

APPLICATIONS NOT ORIGINATED

OVERVIEW

The following procedures have been designed to assist examiners in conducting a review of denied and withdrawn loan applications. Utilizing the procedures as they are presented should enable the examiner to review for compliance with all applicable regulations with just a single review of each file.

The procedures are segregated by the various time frames associated with regulatory requirements, for example, at application, within three business days of application, etc. and then by regulation. The procedures are written for the most common open-end and closed-end types of credit reviewed; however, the procedures can be utilized for other types of loans such as second or vacation homes. The examiner must determine which regulations are applicable to the particular loan type and proceed accordingly.

In This Section

TOPIC	SEE PAGE:
REGULATION OVERVIEW	D-2
DEFINITION(S)	D-4
GENERAL PROCEDURES	D-5
CONSUMER CREDIT PROCEDURES	D-8
DEALER PAPER PROCEDURES	D-9
REAL ESTATE LOANS AT APPLICATION	D-10
REAL ESTATE LOANS AT APPLICATION OR WITHIN THREE BUSINESS DAYS	D-10
ADVERSE ACTION TAKEN	D-11
BUSINESS CREDIT	D-11
WORKPAPER STANDARDS	D-11
REFERENCES	D-12

**REGULATION
OVERVIEW**

The following rules and regulations will be addressed within this section of the manual. These comments are given to provide the examiner a general explanation and purpose of the rule or regulation. Specific requirements are discussed and listed with the applicable sections.

**Equal Credit
Opportunity
Act (ECOA)**

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, is implemented by the Federal Reserve Board's Regulation B, Equal Credit Opportunity.

Regulation B prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), receipt of income from a public assistance program, and the good faith exercise of any right under the Consumer Credit Protection Act. These factors are referred to throughout the regulation as "prohibited bases".

Regulation B deals with taking, evaluating and acting on applications for credit accounts and the furnishing and maintenance of credit information. It does not prevent a creditor from obtaining information necessary to evaluate the creditworthiness of an applicant.

The regulatory references in this section are to Regulation B, 12 CFR Part 202.

**Fair Credit
Reporting Act
(FCRA)**

The Fair Credit Reporting Act (FCRA) was designed to:

- Regulate aspects of the consumer reporting industry
- Place disclosure obligations on users of consumer reports
- Establish requirements applicable to the furnishing of information to consumer reporting agencies
- Require timely responses to consumer inquiries regarding information maintained by consumer reporting agencies

The FCRA places restrictions on the use of consumer reports and, in some instances, requires the deletion of information from them.

Financial institutions may be subject to the FCRA as:

- Procurers and users of information
- Furnishers and transmitters of information
- Marketers of credit or insurance products; or
- Employers

The statutory references in this section are to the sections of FCRA as they appear in Title VI of the Consumer Credit Protection Act, Consumer Credit Reporting.

NOTE: FCRA procedures should only be performed in response to a complaint or if the FDIC otherwise has knowledge of a violation. These procedures may be performed if violations were noted at the previous examination and the current examination is the first or second examination after the examination at which the violations were noted.

**REGULATION
OVERVIEW
(cont'd)****Fair Housing,
Part 338 of the
Regulations**

The purpose of the FDIC's Fair Housing regulations is two-fold: (1) to provide guidance on nondiscriminatory Regulations advertising for loans made for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or for any loan secured by a dwelling; and (2) to further establish certain data collection and recordkeeping requirements for home loan applicants and applications.

The regulatory references in this section are to Fair Housing, 12 CFR Part 338.

**Home
Mortgage
Disclosure Act
(HMDA)**

The purpose of the Home Mortgage Disclosure Act (HMDA) is to make information and data about an institution's home mortgage lending available to the public. HMDA requires covered institutions to compile and disclose data about the home mortgage applications they receive and the home purchase and improvement loans (including refinancing of such loans) they make or purchase. Specifically, HMDA requires that institutions report certain data about each application or loan, such as the location of the subject property, and the race or national origin, sex, and gross annual income of the applicant.

