

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 Examination Manual, 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.

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.

As discussed above, each aspect of the regulation discussed in this section pertains to the technical compliance review of the ECOA and Regulation B. The technical compliance review is an important aspect of the consumer compliance examination. Technical compliance reviews have led to the discovery of substantive fair lending violations. Based on the direction provided in the scoping section of the manual, examiners should review sufficient information to ensure compliance with the applicable provisions of Regulation B described below. Note that the language that follows is taken directly

from the regulation, which appears in the References portion of this section.

Rules for Taking Applications – 12 CFR § 1002.5

Under Regulation B, a creditor may request any information¹ in connection with a credit transaction, unless the information requested or collected concerns one or more of the specific prohibited bases listed above. Nevertheless, the regulation permits a creditor to collect such information when required for monitoring or enforcing compliance with fair lending or other laws as follows:

- *Monitoring Purposes Required by Court or an Enforcement Agency Special Purpose Credit*

In addition, Regulation B permits the collection of certain prohibited information on a limited basis.

Limitations on Requests for Information Concerning Race, Color, Religion, National Origin, or Sex — 12 CFR § 1002.5(b)

In cases where it is not required to collect information, a creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except in the following cases:

- *Self-test*
- *Sex*

Limitations on Requests for Information Concerning a Spouse or Former Spouse — 12 CFR § 1002.5(c)

Regulation B limits the information that a creditor may collect from an applicant's spouse or former spouse to the following circumstances:

- The spouse will be permitted to use the account;
- The spouse will be contractually liable on the account;
- The applicant is relying on the spouse's income as a basis for repayment of the credit requested;
- The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or
- The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

¹ A request for information under Regulation B does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

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A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

Limitations on Requests for Information Concerning Marital Status — 12 CFR § 1002.5(d)(1)

Regulation B also limits inquiries about an applicant's marital status to the following:

- *Individual unsecured credit* - If an applicant applies for individual unsecured credit, a creditor may inquire about the applicant's marital status if the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested.
- *Other credit* - If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married*, *unmarried*, and *separated*. A creditor may explain that the category *unmarried* includes single, divorced, and widowed persons.

Limitation on Disclosure of Income From Alimony, Child Support, or Separate Maintenance — 12 CFR § 1002.5(d)(2)

A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Limitation on Requests for Information Concerning Childbearing or Childrearing — 12 CFR § 1002.5(d)(3)

A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

Permanent Residency and Immigration Status — 12 CFR § 1002.5(e)

A creditor may inquire about the permanent residency and immigration status in the United States of an applicant or any other person in connection with a credit transaction.

Rules Concerning Evaluation of Applications — 12 CFR § 1002.6

General Rule — 12 CFR § 1002.6(a)

Except as otherwise provided for in the ECOA and Regulation B, a creditor may consider any information obtained to evaluate an applicant's credit worthiness, so long as the information is not used to discriminate against the applicant on a prohibited basis.

Specific Rules Concerning Use of Information — 12 CFR § 1002.6(b)

In any system of evaluating the creditworthiness of an applicant, a creditor may not:

- Consider any of the prohibited bases, including age (provided that the applicant has the capacity to enter into a binding contract)² and the receipt of public assistance (with certain limitations, as described below, a creditor may use the applicant's age and income derived from public assistance);
- Use childbearing or childrearing information to make assumptions or use aggregate statistics to determine whether the applicant's income will be diminished or interrupted in the future;
- Take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence;
- Discount or exclude from consideration the income of an applicant or the spouse of an applicant because the income is derived from part-time employment or from other sources, such as an annuity, pension, or other retirement benefit; but may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness.

Limitations on the Use of an Applicant's Age and Income Derived from Public Assistance — 12 CFR § 1002.6(b)(2)

Although generally prohibited, a creditor may use an applicant's age and income derived from public assistance in the following systems for analyzing credit:

² According to the official staff commentary for Regulation B, any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 1002.8

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- *Empirical Derived Credit Scoring System*
- *Judgmental Systems*
- *Any System of Evaluating Creditworthiness*

Use of Credit History Information — 12 CFR § 1002.6(b)(6)

To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

- The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;
- On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and
- On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

Use of Information Concerning Immigration Status — 12 CFR § 1002.6(b)(7)

A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

Use of Information Concerning Marital Status — 12 CFR § 1002.6(b)(8)

Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

Use of Information Concerning Race, Color, Religion, National Origin, or Sex — 12 CFR § 1002.6(b)(9)

Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

State Property Laws — 12 CFR § 1002.6(c)

A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the ECOA or Regulation B.

Rules for Extensions of Credit — 12 CFR § 1002.7

Regulation B has specific provisions regarding extensions of credit.

Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

Action Concerning Existing Open-End Accounts — 12 CFR § 1002.7(c)

Limitations. In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

- Require a reapplication, except as provided under § 1002.7(c)(2);
- Change the terms of the account; or
- Terminate the account.

