

# Equal Credit Opportunity Act - Regulation B

Reviewed Date: 01/30/2013

## General Statement:

The purpose of the Equal Credit Opportunity Act (the Act) is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, receipt of public assistance, sex, marital status, age, or the exercise of rights under the Consumer Credit Protection Act. In particular, the Act prohibits Credit Union practices that discriminate on the basis of any of these factors. The regulation also requires the Credit Union to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; and to collect information about the applicant's race and other personal characteristics for certain dwelling-related loans.

## Highlights:

1. **PROHIBITION AGAINST DISCRIMINATION.** The Credit Union shall not treat applicants for credit less favorably than other applicants because of:
  - A. Race;
  - B. Color;
  - C. Religion;
  - D. National Origin;
  - E. The fact that all or part of the applicant's income derives from a public assistance program;
  - F. Sex;
  - G. Marital Status;
  - H. Age (provided the applicant has the capacity to contract, (i.e., is over 18 years of age); or
  - I. The fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
  
2. **DEFINITIONS.**
  - A. Applicant.** Applicant means any person who requests or who has received an extension of credit from the Credit Union, including any person who may become contractually liable (i.e., guarantors, sureties, endorsers, and similar parties).
  - B. Credit.** Credit means the right granted by the Credit Union to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment.
  - C. Application.** Application means an oral or written request for an extension of credit that is made in accordance with procedures established by the Credit Union 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. A "completed" application is one where the Credit Union has received all the information that the Credit Union regularly obtains and considers in evaluating applications for the amount and type of credit requested.
  
3. **APPLICATIONS.** All members requesting credit will be given the opportunity to apply for a loan. This includes written, telephone, and in-person requests for credit. All of the Credit Union's advertising, letters, and any other written or oral communications will reflect this philosophy.

#### 4. INQUIRIES.

**A. Race, Color, Religion and National Origin.** The Credit Union may inquire about the race, Ethnicity or sex of applicants for home-improvement and home-purchase loans if the Credit Union is subject to the requirements of the Home Mortgage Disclosure Act (See **Policy 9200**). The Credit Union may also inquire about the race, color, religion, national origin or sex of applicants for the purpose of conducting a self-test (See (8)).

**B. Spouse/Former Spouse.**

- i. **Information.** The Credit Union may not request any information concerning an applicant's spouse or former spouse unless:
  - i. Spouse will be permitted to use the account;
  - ii. Spouse will be contractually liable on the account;
  - iii. Applicant is relying on the spouse's income as a basis for repayment of the credit requested;
  - iv. The applicant resides in a community property state, or the property on which the applicant is relying as a basis for repayment of the credit requested is located in a community property state; or
  - v. Applicant is relying on alimony, child support or separate maintenance payments from a spouse or former spouse as a basis for repayment; the Credit Union must disclose that the applicant need not reveal such income if he or she does not want the Credit Union to consider it in determining the applicant's creditworthiness (*before* the inquiry, as it may lead the applicant to disclose the income).

**C. Marital Status.**

- i. If an applicant applies for individual unsecured credit, the Credit Union may not inquire about the applicant's marital status (unless (B)(i)(4) applies).
- ii. Otherwise, the Credit Union may inquire about an applicant's marital status, but may only use the terms "married," "unmarried" and "separated." The Credit Union may explain that the "unmarried" category includes single, divorced or widowed.
- iii. The fact that certain credit-related information may indirectly disclose marital status does not prohibit the Credit Union from seeking such information. For example, the Credit Union may ask the following:
  - i. The applicant's obligation to pay alimony, child support or separate maintenance income;
  - ii. The source of income to be used as the basis for repayment, which could disclose the income of a spouse;
  - iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse; or
  - iv. The ownership of assets, which could disclose the interest of a spouse.

**D. Sex.** The Credit Union may not inquire about the applicant's sex, except for requesting the applicant to designate a title on an application at the applicant's option. Permissible titles include Mr., Ms., Miss, and Mrs. If these titles are provided, it must be disclosed that the designation of a title is optional.

**E. Childbearing and Childrearing.** The Credit Union may not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. However, the Credit Union may inquire about the number and ages of dependents or dependent related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

**F. Permanent Residency and Immigration Status.** The Credit Union may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

**G. Other Accounts of the Applicant.** The Credit Union 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. The Credit Union may also ask an applicant to list the names in which the applicant has previously received credit.

## **5. EVALUATION OF APPLICATIONS.**

### **A. Definitions.**

**i. Credit Scoring System.** A credit scoring system means 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 application is deemed creditworthy.

