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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to clarify that, with respect to any aspect of a credit transaction, the prohibition against sex discrimination in the Equal Credit Opportunity Act (ECOA) and Regulation B, which implements ECOA, encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations.

DATES: This interpretive rule is effective on March 16, 2021.

FOR FURTHER INFORMATION CONTACT: Pavy Bacon, Senior Counsel, Office of Regulations at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is responsible for administering and enforcing ECOA [1] and its implementing Regulation B.[2] ECOA makes it ''unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction,'' on several enumerated bases, including ''on the basis of . . . sex . . . '' [3] Likewise, Regulation B prohibits a creditor from discriminating against an applicant on a prohibited basis (including ''sex'' [4]) ''regarding any aspect of a credit transaction,'' and from making ''any oral or written statement to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.'' [5]

On June 15, 2020, in *Bostock* v. *Clayton County, Georgia,* the Supreme Court ruled that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) encompasses sexual orientation discrimination and gender identity discrimination.[6] The Court relied on three key findings to reach its decision: (1) Sexual orientation discrimination and gender identity discrimination necessarily involve consideration of sex; (2) Title VII's language requires sex to be a ''but for'' cause of the injury, but need not be the only cause; and (3) Title VII's language covers discrimination against individuals, and not merely against groups.[7]

In response to Executive Order 13988, ''Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation'',[8] which addresses *Bostock,* Jeanine M. Worden, Acting Assistant Secretary for Fair Housing & Equal Opportunity, released a memorandum directing the Office of Fair Housing and Equal Opportunity of the U.S. Department of Housing and Urban Development to take the actions to administer and fully enforce the Fair Housing Act to prohibit discrimination because of sexual orientation and gender identity.[9]

Before the issuance of the *Bostock* opinion, at least twenty states and the District of Columbia prohibited discrimination on the bases of sexual orientation and/or gender identity either in all credit transactions or in certain (*e.g.,* housing-related) credit transactions.[10] As such, financial institutions subject to such laws were required to comply with those requirements prior to the issuance of the *Bostock* opinion. Many financial institutions recognize sexual orientation and/or gender identity to be protected classes under State laws [11] and may have determined to incorporate practices that prohibit discrimination on these bases.[12]

[1] 15 U.S.C. 1691–1691f.

[2] 12 CFR part 1002.

[3] 15 U.S.C. 1691(a)(1).

[4] 12 CFR 1002.2(z).

[5] 12 CFR 1002.4(a)–(b).

[6] *Bostock* v. *Clayton Cty., Georgia,* 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

[7] *Id.*

[8] 86 FR 7023 (Jan. 25, 2021).

[9] U.S. Dep't. of Hous. and Urban Dev., *Memorandum, Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act* (Feb. 11, 2021), *https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.*

