



NEWS RELEASE

Statement on

H.R. 3386, 94th Congress, a bill
"To amend the Equal Credit Opportunity Act
to include discrimination the basis of race,
color, religion, national origin, and age,
and for other purposes."

Submitted to the

Subcommittee on Consumer Affairs
of the
Committee on Banking, Currency and Housing
House of Representatives

by

Frank Wille, Chairman
Federal Deposit Insurance Corporation

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The Federal Deposit Insurance Corporation appreciates this opportunity to submit its views with respect to H.R. 3386, 94th Congress, a bill "To amend the Equal Credit Opportunity Act to include discrimination on the basis of race, color, religion, national origin, and age, and for other purposes."

The Truth in Lending Act was recently amended by adding as a new title thereto the Equal Credit Opportunity ("ECO") Act, Title V of Pub. L. 93-495, which banned discrimination based on sex or marital status in the granting of credit, effective October 29, 1975. Under the ECO Act the Federal Reserve is granted substantive rulemaking authority to implement the Act's purposes and, following the Truth in Lending jurisdictional model, various other Federal agencies (including FDIC) were given administrative enforcement powers with respect to lenders subject to their respective regulatory jurisdiction.

As indicated by its title, H.R. 3386 would amend the ECO Act to prohibit, also, discrimination based on race, color, religion, national origin or age (except under certain loan programs designed to meet special social needs, such as those intended to assist the economically disadvantaged). While the bill incorporates technical revisions of a number of the ECO Act's provisions, notable substantive amendments contained in the bill include the following:

- (1) Creation of an advisory committee to consult with the Federal Reserve with respect to its regulatory functions under the ECO Act;

(2) Revision of the ECO Act's class action damage limitations to permit total recovery up to the greater of \$50,000 or one percent of the creditor's net worth, instead of the lesser of \$100,000 or one percent of net worth as presently provided;

(3) Extension of the present one year statute of limitations to permit private civil actions by victims of discrimination within one year of compliance with any administrative enforcement action or of a judicial decision finding a violation of the ECO Act;

(4) Additional civil enforcement authority for the Attorney General generally similar to comparable authority granted to him under Title VIII of the Civil Rights Act of 1968; and

(5) Requirements for annual reports to Congress by the Federal Reserve and the Attorney General with respect to the discharge of their functions under the ECO Act.

In testimony before this Subcommittee on October 29, 1973 relating to a proposal to ban credit discrimination based on sex or marital status, the FDIC recommended expanding the prohibition to cover discrimination based on race, color, religion or national origin. Implementation of this recommendation would

have the effect of extending to all credit transactions the substance of the prohibition presently contained in Title VIII of the Civil Rights Act of 1968 against discrimination based on race, color, religion or national origin in the financing of housing by banks and other institutions engaged in the business of making real estate loans. We believe that there can be little quarrel with the objective of eliminating these types of discrimination wherever they may exist in the credit-granting process and, in our opinion, consolidation of regulatory authority to implement such a prohibition in a single Federal agency, as done in the Equal Credit Opportunity Act, is the more effective method of obtaining vigorous and uniform application of anti-discrimination standards to all forms of lending and all types of lenders. Where substantive regulatory authority is not so consolidated, the potential competitive imbalance that would be created by differing substantive rules applied to different categories of lenders by the various Federal agencies regulating such lenders tends to deter any agency which may desire to impose more stringent anti-discrimination requirements on lenders within its jurisdiction. Federal regulatory agencies which desire to move forward with more effective regulations in this area would be substantially aided by having a clear and specific congressional mandate to implement such a nondiscriminatory policy applicable to all forms of credit. This would obviate

the necessity of relying exclusively on the Civil Rights Act of 1968 and evolving case law under the Equal Protection Clause of the Constitution.

While we have no special knowledge or data with respect to the need for a prohibition against credit discrimination on the basis of age, we would have no objection to including this within the scope of the Equal Credit Opportunity Act, so long as it is made clear that what is prohibited is discrimination against a credit applicant who has the legal capacity to contract and discrimination which is based solely on an arbitrary age limit that has no reasonable relationship to the applicant's willingness or ability to meet his credit obligations. Obviously, minors who cannot be held accountable for their contractual obligations should not be included within the scope of an age discrimination ban. Nor would it be fair to require a creditor to grant credit to an 85-year-old man who might claim discrimination because he was refused a 30 year mortgage. We suggest therefore that the legislative history of H.R. 3386 make clear that the Federal Reserve has broad latitude in this area to determine by regulation what shall constitute unlawful age discrimination.

In our October 29, 1973 testimony before this Subcommittee, we concurred with the Federal Reserve in strongly recommending that the class action liability limitations for violations of the

Truth in Lending Act be set at the greater of \$50,000 or one percent of the creditor's net worth, rather than the then proposed limitations of the lesser of \$100,000 or one percent of net worth that were eventually enacted. Perhaps the single most important factor encouraging creditors to comply with Truth in Lending requirements has been their concern about potential class action liability for violations of that Act. In our opinion, a maximum liability of \$100,000 in a class action suit against the largest insured banks would be an ineffective deterrent to violations of the Equal Credit Opportunity Act. We would therefore concur with the proposal in H.R. 3386 to amend these limitations under the Equal Credit Opportunity Act to permit class action recovery up to the greater of \$50,000 or one percent of net worth. In view of the large number of small banks for which \$50,000 would constitute a substantial percentage of their total capital, however, consideration might be given to a change in the proposed liability limit to the greater of \$25,000 or one percent of the creditor's net worth.

We have no objection to the other substantive changes contained in H.R. 3386 and would therefore support its enactment.