**ii. Judgmental System.** A judgmental system evaluates the creditworthiness of an applicant by a system other than a scientific system based on statistics and probabilities.

**B. Appropriate System.** The Credit Union may use a "demonstrably and statistically sound" credit scoring system. To qualify as a "demonstrably and statistically sound" scoring system, it must be:

- i. Based on data that is derived from an empirical comparison of sample groups or the population of creditworthy and non-credit worthy applicants who applied for credit within a reasonable preceding period of time;
- ii. Developed for the purpose of evaluating creditworthiness of applicants with respect to the legitimate business interests of the Credit Union including but not limited to minimizing bad debt losses and operating expense in accordance with the Credit Union's business judgment;
- iii. Developed and validated using accepted statistical principals and methodology; and
- iv. Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability. Although the Credit Union is responsible for revalidating its credit scoring system, it may use a third party to perform the revalidation.

### **C. Use of Sensitive Information.**

#### **i. Age and Receipt of Public Assistance.**

**i. Statistically Sound System.** If the Credit Union uses an empirically derived, demonstrably and statistically sound credit scoring system, the Credit Union may use age as a predictive variable provided that the age of an elderly applicant is not assigned a negative factor or value. "Elderly" means age 62 or older.

**ii. Judgmental System.** If the Credit Union uses a judgmental system of evaluating creditworthiness, the Credit Union may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purposes of determining a pertinent element of creditworthiness. For example, the Credit Union may consider the following:

- a. The applicant's occupation and length of time to retirement to determine whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- b. The adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity.
- c. The applicant's age to assess the significance of length of employment or length of time at an address.

**iii. Any System.** The Credit Union may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

- ii. Childbearing and Childrearing.** The Credit Union may not use assumptions or aggregate statistics relating to the likelihood that a group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.
- iii. Telephone Listing.** The Credit Union may not take into account whether there is a telephone listing in the name of the applicant for consumer credit, but may take into account whether there is a telephone in the applicant's residence.
- iv. Income.** The Credit Union may not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit. However, the Credit Union may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness.
  - i. Alimony, Child Support and Separate Maintenance Income.** When an applicant relies on alimony, child support or separate maintenance income, the Credit Union may consider such payments as income to the extent that they are likely to be consistently made. In determining the likelihood of consistent payments, the Credit Union may consider factors such as:
    - a. Whether payments are received pursuant to a written agreement or court decree;
    - b. The length of time that payments have been received;
    - c. The availability of court or other procedures to compel payment; and
    - d. The creditworthiness of the payor, including the credit history of the payor when it is available to the Credit Union.
- v. Credit History.** To the extent the Credit Union evaluates the credit history of similarly qualified applicants for similar types and amounts of credit, the Credit Union may consider:
  - i. Credit history of accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;
  - ii. Any information that the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and
  - iii.** On the applicant's request, the credit history 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.
- vi. Immigration Status.** The Credit Union may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the Credit Union's rights and remedies with regarding repayment. A denial on the ground that an applicant is not a U.S. citizen is not per se discrimination based on national origin.

## **6. EXTENDING CREDIT.**

### **A. Designation of Name.**

- i. The Credit Union may 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.
- ii. In the absence of evidence of the applicant's inability or unwillingness to repay, the Credit Union may 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:
  - i. Requiring a reapplication, except in connection with a change in marital status (described in Section (6)(B));
  - ii. Changing the terms of the account; or
  - iii.** Terminating the account.

### **B. Requiring Reapplication.** The Credit Union may require a reapplication for an open-end

account 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 the income of the applicant's spouse and if information available indicates that the applicant's income may not support the amount of credit currently available.

### **C. Signatures.**

- i. Qualified Applicant.** The Credit Union may **not** require the signature of an applicant's spouse or other person other than a joint applicant if the applicant qualifies under the Credit Union's standards of creditworthiness for the amount and terms of the credit requested.
- ii. Unsecured Credit.** If an applicant relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the Credit Union may require the signature of the other person when the Credit Union reasonably believes it necessary to enable it to reach the property in the event of death or default of the applicant.
- iii. Secured Credit.** If the applicant requests secured credit, the Credit Union may require the signature of the applicant's spouse or other person on any instrument when it reasonably believes that it is necessary to make the secured property available to satisfy the debt in the event of default.

**D. Evidence of Intent to Apply for Joint Credit.** A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may **not** be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish said intent.

- i.** The method used to establish intent must be distinct from the method used by individuals to affirm the accuracy of the information. For examples, signatures on a joint financial statement affirming the veracity of information are **not** sufficient to establish intent to apply for joint credit.

