

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7735]
October 20, 1975

EQUAL CREDIT OPPORTUNITY

New Regulation B to Implement the Equal Credit Opportunity Act

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

Following is the text of a statement issued October 16 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today published regulations implementing the Equal Credit Opportunity Act, which forbids discrimination by creditors on the basis of sex or marital status.

The Act makes the Federal Reserve responsible for writing an implementing regulation. Enforcement of the Act and the Regulation is the responsibility of the Federal Trade Commission except as specifically assigned to other Federal agencies, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and several others.¹

The Act goes into effect October 28. It covers all who regularly extend credit, including banks, finance companies, department stores, and credit card issuers.

The Board issued proposed regulations for public comment on April 23 and September 8, 1975 and held a public hearing on May 28-29. The new Regulation issued today — Regulation B — reflects hundreds of oral and written comments received on the basis of the drafts previously made available for the public's information.

In issuing the new Regulation the Board said:

The Equal Credit Opportunity Act constitutes a determination by the Congress that sex or marital status of an applicant shall not be used, as such, in evaluating the applicant's creditworthiness.

The Regulation attempts to reconcile the statutory goal of equal access to credit—without regard to sex or marital status—with the need to preserve the creditor's ability to distinguish, in the creditor's own judgment, between applicants that are, or are not, creditworthy.

We have issued this Regulation pursuant to the direction of the Congress that the Federal Reserve Board should write implementing rules, to be enforced by a number of Federal agencies acting in their own jurisdiction, after very extensive consultation with the public including women's groups, other consumers, creditors large and small, individuals and the Congress. Our aim is to facilitate broader and fairer access to credit on a basis of creditworthiness alone.

The principal ways in which the Regulation will affect the practices of creditors include:

1. *Credit scoring on the basis of marital status.*
—The Regulation forbids the use of sex or marital status in credit scoring systems.
2. *Reasons for denying credit.*
—Upon the request of an applicant, creditors will be required to provide the reasons for terminating or denying credit.
3. *Childbearing.*
—Creditors may not inquire into birth control practices or into childbearing capabilities or intentions, or assume, from her age, that an applicant or an applicant's spouse may drop out of the labor force due to childbearing and thus have an interruption of income.

¹ Federal Home Loan Bank Board acting directly or through the Federal Savings and Loan Insurance Corp.; Administrator of the National Credit Union Administration; Interstate Commerce Commission; Civil Aeronautics Board; Secretary of Agriculture; Farm Credit Administration; Securities and Exchange Commission and the Small Business Administration.

4. *Income.*

- A creditor may not discount part-time income but may examine the probable continuity of the applicant's job.
- A creditor may ask and consider whether and to what extent an applicant's income is affected by obligations to make alimony, child support or maintenance payments.
- A creditor may ask to what extent an applicant is relying on alimony or child support or maintenance payments to repay the debt being incurred. But the applicant must first be informed that no such disclosure is necessary if the applicant does not rely on such income to obtain the credit. Where an applicant chooses to rely on alimony a creditor shall consider such payments as income to the extent the payments are likely consistently to be made.

5. *Recordkeeping.*

- Effective November 30, 1975, creditors must keep applications and related materials, including any written charges submitted by the applicant alleging discrimination, for 15 months following the date the creditor gives the applicant notice of action.
- For all accounts established on or after November 1, 1976, the creditor must identify for consumer reporting agencies or others to whom the creditor furnishes information those accounts that both spouses may use or for which they are both liable, so that the credit history can be utilized in the name of each spouse.
- No later than February 1, 1977, the creditor is required to inform holders of existing accounts of a similar right to have credit history reported in both names.

The Equal Credit Opportunity Act was passed by the Congress and signed by President Ford in October 1974.

The Act provides that an aggrieved applicant may file suit against creditors for actual damages and for punitive damages up to \$10,000. In class actions, penalties up to \$100,000, or 1 per cent of the creditor's net worth, whichever is less, may be assessed.

The Regulation defines discrimination on the basis of sex or marital status as treating "an applicant less favorably than other applicants on the basis of sex or marital status."

In several instances, where changes must be made on a large scale in recordkeeping or computer programs, in training of employees or in forms and information supplied to customers in order to conform to the Regulation, the Board gave creditors various periods of time in which to comply. However, the Act's provisions against discrimination on the basis of sex or marital status are in force during the transition period.

