

## EQUAL CREDIT OPPORTUNITY ACT (ECOA)

### OVERVIEW

The Equal Credit Opportunity Act, and the Federal Reserve Board's implementing Regulation B, prohibit 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
- 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 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.

Public assistance programs include but are not limited to, Aid to Families with Dependent Children (AFDC), food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income (SSI), and unemployment compensation. Only physicians, hospitals and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

The types of credit transactions that are protected by the ECOA include, but are not limited to, business loans, consumer leases, consumer loans, auto loans, credit cards, agricultural loans and loans to purchase, improve, refinance or construct residential or commercial real estate. If the credit transaction provides for the deferral of payment of the debt, it is also covered by ECOA and Regulation B even though it may not be defined as a credit transaction by the Truth in Lending Act, Regulation Z.

**OVERVIEW  
(cont'd)**

The Equal Credit Opportunity Act and Regulation B also prohibit discrimination against an applicant because of the applicant's race, color, sex, religion, national origin, marital status or age of the applicant associates or corporate officers; because of whom applicant associates or affiliates with; because of applicant's personal or business dealings with members of a certain religion; or because of the persons who will be related to the extension of credit (for example, tenants in the apartment complex being financed or the individuals who reside in the neighborhood where the collateral is located).

A creditor may however, take into account the applicant's immigration status and any applicable law, regulation or executive order restricting dealings with citizens or the government of a particular country.

**Examination  
Objective(s)**

The examination objectives are to determine:

- Whether the financial institution has engaged in actions which treat or have the effect of treating one applicant less favorably than another on a prohibited basis and seek corrective measures for affected parties
- Whether the financial institution's policies, procedures, and internal controls are adequate for compliance with Regulation B

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**DEFINITION(S)**

**Applicant**

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 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

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**Application**

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.

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**Completed Application**

An application where the 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.

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**Credit**

The right granted by a creditor to an applicant to:

- Defer payment of a debt
  - Incur debt and defer its payment
  - Purchase property or services and defer payment therefore
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**Creditor**

A person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of Sections 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

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

**Credit  
Transaction**

Every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

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**Empirically  
Derived And  
Other Credit  
Scoring Systems**

A system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:

- Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time
- Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment)
- Developed and validated using accepted statistical principles and methodology
- Revalidated periodically by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability

A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth above. If the creditor is unable during the development process to validate the system based on its own credit experience, the system must be validated when sufficient credit experience becomes available.

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**Extend Credit  
and Extension of  
Credit**

The granting of credit in any form. Including, but not limited to, the following:

- Credit granted in addition to any existing credit or credit limit
  - Credit granted pursuant to an open-end credit plan
  - Refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card
  - Consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity
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**DEFINITION(S)**  
**(cont'd)**

Any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

**Judgmental  
System of  
Evaluating  
Applicants**

**Person**

A natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

**EVALUATION  
OF  
APPLICATIONS**

Institutions have three options in evaluating credit applications:

- A demonstrably and statistically sound, empirically derived, credit scoring system
- A judgmental system
- A combination of credit scoring and judgment

Neither judgmental nor credit scoring evaluation systems can discriminate among applicants using prohibited bases as variables in the credit evaluation process.

**Demonstrably and Statistically Sound Credit Scoring System**

A demonstrably and statistically sound, empirically derived, credit scoring system is a system that has the capability of differentiating between creditworthy and noncreditworthy applicants with a statistically significant probability. Values, or scores, are assigned to credit applicants in direct proportion to the predictive value of variables employed in the scoring system. The requirement that a scoring system be “demonstrably sound” means that a clear relationship must be shown between the measure of creditworthiness and the set of predictive variables used in the scoring system. Initially, a financial institution may adopt a scoring system developed from a source not directly related to the institution’s own credit experience. However, once an institution has adopted a credit scoring system, it must be “validated” periodically. Validation is the process by which an institution demonstrates that the variables used in its scoring system are, or continue to be, predictive of the creditworthiness of applicants. Once sufficient credit experience under a scoring system has been gained, an institution must use the observed creditworthiness of its own customers to test whether the system is “valid” (that is, predictive at statistically significant levels). Anytime a validity test is performed and the set of scoring variables are found to be inappropriate (that is, nonproportional to their predictive value), the scoring system is no longer “demonstrably and statistically sound, empirically derived” and it is invalid.

**EVALUATION  
OF  
APPLICATIONS  
(cont'd)**

**Judgmental Credit Scoring System**

A judgmental system is any system, other than a credit scoring system, used to evaluate creditworthiness. As a general rule, most financial institutions have guidelines for evaluating credit requests that are often based on the same predictive factors used in demonstrably and statistically sound credit scoring systems. However, the values used are not statistically valid. In this type of system, loan officers judgmentally evaluate the application and then accept or reject the credit request.