### **E. Insurance.**

- i.** The Credit Union may not refuse to extend credit and may 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.
- ii.** Differences in the availability, rates and other terms on which credit-related casualty insurance or credit life, health, accident or disability insurance is offered or provided to an applicant does not violate Regulation B.
- iii.** The Credit Union may obtain information about an applicant's age, sex or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, and not in making the credit decision.

**7. NOTIFICATION.** The Credit Union must notify members of action taken on loan requests. Notifications include:

**A. Notice of Incomplete Application.** Within 30 days of receiving an incomplete application regarding matters that an applicant can complete, the Credit Union will notify the member when a submitted application is incomplete. The request to the member may be verbal. The notice will:

- i.** Identify the information needed to complete and evaluate the application.
- ii.** Set a reasonable deadline for receiving the information from the applicant and inform the member that once the deadline has expired, no further consideration will be given to the loan request.

**B. Notice of Adverse Action Taken.** "Adverse action" is defined as one of the following:

- i.** A refusal to grant credit in substantially the same amount or on substantially different terms than those requested in an application, unless the Credit Union makes a counteroffer (granting credit in a different amount or on other terms);
- ii.** A termination of an account or an unfavorable change in the terms of an account that

does not affect all or substantially all of a class of the Credit Union's accounts; or  
**iii.** A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

- iv. Notice of Action Taken.** The Credit Union must notify an applicant of action taken:
- i. 30 days** after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
  - ii. 30 days** after taking adverse action on an incomplete application, unless within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the Credit Union notifies the applicant of the action taken on the incompleteness of the application;
  - iii. 30 days** after taking adverse action on an existing account; or
  - iv. 90 days** after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.
  - v.** Notification occurs when the Credit Union delivers or mails to an applicant's last known address or, in the case of verbal notification, when the Credit Union communicates the credit decision to the applicant.

**C. Content of Adverse Action Notice.** A notification given to an applicant when adverse action is taken must be in writing and must contain:

- i.** A statement of the action taken;
- ii.** The name and address of the creditor;
- iii.** A statement of the provisions of the anti-discrimination section of the Act;
- iv.** The name and address of the federal agency that administers compliance with respect to the Credit Union; and either:
  - i.** A statement of specific reasons for the action taken; or
  - ii.** A disclosure of the applicant's right to a statement of the specific reasons within 30 days, if the statement is requested within 60 days of the Credit Union's notification, including the name, address and telephone number of the person or office from which the statement of reasons can be obtained.
- v.** The reasons must be specific and must indicate the principal reason(s) for the adverse action. Statements that adverse action was based on the Credit Union's internal standards or policies, or that the applicant, joint applicant or similar party failed to achieve a qualifying score on the Credit Union's scoring system are **insufficient**.
- vi.** The following information when a credit score is used in taking an adverse action:
  - i.** A statement that the Credit Union obtained the consumer's credit score from a consumer reporting agency (CRA) named in the notice and used the score making the credit decision;
  - ii.** A statement that a credit score is a number that reflects the information in the consumer's credit report and that the consumer's credit score can change, depending on how the information in the consumer's credit report changes; and
  - iii.** Space for the creditor to include the content required under the Dodd-Frank Act that is specific to the consumer, which includes the following:
    - a.** The consumer's credit score;
    - b.** The date the credit score was created;
    - c.** The range of possible credit scores under the model used; and
    - d.** Up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is one of the factors).

**D. Notice Of Adverse Action To Natural Person Applicants.**

- i. Co-Applicants.** When an adverse action is based in whole or in part on information in a consumer report, the Credit Union will provide a separate notice to each applicant with each applicant's respective credit score on the notices. Otherwise, an adverse action can be provided to either applicant. If one applicant has good credit, and the

other applicant does not, the combined FCRA/ECOA notice will be provided to the applicant with bad credit.

**ii. Guarantors and Co-Signers.** Under the ECOA and FCRA, a guarantor or co-signer would not receive an adverse action notice. The combined ECOA/FCRA notice will be provided to the applicant, even if the adverse action decision is made solely based on information in the guarantor's or co-signer's consumer report. However, the guarantor's or co-signer's credit score will not be disclosed to an applicant in an adverse action notice.

**iii. Multiple Scores.** When the Credit Union obtains multiple scores, but only uses one in making the decision, any of the scores may be disclosed.

#### **E. Notification to Business Credit Applicants.**

**i. Businesses with Gross Revenues of \$1 Million or Less in the Preceding Fiscal Year.** The Credit Union must comply with the following requirements:

- i. When adverse action is taken, the statement of the action taken may be given orally or in writing.
- ii. Disclosure of an applicant's right to a statement of the reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by the regulation; and
- iii.** For an application made entirely by telephone, a verbal statement of the action taken and of the applicant's right to a statement of the reasons for adverse action.

