

CFPB Bulletin 2014-03**Date:** November 18, 2014**Subject:** Social Security Disability Income Verification

The Consumer Financial Protection Bureau (Bureau) issues this compliance bulletin to remind creditors of (1) their obligations under the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, with respect to consideration of public assistance income; and (2) relevant standards and guidelines regarding verification of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) income (collectively, Social Security disability income) received by mortgage applicants.

In the past, Social Security disability income recipients have faced special challenges in providing proof that their disability payments are likely to continue. The Social Security Administration (SSA) provides these benefits for individuals with serious disabilities, but generally will not provide documentation regarding how long benefits will last. Some applicants have reported being asked by mortgage lenders or their agents for information about their disabilities or for statements from their physicians about the likely duration of their disabilities.

ECOA and Regulation B prohibit creditors from discriminating in any aspect of a credit transaction against an applicant because all or part of the applicant's income derives from a public assistance program.¹ Such income includes, but is not limited to, Social Security disability

¹ 15 U.S.C. § 1691(a)(2); 12 C.F.R. §§ 1002.2(z), 1002.4(a).

income.² Regulation B further provides that “[i]n a judgmental system of evaluating creditworthiness, a creditor may consider . . . whether an applicant’s income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.”³ Thus, a creditor may take into account, for example, “[t]he length of time an applicant will likely remain eligible to receive [public assistance] income.”⁴

Fair lending concerns may arise under ECOA and Regulation B when a creditor requires additional documentation beyond that required by lawful applicable agency or secondary market standards and guidelines to demonstrate that Social Security disability income is likely to continue, such as information about the nature of an applicant’s disability or a letter from an applicant’s physician. Disparate treatment prohibited under ECOA and Regulation B may exist when a creditor treats applicants differently on a prohibited basis, for example, when a creditor imposes additional documentation requirements on public assistance recipients not imposed on other applicants.⁵ ECOA and Regulation B may also be violated if an income verification standard has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to

² See 12 C.F.R. pt. 1002, Supp. I, § 1002.2, ¶ 2(z)-3. Additionally, the Fair Housing Act, for which other federal agencies oversee compliance, prohibits discrimination because of disability in residential real estate-related transactions. See 42 U.S.C. § 3601 *et seq.*; 24 C.F.R. pt. 100, subpt. C. The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and National Credit Union Administration have supervisory authority as to the Fair Housing Act.

³ 12 C.F.R. § 1002.6(b)(2)(iii).

⁴ 12 C.F.R. pt. 1002, Supp. I, § 1002.6 ¶ 6(b)(2)-6(i); see also 15 U.S.C. § 1691(b)(2) (“It shall not constitute discrimination . . . for a creditor . . . to make an inquiry . . . of whether the applicant’s income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels . . . or other pertinent element of credit-worthiness as provided in regulations of the Bureau[.]”); 12 C.F.R. § 1002.6(b)(5) (“[A] creditor may consider the amount and probable continuance of any income in evaluating an applicant’s creditworthiness.”).

⁵ Cf. *Wigginton v. Bank of Amer. Corp.*, __ F.3d __, 2014 WL 5285970, at *1 (7th Cir. Oct. 16, 2014) (affirming dismissal of a matter involving a Federal Housing Administration three-year-continuation standard then in effect because plaintiffs did not allege under the Fair Housing Act, Americans with Disabilities Act, or the Rehabilitation Act that they were treated differently than non-disabled mortgage applicants).

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.⁶

The issue of verification of Social Security disability income has been addressed by the Bureau in determining Qualified Mortgage status:

- On July 24, 2013, the Bureau published a final rule that, among other things, clarifies the verification requirements for Social Security income used in the debt-to-income ratio that determines whether a loan is a Qualified Mortgage under the Ability-to-Repay and Qualified Mortgage Standards Rule (Ability-to-Repay Rule).⁷ Specifically, Appendix Q of Regulation Z, 12 C.F.R. part 1026, was amended to provide for verification of Social Security income by means of “a Social Security Administration benefit verification letter (sometimes called a ‘proof of income letter,’ ‘budget letter,’ ‘benefits letter,’ or ‘proof of award letter’).” The Appendix explains that “[i]f the Social Security Administration benefit verification letter does not indicate a defined expiration date within three years of loan origination, the creditor shall consider the income effective and likely to continue.” The Appendix further notes that “[p]ending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the benefit payments are not likely to continue.”⁸

The Department of Housing and Urban Development (HUD) has taken a similar approach for loans insured by the Federal Housing Administration (FHA), as has the Department of Veterans Affairs (VA) for loans it guarantees.

