

**ANNUAL REPORT TO CONGRESS
ON
THE EQUAL CREDIT OPPORTUNITY ACT
FOR THE YEAR 1977**

Board of Governors of the Federal Reserve System

January 26, 1978

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The Board of Governors of the Federal Reserve System is pleased to submit to Congress this second Annual Report on the Equal Credit Opportunity Act (ECOA). This Report describes the highlights of the year, including extensive amendments to the act, outlines the Federal Reserve System's enforcement activities, and provides the Board's assessment of the extent of compliance on the part of State member banks. The Report also discusses the compliance and enforcement efforts of other agencies assigned administrative responsibilities under Section 704 of the act and their assessment of compliance on the part of creditors that they supervise.

The Report does not contain recommendations for statutory amendments. Such recommendations, if any, will be made in the Board's Annual Report to the Congress.

The amendments to the ECOA and the regulations implementing the amended act became effective in March 1977. In an effort to mitigate many of the compliance problems that creditors had experienced under the original Regulation B, the Board published several model application forms. As to the substantive requirements of Regulation B, the chief problem for banks seems to be understanding and complying with Regulation B's limits on requests for the signature of an applicant's spouse. The Board's advisory visit program was developed to explain this provision and other provisions of the regulation to member banks.

The Board issued four interpretations of Regulation B and the Board's staff issued seven official staff interpretations to clarify technical ambiguities in the regulation.

Few lawsuits, to the Board's knowledge, were filed under the act either by private parties or by the Department of Justice.

I. ENFORCEMENT AND ASSESSMENT OF COMPLIANCE

As described below, the Board and the other Federal agencies substantially increased their enforcement efforts in 1977.

A. Federal Reserve System

1. Examination

Examination of banks is the primary means by which the Federal Reserve System enforces the act. To improve enforcement of Regulation B, the Board developed new examiner manuals, checklists, instructions and report forms. The Board also initiated a program of special compliance examinations aimed specifically at consumer credit regulations, including Regulation B. Since the implementation of this program approximately 400 member banks have undergone the special compliance examination. By April 1, 1978, 1 year after the revised Regulation B became effective, nearly all member banks will have been examined for compliance with the regulation. A copy of the examination report is reviewed by the Board's Division of Consumer Affairs to determine the individual bank's compliance and to evaluate and improve the examination program.

To ensure that its examiners are thoroughly versed in Regulation B, the Board conducted three 2-week training institutes

in 1977. Ninety-six System examiners and several representatives of other Federal and State agencies attended these schools. Four more schools are planned for 1978. In response to a General Accounting Office recommendation, joint consumer regulation schools were initiated by the Board, the Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency to supplement their respective training programs. Two sessions, attended by 64 participants from the three agencies, were held. Another joint school was scheduled for early 1978.

The Board's figures indicate that while 73 per cent of the banks that have received special consumer examinations were not in full compliance with Regulation B, the overwhelming majority of violations relate to the use of outdated credit applications and forms. Most other violations involve the unlawful request for the signature of a nonapplicant spouse, the notification requirements of Regulation B, and the failure to request information for monitoring purposes.

During the course of consumer examinations, Reserve Bank examiners explain the nature of any violations discovered and outline the prospective corrective action necessary for compliance. All State member banks are either in compliance at the conclusion of the examination or have agreed to establish policies and procedures designed to prevent recurrence of violations. Continuing emphasis on the special consumer examination program, in conjunction with the Board's advisory visit program, should aid achievement of full compliance for all State member banks.

2. Advisory Visit Program

The Board's examination experience indicates that a lack of familiarity with Regulation B's requirements is the single most significant obstacle to full compliance with the regulation. This is particularly true of smaller banks, which often do not possess either the personnel or resources to study the regulation and develop procedures for compliance. In response to this need and in an effort to improve compliance, the Board initiated a voluntary advisory visit program, consisting of both group meetings and individual visits, for all interested member banks. In half-day or full-day meetings with bank management, Federal Reserve Bank personnel review the bank's forms, procedures, and policies, as well as discuss any problems or questions that the management and operating staff may have concerning compliance. Approximately 770 such visits were made during 1977; the total number of banks that received assistance was higher, approximately 900, since certain meetings were attended by several banks. This program has been well received by member banks.

