

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

May 7, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: May 12, 2021, Full Committee Markup

The full Committee will convene to mark up the following measures, in an order to be determined by the Chairwoman at 10 A.M. on Wednesday, May 12, 2021, and subsequent days if necessary, in a hybrid format in room 2128 of the Rayburn House Office Building as well as on the WebEx platform.

1. **Amendment in the Nature of a Substitute to H.R. 166 “The Fair Lending for All Act” (Green)**

Summary: The amendment in the nature of a substitute (ANS) to H.R. 166 would clarify that Equal Credit Opportunity Act (ECOA) prohibits credit discrimination on the basis of sexual orientation and gender identity, and further prohibits discrimination on the basis of zip code and census tract as well.¹ The bill also expands the disaggregation of data collected under the Home Mortgage Disclosure Act (HMDA) to account for zip code, census tract, income level, race, color, religion, national origin, sex, marital status, sexual orientation, gender identity, and age.² Additionally, the bill would create the Office of Fair Lending Testing in the Consumer Financial Protection Bureau (CFPB) that would be charged with testing creditors’ compliance with ECOA through the use of individuals who pose as prospective borrowers for the purpose of gathering information. The bill would also create criminal penalties under federal law for knowing and willful discrimination by lenders in any credit decision.

Background: Over the years, the consumer financial marketplace has shown repeated patterns of discriminatory lending practices, leading Congress to pass a number of laws, including ECOA, HMDA, and the Community Reinvestment Act. However, discriminatory lending practices persist. For example, the Center for Investigative Reporting’s Reveal project reviewed 31 million HMDA records and found modern day redlining in 61 metro areas.³ Redlining is a practice by which banks discriminated against prospective customers based primarily on where they lived, or their racial or ethnic background, rather than creditworthiness. The Reveal report found that when compared to White borrowers, lenders denied African American borrowers at significantly higher rates in 48 cities, Latinos in 25 cities, Asian Americans in 9 cities, and Native Americans in 3 cities.

¹ ECOA currently prohibits discrimination on the basis of race, color, religion, national origin, sex or marital status, or age, as well as if an applicant receives public assistance. See 15 U.S. Code §1691(a).

² Currently, HMDA data includes census tract, income level, racial characteristics, age, and gender. See 12 U.S.C. §2803(b)(4).

³ Reveal, [Kept Out: For people of color, banks are shutting the door to homeownership](#) (Feb. 15, 2018).

Moreover, fair lending enforcement declined significantly during the Trump Administration. Between 2014 and 2016, the CFPB and federal banking regulators cited, on average, 243 financial institutions for ECOA violations per year. Between 2017 and 2020, ECOA citations fell by almost half to 133 institutions cited, on average, for violations per year.⁴ Discriminatory trends in the consumer financial marketplace also affect borrowers based on their sexual orientation and gender identity. For example, a recent study examining mortgage data found, “a consistent pattern of higher costs both in closing fees and interest rates for same-sex borrowers.”⁵

Some have tried to argue discrimination based on sexual orientation and gender identity is not protected under ECOA. After the House passed the Equality Act earlier this year, which clarifies that ECOA prohibits discrimination based on sex, sexual orientation, or gender identity,⁶ the CFPB issued an interpretative rule confirming that discrimination based on sexual orientation and gender identity are indeed prohibited by ECOA.⁷ H.R. 166 would codify this recent CFPB action, while expanding the criteria to include discrimination based on zip code and census tract.

One potential tool to help root out discriminatory practices is fair lending testing. For example, *Newsday’s Long Island Divided* series, an exhaustive, three-year investigation into racial discrimination in home buying on Long Island, deployed actors to conduct fair lending testing, which involved the use of hidden cameras to record meetings with real estate agents.⁸ The investigation showed the disparate treatment of homebuyers of color and prompted a year-long investigation by the New York State Senate, which resulted in a report⁹ that led to a fair housing legislative package.¹⁰ In 40% of tests, agents engaged in potentially unequal, disparate treatment of homebuyers of color as compared to White homebuyers, and agents at ten of the twelve real estate firms that were tested demonstrated evidence of discriminatory behavior, such as steering non-White home shoppers to certain neighborhoods or requiring homebuyers of color to have prequalification letters from a mortgage lender before allowing them to view houses.¹¹ Building on these successful fair lending tests, H.R. 166 would require CFPB to establish an Office of Fair Lending Testing to regularly utilize these kinds of tests to identify and combat additional discriminatory practices in the marketplace.