The regulatory references in this section are to the Federal Reserve Board's Regulation C, Home Mortgage Disclosure, 12 CFR Part 203, HMDA's implementing regulation.

NOTE: The benchmark for HMDA data collection is subject to adjustment annually to reflect future changes in the Consumers Price Index for Urban Wage Earners and Clerical Workers (CPIW). The Federal Reserve Board will publish the benchmark in the Federal Register on an annual basis.

**Real Estate
Settlement
Procedures Act
(RESPA)**

The purpose of the Real Estate Settlement Procedures Act (RESPA) is to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. RESPA also protects borrowers against certain abusive practices, such as kickbacks, and places limitations on the use of escrow accounts.

The regulatory references in this section are to the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures, 24 CFR Part 3500, RESPA's implementing regulation.

**Truth in
Lending (TIL)
Act**

The purpose of the Truth in Lending (TIL) Act is to provide a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various terms available and avoid the uninformed use of credit. It also protects consumers against inaccurate and unfair credit card billing practices.

The regulatory references cited in this section are to the Federal Reserve Board's Regulation Z, Truth in Lending, 12 CFR Part 226, TIL's implementing regulation.

DEFINITION(S)

As defined by Regulation B, the term means:

Adverse Action

- A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered
 - A termination of an account or an unfavorable change in terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts
 - A refusal to increase the amount of credit available to a borrower who has made an application for an increase
-

Application

As defined by Regulation B, the term means:

- An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit

As defined by Regulation C, the term means:

- An oral or written request for a home purchase or written request for a home purchase or home improvement loan that is made in accordance with procedures established by a financial institution for the type of credit requested

As defined by RESPA (Regulation X), the term means:

- The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan

If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

NOTE: The Official Staff Commentary for Section 226.19(a)(1) of Regulation Z defers to RESPA and Regulation X in determining whether a written application is received.

**DEFINITION(S)
(cont'd)****Completed
Application**

An application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (Including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

**Residential
Mortgage
Transaction**

A transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

**Withdrawn
Application**

An application withdrawn voluntarily by the applicant and not as the result of implied adverse action by the creditor.

**GENERAL
PROCEDURES****Applicable to
All Credit
Applications****Equal Credit Opportunity Act (ECOA)**

1. Review a sample of rejected credit applications, with particular emphasis on applications from women and minorities. Determine whether:
 - The information available on the records supports the reasons for denial stated on the adverse action notices
 - The reasons for rejection are consistent with the institution's written and/or oral policies as previously determined and were applied consistently to both minority and non-minority applicants

(202.4)

NOTE: Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

2. Determine that no prohibited information:
 - Appears in the files
 - Was considered in evaluating an application
 - Was used as a basis in denying an application

(202.4)

3. Determine that information concerning the spouse of an applicant is obtained only where permitted. (202.5(c))

4. Determine whether childbearing intentions/capabilities are considered. (202.5(d)(4))

**GENERAL
PROCEDURES
(cont'd)**

**Applicable to
All Credit
Applications
(cont'd)**

5. Determine whether the institution considered all income to the extent that it will continue and does not discount income on a prohibited basis. (202.6(b)(5))
6. Determine whether credit history, when used by the financial institution, is considered in accordance with applicable requirements. (202.6(b)(6))
7. Determine whether applications for individual accounts are not refused because of the applicant's sex, marital status or any other prohibited basis. (202.7(a))
<p>8. Determine whether accurate notifications of adverse action were given to applicants within the required time periods.</p> <p>A creditor shall notify an applicant of action taken within the following time periods:</p> <ul style="list-style-type: none"> • 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application • 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with 202.9(c) • 30 days after taking adverse action on an existing account • 90 days after notifying the applicant of a counteroffer, if the applicant does not expressly accept or use the credit offered <p>(202.9(a)(1))</p> <p><i>NOTE: If the creditor approved an application, and the applicant does not inquire about the status of the application within 30 days after applying, the creditor may consider the application withdrawn and need not comply with Section 202.9(a)(1). (202.9(e))</i></p> <p>The adverse action notification must be in writing and include the following:</p> <p><i>NOTE: For small-volume (received 150 or less during the preceding calendar year) creditors, the adverse action notification requirements may be satisfied by oral notifications. (202.9(d))</i></p> <ul style="list-style-type: none"> • Statement of action taken • Name and address of creditor • Statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (ECOA Notice) • Name and address of the federal agency that administers compliance with respect to the creditor