3. Model Forms

Prior to the revision of Regulation B, many creditors experienced difficulty in adapting their credit application forms to the regulation's restrictions on permissible questions. To alleviate this problem, the Board developed five model forms for the following types of credit: open end, unsecured consumer credit transactions; closed end, secured transactions; closed end transactions, whether unsecured or secured; credit in community property States; and

residential real estate mortgage transactions. The model forms appear in an appendix to the regulation. While their use is optional, proper usage by a creditor assures compliance with the requirements of Regulation B relating to application forms. These model forms not only should promote compliance but should reduce the cost of compliance.

4. Consumer Complaints

Another method by which the Federal Reserve System enforces compliance with the act is the investigation of consumer complaints. In the course of an investigation, an attempt is made to resolve the problem of the individual complainant. The Board has developed a Systemwide computerized complaint control procedure to monitor the handling of complaints and to aid in their resolution.

From January 1, 1977, through October 31, 1977, the Federal Reserve System received 731 complaints involving the act or Regulation B, of which approximately 40 per cent were related to State member banks and 60 per cent to other creditors. The latter group was handled either by referring them to the appropriate agency or by supplying information or an explanation to the complainant.

With respect to the 293 complaints regarding State member banks, 132 investigations have been completed, 69 are still under investigation, and 92 were handled by furnishing information or an explanation. The 132 completed investigations yielded the following results: the bank was determined to be legally correct in 83 cases; was found to be legally correct but nevertheless reached an accommodation

with the complainant in 28 cases; was found to have made an error, which has since been corrected, in 13 cases; was involved in a possible violation, which has since been resolved in 6 cases; and was involved in a possible violation, which is still unresolved, in 2 cases.

The most common complaint (574 out of a total of 731) was unfair denial, termination, or change in terms of credit. Not all of these 574, however, claimed discrimination on one of the bases prohibited in the act. For example, 159 complainants believed that the reason for the adverse action was their credit history. Level of income was cited by 68 as the perceived reason for the denial. On the other hand, 42 complainants felt that marital status was the reason for the creditor's adverse action, 41 cited discrimination because of sex, and 16 because of race, color, or national origin.

In an effort to evaluate consumer satisfaction with the Federal Reserve's handling of complaints, the Board has sent a followup questionnaire to those persons whose complaints were received subsequent to April 1, 1977. The questionnaire is sent to complainants shortly after the investigation is completed. The questionnaire deals with the acceptability of the resolution, the clarity of the explanation, the amount of time in which the complaint was handled, the courteousness of System staff, and whether or not the consumer would contact the Federal Reserve in the event of a future problem. The Board is reviewing returns from the followup letter and the entire procedure to determine if any changes should be made to improve this service to the public.

5. Other Compliance Activities

The Board is currently conducting a survey of selected major creditors that extend open end credit to determine the extent to which consumers are exercising their rights to a credit history reported separately from that of a spouse and to a notification of specific reasons for the denial of credit. The results should assist the Board in evaluating the effectiveness of these requirements as well as in determining the cost of compliance.

The Board and the other financial institution regulatory agencies are working on a uniform set of guidelines for enforcement of Regulation B, specifying corrective action that will be taken by the appropriate agency when certain violations are discovered. The guidelines are intended to promote better and more uniform enforcement among all Federally regulated financial institutions.

B. Other Agencies

1. Comptroller of the Currency

The Comptroller of the Currency, who is responsible for enforcing the act for national banks, instituted in October 1976 a program of consumer affairs examinations. To date, 2,859 national banks have undergone such examinations. The examinations are conducted by specially trained examiners who have completed a 2-week consumer school. Six such schools have been conducted.

Enforcement of Regulation B also occurs through the resolution of consumer complaints. From January 1, 1977, through

November 30, 1977, the Comptroller received 451 complaints, the majority of which alleged discrimination on the basis of sex or marital status. When a violation is discovered through investigation, the bank not only must take corrective action in the applicant's case but is required to establish policies and procedures to prevent future violations.

The Comptroller's examinations reveal that 97 per cent of all national banks were in violation of the act to some extent. However, 86 per cent of the violations appear to be technical in nature, that is, attributable to the use of obsolete credit applications and other forms. Most (86 per cent) of the substantive violations involve the unlawful request for the signature of a nonapplicant spouse and the denial of separate credit to married applicants. All national banks have taken or have promised to take prospective corrective action when the examination has disclosed violations. The Comptroller believes that substantial compliance is achieved by national banks after a consumer examination has occurred and the directed corrective action taken.