[10] While not intended to be an all-inclusive list, the State statutes include Cal. Civ. Code secs. 51, 51.5; Cal. Gov't Code sec. 12955; Colo. Rev. Stat. sec. 24–34–501(3); Colo. Rev. Stat. sec. 5–3–210; Conn. Gen. Stat. secs. 46a–81e, 46a–81f, 46a–98; Del. Code Ann. tit. 6, sec. 4604; D.C. Code sec. 2–1402.21; Haw. Rev. Stat secs. 515–3, 515–5; 775 Ill. Comp. Stat. sec. 5/1–102(A), 5/1–103(O), (O1), and (Q), 5/4–102, 5/3–102, 5/4–103; Iowa Code secs. 216.8A, 216.10; Me. Rev. Stat. tit. 5, sec. 4553(5–C) and (9–C), 4595 to 4598, 4581 to 4583; Md. Code Ann, State Gov't secs. 20–705, 20–707, 20–1103; Mass. Gen. Laws ch. 151B, sec. 4(3B), (14); Minn. Stat. secs. 363A.03 (Subd. 44), 363A.09(3), 363A.16 (Subds.1 and 3), 363A.17; N.H. Rev. Stat. Ann. sec. 354–A:10; N.J. Stat. Ann. sec. 10:5–12(i); N.M. Stat. Ann. sec. 28–1–7; N.Y. Civ. Rights Law sec. 40–c(2); N.Y. Exec. Law sec. 296–A; Or. Rev. Stat. secs. 174.100(7), 659A.421; R.I. Gen. Laws secs. 34–37–4(a) through (c), 34–37–4.3, 34–37–5.4; Va. Code Ann. sec. 6.2–501(B)(1); 15.2–853; 15.2–965; Vt. Stat. Ann. tit. 8, sec. 10403; Vt. Stat. Ann. tit. 9, sec. 2362, 2410, 4503(a)(6); Wash. Rev. Code sec. 49.60.030, 49.60.040 (14), (26), and (27), 49.60.175, 49.60.222; Wis. Stat. secs. 106.50, 224.77(1)(o). Also, since *Bostock,* the North Dakota Department of Labor and Human Rights has interpreted the North Dakota statutes against sex discrimination to include sexual orientation and gender identity discrimination. N.D. Dep't of Lab. and Hum. Rts. (NDDOLHR), *NDDOLHR Now Accepting and Investigating Charges of Discrimination Based on Sexual Orientation and Gender Identity* (June 18, 2020), *https://www.nd.gov/labor/news/nddolhr-now-accepting-and-investigating-charges-discrimination-based-sexual-orientation-and.* There are also a number of municipalities that include sexual orientation and/or gender identity in their credit discrimination ordinances. *See, e.g.,* Austin City Code sec. 5–1–1 *et seq.;* N.Y.C. Admin. Code secs. 8–101, 8–107 *et seq.;* S.F. Police Code, sec. 3304(a) *et seq.*

[11] *See* Consumer Bankers Ass'n (CBA), Comment Letter on Request for Information on the Equal Credit Opportunity Act and Regulation B (RFI), Document No. CFPB–2020–0026–0147 (Dec. 1, 2020) (''Many CBA members currently consider sexual orientation and gender identity to be protected classes under [S]tate laws, therefore, potential post Bostock changes to how the Bureau interprets ECOA's prohibition on discrimination on the basis of sex would likely align with, and would not significantly alter, practices that comply with state laws.'').

[12] *See, e.g.,* Off. of the Comptroller of the Currency, *Interpretive Letter #998* (Mar. 9, 2004), *https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2004/int998.pdf* (''[W]hat would generally be understood to be an 'anti-discrimination' law . . . [e.]g., laws that prohibit lenders from discriminating on the basis of race, religion, ethnicity, gender, sexual orientation,

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The Bureau has previously indicated that legal developments would lead to prohibitions against sex discrimination being interpreted to afford broad protection against discrimination on the bases of sexual orientation and gender identity. In 2016, in response to an inquiry from Services & Advocacy for GLBT Elders (SAGE), the Bureau sent a letter addressing coverage of sex discrimination involving sexual orientation and gender identity under ECOA.[13] The letter to SAGE concluded that ''the current state of the law supports arguments that the prohibition of sex discrimination in ECOA and Regulation B affords broad protection against credit discrimination on the bases of gender identity and sexual orientation, including but not limited to discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes as well as discrimination based on one's associations.'' [14] Further, the letter to SAGE stated that the Bureau ''will continue to monitor these legal developments closely as we strive to ensure that our interpretation and application of laws and rules under our jurisdiction, including ECOA and Regulation B, appropriately reflect the evolving precedents interpreting sexual discrimination law.'' [15] The Bureau also incorporated its views regarding sex discrimination under ECOA and Regulation B into its ECOA brochure and AskCFPB materials.[16]

