

June 1, 2020

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

Re: Docket No. CFPB-2020-0013
85 FR 18214 Request for Information to Assist the Taskforce on Federal Consumer
Financial Law

Dear Chief of Staff Weber:

The National Community Reinvestment Coalition (NCRC) would like to respond to the CFPB's Request For Information related to the consumer financial services markets. As an organization devoted to the promotion of fair lending practices, we are especially interested in Question A6, which asks, *"Should the Bureau clarify its position on disparate impact theory under the Equal Credit Opportunity Act? If so, what should be the Bureau's position?"*

NCRC fully supports the use of disparate impact theory in Equal Credit Opportunity Act (ECOA) discrimination claims. We recently wrote to the Department of Housing and Urban Development (HUD) to express support for the traditional application of disparate impact theory in the enforcement of the Fair Housing Act. We have [attached](#) a copy of this letter.

NCRC supports the use of disparate impact theory in ECOA cases for the same reasons that we support the use of disparate impact theory in Fair Housing Act cases. Disparate impact is an essential tool for eliminating business practices that have discriminatory effects. Victims of discrimination should be able to seek redress, regardless of whether the discrimination they suffered was intentional.

In addition, when ECOA was enacted, it was intended to prohibit disparate impact discrimination. The legislative history makes it clear that the drafters wanted to prohibit disparate impact discrimination.¹ The House Committee Report that accompanied the ECOA

¹ Winnie F. Taylor, *Eliminating Racial Discrimination in the Subprime Mortgage Market: Proposals for Fair Lending Reform*, 18 J.L. & POL'Y 263, 273 n.38 (2009).

legislation showed that the bill was passed with the understanding that statistical evidence could be used to establish a *prima facie* case of discrimination.²

Many Americans are now desperate for access to credit due to financial difficulties related to the COVID-19 pandemic. Communities of color have been especially affected by the pandemic. It would be a huge blow to these communities if the CFPB were to reject the use of disparate impact theory in ECOA cases, thereby opening the door for lenders to enact discriminatory policies.

If you have any questions or need additional information regarding our comment, please do not hesitate to contact me or Gerron Levi, Director of Government Affairs at 202-464-2708.

Sincerely,

Jesse Van Tol
Chief Executive Officer

² H.R. Rep No. 210, at 5 (1975).