2. Federal Deposit Insurance Corporation

The FDIC, which enforces the act for insured nonmember banks, initiated in May 1977 a program of separate compliance examinations, conducted by specially trained examiners, to determine compliance with consumer protection laws and regulations. Under this program, the FDIC expects to examine each insured nonmember bank at least once every 15 months.

From October 1, 1976, through September 30, 1977, 26.6 per cent of the compliance examination reports indicated apparent violations, which related primarily to the notification requirements of Regulation B and to the provisions concerning applications, particularly the conditions governing permissible terminology on application forms and permissible requests for information.

During the same period, the FDIC received 291 consumer complaints alleging ECOA violations. Sex or marital status discrimination comprised the largest category, followed by consumer disagreement with the bank's reasons for taking adverse action. A thorough inquiry is conducted to determine the merits of all discrimination complaints. Should violations be found, the FDIC takes appropriate action to bring the bank into compliance.

From October 1, 1976, through September 30, 1977, the FDIC's Board approved six cease-and-desist orders involving equal credit opportunity.

In assessing the extent of compliance with the ECOA, the FDIC reports that the majority of violations discovered thus far relate to form and procedure rather than substantive discrimination.

3. Federal Home Loan Bank Board

The Federal Home Loan Bank Board (FHLBB), which enforces the act for Federally chartered savings and loan associations, conducts regular examinations to determine compliance with Regulation B. During late 1976 and early 1977, the FHLBB conducted 2-1/2 day training sessions in consumer law for all of its examiners.

In July 1977, the FHLBB instituted a new consumer complaint procedure. During the first 11 weeks of operation, 48 discrimination complaints were received. Redlining was the most common type of complaint, followed by discrimination on the bases of race or national origin and sex and marital status. As of December 5, 1977, discrimination complaints received numbered approximately 200. Each complaint is investigated to determine whether a violation has occurred and the complainant is notified of the result of the investigation.

The FHLBB believes that most savings and loan associations wish to comply, but that confusion on procedural matters as well as extremely literal interpretations on the part of association staff often defeat the act's purpose. Thus, most noncompliance derives from "technical violations" and compliance is promptly obtained.

4. National Credit Union Administration

The National Credit Union Administration (NCUA) enforces the act for Federally chartered credit unions. Enforcement activities, like those of the other financial regulatory agencies, include examiner training, specialized examination procedures, and, if a violation is discovered, appropriate followup with credit union officials. Approximately 90 per cent of the 12,800 Federal credit unions were examined by the year-end.

The NCUA conducts a field investigation of all written consumer complaints and, when necessary, institutes corrective action. The agency has received 30 complaints or requests for information, with the largest group pertaining to discrimination on the basis of race or

national origin. The next most common complaint alleged discrimination due to factors not prohibited by existing law, followed by discrimination alleged to be based on marital status. Eight complaints are still under investigation, but of the remainder, only two were substantiated by objective review of the facts. In both of those cases, corrective action was undertaken promptly and in several other instances, subsequent loan applications by complainants were approved as a result of improved understanding between the parties.

NCUA's preliminary results indicate that 83 per cent of the credit unions examined were in compliance at the conclusion of the examination and the remainder had agreed to take prompt corrective actions.

5. Federal Trade Commission

The Federal Trade Commission (FTC) enforces the act for all creditors not subject to the jurisdiction of any of the other enforcement agencies. Potential violators of the act are identified through several sources of information, including consumer complaints, consumer and civil rights organizations, and other enforcement agencies. When there is evidence that a violation may have occurred, an informal inquiry is made, followed by a full investigation when warranted. During 1977 the FTC staff initiated a number of investigations, which are expected to result in formal action in the near future.

During the first 10 months of 1977, the FTC received 6,500 complaints and inquiries concerning equal credit opportunity. The

agency states that many complaints allege discrimination on the basis of sex and marital status while a significant number of complaints claim discrimination on the basis of race and age.

