

FEDERAL RESERVE BANK  
OF NEW YORK

Circular No. 8650  
October 3, 1979

**INTERPRETATION OF REGULATION B**

**New Jersey Statute Prohibiting Marital Status Inquiries**

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

The Board of Governors of the Federal Reserve System has issued an interpretation of its Regulation B, "Equal Credit Opportunity," in response to a request to determine whether a certain New Jersey statute is inconsistent with the Equal Credit Opportunity Act and Regulation B, and is therefore preempted. The New Jersey statute prohibits inquiries regarding marital status in connection with credit applications. The Board of Governors has determined that the New Jersey law and other substantially similar State laws are not inconsistent with the ECOA and Regulation B, and accordingly are not preempted.

Enclosed is a copy of the interpretation of Regulation B. Questions regarding the interpretation may be directed to our Regulations Division (Tel. No. 212-791-5914).

THOMAS M. TIMLEN,  
*First Vice President.*

Board of Governors of the Federal Reserve System

EQUAL CREDIT OPPORTUNITY

INTERPRETATION OF REGULATION B

(Docket No. R-0248)

(effective September 26, 1979)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: In response to a request to determine whether a New Jersey law is inconsistent with the Equal Credit Opportunity Act and Regulation B and therefore preempted, the Board has decided that a law creating an absolute ban on marital status inquiries is not inconsistent with the ECOA and Regulation B.

EFFECTIVE DATE: September 26, 1979.

FOR FURTHER INFORMATION CONTACT: Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3667).

SUPPLEMENTARY INFORMATION: Pursuant to its authority under § 705(f) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(f)) to determine whether state laws are inconsistent with the ECOA and Regulation B, the Board issues the following interpretation, effective September 26, 1979.

§ 202.1104 State laws prohibiting marital status inquiries generally are not inconsistent with Equal Credit Opportunity Act.

The Board has been asked to determine whether a New Jersey statute that prohibits marital status inquiries in connection with a credit application is inconsistent with the Equal Credit Opportunity Act (15 U.S.C. 1691-1691(f)), as implemented by Regulation B (12 CFR Part 202), and therefore preempted. The issue is whether an absolute ban on marital status inquiries is inconsistent with that portion of § 202.5(d)(1) of Regulation B that permits marital status inquiries.

The New Jersey statute\* generally bars marital status inquiries in connection with all credit applications. On the other hand, § 202.5(d)(1) of Regulation B provides that a creditor may request an applicant's marital status when the applicant applies for credit with another person or relies on another person's income or assets or when the applicant seeks credit secured by collateral. For the reasons set forth below, the Board has determined that the New Jersey statute is not inconsistent with the ECOA.

A preemption determination requires a two-step analysis. First, the Board must determine whether the state law is inconsistent and, second, whether the state law is more protective of an applicant. If the Board determines that a state law is not inconsistent, however, then consideration of the "more protective" issue is not required.

In resolving the inconsistency issue, the first and key question is whether the New Jersey statute requires or permits a practice prohibited by the ECOA. If it does, then clearly it is inconsistent.

\*New Jersey Stat. Annot. 10:15-12(i)(2) provides (emphasis added):

It shall be . . . an unlawful discrimination:

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution to whom application is made for any loan or extension of credit including but not limited to an application for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof:

\* \* \*

(2) to use any form of application for such loan, extension of credit or financial assistance or to make any record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, sex or nationality or any intent to make any such limitation, specification or discrimination; unless otherwise required by law or regulation to retain or use such information.

But it does not. Indeed, the New Jersey statute does just the opposite; it prohibits a practice permitted by the ECOA.

Regulation B permits a creditor to ask about an applicant's marital status when the applicant applies for other than individual, unsecured credit. This regulatory provision implements a statutory determination that a marital status inquiry made for the purpose of ascertaining a creditor's rights and remedies does not represent marital status discrimination under the ECOA. Furthermore, the act and regulation permit creditors to consider state property laws affecting creditworthiness even if those laws make distinctions based upon marital status.

The New Jersey statute under review clearly prevents a creditor from taking advantage of the ECOA and Regulation B provisions noted in the preceding paragraph. In that sense, it might be considered "inconsistent" with federal law. The purpose of the provisions in the ECOA and Regulation B that permit marital status inquiries in certain circumstances, however, is to accommodate state laws that may affect creditworthiness. Thus, in this case, if the New Jersey statute banning marital status inquiries precludes consideration of factors under other New Jersey laws that affect creditworthiness, the inconsistency, in the Board's opinion, is between the differing New Jersey laws, not between state and federal law.

The New Jersey legislature obviously has made a policy judgment that collection of information regarding an applicant's marital status for the purpose of determining a creditor's rights and remedies is not necessary. The ECOA leaves that judgment to state law. Therefore, the appropriateness of the New Jersey legislature's deci-

sion is not an issue in this matter. Since a New Jersey creditor can comply with the New Jersey statute without violating the ECOA, the Board believes that the laws are not inconsistent on the basic point of marital status discrimination.

Two remaining questions relevant to deciding whether the New Jersey statute is inconsistent are:

- (1) Does the state law prevent a creditor from seeking information required for monitoring purposes under § 202.13 of Regulation B or under substitute monitoring programs imposed by the other federal enforcement agencies listed in § 704 of the ECOA?
- (2) Does the state law prevent a creditor from making inquiries concerning information required for the establishment of special purpose credit programs under § 202.8 of Regulation B?

The answer to these two questions also is that it does not. The Board interprets the language in the last sentence of the New Jersey statute — "unless otherwise required by law or regulation to retain or use such information" — to provide specifically for compliance with these provisions of Regulation B.

Based on this analysis, the Board has determined that the New Jersey statute, along with other substantially similar state laws prohibiting marital status inquiries in connection with a credit application, are not inconsistent with the ECOA and Regulation B and therefore are not preempted if those laws permit marital status inquiries in accordance with §§ 202.8 and 202.13 of Regulation B.

By order of the Board of Governors, effective September 26, 1979.