APPENDIX B: Examples of Consumers Harmed by Credit Discrimination

No comment can catalog the full breadth and scope of credit discrimination within the American financial system. However, since the Bureau's Propose Rule contains little by way of justification for watering down a major civil rights act, we attempt to provide examples, collected from consumers and research. We note for instance that discrimination goes unaddressed among certain often overlooked populations, including:

American Indians. American Indian populations on reservations have been redlined.[1] Lenders have argued, for example, that redlining is permissible on reservation property because American Indian reservation residents do not generally own their property.

Military service members and veterans. In December 2023, a class action lawsuit was filed against Navy Federal Credit Union, the country's largest credit union, following a CNN report demonstrating a sharp disparity between approval rates for white mortgage applicants as compared to Hispanic and Black applicants.[2] Citing the CNN report, the complaint alleges that in 2022 the credit union approved mortgages for more than 75% of white applicants but fewer than 50% of Black applicants seeking the same type of loan, the complaint states that the disparity in approvals "is not readily explainable by any variable other than bias."[3]

Women. As discussed above women continue to face significant headwinds in obtaining credit. A 2010 report from Work Life Law, produced by UC Hastings College of the Law, found that discrimination against women in the lending on the basis of pregnancy or maternity leave was widespread.[23] In *Williams v. Countrywide Home Loans, Inc.*, a pregnant woman alleged that Countrywide refused to grant her a loan because her income would be reduced for several years while she raised her child.[24] The Consumer Federation of America reported that women are disproportionately represented in the high-cost, subprime mortgage market at the national level.[21] A later report by the Woodstock Institute also shows that disparities between men and women exist in particular markets (in that case Chicago).[22]

Two litigation matters reflect recent examples of why disparate impact liability under ECOA is important:

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[1] According to the Department of Justice, avoidance of tribal court jurisdiction is not a legitimate business justification for refusing to make secured loans when the collateral is located on an American Indian reservation. Complaint & Consent Decree, United States v. Blackpipe State Bank, No. 93-5115 (D.S.D. 1994), available at www.justice.gov.

[2] See Rene Marsh & Audrey Ash, *Class Action Lawsuit Alleging Discrimination Filed Against Navy Federal After CNN Exclusive Report*, CNN (Dec. 19, 2023), available at www.cnn.com.

[3] Complaint, Oliver & Jacob v. Navy Fed. Credit Union, No. 1:23-cv-01731, at 8 (E.D. Va. Dec. 17, 2023).

Upstart Monitor Report
In 2020, the Student Borrower Protection Center found that lender **Upstart** used an AI model that would cause a hypothetical Howard University graduate to pay almost $3,500 more for a five-year $30,0000 loan than a similar graduate from New York University.[4] Although Upstart's model did not look at or use proxies for race, it still approved Black applicants for loans at lower rates. Upstart made some changes to its AI model to reduce bias and make it fairer for all borrowers, but failed to implement all the changes recommended from an independent civil rights monitor.

Earnest Operations LLC Settlement with Massachusetts Attorney General
Earnest Operations LLC settled for $2.5 million with the state of Massachusetts after it was found that an AI model used to determine whether or not to lend to applicants or the loan terms discriminated against Black, Latino, and immigrant applicants.[5] The AI model used a "Knockout Rule" to automatically deny applications based on immigration status as well as a "Cohort Default Rate" – an average rate of loan defaults associated with a specific educational institution – variable in its algorithmic model, which resulted in disparate impact in approval rates and loan terms for a certain product, with Black and Hispanic applicants more likely to be penalized than White applicants.

In addition, in comments from industry players have shared the following information in the CFPB's 2020 and 2025 ECOA Rulemaking Dockets:

Comments from the CFPB's 2020 ECOA RFI:
Caroline Gerardo Barbeau (mortgage banker for the past 30 years)
https://www.regulations.gov/comment/CFPB-2020-0026-0070

Summary: Ms. Barbeau is a mortgage banker who speaks 4 languages and believes that all borrowers should be given documents in their own language and have someone in the room with them who can converse with them and explain documents in their language and English to make sure things are fair.

