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Ranking Member Markey, Lawmakers Condemn CFPB Attacks on Underserved Small Businesses (/public/index.cfm/pressreleases?ID=9DDE02AD-8D34-4E41-BFA3-4279BF0BA035)

January 26, 2026

Markey leads lawmakers in opposition to CFPB lending rule changes attacking protections for minority-owned and underserved small businesses

Letter (PDF) (https://www.sbc.senate.gov/public/_cache/files/7/f/7f417695-badd-4892-8ac6-c702c02c4e6d/CD4E59C571D1862D4B8B3CDEF12D80B0DCE60465E74CBAE48A05C6EEDFBA29E9.01.21.26-letter-to-cfpb.pdf)

(Washington, January 26) - Ranking Member Edward J. Markey (D-Mass.) and Senators Elizabeth Warren (D-Mass.), Mazie Hirono (D-Hawaii), and Cory Booker (D-NJ) sent a letter to Acting Director of the Consumer Financial Protection Bureau (CFPB) Russell Vought to oppose two proposed rule changes that gut protections against discriminatory lending practices that harm small businesses. The rule changes would undermine efforts to collect data on lending disparities and limit the ability of small businesses to bring discrimination claims under the Equal Credit Opportunity Act. These rules harm small businesses by turning a blind eye to discriminatory lending practices that leave minority and underserved entrepreneurs behind and put communities at risk.

In Massachusetts, minority entrepreneurs report greater challenges accessing capital than white-owned businesses; minority entrepreneurs are denied financing at nearly twice the rate of white-owned businesses, leading to an unmet demand for financing of over $600 million annually. (https://www.tbf.org/-/media/tbf/files/forum-materials/the-color-of-the-capital-gap--forum-event-presentation--final-112823.pdf) Financial health and creditworthiness do not fully account for access to capital. Research shows that minority entrepreneurs receive less favorable treatment by small business loan officers. The Trump administration's proposed rules undermine data collection and tools used to shed light on lending disparities and combat discriminatory lending practices.

In the letter, the lawmakers write, "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."

The lawmakers continue, "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… 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. 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 lawmakers conclude, "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."

The lawmakers request answers to the following questions in writing 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?

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 the historic and present-day discrimination that presents such barriers?

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