After the Supreme Court issued the *Bostock* opinion, diverse stakeholders asked the Bureau to clarify that ECOA's and Regulation B's prohibition of ''sex'' discrimination includes discrimination on the bases of sexual orientation and/or gender identity. Many comments to the Bureau's recent *Request for Information on the Equal Credit Opportunity Act and Regulation B* (RFI) [17] from a variety of stakeholders, including consumer and civil rights advocates, a local government official, an academic institution, and industry representatives, reiterated this request for regulatory clarification.[18] The Bureau is issuing this interpretive rule to address any regulatory uncertainty that may still exist under ECOA and Regulation B as to the term ''sex'' so as to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities and to ensure that consumers are protected from discrimination.[19] This interpretive rule serves a stated purpose of Regulation B, which is to ''promote the availability of credit to all creditworthy applicants without regard to . . . sex . . . '' [20]

II. Discussion

The Bureau interprets the ECOA and Regulation B prohibitions against discrimination on the basis of ''sex'' to include discrimination based on sexual orientation and/or gender identity. The Bureau's interpretation is consistent with the Court's conclusion in *Bostock* regarding sex discrimination under Title VII.[21]

It is well established that ECOA and Title VII are generally interpreted consistently.[22] Like Title VII,[23] ECOA prohibits sex discrimination (among other bases) and does not require that sex (or other protected characteristics) be the sole or primary reason for an action to be discriminatory.[24] Like Title VII,[25] ECOA applies to sex discrimination against individuals, not just to situations where all men or all women (or any other group of people with a common protected characteristic) are discriminated against

disability, or the like . . . would *not* be preempted.'') (emphasis in original); Nat'l Cmty. Reinvestment Coal., Comment Letter on RFI, Document No. CFPB–2020–0026–0123 (Dec. 1, 2020) (noting that ''defense attorneys have already informed the mortgage industry that as more State laws incorporate this robust definition of sex, they should incorporate it into their policies and procedures'') (citation omitted).

[13] *See* Letter from Bureau of Consumer Fin. Prot., to Serv. & Advocacy for GLBT Elders (SAGE), (Aug. 30, 2016), *https://files.consumerfinance.gov/f/documents/cfpb_sage-response-letter_2021-02.pdf.*

[14] *Id.* at 7.

[15] *Id.*

[16] *See* Bureau of Consumer Fin. Prot., *Helping consumers understand credit discrimination* (Mar. 2017), *https://files.consumerfinance.gov/f/documents/201703_cfpb_handout_ECOA_helping_consumers.pdf;* Bureau of Consumer Fin. Prot., *What protections do I have against credit discrimination?, https://www.consumerfinance.gov/fair-lending/.* (Both state: ''Currently, the law supports arguments that the prohibition against sex discrimination also affords broad protection from discrimination based on a consumer's gender identity and sexual orientation.''). The Bureau will update these and other materials to reflect this interpretive rule.

[17] 85 FR 46600 (Aug. 3, 2020).