**Combination of Statistically Sound and Judgmental System**

Some institutions use a combination of the two systems to evaluate credit applicants. An application is scored using a demonstrably and statistically sound credit scoring system and if the results are close to the accepted or rejected cutoff, the institution may use a judgmental override. Loan officers review the scored applications and judgmentally render the final credit decision.

**Other General  
Requirements**

The Equal Credit Opportunity Act and Regulation B further require creditors to:

- Notify applicants of action taken on their applications
- Report credit history in the names of both spouses
- Retain records on credit applications
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans

Dwelling in this instance means a residential structure containing one-to-four family units. Individual cooperative or condominium units, mobile or other manufactured homes are also included, regardless of whether they are considered as real property under state law.

Applicants also have the right, under ECOA and Regulation B, to receive copies of appraisal reports for credit that is to be secured by a dwelling. Creditors must provide the appraisal reports either routinely or upon the applicant's request. This must be done whether the credit request is granted, denied or withdrawn. If the creditor provides the appraisal report only upon written request, the applicant must be notified in writing of the right to receive a copy of the appraisal, and the notice may be given at any time during the application process but, no later than when the creditor provides notice of action taken in accordance with Section 202.9 of Regulation B.

ECOA prohibits the discouragement of applications. Creditors may not use words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference. However, a creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit.

**EVALUATION  
OF  
APPLICATIONS  
(cont'd)**

Examination procedures for determining if an institution is in compliance with the ECOA and Regulation B are contained throughout this manual. Both are specifically referenced in:

**Other General  
Requirements  
(cont'd)**

- Initial Examination Procedures
- Approved Loans
- Loan Related Regulations
- Applications Not Originated
- Advertising and Public Notices
- Equal Credit Opportunity

**EXAMINATION  
PROCEDURES**

<b>Initial Examination Activities</b>	
1.	<p>During Initial Examination Activities, examiners must review any written loan and appraisal policies, procedures, guidelines, etc., including collateral requirements and standards, applicable to each type of credit offered.</p> <p>If written policies are not available, determine what policies and procedures are followed in practice through interviews with management and lending staff. Analyze these policies and procedures to determine if any discriminatory practices are evident. The analysis should include an evaluation of whether any of the policies or procedures fails the “effects test.”</p> <p><i>Refer to the Interagency Fair Lending Examination Procedures section of this manual.</i></p>
2.	<p>During Pre-Examination Planning and Initial Examination Activities, examiners must review the number and nature of consumer complaints.</p> <p>Investigate the status of any consumer complaints concerning the lending function. Determine if any of the complaints warrant an in-depth credit discrimination complaint investigation.</p> <p><i>Refer to the Pre-Examination Planning (PEP) Procedures section of this manual.</i></p>

**EXAMINATION  
PROCEDURES  
(cont'd)**

3. Interview personnel who respond to written or oral loan inquiries or take applications to determine that no statements are made to a prospective applicant that would, on a prohibited basis, discourage a reasonable person from applying.

*NOTE: Regulation B does not distinguish between oral and written applications in its prohibition of discriminatory action. Therefore, in the interview prior to and during the taking of an application, lending officers must refrain from asking for prohibited information. Questions must be neutral with regard to sex and asked of all applicants who desire the same type and amount of credit. (202.5(a))*

**Comparative Loan File Analysis**

4. Comparative loan file analysis is central to the detection of unlawful discrimination on a prohibited basis. Refer to the Interagency Fair Lending Examination Procedures for the guidelines on how to conduct a comparative loan file analysis. While the focus in the Fair Lending examination procedures is on residential mortgage lending, the procedures also can be used to analyze other types of loan applications, such as consumer loans, to the extent that information in the applications would allow. When conducting a comparative analysis for ECOA purposes, spreadsheets must be used. The sample Fair Housing Act spreadsheet found in the Standardized Workpapers, Appendix K, should be used as a model, appropriately modified to reflect important categories or items of concern.

**Other Areas for Investigation**

5. Determine that no prohibited information appears in the institution files, was considered in evaluating an application, or was used as a basis in denying a credit application. (202.4)

6. Determine that information concerning the spouse of an applicant is obtained only where permitted.

*NOTE: The institution must not inquire about the applicant's spouse, or former spouse, either on the application or orally, unless one of the following conditions exists:*

- *The spouse will be a user of, or contractually liable on, the account*
- *The applicant is relying on a spouse's income to repay the debt*
- *The applicant resides in or is relying on property located in a community property state to support the credit request*
- *The applicant is relying on alimony, child support or separate maintenance income to repay the debt*

(202.5(c))