Requiring Reapplication — 12 CFR § 1002.7(c)(2)

A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

Signature Requirements — 12 CFR § 1002.7(d)

Rule for qualified applicant. Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

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Unsecured credit. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

Unsecured credit—community property states. If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

- Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and
- The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

Additional parties. If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

Rights of additional parties. A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

Insurance. A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

Notifications — 12 CFR § 1002.9

Regulation B provides specific requirements for creditors regarding notification of action taken, ECOA notices, and statement of specific reasons to applicants.

Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons — 12 CFR § 1002.9(a)

When Notification is Required — 12 CFR § 1002.9(a)(1)

A creditor shall notify an applicant of action taken within:

- 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 the requirements for incomplete applications under § 1002.9(c);
- 30 days after taking adverse action on an existing account; or
- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Content of Notification When Adverse Action is Taken — 12 CFR § 1002.9(a)(2)

A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

- A statement of specific reasons for the action taken; (§ 1002.9(a)(2)(i)) or
- A 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. 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 the applicant's written request for confirmation. (§ 1002.9(a)(2)(ii))

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Notification to business credit applicants. For business credit, a creditor shall comply with the notification requirements of § 1002.9 in the following manner:

Businesses with gross revenues of \$1 million or less (§ 1002.9(a)(3)(i)) – Businesses 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 with the timing and content requirements of action taken, except that:

- The statement of the action taken may be given orally or in writing, when adverse action is taken;
- 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 by § 1002.9(a)(2)(ii) and the ECOA notice specified in § 1002.9(b)(1);
- For an application made entirely by telephone, a creditor satisfies the requirements of § 1002.9(a)(3)(i) by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

Businesses with gross revenues in excess of \$1 million - Businesses 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 action taken; and
- Provide a written statement of the reasons for adverse action and the ECOA notice specified in § 1002.9(b)(1) if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

Form of ECOA Notice and Statement of Specific Reasons — 12 CFR § 1002.9(b)(1)

ECOA notice. To satisfy the disclosure requirements of the notice of adverse action regarding the prohibited basis for discrimination of section 701(a) of the ECOA, the creditor shall provide a notice that is substantially similar to the following:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in Appendix A of Regulation B].

Statement of Specific Reasons — 12 CFR § 1002.9(b)(2)

The statement of reasons for adverse action required must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient. Note: According to the staff commentary, a creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

Incomplete Applications — 12 CFR § 1002.9(c)

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, in accordance with § 1002.9(a); or
- Of the incompleteness, in accordance with § 1002.9(c)(2)

Notice of Incompleteness — 12 CFR § 1002.9(c)(2)

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 to the application. The creditor shall have no further obligation under this section 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

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shall take action on the application and notify the applicant in accordance the requirements of § 1002.9(a) described above.

Oral Request for Information — 12 CFR § 1002.9(c)(3)

At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete, the creditor shall send a notice in accordance with the notice alternatives for incomplete applications.

Oral Notifications by Small-Volume Creditors — 12 CFR § 1002.9(d)

In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

Withdrawal of Approved Application — 12 CFR § 1002.9(e)

When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with the timing requirements of action taken under § 1002.9(a)(1).

Multiple Applicants — 12 CFR § 1002.9(e)

When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

Applications Submitted Through a Third Party — 12 CFR § 1002.9(g)

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. If no credit is offered or if the applicant does not expressly accept or use the 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.

Furnishing of Credit Information — 12 CFR § 1002.10

Regulation B provides specific requirements for creditors regarding designation of accounts.

Designation of Accounts — 12 CFR § 1002.10(a)

A creditor that furnishes credit information shall 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 to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

Routine Reports to Consumer Reporting Agency — 12 CFR § 1002.10(b)

If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

Reporting in Response to Inquiry — 12 CFR § 1002.10(c)

If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

Record Retention — 12 CFR § 1002.12

Regulation B provides specific record retention requirements for creditors.

Retention of Prohibited Information — 12 CFR § 1002.12(a)

A creditor may retain in its files information that is prohibited by the ECOA or Regulation B for use in evaluating applications, without violating the ECOA or Regulation B, if the information was obtained:

- (1) From any source prior to March 23, 1977;
- (2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or
- (3) As required to monitor compliance with the ECOA and this Regulation B or other Federal or state statutes or regulations.

Preservation of Records — 12 CFR § 1002.12(b)

Applications. For 25 months (12 months for business credit, except as provided for in the “special rule for certain business credit applications”) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

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- Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the ECOA and Regulation B or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;
- A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):
 - The notification of action taken; and
 - The statement of specific reasons for adverse action; and
- Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.

Existing accounts. For 25 months (12 months for business credit, except as provided for in the “*special rule for certain business credit applications*”) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

- Any written or recorded information concerning the adverse action; and
- Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.