[4] "LDF, SBPC, and Upstart Announce Final Monitorship Report on AI and Fair Lending," NAACP Legal Defense Fund (Mar. 28, 2024), https://www.naacpldf.org/press-release/ldf-sbpc-and-upstart-announce-final-monitorship-report-on-ai-and-fair-lending/.
[5] Massachusetts Office of the Attorney General, "AG Campbell Announces $2.5 Million Settlement With Student Loan Lender For Unlawful Practices Through AI Use, Other Consumer Protection Violations" (July 10, 2025), https://www.mass.gov/news/ag-campbell-announces-25-million-settlement-with-student-loan-lender-for-unlawful-practices-through-ai-use-other-consumer-protection-violations.

California Association of Realtors (realtor trade association)
https://www.regulations.gov/comment/CFPB-2020-0026-0148

Summary: ECOA should be a baseline for fair and equitable lending, but the CFPB should go further than that. They should use state law where it goes beyond ECOA and allow states to regulate to meet their own needs. The California Association of Realtors relied on a Nov. 2019 Berkeley study that found that "from 2009 to 2015, lenders rejected 0.74 to 1.3 million Latinx and African-American applications that would have been accepted except for discrimination. FinTech lenders, on the other hand, do not discriminate at all in the decision to reject or accept a minority loan application in our sample." The comment also pointed to another study, "Racial Differences in Access to Mortgage Lending: Comparison Across Major Institutions" (July 20, 2020). This study also found Black and Latinx borrowers were denied loans at a higher rate than White borrowers with similar credit.

Erik Mayer (academic researcher)
https://www.regulations.gov/comment/CFPB-2020-0026-0068
Summary: Auto lending is replete with examples of discrimination, with minority applicants 1.5 percentage points less likely to receive a loan than their equivalently qualified white applicant counterparts. This stops 80,000 minorities from getting loans per year. Among borrowers with the same financial characteristics, minorities are charged .7% APR more than white borrowers, around $410 up front per borrower and $1.7 Billion per year, the rough equivalent of having a credit score 30 points lower than it actually is. The discriminatory lending is geographically consistent with areas of racial biases.

Comments in the Current, 2025 ECOA Rulemaking Docket:

Cheryl Evans (title operations strategist, founder of a national platform used by title professionals)

https://www.regulations.gov/comment/CFPB-2025-0039-0005
Summary: Ms. Evans works across different regions where lending patterns mirror historic inequities, with those disadvantaged neighborhoods regularly receiving fewer mortgage approvals, less advertising, and higher priced credit options even when they have comparable borrower qualifications. Disparate impact is the only way to force lenders to examine if their "neutral" policies produce discriminatory results. CFPB admits removing effects based liability leads to more credit denials, higher priced credit, and fewer paths to redress for consumers harmed by discriminatory outcomes. When lending is available and fair, communities and economies thrive; when it isn't, they fall apart.

Veronica Lockett (attorney, social worker, and realtor)
https://www.regulations.gov/comment/CFPB-2025-0039-0008
Summary: Ms. Lockett opposes the rule change because it lessens the power of disparate impact to expose the discrimination she sees when algorithms prefer certain profiles, ZIP codes, make inconsistent documentation demands, and have unexplained interest rate differences. The people she works with are first time buyers, people rebuilding after setbacks, and families who have faced instability. They don't understand why they're denied. Sometimes it is reporting errors, other times underwriting standards not considering real circumstances. SPCPs help fill gaps by recognizing different starting points, restriction of which would shrink access for groups already facing longstanding structural exclusion. Many people coming from hard situations do not have the ability to prove intent behind lenders' decisions. She also sees lenders refusing to correct errors, automating denials with no explanation, and inconsistent information from collectors. People need disparate impact to have any chance.

Brian Warwick (consumer lawyer)
https://www.regulations.gov/comment/CFPB-2025-0039-0012
Summary: Mr. Warwick is a consumer lawyer who has seen discrimination in auto loans where a dealer has a consumer (usually of color) who is approved for a certain interest rate (5% for example) by the lender, but the dealer says they are approved for a higher interest (8%) and splits the difference (3%) with the lender for overcharging. These practices result in consistent patterns of discrimination.

Cathy Mansfield (academic researcher)
https://www.regulations.gov/comment/CFPB-2025-0039-0018
Summary: In her studies of mortgage lending, discriminatory lending has been rampant in the subprime mortgage market crisis. Subprime lender rate setting policies led to discretionary pricing causing borrowers protected by ECOA to pay much more for loans, something that can only be stopped by disparate impact. ECOA borrowers are also discouraged from seeking loans from traditional lenders, even if they're qualified, instead being steered to higher cost loans.