Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2012-04 (Fair Lending)

Date: April 18, 2012

Subject: Lending Discrimination

In response to recent inquiries, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") issues this bulletin to provide guidance about compliance with the fair lending requirements of the Equal Credit Opportunity Act ("ECOA"),[1] and its implementing regulation, Regulation B.[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act" or "Act") granted CFPB authority to supervise and enforce compliance with the ECOA for entities within CFPB's jurisdiction and to issue regulations and guidance to interpret the ECOA.[3]

The ECOA makes it illegal for a creditor to discriminate in any credit transaction against any applicant because of race, color, religion, national origin, sex, marital status, age (if the applicant is old enough to enter into a contract), receipt of income from any public assistance program; or the exercise in good faith of a right under the Consumer Credit Protection Act.[4] As the legislative history of the ECOA emphasizes, "[t]he availability of credit often determines an individual's effective range of social choice and influences such basic life matters as selection of occupation and housing."[5] Without nondiscriminatory access to credit, consumers face obstacles in obtaining equal access to housing.

In response to recent inquiries, the CFPB states that it will continue to adhere to the fair lending principles outlined in Regulation B. Consistent with other federal supervisory and law enforcement agencies, the CFPB reaffirms that the legal doctrine of disparate impact remains applicable as the Bureau exercises its supervision and enforcement authority to enforce compliance with the ECOA and Regulation B.

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[1] 15 U.S.C. § 1691 *et seq.*
[2] 12 C.F.R. pt. 1002 *et seq.*
[3] Sections 1022, 1024 -1026, 1053, 1054, 1061, and 1085 of the Dodd-Frank Act.
[4] 15 U.S.C. § 1691(a)(1).
[5] House Report that accompanied H.R. 6516, No. 94-210, p. 3.

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In 1994, the Interagency Task Force on Fair Lending – which was composed of ten federal agencies, including the Department of Justice, each of the federal prudential agencies with regulatory authority over financial institutions, and the Federal Trade Commission – released the Policy Statement on Discrimination in Lending ("Policy Statement").[6] The Policy Statement notes that the courts have recognized the following methods of proving lending discrimination under the ECOA:

- Overt evidence of discrimination;
- Evidence of disparate treatment; and
- Evidence of disparate impact.

The CFPB, which did not yet exist at that time, concurs with the Policy Statement. In addition, the Bureau's ECOA Examination Procedures, Mortgage Origination Examination Procedures, and Mortgage Servicing Examination Procedures also adopt and reference the Interagency Fair Lending Examination Procedures, including those designed to identify evidence of disparate impact.[7]

The applicability of disparate impact doctrine, also known as the "effects test," to credit transactions is reflected in the legislative history of the ECOA. Regulation B, which the Federal Reserve Board adopted to implement the ECOA, provides that:

> The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.[8]

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[6] Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 Fed. Reg. 18,266 (Apr. 15, 1994) (online at www.occ.treas.gov/news-issuances/federal-register/94fr9214.pdf).
[7] CFPB, *Supervision and Examination Manual* (Oct. 2011) (online at www.consumerfinance.gov/wp-content/themes/cfpb_theme/images/supervision_examination_manual_11211.pdf).
[8] 12 C.F.R. § 1002.6.

The Commentary explicating Regulation B further elaborates:

> The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.[9]

In accordance with the foregoing authorities, as the CFPB exercises its supervisory and enforcement authority, it will consider evidence of the disparate impact doctrine as one method of proving lending discrimination under the ECOA and Regulation B.

[9] 12 C.F.R. pt. 1002, Supp. I, § 1002.6, ¶ 6(a)-2.