[18] *See, e.g.,* Nat'l Fair Hous. All., Comment Letter on RFI, Document No. CFPB–2020–0026–0137 (Dec. 1, 2020); City of Houston, City Controller, Comment Letter on RFI, Document No. CFPB–2020–0026–0120 (Dec. 1, 2020); Steven Trovarelli, Comment Letter on RFI, CFPB–2020–0026–0051 (Oct. 1, 2020); Anonymous, Comment Letter on RFI, Document No. CFPB–2020–0026–0064– (Nov. 3, 2020); Consortium for Citizens with Disabilities Fin. Sec. & Poverty Task Force, Comment Letter on RFI, Document No. CFPB–2020–0026–0104– (Dec. 1, 2020); Nat'l Women's Law Ctr., Comment Letter on RFI, Document No. CFPB–2020–0026–0112–A1 (Dec. 1, 2020); Cmty. Dev. Bankers Ass'n (CDBA), Comment Letter on RFI, Document No. CFPB–2020–0026–0113 (Dec. 1, 2020); Mortg. Bankers Ass'n, Comment Letter on RFI, Document No. CFPB–2020–0026–0115 (Dec. 1, 2020); Nat'l Cmty. Reinvestment Coal., Comment Letter on RFI, Document No. CFPB–2020–0026–0123 (Dec. 1, 2020); LendingClub, Comment Letter on RFI, Document No. CFPB–2020–0026–0126 (Dec. 2, 2020); Nat'l Consumer Law Ctr., Comment Letter on RFI, Document No. CFPB–2020–0026–0129–A1 (Dec. 2, 2020); The Williams Institute, Comment Letter on RFI, Document No. CFPB–2020–0026–0132 (Dec. 2, 2020); Nat'l Disability Rts. Network, Comment Letter on RFI, Document No. CFPB–2020–0026–0139 (Dec. 2, 2020); Serv. & Advocacy for GLBT Elders (SAGE), Comment Letter on RFI, Document No. CFPB–2020–0026–0141 (Dec. 2, 2020); Ctr. for Am. Progress, Comment Letter on RFI, Document No. CFPB–2020–0026–0144 (Dec. 2, 2020); Consumer Bankers Ass'n, Comment Letter on RFI, Document No. CFPB–2020–0026–0147 (Dec. 2, 2020).

[19] 12 U.S.C. 5493(c)(2)(A), 5511(b)(2).

[20] 12 CFR 1002.1(b).

[21] *See Bostock,* 140 S. Ct. 1731.

[22] *See, e.g.,* Equal Credit Opportunity Act Amendments of 1976, Public Law 94–239, 114 Stat. 246 (1976); S. Rep. 94–589, at 4–5 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403. (''judicial constructions of anti-discrimination legislation in the employment field . . . are intended to serve as guides in the application of this [Equal Credit Opportunity] Act''); *Mercado-Garcia* v. *Ponce Fed. Bank,* 979 F.2d 890, 893 (1st Cir. 1992) (applying Title VII standards in interpreting ECOA); *Bhandari* v. *First Nat'l Bank of Commerce,* 808 F.2d 1082, 1100 (5th Cir. 1987) (same); *Rosa* v. *Park W. Bank & Tr. Co.,* 214 F.3d 213, 215 (1st Cir. 2000) (''look[ing] to Title VII case law'' and reversing the dismissal of a sex discrimination claim filed by a transgender person who alleged being denied a loan application for failing to appear in clothing consistent with the sex reflected on their identification cards). *See also Bostock,* 140 S. Ct. at 1778 (Alito, S., dissenting) (expressing the view that the decision ''is virtually certain to have far-reaching consequences'' including, specifically, with regard to ECOA).

[23] *Bostock,* 140 S. Ct. at 1734 (holding that under Title VII, ''the plaintiff's sex need not be the sole or primary cause of the employer's adverse action'').

[24] *See* Official Staff Commentary, 12 CFR part 1002, supp. I, ¶ 4(a)–1) (''Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.''); *Saldana* v. *Citibank, Fed. Sav. Bank,* No. 93 C 4164, 1996 WL 332451, at *2 (N.D. Ill. June 13, 1996) (''To establish a case of lending discrimination under the [Fair Housing Act] or the ECOA, [plaintiff] does not need to prove an actual intent to discriminate on the part of [defendant], but she must show that race played some role in [defendant's] decision.''). Moreover, the 1994 Interagency Policy Statement on Discrimination in Lending (Policy Statement) provides an illustration of disparate treatment where the applicants' minority status was not the sole or primary reason for the loan denial since adverse credit information was also a factor in the decision. The illustration states that a nonminority couple applied for an automobile loan. The lender found adverse information in the couple's credit report. The lender discussed the credit report with them and determined that the adverse information (a judgment against the couple) was incorrect since the judgment had been vacated. The nonminority couple was granted their loan. A minority couple applied for a similar loan with the same lender. Upon discovering adverse information in the minority couple's credit report, the lender denied the loan application on the basis of the adverse information without giving the couple an opportunity to discuss the report. 59 FR 18266, 18268 (Apr. 15, 1994); Bureau of Consumer Fin. Prot., *Bulletin 2012–04 (Fair Lending)* (Apr. 18, 2012), *https://files.consumerfinance.gov/f/201404_cfpb_bulletin_lending_discrimination.pdf* (the Bureau expressed its concurrence with the Policy Statement).