⁶ See 12 C.F.R. § 1002.6(a); 12 C.F.R. pt. 1002, Supp. I, § 1002.6, ¶ 6(a)-2. For more information about compliance with the fair lending requirements of ECOA and Regulation B, please refer to CFPB Bulletin 2012-04: Lending Discrimination (April 18, 2012), available at http://files.consumerfinance.gov/f/201404_cfpb_bulletin_lending_discrimination.pdf.

⁷ Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 44,686, 44,719-20 (July 24, 2013) (codified at 12 C.F.R. pt. 1026, Appendix Q).

⁸ 12 C.F.R. pt. 1026, App. Q, Section I.B.11 & Note i.

- HUD standards provide that if the SSA Notice of Award or equivalent document “does not have a defined expiration date, the lender shall consider the income effective and likely to continue.” HUD emphasizes that lenders “should not request additional documentation from the borrower to demonstrate continuance of Social Security Administration income” and “[u]nder no circumstance may lenders inquire into or request documentation concerning the nature of the disability or the medical condition of the borrower.” HUD also notes that “[p]ending or current re-evaluation of medical eligibility for benefit payments is not considered an indication that the benefit payment is not likely to continue.”⁹
- VA standards provide that “[t]he Social Security Administration has a program that pays benefits to individuals who cannot work because they have a medical condition that is expected to last at least [one] year” and that “[l]enders may use income from this source as qualifying income.” The VA also emphasizes that “[i]t is not necessary to seek a statement from a physician about how long the medical condition will last.”¹⁰

The National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide similar guidelines for loans that are eligible for their purchase.

- Fannie Mae’s Selling Guide explains that “Social Security income for . . . long-term disability that the borrower is drawing from his or her own account/work record will not have a defined expiration date and must be expected to continue.” The Selling Guide

⁹ HUD Mortgagee Letter 12-15, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=12-15ml.pdf>; see also http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/handbook_4000-1 (Single Family Housing Policy Handbook (Handbook 4000.1), generally effective for case numbers assigned on or after June 15, 2015, providing similar standards). Citations are provided to relevant agency and secondary market standards and guidelines available at the time of this compliance bulletin’s publication. Financial institutions are encouraged to monitor any changes to these standards and guidelines.

¹⁰ VA Circular 26-12-6, available at http://www.benefits.va.gov/HOMELOANS/circulars/26_12_6.pdf; see also VA Circular 26-12-6, Change 1, available at http://www.benefits.va.gov/homeloans/documents/circulars/26_12_6_change1.pdf (extending the circular’s rescission date to October 1, 2016).

further provides that creditors must verify this income by obtaining either a copy of the Social Security Administration's award letter or proof of current receipt and, for SSI, by obtaining both forms of documentation.¹¹

- Freddie Mac's Single-Family Seller/Servicer Guide provides that "[l]ong-term disability income," including "Social Security disability benefits," "may be considered qualifying income that has a reasonable expectation of continuance unless there is a pre-determined insurance and/or benefit expiration date that is less than three years." Further, the Guide provides that "[p]ending or current re-evaluation of medical eligibility for insurance and/or benefit payments is not considered an indication that the insurance and/or benefit payment will not continue."¹²

The standards and the guidelines provided by the Bureau, HUD, VA, Fannie Mae, and Freddie Mac described above may help creditors avoid unnecessary documentation requests and increase access to credit for persons receiving Social Security disability income. In addition, following these standards and guidelines may help creditors avoid policies and practices that may violate ECOA and Regulation B. A creditor's clear articulation of verification requirements for Social Security disability income, proper training of underwriters and mortgage loan originators, and others involved in mortgage-loan origination, and careful monitoring for compliance with underwriting policies can all help manage fair lending risk in this area.

¹¹ Fannie Mae's Selling Guide, available at <https://www.fanniemae.com/singlefamily/originating-underwriting>.

¹² Freddie Mac's Single-Family Seller/Servicer Guide, available at <http://www.freddie.mac.com/singlefamily/guide/>.