



# Federal Trade Commission

---

CREDIT PRACTICES UNDER  
THE EQUAL CREDIT OPPORTUNITY ACT

MARY L. AZCUENAGA  
COMMISSIONER

FEDERAL TRADE COMMISSION

before

THE SOUTHEASTERN PETROLEUM CREDIT ASSOCIATION  
44th Annual Meeting

Sonesta Sanibel Harbour Resort  
Ft. Myers, Florida

April 29, 1991

---

The views expressed are those of the Commissioner and do not necessarily reflect those of the Federal Trade Commission or the other Commissioners.

**REMARKS OF**  
**COMMISSIONER MARY L. AZCUENAGA**  
**BEFORE THE**  
**SOUTHEASTERN PETROLEUM CREDIT ASS'N**

I appreciate the opportunity to speak to you today about the Equal Credit Opportunity Act (ECOA),<sup>1</sup> the federal law that prohibits discrimination in credit, and particularly about recent amendments to the Act that may affect your compliance obligations. My remarks will focus on the particular notification and recordkeeping requirements for business credit and consumer credit. I have some copies of a short summary of those requirements that I will make available to take with you.

Before continuing, let me say that my comments today are my own and do not necessarily represent the views of the Federal Trade Commission or any other individual commissioner. If you want to seek additional guidance on particular problems you may have, I am happy to volunteer the services of the Commission's excellent Credit Practices Staff. The telephone number is on the summary hand-out.

The Equal Credit Opportunity Act and Federal Reserve Board Regulation B,<sup>2</sup> which implements the Act, forbid a creditor from discriminating on the basis of sex, marital status, race, national origin, religion, or age. The law also prohibits discrimination because a person receives income from a public

---

<sup>1</sup> 15 U.S.C. §§ 1691 et seq.

<sup>2</sup> 12 C.F.R. Part 202 (1990)

assistance program, or because the applicant has in good faith exercised rights under the ECOA or any of the other federal consumer credit protection statutes.

To carry out the purposes of the Act, Regulation B imposes certain procedural requirements on creditors. To permit creditworthy married applicants to obtain individual credit and to prevent discrimination based on marital status, for example, Regulation B limits the circumstances under which a creditor may request information about an applicant's marital status.

Regulation B requires creditors to make credit decisions within a reasonable period of time, notify rejected applicants of those decisions, and retain records relating to the application. The notification requirement serves three purposes. It helps consumers to detect discrimination, allows them to correct errors that may have occurred in evaluating their applications, and teaches them how they may become more creditworthy. The recordkeeping requirement insures that credit applicants (and enforcement agencies like the Federal Trade Commission) that wish to pursue discrimination claims have the documentation available to do so.

Some of you extend credit to businesses, not just to individual consumers. Unlike the other credit laws that the Federal Trade Commission enforces, the Equal Credit Opportunity

Act applies to business as well as consumer credit. Business creditors, like consumer creditors, must avoid unlawful discrimination and are subject to the penalties provided by the Act if they fail to do so. This has been the case since the ECOA became effective and was not changed by the recent amendments to the Act.

The ECOA does not apply to what is often called "trade credit," a term that covers credit arrangements between a buyer and seller -- for example, credit arrangements between a crude oil producer and a refinery, or between a refinery and a retailer or other end user.<sup>3</sup> Of course, if credit for such a transaction is sought from a bank or other financial institution, this constitutes business credit under the ECOA and the rules issued by the Federal Reserve in Regulation B apply.

Some of the procedures that apply to those of you who extend business credit -- for example, credit cards to other companies for business use by the company, its officers or employees -- have changed. Although procedures for business creditors have always been somewhat different than those for consumer creditors under Regulation B, those procedures were altered by the amendments to the Equal Credit Opportunity Act that were

---

<sup>3</sup> Official Staff Commentary on Regulation B, ¶9(a)(3)-2 and 3 (April 1, 1990).

contained in the Women's Business Ownership Act of 1988<sup>4</sup> and by the changes to Regulation B mandated by that statute. I understand that those changes have been a source of confusion for some of you. I will try to explain how the law has changed and what your compliance obligations are under the new law.

