Equal Credit Opportunity Act (ECOA)

Introduction

The examination procedures in this section are primarily for the technical compliance review. Although the fair lending procedures are addressed under a separate section of the Compliance Handbook, findings from the technical review may aid the review for fair lending. These procedures should be conducted to ensure compliance with all sections of the subject regulation.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships, and trusts.

The ECOA prohibits discrimination based on

- Race or color,
- Religion,
- National origin,
- Sex,
- Marital status,
- Age (provided the applicant has the capacity to contract),
- The applicant's receipt of income derived from any public assistance program, or
- The applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act.

The CFPB's Regulation B, found at 12 CFR Part 1002, implements ECOA. Regulation B describes lending acts and practices that are specifically prohibited, permitted, or required. Official staff interpretations of the regulation are found in Supplement I to 12 CFR Part 1002.

Rules on Providing Appraisals and Other Valuations – 12 CFR 1002.14

In January 2013, the CFPB amended Regulation B to reflect the Dodd-Frank Act amendments requiring creditors to provide applicants with free copies of all appraisals and other written valuations developed in connection with all credit applications to be secured by a first lien on a dwelling. This amendment to Regulation B also requires creditors to notify applicants in writing that copies of all appraisals will be provided to them promptly.

Providing appraisals and other valuations – 12 CFR 1002.14(a)(1)

Regulation B requires that creditors provide applicants with a copy of all appraisals and other written valuations[1] developed in connection with an application for credit to be secured by a first lien on a dwelling. A creditor shall provide the copy of each such appraisal or other written valuation promptly upon completion, or at least three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version provided to the applicant or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

Disclosure – 12 CFR 1002.14(a)(2)

A creditor shall mail or deliver a notice in writing of the applicant's right to receive a copy of all written appraisals or valuations developed in connection with the application, no later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling. A special timing rule applies if an application for credit is not to be secured by a first lien on a dwelling at the time of application, but the creditor later determines that it will be secured by such a lien. In that case, the creditor shall mail or deliver the same disclosure in writing no later than the third business day after determining that the loan is to be secured by a first lien on a dwelling. If the disclosure required under 12 CFR 1002.14(a)(2) accompanies an application accessed by the applicant in electronic form, it may be provided in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act. (15 U.S.C. 7001 et seq.). See 12 CFR 1002.4(d)(2).

[1] Regulation B defines a valuation as "any estimate of the value of a dwelling developed in connection with an application for credit". 12 CFR 1002.14(b)(3). Additionally, examples of valuations can be found in the Official Interpretations of Regulation B at 1002.14(b)(3)(1)(i) – (v).

Reimbursement – 12 CFR 1002.14(a)(3)

A creditor shall not charge an applicant for providing a copy of appraisals and/or other written valuations, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

Withdrawn, Denied, or Incomplete Applications – 12 CFR 1002.14(a)(4)

The requirements to provide copies of appraisals and other written valuations developed in connection with an application for credit to be secured by a first lien on a dwelling apply whether credit is extended or denied or if the application is incomplete or withdrawn.

Copies in Electronic Form – 12 CFR 1002.14(a)(5)

Required copies of appraisals and other written valuations may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

References

FIL 02-09: Guidance on Avoiding Violations of the Spousal Signatures Provisions of Regulation B
http://www.fdic.gov/news/news/financial/2002/fil0209.html

FIL 06-04: Spousal Signature Provision of Regulation B
http://www.fdic.gov/news/news/financial/2004/fil0604.html

Examination Procedures

- Examiners must review compliance with these provisions in all compliance examinations that include review of bank loan files, and they may elect to do so as part of a regular, scheduled supervisory activity that includes a review of fair lending risk.
- Examiners should use copies of the technical compliance checklist to review in detail approved and denied consumer, business, and residential real estate files. If there appear to be any technical violations in those files, the violations should be written up and discussed with management. The examiners should maintain one master checklist to note any observed recurrence of the violations which would aid a comparative file review (if there is one).

Technical Compliance Checklist

The worksheet beginning on the following page can be used to review audit workpapers, evaluate bank policies, perform transaction testing, and assess training as appropriate. Complete those aspects of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the workpapers.