A failure to comply with certain requirements of the Regulation is not a violation if it is caused by mechanical, electronic or clerical error in circumstances making it clear that the creditor had established and was maintaining suitable compliance procedures.

The Regulation exempts from numerous specific procedural provisions credit issued as an incident to doing business, such as credit given by dentists, doctors or small shopkeepers not obtained by use of a credit card, where no finance or late charge is made and where there is no agreement making the credit payable in more than four installments (Section 202.10b).

There are also partial exceptions from procedural provisions for business credit (Section 202.10c), securities credit (202.10d), and public utilities credit (202.10e).

These partial exemptions, however, do not exempt such creditors from the basic prohibition of the Act against discrimination on the basis of sex or marital status.

Effective June 30, 1976, the Regulation requires that — except where applications for credit are made by telephone, or made orally for an amount not exceeding an existing limit on an open end account — creditors must give applicants the following written notice:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with this law concerning this (insert appropriate description — bank, store, etc.) is (name and address of the appropriate agency).

By February 1, 1977, creditors are required to mail to all customers, or to all married customers, a notice set forth in the Regulation (Section 202.6) notifying them of their rights under the Act to have credit reports of accounts of married persons made in both names. Both spouses are entitled to the credit history of the account where both are contractually liable for the account or are allowed to use it. The information must be retrievable in the name of either spouse.

With respect to notification of applicants who request a statement of the reasons for denial or termination of credit, the Regulation permits creditors to design their own form or methods of compliance. The notification may be given orally or in writing. The Regulation also provides an example of a possible form of

response. This form lists various reasons, under five main headings, which may be checked to indicate why credit was denied. These are:

1. Credit application :
 -not completed
 -lack of credit references
 -credit ref. too new to check
2. Employment :
 -unemployed
 -temporary, irregular
 -unable to verify
 -length of employment
3. Income :
 -insufficient
 -unable to confirm
 -information refused
4. Residence :
 -too short a period
 -temporary
5. Other (specify) :

Other main provisions of the Regulation include:

- Creditors may not, on the basis of sex or marital status, discourage potential applicants from applying for credit.
- Separate accounts may not be refused to qualified applicants on the basis of sex or marital status.
- Terms in the application form must be neutral as to sex. Only the terms “married” “unmarried” and “separated” are acceptable where any inquiry as to marital status is permitted. If the applicant is asked to designate a title such as Mr., Mrs., Ms. or Miss, it must be made clear that this is optional.

The Regulation forbids:

- With certain exceptions, terminating credit on an existing account because of a change in an applicant’s marital status without evidence that the applicant is unable or unwilling to pay.
- With certain exceptions, requiring or using any unfavorable information about a spouse or former spouse where an applicant applies for credit independently of his or her spouse, and can demonstrate that the unfavorable history should not be applied.

The Regulation provides certain permissible inquiries or actions regarding a spouse, which may have the following scope:

- (1) Where an applicant seeks unsecured individual credit, questions as to marital status may be asked only in a community property State, or if necessary to comply with certain State laws as to permissible finance charges or loan ceilings.
- (2) Where the applicant seeking credit relies on the creditworthiness of the non-applicant spouse, the creditor may request and consider any information that might be considered about the spouse.
- (3) Creditors may not prohibit an applicant from opening or maintaining an account in birth-given first and surnames.
- (4) Creditors may require the signatures of both spouses where State law requires, or probably requires, both signatures in order to pass clear title, to create valid liens, or to waive inchoate (potential) rights to property or to assign earnings.
- (5) State law notwithstanding, a creditor may extend separate credit to each spouse if each applies separately and voluntarily. Where this pre-empts State law, each spouse is solely responsible for the credit separately obtained.

- Where separate credit is extended, each account is treated separately in determining permissible finance charges or loan ceilings, under conditions described in the Regulation.

State laws are pre-empted only if they conflict with the Act or Regulation, and only to the extent that they do so.

A copy of the new Regulation B will be sent to you shortly. Any questions regarding this Regulation should be directed to our Bank Regulations Department.

PAUL A. VOLCKER,
President.