

Regulation B - Equal Credit Opportunity Act Webinar 2012

Presented

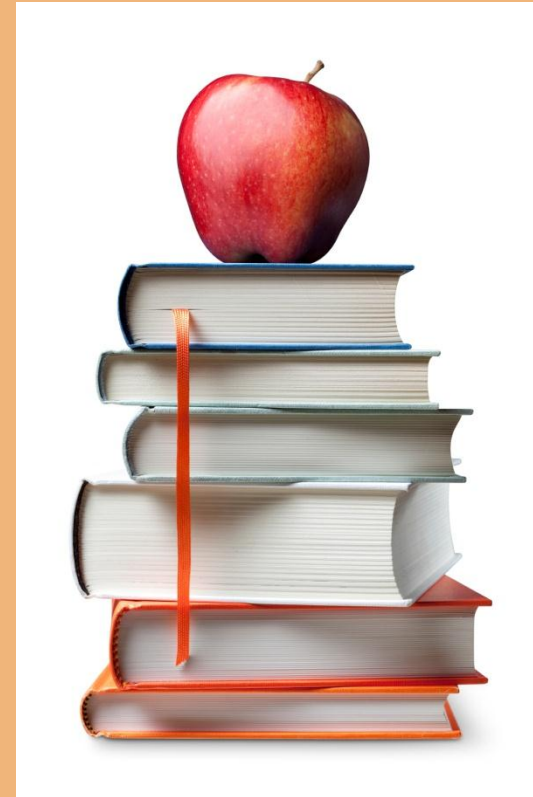
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Webinar Topics

1. Fair Lending
2. Applicants
3. Joint Intent
4. Guarantors
5. Application Evaluation
6. Adverse Action
7. Government Monitoring
8. Violations



DOCUMENTATION!!!

Overview of Fair Lending

➤ The spirit of Fair Lending is to ensure that all customers are treated in a fair and consistent manner.

➤ Fair Lending is an umbrella encompassing the following regulations:

- Equal Credit Opportunity Act (ECOA/Reg B)
- Fair Housing Act
- Community Reinvestment Act
- Home Mortgage Disclosure Act (HMDA)
- Fair Credit Reporting Act



Equal Credit Opportunity Act

- ✓ Promotes the availability of credit to all creditworthy applicants.
- ✓ Financial Institutions are prohibited from discrimination based on any of these factors:
 - Race
 - Color
 - Religion
 - National origin
 - Sex
 - Marital status
 - Age
 - Applicant's income from public assistance.
 - If applicant, in good faith, has exercised any right under the Consumer Credit Protection Act.



Proof of Lending Discrimination

➤ Overt Discrimination

- Openly discriminates on a prohibited basis.
- Expressing a discriminatory preference.



➤ Disparate Treatment

- Treating an applicant differently based on one of the prohibited basis.

➤ Disparate Impact

- Applying a policy or practice uniformly to all applicants, but the policy or practice has a disproportionate effect on groups protected under ECOA.

