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United States Senate
COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510–6350
TELEPHONE: (202) 224–5175

January 21, 2026

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G St NW
Washington, DC 20552

Dear Acting Director Vought:

We write to express opposition to two Consumer Financial Protection Bureau (CFPB) proposed rules published on November 13, 2025: (1) Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), which would eviscerate Regulation B, subpart B of the Equal Credit Opportunity Act (ECOA), implementing changes to it made by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (2) Equal Credit Opportunity Act (Regulation B), which would undermine the ability to bring fair lending claims based on the disparate impact of facially neutral policies. Both proposed rules represent an unwelcome step backward from addressing serious lending concerns in the small business community that Congress directed the CFPB to address.

In 2023, the CFPB issued a final rule to implement Section 1071 by adding subpart B to Regulation B. The proposed Section 1071 rule that the CFPB has now promulgated is far from a refinement of its 2023 rule. Rather, it is a full retreat from creating a comprehensive and meaningful picture of small business lending in the United States, as Section 1071 intended.[1] The proposed rule would substantially undermine congressional intent and harm small businesses, especially minority-owned and women-owned firms, by perpetuating longstanding knowledge gaps in lending practices.

The CFPB's 2023 rule to implement Section 1071 recognized that if we want fair markets, we need fair and complete information. Congress did not ask the CFPB to collect the bare minimum of data, and only from the biggest banks and credit unions. Congress asked for real insight and sunlight. The proposed rule replaces sunlight with a keyhole perspective.

Indeed, the proposed rule disregards the importance of a more complete understanding of small business credit markets and perpetuates knowledge gaps in largely unregulated forms of alternative lending, such as merchant cash advances. This type of financing is more likely to affect minority entrepreneurs, who are more likely to be denied traditional financing and seek out

[1]Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50952 (proposed Nov. 13, 2025) (to be codified at 12 C.F.R. pt. 1002), https://www.federalregister.gov/documents/2025/11/13/2025-19865/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b.

alternative financing.[2] The growth of this market should be carefully monitored, given the frequent lack of transparency and expensive cost of credit by lenders in this field,[3] yet the proposed rule inexplicably removes merchant cash advances from reporting requirements. It also excludes agricultural lending products from data collection, again leaving critical knowledge gaps in an important lending market.

The proposed rule preserves just enough data to say the agency collects data, while ensuring that the results will be too thin, too partial, and too distorted to tell us anything useful about how capital actually flows in the real economy. As Small Business Majority and the National Community Reinvestment Coalition notes, raising the covered loan origination threshold would exempt the vast majority of banks from reporting requirements and lowering the small business revenue threshold from $5 million to $1 million means that a significant share of small business loans would be exempt from data collection.[4] If this were a weather forecast, it would be based on one thermometer, indoors, with the window closed.

This matters because we have evidence that access to capital is not evenly distributed, and that these gaps persist even when lenders rely on so-called neutral measures such as credit scores and revenues. Research from MassINC makes clear that entrepreneurs of color, especially those operating small businesses, face systemic barriers to growth capital that constrain job creation and regional economic performance.[5] The Boston Foundation's work similarly shows that Black- and Latino-owned businesses apply for financing at higher rates than white-owned businesses but are denied at dramatically higher rates.[6]

These outcomes cannot be explained away by credit risk alone. These are not delusions. They are real structural patterns that require serious data collection to understand the problem and work towards a solution. The CFPB understood this when it finalized the 2023 rule.[7] That rule was intentionally broad because the problem is broad. It captured lenders that actually shape local credit markets and businesses that are actually trying to grow. This proposal, by contrast,

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[2] *2022 Report on Firms Owned by People of Color: Based on the 2021 Small Business Credit Survey,* Federal Reserve (June 29, 2022), https://www.fedsmallbusiness.org/reports/survey/2022/2022-report-on-firms-owned-by-people-of-color.

[3] *CFPB Study Details the Rapid Growth of "Buy Now, Pay Later" Lending*, Consumer Financial Protection Bureau (Sept. 15, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/.

[4] National Community Reinvestment Coalition, Comment Letter on Proposed Rule to Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) (Dec. 12, 2025), https://www.regulations.gov/comment/CFPB-2025-0040-0228;
Small Business Majority, Comment Letter on Proposed Rule to Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) (Dec. 15, 2025), https://www.regulations.gov/comment/CFPB-2025-0040-0262.

[5] Ben Forman, *Unleashing the Potential of Entrepreneurs of Color in Massachusetts*, MassINC (Mar. 29, 2021), https://massinc.org/research/entrepreneurs-of-color/.

[6] "*The Color of the Capital Gap: An Update and Discussion*," The Boston Foundation (Nov. 28, 2023), https://www.tbf.org/news-and-insights/videos/2023/november/color-of-the-capital-gap-recap-20231128.

[7] Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150 (finalized May 31, 2023), 12 C.F.R. § 1002, https://www.federalregister.gov/documents/2023/05/31/2023-07230/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b.

draws its boundaries so tightly that entire segments of minority entrepreneurship disappear from view.

Any burden for lenders cannot override the compelling need to collect this vital data, which Congress has mandated. The impact on lenders is absent from the statute, absent from the lived experience of small business owners denied fair access to credit, and absent when communities are asked to bear the cost of opaque markets. The current rule reflects extensive compromise, phased implementation, and years of engagement with industry. To now suggest that the answer to complexity is near-blindness is an abdication of the CFPB's role in implementing the statute.

Congress enacted Section 1071 because it understood that incomplete data results in policy failure. A rule that captures only a narrow slice of lending activity cannot facilitate fair lending enforcement, cannot identify unmet community credit needs, and cannot meet the statute's core purposes. It may reduce paperwork. It will not reduce discrimination. It will, however, make it easier not to see it.

