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December 15, 2025

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

Re: Proposed Rule by The Consumer Financial Protection Bureau Regarding the Equal Credit Opportunity Act; Docket ID. CFPB-2025-0039.

Dear Legal Division Docket Manager:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund) in response to the Notice of Proposed Rulemaking published by the Consumer Financial Protection Bureau (CFPB or Bureau) on November 13, 2025 (hereinafter "NPRM").[1] Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in voting rights, education, immigrant rights, employment, and freedom from open bias. MALDEF has a long history of fighting to secure access to credit for Latino borrowers.

MALDEF has grave concerns about the NPRM's failure to follow the procedural requirements of the Administrative Procedure Act (APA). MALDEF is equally concerned that the NPRM would revise the Bureau's prior interpretation of the Equal Credit Opportunity Act (ECOA) by removing language clarifying that disparate impact is a method for proving discrimination, and by amending the standards for discouragement and Special Purpose Credit Programs (SPCPs). As a result, the NPRM would make it harder for Latinos to prove they have been impermissibly denied or discouraged from applying for credit and would make it more difficult for them to secure their financial futures.

For the following reasons, MALDEF strongly opposes the proposed rule and urges CFPB to withdraw it in its entirety.

[1] Equal Credit Opportunity Act (Regulation B) 90 Fed. Reg. 50901 (Nov. 13, 2025) (to be codified at 12 C.F.R. pt. 1002).

I. The Administration Failed to Provide Adequate Notice and Opportunity for the Public to Comment on the Proposed Changes to Regulation B.

While MALDEF opposes the proposed rule on substantive grounds, the NPRM also violates the APA by failing to provide the public adequate notice and opportunity to comment on the proposed changes to Regulation B. A comment period of only thirty-two days is inconsistent with notice and comment requirements under federal law.[2]

The APA requires that substantive rules be promulgated through notice-and-comment rulemaking and that all comments on proposed rules be read and considered before the issuance of a final rule.[3] These procedures are "designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review."[4] Executive Orders 12866 and 13563 both establish that federal agencies should generally provide at least sixty days for public comment on proposed regulations.[5]

Because of the truncated comment period, MALDEF is unable to undertake a full review of all the elements of this NPRM and provide complete comments on the NPRM's constitutional and civil rights implications and its far-reaching impact on the Latino community. The NPRM also does not leave sufficient time for the public to fully vet and comment on the proposed rule, raising concerns that this process violates the APA's requirements.

II. The Proposed Elimination of the Disparate-Impact Standard is Contrary to Law.

Under the APA, agency action must be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law."[6] For the following reasons, the NPRM's changes are contrary to law and would violate the APA if adopted.

A. CFPB Does Not Engage with Cases That Permit Disparate-Impact ECOA Claims.

CFPB does not cite a single case in which a court has held that ECOA does not allow for disparate-impact claims, and MALDEF has also not identified such a case. CFPB instead relies on the argument that disparate-impact claims are disallowed solely because the Supreme Court has yet to consider and issue a decision on the question directly.[7] However, a number of lower and appellate courts have permitted such cases to proceed under ECOA, which CFPB fails to adequately discuss in the NPRM. For example, the Ninth Circuit has explicitly held that ECOA allows disparate-impact claims.[8] The D.C. and the Sixth Circuit have assumed without deciding that disparate-impact claims are permissible under

[2] *See* 5 U.S.C. § 553.
[3] *Id.*
[4] *Int'l Union, United Mine Workers v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).
[5] Exec. Order No. 12866, 3 C.F.R. 638 (1994); Exec. Order No. 13563, 76 Fed. Reg. 3821 (2011).
[6] 5 U.S.C. §§ 706(2)(A)-(D).
[7] 90 Fed. Reg. at 50902.
[8] *See Miller v. Am. Exp. Co.*, 688 F.2d 1235, 1239-40 (9th Cir. 1982) ("ECOA's history refers by analogy to the disparate treatment and adverse impact tests for discrimination . . .").

ECOA; the Sixth Circuit stated that "it appears that they are" allowed.[9] The Fifth Circuit has also noted that ECOA's regulations "endorse the use of the disparate-impact test to establish discrimination,"[10] and a number of district courts around the country have permitted ECOA disparate-impact claims to proceed.[11]

CFPB ignores these cases, electing to advance an interpretation of ECOA that improperly disregards its text, purpose, and legislative history.[12] Thus, if CFPB's new interpretation of ECOA were adopted, it would likely be held contrary to law.