**ii. Businesses Revenues in Excess of \$1 Million in the Preceding Fiscal Year or an Extension of Trade Credit, Credit Incident to a Factoring Agreement, or Other Similar Type of Business Credit.** The Credit Union must comply with the following requirements:

- i. Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and
- ii.** Provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request for the reasons within 60 days of the Credit Union's notification.

**8. SELF-TESTS.** The Credit Union may inquire about the race, color, religion, national origin or sex of applicants for the purpose of conducting a self test. Such inquiries must disclose the following information verbally or in writing at the time the information is requested:

- A. The applicant will not be required to provide the information;
- B. The Credit Union is requesting the information to monitor its compliance with the Act;
- C. Federal law prohibits the Credit Union from discriminating on the basis of this information, or on the applicant's decision not to furnish this information; and
- D.** If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or another person.

#### **9. RECORD RETENTION.**

**A. Applications.** The Credit Union must retain applications for **25 months** (12 months for business credit) after the date the Credit Union notifies an applicant of action taken on the application or notification of incompleteness, including any:

- i. Application the Credit Union receives;
- ii. Any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act, regulation or similar law;
- iii. Other written or recorded information used in evaluating the application not returned to the applicant at the applicant's request;
- iv. Copy of notification of action taken and statement and reasons of action taken if issued to the applicant in written form; and
- v. Written statement submitted by the applicant alleging a violation of the Act.

- B. Existing Accounts.** The Credit Union must retain the following for **25 months** (12 months for business credit) after the date the Credit Union notifies an applicant of adverse action regarding an existing account:

  - i. Any written or recorded information concerning the adverse action;
  - ii. Any written statement submitted by the applicant alleging a violation of the Act or the regulation.
- C. Certain Business Credit Applications.** For businesses with 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 type of business credit, the Credit Union must retain records for at least **60 days** after notifying the applicant of the action taken.

  - i. If with that time period, an applicant makes a written request for the reasons for adverse action, or that records be retained, the Credit Union must retain the records for 12 months.
- D. Enforcement Proceedings.** If the Credit Union receives actual notice that it is under investigation or subject to an enforcement proceeding, it must retain the above information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.
- E. Self Tests.** The Credit Union must retain all written or recorded information about the self test for **25 months** after it has been completed (unless the Credit Union has actual knowledge that it is under investigation (See (9)(D))).

  - i. A self test is deemed completed when the Credit Union has obtained the results and made a determination about what corrective action, if any, is appropriate. The following self test information must be retained:
    - i. Information regarding the scope of the test;
    - ii. The methodology used and the time period covered by the test;
    - iii. The report or results of the self test, including any analysis or conclusions; and
    - iv. Any corrective actions taken in response to the self test.
- F. Pre-screened Solicitations.** The Credit Union must retain information about the criteria used to select potential members that both receive the pre-screened solicitations and that are actually offered credit; the text of the solicitation; and complaints that may have been received about the solicitation for **25 months** after the date on which an offer of credit is made (**12 months** for business credit).

10. **INFORMATION FOR MONITORING PURPOSES.** The Credit Union must obtain information for monitoring purposes whenever an applicant requests credit for the purchase or refinancing of a 1-4 family dwelling occupied or to be occupied by the applicant as a principal residence, and where the extension of credit will be secured by the dwelling (regardless of whether the structure is attached to the property). The Credit Union will ask but not require applicants to supply the following information, disclosing that the information is being requested by the federal government for monitoring compliance:

- A. Race or National Origin (American Indian; Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (specify)).
- B. Sex.
- C. Marital Status (married, unmarried or separated).
- D. Age.

If the applicant chooses not to provide monitoring information, the Credit Union should note their decline on the form. The Credit Union must also note (after disclosure) the race or national origin and sex of the applicant on the basis of visual observation or surname.



**11. FURNISHING CREDIT INFORMATION.**

**A. Designating Accounts.**

- i. The Credit Union will designate existing accounts (upon written request) and new accounts to reflect the participation of both spouses where the applicant's spouse is contractually liable or is permitted to use the account (other than as a guarantor, surety, endorser or similar party); and
- ii. Any existing account to reflect such participation, within 90 days after receiving a written request, to do so from one of the spouses.

**B. Routine Consumer Reports.** When the Credit Union furnishes credit information to consumer reporting agencies, it will provide access to the information in the name of each spouse.

**C. Reporting in Response to an Inquiry.** When the Credit Union furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, it will furnish the information in the name of the spouse about whom the information is requested.