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Comment Intake—2025 NPRM ECOA
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Delivered electronically via: https://www.regulations.gov

RE: Proposed Rule and Request for Public Comment on the Equal Credit Opportunity Act (Regulation B) [Docket No. CFPB-2025-0039; RIN 3170-AB54]

To Whom It May Concern:

On behalf of the Defense Credit Union Council (DCUC),[1] thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed rule and request for public comment relating to the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B. DCUC represents credit unions that serve active-duty military, veterans, and their families worldwide.

Credit unions support fair and impartial lending practices consistent with ECOA's core purpose, as inclusive lending is part of credit unions' DNA. Nevertheless, regulatory ambiguity can discourage responsible lending, product development, consumer outreach, and innovation. This is why DCUC supports a regulatory framework that aligns closely with statutory text and provides reasonable and workable compliance standards for credit unions. DCUC generally supports the CFPB's proposed amendments, as they clarify Regulation B's provisions while ensuring consumer protection from discriminatory practices.

The CFPB's proposed rule would revise Regulation B's requirements to: (i) provide that ECOA does not authorize disparate impact claims; (ii) amend the prohibition on discouraging applicants or prospective applicants to clarify that it prohibits statements of intent to discriminate in violation of ECOA and is not triggered merely by negative consumer impressions, and to clarify that encouraging statements by creditors directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements; and (iii) amend the standards for special purpose credit programs (SPCPs)

[1] The Defense Credit Union Council represents more than 200 defense-affiliated credit unions and over 40 million members—including active-duty servicemembers, Guard and Reserve personnel, veterans, Department of War civilians, and military families.

offered or participated in by for-profit organizations to include new standards and related restrictions. DCUC's comments on the proposed amendments are below.

I. Disparate Impact Claims

The CFPB is proposing changes to § 1002.6(a) and its accompanying commentary as it has preliminarily determined that, under the best reading of the statute, disparate-impact claims are not applicable under ECOA. As a result, the CFPB is proposing to delete language in § 1002.6(a) and its accompanying commentary indicating that disparate-impact liability, which is referred to in the rule as the "effects test," may be applicable under ECOA, and add language stating that the Act does not recognize the "effects test." The CFPB acknowledges that section 701(a)(1) of ECOA makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age, but does not contain language that suggests that disparate impact claims are cognizable.

DCUC supports the CFPB's proposed change. The statutory language of ECOA is unambiguous in prohibiting discrimination "on the basis of" prohibited characteristics, but it does not contain language authorizing liability based on disparate outcomes. We believe this change supports the statute's mission and that any reliance interests in the existing regulatory interpretation permitting disparate-impact liability do not outweigh revising Regulation B to bring it into closer alignment with the statutory text.

While credit unions consistently comply with the disparate impact test and have developed policies, procedures, and training to ensure their compliance, we appreciate the greater flexibility this regulatory change will deliver. Disparate impact has been measured and determined inconsistently by financial services regulators and examiners, and credit unions have endured unpredictable and shifting application and examination findings. The CFPB's amendments bring greater consistency to the application and interpretation of Regulation B, while still protecting consumers from disparate treatment. The CFPB's regulatory amendments will also provide credit unions with greater confidence and certainty in their lending practices, which have been stifled in the past by fear of unintentional non-compliance with federal agency fair lending regulatory interpretations.

II. Discouragement

The CFPB is proposing amendments to § 1002.4(b) and its accompanying commentary to change the provisions that prohibit creditors from making oral or written statements to applicants or prospective applicants that would discourage a reasonable person from applying for credit. The proposed revisions address various aspects of § 1002.4(b): (1) what constitutes an oral or written statement, (2) what constitutes a statement to an applicant or prospective applicant, and (3) the standard for showing prohibited discouragement.

We agree with the CFPB's proposal to add language to § 1002.4(b) clarifying that "oral or written statement" means spoken or written words, or visual images such as symbols, photographs, or videos, and its proposal to align the text of comment 4(b)-1 with the text of current § 1002.4(b) by replacing current references in the comment to "acts or practices" or "practices" with references to "oral or written statements" or "statements." We believe these changes provide greater clarity to the regulatory requirements and reduce compliance uncertainty.

We also support the CFPB's revision to § 1002.4(b) and its accompanying commentary to provide that prohibited discouragement occurs when a creditor makes any oral or written statement "directed at" applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from applying for credit. The CFPB's proposed change to comment 4(b)-1, to provide that encouraging statements directed at one group of consumers cannot discourage applicants or prospective applicants who were not the intended recipients of the statements, offers greater regulatory clarity and will help credit unions with their outreach and education efforts to improve member access to credit.

Finally, DCUC supports the CFPB's proposed revisions to § 1002.4(b) and its accompanying commentary 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, and its proposal to revise § 1002.4(b) and its accompanying commentary to clarify that the standard is not whether a creditor's statement "would discourage on a prohibited basis a reasonable person," but rather that discouragement occurs only if the creditor's 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)." This revision creates a proximate cause between the creditor's statement and the applicant's belief about their ability to obtain credit on non-discriminatory terms. These changes to § 1002.4(b) and the commentary would decrease the regulatory burden for credit unions because the revised provisions are less ambiguous and more straightforward for compliance and examination purposes.

However, DCUC does not support the removal of the current comment 4(b)-2, which provides that creditors may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor. This provision provides necessary clarity to the Regulation B requirements and we urge the CFPB to keep it in the commentary. This comment is important for credit unions serving military communities that engage in outreach to populations that may be reluctant to seek credit. Removing this comment could also suggest that this practice is no longer permissible, which is counterproductive to the CFPB's apparent intentions.

III. Special Purpose Credit Programs

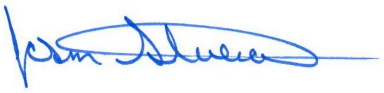
The CFPB is also proposing changes to the Regulation B provisions governing SPCPs offered by for-profit organizations. More specifically, the CFPB proposes to prohibit an SPCP offered or participated in by a for-profit organization from using the prohibited basis of race, color, national origin, or sex, or any combination thereof, of the applicant, as the common characteristic in determining eligibility.

DCUC does not have any initial concerns with the CFPB's regulatory changes as long as they do not restrict a credit union's ability to collaborate with community organizations on programs that will improve consumer access to credit. Credit unions frequently partner with community organizations and other stakeholders to fill credit gaps and expand banking services to underrepresented populations.

Credit unions must continue to have regulatory flexibility to participate in these lending programs. DCUC urges the CFPB to ensure that any final rule preserves flexibility for financial institutions, such as credit unions, to participate in programs designed to expand access to credit. Again, we do not support regulatory changes that negatively impact a credit union's ability to lend to consumers and function as a financial safety net for underserved communities.

Thank you for the opportunity to provide comments on these proposed changes. DCUC is encouraged by the CFPB's efforts to streamline regulatory requirements for credit unions and is always an eager resource to the CFPB as it develops greater collaboration and communication with the credit union industry. Please contact me at Jason.Stverak@dcuc.org for further discussion on this and any other matters that impact credit unions.

Sincerely,



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