FEDERAL RESERVE BANK OF DALLAS
DALLAS, TEXAS 75222

Circular No. 78-102
July 27, 1978

PROPOSED GUIDELINES FOR ENFORCEMENT OF THE
EQUAL CREDIT OPPORTUNITY ACT, REGULATION B,
AND THE FAIR HOUSING ACT

TO ALL BANKS, OTHER CREDITORS,
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System, the Comptroller of
the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank
Board, and the National Credit Union Administration have proposed guidelines for the
enforcement of the Equal Credit Opportunity Act, the Board's implementing Regulation
B, and the Fair Housing Act.

The proposed enforcement guidelines provide specific remedies for violations of the Acts covered with the idea of assuring that prohibited discrimination
against a credit applicant on the basis of age, sex, marital status, race, color, national
origin, or religion does not take place. Under the guidelines, voluntary correction
will be sought, and where substantive violations are discovered, a creditor will be re­
quired to adopt a written loan policy consistent with the Acts and to implement a com­
pliance program.

The following list enumerates the specific corrective measures which will be
imposed if the guidelines are adopted.

1. Discouragement of credit applications – The creditor would be re­
quired to solicit applications from the discouraged class and might
be required to inform brokers, dealers, and community groups that
it has a nondiscriminatory lending policy.

2. Use of an illegal credit evaluation system – The creditor would be
required to reevaluate past rejected applicants during a period of
time determined by the agency, and send letters soliciting new ap­
lications from individuals discriminatorily rejected. A nondis­
criminatory loan policy would be required to be written and
implemented.

3. Charging a higher rate of interest – If the creditor charged a higher
rate of interest on a prohibited basis or imposed more burdensome
terms such as a higher downpayment on a prohibited basis, the cred­
itor would be required to reimburse the difference or renegotiate the
credit extension.

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank:
1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus
the extension referred to above.

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4. Requiring a cosigner on a prohibited basis - The creditor would be required to release unnecessary cosigners or substitute a new one if the applicant's choice had been restricted.

5. Failure to obtain monitoring information - Information would be required to be solicited from real estate loan applicants as of March 23, 1977 or the previous exam, whichever is later.

6. Failure to provide Statements of Denial - Adverse action notices would be required for all applicants denied credit in the 25 months prior to the examination.

7. Failure to properly report married persons' credit histories - The creditor would be required to properly report the information in the future. In addition, the creditor would be required to notify account holders that past reporting practices were illegal and credit reapplications might be in order.

8. Terminating an open-end account - The creditor would be required to return the account to its previous condition unless another action is justified by a creditworthiness evaluation.

In all cases the five Federal enforcement agencies intend to prescribe a remedy to meet the circumstances by taking into consideration the character of the violation, the condition of the creditor, and the cost and effectiveness of the corrective measure.

Uncorrected violations could lead to enforcement agency administrative actions such as cease and desist orders. Further, enforcement agencies would retain the right to refer cases involving a pattern or practice of discrimination to the United States Attorney General.

The guidelines are proposed for comment and all interested parties are urged to make their comments available to the agencies so that they are received on or before September 5, 1978. Comments should be sent to Equal Credit Opportunity Guidelines, Room B-4107, Washington, D.C. 20551.

A complete text of the proposed guidelines for enforcement is printed on the following pages. Questions regarding interpretation of the guidelines or the underlying Acts and regulations should be directed to the Consumer Affairs Section of the Federal Reserve Bank of Dallas at Ext. 6171.

Sincerely yours,

Robert H. Boykin

First Vice President
The agencies believe that coordination among the agencies will promote uniform enforcement of the law.

The guidelines indicate what corrective action creditors will be required to take when substantive violations are discovered. It should be noted that creditors will be required to correct all violations, including such matters as an error on an application form.

The guidelines will neither preclude the use of any other administrative authority that any of the agencies possess to enforce these laws, nor limit the agencies’ discretion to take other action to correct conditions resulting from violations of these laws. The agencies may discretion to consider the suitability of the prescribed remedy under the circumstances of each case.