H.R. 166 is supported by a number of national consumer and civil rights groups, including Center for Responsible Lending, Leadership Conference on Civil and Human Rights, NAACP, NAACP Legal Defense and Educational Fund, National Coalition for Asian Pacific American Community Development (National CAPACD), National Community Reinvestment Coalition (NCRC), National Consumer Law Center (on behalf of its low income clients), National Fair Housing Alliance, National NeighborWorks Association, Poverty & Race Research Action Council, Prosperity Now, Public Citizen, and Public Justice. Many state and local organizations support H.R. 166 as well, including: *Alaska* – AKPIRG; *Arizona* - Pima County Community Land Trust;

⁴ CFPB, [Fair Lending Report of the Bureau of Consumer Financial Protection](#) (Apr. 2021).

⁵ NCRC, [Same-Sex Couples And Mortgage Lending](#) (Jun 22, 2020)

⁶ [H.R. 5](#) (117th Cong.), the Equality Act

⁷ Consumer Financial Protection Bureau, [Equal Credit Opportunity \(Regulation B\); Discrimination on the Bases of Sexual Orientation and Gender Identity](#), 86 Fed. Reg. 14363 (March 16, 2021) (interpretive rule).

⁸ Ann Choi, et al., [Long Island Divided](#), *Newsday*, (Nov. 17, 2019).

⁹ New York State Senate, [Final Investigative Report, Fair Housing and Discrimination on Long Island](#) (Jan. 27, 2021).

¹⁰ New York State Senate, [Here Are the Eleven Bills Kavanagh & the Senate Majority Passed to Stop Housing Discrimination](#) (Feb. 8, 2021).

¹¹ Ann Choi, et al., [Long Island Divided](#), *Newsday*, (Nov. 17, 2019).

California - California Coalition for Rural Housing, California Low-Income Consumer Coalition (CLICC), California Reinvestment Coalition, Fair Housing Council of Orange County, People's Self-Help Housing, Public Good Law Center; *Colorado* - African American Trade Association, Urban Land Conservancy; *Connecticut* - Neighborhood Housing Services of Waterbury, Inc.; *D.C.* - 727 Mgt. LLC; *Delaware* - Delaware Community Reinvestment Action Council, Inc.; *Florida* - Affordable Homeownership Foundation, Inc., Community Reinvestment Alliance of South Florida, HELP COMMUNITY DEVELOPMENT CORP., Metro North Community Development Corporation; *Georgia* - Beyond Savvy Corporation, Equal Rights Center, Georgia Advancing Communities Together, Inc.; *Hawaii* - Hawai'i Alliance for Community-Based Economic Development, Self-Help Housing Corporation of Hawaii; *Illinois* - Housing Action Illinois, Universal Housing Solutions CDC, Woodstock Institute; *Indiana* - Habitat for Humanity of Northwest Indiana, HomesteadCS, Northwest Indiana Reinvestment Alliance, Prosperity Indiana, Suzy Q Service Corporation; *Maryland* - African American Chamber of Commerce of Montgomery County, CCCSMD, Housing Options & Planning Enterprises, Inc., MakingChange, Inc., Maryland Consumer Rights Coalition; *Minnesota* - Housing Justice Center, MICAH-Metropolitan Interfaith Council on Affordable Housing; *Mississippi* - MS Communities United for Prosperity (MCUP); *Missouri* - Consumers Council of Missouri, Metropolitan St. Louis Equal Housing and Opportunity Council, R.A.A. - Ready, Aim, Advocate; *New York* - Fair Finance Watch; *North Carolina* - Henderson and Company, Olive Hill Community Economic Development Corporation, Inc, Sandhills Community Action Program Inc.; *Ohio* - Columbus Empowerment Corporation, Home Repair Resource Center²³-, Homes on the Hill CDC, JOVIS, SCMBA; *Oregon* - CASA of Oregon, Housing Oregon; *Pennsylvania* - Ceiba, Philadelphia Association of Community Development Corporations, Pittsburgh Community Reinvestment Group; *Texas* - Southern Dallas Progress Community Development Corporation; *Washington* - Beacon Development Group C/O Cindy Proctor; *West Virginia* - CommunityWorks in West Virginia; and *Wisconsin* - Metropolitan Milwaukee Fair Housing Council.