**GENERAL
PROCEDURES
(cont'd)**

**Applicable to
All Credit
Applications
(cont'd)**

- The creditor must provide either of the following:
 - Statement of specific reasons for the action taken
 - Disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification

NOTE: The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

9. Determine whether required records are maintained for 25 months. (202.12)

**Fair Credit
Reporting Act
(FCRA)**

Fair Credit Reporting Act (FCRA)

NOTE: FCRA procedures should only be performed in response to a complaint or if the FDIC otherwise has knowledge of a violation. These procedures may be performed if violations were noted at the previous examination and the current examination is the first or second examination after the examination at which the violations were noted.

1. From recent reports provided to a consumer reporting agency (CRA), select a sample of reported items and the corresponding rejected loan files. Determine whether the institution's procedures are adequate to ensure that:
 - a. It did not report information that it knew or consciously avoided knowing was inaccurate. Section 623(a)(1)(A). This is not applicable if the institution has, in a clear and conspicuous manner, provided the consumer with an address for notices of inaccurate information. Section 623(a)(1)(C)
 - b. It did not report information if it was notified by the consumer that the information was inaccurate and the information was, in fact, inaccurate. Section 623(a)(1)(B)
 - c. If it determined that any information it furnished to a CRA was incomplete or inaccurate, it promptly notified the CRA, provided the CRA with corrections or additional information to make the information complete and accurate, and thereafter did not send the CRA the inaccurate or incomplete information (if the institution regularly furnishes information to a CRA). Section 623(a)(2)
 - d. If a consumer disputed the completeness or accuracy of any information the institution furnished, and the institution continued furnishing the information, it also furnished a notice of the dispute. Section 623(a)(3)
2. Review a sample of applications and accounts (for example, credit, deposit, insurance, and other) where the institution took adverse action and determine whether it complied with the adverse action notification requirements of Section 615. When the following types of notice are required, they must contain the following elements:

**GENERAL
PROCEDURES
(cont'd)**

**Fair Credit
Reporting Act
(FCRA)
(cont'd)**

- a. When Section 615(a) notice is required, the notice must contain: notice of the adverse action; the name, address, and telephone number of the CRA that furnished the consumer report (including a toll-free number if the CRA is a nationwide CRA); a statement that the CRA did not make the decision to take the adverse action and cannot provide the specific reasons why the adverse action was taken; notice of the consumer's right to obtain a free copy of a consumer report on the consumer from that CRA in accordance with Section 612(b), including notice of the sixty-day period under that Section for obtaining the copy; and notice of the consumer's right to dispute with the CRA the completeness or accuracy of any information in the consumer report. Section 615(a)
- b. When a Section 615(b)(1) notice is required, the notice must contain: notice of the adverse action; and notice that if the institution receives a written request from the consumer within sixty days the institution must, within a reasonable period of time, disclose the nature of the information on which the adverse action was based. Section 615(b)(1)
- c. When a Section 615(b)(2) notice is required, the notice must contain: notice of the adverse action; and notice that if the institution receives a written request from the consumer within sixty days the institution must, within thirty days of receiving the request, disclose the nature of the information on which the adverse action was based. Section 615(b)(2)

**CONSUMER
CREDIT
PROCEDURES**

Applicable to the following types of applications:

- Installment
- Credit Cards

Equal Credit Opportunity Act (ECOA)
1. Perform ECOA General Procedures.