[25] *Bostock,* 140 S. Ct. at 1734 (finding that ''an employer cannot escape liability [under Title VII] by demonstrating that it treats males and females comparably as groups'').

categorically.[26] Indeed, Regulation B clarifies that ECOA prohibits discrimination based not only on the characteristics of an applicant but also based on the characteristics of a person with whom an applicant associates.[27]

The Bureau believes that even though the term ''sex'' is not defined in ECOA or Regulation B, the prohibitions against discrimination on the basis of ''sex'' under ECOA and Regulation B are correctly interpreted to include discrimination based on sexual orientation and/or gender identity. As explained below and consistent with the Court's analysis in the *Bostock* opinion, this conclusion can be based on ''no more than the straightforward application of legal terms with plain and settled meanings.'' [28] But, even if it were not so straightforward, the Bureau would still reach the same conclusion based on its expertise in interpreting ECOA and Regulation B. In sum, the Bureau finds that under ECOA and Regulation B: (1) Sexual orientation discrimination and gender identity discrimination necessarily involve consideration of sex; (2) an applicant's sex must be a ''but for'' cause of the injury, but need not be the only cause; and (3) discrimination against individuals, and not merely against groups, is covered. The Bureau also clarifies that ECOA's and Regulation B's prohibition against sex discrimination encompasses discrimination motivated by perceived nonconformity with sex-based or gender-based stereotypes, as well as discrimination based on an applicant's associations.

First, under ECOA and Regulation B, as under Title VII, sexual orientation discrimination and gender identity discrimination necessarily involve consideration of sex. For example, if a creditor declines the loan application of a male applicant on the basis that he is attracted to men, the creditor discriminates against him for traits or actions it tolerates in female applicants; further, this discrimination is motivated, at least partly, by the applicant ''failing to fulfill traditional sex stereotypes.'' [29] Or, if a creditor declines the loan forbearance application of a transgender person who was identified as male at birth but who now identifies as female, but approves the application of an otherwise similarly-situated applicant who was identified as female at birth and now continues to identify as female, the creditor discriminates against a person identified as male at birth for traits or actions that it tolerates in an applicant identified as female at birth. In these examples, the individual applicant's ''sex plays an unmistakable and impermissible role'' [30] in the credit decisions and thus constitutes discrimination on the basis of sex in violation of ECOA and Regulation B. The Bureau's interpretation is consistent with the Supreme Court's conclusion in *Bostock* that ''it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.'' [31]

Second, under ECOA and Regulation B, as under Title VII, sex does not have to be the sole or primary reason for an action to be discriminatory.[32] For example, when a creditor rejects an applicant on the basis of their being gay or transgender, two causal factors may be in play—*both* the individual's sex *and* something else (the sex to which the individual is attracted or with which the individual identifies).[33] Under ECOA and Regulation B, if a creditor would not have rejected a credit applicant or discouraged a prospective applicant but for that individual's sex, the causation standards are met, and liability may attach.[34]

Third, ECOA and Regulation B, like Title VII, apply to sex discrimination against individuals, not just to situations where all men or all women are discriminated against categorically.[35] Further, ECOA and Regulation B, like Title VII, work to protect individuals of all sexes from discrimination, and do so equally.[36] For example, a creditor who rejects an application from a woman because the loan officer regards her as insufficiently feminine, and also rejects an application from a man because the loan officer regards him as being insufficiently masculine, may treat men and women as groups more or less equally. But in *both* scenarios, the creditor has discriminated against an applicant in violation of ECOA and Regulation B by rejecting an individual applicant in part because of sex. Instead of avoiding ECOA exposure, this creditor ''doubles it.'' [37] It is no defense for a creditor to argue that it is equally happy to reject male *and* female applicants who are gay or transgender because each instance of discriminating against an individual applicant because of that individual's sex is an independent violation of ECOA and Regulation B.[38]