2. Amendment in the Nature of a Substitute to H.R. 1443, the “LOBTO Business Equal Credit Enforcement and Investment Act” (Torres)

Summary: The ANS to H.R. 1443 would clarify that Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires financial institutions to collect the self-identified sexual orientation and gender identity of the principal owners of small businesses, in addition to their sex, race, and ethnicity. The ANS would also add a definition for businesses owned by lesbian, gay, bisexual, transgender and queer (LGBTQ+) individuals to the ECOA statute. The ANS includes a Sense of Congress confirming that sexual orientation and gender identity are already covered under ECOA (including the current data collection requirements), while noting the bill clarifies the sex, sexual orientation, and gender identity of the principal owners of a business should be collected as three separate forms of information.

Background: There are an estimated 1.4 million LGBT-owned businesses in the U.S. which contribute more than \$1.7 trillion dollars to the nation’s economy.¹² According to the National Gay and Lesbian Chamber of Commerce (NGLCC), in 2016, more than 66% of businesses certified by the NGLCC’s Business Enterprise Program identified as gay-owned, 29.1% lesbian-

¹² National LGBT Chamber of Commerce. [America’s LGBT Economy](#) (October 2016)

owned, 2.3% bisexual-owned, and 2% as transgender-owned.¹³ Certification provides these small businesses with opportunities to overcome historical barriers in access to capital and government procurement contracts.¹⁴

LGBTQ+ individuals experience discrimination when applying for a mortgage, credit card, student loan, and other forms of credit because of their sexual orientation or gender identity.¹⁵ While ECOA¹⁶ prohibits creditors from denying, discouraging or applying inconsistent standards to consumers seeking credit products or loans based on their sex, it does not explicitly protect individuals against discrimination based on their sexual orientation or gender identity. Former CFPB Director Richard Cordray identified several examples of case law, which “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...”¹⁷

Section 1071 of Dodd-Frank amended ECOA to require financial institutions to collect, maintain, and submit to the CFPB data on applications for credit for women-owned, minority-owned, and small businesses. Similar to HMDA data collection requirements for mortgage lending, this was done to help facilitate the enforcement of fair lending laws, as well as enable communities, government agencies, and lenders to identify community development needs as it relates to women-owned, minority-owned, and small businesses. The CFPB has yet to fully implement this requirement, but is operating under a court-supervised settlement with several small business owners and other organizations to promptly finalize rules under Section 1071.¹⁸ For example, the agency issued its final report of the Small Business Review Panel organized to help implement the law in December 2020.¹⁹

Furthermore, the Supreme Court decision in June 2020 held that Title VII of the Civil Rights Act of 1964²⁰ also applies to sexual orientation and gender identity.²¹ Still, an estimated 70% of LGBTQ+ individuals remain unprotected by non-discrimination statutes.²² According to the Williams Institute, more than 7.7 million LGBT adults over the age of 18, live in states without statutory protections against sexual orientation and gender identity discrimination in credit.²³ Following President Biden’s executive order to combat discrimination on the basis of gender

¹³ *Id.*

¹⁴ Justin Nelson, [The Equality Act Is Missing One Big Thing](#), The Advocate (Sept. 23, 2015).

¹⁵ Hua Sun and Lei Gao, *Lending practices to same-sex borrowers*, Proceedings of the National Academy of Sciences (May 17, 2019) and S. Goldberg et al., [LGBT People And Housing Affordability, Discrimination, and Homelessness](#) (April 2020).