When reviewing audit or evaluating bank policies, a “No” answer indicates a possible exception/deficiency and should be explained in the workpapers. When performing transaction testing, a “No” answer indicates a possible violation and should be explained in the workpapers. If a line item is not applicable within the area you are reviewing, simply indicate “NA.”

Underline the applicable use:

- Audit
- Bank Policies
- Transaction Testing

Technical Compliance Checklist

Requirement (If answer is No, there appears to be a violation)	**Yes**	**No**	**Basis for Conclusion**
Information for Monitoring Purposes			
1. Do files for purchase and refinance loans for primary residences that are secured by the dwelling show that the bank requested monitoring information (§1002.13(a) and (b)) and that it noted this information on the application form or on a separate form referring to the application (§1002.13(b)): a. Ethnicity, using the categories "Hispanic or Latino," and "Not Hispanic or Latino"; and race, using the categories "American Indian or Alaska Native," "Asian," "Black or African American," "Native Hawaiian or Other Pacific Islander," and "White," and allowing applicants to select more than one racial designation (Comment 13(b)-1)? b. Sex? c.. Marital status, using the categories married, unmarried, and separated? d. Age? *NOTE: Examiners should ensure that the bank limits its requests for government monitoring information to only those loans secured by the applicant's principal dwelling, as required in §1002.5(a)&(b); 1002.13(a).*			
2. Does the form used to collect monitoring information contain written notice that it is for federal government monitoring of compliance with federal statutes prohibiting discrimination on those bases, and that the bank must note ethnicity, race and sex on the basis of sight and/or surname if the applicant chooses not to do so, or does the loan file indicate that the borrower was otherwise notified of this fact? (§1002.13(c))			
3. Does the bank note on the monitoring form applicant's refusals to disclose monitoring information? (§1002.13(b))			

4. a. If the bank takes applications in person (including by electronic media that allows the bank to see the applicant), and if the applicant refuses to provide the monitoring information, does the bank, to the extent possible on the basis of sight or surname, note on the form the ethnicity, race and sex of each applicant? (§1002.13(b)), Comment 13(b)-4) b. If the bank receives applications by mail, telephone, or electronic media and if it is not evident on the face of the application how it was received, does the bank indicate on the form or in the loan file how it was received? (Comments 13(b)-3, -4)			
5. Are written applications used for home purchase and refinance transactions? (§1002.4(c), §1002.13(a))			
6. Are disclosures clear, conspicuous and except for those required by §1002.5 and §1002.13, in a form the applicant can retain? (§1002.4(d))			
7. Are disclosures in electronic form provided in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce (E-Sign) Act? (§1002.4(d)(2))			
8. If an applicant accesses a credit application electronically from a place other than a creditor's office, were the required disclosures provided in electronic form? (Comment 4(d)-2)			
Rules Concerning Requests for Information			
9. Do guidance and forms exclude requests for information relative to birth control practices, childbearing abilities, or childbearing or child-rearing intentions of the applicant, and does the loan file indicate that the bank did not otherwise inquire about these topics? (§1002.5(d)(3))			

10. Does the loan file indicate that the bank did not request information about spouses except for transactions which: a. The spouse is permitted to use the account, b. The spouse is liable on the account, c. The applicant is relying on the spouse's income as a basis for repayment of the credit requested, d. The applicant resides in a community property state or is relying on property in such a state for repayment, or e. The applicant relies on alimony, child support, or separate maintenance payments from the spouse or the former spouse to repay the debt? (§1002.5(c))			
11. In the case of individual unsecured credit, does the loan file indicate that the bank made inquiries about the marital status of the applicant only when the applicant resides in a community property state or when community property is a basis for repayment of the debt, and do guidance and forms for unsecured individual loans include these inquiries? (§1002.5(d)(1))			
12. For loans other than individual unsecured credit, are inquiries into marital status no more extensive than obtaining the applicant's status as "married," "unmarried," or "separated"? (§1002.5(d)(1))			
13. If the loan file indicates that information was requested regarding whether income on the application is derived from alimony, child support, or separate maintenance payments, do guidance and forms ensure that the applicant is informed that such income need not be revealed if the applicant does not want the bank to consider the information in determining the applicant's creditworthiness? (§1002.5(d)(2))			