Fair Credit Reporting Act (FCRA)
1. Perform FCRA General Procedures.

**DEALER
PAPER
PROCEDURES**

When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required.

**Applications
Submitted by a
Third Party
(Dealer)**

If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

**Applications
Denied by
Financial
Institutions****Equal Credit Opportunity Act (ECOA)**

1. Perform ECOA General Procedures.

Fair Credit Reporting Act

1. Perform FCRA General Procedures.

**Applications
Denied by Third
Party****Applications Denied by a Third Party**

1. Review the agreement between the third party and the financial institution.
2. Review a notice of adverse action sent by the third party for the following:
 - ECOA
 - Fair Credit Reporting

Refer to ECOA and FCRA General Procedures.

Equal Credit Opportunity Act (ECOA)

1. Perform ECOA General Procedures.

NOTE: If a dealer attempts unsuccessfully to obtain financing at several financial institutions or the applicant does not accept any alternate terms offered, all the financial institutions and any dealer acting as a creditor in the transaction must give the notices required for adverse action. A financial institution may enter into contractual arrangements with dealers to provide all appropriate notices. If the dealer provides a joint notification, the financial institution will not be liable for actions or omissions resulting in violations if it provided the dealer with the information necessary to comply with the notification requirements and was maintaining procedures reasonably adapted to avoid any such violation. Any joint notification must identify each creditor.

**DEALER
PAPER
PROCEDURES
(cont'd)**

**Applications
Denied by Third
Party (cont'd)**

Fair Credit Reporting Act

1. Perform FCRA General Procedures.

**REAL ESTATE
LOANS
At Application**

Equal Credit Opportunity Act (ECOA)

1. Determine whether the institution required written applications for credit primarily for the purchase or refinance of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling. (202.5(e))

Fair Housing

1. Determine that the financial institution advised the applicant that the information regarding race/national origin, marital status, age, and sex is being requested to enable the FDIC to monitor compliance with the Equal Credit Opportunity Act which prohibits creditors from discriminating against applicants on prohibited bases. (338.7)

**At Application
or Within Three
Business Days of
Receipt of a
Written
Application**

Truth in Lending (TIL)

1. Perform TIL "At Application" procedures for Approved Primary Residence Loans.
2. Perform TIL "Within Three Business Days of Receipt of a Written Application" for Approved Primary Residence Loans.

Real Estate Settlement Procedures (RESPA)

1. Perform RESPA "Within Three Business Days of Receipt of a Written Application" procedures for Approved Primary Residence Loans.

**ADVERSE
ACTION
TAKEN****Equal Credit Opportunity Act (ECOA)**

1. Perform ECOA General Procedures.

Fair Credit Reporting Act

1. Perform FCRA General Procedures.

Home Mortgage Disclosure

1. Determine whether the loan transaction was accurately recorded on the LAR within 30 days after the end of each calendar quarter in which final action was taken. (203.4(a))

**BUSINESS
CREDIT****Adverse Action Taken**

1. Perform ECOA General Procedures.

NOTE: For businesses with gross revenues of \$1,000,000 or less in the preceding fiscal year, a creditor will comply with the following except that the statement of action taken may be given orally or in writing and an applicant's right to a statement of reasons may be given at the time of application provided the disclosure is in a form that the applicant may retain and contains the information contained in the ECOA Notice.

**WORKPAPER
STANDARDS**

Appropriate workpapers must be completed when reviewing compliance with the regulations discussed in the Applications Not Originated section. Refer to Standardized Wordpapers, Appendix K, in this manual.



**FDIC LAW,
REGULATIONS
& RELATED
ACTS**

Applicable Rules See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Advisory
Opinions** See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Statements of
Policy** See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**DCA
MEMORANDA** See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**FINANCIAL
INSTITUTION
LETTERS (FIL)** Equal Credit Opportunity Act and Fair Credit Reporting Act, Letter # 40-98, dated 4/14/98
See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.