First, let me review what has not changed. Besides the obligation to avoid discrimination, the procedural requirements for consumer credit have remained the same. Remember that you will be in compliance with the ECOA with respect to both business and consumer credit if you choose to follow the rules for consumer credit for all of the credit that you extend. This option may be helpful to you if you extend both business and consumer credit, but prefer to follow only one set of procedures. You may, however, choose to follow the alternative procedures for business credit when you receive business credit applications.

I will first explain the procedures required for consumer creditors, then the alternative procedures for business creditors and how the business credit procedures have been changed by recent law. Consumer credit means credit extended to a natural person primarily for personal, family, or household purposes. A creditor who receives an application for consumer credit must notify the applicant of the action taken on the application within thirty days of receiving a completed application. If an

---

<sup>4</sup> Pub. L. No. 100-533, 100th Cong., 1st Sess. (1988)

application is rejected or other adverse action is taken, the notice given to the applicant must be in writing. The notice must also inform the rejected applicant that he or she is protected from discrimination by the ECOA and provide the name and address of the federal agency that enforces the ECOA as to that particular creditor.<sup>5</sup> Regulation B provides "safe harbor" language that if used verbatim or substantially verbatim will assure that your notice will comply with the law. In the case of most creditors other than banks, including most of you, the enforcement agency will be the Federal Trade Commission.<sup>6</sup>

The notice must also contain the creditor's name and address and a statement of the adverse action taken -- for example denial

---

<sup>5</sup> The "safe harbor" provision in Regulation B is:

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from a public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is

Federal Trade Commission  
Equal Credit Opportunity  
Washington, D. C. 20580

[or other agency as appropriate]

12 C.F.R. § 202.9(b)(1) (1990).

<sup>6</sup> A list of federal enforcement agencies and the creditors subject to their respective jurisdictions is contained in Appendix A to Regulation B.

of credit, lowering of a previously established credit limit, or termination of an existing account. Finally, the notice must either contain a statement of the specific, principal reasons for the action taken, or disclose the applicant's right to obtain a statement of reasons by writing to the creditor within sixty days. The creditor who elects to tell the applicant of the right to obtain a statement of reasons is required to provide that statement of reasons within thirty days of an applicant's request.

Consumer creditors are required to retain records of rejected applications for twenty-five months from the date that the applicant is notified of the action taken. The ECOA gives an applicant the right to sue a creditor for any actual damages resulting from the creditor's unlawful conduct and for punitive damages of up to \$10,000 a violation. The statute of limitations for such private suits is two years.<sup>7</sup> The recordkeeping requirement insures that relevant documents are available during that period.

When the Federal Reserve Board adopted these requirements, it apparently believed that applicants for business credit were more sophisticated about these matters than the typical consumer, would be aware of their legal rights and, therefore, would not

---

<sup>7</sup> A successful applicant may also obtain attorney's fees and court costs.

need the same level of protection as ordinary consumers.<sup>8</sup> So, although creditors usually were not permitted to ask those seeking consumer credit their marital status, creditors were permitted to raise this question with applicants for business credit. Although creditors had to notify applicants for business credit of the action taken on their applications, they could do so orally, rather than in writing, if they chose. Creditors also did not have to tell rejected applicants for business credit about their rights under the ECOA or of their right to learn why the application was denied. Only if the business credit applicant wrote to request a statement of reasons for denial did the creditor have to provide it. Finally, with regard to recordkeeping, creditors were required to retain records concerning business credit for only 90 days unless the applicant requested that records be kept for longer, in which case the creditor was required to keep the record for the same period required for consumer credit.

In the 1988 Women's Business Ownership Act, Congress determined that many women and other small business owners have less access to credit markets and would benefit from the type of protections available to consumers. The Act directed the Federal Reserve Board to amend Regulation B to provide procedures for business credit that would eliminate existing exemptions and

---

<sup>8</sup> Proposed Amendments to Regulation B, 41 Fed. Reg. 49,123, 49,126 (1976)

would create notification and recordkeeping requirements like those for consumer credit.