Last, the Bureau interprets the ECOA and Regulation B prohibition against discrimination on the basis of ''sex'' to also include discrimination motivated by perceived nonconformity with sex-based or gender-based stereotypes, including those related to gender identity and/or sexual orientation, as well as discrimination based on an applicant's associations. An example of discriminatory sex-based or gender-based stereotyping occurs if a small business lender discourages a small business owner appearing at its office from applying for a business loan and tells the prospective applicant to go home and change because, in the view of the creditor, the small business customer's attire does not accord with the customer's gender.[39] The Bureau's interpretation regarding discriminatory stereotyping is consistent with multiple court decisions [40] and with the Court's *Bostock* decision.[41] The Bureau's

[26] While Title VII prohibits discrimination against ''any individual,'' 42 U.S.C. 2000e–2(a)(1), and ECOA prohibits discrimination against ''any applicant,'' 15 U.S.C. 1691(a), both statutes refer to a singular person or applicant rather than a group. ECOA defines an ''applicant'' as ''any person who applies to a creditor directly for an extension, renewal, or continuation of credit or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.'' 15 U.S.C. 1691a(b). Regulation B defines an ''applicant'' as ''any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit.'' 12 CFR 1002.2(e).

[27] 12 CFR part 1002, supp. I, ¶ 2(z)–1 (providing that ''prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates'').

[28] *Bostock,* 140 S. Ct. at 1743.

[29] *Id.* at 1742.

[30] *Id.* at 1741–42.

[31] *Id.* at 1741. Notwithstanding differences in the ways that Title VII and ECOA phrase their prohibition against sex discrimination, the Bureau interprets ECOA and Regulation B to incorporate the *Bostock* principles and reasoning with respect to the recognition of sexual orientation discrimination and gender identity discrimination as sex discrimination under ECOA and Regulation B.

[32] *See id.* at 1744; 59 FR 18266, 18268 (Apr. 15, 1994).

[33] *See id.* at 1742.

[34] *See id.* at 1742; *see also Rosa,* 214 F.3d at 215.

[35] *See Bostock,* 140 S. Ct. at 1740–41; *see also Rosa,* 214 F.3d at 215 (finding a potential ECOA claim where the plaintiff ''did not receive the loan application because he was a man, whereas a similarly situated woman would have received the loan application'').

[36] *See Bostock,* 140 S. Ct. at 1741.

[37] *See id.* at 1741.

[38] *See id.* at 1742–43.

[39] *See, e.g., Rosa,* 214 F.3d at 214–15.

[40] *See EEOC* v. *Boh Bros. Constr. Co.,* 731 F.3d 444, 457–58 (5th Cir. 2013) (en banc); *Glenn* v. *Brumby,* 663 F.3d 1312, 1314, 1320–21 (11th Cir. 2011); *Barnes* v. *City of Cincinnati,* 401 F.3d 729, 735–37 (6th Cir. 2005); *Nichols* v. *Azteca Rest. Enterprises, Inc.,* 256 F.3d 864, 870, 874–75 (9th Cir. 2001); *Rosa,* 214 F.3d at 215.