B. CFPB Overreads Supreme Court Precedent and Incorrectly Concludes that the Lack of Key Phrases in ECOA's Text Precludes Disparate-Impact Claims.

Courts interpret a statute "in accord with the ordinary public meaning of its terms at the time of its enactment."[13] "In addressing a question of statutory interpretation, [courts] begin with the text" and "presume that [the] legislature says in a statute what it means and means in a statute what it says there."[14]

ECOA clearly prohibits all forms of discrimination in credit. The act states that it "shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction" on the basis of protected characteristics.[15] However, if a court believed ECOA was ambiguous because it does not explicitly state how a plaintiff may prove discrimination, the court would clarify the statute by looking to the meaning of the word "discrimination."[16]

Black's Law Dictionary confirms that ECOA covers both disparate-impact and disparate-treatment claims. "Discrimination" refers to: 1) the effect of an established practice that arbitrarily confers a benefit to a favored group where "no reasonable distinction can be found" between a favored group and a disfavored group; and 2) the unfair treatment of persons based on protected characteristics.[17] Because

[9] *See Garcia v. Johanns*, 444 F.3d 625, 633 (D.C. Cir. 2006) ("Assuming without deciding that a disparate impact claim is cognizable under ECOA . . ."); *Golden v. City of Columbus*, 404 F.3d 950, 963 n.11 (6th Cir. 2005) (citing authority in favor of the assumption that disparate-impact claims cognizable under ECOA).
[10] *Haynes v. Bank of Wedowee*, 634 F.2d 266, 269 n. 5 (5th Cir. Unit B Jan. 1981); *see also Bhandari v. First Nat. Bank of Com.*, 808 F.2d 1082, 1101 (5th Cir.), vacated and remanded on other grounds, 492 U.S. 901 (1989) (noting that Plaintiff could have proved national origin discrimination in violation of ECOA "by analogy to *Griggs v. Duke Power* and its progeny, that [a] facially permissible alienage discrimination had the effect of discriminating against Indians.").
[11] *See e.g., Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 140 (2d Cir. 2025) (reviewing district court disparate-impact reverse-redlining cases); *Carroll v. Walden Univ., LLC*, 650 F. Supp. 3d 342 (D. Md. 2022) ("ECOA claims may be prosecuted on the basis of . . . disparate impact") (citation omitted); *Miller v. Countrywide Bank, N.A.*, 571 F. Supp. 2d 251 (D. Mass. 2008) (denying motion to dismiss claim that bank's discretionary pricing policy created a disparate impact); *Hoffman v. Option One Mortg. Corp.*, 589 F. Supp. 2d 1009, 1011 (N.D. Ill. 2008) (concluding that disparate-impact claims are not precluded under ECOA).
[12] *See id.*
[13] *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020).
[14] *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 330 (D.C. Cir. 2020) (quotations and citations omitted).
[15] 15 U.S.C § 1691(a).
[16] *See Bostock*, 590 U.S. at 654.
[17] *See* DISCRIMINATION, Black's Law Dictionary (5th ed. 1979); *see also* DISCRIMINATION, Black's Law Dictionary (12th ed. 2024) (similar).

the definition covers both effects and treatment, this should be the end of the analysis, and CFPB should keep the effects test in the current version of Regulation B.

In the NPRM, however, CFPB comes to the opposite conclusion based on what ECOA *does not* say. CFPB now argues that Supreme Court precedent has identified key phrases – such as "otherwise adversely affect" or "otherwise make unavailable" – which must be used in a statute to permit disparate-impact claims.[18] The Bureau argues that because ECOA does not include these words, disparate-impact claims are not cognizable.[19]

The Bureau's argument grossly misunderstands Supreme Court precedent. The Court has never required Congress to use "magic" words to ensure that its acts cover disparate-impact claims. Rather, these phrases are just strong textual indicators that Congress meant to cover disparate impact. In *Griggs v. Duke Power Company,* the phrase "or otherwise adversely affect" was not dispositive in the Court's decision to recognize disparate-impact liability in the Civil Rights Act of 1964.[20] As the Court itself later recognized, *Griggs* primarily turned on the purpose of the Civil Rights Act.[21] In *Smith v. City of Jackson, Mississippi*, the Court subsequently recognized that the best interpretation of the phrase "otherwise adversely affect" was that it allows disparate-impact claims.[22] However, as multiple lower courts have pointed out, the Supreme Court has not required this (or any other) phrase to be used to find disparate-impact liability covered by other statutes.[23] Indeed, even the case the Bureau cites, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc*., imposed no such requirement. There, rather than require Congress to use any specific terms, the Court merely held that "antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose."[24]