**EXAMINATION  
PROCEDURES  
(cont'd)**

<b>Other Areas for Investigation (cont'd)</b>	
7.	<p>Determine whether childbearing intention capabilities are considered.</p> <p><i>NOTE: The institution may inquire about the continued ability to repay the debt, such as the probability of continued employment. However, the request must be made of all applicants who are similarly qualified without regard to any prohibited basis. The number, ages and expenses of present dependents may also be requested.</i></p> <p>(202.5(d)(4))</p>
8.	<p>Determine whether the institution considered all income to the extent that it will continue and does not discount income on a prohibited basis.</p> <p>(202.6(b)(5))</p>
9.	<p>Determine whether credit history, when used by the financial institution, is considered in accordance with applicable requirements. (202.6(b)(6))</p> <p><i>NOTE: At the request of the applicant, the institution must also consider any information the applicant presents indicating that the credit history does not accurately reflect ability or willingness to repay. (202.6(b)(6)(ii)) and (202.6(b)(6)(iii))</i></p>
10.	<p>Determine whether applications for individual accounts are not refused because of the applicant's sex, marital status or any other prohibited basis.</p> <p>(202.7(a))</p>
11.	<p>Determine whether applications for accounts in birth-given names are accepted. (202.7(b))</p>
12.	<p>Determine whether the institution offers casualty, credit life, health, accident or disability insurance in connection with extending credit. If yes, determine that information regarding the applicant's age, sex or marital status is requested solely to determine eligibility for insurance. (202.7(e))</p>
13.	<p>Determine through a sample of applications and loan documents whether the spouse of an applicant was requested or required to sign any instrument. If yes, determine whether the signature was obtained as permitted.</p> <p><i>NOTE: Financial institutions must evaluate each credit request separately, determine how property used as collateral or support for the debt is held, and what signatures are necessary on which credit instruments to perfect a valid lien and ensure repayment of the debt. (202.7(d))</i></p>

**EXAMINATION  
PROCEDURES  
(cont'd)**

14. Where a co-signer, guarantor, endorser, etc. was required, determine whether the choice of the second party was left to the applicant. (202.7(d)(5))

15. Determine whether the institution qualifies applicants for special purpose credit programs in accordance with applicable requirements. (202.8)

**Identification of Substantive Fair Lending Violations**

16. Substantive ECOA issues should be reviewed with the Regional Office prior to discussions with the institution's management as supervisory action may be warranted.

*Refer to the "Guidelines for Referring Violations of the Anti-Discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act" Memorandum to Regional Directors, transmittal #DCA-003, dated 1/23/97.*

**WORKPAPER  
STANDARDS**

Appropriate workpapers must be completed when reviewing compliance with Regulation B. Refer to the sample Fair Housing Act spreadsheet found in the Standardized Workpapers, Appendix K, as a model. This spreadsheet should be modified to reflect information available from the file and important categories or items of concern. See also Side by Side: A Guide to Fair Lending, for further guidance.



**FDIC LAW,  
REGULATIONS,  
& RELATED  
ACTS**

**Applicable Rules**

Consumer Credit Protection Act, Title VII – Equal Credit Opportunity, Volume 2,  
Page 6610

Federal Reserve Board’s Regulation B – Equal Credit Opportunity, Volume 2,  
Page 7209

Federal Reserve Board’s Regulation B Official Staff Interpretations, Volume 2,  
Page 7241

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**Advisory  
Opinions**

Equal Credit Opportunity Act: Reg. B, Letter #89-44, Volume 1, Page 4420

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**Statements of  
Policy**

Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement,  
Volume 2, Page 5221

Policy Statement on Discrimination in Lending, Volume 2, Page 5397

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**DCA  
MEMORANDA**

Guidelines for Referring Violations of the Anti-Discrimination Provisions of the  
Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or  
Notifying the Department of Housing and Urban Development of Violations of the  
Fair Housing Act, Transmittal #DCA-003, dated 1/23/97

Examination Procedures for Advertisements and Public Notices, Transmittal  
#DCA-96-022, dated 2/22/96

Initial Examination Activities, Transmittal #DCA-96-011, dated 1/31/96

Pre-Examination Planning (PEP) Procedures, Transmittal No. DCA-96-013, dated  
1/31/96

General Workpaper Standards and Standardized Workpapers, Transmittal #DCA-  
96-003, dated 1/19/96

Revisions to Official Staff Commentary to Regulation B – Equal Credit  
Opportunity Act, Transmittal #DCA-95-018, dated 6/15/95

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**FINANCIAL  
INSTITUTION  
LETTERS (FIL)**

Interagency Fair Lending Examination Procedures, Letter #14-99, dated 2/11/99 ■

Side by Side, A Guide to Fair Lending, Letter #47-94, dated 7/7/94

Interagency Policy Statement on Discrimination in Lending, Letter #29-94, dated 4/29/94

Equal Credit Opportunity: Appraisals and Enforcement, Letter #12-94, dated 2/28/94

Revisions to Guidance on Fair Housing Rules (Part 338), Letter #23-92, dated 3/20/92

Pamphlet on Home Mortgage Lending and Equal Treatment, Letter #19-92, dated 3/16/92