

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. 10270  
November 28, 1988 ]

**EQUAL CREDIT OPPORTUNITY**  
**Final Preemption Determination Under Regulation B**

*To All Depository Institutions, and Others Concerned,  
in the Second Federal Reserve District:*

The Board of Governors of the Federal Reserve System has issued a final determination that a provision in New York law relating to the offering of special-purpose credit programs is preempted under Regulation B.

Printed below is the text of the Board's notice, as published in the *Federal Register* of November 14. Questions on the final preemption determination should be directed to our Compliance Examinations Department.

E. GERALD CORRIGAN,  
*President.*

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 202**

[Reg. B; Docket No. R-0646]

**Equal Credit Opportunity; Preemption  
of New York Law**

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

**ACTION:** Preemption determination.

**SUMMARY:** The Board is publishing in final form a determination that a certain provision in New York law is inconsistent with the Equal Credit Opportunity Act and Regulation B and therefore is preempted.

**EFFECTIVE DATE:** November 11, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Linda Vespereny, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**(1) General**

Section 705(f) of the Equal Credit Opportunity Act authorizes the Federal Reserve Board to determine whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination. If a state law is inconsistent and provides no greater protection for credit

applicants than does the federal law, the state law is preempted to the extent of the inconsistency, and creditors in that state may not follow the inconsistent state requirement.

The Board received a request, made on behalf of an organization headquartered in the Republic of China, for a preemption determination concerning New York state law. The organization plans to operate a fund that will guarantee loans made to overseas Chinese residing in the United States when they borrow money from the U.S. branches of Chinese banks or from U.S. banks that have Chinese capital. The organization proposes to establish this guarantee program in keeping with provisions of the Equal Credit Opportunity Act that permit a creditor

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offering a special-purpose credit program (as defined by the Board's Regulation B, which implements the act) to take into account a factor—such as national origin—whose consideration is normally barred by the act and regulation.

In response to this request the Board examined New York law, Article 15, section 296-a to determine whether its provisions are inconsistent with the ECOA and the Board's Regulation B. On July 18, 1988, the Board published a preliminary determination (53 FR 26987). In that notice, the Board proposed to preempt the New York law to the extent that it bars a creditor from offering a special-purpose credit program. One comment on the proposed determination was received during the comment period, which closed on September 12, 1988.

The Board is now publishing a final determination regarding the New York law under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265).

#### **(2) Analysis of ECOA, Regulation B, and New York Law**

The ECOA and Regulation B prohibit discrimination in any credit transaction on the basis of race, color, national origin, religion, sex, marital status, age, receipt of income from public assistance programs, or the good-faith exercise of any rights under the Consumer Credit Protection Act. However, § 202.8 of the regulation (which implements section 701(c) of the ECOA) permits a creditor to extend special-purpose credit and to consider one or more common characteristics of program participants

(for example, race or national origin) when extending credit under these programs.

Under § 202.8, creditors are allowed to offer credit assistance programs that are authorized by federal or state law, or that are established by a not-for-profit organization, for the benefit of an economically disadvantaged class of persons. It also allows a not-for-profit organization to offer credit assistance programs for the benefit of its members. In addition, for-profit organizations may provide special-purpose credit programs to meet special social needs if the programs are administered pursuant to a written plan that identifies the class of persons the particular program is designed to benefit. As mentioned earlier, participants of these programs may be required to share one or more common characteristics, such as race or national origin. If participants are required to possess a common characteristic, the creditor may request and consider information regarding that particular characteristic.

Under section 705 of the ECOA and § 202.11 of Regulation B, state law provisions that are inconsistent with the requirements of the act and regulation are preempted. Section 202.11(b)(1)(v) of Regulation B also provides that a state law is inconsistent with the requirements of the federal law to the extent that the state law prohibits inquires necessary to establish or administer a special-purpose credit program as defined by § 202.8.

The Board has made a comparison of New York statute section 296-a(1) (b) and (c) to regulation B's Section 202.8. The establishment of a special-purpose credit program, though permissible

under the ECOA and § 202.8, is prohibited under New York law, which bars—without exception—discrimination on the basis of the race, creed, color, national origin, sex, or marital status of an applicant or of a class of applicants. Furthermore, creditors are expressly prohibited under New York law from inquiring about these characteristics.

#### **(3) Determination and Effect of Preemption**

Based on its analysis, the Board has determined that the New York law on credit discrimination is inconsistent with federal law, and that it is preempted by the ECOA and Regulation B to the extent of the inconsistency. Thus, the state of New York is barred from prohibiting special-purpose credit programs and related inquires that are permissible under federal law.

The Board makes no determination, however, as to whether any particular credit program (including the program which the party requesting this preemption determination proposes to establish) qualifies as a special-purpose credit program under the ECOA and Regulation B. As explained in comment 8(a)-1 of the official staff commentary to Regulation B (12 CFR Part 202, Supp. 1), the agency or creditor administering or offering the credit program must make that determination.

Board of Governors of the Federal Reserve System, November 4, 1988.

William W. Wiles,

Secretary of the Board.

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