of ensuring everyone has fair and nondiscriminatory access to credit.

The disparate impact test has been used for over 50 years to combat some of the most nefarious forms of discrimination and has been upheld by the Supreme Court repeatedly.<sup>4</sup> The Trump Administration's wrongheaded attempts to destroy this longstanding tenet of our civil rights protections<sup>5</sup> and your defense of those actions—is callous, unjust, and yet another handout to industry on the backs of American consumers.

ECOA prohibits discrimination on the basis of sex, marital status, race, color, religion, national origin, age, and source of income in credit transactions. In some cases, lending discrimination is explicit: a lender makes clear to an individual that they are being denied credit, or offered worse terms, as a direct result of a protected characteristic. In many cases, however, discrimination is less explicit: a policy or pattern of behavior by a lender can produce discriminatory outcomes, whether or not the lender's intention is to discriminate. These cases are examples of disparate

<sup>1</sup> Wall Street Journal, “DEI Turns Fair-Lending Laws on Their Head”, Russell Vought, January 26, 2026, <https://www.wsj.com/opinion/dei-turns-fair-lending-laws-on-their-head-04faa69a>.

<sup>2</sup> National Consumer Law Center, Fact Sheet: CFPB Proposes to Gut Credit Discrimination Protections, November 19, 2025, <https://www.nclc.org/resources/fact-sheet-cfpb-proposes-to-gut-credit-discrimination-protections/>.

<sup>3</sup> National Fair Housing Alliance, “NFHA Denounces Proposed CFPB Rule Change Eliminating Fair Access to Lending for Women, Underserved Communities,” November 13, 2025, <https://nationalfairhousing.org/-denounces-proposed-cfpb-rule-change-eliminating-fair-access-to-lending-for-women-underserved-communities/>.

<sup>4</sup> Center for American Progress, “The Truth About Disparate Impact and Equity,” Ives-Rublee, Rashid, and Durudogan, August 13, 2025, <https://www.americanprogress.org/article/the-truth-about-disparate-impact-and-equity/>.

<sup>5</sup> The White House, “Restoring Equality of Opportunity and Meritocracy,” Executive Order, April 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

impact: practices that adversely affect one group of people of a protected characteristic more than another, even if the policy or practice may seem neutral on its face. By focusing on the consequences of seemingly neutral policies and practices, disparate impact analyses help uncover discrimination that is prohibited under the law, regardless of intent.

Disparate impact analysis is a critical piece of civil rights enforcement, including under ECOA. In passing and amending ECOA, Congress made clear that focusing only on intentional, explicit discrimination was not sufficient to address inequity in the credit market. Congressional Committee reports explicitly stated that agencies should not only look at the creditor's intentions, but also at the effects of policies and practices.<sup>6</sup> For the last 45 years, federal courts have consistently upheld disparate impact claims under ECOA.<sup>7</sup> Indeed, as our economy, housing, and lending markets have evolved over time, including through the introduction of new technologies that give borrowers less face-time with lenders and less insight into decision-making practices, the vast majority of ECOA cases rely on disparate impact analysis.<sup>8</sup> ECOA and the CFPB's implementing regulations explicitly require lenders to thoroughly review policies, procedures, and outcomes for disparate outcomes.<sup>9</sup> Yet, the CFPB's proposed rule seeks to upend many decades of legal precedent, including Congressional intent, to advance the Trump Administration's unsubstantiated ideological crusade to dismantle disparate impact protections across the federal government.<sup>10</sup>

According to one former CFPB attorney, “the disparate impact legal doctrine was a crucial tool allowing the government to uncover intentional discrimination by banks and mortgage originators, which could become much harder if the federal government ceases to enforce it.”<sup>11</sup> Moreover, the National Fair Housing Alliance stated, “if this change is enacted, this means lenders could freely use credit models that exclude hardworking people.”<sup>12</sup>

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<sup>6</sup> Letter from National Fair Housing Alliance to Acting Director Vought, December 15, 2025, <https://nfc.org/wp-content/uploads/2025/12/NHC-ECOA-Comment-Letter-12-15-25-FINAL.pdf>.

<sup>7</sup> Texas Dep't of Hous. & Cmtys. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015).

<sup>8</sup> Letter from National Community Reinvestment Coalition to Acting Director Vought, December 12, 2025, <https://ncrc.org/ncrcs-comment-on-the-cfpbs-proposed-rule-to-undermine-the-equal-credit-opportunity-act-regulation-b/>.