Other applications. For 25 months (12 months for business credit, except as provided for in the “*special rule for certain business credit applications*”) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

Enforcement proceedings and investigations. A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided for in the “*special rule for certain business credit applications*”) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the ECOA or Regulation B, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the ECOA and Regulation B, or if it has been served with notice of an action filed pursuant to section 706 of the ECOA and § 1002.16 of Regulation B. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Special rule for certain business credit applications. 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, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

Self-tests. For 25 months after a self-test (as defined in § 1002.15(b)(1) of Regulation B) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Prescreened solicitations. For 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, except as provided for in the “*special rule for certain business credit applications*”), the creditor shall retain in original form or a copy thereof:

- The text of any prescreened solicitation;
- The list of criteria the creditor used to select potential recipients of the solicitation; and
- Any correspondence related to complaints (formal or informal) about the solicitation.

Information for Monitoring Purposes — 12 CFR § 1002.13

Information to be Requested — 12 CFR § 1002.13(a)

A creditor that receives an application for credit primarily for the purchase or refinancing 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, shall request as part of the application the following information regarding the applicant(s):

- 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;
- Sex;

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- Marital status, using the categories married, unmarried, and separated; and
- Age.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

Obtaining information. — 12 CFR § 1002.13(b)

Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname.

Disclosure to applicant(s) — 12 CFR § 1002.13(c)

The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

Substitute Monitoring Program — 12 CFR § 1002.13(d)

A monitoring program required by an agency charged with administrative enforcement under section 704 of the ECOA may be substituted for the monitoring requirements of § 1002.13(a)-(c).

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 valuations³ 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).

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.

³ 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).

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.*).

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

References

[12 CFR Part 1002](#)

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Requirement (If answer is No, there appears to be a violation)	Yes	No	Basis for Conclusion
Information for Monitoring Purposes			
<p>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)):</p> <p style="margin-left: 20px;">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)?</p> <p style="margin-left: 20px;">b. Sex?</p> <p style="margin-left: 20px;">c. Marital status, using the categories married, unmarried, and separated?</p> <p style="margin-left: 20px;">d. Age?</p> <p style="margin-left: 40px;"><i>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).</i></p>			
<p>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))</p>			
<p>3. Does the bank note on the monitoring form applicant’s refusals to disclose monitoring information? (§1002.13(b))</p>			

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<p>4.</p> <p>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)</p> <p>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)</p>			
<p>5. Are written applications used for home purchase and refinance transactions? (§1002.4(c), §1002.13(a))</p>			
<p>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))</p>			
<p>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))</p>			
<p>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)</p>			
<p>Rules Concerning Requests for Information</p>			
<p>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))</p>			

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<p>10. Does the loan file indicate that the bank did not request information about spouses except for transactions which:</p> <ul style="list-style-type: none"> 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)) 			
<p>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))</p>			
<p>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))</p>			
<p>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))</p>			

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<p>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))</p>			
<p>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”:</p> <p>a. Does the “self-test” meet the requirements of §1002.15?</p> <p>b. Does the creditor disclose to the applicant, orally or in writing, when requesting the information that:</p> <p>i. Applicant isn’t required to provide information?</p> <p>ii. The bank is requesting information to monitor its compliance with ECOA?</p> <p>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?</p> <p>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))</p>			
<p>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))</p>			
<p>Rules Concerning Extensions of Credit</p>			
<p>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))</p>			

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Notifications			
<p>18. Do files show that the bank notified non-commercial applicants in writing of:</p> <ul style="list-style-type: none"> 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)) 			
<p>19. Do adverse action notices in denied files (as applicable) contain:</p> <ul style="list-style-type: none"> 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)) 			

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<p>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)?</p>			
<p>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)):</p>			
<p>22. Does the statement of reason(s) for adverse action contain the principal and specific reason(s) for the action? (§1002.9(b)(2))</p>			
<p>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))</p>			
<p>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))</p>			
<p>Furnishing Credit Information</p>			
<p>25. If the bank furnishes information:</p> <ul style="list-style-type: none"> 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)) 			

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<p>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))</p>			
Record Retention			
<p>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:</p> <ul style="list-style-type: none"> 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)) 			
<p>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:</p> <ul style="list-style-type: none"> 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)) 			
<p>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))</p>			

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<p>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))</p>			
<p>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:</p> <ul style="list-style-type: none"> 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)) 			
<p>32. Was information relative to an investigative enforcement or civil action retained until final disposition of the matter? (§1002.12(b)(4))</p>			
<p>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:</p> <ul style="list-style-type: none"> 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)) 			

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<p>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:</p> <ul style="list-style-type: none"> 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; or b) If the creditor obtains a waiver of the timing requirements that is not otherwise prohibited by law, does the creditor: <ul style="list-style-type: none"> 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)). 			
<p>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))</p>			

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<p>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))</p>			
<p>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))</p>			
<p>General Rule</p>			
<p>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))</p>			