CFPB's interpretation of ECOA is also not supported by case law interpreting ambiguous anti-discrimination laws.[25] The NPRM discusses *Bd. of Ed. of City Sch. Dist. of City of New York v. Harris*, where the Supreme Court interpreted the Emergency School Aid Act (ESAA), which made an agency ineligible for aid if it had in "effect a practice which results in the disproportionate demotion or dismissal of . . . personnel from minority groups, or otherwise engage[s] in discrimination . . ."[26] The Court held this language was ambiguous as to the standard for ineligibility, and resolved the ambiguity in favor of using the disparate-impact standard by considering other tools of statutory interpretation.

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[18] *See* 90 Fed. Reg. at 50905-06.
[19] *See id.*
[20] *See* 401 U.S. 424, 426 n.1 (1971).
[21] *See Smith v. City of Jackson, Mississippi*, 544 U.S. 228, 235 (2005).
[22] *Id.*
[23] *See Ramirez v. GreenPoint Mortg. Funding, Inc.*, 633 F. Supp. 2d 922, 927 (N.D. Cal. 2008) ("*Smith* did not hold that a statute must contain . . . 'effects' language in order to authorize disparate impact claims.") (internal quotations omitted); *see also Guerra v. GMAC LLC*, No. CIV.A 2:08CV01297LDD, 2009 WL 449153 at *2 (E.D. Pa. Feb. 20, 2009) ("No court has applied *Smith* to find that disparate impact claims are not cognizable under the FHA or the ECOA."); *Hoffman v. Option One Mortg. Corp.*, 589 F. Supp. 2d 1009 (N.D. Ill. 2008) (concluding that *Smith* does not preclude disparate-impact claims under ECOA); *Taylor v. Accredited Home Lenders, Inc.*, 580 F. Supp. 2d 1062, 1067 (S.D. Cal. 2008) (citing cases recognizing disparate-impact claims after *Smith*).
[24] *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc. (Inclusive Communities)*, 576 U.S. 519, 533 (2015).
[25] *See* 90 Fed. Reg. at 50905.
[26] *Bd. of Ed. of City Sch. Dist. of City of New York v. Harris*, 444 U.S. 130, 138 (1979) (internal quotation omitted).

CFPB's argument rests on a misreading of *Harris*. The Bureau contends that, because ECOA "does not suffer from ESAA's less than careful draftsmanship," ECOA is unambiguous and therefore does not permit disparate-impact claims. But *Harris* involved a concededly ambiguous statute, and its analysis turned on how to construe that ambiguity. It is thus inapposite here because, as explained above, ECOA's text plainly permits disparate-impact liability. Thus, the changes proposed in the NPRM are contrary to law.

C. CFPB Wrongly Assumes that Disparate Impact Claims Contradict ECOA's Purpose.

If textual clues were deemed insufficient to clarify the meaning of an ambiguous statutory term – which is not an issue with ECOA – a court would look to the statute's structure and purpose.[27] Although CFPB seeks comment on ECOA's purpose, there can be no question that the Bureau already knows it. The NPRM acknowledges that ECOA's purpose is to require that "financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to prohibited bases."[28] Given this acknowledgement, it is incomprehensible why the Bureau believes disparate-impact liability contravenes ECOA's purpose.[29]

The Bureau's stated concern that disparate-impact liability will prompt some creditors to achieve "particular protected class outcomes" belies a misunderstanding of disparate-impact liability.[30] A legally cognizable disparate impact exists where a facially neutral policy or practice has a disproportionately adverse effect on members of a protected class.[31] The goal of a disparate-impact liability is to *avoid* outcomes that disproportionately and negatively affect members of a protected class. It does not require creditors to "achieve protected class outcomes" as part of their efforts to avoid disparate impacts.

In sum, disparate-impact liability is consistent with the purpose of ECOA, and any suggestion otherwise is contrary to law.