Regulation B Signature Rule Guidelines

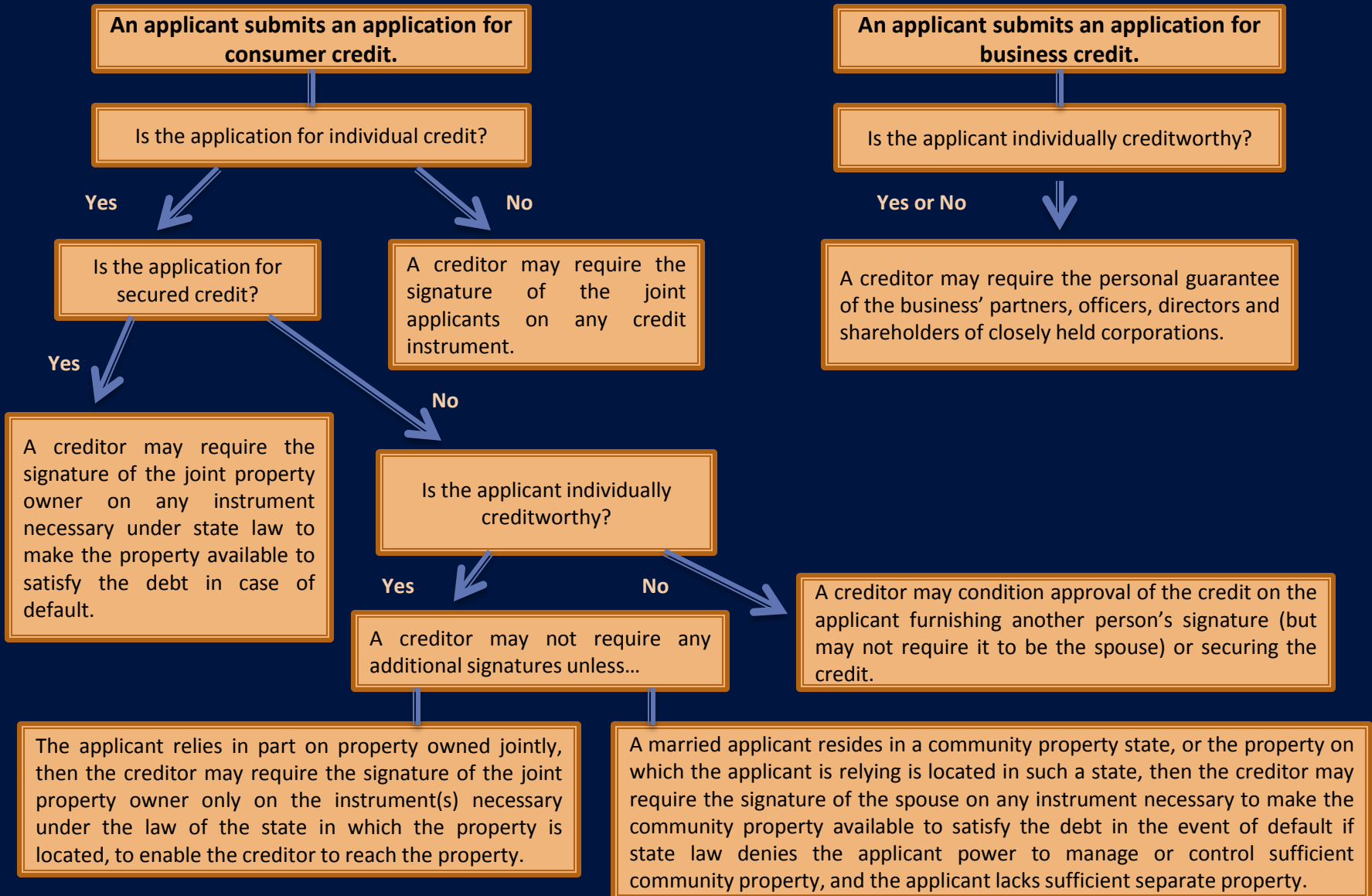


Who is the Applicant?

- Applicant is defined as any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of section 1002.7(d), the term includes Guarantors, Sureties, Endorsers and similar parties.
- A Joint applicant is defined as someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested. (Commentary 1002.7(d) (1)(#2)
- A person's intent to be a joint applicant must be evidenced at the time of application;
- Signatures on a promissory note may not be used to show intent to apply for joint credit;
- Signatures on a joint financial statement affirming the accuracy of information are not sufficient to establish intent;
- The method used to establish intent must be distinct.



Regulation B Signature Requirements



Evaluating the Application

- A guarantor or cosigner may not be requested without first ascertaining whether or not an individual applicant is creditworthy.
- Generally, it is impermissible to require an applicant who is individually creditworthy to provide a guarantor or cosigner (see Exceptions – slides #12, 13, and 14).
- If an applicant does not meet the standards of creditworthiness, the approval of the credit request can be conditioned on:
 - Acceptable guarantor, but cannot require that it is the applicant's spouse;
 - Sufficient or additional collateral.
- Always document the specific reasons for obtaining additional signatures.
- Married and unmarried applicants shall be evaluated by the same standards.

