FEDERAL RESERVE BANK OF NEW YORK

[Circular No. 8450
November 8, 1978]

EQUAL CREDIT OPPORTUNITY

Proposed Amendments to Regulation B

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

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

The Federal Reserve Board today [*October 23, 1978*] proposed to make several changes in its Regulation B (Equal Credit Opportunity) that would broaden the scope of the regulation.

The Board requested comment by December 26, 1978.

The Board proposed:

1. To bring arrangers of credit within the scope of the regulation. An example would be real estate brokers, who select the creditor or creditors with whom a credit application will be filed.

The regulation currently applies to extenders of credit.

2. To eliminate the exemption in the regulation of business credit from the record-keeping and notification requirements in certain transactions under $100,000. The regulation now provides that in case of adverse action an applicant for business credit may request written notification of the applicant's right under the Equal Credit Opportunity Act and a statement of reasons for the adverse action, but will not receive them automatically. Further, the proposal would require business credit applications under the same dollar limit to be kept for 25 months. They may now be discarded in 90 days unless retention is requested.

3. To eliminate the exemption of business credit from the general bar in the regulation against asking the applicant's marital status.

The proposal would also, as a clarification, incorporate in the regulation an official staff interpretation requiring creditors to give applicants for business credit some notice, oral or written, of action taken on an application or an existing account within a reasonable time.

Printed below is the text of the proposed amendments. Comments on the proposals should be submitted by December 26 and may be sent to our Consumer Affairs Division.

PAUL A. VOLCKER,
President.

FEDERAL RESERVE SYSTEM
[12 CFR Part 202]

[Reg. B; Docket No. R-0185]
Equal Credit Opportunity

Proposed Rulemaking

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rules.

SUMMARY: The Board proposes amendments to Regulation B that would (1) bring within the scope of the regulation persons such as real estate brokers who select the creditor(s) to which a credit application will be submitted; (2) eliminate the exemption of business credit from the recordkeeping and notification requirements in certain transactions under $100,000; and (3) eliminate the exemption of business credit from the marital status information bar. The proposed amendment regarding business credit would also clarify the existing exemption as it applies to notification requirements.

DATE: Comments must be received on or before December 26, 1978.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All comments should refer to docket No. R-0185.

FOR FURTHER INFORMATION CONTACT:

Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

SUPPLEMENTARY INFORMATION:

1. CREDIT ARRANGERS

The Board's Regulation B, which implements the Equal Credit Opportunity Act, applies to all persons who are creditors, as that term is defined by the regulation. The existing § 202.2(1) definition provides that a creditor is a person who in the ordinary course of business "regularly participates in the decision of whether or not to extend credit."

The staff of the Federal Trade Commission has urged the Board to amend that definition, to include persons who in the ordinary course of business regularly "arrange for the extension of credit." The FTC staff expresses concern that real estate brokers may not be covered by Regulation B, since ostensibly they do not participate in the credit decision. The FTC staff points out that, by their participation in the credit application process, real estate brokers may nevertheless be in a position to influence the outcome. They cite a recent HUD report [1] in support of the proposition that discriminatory "steering" by real estate brokers is the cause of serve problems faced by members of minority groups in obtaining housing and that credit discrimination may exacerbate this problem. The FTC staff believes there is authority for making the regulation applicable to these persons based on the statutory definition of "creditor," which includes persons who regularly arrange for the extension of credit.

The proposed amendment would define "creditor," which includes persons who regularly arrange for the extension of credit.

The proposed amendment would define "creditor" in regulation B to include persons who in the ordinary course of business regularly arrange for the extension of credit. "Arrange for the extension of the credit" would mean to refer applicants to sources of credit, or to select the creditors to which applications are to be submitted. Under the proposed language, arrangers of credit would be subject to the basic antidiscrimination rules of Regulation B. They would not be subject to its "mechanical" provisions, such as the notification and record-keeping requirements and the rules concerning applications.

If this proposal were adopted, persons and organizations such as builders, auto dealers, and loan brokers would become creditors to the extent that they engage in referral activities. Groups that regularly refer persons to financing sources, such as neighborhood service centers or State departments of economic development, would also fall within the definition.

The Board invites comments on the following aspects of the proposal in particular:

1. Should arrangers who do not participate in the credit decision be subject to

2. If so, should they be subject to provisions different from those proposed?

3. Should the text of the amendment be drawn more narrowly, and if so, how?

2. Recordkeeping and Notification Requirements in Business Credit Transactions

The second and third proposals relate to the notification and record retention exemptions for business credit provided by Regulation B.

In a consumer credit transaction, a creditor must give the applicant notice of the action it takes and retain its records regarding the credit application for 25 months. Where adverse action occurs, creditors must provide written notice about an applicant's ECOA rights, together with a statement of the reasons or of the right to request the reasons for the denial.

Existing § 202.3(e) partially exempts business credit transactions from the record retention and adverse action requirements. That is, an applicant for business credit may request written notice of reasons for adverse action, but does not receive it automatically. Similarly, the business applicant can request to have the records of the transaction retained for 25 months. If there is no such request, the creditor may discard its records 90 days after it takes adverse action.

The Board has been urged to modify these regulatory exemptions. The FTC staff and the President's Interagency Task Force on Women Business Owners have expressed concern about enforcement of the ECOA in business credit transactions. The FTC staff and the Task Force contend that, without notification by the creditor, women and minority group members who own small businesses may not realize that the ECOA applies to business credit. When credit is denied, they may not know of their right to obtain the reasons for the denial. Thus, they may not protect their rights when unlawful discrimination occurs. In addition, the FTC relies on complaints to guide its enforcement efforts, and the FTC staff is concerned that applicants might not complain to the FTC or to other Federal enforcement agencies about discriminatory treatment. Record retention is similarly considered important to enforcement, in order that documentary evidence be available to both private litigants and enforcement agencies.