D. The Legislative History Also Confirms that ECOA Allows Disparate-Impact Claims.

If a statute remains unclear after analyzing its text, structure, and purpose, courts may look to the statute's legislative history for clarity.[32] Assuming for the sake of argument that the text and purpose are not clear, the current version of Regulation B relies on ECOA's legislative history, which also confirms that Congress intended the law to permit disparate-impact claims.[33] Specifically, the Senate report

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[27] *See Eagle Pharms.*, 952 F.3d at 332.
[28] 90 Fed. Reg at 50909 (citing Pub. L. No. 93-495, tit. V, § 502, 88 Stat. 1521 (1974)).
[29] *See id.* at 50905.
[30] *Id.*
[31] *See Griggs,* 401 U.S. at 432.
[32] *See Eagle Pharms*, 952 F.3d at 338.
[33] *See* 12 C.F.R. § 1002.6(a) (2023)("The legislative history of the Act indicates that the Congress intended an 'effects test' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness"); *see also* 50 FR 48018, 48050 (Nov. 20, 1985) ("The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5.").

accompanying ECOA states that "judicial constructions of anti-discrimination legislation in the employment field, in cases such as *Griggs* . . . and *Albemarle Paper Company v. Moody* are intended to serve as guides in the application of this Act, especially with respect to the allocations of burdens of proof."[34]

In the NPRM, CFPB ignores the legislative history to conclude that ECOA does not cover disparate-impact claims. In sum, then, ECOA covers disparate-impact claims and any argument that it does not is contrary to law, whether based on its text, purpose, or legislative history.

E. CFPB's Alternate Theory About Disparate-Impact Liability Being Unconstitutional Is Contrary To Law and Thus Not an Independent Basis to Justify the Changes in the NPRM.

Throughout the NPRM, CFPB casts doubt on the constitutionality of disparate-impact claims. This is a baseless interpretation of law given decades of Supreme Court precedent that uphold the use of disparate impact.

Disparate impact originated with the Supreme Court in *Griggs,* which considered the disparate racial impact of requiring a high school education or passing an intelligence test, under Title VII of the Civil Rights Act of 1964.[35] Subsequently, the Court expanded its disparate-impact holdings to apply to "subjective employment criteria" because "a facially neutral practice, adopted without discriminatory intent, may have effects that are indistinguishable from intentionally discriminatory practices."[36] The Supreme Court has also held that agency regulations may properly target disparate-impact discrimination.[37]

Accordingly, there is no doubt that disparate-impact liability regimes, when applied by federal agencies, are constitutional. To the extent CFPB is amending Regulation B because it believes that disparate-impact liability is unconstitutional, these changes would be contrary to law.

F. The Lack of a Supreme Court Ruling that ECOA Permits Disparate-Impact Liability is Not a Sufficient Basis to Justify the Changes in the NPRM.

Alternatively, the Bureau claims it can remove the disparate-impact provisions of Regulation B simply because the Supreme Court has not ruled on whether ECOA covers disparate-impact claims.[38] CFPB's reliance on *Loper Bright Enterprises v. Raimondo* is unavailing.[39]

Citing *Loper Bright,* CFPB notes that courts are the "ultimate arbiters of statutory meaning."[40] However, the judiciary is not always the first branch of government to interpret a statute. Nothing in *Loper Bright*

[34] *See* 90 Fed. Reg at 50904 (citing S. Rep. No. 94-598, at 4-5 (1976)).
[35] 401 U.S. at 431 ("The [Civil Rights Act of 1964] proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.").
[36] *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 990 (1988).
[37] *Alexander v. Choate*, 469 U.S. 287, 292 (1985) (citing *Guardians Assn. v. Civil Service Comm'n of New York City*, 463 U.S. 582, 584 (1983) (White, J., announcing the judgment of the Court); *id.*, at 623, n. 15 (opinion of Marshall, J.); *id.*, at 634 (opinion of Stevens, J., in which Brennan and Blackmun, JJ., joined)).
[38] 90 Fed. Reg. at 50906.
[39] *See* 603 U.S. 369 (2024).
[40] 90 Fed. Reg. at 50906.

requires agencies to wait until a court—much less the Supreme Court—has opined on a statute's meaning before they initiate rulemaking, such as with the longstanding Regulation B. In fact, *Loper Bright* recognized that courts often interpret the scope of statutes after final agency action,[41] and more importantly that courts, in doing so, are supposed to afford great respect to long-standing interpretations of law from the Executive Branch issued at the time of enactment.[42] Accordingly, consistent with *Loper Bright*, a reviewing court here would afford great respect to Regulation B's longstanding interpretation that ECOA permits disparate-impact claims.