Renewals

- If the borrower's creditworthiness is re-evaluated when a credit obligation is renewed, a determination must be made whether an additional party is still warranted and, if not warranted, release of the additional party is required (Limited Guaranties vs. Unlimited Guaranties).

Exceptions

➤ Secured Credit:

- To make the property being offered as security available to satisfy the debt in the event of default the signature of the joint owner can be required on any instrument necessary, or reasonably believed to be necessary to create a valid lien (a signature is generally only needed on a security instrument).

Exceptions

➤ Unsecured Credit:

- When the applicant applies for unsecured credit and relies in part upon property that the applicant owns jointly to satisfy the standards of creditworthiness, the signature of the other person can be required on the instrument necessary or reasonably believed to be necessary to reach the property being relied upon in the event of death or default (reasonable belief must be supported by a thorough review of pertinent statutory law and decisional laws or an opinion of the state attorney general).

Exceptions

- Loans to a Business Entity:
 - It is acceptable to require the personal guarantee of partners, directors or officers as well as shareholders of a closely held corporation.
- Reliance on income of another person:
 - An applicant who requests individual credit relying on the income of another person may be required to provide the signature of the other person to make the income available to pay the debt.

Value of an Applicant's Interest in Joint Property

- When determining the value of an applicant's interest in jointly owned property, the actual form of ownership of the property must be determined (not presumed) before or at consummation of the transaction. The possibility of subsequent changes in the form of ownership (for example, by transfer or divorce) may not be considered.

Notification Requirements

➤ Individual Decisions:

- Must be communicated within 30 days.
- Approvals may be communicated by telephone or in person.
- Denials must be mailed an Adverse Action Notice.

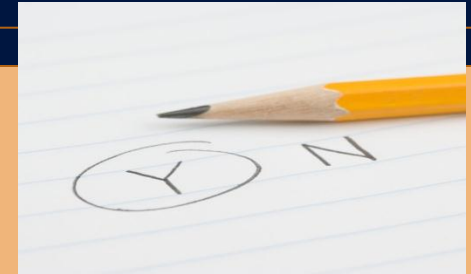


Notification Requirements

➤ Business Decisions:

■ Small Business:

- With regard to a business that had gross revenues of \$1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply if the statement of action taken is given orally or in writing, when adverse action is taken;
- The disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required including the ECOA notice.
- For an application made solely by telephone, a creditor satisfies the requirements by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.



Notification Requirements

➤ Business Decisions:

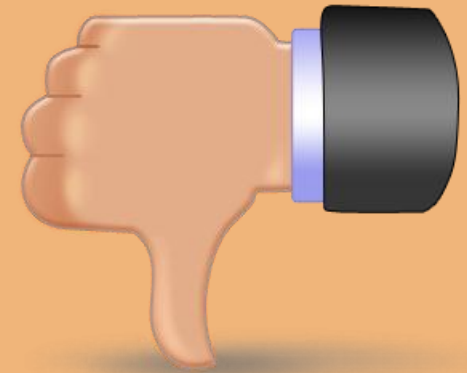
■ Large Business:

- With regard to a business that had gross revenues in excess of \$1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:
 - Notify the applicant, within a reasonable time, orally or in writing of the actions taken; and
 - Provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

Adverse Action Notices

➤ Adverse Action Notices

- Denying Credit
- Reducing customer's credit limit
- Refusing to increase amount of credit available when a formal request is made by the customer
- Counter Offer
- Incomplete Application



Adverse Action Notices Continued

- Adverse Action Notices must include:
 - Telephone number of consumer reporting agency.
 - Disclose whether the credit decision was based in whole or in part on information provided by a consumer reporting agency.
 - Notice to receive a free copy of the credit report.
 - Notice of customer's right to dispute information in the credit report.

