



December 1, 2020

**Submitted via [www.regulations.gov](http://www.regulations.gov)**

Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

**Re: Request for Information on the Equal Credit Opportunity Act and Regulation B [Docket No. CFPB-2020-0026]**

To whom it may concern:

Thank you for the opportunity to comment on the Bureau of Consumer Financial Protection's (CFPB) Request for Information (RFI) on the Equal Credit Opportunity Act (ECOA) and Regulation B. The National Disability Rights Network (NDRN) appreciates that the CFPB seeks comment on the actions it can take or should consider taking to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges under the ECOA and Regulation B.

The National Disability Rights Network (NDRN) is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities, including advocacy on accessibility of financial services and institutions for people with disabilities.

As an organization that supports the right of all people with disabilities to live and work in their community, NDRN believes unimpeded access to financial services such as credit plays an important role in this effort. Unfortunately, people with disabilities are often excluded from mainstream financial services and are less likely to be banked or have access to mainstream credit<sup>1</sup>. While there are several factors that contribute to

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1 Auchenbach, K. (2019, November 20). Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2017 FDIC National Survey of Unbanked and Underbanked Households and Focus Group

people with disabilities not having access to credit, there exist disability specific barriers such as misperceptions, misunderstandings, communications barriers and lack of basic disability etiquette among lenders can make taking out a loan more difficult for people with disabilities<sup>2</sup>.

The problem of people with disabilities being excluded from financial services is also an intersectional one. A history of exclusive practices in the United States, such as redlining and employment discrimination, have resulted in a system where people of color with disabilities, particularly Black, Indigenous and People of Color (BIPOC) and the Latinx community, are at a particular disadvantage financially<sup>3</sup>. The poverty rate of BIPOC communities is higher than the rate of white communities regardless of disability status and individuals with disabilities are significantly more likely to be living in poverty than those without disabilities regardless of race and ethnicity<sup>3</sup>. However, the groups with the highest poverty rates are Black and Indigenous individuals with disabilities<sup>3</sup>. This underscores NDRN's view that any opportunity that the CFPB has to strengthen its supervision and enforcement capability under the ECOA and Regulation B be considered in order to better prevent credit discrimination especially among those with intersecting identities including disability.

Given NDRN's demonstrated interest in this topic as it relates to people with disabilities, please see our responses to questions 6 and 8 posed in the RFI:

**6. Sexual Orientation and Gender Identity Discrimination: Should the Supreme Court's decision in *Bostock* affect how the Bureau interprets ECOA's prohibition of discrimination on the basis of sex? If so, in what way(s)?**

In our view, the Supreme Court's decision in *Bostock* applies equally to other laws that prohibit discrimination based on sex, such as the ECOA, as the Court's analysis interpreted the meaning of sex-based discrimination and was not dependent on the language or structure of Title VII of the Civil Rights Act of 1964. We agree with the opinion of the court when it says, "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex"<sup>4</sup>. This view is particularly important given that the U.S. Trans Survey of 2015 indicates that the proportion of transgender individuals who identify as having a disability exceeds that of the general population<sup>5</sup> and overall thirty-nine percent of transgender respondents reported having one or more disability, compared to fifteen to twenty percent of the general population<sup>5</sup>. Unfortunately, the mistreatment of both

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Research. Retrieved from <https://www.nationaldisabilityinstitute.org/reports/banking-status-and-financial-behaviors-2019/>

2 Nanette Goodman and Michael Morris (2018 June). Access to Credit for Adults with Disabilities. Retrieved from <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/access-credit-brief.pdf>

3 Auchenbach, K. (2020, September 2). Research Brief: Race, Ethnicity and Disability. Retrieved from <https://www.nationaldisabilityinstitute.org/reports/research-brief-race-ethnicity-and-disability/>

4 *Bostock v. Clayton County*, 590 U.S., 9 (2020)

5 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

individuals with disabilities and LGBTQ+ individuals is not a new phenomenon<sup>6</sup>. Both communities intersect and are subject to discrimination. Given this reality and the opinion in *Bostock*, we believe that the CFPB should interpret the ECOA's prohibition of discrimination on the basis of sex as encompassing sexual orientation discrimination and gender identity discrimination.

***8. Public Assistance Income: Should the Bureau provide additional clarity under ECOA and/or Regulation B regarding when all or part of the applicant's income derives from any public assistance program? If so, in what way(s)? For example, should it provide guidance on how to address situations where creditors seek to ascertain the continuance of public assistance benefits in underwriting decisions?***

Similar to many people in this country, people with disabilities also utilize and rely on public assistance programs. People with disabilities participate in programs such as the Supplemental Nutrition Assistance Program (SNAP), the various federal housing assistance programs, Medicare/Medicaid along with disability-specific public assistance programs such as the Social Security and Supplemental Security Income disability programs and disability compensation through the U.S. Department of Veterans Affairs. Given the participation of people with disabilities in many of these programs, we find it important to ensure that the provision in the ECOA making it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . because all or part of the applicant's income derives from any public assistance program"<sup>7</sup> along with Regulation B and its official interpretation that "A creditor must evaluate income derived from . . . public assistance on an individual basis"<sup>8</sup> are enforced with fidelity.

While we believe the ECOA along with Regulation B and its official interpretations are clear regarding creditor's obligations to not discriminate against applicants on public assistance with respect to credit transactions, we appreciate the measures the CFPB has taken to provide additional clarity to lenders in the form of policy guidance<sup>9</sup> and blogs<sup>10</sup>. Collectively, we believe these documents provide greater clarity to creditors evaluating applicants on public assistance. With respect to the CFPB providing additional clarity on this topic, we recommend continuing to issue policy guidance and

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<sup>6</sup> David Pettinicchio, Why Disabled Americans Remain Second-Class Citizens, WASHINGTON POST (July 23, 2019), <https://www.washingtonpost.com/outlook/2019/07/23/why-disabled-americans-remain-second-class-citizens/>; Susan Miller, 'Not just about a cake shop': LGBT People Battle Bias in Everyday Routines, USA TODAY (Jan. 16, 2018), <https://www.usatoday.com/>

<sup>7</sup> 15 U.S.C. 1691(a)(2).

<sup>8</sup> Comment 6(b)(5)–(1) <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1002/Interp-6/#6-b-2-Interp-5>

<sup>9</sup> See CFPB Bulletin 2015–02, Section 8 Housing Choice Voucher Homeownership Program (May 11, 2015), [https://files.consumerfinance.gov/f/201505\\_cfpb\\_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf](https://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf). See CFPB Bulletin 2014–03, Social Security Disability Income Verification (Nov. 18, 2014), [https://files.consumerfinance.gov/f/201411\\_cfpb\\_bulletin\\_disability-income.pdf](https://files.consumerfinance.gov/f/201411_cfpb_bulletin_disability-income.pdf)

<sup>10</sup> Social Security disability income shouldn't mean you don't qualify for a mortgage. (2014, November 18). Retrieved from <https://www.consumerfinance.gov/about-us/blog/social-security-disability-income-shouldnt-mean-you-dont-qualify-for-a-mortgage/>

other informational communications, such as blogs, as needed and in response to challenges faced by people on public assistance seeking to engage in credit transactions. At this point, we believe this is an effective strategy to ensure further compliance with the ECOA and Regulation B.

Please contact Cyrus Huncharek, Senior Public Policy Analyst, at [cyrus.huncharek@ndrn.org](mailto:cyrus.huncharek@ndrn.org) should you have any questions or concerns with these comments.

Sincerely,



Curtis L. Decker  
Executive Director