



MBA's Regulatory Compliance Conference 2010

Workshop 1: Quick Guide to the Alphabet Soup
Equal Credit Opportunity Act / Regulation B
Fair Housing Act

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ECOA and FHA



- Fair Lending: Compliance is critical
 1. Fair lending has always been a major compliance priority for most institutions
 - Financial exposure
 - Reputational issue
 - › Cases rarely involve “overt” discrimination
 - › Technical analyses → fair lending claims
 2. Obama Administration means business
 - DOJ Fair Lending Unit
 - Banking Agencies
 - FTC
 - HUD



Equal Credit Opportunity Act and Regulation B

15 U.S.C. § 1691 *et seq.*


12 C.F.R. Part 202



Equal Credit Opportunity Act (ECOA) and Regulation B

❖ Purpose of ECOA and Regulation B:


» To promote the availability of credit to all creditworthy applicants without regard to:


- race
 - religion
 - national origin
 - sex
 - marital status
 - age (provided the applicant has the ability to contract)
 - receipt of public assistance
 - exercise of rights under the Consumer Credit Protection Act
- 



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)


❖ Coverage:

- 
- » ECOA and Reg B apply to all persons who are “creditors.”
 - A creditor is: a person who regularly participates in a credit decision, including setting the terms of credit
 - Includes a creditor’s assignee, transferee or subrogee who so participates
 - For purposes of the antidiscrimination provisions, includes a person who refers applicants or prospective applicants to creditors
 - » Applies to all credit, including commercial



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

❖ Key Provisions:

- » Prohibits discrimination on a prohibited basis
 - » Requires creditors to notify applicants of action taken on applications
 - » Requires creditors to report credit history in the name of both spouses on an account
 - » Requires creditors to collect race/ethnicity and other information for certain dwelling-related loans
 - » Requires creditors to provide applicants with copies of appraisal reports
 - » Restricts when a creditor may require signature of a spouse on a credit instrument
- 



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)


- ❖ Prohibits discrimination on a prohibited basis:
 - » A creditor may not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction
 - Includes underwriting, terms of credit and servicing
 - » A creditor may not discourage applicants or prospective applicants from making or pursuing an application
 - Includes advertising and marketing
 - » **Creditors must follow rules regarding requests for information and evaluation of applications**






Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

❖ Notice Requirement:

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- » A creditor must notify an applicant of the action taken within:
 - 30 days after receiving a completed application of the creditor's approval, counteroffer or adverse action on the application
 - 30 days of taking adverse action on an incomplete application (unless it provides a notice of incompleteness)
 - 90 days after notifying the applicant of a counteroffer and the applicant does not accept



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

- ❖ Reporting credit history:
 - » Reporting credit information is not required
 - » If creditor does report:
 - it must designate the account to reflect the participation of both spouses if the applicant's spouse is permitted to use or contractually liable on the account
 - it must furnish information to consumer reporting agencies in a way that will allow the CRA to access the information in the name of each spouse
 - it must respond to inquiries in the name of the spouse about whom the information is requested
- 




Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)


- ❖ Collection of Race/Ethnicity Information:
 - » Creditors receiving an application for a purchase money loan or refinance involving an owner occupied dwelling must collect information about the applicant's race, ethnicity, sex, marital status and age.
 - » HMDA
 - » HAMP



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

❖ Providing Appraisal Reports:

- » A creditor must provide a copy of a credit report used in connection with an application for a loan to be secured by a dwelling, either routinely or upon the applicant's request
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Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

❖ Spousal Signature:

- » A creditor may not require signature of an applicant's spouse or other person (other than a joint applicant) on a credit instrument
- » Certain exceptions sometimes apply, but careful legal and factual review is important
 - Unsecured credit – applicant relying on joint property
 - Unsecured property – community property states
 - Secured credit



Equal Credit Opportunity Act (ECOA) and Regulation B (cont'd)

❖ Remedies:

- » Actual damages
- » Punitive damages up to \$10k in individual actions and lesser of \$500K or 1% of net worth
- » Equitable and declaratory relief
- » Costs and attorney's fees



Fair Housing Act


42 U.S.C. § 3601, *et seq.*



Fair Housing Act

❖ Purpose:

» Prohibits discrimination in the sale or rental of housing and in housing-related lending activities on the basis of:

- Race
 - Color
 - Religion
 - National origin
 - Sex
 - Handicap
 - Familial status
- 



Fair Housing Act (cont'd)

❖ Coverage

- » Any person or other entity whose business includes engaging in residential real estate-related transactions
 - includes making or purchasing loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling, or secured by residential real property



Fair Housing Act (cont'd)


❖ Key Provisions


- » FHA makes it unlawful to discriminate in its housing-related lending activities against any person on a prohibited basis.
- » The FHA also prohibits redlining (i.e., denying loans in certain neighborhoods even though the individual applicant may be eligible for credit), expressing a racially exclusive image, discouraging applications from protected class members and imposing more onerous terms and conditions on protected class members.



Fair Housing Act (cont'd)

❖ Remedies

- » Actual damages
 - » Injunctive or other equitable relief
 - » Civil penalty (in administrative proceeding or civil action by Attorney General)
 - » Punitive damages (in civil action by private persons)
 - » Attorney's fees and costs
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- Major Issues Include:
 - » Underwriting / Denials
 - » Pricing
 - » Redlining
 - » Reverse Redlining / Predatory Lending
 - » Servicing / Loan Modifications