14. Is any special purpose program established and administered so as to avoid discriminating on a prohibited basis? (§1002.5(a)(3), §1002.8(b)(2))			
15. If the creditor collects information (in addition to required government monitoring information) on the race, color, religion, national origin, or sex of the applicant for purposes of a "self-test": a. Does the "self-test" meet the requirements of §1002.15? b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that:, i. Applicant isn't required to provide information? ii. The bank is requesting information to monitor its compliance with ECOA? iii. Federal law prohibits the bank from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information? iv. If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person? (§1002.5(b))			
16. When a title, such as Ms., Miss, Mrs. or Mr., is requested on the application, does the form disclose that such designation is optional, and does the application form otherwise use only terms neutral as to sex? (§1002.5(b)(2))			
Rules Concerning Extensions of Credit			
17. For joint applications, do application files indicate an applicant's intent to apply for joint credit at the time of application? (Supplement I to 12 CFR 1002, Staff Commentary, comment no. 3 to §1002.7(d)(1))			

Notifications			
18. Do files show that the bank notified non-commercial applicants in writing of: a. Action taken, whether approval, counteroffer, or adverse action (within 30 days of receipt of a completed application), unless the application is approved and the parties contemplate that the applicant who has yet to inquire about the status of the application, will do so within 30 days after applying? (§1002.9(a)(1)(i), §1002.9(e)) b. Adverse action because of incompleteness or a notice of missing information and that the information must be provided within a designated reasonable period for the application to be considered (within 30 days of receipt of the incomplete application)? (§1002.9(a)(1)(ii) and (c)(2)) c. Adverse action (within 30 days of taking such action) on existing accounts? (§1002.9(a)(1)(iii)) d. Adverse action (within 90 days after notifying the applicant of a counteroffer), if the applicant has not accepted the counteroffer (unless the notice of adverse action on the credit terms sought accompanied the counteroffer)? (§1002.9(a)(1)(iv))			
19. Do adverse action notices in denied files (as applicable) contain: a A written statement of action taken and the name and address of the bank? (§1002.9(a)(2) b. A written statement substantially similar to that in §1002.9(b)(1)? c. A written statement of specific reasons for the action taken or written disclosure as specified in §1002.9(a)(2)(ii)) of the applicant's right to such a statement? (§1002.9(a)(2)(i) and (ii))			

20. In connection with credit other than an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, for businesses with revenues of $1 million or less in the preceding fiscal year, where the reasons were not given orally or in writing when adverse action was taken (under timeframes in §1002.9(a)(1)), was the disclosure of the right to a statement of reasons given in writing at the time of application in accordance with §1002.9(a)(3)(i)(B)?			
21. For businesses with revenues in excess of $1 million in the preceding fiscal year, or for extensions of trade credit, credit incident to a factoring agreement or other similar types of business credit, was the notification of action taken communicated within a reasonable time orally or in writing, and were reasons for denial and the ECOA notice provided in writing in response to a written request for the reasons by the applicant within 60 days of the bank's notification? (§1002.9(a)(3)(ii)(B)):			
22. Does the statement of reason(s) for adverse action contain the principal and specific reason(s) for the action? (§1002.9(b)(2))			
23. When an application involves multiple applicants, does the bank provide notification of action to the primary applicant, when one is readily apparent? (§1002.9(f))			
24. When an application is made to multiple creditors by a third party, and no credit is offered or extended by any of the creditors, does the bank ensure that the applicant is properly informed of the action taken? (§1002.9(g))			
Furnishing Credit Information			
25. If the bank furnishes information: a. Does the bank designate any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party) and any existing account within 90 days of the Requirement? (If answer is No, there appears to be a violation.) b. Does the bank furnish joint account information to consumer reporting agencies in a manner that provides access to such information in the name of each spouse? (§1002.10(b))			