Congress, moreover, obligated the Executive Branch to undertake rulemaking to "facilitate substantial compliance" with ECOA.[43] Because the reading of ECOA most consistent with the rules of statutory interpretation is that it covers disparate-impact claims, CFPB is obligated by Congress to keep the effects language in Regulation B unless and until the Supreme Court rules otherwise.

III. The Proposed Changes to the Discouragement Standard Would Be Arbitrary and Capricious if Enacted Without Further Explanation and Contradict ECOA's Goals.

A. Eliminating the Phrase "Acts or Practices" Would be Arbitrary and Capricious if Adopted Without a Detailed Factual Record.

An agency must "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[44] Regulation B currently states that a "creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application."[45] This prohibition was subsequently interpreted to "cover[] acts or practices directed at prospective applicants," and included three examples of impermissible conduct.[46]

In the NPRM, the Bureau preliminarily determined that the inclusion of the phrase "acts or practices" has had a chilling effect on creditors' business practices and their rights to speak about them.[47] The NPRM, however, provides no evidence of this chilling effect on creditors. The NPRM also provides no evidence that clarifying the Bureau's interpretation of discouragement would alleviate the purported chilling effect. Although the Bureau identifies business practices that could be considered discouragement, such as closing a branch or choosing a place to advertise, it provides no evidence that a creditor has ever avoided making such choices for fear that it would run afoul of Regulation B.

Accordingly, CFPB's justification for the changes in the NPRM rests on its unsupported assumption that there is a chilling effect that would be alleviated by clarifying its interpretation of Regulation B. The NPRM fails to establish the necessary record for these changes, and thus they would be arbitrary and capricious if adopted.[48]

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[41] *See Loper Bright Enters.*, 603 U.S. at 395-96.
[42] *Id.* at 385-86.
[43] Pub. L. No. 93-495, tit. V, § 703, 88 Stat. 1522 (1974).
[44] *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43, 56 (1983) (citation and quotations omitted).
[45] 12 C.F.R. 1002.4(b) (2023).
[46] 50 FR at 48050.
[47] *See* 90 Fed. Reg. at 50907.
[48] *See State Farm*, 463 U.S. at 43.

B. The Proposals to Narrow the Scope of Discouragement Contradict the Goals of ECOA and Are Arbitrary and Capricious.

CFPB proposes two changes that would narrow the scope of actions that qualify as discouragement. First, it seeks to provide that "a statement is prohibited discouragement only if a creditor 'knows or should know' that the statement would cause a reasonable person to be discouraged."[49] Second, it seeks to clarify that the standard for discouragement "is not whether a creditor's statement 'would discourage on a prohibited basis a reasonable person,'" but whether the statement "would cause a reasonable person to believe that the creditor would deny, or would grant on less favorable terms, a credit application by the applicant or prospective applicant because of the applicant or prospective applicant's prohibited basis characteristic(s)."[50]

These changes contradict the goals of ECOA. Its purpose is to require creditors to make credit "equally available to all creditworthy customers without regard to prohibited bases."[51] The prohibition against discouragement was adopted to "protect applicants against discriminatory acts occurring before an application is initiated . . . [otherwise] creditors could sidestep [ECOA] entirely by discouraging applicants from applying for credit in the first place."[52] Requiring proof of a creditor's knowledge and changing the standard for discouragement would make it easier to skirt ECOA. Therefore, these changes should not be enacted.

Moreover, the Bureau does not provide a full factual record to justify these changes,[53] relying almost entirely on its preliminary determination that the current language sweeps in "scenarios that should not be characterized as prohibited discouragement."[54] However, requiring creditors to know that their statements are discouraging is much more likely to allow them to make reckless statements that would still dissuade applicants with protected characteristics.[55] And nothing in the NPRM supports the idea that a court applying the current reasonable person standard, which is common in American law, would be unable to effectively distinguish between prohibited and merely disagreeable statements.[56]

Ultimately, the Bureau proposes to allow creditors to engage in all but the most targeted discouragement before an applicant applies, allowing creditors to skirt their ECOA obligations,[57] on the slimmest factual record. Therefore, these changes should not be enacted.