¹⁶ [15 U.S. Code § 1691](#) (1974).

¹⁷ Letter from CFPB Director Richard Cordray to Services and Advocacy for GLBT Elders (SAGE) (Aug. 30, 2016).

¹⁸ Ballard Spahr – Consumer Finance Monitor, [CFPB and plaintiffs enter into settlement of lawsuit alleging wrongful delay in Section 1071 implementation](#) (Mar. 2, 2020)

¹⁹ CFPB, [Small business lending data collection rulemaking](#) (accessed May 7, 2021)

²⁰ Civil Rights Act of 1964, [Pub. L. No. 88-352](#).

²¹ *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 173 (2020).

²² Movement Advancement Project. "Equality Maps: State Nondiscrimination Laws." https://www.lgbtmap.org/equality-maps/non_discrimination_laws (May 4, 2021).

²³ Karith J Conran and Shoshana K. Goldberg, [LGBT People In the U.S. Not Protected By State Non-Discrimination Statutes](#) (April 2020).

identity and sexual orientation in January 2021,²⁴ the CFPB issued a rule clarifying protections against credit discrimination for the LGBTQ+ community under ECOA.²⁵

Part of the information required to be collected under Section 1071 of Dodd-Frank includes “the race, sex, and ethnicity of the principal owners of the business,” but there has been ambiguity regarding the the manner and form information about sexual orientation and gender identity should be collected. For example, in response to the rule, in an interview with the Illinois Eagle, Christy Mallory, legal director at the Williams Institute explained that “[r]esearch on LGBT people’s experiences with credit discrimination is limited—in part because creditors are not currently required by the Bureau to collect data specifically on applicants’ sexual orientation or gender identity.”²⁶ H.R. 1443 addresses this concern to affirm the intent of Congress that sexual orientation and gender identity is already included in ECOA’s data collection requirements, and further clarifies the sex, sexual orientation, and gender identity of the principal owners of a business should be collected as three separate forms of information. Moreover, the bill establishes a definition for a LGBTQ-owned businesses to help ensure these businesses get equal access to credit.

H.R. 1443 is endorsed by Center for American Progress, Center for LGBTQ Economic Advancement & Research, Equality Federation, Family Equality, Freedom for All Americans, Human Rights Campaign, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Chamber of Commerce, National Gay and Lesbian Chamber of Commerce, National LGBTQ Task Force Action Fund, the National Center for Transgender Equality, Out Leadership, PFLAG National, and SAGE.

3. Amendment in the Nature of a Substitute to H.R. 1188 the “Greater Accountability in Pay Act” (Velázquez)

Summary: The ANS to H.R. 1188, would require public companies, with the exception of emerging growth companies, to disclose certain employee pay raise information, including pay raises for executive employees and non-executive employees. The bill also requires companies to compare executive and non-executive pay increases to each other and to the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Companies would be required to disclose information related to those comparisons. Disclosures under this bill are annual.

Background: During 2020, the coronavirus 2019 pandemic killed more than 550,000 American lives and hurt the U.S. workforce, resulting in unprecedented unemployment rates. In fact, in April 2020, the unemployment rate reached 14.8%, the highest rate of unemployment since data collection began in 1948.²⁷ Still, the average salaries for chief executive officers of some of the

²⁴ [Exec. Order No. 13988](#), Fed. Reg. 86 (Jan 20, 2021).

²⁵ Consumer Financial Protection Bureau, [Equal Credit Opportunity \(Regulation B\): Discrimination on the Bases of Sexual Orientation and Gender Identity](#), 86 Fed. Reg. 14363 (March 16, 2021) (interpretive rule).