The guidelines will not preclude the enforcement agencies from referring to the Attorney General cases involving a pattern or practice of discrimination nor will the guidelines foreclose a customer’s right to bring a civil action under the Equal Credit Opportunity Act or Fair Housing Act.

To aid the agencies in consideration of this matter, interested persons are invited to submit relevant comments or data. Any such material should be submitted in writing to:

Equal Credit Opportunity Guidelines
Room B-4107
Washington, D.C. 20551.

The comments will be made available for inspection and copying upon request, except as provided in §261.6(a) of the Board’s rules regarding availability of information (12 CFR Part 261.6(a)).

AUTHORITY

These guidelines are proposed pursuant to the enforcing agencies’ authority under the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691, et seq.) and under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) for the Board of Governors of the Federal Reserve System, the Comptroller of the Currency and the Federal Deposit Insurance Corporation; the Home Owners Loan Act of 1933 (12 U.S.C. 1464(d)) and the National Housing Act (12 U.S.C. 1701) for the Federal Home Loan Bank Board; and the Federal Credit Union Act (12 U.S.C. 1754(e)(1)) for the National Credit Union Administration.

PROPOSED STATEMENT

In consideration of the foregoing, the agencies propose the following guidelines:

STATEMENT OF ENFORCEMENT POLICY

DEFINITIONS


2. “Applicant” means “applicant” as defined in section 202.2(e) of Regulation B.

3. “Corrective action” means a course of conduct to be undertaken by a creditor at the direction of an enforcing agency to correct the conditions resulting from violations of the Act.

4. “Creditor” means “creditor” as defined in §202.21 of Regulation B.

“Enforcing agency” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

GENERAL ENFORCEMENT POLICY

The objectives of the agencies’ enforcement policy are to require corrective action for violations and to assure compliance in the future. The enforcing agencies will encourage voluntary correction and compliance with the act. Whenever substantive violations are discovered, however, a creditor that has not previously adopted a written loan policy, which is consistent with the act will be required to adopt one and to formulate a compliance plan to implement that policy. In addition, the enforcing agency will take action as indicated in these guidelines to correct the conditions resulting from the violations. In all cases, the enforcing agency will consider the suitability of the prescribed remedy for the circumstances—for example, the character of the violation, the condition of the creditor and the cost and effectiveness of the corrective action—and will make whatever modifications it deems appropriate. If violations remain uncorrected, the enforcing agency will take administrative action by appropriate means, such as a cease and desist order, to insure correction.

Corrective action under these guidelines will not preclude the enforcing agencies from referring cases involving a pattern or practice of discrimination to the Attorney General, nor does corrective action cut off the rights of individuals under section 706 of the ECOA.

These guidelines should not be considered all inclusive of possible enforcement action by the agencies.
SPECIFIC VIOLATIONS

I. Discouraging Applications on a Prohibited Basis in Violation of § 202.5(a) of Regulation B

The creditor will be required to solicit credit applications from the discouraged class through affirmative advertising, and all advertising will be subject to review by the enforcing agency. The content as well as the medium of advertising should relate to the discouraged class. The creditor may be required to advise agents, dealers, community groups, and brokers that it pursues a non-discriminatory lending policy.

Comment: Identifying the actual victims of pre-screening may not be feasible. Therefore, requiring the solicitation of applications from the discouraged class through affirmative advertising may be the only expedient means of correcting this violation. For example, if a creditor advertises only for deposits in minority areas but directs loan advertising only to white neighborhoods, it would be required to extend similar loan advertising to the minority areas. Or, if a creditor discourages applications from women, future advertising for particular type(s) of credit over a specific period would have to affirmatively solicit that group. In ruling on the adequacy and timing of the proposed affirmative advertising, the enforcing agency will consider the extent of the violation, the resources of the creditor, the type and cost of past advertising, as well as the efficacy of the advertising in reaching the discouraged class.