[41] *See Bostock,* 140 S. Ct. at 1742–43 (stating that an employer who fires employees ''for failing to fulfill traditional sex stereotypes doubles rather

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interpretation regarding associational discrimination is similarly consistent with the Court's reasoning in *Bostock* regarding how discrimination based on the sex, including sexual orientation and/or gender identity, of the persons with whom the individual associates is prohibited under Title VII.[42] A creditor engages in such associational discrimination if it, for example, requires a person applying for credit who is married to a person of the same-sex to provide different documentation of the marriage than a person applying for credit who is married to a person of the opposite sex. The Bureau's interpretation is consistent with the principle, applied by Federal agencies for decades, that credit discrimination on a prohibited basis includes discrimination against an applicant because of the protected characteristics of individuals with whom they are affiliated or associated (*e.g.,* spouses, domestic partners, dates, friends, coworkers).[43] Moreover, the Bureau has previously established that a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a protected class, because of the protected class of any persons associated with the extension of credit, or because of the protected class of other residents in the neighborhood where the property offered as collateral is located.[44]

For these reasons, the ECOA and Regulation B prohibition against discrimination on the basis of ''sex'' includes discrimination or discouragement based on sexual orientation and/or gender identity, including but not limited to discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations.

III. Legal Authority

This interpretive rule is issued under the Bureau's authority to interpret the ECOA and Regulation B, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[45]

By operation of the ECOA section 706(e), no provision of ECOA sections 701(a), 704(b), 706(a), or 706(b) imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[46]

IV. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.[47] Therefore, this rule is effective on March 16, 2021, the same date that it is published in the **Federal Register**.

V. Regulatory Matters

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[48] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[49] The Bureau also has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[50]

Pursuant to the Congressional Review Act,[51] the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: March 5, 2021.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2021–05233 Filed 3–15–21; 8:45 am]

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than eliminates Title VII liability, an employer who fires [employees] for being gay or transgender does the same'').

[42] *See id.* at 1748 (''So, for example, when it comes to homosexual employees, male sex and attraction to men are but-for factors that can combine to get them fired. The fact that female sex and attraction to women can also get an employee fired does no more than show the same outcome can be achieved through the combination of different factors. In either case, though, sex plays an essential but-for role.'').

[43] *See* Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary, 50 FR 48018, 48049 (Nov. 20, 1985) (providing that discrimination on a ''prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates,'' or because of the characteristics of people with whom an applicant has ''personal or business dealings''); 59 FR 18266, 18268 (Apr. 15, 1994) (stating that ''A lender may not discriminate on a prohibited basis because of the characteristics of: [a] person associated with a credit applicant (for example, a co-applicant, spouse, business partner, or live-in-aide); or [t]he present or prospective occupants of the area where property to be financed is located.''); 76 FR 79442, 79473 (Dec. 21, 2011); 81 FR 25323, 25325 (Apr. 28, 2016); Official Staff Commentary, 12 CFR part 1002, supp. I, ¶ 2(z)–1).

[44] Official Staff Commentary, 12 CFR part 1002, supp. I, ¶ 2(z)–1).

[45] 12 U.S.C. 5512(b)(1). The relevant provisions of the ECOA and Regulation B form part of Federal consumer financial law. 12 U.S.C. 5481(12)(D), (14).

[46] 15 U.S.C. 1691(e).

[47] 75 U.S.C. 553(d).

[48] 5 U.S.C. 553(b).

[49] 5 U.S.C. 603(a), 604(a).

[50] 44 U.S.C. 3501–3521.

[51] 5 U.S.C. 801 *et seq.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0144; Project Identifier MCAI–2021–00255–R; Amendment 39–21473; AD 2021–06–06]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Emergency Airworthiness Directive (AD) 2021–05–52 which applied to certain Bell Textron Canada Limited (Bell) Model 505 helicopters. Emergency AD 2021–05–52 required a one-time visual inspection of the pilot collective stick and grip assembly (pilot collective stick), a fluorescent penetrant inspection (FPI) if no crack was found during the visual inspection, and depending on the inspection results, removing the pilot collective stick from service and reporting certain information to Bell. Emergency AD 2021–05–52 also prohibited installing any pilot collective stick on any helicopter unless the inspections had been accomplished. This AD removes the visual inspection of the pilot collective stick, requires repetitive FPIs of the pilot collective stick, and requires revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. This AD retains the reporting requirement