

THE ANNUAL REPORT TO THE CONGRESS
ON
THE EQUAL CREDIT OPPORTUNITY ACT
FOR THE YEAR
1981

The Board of Governors of the Federal Reserve System
January 28, 1982

This fifth annual report on the Equal Credit Opportunity Act (ECOA) discusses the uniform enforcement policy that was developed by the Federal Financial Institutions Examination Council. That policy was designed to ensure corrective action by financial institutions whose practices violate the intent of the Equal Credit Opportunity and Fair Housing Acts. The report also discusses compliance, rulewriting, and the activities of the Consumer Advisory Council.

UNIFORM ENFORCEMENT POLICIES

On August 10, 1981, the Federal Financial Institutions Examination Council proposed a policy statement for enforcement of the Equal Credit Opportunity and Fair Housing Acts. ^{1/} The objective of the statement is to establish a uniform national policy to require creditors to take corrective action for the more serious past violations, and to ensure future compliance. The policy statement was adopted by the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) (46 F.R. 56500, November 17, 1981).

The policy statement emphasizes that the agencies will enforce the acts vigorously, and states that institutions will be required to establish procedures to prevent repetition of certain violations that the policy identifies as serious. The policy applies to violations that are discovered following its adoption; when a serious violation is discovered, the creditor is usually required to correct all similar violations that occurred in the 24 months before the discovery of the violation.

The serious violations identified are discouraging applicants on a prohibited basis, using credit criteria in a discriminatory manner in evaluating

1. The Examination Council consists of The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

applications, imposing more onerous terms and requiring cosigners on a prohibited basis, failing to provide notice of adverse action, and failing to report separate credit histories for married persons.

To implement the policy statement, the Examination Council also proposed a Supervisory Enforcement Policy for the Equal Credit Opportunity and Fair Housing Acts. The enforcement policy, which has been adopted by the Board, the OCC, and the NCUA, recommends specific measures to correct serious violations. For example, creditors that have discriminated illegally are required to take the following steps:

- o identify all applicants who suffered illegal discrimination in the previous 24 months;
- o solicit new applications from them and allow 60 days for re-application;
- o describe to the affected applicants the conditions for any refunds or reimbursements;
- o notify any party informed of a rejection that the applicant's credit history should be corrected;
- o evaluate the new application using the original credit standards, without any discriminatory elements.

COMPLIANCE

Federal Financial Institutions Regulatory Agencies

The Board, the FDIC, the Federal Home Loan Bank Board (FHLBB), and the OCC reported that compliance continued to improve in 1981. More than half (51 percent) of the examined institutions were found to be in full compliance with Regulation B. Only 20 percent of the examined institutions that were not in full compliance had violated more than five provisions. (The regulation contains about 170 provisions that could be violated.) The Board reported a 10 percent increase in overall compliance from 1980; the FDIC, 8 percent; the FHLBB, 11 percent; and the OCC, 20 percent. The NCUA reported a 16 percent

decrease in compliance, which it attributes to the examination techniques of its new consumer compliance program.

The Board issued two cease-and-desist orders that addressed equal credit opportunity matters, and the FDIC issued one.

The most common violations cited by the agencies were failures (1) to give or to complete properly written notices of adverse action; (2) to follow the requirements about the timing of adverse action notices; (3) to provide the required disclosures regarding "other income" and marital status; (4) to observe the provisions prohibiting spousal signatures; and (5) to retain for the required time period evidence of compliance with the act and Regulation B.

Other Agencies

The Civil Aeronautics Board (CAB) reported a satisfactory level of compliance among U.S. and foreign airlines in 1981; it received fewer complaints than in 1980, and none required any formal enforcement action. The CAB provided consumers interested in the ECOA with telephone information and with appropriate government publications.

The Farm Credit Administration (FCA) reported continued good compliance. The complaints received in 1981 did not suggest any discriminatory patterns or practices.

The Federal Trade Commission (FTC) reported an apparent improvement in compliance. However, it mentioned that certain requirements continue to be violated: the prohibition against requiring spousal signatures; the use of possibly discriminatory criteria, such as ZIP codes, in credit-scoring systems; and the use of vague, rather than specific, reasons for rejecting applications. The FTC is also concerned that in both judgmental and credit-scoring systems, some creditors may disregard, or treat less favorably, income derived from sources other than employment. The FTC is investigating whether these practices

have the effect of illegal discrimination against divorced or separated women, elderly persons, and recipients of public assistance.

The Interstate Commerce Commission (ICC) explained in its report that of the regulated carriers, those that transport household goods, and thus deal with individuals rather than business firms, would be most likely to violate the ECOA. Nonetheless, that agency said that it has never received a complaint from a shipper involving the discriminatory denial of credit by such a carrier.

The Securities and Exchange Commission (SEC) reported substantial compliance with the ECOA. It brought no enforcement actions and received no formal complaints.

The Small Business Administration (SBA) reported no enforcement problems and good compliance. The SBA's monitoring efforts were expanded in 1981 to include service-oriented borrowers, such as doctors and attorneys.

The U.S. Department of Agriculture reported substantial compliance by creditors subject to the Packers and Stockyards Act. No complaints were received and no enforcement actions were initiated.

None of the agencies, including the Board, has legislative recommendations.

THE CONSUMER ADVISORY COUNCIL

The Consumer Advisory Council was established in 1976 to advise the Board in carrying out its responsibilities under the Consumer Credit Protection Act and in other consumer-related activities. The council has 30 members who represent the interests of consumers and creditors from different regions of the country.

With regard to equal credit legislation, council members discussed ways to improve the detection of ECOA violations, including the development and use by creditors of written loan policies. The council also discussed

the extent to which past violations of the act should be considered under the enforcement policy developed by the Examination Council, and the ways creditors should be required to remedy the violations; and the advantages and disadvantages to consumers and creditors of judgmental and numerical credit-scoring systems.

RULEWRITING

In 1981, the Board continued to analyze various issues related to two proposed regulatory interpretations (45.F.R. 56818) and two proposed amendments to Regulation B (43 F.R. 49987). The Board expects to take final action on the proposals in early 1982.

One proposed interpretation concerns the consideration of income by creditors. The second is related to the way a creditor that uses a credit-scoring system should select and disclose the principal reasons for denying credit.

The first proposed amendment relates to the business credit exemption from recordkeeping and notification requirements and would modify the rules for business loans under \$100,000. The other proposed amendment would have the effect of making all business credit transactions subject to the prohibition against requesting information on marital status. Under the current regulation, such transactions are exempt from that prohibition.