Adverse Action Notices Continued

➤ Notification of Adverse Action

- Must be in writing and mailed to customer within 30 days.
- Must be in writing and mailed to customer within 90 days of counteroffer.
- Must include ECOA notice.
- Include list of reasons for denial;
→ Do not include more than 4 reasons for denial.

Fair Credit Reporting Act

➤ Provide additional information required under FCRA:

1. Credit score
2. 4 Key Factors that impacted score (including number of recent inquiries, if applicable as #5)
3. Date of score
4. Range of scores used by credit reporting agencies



Reasons for Adverse Action

1. Income insufficient for amount of credit requested: Should only be used where borrower's current debt-to-income ratio is within bank standards, but when requested credit is added in (and any debts to be paid off are subtracted), the ratio exceeds the standards.
2. Excessive obligations in relation to income: Should be used where borrower's existing debt-to-income exceeds the bank standards even before adding in the requested credit.
3. Insufficient number of credit references provided: Should only be used where application asks borrower to provide credit references and bank has standard for what constitutes sufficient number. Alternative reasons include "No credit file" and "Limited credit experience", both of which are based off of credit bureau report.
4. Value or type of collateral not sufficient: Should only be used where applicant has offered collateral. If application is for unsecured credit, use another denial reason, or consider counter-offer to lend with adequate collateral. Where used, file should be documented as to the value of the collateral and how determined. Refer to bank loan-to-value standards for determining applicability of this reason.

Note: Supplemental material includes additional denial reasons and will be provided to all participants along with power point presentation later.

Incomplete Application

➤ Incomplete Application:

- Notice Alternatives: Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:
 - Of action taken; or
 - Of the incompleteness of the application.
- Notice of Incompleteness: If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given the application. The creditor shall have no further obligation under the regulation if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with the regulation.

Counter Offer

➤ Counter Offer:

1. A counter offer to an applicant(s) does not have to be in writing.
2. Documentation is key for the bank to establish when any counter offer is made.
3. However; if the counter offer is not accepted, then the bank has to send an adverse action notice out to the applicant(s).
4. The length of the counter offer does not have to be for 90 days. The regulation further stipulates that there is not a particular length of time for action by the applicant(s).
5. The best practice option would be to send out the C-4 form listed on the next slide for all counter offers. If the form is used, than a second adverse action notice is not needed if the customer does not accept the counter offer.

Sample Notice of Action Taken, Statement of Reasons and Counter Offer

Date _____

Dear Applicant:

Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s): _____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] number of the consumer reporting agency]. You have a right under the Fair Credit reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes. Your credit score: ____ Date: ____ Scores range from a low of ____ to a high of _____. Key factors that adversely affected your credit score: ____ _ _ _ _ .

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: _____
Address: _____ [Toll-free Number]Telephone number: _____

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency of your bank].

Sincerely,

Regulation B

Government Monitoring Information



Federal Government Monitoring

- Federal Government Monitoring:
 - If loan is used to purchase or refinance a principal residence, we are required to request the following information:
 - Race/national origin, using specific, listed terms
 - Sex
 - Marital status, using specific, listed terms
 - Age
 - Ethnicity
 - You may ask the applicant their immigration or residency status and deny credit to an illegal alien.
 - If applicant refuses to answer the required questions:
 - Note the applicant's refusal on the form.
 - Note the applicant's ethnicity, national origin or race and sex based on visual observation.

VIOLATIONS and RETENTION

- Signature violations can be the most dangerous and costly violations of Reg B:
 - ECOA was enacted to guarantee a person's right to individual credit if the person qualifies;
 - If an individual is creditworthy it is impermissible to require an additional signature to make the loan "safer".
- Retention:
 - Applications – In general, a creditor must preserve all written or recorded information connected with an application for 25 months (12 months for business credit) after the date on which the creditor informed the applicant of action taken on an application or of incompleteness of an application.

Questions?



Thank You!

Additional Questions? Please contact us:

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