

**FEDERAL RESERVE BANK
OF NEW YORK**

At circ. no. 8381
July 5, 1978

EQUAL CREDIT OPPORTUNITY

**Proposed Uniform Guidelines for Enforcement of Regulation B
and the Fair Housing Act**

*To All State Member Banks in the Second
Federal Reserve District:*

The Board of Governors of the Federal Reserve System, in conjunction with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration, has issued for comment proposed guidelines regarding the administrative enforcement of the Equal Credit Opportunity Act, its implementing Regulation B, and the Fair Housing Act.

Enclosed is a copy of the joint press release, dated June 27, 1978, issued by the five regulatory agencies, together with the proposed guidelines.

Comments on the proposal should be submitted by September 1 to Equal Credit Opportunity Guidelines, Room B-4107, Washington, D.C. 20551, or to the Consumer Affairs Division of this Bank.

PAUL A. VOLCKER,
President.



FEDERAL RESERVE

press release

For immediate release

June 27, 1978

NOTE: This release has been issued on behalf of the following Federal regulatory agencies:

Comptroller of the Currency
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
National Credit Union Administration
Federal Reserve Board

Proposed guidelines for the enforcement of the Equal Credit Opportunity Act, its implementing Regulation B, and the Fair Housing Act were today issued for public comment by the five Federal agencies that regulate banks, thrift institutions and credit unions.

Comment should be sent by September 1, 1978 to Equal Credit Opportunity Guidelines, Room B-4107, Washington, D.C. 20551.

This was the second set of uniform guidelines worked out jointly by the Federal regulators for enforcement of a major consumer credit protection statute and proposed for comment. The agencies are currently considering the first set, which was for the enforcement of Truth-in-Lending and its implementing Regulation Z.

The Equal Credit Opportunity Act prohibits discrimination against an applicant for credit on the basis of age, sex, marital status, race, color, religion or national origin. Other "prohibited bases" include receipt of public assistance or good faith exercise of rights under the Federal consumer credit protection laws. The Act also requires written notice of credit denials.

The Fair Housing Act prohibits discrimination in residential lending on the basis of race, color, religion, national origin or sex.

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The Equal Credit Opportunity guidelines define "corrective action" as 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."

In an accompanying general enforcement policy statement the five agencies said:

"The objectives of the agencies' enforcement policy are to require corrective action for violations of the Act and to ensure 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 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."

The statement also said that corrective action would not preclude the enforcing agencies from referring cases involving a pattern or practice of discrimination to the Attorney General.

The draft guidelines include the following remedies for specific violations of the Equal Credit Opportunity Act, Regulation B and the Fair Housing Act. The proposal was accompanied by comments to illustrate implementation of these suggested remedies.

1. If applications have been discouraged on a prohibited basis, the creditor would be required to solicit credit applications from the discouraged class through affirmative advertising subject to review by the enforcing agency. The creditor may also be required to inform interested parties that it pursues a nondiscriminatory lending policy.

2. If discriminatory elements have been used in credit evaluation systems, the creditor would be required to reevaluate--according to a written, nondiscriminatory loan policy--all credit applications rejected during a period of time to be determined by the enforcement agencies and to send letters soliciting new applications from individuals rejected on a discriminatory basis. Any application fees previously paid by these applicants would be refunded, and no new application fees would be charged prior to the acceptance of an offer.

3. Where a creditor has charged a higher rate of interest on a prohibited basis or required insurance in violation of the Fair Housing Act or the relevant section of Regulation B, corrective action would be taken in the form of reimbursement or adjustment. In other cases where more onerous terms have been imposed, such as a discriminatory down payment, the creditor would be required to notify applicants of their right to renegotiate the credit extension. The creditor would also be required to offer to release the applicant from such illegally required terms, and to reimburse the applicant for illegally required payments.

4. If a cosigner has been required on a prohibited basis, creditors would be required to offer to release any unnecessary cosigner from liability, or to substitute a new cosigner if the applicant's choice had been restricted on a prohibited basis.

5. Creditors failing to provide appropriate notices of adverse action must send such notices to all applicants denied credit within 25 months of the date of the compliance examination.

6. Creditors failing to maintain and report separate credit histories for married persons would be required to obtain such information, to reflect the participation of both spouses on joint accounts, and to properly report information. They must also notify joint account holders that either spouse may want to reapply for credit denied since January 1, 1978, on the basis of insufficient credit history.

Specific sanctions were also proposed for failure to collect information for monitoring purposes and for termination of accounts on a prohibited basis. Such accounts would be returned to their previous condition, unless an evaluation justified other action.

The draft guidelines are attached.

FEDERAL RESERVE SYSTEM

[Reg. B]

Equal Credit Opportunity

Joint Notice of Proposed Enforcement Guidelines

AGENCIES: 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.

ACTION: Proposed uniform guidelines for administrative enforcement of Regulation B, Equal Credit Opportunity, and the Fair Housing Act.

SUMMARY: This document sets forth the guidelines which 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 propose to follow in order to correct the conditions resulting from violations of Regulation B or the Fair Housing Act. The agencies believe that the adoption of guidelines will promote uniform enforcement of the Equal Credit Opportunity Act and Fair Housing Act.

DATES: Comments must be received on or before

(60 days from publication in the Federal Register.)