The FTC believes that creditors are making a good faith effort to comply with the act and are achieving a substantial degree of compliance. However, some evidence indicates that smaller creditors may be less familiar with the requirements of the act and with Regulation B than major national creditors. The FTC hopes that this problem will be alleviated by increased creditor and consumer education efforts and by the deterrent effect of litigation and administrative enforcement actions.

6. Civil Aeronautics Board

The Civil Aeronautics Board (CAB), which enforces the act for domestic and foreign air carriers, continues to monitor industry practices through the resolution of consumer complaints, none of which, to date, have been considered valid. Enforcement measures include contacting the carrier or supplying information to the consumer. On the basis of complaints received, the CAB believes that compliance within the industry is relatively good.

7. Interstate Commerce Commission

The Interstate Commerce Commission (ICC) enforces the act for regulated common carriers. In its view, common carriers are forbidden to discriminate in the granting of credit by Section 3(1) of the Interstate Commerce Act and by several ICC credit regulations. Thus, the ICC believes that the ECOA does not have a significant impact on the surface transportation industry.

8. Department of Agriculture

The U.S. Department of Agriculture (USDA) includes agencies with responsibilities under the act. The Packers and Stockyards Administration enforces the act for creditors under its jurisdiction. Since the livestock industry characteristically operates on a cash basis, the agency's monitoring is handled on a complaints received basis, and in the event of a violation, remedial action will be initiated. As no complaints have been received to date, the Packers and Stockyards Administration assumes there is substantial compliance within the industry.

The Farmers Home Administration, itself a creditor, is under the enforcement authority of the FTC. During 1977, 140 complaints against this organization concerning the denial of loans were received by the USDA's Office of Equal Opportunity.

9. Small Business Administration

The Small Business Administration (SBA) enforces the act for small business investment companies and, through a letter of understanding with the FTC, with regard to other recipients of SBA assistance and with regard to SBA program offices. During fiscal year 1977, seven SBA program offices were reviewed and 15,954 recipient businesses were monitored for compliance, with 844 being subjected to on-site reviews.

Six complaints were received alleging sex discrimination when applying for loans from SBA program offices, but investigations revealed that the complaints were unsubstantiated. No consumer

complaints alleging discrimination were received from customers or clients of recipients of SBA assistance.

Due to the general nature of SBA recipients (small businesses) and the lack of consumer complaints received, the SBA believes creditors subject to its authority to be in adequate compliance.

10. Securities and Exchange Commission

The Securities and Exchange Commission (SEC) enforces the act for securities brokers and dealers. The SEC reports having received no complaints during 1977 that alleged discrimination in securities credit transactions and states that creditors subject to its jurisdiction appear to be complying with the act and Regulation B.

11. Farm Credit Administration

The Farm Credit Administration (FCA) enforces the act for Federal land banks, Federal land bank associations, Federal intermediate credit banks, and production credit associations. FCA's enforcement activities include regular examinations, conducted every 12 to 18 months. Such examinations in the current year have not disclosed significant problems in the area of discrimination.

In 1977 approximately a dozen complaints were received by the agency and reviewed for appropriate followup. In none of the nine complaints resolved thus far was evidence disclosed of intent to discriminate and no known complaints have resulted in litigation. The FCA concludes that the record of compliance by farm credit institutions appears to be good.

II. CONSUMER ADVISORY COUNCIL

The Consumer Advisory Council, established in late 1976 to advise and consult with the Board on matters relating to consumer credit, held four meetings in 1977. The Council considered such topics as consumer education and the survey of consumers (both mentioned below).

Those members of the Council appointed to 1-year terms in 1976 were reappointed to 3-year terms in 1977, and three members resigned during the year. A list of current Council members appears below as an appendix.

III. ADMINISTRATIVE FUNCTIONS

A. Amendments and Interpretations of Regulation B

1. Board Interpretations

On April 28, 1977, the Board adopted two interpretations of revised Regulation B, both concerning the possible inconsistency of California law with the act and the regulation. One interpretation, designated 202.1101, states that a law requiring delivery of a notice explaining the obligations of a cosigner only when the signers of a consumer credit contract are not married to each other is not inconsistent with Regulation B. The other interpretation, designated 202.1102, states that a law requiring translation of certain consumer credit documents into Spanish but not into other languages is not inconsistent with Regulation B.

On July 8, 1977, the Board adopted an interpretation of Regulation B, designated 202.1103, determining that State laws making contracts enforceable against married persons at a younger age than against unmarried persons are not inconsistent with the act.