The proposed amendments would eliminate the business credit exemptions for notification and record-keeping in transactions involving direct loans where the total amount of credit extended by the creditor to the applicant is less than $100,000. In the case of an application, the amount of the loan applied for would be added to loans previously granted in determining whether the exception applies.

As proposed, the amendments regarding notification and record-keeping would affect identical classes of business credit transactions. They are, however, separate proposals and will be dealt with accordingly when the Board takes final action.

If these amendments are adopted, business creditors would be required to comply routinely with the notification and record-keeping provisions in transactions falling within the specified dollar cutoff. The proposal is limited to direct loans to avoid imposing record-keeping and notification requirements on suppliers, who may extend trade credit as an incident to their primary business.

The Board is particularly interested in comments on the following points:

1. What proportion of loan applications are made by business whose outstanding obligations to the creditor aggregate to $25,000 or less, and what proportion of these are declined? $50,000 or less? $75,000 or less? $100,000 or less?

2. What proportion of these businesses have a net worth of more than $100,000?

3. What would it cost to generate an adverse action notice regarding an application for a business loan?

4. When a business loan application is denied, what records do lenders normally retain, and for how long? When an application is granted, what records are retained?

5. What would the incremental cost be of retaining the records of business loan applications as necessary to comply with the proposed record-keeping requirements?

6. Is the $100,000 limitation in the proposal a reasonable criterion in terms of defining a class of businesses that may need additional protection under Regulation B; if not, what other criterion would be better?

3. Clarification of Notification Requirements Generally

Aside from the changes discussed above, the proposed amendment to § 202.3(e) would also clarify the notification responsibilities of creditors to whom the existing business credit exemption applies. Official Staff Interpretation EC-0009 states that, while the full notification requirements of § 202.9 do not apply automatically, a creditor nevertheless must give business applicants some notice, oral or written, of action taken regarding an application or existing account, within a reasonable time. Despite the issuance of this official staff interpretation, however, the Board's staff continues to receive questions on this matter. The Board proposes to amend the business credit provisions (see proposed § 202.3(e)(1)(ii)) so as to incorporate the substance of EC-0009.

4. Martial Status Information Bar for Business Credit.

Under Regulation B, a creditor who receives an application for business credit is exempt from the restrictions on asking the applicant's martial status that apply in certain consumer credit applications. The Interagency Task Force on Women Business Owners expresses concern that this exemption is contrary to the congressional intent in enacting the ECOA. They believe it dilutes the protection of the ECOA for women business owners.

The proposed amendment would eliminate the exemption. Business

[1] "Housing Market Practices Survey," prepared jointly by the Department of Housing and Urban Development and the National Committee Against Discrimination, April 1978.

credit would then be subject to all the same restrictions on solicitation of information as consumer credit.

The Board is particularly interested in comments addressing the following issues:

1. To what extent would changes in forms (such as application forms and financial statements) be required?

2. Should the exemption be eliminated only as to certain classes of business credit transactions, as is proposed regarding notification and recordkeeping; and if so, would the same criteria be appropriate?

3. What percentage of business credit applications is for credit to be secured by the owner's assets?

To aid in the consideration of these proposals by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. All such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 26, 1978. All material submitted should refer to docket No. R-0185. Such information 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 261.6(a)).

This notice is published pursuant to section 553(b) of Title 5 United States Code and § 262.2(a) of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2(a)).

Pursuant to the authority granted in section 703(a) of the ECOA (15 U.S.C. 1691b(a)), the Board proposes to amend Regulation B, 12 CFR part 202, as follows:

1. Section 202.2(l) would be amended to read:

§ 202.2 Definitions and rules of construction.

* * * * *

(l) *Creditor* means any person who in the ordinary course of business regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term also includes any person who in the ordinary course of business regularly arranges for the extension of credit but does not participate in the credit decision, except that such persons shall be exempt from the requirements of §§ 202.5(b) through (e) concerning applications, 202.9 relating to notifications, 202.10 relating to furnishing of credit information, 202.12 relating to record retention, and 202.13 relating to information for monitoring purposes. *Arrange for the extension of credit* means to refer applicants or prospective applicants to other creditors, or to select or offer to select creditors to which requests for credit may be made. The term creditor does not include a person whose only participation in a credit transaction involves honoring a credit card.

* * * * *

2. Section 202.3(e) would be amended by deleting paragraph (1), by renumbering existing paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively, and by revising the paragraphs renumbered (1) and (3):

§ 202.3 Special treatment for certain classes of transactions.

* * * * *

(e) *Business credit.* The following provisions of this part shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) Section 202.9(a) relating to notifications, except that:

(i) This exemption is not available regarding applications for or existing extensions of direct loans where the aggregate of the amounts owed by the applicant to the creditor and any amount applied for is less than $100,000; and

(ii) In the case of any application or account where this exemption is available, the creditor nevertheless shall notify the applicant, orally or in writing, within a reasonable time of any action taken regarding the application or account; and if the applicant, within 30 days after a notification of adverse action is given, requests in writing the reasons for such action, the creditor shall furnish a written statement of specific reasons for the adverse action and the ECOA notice within 30 days of such a request, in accordance with § 202.9(b);

(2) Section 202.10 relating to furnishing of credit information; and

(3) Section 202.12(b) relating to record retention, except that:

(i) This exemption is not available regarding applications for or existing extensions of direct loans where the aggregate of the amounts owed by the applicant to the creditor and any amount applied for is less than $100,000; and

(ii) In the case of any application or account where this exemption is available, the creditor nevertheless shall comply with § 202.12(b) if the applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application or account be retained.

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