



May 7, 2021

Honorable Maxine Waters
Chair, United State House Committee on Financial Services
2129 Rayburn House Office Building, Washington, DC 20515

Honorable Patrick McHenry
Ranking Member, United State House Committee on Financial Services
2129 Rayburn House Office Building, Washington, DC 20515

Dear Chair Waters and Ranking Member McHenry,

We write to you to express our support for the LGBTQ Business Equal Credit Enforcement and Investment Act (H.R. 1443). The Center for LGBTQ Economic Advancement & Research (CLEAR) is a nonprofit organization that produces information, education, and advocacy to promote the economic and financial wellbeing of LGBTQ households, organizations, and communities.

H.R. 1443 will amend Section 704B of the Equal Credit Opportunity Act (ECOA)¹ to require lenders to collect sexual orientation and gender identity (SOGI) data in small business loan data. Enacting H.R. 1443 will help deter lending discrimination against LGBTQ-owned businesses, promote fair and equal credit opportunities for LGBTQ-owned businesses, and foster greater growth and financial wellbeing for LGBTQ-owned businesses, their local communities, and the entire economy.

Consistent with the purpose of Congress in enacting section 704B, H.R. 1443 will “facilitate enforcement of fair-lending laws” including ECOA and help “identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”² The Consumer Financial Protection Bureau has recently affirmed that unlawful discrimination based on “sex” under ECOA includes discrimination based on sexual orientation and gender identity,³ consistent with the Supreme Court’s findings in *Bostock v. Clayton County*.⁴ Collecting sexual orientation and gender identity (SOGI) data under section 704B as H.R. 1443 requires will consequently enhance the agency’s ability to enforce ECOA fully to protect LGBTQ businesses and identify needs and opportunities for LGBTQ businesses.

Effective fair lending protections for LGBTQ credit applicants are direly needed. Despite the lack of SOGI data in federal fair lending data, nonprofits and academics have shown how LGBTQ people experience discrimination in credit. In separate studies, the National Community Reinvestment Coalition and scholars at Iowa State analyzed Home Mortgage Disclosure Act (HMDA) data to identify same-sex couples, and both found that same-sex couples are denied home loans more often than different-sex couples of similar financial and credit quality and receive loans with higher interest rates and fees.⁵ The Iowa State study also showed that loans in neighborhoods with a higher density of LGBTQ people also

¹ 15 U.S.C. 1691c-2

² 15 U.S.C. 1691c-2(a)

³ CFPB, *Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity* (March 09, 2021) https://files.consumerfinance.gov/f/documents/cfpb_ecoa-interpretive-rule_2021-03.pdf

⁴ *Bostock v. Clayton County*, 590 U.S. ____ (2020) (Holding that discrimination based on sexual orientation and gender identity are unlawful forms of discrimination based on sex under Title VII of the Civil Rights Act.)

⁵ Jason Richardson & Karen Kali, *Same-Sex Couples And Mortgage Lending*, NAT’L CMTY. REINVESTMENT COAL. (June 22, 2020) <https://ncrc.org/same-sex-couples-and-mortgage-lending/>; Hua Sun & Lei Gao, *Lending Practices to Same Sex Borrowers*, PROCEEDINGS NAT’L ACAD. SCI. 116 (May 2019) <https://doi.org/10.1073/pnas.1903592116>



received higher interest and fees regardless of applicants' sexuality—suggesting that loans in LGBTQ-dense neighborhoods may be affected by reverse-redlining (i.e., discriminatory higher interest and costs).⁶

Improving LGBTQ businesses' fair access to lending capital, as H.R. 1443 will do, will improve financial health and success for LGBTQ businesses, their local communities, and the entire economy. Small businesses play a crucial role in community development and creating wealth and employment opportunities in their communities.⁷ According to the National LGBT Chamber of Commerce (NGLCC), its member LGBTQ businesses created more than 33,000 jobs and added \$1.7 trillion to the U.S. economy in 2016.⁸ Fair access to credit is critical for small businesses to start and grow: Small businesses with access to business loans are more likely to hire more employees and expand their inventories to meet demand⁹ than those without credit. Ensuring equal opportunity for LGBTQ businesses in lending will enable them to make even greater investments in their employees and the economy.

In addition to creating jobs and wealth, LGBTQ small businesses also play a vital cultural role for the LGBTQ community. Local businesses owned by and catering to LGBTQ people serve as community hubs for patrons seeking safe and inclusive spaces where they can be open about their identity and freely associate with other LGBTQ people.¹⁰ LGBTQ-serving bars and venues, in particular, have historically provided space for LGBTQ people to gather and organize for collective political and community goals.¹¹ But COVID-19 has had a withering effect on LGBTQ small businesses, particularly those serving in-person clientele—driving the closure of many bars and spaces beloved by their LGBTQ patrons.¹² LGBTQ-owned businesses will need equal access to fairly-priced lending capital for LGBTQ Americans to reinvigorate their communities and recover fully from this pandemic.

We urge you to support the LGBTQ Business Equal Credit Enforcement and Investment Act for the foregoing reasons. For any questions regarding this letter, please contact Spencer Watson, Executive Director for CLEAR, at spencer@lgbtq-economics.org or 415-278-7358.

Sincerely,



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⁶ Hua Sun & Lei Gao, *supra* note 5.

⁷ CFPB, *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking*, (December 2020)

⁸ NGLCC, *America's LGBT Economy 2016 Snapshot*, 8-10 (2017)

⁹ NAT'L SMALL BUS. ASSOCIATION, *2016 Year-End Economic Report* (February 2017)
<http://www.nsba.biz/wpcontent/uploads/2017/02/Year-End-Economic-Report-2016.pdf>

¹⁰ Jeffery Escoffier, *The Political Economy of the Closet*, *HOMOECONOMICS: CAPITALISM, COMMUNITY AND LESBIAN AND GAY LIFE* 128-130 (1997)

¹¹ *Id.*

¹² Giulia Heyward and Melissa Gray, *The pandemic is hurting gay and lesbian bars. The consequences for the community could be devastating*, CNN (November 22, 2020) <https://www.cnn.com/2020/11/22/business/gay-lesbian-bars-covid-consequences-trnd/index.html>