

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8109]
May 6, 1977

INTERPRETATIONS OF REGULATION B

State Laws Relating to

- Notices to Co-Signers
- Foreign-Language Translations

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

Following is the text of a statement issued April 28 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today issued two interpretations of its Equal Credit Opportunity Regulation B that:

- (1) Clarify when notices to borrowers required by State law should be considered inconsistent with the requirements of the Equal Credit Opportunity Act, and
- (2) State that translation of notices and procedures under ECOA into Spanish (or other foreign language) does not discriminate against borrowers who use another language.

The Board made its rulings in response to requests for determinations whether ECOA preempts two California laws. The Act authorizes the Board to make such determinations if it finds that a State law is inconsistent with ECOA, but specifies that there may be no such preemption if the State law is more protective of credit applicants than the Federal law.

The Board's Regulation B (Section 202.11(b)) includes guidelines for preemption of State law but says a formal interpretation may be sought from the Board in case of uncertainty. The interpretations are:

Notice to Co-Signers

The California Civil Code (Sections 1799.90-1799.96) requires that when more than one person signs a consumer credit contract each signer must be given a notice explaining the obligations imposed by the contract, unless the signers are married to each other, when no notice need be delivered. A California creditor asked whether this procedure violates the provisions of the Equal Credit Opportunity Act forbidding discrimination in credit transactions on the basis of marital status, and, if it does, whether the Federal Act preempts the State law.

The Board ruled that the State law "clearly discriminates on the basis of marital status (but) the Board has determined that the discrimination is not the type prohibited by the Act because the State law does not inhibit the equal availability of credit to all creditworthy customers."

In making this ruling the Board stated:

(over)

"The Board believes that a law requiring the delivery of a notice affects neither the availability of credit nor the creditworthiness of the applicant to the extent that would render it inconsistent with the Act and Regulation B, unless:

- "(1) The notice conveys information that is inconsistent with the intent of the Act or Regulation B, or
- "(2) The State law prohibits delivery of a notice required by the Act or Regulation B."

Consequently, the Board determined that creditors will not violate the Equal Credit Opportunity Act or Regulation B by complying with the California law in question.

Spanish Language Translations

Second, the California Civil Code (Section 1632) generally requires that any person who negotiates primarily in the Spanish language — orally or in writing — in the course of certain transactions, including some consumer credit contracts, must display a notice in Spanish advising customers that they may request a translation of the agreement in Spanish. Section 1799.91 requires that where the notice to co-signers discussed above is required, a Spanish translation of the notice must be provided.

The Board has been asked whether this, in effect, discriminates against non-Spanish-speaking credit applicants, on the basis of their national origin (discrimination on the basis of national origin is prohibited by the Equal Credit Opportunity Act).

The Board determined that in the case of the California laws, there is no such discrimination. More generally, the Board said:

"The right to obtain a translation of documents relating to a consumer credit transaction does not affect an applicant's creditworthiness nor does not make credit more readily available. The Federal Equal Credit Opportunity Act requires that creditors apply their standards of creditworthiness uniformly without regard to national origin. A State requirement that contract terms be made more easily understandable for one group is therefore not inconsistent with the Act or Regulation B."

Creditors may comply with the California law cited concerning notification and translation without violating Regulation B.

Enclosed is a copy of the interpretations of Regulation B. Inquiries thereon may be directed to our Consumer Affairs Division (Tel. No. 212-791-5919).

PAUL A. VOLCKER,
President.

EQUAL CREDIT OPPORTUNITY

INTERPRETATIONS OF REGULATION B

(Docket No. R-0097)

AGENCY: *Board of Governors of the Federal Reserve System.*

ACTION: *Interpretations.*

SUMMARY: *In response to a request to determine whether two California laws are inconsistent with the Equal Credit Opportunity Act and Regulation B, and therefore preempted, the Board has issued two interpretations of its Regulation B, Equal Credit Opportunity. The Board has determined that the California law requiring the delivery of a disclosure to credit applicants explaining the obligation undertaken by co-signers and the California law requiring translation of all notifications and loan documents into Spanish are not inconsistent with the Act and regulation.*

EFFECTIVE DATE: *April 27, 1977.*

FOR FURTHER INFORMATION CONTACT: *Anne J. Geary, Acting Chief, Equal Credit Opportunity Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D. C. 20551 (202-452-3946).*