ADDRESSES: Written comments should be addressed to:

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

FOR FUTHER INFORMATION CONTACT: William Resnik, Comptroller of the Currency, 202-447-1600; Anne Geary, Federal Reserve Board, 202-452-2761; Karl Seif, Federal Deposit Insurance Corporation, 202-389-4422; Frank Passarelli, Federal Home Loan Bank Board, 202-377-6525; Edward Dobranski, National Credit Union Administration, 202-632-4870.

SUPPLEMENTARY INFORMATION: This document sets forth the guidelines the federal financial regulatory agencies propose to follow when violations of the Equal Credit Opportunity Act or Fair Housing Act are discovered in the course of examinations or through investigation of complaints. 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 retain discretion to consider the suitability of the prescribed remedy under the circumstances of each case.

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

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 C.F.R. 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. 1730) for the Federal Home Loan Bank Board; and the Federal Credit Union Act (12 U.S.C. 1786(e)(1)) for the National Credit Union Administration.

DRAFTING INFORMATION

The principal drafters of this document were Roberta Boylan, Comptroller of the Currency; Karl Seif, Federal Deposit Insurance Corporation; Anne Geary, Federal Reserve Board; James Kristufek, Federal Home Loan Bank Board and Edward Dobranski, National Credit Union Administration.

PROPOSED STATEMENT

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

STATEMENT OF ENFORCEMENT POLICY

DEFINITIONS

1. "Act" means the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.), Regulation B (12 C.F.R. 202), and the Fair Housing Act (42 U.S.C. 3601, et seq.).
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 section 202.2(1) of Regulation B.
5. "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 § 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 SECTION 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 SECTIONS 202.6(a) AND 202.7 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 SECTION 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 Federal Register 55786, October 18, 1977.)

IV. REQUIRING CO-SIGNERS ON A PROHIBITED BASIS IN VIOLATION OF THE FAIR HOUSING ACT AND SECTION 202.7(d) OF REGULATION B

Where a co-signer is required in violation of the Act, the creditor must offer to release any unnecessary co-signer from liability. Where a co-signer is necessary to support the extension of credit but the creditor has restricted the applicant's choice of co-signer on a prohibited basis, the creditor must notify the applicant that another financially responsible co-signer may be substituted.

V. FAILING TO COLLECT MONITORING INFORMATION IN VIOLATION OF SECTION 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, or the previous examination, whichever is later.

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

VI. FAILING TO PROVIDE NOTICES OF ADVERSE ACTION IN VIOLATION OF SECTION 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 SECTION 202.10 OF REGULATION B

If the creditor has failed to obtain sufficient information to report credit information in accordance with the requirements of Section 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 Section 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.

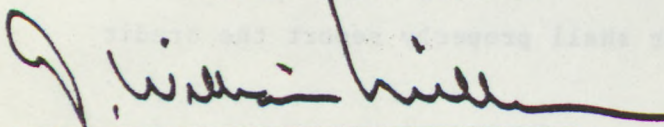
In addition, where the creditor has failed to report a separate credit history as required, each account must also receive a statement advising the account holders that if either spouse has been

refused credit since January 1, 1978, on the basis of insufficient credit history, 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.

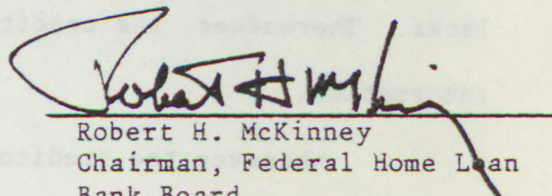
VIII. TERMINATING OR CHANGING THE TERMS OF EXISTING OPEN END ACCOUNTS ON A PROHIBITED BASIS IN VIOLATION OF SECTION 202.7(c) OF REGULATION B

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.

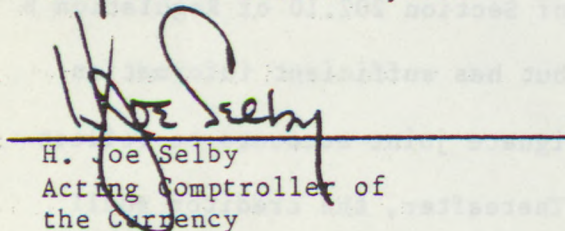
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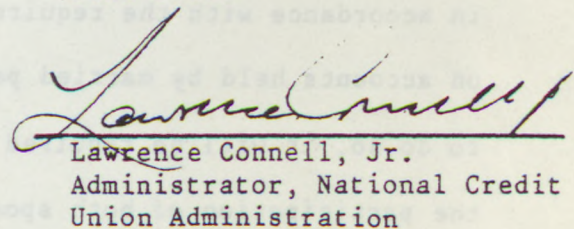
G. William Miller
Chairman, Board of Governors of
the Federal Reserve System



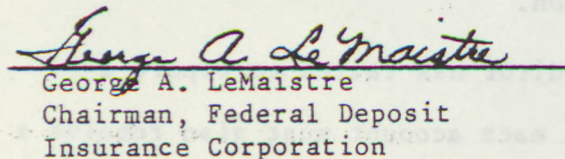
Robert H. McKinney
Chairman, Federal Home Loan
Bank Board



H. Joe Selby
Acting Comptroller of
the Currency



Lawrence Connell, Jr.
Administrator, National Credit
Union Administration



George A. LeMaistre
Chairman, Federal Deposit
Insurance Corporation