²⁶ Wray, Tom. 2021. “CFPB extends credit protections to LGBTQ.” *Illinois Eagle*, March 10, 2021. <https://illinoiseagle.com/2021/03/10/cfpb-extends-credit-protections-to-lgbtq/>

²⁷ Congressional Research Services, [Unemployment Rates During the COVID-19 Pandemic: In Brief](#) (Jan. 12, 2021).

largest publicly traded companies continued to rise. More specifically, according to an analysis done by the Wall Street Journal, “[m]edian pay for the chief executives of more than 300 of the biggest U.S. public companies reached \$13.7 million last year, up from \$12.8 million for the same companies a year earlier.”²⁸ Shareholders have reacted to this withholding their support for compensation practices.²⁹ For instance, shareholders with some companies, including “Starbucks Corp. and Walgreens Boots Alliance Inc.,” have even voting against compensation arrangements.³⁰ General Electric Co.’s shareholders rejected its company packages, including its chief executive officer’s whose 2020 compensation was over \$700 million.³¹ At the same time, General Electric has “laid off thousands of” employees.³² Information disclosed under the Greater Accountability in Pay Act would provide shareholders with more detailed information into the company’s human capital management, in particular, the company’s expenditures on executive compensation verses worker pay. This bill is supported by Public Citizen.

4. Amendment in the Nature of a Substitute to H.R. 2570, the “Climate Risk Disclosure Act” (Casten)

Summary: The ANS to H.R. 2570 would require public companies to disclose in their annual reports information relating to the financial and business risks associated with climate change. The bill also requires the SEC to establish, in consultation with other relevant financial agencies, climate-related risk disclosure metrics and guidance, which will be industry-specific, and will require companies to make both quantitative and qualitative disclosures.

Background: The Securities Exchange Act of 1934 requires public companies to file annual reports with the SEC to publicly disclose company information that investors would find pertinent in making investment decisions.³³ This reporting requirement mandates the disclosure of information related to risk exposure, material financial data, and an analysis performed by management on the company’s financial condition.³⁴ Although the effects of climate change pose significant risks to companies and investors, companies are currently not required to report climate-related risk exposure and risk management strategies. This bill is similar to Senator Warren’s Climate Risk Disclosure Act. This bill is supported by science advocacy groups such as the Union of Concerned Scientists; investor advocacy groups including Americans for Financial Reform, Corporate Accountability, Public Citizen and Ceres; and environmental groups including the Sierra Club, US SIF: The Forum for Responsible Investment, EarthRights International, Sunrise Movement, and 350.org.

5. Amendment in the Nature of a Substitute to H.R. 3007, the “Disclosure of Tax Havens and Offshoring Act” (Axne)

Summary: The ANS to H.R. 3007 would require public companies to disclose their total pre-tax profits, and total amounts paid in State, Federal, and foreign taxes. The bill would also require companies to disclose a number of specific tax-related items for each of its subsidiaries, as well as

²⁸ The Wall Street Journal, [CEO Pay Surged in a Year of Upheaval and Leadership Challenges](#) (April 21, 2021)

²⁹ *Id.*

³⁰ *Id.*

³¹ Reuters, [General Electric shareholders reject CEO Culp's pay deal](#) (May 4, 2021).

³² *Id.*

³³ See 15 U.S.C. § 78m(a).

³⁴ SEC, Form 10-K, General Instructions, available at <https://www.sec.gov/about/forms/form10-k.pdf>.

on a consolidated basis, such as total accrued tax expenses, stated capital, and total accumulated earnings.

Background: The Securities Exchange Act of 1934 requires public companies to file annual reports with the SEC to publicly disclose company information that investors would find pertinent in making investment decisions.³⁵ This reporting requirement mandates the disclosure of information related to risk exposure, material financial data, and an analysis performed by management on the company’s financial condition.³⁶ Although corporate tax practices may impose material financial risks on investors, there is currently no requirement for public companies to disclose their tax liabilities or the domestic or foreign governments they are owed to. Without this information in the form of standardized, mandatory disclosures, investors and markets are unable to adequately assess a company’s tax liability or any associated legal or reputational risk, which may have a material impact on both short- and long-term value. Additionally, lack of disclosure of this information makes it difficult for investors and consumers to know if the companies they are investing in are contributing to the American economy and protecting American jobs. This bill is supported by AFL-CIO, AFR, Americans for Tax Fairness, AFT, EPI, FACT Coalition, ITEP, NAACP, NELP, National Organization of Women, Oxfam America, Public Citizen, SEIU, among others.