II. Using Discriminatory Elements in Credit Evaluation Systems in Violation of the Fair Housing Act and §§ 202.8(a) and 202.7(d) of Regulation B

The creditor will be required to re-evaluate, in accordance with a non-discriminatory, written loan policy, all credit applications rejected during a period of time to be determined by the agency. The creditor will be required to send letters soliciting new applications from individuals discriminatorily rejected. These individuals must be refunded any fees or costs paid by them in connection with their original applications. Any individuals who make a new application as a result of such solicitation shall not be required to pay any fee, including but not limited to an application fee, appraisal fee or fee for a credit check, prior to the acceptance of an offer of credit by the creditor. If such application is approved, and the applicant accepts the credit, the creditor shall reimburse the applicant for any penalty incurred in connection with the prepayment of any existing loan which was obtained in lieu of the discriminatorily denied credit.

Comment: The past period for which a creditor will be required to re-evaluate applications will be determined by an assessment of the nature of the violation and the type of credit involved. The standards of creditworthiness used to re-evaluate applications shall not be more stringent than those in effect at the time the applicant was denied credit.

III. Imposing More Onerous Terms on a Prohibited Basis in Violation of the Fair Housing Act and § 202.6(b) of Regulation B

Where a creditor has charged a higher rate or required insurance in violation of the act, corrective action will be taken in the form of reimbursement or adjustment. Where other more onerous terms, such as a higher downpayment, were required in violation of the act, the creditor must notify those applicants that they may renegotiate the extension of credit on terms for which they qualified at the time credit was originally granted. Furthermore, the creditor must offer to release the applicant from any other term illegally required, and to reimburse the applicant for any other money illegally required.

Comment: The procedures for correcting violations such as charging a higher rate or requiring credit insurance will be those adopted by the agencies for correcting violations of Regulation Z. See proposed enforcement guidelines for Regulation Z, 42 FR 55786, October 18, 1977.)

IV. Requiring Cosigners on a Prohibited Basis in Violation of the Fair Housing Act and § 202.7(d) of Regulation B

Where a cosigner is required in violation of the act, the creditor must notify the applicant that another financially responsible cosigner may be substituted.

V. Failing to collect Monitoring Information in Violation of § 202.13 of Regulation B

If a creditor has failed to collect and retain required monitoring information, it must solicit such information from all who have applied for real estate loans since March 23, 1977, for accounts held by married persons, the creditor will be required to obtain all the necessary information it lacks. Thereafter, the creditor shall properly report the credit information.

Whenever the creditor has failed to report credit information in accordance with the requirements of § 202.10 of Regulation B on accounts held by married persons, he or she may want to reapply for that credit since the denial may have been caused by the creditor's failure to report all credit information.

In addition, where the creditor has failed to report a separate credit history as required, each account must also receive a statement advising the account holder of the right to be informed of the basis on which that credit was denied or refused.

Comment: Agencies with substitute monitoring programs may use other forms of corrective action.

VI. Failing to Provide Notices of Adverse Action in Violation of § 202.9 of Regulation B

Appropriate notices of adverse action must be sent to all applicants denied credit within 25 months of the date of the examination.

VII. Failing to Maintain and Report Separate Credit Histories for Married Persons in Violation of § 202.10 of Regulation B

If the creditor has failed to obtain sufficient information to report credit information in accordance with the requirements of § 202.10 of Regulation B for accounts held by married persons, the creditor will be required to obtain all the necessary information it lacks. Thereafter, the creditor shall properly report the credit information.

Whenever the creditor has failed to report credit information in accordance with the requirements of § 202.10 of Regulation B on accounts held by married persons but has sufficient information to do so, it will be required to designate joint accounts to reflect the participation of both spouses. Thereafter, the creditor shall properly report the credit information.

VIII. Terminating or Changing the Terms of Existing Open End Accounts on a Prohibited Basis in Violation of § 202.7(c) of Regulation B

Where a creditor has violated the act by terminating an account or making a change in terms which is less favorable to the borrower, the creditor will be required to return the account to its previous condition, unless an evaluation of the creditworthiness of the affected parties justifies other action.


C. WILLIAM MILLER, Chairman, Board of Governors of the Federal Reserve System.


GEORGE A. LE MAISTRE, Chairman, Federal Deposit Insurance Corporation.

ROBERT H. MCKINNEY, Chairman, Federal Home Loan Bank Board.

LAWRENCE CONNELL, Jr., Administrator, National Credit Union Administration.

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