On August 4, 1977, the Board issued an interpretation, designated 202.801, dealing with special-purpose credit programs under Section 202.8 of the regulation. The interpretation states that a credit program is to be considered "expressly authorized by Federal or State law," as required for programs seeking to qualify under Section 202.8(a)(1), if it is authorized either by the terms of a Federal or State statute, or by a regulation lawfully promulgated by the agency administering the program. The interpretation further states that participating creditors will not violate Regulation B by complying with regulations that implement the program. Finally, the Board stated that determinations on another of the criteria for qualification under Section 202.8(a)(1), namely, whether particular programs benefit an "economically disadvantaged class of persons," should be made by the agency administering the program, not by the Board.

2. Official Staff Interpretations

Regulation B was amended during 1976 to implement the provisions of the 1976 amendments to the act, which authorized the Board to empower staff members to issue interpretations of Regulation B or the act. Creditors can rely on such interpretations to the same extent as on formal Board interpretations. During 1977 seven official staff interpretations of Regulation B were issued. Their

subject matter includes names in which accounts may be carried, the effect of Regulation B on State loan-splitting laws, the scope of the real estate credit-monitoring requirements, use of credit-scoring systems in combination with judgmental credit evaluation methods, the application of notification and record retention requirements to business credit, information gathering by creditors for noncredit purposes, and whether or not adverse action can occur at the point of sale.

Two official staff interpretations, designated EC-0007 and EC-0008, were taken under reconsideration at the request of the FTC and the Department of Justice. On October 3, 1977, the Board issued alternative proposed amendments to Regulation B, which would cover the same issue as interpretation EC-0008, whether or not adverse action occurs at the point of sale. These are discussed in greater detail in the following section of this Report.

The FTC and Justice also petitioned the Board for a change in the procedures by which official staff interpretations are issued. They urged the Board to allow opportunity for public comment before official staff interpretations are issued in final form. This matter is currently under consideration.

3. Amendments

In order to resolve the questions raised by the requests for reconsideration of EC-0008, the Board issued alternative proposed amendments to Regulation B. Under the regulation, a creditor, in each instance of adverse action, must either provide a written explanation to the customer of the reason for the adverse

action or advise the customer of the right to obtain an explanation upon request. Each proposal would amend the definition of "adverse action." The first would generally result in an affirmation of EC-0008; in general, adverse action commonly would not occur when use of an open end credit account is denied at the point of sale. The other proposal would generally adopt the position of the FTC and the Justice Department; adverse action would occur at the point of sale in many instances. Approximately 200 comments on the proposed amendments have been received, and the matter is still under consideration.

B. Education

The past year has seen increased educational activity on the part of both the Federal Reserve System and the other agencies responsible for Regulation B compliance.

Within the Federal Reserve System, educational efforts included speeches and seminars involving consumers, creditors, school groups, professional associations, and others. Nearly 350 of these presentations were made by staff members of the Federal Reserve Banks during 1977 and about 60 by Board staff during the first 8 months of the year. In addition, Board and Reserve Bank staff on several occasions participated in radio and television programs relating to equal credit opportunity.

During 1977 the Board published two pamphlets to inform consumers of their rights under Regulation B. One deals with rights of women under the regulation and the other with credit discrimination

on the basis of age. Approximately 4.4 million copies of the former and 2.9 million copies of the latter have been distributed. The Board also published a pamphlet summarizing Regulation B requirements applicable to small businesses and professionals who extend credit with no finance charge imposed. Approximately 1 million copies of this pamphlet have been distributed. Current plans include a pamphlet on housing credit and a filmstrip explaining consumer protection laws, including equal credit opportunity.

During 1977 a nationwide survey of consumers was conducted for the Board in an effort to ascertain the extent of consumer knowledge of credit and consumer credit legislation. The results are currently being analyzed.

A number of the other enforcement agencies report similar educational efforts including slide presentations, consumer pamphlets, journal articles, seminars, and speeches.

APPENDIX

CONSUMER ADVISORY COUNCIL
Board of Governors
Federal Reserve System

Leonor K. Sullivan
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12-31-78

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Linda M. Cohen
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12-31-78

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12-31-80

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Dates indicate expiration of term