6. Amendment in the Nature of a Substitute to H.R. 3009, “Improving Language Access in Mortgage Servicing Act” (Garcia, TX)

Summary: The ANS to H.R. 3009 would amend the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA) to establish language access requirements for creditors and servicers to better serve borrowers with limited English proficiency. Under the bill, the Consumer Financial Protection Bureau (CFPB) would be required to create a standard language preference form to be used by creditors and servicers to track language preferences and transfer such information with the loan. The CFPB and Federal Housing Finance Agency (FHFA) would also be required to work jointly to translate federal documents used in association with residential mortgage loan transactions from English into the eight languages most commonly spoken by individuals. The bill would also require relevant federal agencies to establish and maintain a language resources website for mortgage originators and servicers, as well as to improve existing websites that include information for consumers about language services provided by housing counseling agencies.

Background: According to the latest data from the U.S. Census Bureau, over 20 percent of U.S. households speak a language other than English, there are over 380 languages spoken in the U.S., and nearly 9 percent of households speak English “less than very well.”³⁷ Other than English, the top 8 languages spoken by households between 2016 and 2018 were: Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, and Polish.³⁸ While the financial services industry is largely centered on serving English-speaking consumers, ensuring language access in housing finance will help households with limited English proficiency (LEP), such as among immigrant

³⁵ See 15 U.S.C. § 78m(a).

³⁶ SEC, Form 10-K, General Instructions, available at <https://www.sec.gov/about/forms/form10-k.pdf>.

³⁷ U.S. Census Bureau, *Why We Ask Questions About Language Spoken at Home* (Accessed on May 3, 2021).

³⁸ U.S. Census Bureau, *The 2020 Census Speaks More Languages* (Mar. 9, 2020).

communities, have equal access to mortgage lending products and services and receive adequate documentation and servicing in their preferred language.³⁹

During the Great Recession, many LEP homeowners lost their homes to scams and foreclosure due to information gaps created by a lack of adequate servicing and documentation translated in their preferred language.⁴⁰ During the current COVID-19 pandemic and economic downturn, millions of homeowners are in forbearance or behind on their mortgage payments, with the threat of foreclosure once forbearance periods expire.⁴¹ As of April 2020, 24.7 million people in the U.S. were unemployed, with immigrants and Latinas experiencing some of the sharpest decreases in employment in the U.S.⁴² This bill will ensure that servicers and creditors covered under TILA and RESPA provide LEP borrowers with translated documents, interpretation services, and notice of other resources available in borrowers' preferred languages. These changes will ensure equal treatment and fair lending access, especially as the industry prepares to move homeowners through critical loss mitigation processes to avoid unnecessary foreclosures in the wake of COVID-19.

This bill is supported by the National Consumer Law Center (on behalf of its low-income clients), UnidosUS, Americans for Financial Reform, National Fair Housing Alliance, National Housing Resource Center, National Housing Law Project, Consumer Action, Asian Real Estate Association of America, National Association of Hispanic Real Estate Professionals, Inclusive Communities Project, Avenue Community Development Corporation, and California Reinvestment Coalition.

³⁹ See, e.g., Americans for Financial Reform, [The CFPB and Other Federal Agencies Should Adopt Strong Language Access Protections for Homeowners and Other Consumers](#) (May 2016).

⁴⁰ Americans for Financial Reform, [Barriers to Language Access in the Housing Market: Stories from the Field](#) (May 2016).

⁴¹ See U.S. Census Bureau, [Pulse Survey Week 27 Household Pulse Survey: March 17 – March 29](#) (Apr. 7, 2021); See also Mortgage Bankers Association, [Share of Mortgage Loans in Forbearance Decreases to 4.47 Percent](#) (May 3, 2021).

⁴² Rakesh Kochhar, [Hispanic women, immigrants, young adults, those with less education hit hardest by COVID-19 job losses](#), Pew Research Center (June 9, 2020); See also Prosperity Now, [The Unequal Impact of the COVID-19 Crisis on Households' Financial Stability](#) (Apr. 2020).