December 15, 2025

Comments - Community Home Lenders of America (CHLA)
CFPB Proposed Rule: Regulatory Changes to ECOA
[Docket No. CFPB-2025-0039]. RIN 3170-AB54

The Community Home Lenders of America (CHLA)[1] writes to provide comments on the CFPB's proposed rule that would amend the Equal Credit Opportunity Act ("ECOA") Regulation B.

DISPARATE IMPACT

CHLA supports the CFPB's proposal to clarify that the ECOA statute does not authorize liability on the basis of disparate impact (the so-called "effects test").

ECOA prohibits creditors, including mortgage lenders, from discriminating against any applicant on a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age.

CHLA does not condone discrimination in mortgage origination. However, the use of disparate impact goes beyond the assessment of actual discrimination on the part of a creditor to inappropriately conclude that there is discrimination, based merely on different outcomes between categories of protected classes.

This is particularly a concern for independent mortgage banks (IMBs), for the simple reasons that:
(1) The great majority of IMB loans use federal mortgage programs (FHA, RHS, VA, Fannie, Freddie).
(2) IMBs do not have control over underwriting standards and loan fees for these loan programs.
(3) This can easily result in denial or mortgage rate differentials that have nothing to do with the lender.

Instead of trying to inappropriately use ECOA to address disappointing statistical outcomes with respect to homeownership rates of minorities and other underserved borrowers, housing policy makers should look to implement proactive policies that help such individuals, such as:

1. **End FHA Life of Loan premiums.** CHLA has long documented how 2013 changes mandating premiums for the life of an FHA loan dramatically overcharge borrowers - particularly minority and underserved borrowers disproportionately unable to refinance out of FHA (**see *CHLA IMB Sign on Letter***). **FHA should also consider cutting FHA premiums for new loans.**

2. **States Should Reduce Barriers to Loan Originator Licensing.** IMBs don't originate loans out of branches like banks do - but instead generally use loan originators (LOs). So, the best way to generate more loans to underserved borrowers and communities is to license more LOs that serve them. [See page 2 for CHLA recommendations to reduce barriers to SAFE Act licensing].

3. **Fannie and Freddie should eliminate LLPAs (fee add-ons) for entry-level homeownership options like manufactured homes, condominiums, and affordable homes in high cost areas.**

4. **The CFPB should create exemptions from the LO Comp rule for State HFA bond loans and mortgage banker brokered loans, to serve underserved borrowers** [see CHLA White Paper].

[1] CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

Bootstrapping ECOA and Disparate Impact to Create a Back-door CRA for IMBs

CHLA is also concerned that in prior years, the CFPB has at times used disparate impact to implement a kind of *de facto* national CRA requirement on IMBs - without any legal basis in federal statute.

This has taken the form of the CFPB using statistical outcomes and disparate income – not to determine whether an IMB is engaging in discrimination - but to pressure them to do more lending to certain protected classes and to take actions like opening new branches in certain communities.

Nowhere in the ECOA statute are such remedies authorized or even contemplated. ECOA is an anti-discrimination statute – not a vehicle to force IMBs to take affirmative actions to increase loans to certain classes of borrowers. ECOA should not morph into a backdoor federal CRA requirement for IMBs.

CHLA has written extensively - including a 2021 **CHLA Comment Letter** to the OCC on this subject, explaining why CRA is entirely inappropriate for IMBs - either at the federal or the state level .

IMBs do not take deposits from communities and deploy them elsewhere, which is the problem CRA seeks to address for banks with branches. IMBs bring capital **into** communities from outside sources, through sources like Ginnie Mae and sales to the GSE cash window and to aggregators. Moreover, unlike banks, IMBs do not enjoy FDIC deposit insurance, access to Federal Reserve funds, or FLHB advances.

History has shown that state imposition of CRA on IMBs actually discourages IMBs from mortgage lending in a state, as documented in the 2021 CRA comment letter linked above. That letter uses HMDA data to show that IMB mortgage loan growth in Massachusetts significantly trailed the national average of IMB lending growth after Massachusetts adopted CRA requirements for IMBs.

Recommendations to Lower Barriers to SAFE Act Licensing

Finally, using ECOA or CRA to press IMBs to open branches in certain communities is based on a flawed understanding of how IMBs work. While banks predominately use branches and their existing customer base to develop their mortgage loan business, the origination model of IMBs relies on mortgage loan originators to identify potential borrowers and originate loans for them.

Therefore, the most effective way to increase IMB mortgage lending for protected ECOA classes like minority borrowers or to lend in underserved communities is to increase the number of mortgage loan originators serving these borrowers and communities. Since states supervise the SAFE Act licensing process, they could play a constructive role in making this happen by:

(1) Waiving state SAFE Act text fees and/or subsidize the cost of SAFE Act pre-licensing courses for underserved borrower seeking to obtain their SAFE Act mortgage license. [Other sources like appropriated Fair Housing Funds or CDBG or HOME funds could also fund this].

(2) Eliminating SAFE Act restrictions that deny licenses to non-bank mortgage loan originators based on blemishes on their credit reports.

(3) Ending requirements in some states that mortgage loan originators be located within a specified distance of an IMB physical office.

DISCOURAGEMENT

CHLA supports the tweaks the Bureau is proposing to the Discouragement Provisions of ECOA.

Regulation B 1002.4(b) currently provides 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."*

The proposed changes would:

(1) Clarify that an *"oral or written statement"* that would be subject to scrutiny is limited to only oral or written words or visual images (like videos) – and does not include business practices like branch office decisions, advertisement placement choices, or community event participation.
(2) Modify applicability of the *"directed at"* provision, so that targeted advertising and geographically focused marketing would not violate the discouragement provision. Applicability of such latter activities are inherently subjective and lack clear interpretations as to compliance.
(3) Narrow liability to statements that directly express intent to discriminate, in order to exclude statements that might be controversial or unpopular, but don't reflect discrimination.

These changes would preserve the essential purpose of the Discouragement Provisions – prohibiting oral or written statements that discourage on a prohibited basis a reasonable person from pursuing a credit application – while making clarifications to ensure more of a bright line interpretation of the prohibition.

In turn, these changes would reduce unnecessary compliance burdens for mortgage lenders that are extraneous to the objectives of the Discouragement provision. This helps in the overall long term goal of the Bureau in reducing mortgage costs and fees for borrowers.

SPECIAL PURPOSE CREDIT PROGRAMS

CHLA supports the objectives of Special Purpose Credit Programs (SPCPs), recognizing their goal of responsibly expanding access to credit for underserved borrowers.

At the same time, CHLA appreciates and supports the CFPB's effort in the proposed rule to provide clearer parameters regarding the permissible structure of SPCPs, including the proposed limits on the use of race, color, national origin, sex, and certain other protected characteristics as eligibility criteria.

CHLA believes that a focus on geography or income levels—including those designed to support rural or persistently underserved communities—can be effective.

We understand the Bureau's rationale for these restrictions, as well as the requirement that a for-profit institution seeking to base eligibility on race or national origin would need to demonstrate, for each participant, that the individual would not otherwise receive credit due to that characteristic.

Given the compliance complexity and legal risk associated with such individualized determinations, CHLA believes that many lenders—particularly small and mid-sized IMBs—may find such programs difficult to administer in practice. Within this framework, we support the Bureau's effort to provide clarity while reducing the potential for fair lending uncertainty or inadvertent noncompliance.

In closing, CHLA appreciates the opportunity to submit these comments.

Sincerely,

COMMUNITY HOME LENDERS OF AMERICA