

In *Gomez v. Quicken Loans, Inc.*, -- Fed Appx. --, 2015 WL 6655476 (9th Cir. Nov. 2, 2015), the Ninth Circuit reversed the district court's dismissal of the appellant's Equal Credit Opportunity Act (ECOA) claim that was based on Quicken's alleged consideration of a disability in evaluating the appellant's mortgage loan application. The appellant alleged that Quicken violated the ECOA when, as a condition to approving his mortgage loan, it requested verification of his continued receipt of Social Security Disability Insurance (SSDI) in the form of sensitive medical information such as letters from his doctor and other medical records. The district court dismissed the appellant's ECOA claim, reasoning that "information related to the source of current and future income is material to [Quicken's] legitimate and non-discriminatory need to evaluate [the applicant's] creditworthiness."

The Ninth Circuit disagreed with the district court stating that "statutes do not insulate all behavior related to the evaluation of creditworthiness from judicial review" and **the ECOA "merely allows a lender to inquire into the source of an applicant's disability income, not the medical reason[.]"** The Circuit Court found that Quicken's alleged requirement that an applicant receiving SSDI income divulge medical information in order to obtain a mortgage loan was akin to a presumption that applicants with SSDI award letters did not have sufficient evidence of income and needed to meet a higher standard of proof than other applicants. Thus, the appellant had sufficiently alleged disparate treatment. In an amicus brief, the United States argued that if Quicken was presented with employment income in the form of pay stubs and tax returns from an applicant, they would likely not require additional information to verify the applicant's likelihood of future employment by, for example, calling the applicant's employer to ascertain whether the employer intends to continue employing the applicant or requiring the applicant to provide performance reviews from his employer.

The Ninth Circuit's holding creates a bright line rule that **MORTGAGE LENDERS CANNOT REQUIRE VERIFICATION OF FUTURE SSDI INCOME IN THE FORM OF PERSONAL MEDICAL INFORMATION LEST THEY BE SUBJECT TO AN ECOA CLAIM.** It is also an indication that mortgage lenders' actions to thoroughly evaluate creditworthiness may be scrutinized by the courts under ECOA. The Ninth Circuit's holding is yet another example of how sensitively mortgage lenders must approach applications for credit when

the applicant fits into a protected class under ECOA. ECOA prohibits discrimination in lending on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.