

## **Petition for Rulemaking: Guidance to Registrants Regarding Disclosure of Material Risks from Race- and Ethnicity-Based Lending, Investment, and DEI Programs**

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### **Submitted by:**

Free Enterprise Project  
National Center for Public Policy Research  
2005 Massachusetts Ave., NW  
Washington, DC 20036

### **Submitted to:**

Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Attention: Secretary, Securities and Exchange Commission

Pursuant to Rule 192(a) of the Commission’s Rules of Practice, we request that the Commission issue guidance to issuers—particularly publicly traded financial institutions—regarding disclosure of material risks arising from race- and ethnicity-based lending, investment, credit and related DEI programs.

The National Center for Public Policy Research is a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code. The National Center’s Free Enterprise Project works to ensure that publicly traded companies remain focused on their role of creating societal wealth while staying within the bounds of the law, including respecting their fiduciary obligations. Disclosure of material facts and risks is one of these obligations.

U.S. publicly traded financial institutions have become deeply entangled in race- and ethnicity-conscious programs that explicitly allocate lending, investments and economic opportunities based on demographic identity rather than individual merit, creditworthiness or neutral criteria. While often presented as efforts to promote “equity,” these initiatives carry substantial legal, regulatory, reputational, financial and operational risks—risks that are currently under-disclosed to investors.

In a legal environment grounded in colorblind equal protection and fair lending laws, such programs expose companies to enforcement actions, litigation, changes in regulatory scrutiny, portfolio impairments and erosion of shareholder value. Recent federal enforcement actions demonstrate that these risks are not hypothetical.

On May 12, 2026, the U.S. Department of Justice announced a \$30 million settlement with PayPal regarding its 2020 Economic Opportunity Fund. This \$530 million initiative explicitly channeled benefits toward “Black and underrepresented minority businesses and communities”

on the basis of race and national origin. The DOJ found these preferences violated the Equal Credit Opportunity Act (ECOA).

As part of the resolution, PayPal agreed to abandon race-based criteria and redirect support through neutral measures, such as fee waivers for veteran-owned businesses and firms in manufacturing, technology and other sectors.

PayPal's experience is not isolated. Following the 2020 social unrest, numerous major financial institutions adopted similar race-conscious programs. Examples include:

- **JPMorgan Chase:** A \$30 billion Racial Equity Commitment focused on lending, investments and support specifically for Black, Hispanic and Latino communities
- **Bank of America:** Pledges exceeding \$1 billion aimed at addressing “economic and racial inequality,” with targeted preferences for minority-owned businesses
- **Citigroup:** Implementation of Special Purpose Credit Programs offering relaxed underwriting standards for minority- and woman-owned enterprises
- **U.S. Bank:** A Business Diversity Lending Program extending up to \$2.5 million in financing with preferential terms for businesses at least 51% owned by “people of color” and other designated groups

Such programs expose issuers to significant risks, including:

- **Legal and Regulatory Risks:** Potential DOJ, CFPB or other enforcement actions for ECOA violations or other fair lending statutes; private litigation alleging reverse discrimination; and heightened scrutiny following the Supreme Court's decisions rejecting race-based preferences (e.g., *Students for Fair Admissions v. Harvard*, 2023) and renewed emphasis on colorblind enforcement of civil rights laws
- **Financial and Operational Impacts:** Increased default risks from relaxed underwriting; portfolio reallocation costs; loss of access to certain government programs or partnerships; and potential impairments to asset values or revenue streams tied to these initiatives
- **Reputational and Market Risks:** Erosion of customer and investor trust, boycotts, talent retention challenges and adverse effects on stock performance when programs face public backlash or enforcement
- **Broader Market Effects:** Distortion of capital allocation away from merit-based decisions, reduced economic efficiency and hidden liabilities that could affect systemic stability in the financial sector

Current issuer disclosures of these risks in SEC filings (particularly 10-K risk factors and MD&A sections) are often vague, boilerplate or entirely absent. Many companies frame DEI

initiatives only in positive ESG or sustainability terms without detailing the associated legal exposures, potential financial costs or shifting regulatory landscape. This leaves investors unable to fully assess portfolio risks, and policymakers without a clear picture of systemic vulnerabilities.

The Commission has previously addressed related disclosure topics, but existing guidance does not adequately cover the specific and growing materiality of race- and ethnicity-based program risks in the current legal environment. Investors and the public cannot afford incomplete information about practices that directly implicate core antidiscrimination laws and fiduciary duties.

We are asking the Commission to take action as soon as possible under its existing regulatory powers to remedy this situation. Issuers, investors and regulators cannot bury their heads in the sand about these material risks.

To fulfill its investor protection mandate, we respectfully urge the Commission to:

1. Issue formal guidance on the materiality of fair lending compliance risks, ECOA liabilities and DEI-related program exposures, including requirements for specific risk factor disclosures in SEC filings.
2. Initiate rulemaking to enhance risk factor and MD&A reporting requirements for financial institutions engaged in lending, credit or investment activities with respect to race- or ethnicity-conscious programs.
3. Consider stakeholder engagement, such as public roundtables or requests for information, to better understand how these practices affect capital market efficiency, investor confidence and fair competition.

America's capital markets thrive when rooted in the rule of law, merit and equal opportunity for all individuals regardless of race or ethnicity. Clear guidance from the SEC will promote transparency, mitigate hidden risks, protect investors and reinforce the foundations of free enterprise.

Thank you for your attention to this petition. The Free Enterprise Project stands ready to provide additional information, data or testimony.

Sincerely,  
Curtis T. Hill, Jr.  
Senior Advisor  
Free Enterprise Project  
National Center for Public Policy Research  
Washington, D.C.