Although the text of the 1988 Act did not mention small business specifically, the Federal Reserve Board in amending Regulation B to carry out the purposes of the Act adopted a set of procedures exclusively for creditors in dealing with credit applications from small businesses that are more like, but still not identical to, the procedures required of creditors with respect to consumer credit. A small business is defined as one earning \$1 million or less in annual revenues.

The Federal Reserve Board left unchanged most of the old business credit procedures for creditors lending to larger businesses. As a result, there are now three sets of procedures, rather than two. There are procedures for credit extended to consumers, procedures for credit extended to small businesses, and procedures for credit extended to large businesses.

The new rules for small businesses still permit oral notification of adverse action, but they require for the first time that small business credit applicants be given a statement of the right to learn the reasons for the adverse action and be told of their rights under the ECOA. This information must be provided in a form that the applicant can retain, but it may be given at the time of the application, rather than at the time

that adverse action is taken. For applications taken entirely by telephone, this information may be given orally as well.<sup>9</sup>

The new rules for small business credit require the creditor to retain records for twelve months from the date that the applicant is notified of the action taken on the application. This retention period does not depend on a request from the applicant that this be done.

Creditors serving large businesses may continue to notify applicants, orally or in writing, of the action taken. As before, they must do so within a reasonable period of time, but are not subject to the 30-day time limit that applies to consumer and small business creditors. As before, they are required to provide reasons in response to a written request from the applicant. The only new requirement is that the statement of reasons provided in response to the applicant's request must also contain a statement of the applicant's rights under the ECOA.

Creditors serving large businesses are required to retain records for 60 days after notifying the applicant of the action taken rather than the 90 days previously required. If within that time period the applicant makes a written request that

---

<sup>9</sup> If an application for consumer credit is taken by telephone, the creditor has the obligation to attempt to obtain the applicant's name and address and to send a written adverse action notice.

records be retained, or requests the reasons for the adverse action, the creditor must retain the records for 12 months. Previously, records had to be retained only in response to a specific request for record retention, not in response to a request simply for the reasons for the adverse action.

Finally, all business creditors -- large or small -- are now subject to the same rules as consumer creditors regarding requests for marital status information. The question usually is off limits with respect to applications for unsecured, individual credit.<sup>10</sup>

Remember, you do not have to follow three different procedures to comply with the ECOA and Regulation B. You may follow the consumer credit rules for all transactions, or you may follow the consumer credit rules for consumer credit and use the small business credit rules for all business credit.

Let me conclude by summarizing the Federal Reserve's notification and recordkeeping requirements in Regulation B applicable to the three types of credit.

---

<sup>10</sup> For example, inquiry may be made into marital status in states where it is necessary to ascertain whether assets of a credit applicant are subject to community property requirements.

For **consumer credit**, you must:

- Provide written notice of adverse action to credit applicants within 30 days of receiving the application;
- Include with the notice a statement of rights under ECOA;
- Include a statement of reasons for the adverse action or tell the applicant how to get a statement of reasons;
- Respond within 30 days to any request for reasons; and
- Keep the records for 25 months.

For **small business credit**, you must:

- Provide oral or written notice of adverse action within 30 days;
- Provide a statement of rights under the ECOA either at the time of application, as part of

a written adverse action notice, or orally in response to a telephone application;

- Inform the applicant that he or she has the right to learn the reasons for adverse action either at the time of application, as part of a written adverse action notice, or orally in response to a telephone application;
- Respond within 30 days to a request for reasons; and
- Keep records for 12 months.

For *other business credit*, you must:

- Notify the applicant, either orally or in writing, within a reasonable time of adverse action;
- Provide a statement of reasons in response to a written request received within 60 days;
- Include a statement of the applicant's rights under the ECOA in the statement of reasons; and

- Keep records for 60 days (unless the applicant requests that records be retained or requests a statement of reasons, in which case you must keep records for 12 months).

The purpose of having three compliance procedures is to give creditors who serve business greater flexibility. Although we appreciate that greater choice can sometimes result in greater confusion, we at the FTC are willing to assist you in adapting these rules to your business needs. Again, please do not hesitate to call on our staff.

If you have any questions about the new ECOA rules, I will be happy to try and answer them.