On the same day that the CFPB published the proposed rule to eviscerate its 2023 rule implementing Section 1071, it also proposed a rule to amend provisions relating to disparate impact.[8] That proposed rule (1) limits the ability to assess discrimination or bring fair lending claims based on the disparate impact of facially neutral policies, (2) redefines discouragement in ways that allow discriminatory practices in marketing, soliciting, and accepting applications, and (3) targets private, for-profit lenders that operate Special Purpose Credit Programs (SPCPs). The proposal would undermine programs and tools meant to prevent, address, and remedy lending discrimination, including by gutting protections against multiple forms of discrimination against small businesses.

Discrimination is not always obvious. Policies that are designed to be facially neutral can have a disparate impact on certain populations: as previously detailed, studies have shown that minority entrepreneurs operating small businesses face higher denial rates and different treatment compared to non-minority entrepreneurs, even when they have similar or stronger business financials or other characteristics.[9] Yet, the CFPB failed to assess the impact of the proposed rule on small business borrowers or to conduct an initial regulatory flexibility analysis regarding those impacts.

The disparate impact standard, supported by decades of judicial precedent, has been a critical tool for enforcing fair lending laws by government entities and consumers. The ability to bring legal claims based on disparate impact is an important tool for addressing discrimination. The Administration seeks to undermine this tool by prohibiting disparate impact claims under ECOA and discouraging lenders from assessing the disparate impact of their policies, which will impair

[8] Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50901 (proposed Nov. 13, 2025) (to be codified at 12 C.F.R. pt. 1002), https://www.federalregister.gov/documents/2025/11/13/2025-19864/equal-credit-opportunity-act-regulation-b.

[9] Anneliese Lederer et al., *Lending Discrimination within the Paycheck Protection Program*, National Community Reinvestment Coalition (July 15, 2020) https://www.ncrc.org/lending-discrimination-within-the-paycheck-protection-program/

the ability of minority and underserved entrepreneurs to avoid and readdress discriminatory practices impacting their ability to obtain credit.

ECOA is also designed to prevent lenders from discouraging certain applicants on the basis of their ethnicity, sex, age, and more. Current regulations stipulate that lenders are prohibited from making statements, including in advertising, that "express, imply, or suggest" discriminatory practices or policies.[10] The proposed rule would limit "discouragement" only to explicit statement of discriminatory practices or policies. Again, these changes would allow for insidious forms of discrimination that are not always directly expressed.

Finally, the proposed disparate impact rule meddles with the ability of lenders to operate SPCPs, a tool to reach minority and underserved communities that face unique barriers to accessing financing. The Administration seeks to prevent lenders from "using the prohibited basis of race, color, national origin, or sex, or any combination thereof, of the applicant, as the common characteristic in determining eligibility for the SPCP."[11] Lenders operating SPCPs, many of which have identified inequities in lending practices for certain entrepreneurs using both qualitative and quantitative research, would be barred from providing targeted financial assistance.

Combined, the CFPB's two proposed rules would obfuscate critical gaps and issues in lending markets for small businesses, especially those in minority and underserved communities, and would undermine tools meant to combat and remedy discrimination. We are left wondering how the CFPB intends to square these proposals with the law Congress passed and the realities small businesses face every day We therefore request written to answers to the following questions by February 4, 2026:

1. How does the CFPB believe the Section 1071 rule fulfills ECOA's statutory purposes when it captures only a narrow slice of small business lending activity and excludes large segments of lenders and borrowers that shape local credit markets?
2. What evidence does the CFPB rely on to conclude that data collected under this dramatically narrowed scope will be sufficient to identify patterns of discrimination or unmet credit needs, particularly for minority-owned and women-owned businesses?
3. How does the CFPB reconcile the Section 1071 proposal with the current rule, which explicitly recognizes that comprehensive, application-level data across a broad set of lenders is necessary to create meaningful transparency in the small business lending market?
4. What mechanisms does the CFPB intend to use to evaluate whether this reduced dataset is failing to meet the statute's objectives, and what concrete benchmarks would trigger an expansion of coverage?

[10] 12 C.F.R. 1002.4(b)(1)(ii)
[11] Equal Credit Opportunity Act (Regulation B), 90 Fed. Reg. 50901 (proposed Nov. 13, 2025) (to be codified at 12 C.F.R. pt. 1002), https://www.federalregister.gov/documents/2025/11/13/2025-19864/equal-credit-opportunity-act-regulation-b.

5. If the CFPB views this proposal as an interim or incremental step, what is the timeline—and what is the commitment—for restoring a data collection framework capable of meeting Congress's clear mandate?
6. What is the impact and cost of discriminatory lending practices on minority and underserved small businesses, and the positive economic impact of government policies, including special purpose credit programs, that seek to remedy such discrimination?
7. Prior to publishing the proposed rule, did the CFPB conduct any stakeholder engagement or quantitative research to understand the barriers faced by minority entrepreneurs in credit markets, as well as the historic and present-day discrimination that presents such barriers?

We urge the CFPB to withdraw these proposed rules and maintain the existing rules that implement Section 1071, authorize disparate impact claims under ECOA, maintain current discouragement standards, and allow lenders to operate SPCPs that target minority and underserved populations – consistent with congressional intent to address serious problems in small business lending.

Sincerely,

Edward J. Markey
Ranking Member, Committee on Small Business and Entrepreneurship

Elizabeth Warren
Ranking Member
Committee on Banking, Housing, and Urban Affairs

Mazie K. Hirono
United States Senator

Cory A. Booker
United States Senator