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[49] *See* 90 Fed. Reg. at 50908.
[50] *Id.*
[51] *Id.* at 50909 (citing Pub. L. No. 93-495, tit. V, § 502, 88 Stat. 1521 (1974)).
[52] *Id.* at 50907 (internal citation and quotation omitted).
[53] *Contra State Farm*, 463 U.S. at 43.
[54] 90 Fed. Reg. at 50908.
[55] *See Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.*, 107 F.4th 768, 772 (7th Cir. 2024) (listing examples of discouraging statements, some of which were arguably made recklessly without the explicit intent to discourage applicants).
[56] *Contra* 90 Fed. Reg. at 50908.
[57] *See also Townstone Fin.*, 107 F.4th at 776 ("In endowing the Board with authority to prevent 'circumvention or evasion,' Congress indicated that the ECOA must be construed broadly to effectuate its purpose of ending discrimination in credit applications.").

IV. Supreme Court Precedent Does Not Compel Changes to Special Purpose Credit Programs (SPCPs).[58]

The Bureau proposes a host of changes to Regulation B provisions that govern SPCPs to prevent the use of race or national origin as eligibility criteria.[59] These changes seem to be motivated in part by an incorrect reading of *Students for Fair Admission, Inc v. President and Fellows of Harvard College (SFFA)*.[60] *SFFA* struck down the limited use of race in Harvard's admissions policies.[61] Nothing in the decision, however, indicates it was meant to apply beyond the context of college admissions.

SPCPs are completely different and in no way analogous to college admissions criteria. Their impact can be easily measured by charting the rise in the number of applicants with protected characteristics who receive credit. Nor do they use negative stereotypes against credit applicants. CFPB did not produce any statistics that showed a fall in the number of applicants who lacked protected characteristics and received credit.[62] Finally, the Bureau itself recently recognized that SPCPs are crucial to helping minorities secure fair access to credit.[63] In the NPRM, CFPB recognizes that the credit market has changed since ECOA was enacted, but does not consider, for example, that Latinos still struggle relative to other consumers to gain access to credit.[64]

In sum, the logic *SFFA* applied to Harvard's admissions policies is not applicable to SPCPs. If the many changes CFPB proposes were enacted, they would make it unnecessarily more difficult for Latinos to gain credit. As such, CFPB should abandon its effort to change SPCPs.

V. Conclusion.

CFPB proposes drastic changes to Regulation B that would upset the Bureau's longstanding interpretation of ECOA. The NPRM violates the APA's procedural requirements, and its proposed changes would be contrary to law as well as arbitrary and capricious, if adopted. Moreover, the proposed changes would make it harder for Latinos to prove discrimination when pursuing credit and would make it harder for them to build their financial futures.

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[58] SPCPs allow lenders "to extend credit to a class of persons who would otherwise be denied credit or would receive it on less favorable terms, under certain conditions." Tim Lambert, *Using special purpose credit programs to serve unmet credit needs*, CONSUMER FIN, PROTEC. BUREAU (July 19, 2022), https://www.consumerfinance.gov/about-us/blog/using-special-purpose-credit-programs-to-serve-unmet-credit-needs/.

[59] *See* 90 Fed. Reg at 50909.

[60] *See id.* (citing *Students for Fair Admissions, Inc v. President and Fellows of Harvard College (SFFA)*, 600 U.S. 181 (2023)). The Bureau cites other cases too, but the only other one that is binding precedent is *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303 (2025). Because the Bureau has not established how SPCPs discriminate against a majority group, *Ames* is inapposite, and the analysis in this section of this comment focuses on *SFFA*.

[61] *SFFA*, 600 U.S. at 214-21.

[62] *Contra id.* at 218.

[63] Lambert, *supra* note 58.

[64] *See New Survey Shows Latinos Are Struggling with High Debt Burdens, Low Savings Rates, and a Lack of Access to Affordable Bank Products*, UNIDOSUS (Sept. 27, 2022), https://unidosus.org/press-releases/new-survey-shows-latinos-are-struggling-with-high-debt-burdens-low-savings-rates-and-a-lack-of-access-to-affordable-bank-products/; KENNETH P. BREVOORT ET AL., CONSUMER FIN. PROT. BUREAU OFF. OF RSCH., DATA POINT: CREDIT INVISIBLES, 16-23 (2015).

For the foregoing reasons, MALDEF urges CFPB to withdraw the NPRM in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or at salarcon@maldef.org.

Sincerely,

Sebastian T. Alarcon

Sebastian T. Alarcon
Staff Attorney