SUPPLEMENTARY INFORMATION: *Pursuant to its authority under §705(f) of the Equal Credit Opportunity Act to determine whether State laws are inconsistent with the Act and Regulation B, the Board has issued the following interpretations of Regulation B, which implements the Act.*

The Board has been asked to determine whether certain provisions of the California Civil Code are inconsistent with the Federal Equal Credit Opportunity Act (the ECOA) and Regulation B. The ECOA preempts those State laws that are inconsistent with it, unless the State law provides greater protection to the applicant. Section 202.11(b)(1) of Regulation B further defines the statutory preemption standard by listing five types of State law that are deemed inconsistent and less protective of an applicant. The Board has determined, as more fully discussed below, that the notification and Spanish-language translation re-

quirements of §§1799.90-1799.96 and 1632 of the California Civil Code are not inconsistent with the Act and Regulation B.

California Civil Code §§1799.90-1799.96 require that whenever more than one person signs a consumer credit contract, each signer must receive a notice explaining the obligations imposed by the contract as well as a copy of all documents affecting the obligations to be undertaken. If the signers are married to each other, however, no notice need be delivered.

Section 202.11(b)(1)(i) of Regulation B provides that if a State law ". . . requires or permits a practice or act prohibited by the Act or [Regulation B]," it is preempted. In order to determine whether favoring unmarried applicants over married applicants when delivering notices is a practice intended to be prohibited by the ECOA, the scope and purpose of the Act must be identified.

The Act forbids discrimination in the granting of credit on several bases, but marital status is the only prohibited basis relevant to this discussion. The purpose of the Act as stated in §502 is:

. . . to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to . . . marital status.

Although the State law in question clearly discriminates on the basis of marital status by requiring protections for unmarried co-signers not required for married ones, the Board has determined that the discrimination is not the type prohibited by the Act because the State law does not inhibit the equal availability of credit to all creditworthy customers. The Board believes that a law requiring the delivery of a notice affects neither the availability of credit nor the creditworthiness of the applicant to the extent that would render it inconsistent with the Act and Regulation B, unless:

(1) the notice conveys information that is inconsistent with the intent of the Act or Regulation B; or

(2) the State law prohibits delivery of a notice required by the Act or Regulation B.

Accordingly, the Board has determined that §§1799.90-1799.96 of the California Civil Code requiring notifications for co-signers are not inconsistent with Regulation B. Creditors will not violate the Equal Credit Opportunity Act or Regulation B by complying with this State law.

* * *

California Civil Code §1632 generally requires that any person who negotiates primarily in the Spanish language orally or in writing in the course of entering into certain transactions, including some consumer credit contracts, must display a Spanish-language notice advising customers that they may request an unexecuted Spanish-language contract or agreement. Section 1799.91 requires that where the notice to co-signers, discussed above, is required, a Spanish translation of the notice must also be provided.

The Board has been asked to determine whether the State law, by requiring creditors to give preferential treatment to Spanish-speaking credit applicants, requires discrimination against other credit applicants on the basis of their national origin, and, therefore, is preempted by §202.11(b)(1)(i) of Regulation B.

The judgment must be made whether a translation requirement benefiting only one national group frustrates the intent of the Federal Act and regulation; that is, whether affording special protection to one group adversely affects the creditworthiness of other groups or makes credit less available to them. The Board has determined that in the case of §§1632 and 1799.91 of the California Civil Code, it does not.

The right to obtain a translation of documents relating to a consumer credit transaction does not affect an applicant's creditworthiness nor does it make credit more readily available. It aids consumers in understanding the obligation they are about to incur. The Federal Equal Credit Opportunity Act requires that creditors apply their standards of creditworthiness uniformly without regard to national origin. A State requirement that contract terms be made more easily understandable for one group is therefore not inconsistent with the Act and Regulation B. Creditors may comply with the notification and translation requirements imposed by §§1632 and 1799.91 of the California Civil Code without violating Regulation B.

This interpretation should not be construed to condone a refusal to negotiate with certain groups or the discouraging of their applications because they are afforded special protection by State law. Such a practice may violate the Act and regulation.

By order of the Board of Governors, effective April 27, 1977.