

United States Senate

WASHINGTON, DC 20510

February 25, 2026

The Honorable Jonathan V. Gould
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, D.C. 20219

The Honorable Travis Hill
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

The Honorable Kyle S. Hauptman
Chairman of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Comptroller Gould, Chairman Hill, and Chairman Hauptman:

We write today with concern regarding your agencies' decisions to remove references to disparate impact liability in your guidance documents governing bank and credit union supervision. Removing disparate impact liability from these documents will significantly weaken longstanding civil rights safeguards and make it easier for financial institutions to discriminate against borrowers on the basis of protected characteristics such as race and gender. Your agencies must immediately reinstate the use of disparate impact analysis to ensure examiners can use the full set of tools at their disposal to uncover and act on instances of discrimination in financial services.

For decades, the federal government and lenders institutionalized financial discrimination through practices such as redlining and denying certain financial services in minority neighborhoods, which restricted access to homeownership and widened the racial wealth gap.¹ In the 1960s, Congress began to acknowledge discrimination in the financial system, and passed a series of civil rights laws to combat these practices. These included the Fair Housing Act of 1968, which outlawed racially motivated redlining, the Equal Credit Opportunity Act of 1974, which prohibited discrimination in credit transactions, the Home Mortgage Disclosure Act in 1975, which required financial institutions to report and disclose loan-level information about mortgages, helping shed light on potentially discriminatory lending patterns, and the Community Reinvestment Act in 1977, which ensured that banks reinvest in low-and-moderate income communities where they operate.²

¹ Federal Reserve History, "Redlining," June 2, 2023, <https://www.federalreservehistory.org/essays/redlining>.

² *Id*; Consumer Financial Protection Bureau, "About HMDA," <https://www.consumerfinance.gov/data-research/hmda/>.

Not all discriminatory conduct in financial services is easily identifiable at the onset. Disparate impact refers to practices that disproportionately and adversely affect members of a protected class, even if the practice may seem neutral on its face. By focusing on the consequences of such practices, disparate impact analyses help uncover discriminatory conduct that may be deliberate, but subtle or concealed. Most cases of lending discrimination fall into this pattern: though not explicit, a pattern of behavior by a lender can produce discriminatory outcomes, whether or not the stated intention of that behavior is discriminatory. Instead of putting an explicit “No Blacks Allowed” sign on a bank window, for example, lenders might focus on disproportionately white areas or follow other policies that effectively mean avoiding communities of color.

In April 2025, President Donald Trump signed an executive order seeking “to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible.”³ Following this executive order, your agencies removed all references to disparate impact in your examination manuals. Specifically, in July 2025, the OCC removed references of disparate impact liability, from the “Fair Lending” booklet of the Comptroller’s Handbook and instructed its examiners to no longer examine for disparate impact.⁴ In August 2025, the FDIC eliminated all references to disparate impact from its Consumer Compliance Examination Manual.⁵ And in September 2025, the NCUA followed, eliminating all references to disparate impact from its Fair Lending Guide, and instructed examiners to no longer request or review matters related to credit union’s disparate impact risk, and internal disparate-impact risk analysis, assessment processes or procedures.⁶

Removing disparate impact ties examiners’ hands and makes it much harder to uncover discrimination by banks, credit unions, mortgage originators, and other lenders. Discrimination often goes undetected unless independent entities conduct an analysis that reveals discrimination after the consumer received a loan. Your agencies’ compliance processes have traditionally required lenders to thoroughly review policies and procedures for disparate outcomes.⁷ These requirements have been responsible for the identification of most cases of discriminatory conduct

³ Executive Order 14281, “Restoring Equality of Opportunity and Meritocracy,” April 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

⁴ Office of the Comptroller of the Currency, “Fair Lending: Removing References to Disparate Impact,” July 14, 2025, <https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-16.html>.

⁵ Federal Deposit Insurance Corporation, “Update to the FDIC’s Consumer Compliance Examination Manual,” August 29, 2025, <https://www.fdic.gov/news/financial-institution-letters/2025/update-fdics-consumer-compliance-examination-manual>.

⁶ Letter from Chairman Kyle Hauptman to Federally Insured Credit Unions, “Removal of Disparate Impact,” September 4, 2025, <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/removal-disparate-impact>.

⁷ Letter from Americans for Financial Reform to Acting Director Mulvaney, June 25, 2018, <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/cfpb-inherited-regs-disparate-impact.pdf>; United States v. Citizens Republic Bancorp, Inc. and Citizens Bank, Case No. 2:11-cv-11976-LPZ-LJM (E.D. Mich. 2011); United States v. Compass Bank, Civil Action No. 07-B-0102-S (N.D. Ala 2007); United States v. First American Bank, Civil Action No. 04C-4585 (N.D. Ill. 2004); United States v. Midwest BankCentre, Case No. 4:11-cv-01086 (E.D. Mo. 2011); United States v. PrimeLending, Case No. 3:10-cv-02494-P (N.D. Tex. 2011); United States v. SunTrust Mortgage, Case No. 3:12-cv-00397-REP (E.D. Va. 2012); United States v. Texas Champion Bank, Case No. Case 2:13-cv-00044 (S.D. Tex. 2013); United States v. C&F Mortgage Corporation, Case No. 3:11-cv-00653 (E.D. Va. 2011); United States v. First United Bank, Case No. 3:15-cv-00144-L (N.D. Tex. 2015); United States v. AIG Federal Savings Bank and Wilmington Finance, Inc., Case No. 1:10-cv-00178-JJF (D. Del. 2010).

brought under the Equal Credit Opportunity Act.⁸ Now, the OCC supervisory process will no longer examine community banks, national banks, federal savings associations and federal branches or agencies of foreign banking organizations over disparate-impact risk analysis, or disparate impact risk assessment processes or procedures.⁹ Meanwhile, the FDIC supervised banks and savings associations, and NCUA supervised federal credit unions will no longer be evaluated for disparate impact risk.¹⁰

Conducting disparate impact analyses is integral to combating disparities in mortgage lending, credit cards, auto financing, and other consumer financial products. Given the importance of disparate impact liability, we urge your agencies to restore references to disparate impact in your examination manuals, and request that your agencies provide a briefing on your efforts to do so by March 11, 2026.

Sincerely,



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



Chris Van Hollen
United States Senator



Angela D. Alsobrooks
United States Senator



Tina Smith
United States Senator



Catherine Cortez Masto
United States Senator



Jack Reed
United States Senator

⁸ *Id.*

⁹ Banking Dive, “OCC drops disparate impact liability from supervision, exam metrics,” Rajashree Chakravarty, July 15, 2025, <https://www.bankingdive.com/news/occ-drops-disparate-impact-liability-from-supervision-exam-metrics/753092/>.

¹⁰ Federal Deposit Insurance Corporation, “Update to the FDIC’s Consumer Compliance Examination Manual,” August 29, 2025, <https://www.fdic.gov/news/financial-institution-letters/2025/update-fdics-consumer-compliance-examination-manual/>; National Credit Union Administration, “NCUA Disparate Impact References From Fair Lending Guide and Other Materials,” press release, September 4, 2025, <https://ncua.gov/newsroom/press-release/2025/ncua-disparate-impact-references-fair-lending-guide-and-other-materials>.



Cory A. Booker
United States Senator