



## Regulation B Interpretive Rule on Sexual Orientation and Gender Identity

By: Bill Elliott, Director of Compliance Education

March 2021

The Bureau of Consumer Financial Protection (Bureau) issued an 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.

The interpretive rule will be effective upon publication in the Federal Register.

At Young & Associates, Inc., we have been teaching for years that this is the correct approach. The reality is that an applicant's sexual orientation or gender identity has absolutely nothing to do with whether they will be able to repay the loan. The focus of all bankers should be on the same things that are important in all credit decisions - cash, collateral, and credit. Nothing else really matters. The Equal Credit Opportunity Act (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 . . ." Likewise, Regulation B prohibits a creditor from discriminating against an applicant on a prohibited basis (including "sex" ) "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."

Before this interpretive rule, 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. This interpretive rule now makes this the new national standard. So financial institutions must recognize sexual orientation and/or gender identity to be protected classes and must incorporate practices that prohibit discrimination on these bases.

This interpretive rule addresses any regulatory uncertainty that may still exist under ECOA and Regulation B as to the term "sex" to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities and to ensure that consumers are protected from discrimination. It serves a stated purpose of Regulation B, which is to "promote the availability of credit to all creditworthy applicants without regard to ... sex ..."

As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.

### About Young & Associates, Inc.

Young & Associates, Inc. has provided consulting, training, and practical products for community financial institutions for over 43 years. We strive to provide the most up-to-date solutions for our clients' needs, while remaining true to our founding principles and goals – to ease the management of

your organization, reduce the regulatory burden, improve your bottom line, and increase shareholder value.

To learn more about Young & Associates, Inc. and how we can assist your organization, visit our website, or contact Dave Reno, Director – Lending and Business Development.

[www.younginc.com](http://www.younginc.com)

**Email:** [dreno@younginc.com](mailto:dreno@younginc.com)

**Phone:** 330.422. 3455