



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

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:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Financial Security & Poverty Task Force appreciate 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. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We appreciate 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.

Due to the disproportionate number of people with disabilities living in poverty, our specific task force advocates for public policy that impacts people living in poverty, including the disproportionate number of people of color with disabilities living in poverty, and to improve the financial status of people with disabilities. 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>.

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<sup>1</sup> 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 Research. Retrieved from <https://www.nationaldisabilityinstitute.org/reports/banking-status-and-financial-behaviors-2019/>

The issue 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>2</sup>. Individuals with disabilities are significantly more likely to be living in poverty than those without disabilities regardless of race and ethnicity<sup>2</sup>. However, the groups with the highest poverty rates are Black and Indigenous individuals with disabilities<sup>2</sup>. These troubling statistics reinforce our view that any attempt to better the financial prospects of people with disabilities and people of color with disabilities should be pursued. The strengthening of the CFPB's supervision and enforcement capabilities under the ECOA and Regulation B is one way to improve the financial status of people with disabilities.

Given CCD'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)?**

The Supreme Court's decision in *Bostock* should apply 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>3</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>4</sup> and overall thirty-nine percent of transgender respondents admitted having one or more disability, compared to fifteen to twenty percent of the general population<sup>5</sup>. Unfortunately, the mistreatment of both individuals with disabilities and LGBTQ+ individuals is not a new phenomenon<sup>5</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.

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

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

4 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.

5 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/>

**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?**

People with disabilities participate in several public assistance programs, including but not limited to, 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 this, 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>6</sup> along with Regulation B and its official interpretation that “A creditor must evaluate income derived from . . . public assistance on an individual basis”<sup>7</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>8</sup> and blogs<sup>9</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 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.

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6 15 U.S.C. 1691(a)(2).

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

8 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)

9 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/>

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,

Justice in Aging  
National Association of Councils on Developmental Disabilities  
National Disability Institute  
National Disability Rights Network (NDRN)  
RespectAbility  
The Arc