<sup>9</sup> United States v. Citizens Republic Bancorp, Inc. and Citizens Bank, 2011 WL 2014873 (E.D. Mich. 2011); United States v. Compass Bank, Civil Action No. 07-H-0102-S (N.D. Ala 2007); United States v. First American Bank, Civil Action No. 04C-4585 (N.D. Ill. 2004); United States v. Midwest BankCentre, Case No. 4:11- cv-01086 (E.D. Mo. 2011); United States v. PrimeLending, Case 3:10-cv-02494-P (N.D. Tex. 2010); United States v. SunTrust Mortgage, Case No. 3:12-cv-00397-REP (E.D. Va. 2012); United States v. Texas Champion Bank, Case No. Case 2:13-cv-00044 (S.D. Tex. 2013); United States v. C&F Mortgage Corporation, Case. No. 3:11-CV-00653 (E.D. Va. 2011); United States v. First United Bank, Case No. 3:15-cv-00144-L (N.D. Tex. 2015); United States v. AIG Federal Savings Bank and Wilmington Finance, Inc., Case No. 1:10-CV-00178 (D. Del. 2010).

<sup>10</sup> The White House, “Restoring Equality of Opportunity and Meritocracy,” Executive Order, April 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

<sup>11</sup> Reuters, “US consumer watchdog to narrow civil rights era lending law, sources say,” Douglas Gillison, November 11, 2025, <https://www.reuters.com/legal/transactional/us-consumer-watchdog-narrow-civil-rights-era-lending-law-sources-say-2025-11-11/>.

<sup>12</sup> National Fair Housing Alliance, “NFHA Denounces Proposed CFPB Rule Change Eliminating Fair Access to Lending for Women, Underserved Communities,” November 13, 2025, <https://nationalfairhousing.org/nfha-denounces-proposed-cfpb-rule-change-eliminating-fair-access-to-lending-for-women-underserved-communities/>.

The rollback of disparate impact enforcement under ECOA will also increase housing and other borrowing costs, which is particularly unacceptable during the current housing and affordability crisis. Research has shown that protected classes of borrowers under ECOA, including women, people of color, and LGBTQ+ couples, often experience higher denial rates or are charged higher fees and interest rates compared to similarly situated borrowers or even other borrowers with worse credit histories. For example, between 2018 and 2023, Black mortgage applicants were more than 2 times more likely to be denied than White applicants with similar profiles, while Latino and Asian mortgage applicants were 1.5 and 1.2 times more likely, respectively, to be denied compared to White applicants.<sup>13</sup> Similarly, “[s]ole female applicants are [nearly 30%] more likely to be denied a mortgage than sole males.”<sup>14</sup> Another study found that between 1990 and 2015, “same-sex applicants are 73.12% more likely to be denied, and they tend to be charged up to 0.2% higher fees/interest [compared with otherwise similar, different-sex applicants].”<sup>15</sup>

The CFPB’s proposed rule would also stop lenders from establishing Special Purpose Credit Programs (SPCP), which Congress explicitly authorized under ECOA to provide affordable credit to historically discriminated-against groups, in order to help build wealth and close wealth gaps.<sup>16</sup> To address long-standing disparities in the mortgage market, the CFPB and other federal agencies issued SPCP guidance beginning in 2021 that gave lenders more certainty about how to properly implement SPCPs in a way that is consistent with fair housing and lending laws. The CFPB’s latest proposed rule would roll back this progress and instead stop lenders from relying on protected characteristics under ECOA to determine eligibility for SPCPs, creating a standard for implementing an SPCP that is virtually impossible for any creditor to satisfy.

The CFPB’s proposed rule would eliminate longstanding fair lending protections, increase housing and lending costs, and undermine ECOA’s original purpose and decades of progress toward closing the wealth gap. Given our concerns, we urge you to rescind the CFPB’s proposed rule and provide a briefing on your efforts to do so by February 10, 2026.

Sincerely,

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<sup>13</sup> Financial Times, “Black applicants twice as likely to be rejected for a US mortgage,” Paul Caruana Galizia et al., September 4, 2025, <https://www.ft.com/content/217cccd86-7266-4c26-a5dd-18d6e726abcf>.

<sup>14</sup> Lending Tree, “Sole Female Applicants 30% More Likely to Be Denied Mortgage Than Sole Males,” Maggie Davis and Dan Shepard, September 29, 2025, <https://www.lendingtree.com/home/mortgage/sole-female-study/>.

<sup>15</sup> PNAS, “Lending practices to same-sex borrowers,” Hua Sun and Lei Gao, April 16, 2019, <https://www.pnas.org/doi/10.1073/pnas.1903592116>.

<sup>16</sup> 12 U.S.C. §1691(c); 12 C.F.R. §1002.8(b)(2); Federal Reserve Bank of Philadelphia, “An Overview of Special-Purpose Credit Programs Under the Equal Credit Opportunity Act,” Kenneth Benton, May 3, 2025, [https://www.philadelphiafed.org/-/media/FRBP/Assets/Institutional/Banking/SURF/spotlights/2023/SURF\\_2023\\_Q2\\_spotlight.pdf](https://www.philadelphiafed.org/-/media/FRBP/Assets/Institutional/Banking/SURF/spotlights/2023/SURF_2023_Q2_spotlight.pdf).

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