26. When an application involves multiple applicants, does the bank provide notification of action to the primary applicant, when one is readily apparent? (§1002.9(f))			
Record Retention			
27. Does the bank retain application files for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after date of notice of action taken or notice of incompleteness the following (as applicable) containing: a. The application and all supporting material? (§1002.12(b)(1)(i)) b. All information obtained for monitoring purposes? (§1002.12(b)(1)(i)) c. The notification of action taken, if written, or any notation or memorandum by the bank, if made orally? (§1002.12(b)(1)(ii)(A)) d. A statement of specific reasons for adverse action, if written, or any notation or memorandum by the bank, if made orally? (§1002.12(b)(1)(ii)(B)) e. Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§1002.12(b)(1)(iii))			
28. Does the bank retain application files in connection with existing accounts for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after date of notice of action taken containing: a. Any written or recorded information concerning the adverse action? (§1002.12(b)(2)(i)) b. Any written statement submitted by the applicant alleging a violation of ECOA or Regulation B? (§1002.12(b)(2)(ii))			
29. Does the bank retain application files for other applications, for which §1002.9's notification requirements do not apply, retain for 25 months (12 months for business credit applications from businesses with gross revenues of $1 million or less in the previous fiscal year, except an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the date the bank receives the application, containing all written or recorded information in its possession concerning the applicant, including any notation of action taken? (§1002.12(b)(3))			

30. For business credit applications from businesses with gross revenues of more than $1 million in the previous fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, does the bank retain records for at least 60 days after notifying the applicant of the action taken, or for 12 months after notifying the applicant of the action taken if the applicant requests in the 60-day time period the reasons for denial or that the records be retained? (§1002.12(b)(5))			
31. For prescreened solicitations, does the bank retain for 25 months (12 months for business credit except for businesses with gross revenues of more than $1 million in the previous fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit) after the offer of credit was made: a. The text of any prescreened solicitation; b. The list of criteria the bank used to select potential recipients of the solicitation; and c. Any correspondence related to complaints (formal or informal) about the solicitation? (§1002.12(b)(7))			
32. Was information relative to an investigative enforcement or civil action retained until final disposition of the matter? (§1002.12(b)(4))			
33. If the bank conducts a self test pursuant to §1002.15, does it after completion of the test, retain all written and recorded information: a. For 25 months? b. Until final disposition if it has actual notice that it is under investigation or subject to enforcement proceedings or a civil action? (§1002.12(b)(6))			

34. With respect to applications for credit to be secured by a first lien on a dwelling, in the absence of a waiver, does the creditor: a. Provide copies of all appraisals and other written valuations developed in connection with the application for credit promptly upon completion, or three business days prior to consummation of the transaction (for closed-end-credit) or at, or before, account opening (for open-end credit), whichever is earlier, whether credit is granted or denied or the application is withdrawn; <u>or</u> b. If the creditor obtains a waiver of the timing requirements that is not otherwise prohibited by law, does the creditor: i. Obtain the waiver at least three business days prior to consummation or account opening (except in the case of waivers pertaining solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening); ii. Provide the applicant a copy of the appraisal or other valuation at or before consummation or account opening, where the loan is consummated or the account is opened; and iii. Where the loan is not consummated or the account is not opened, provide the applicant with copies no later than 30 days after determining the consummation will not occur or the account will not be opened? (12 CFR 1002.14(a)).			
35. With respect to applications for credit to be secured by a first lien on a dwelling, does the creditor refrain from charging an applicant for providing required copies of appraisals and other written valuations? (A creditor may charge a reasonable fee to reimburse for the cost of the appraisal or other written valuation unless otherwise provided by the law but a creditor may not charge an applicant for providing a copy of appraisals and other written valuations.) (12 CFR 1002.14(a)(3))			

36. With respect to applications for credit to be secured by a first lien on a dwelling, does the creditor mail or deliver a written notice of the applicant's right to receive a copy of all written appraisals developed in connection with the application no later than the third business day after the creditor receives the application for credit; or if the creditor determines that credit was not to be secured by a first lien on a dwelling at the time of application but later determined the credit will be secured by a first lien on a dwelling, does the creditor mail or deliver the same written notice no later than the third business day after such determination? (12 CFR 1002.14(a)(2))			
37. Are the creditor's written disclosures that are required by Regulation B clear, conspicuous, and except for those required by 12 CFR 1002.5 (self-tests) and 1002.13 (monitoring), in a form the applicant can retain? (12 CFR 1002.4(d))			
General Rule			
38. Do the bank's marketing or advertising materials (including lobby signs or other displays) contain any information that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application? (§1002.4(b))			