

FEDERAL RESERVE BANK OF SAN FRANCISCO
101 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94105

March 14, 2003

**BANKING SUPERVISION AND REGULATION:
REGULATION B—FINAL RULE**

To State Member Banks, Bank
Holding Companies, U.S. Branches
and Agencies of Foreign Banks,
and Others Concerned,
in the Twelfth Federal Reserve District

Final Rule on Collecting Applicants' Personal Characteristics (R-1008)

The Federal Reserve Board has approved a final rule amending Regulation B, which implements the Equal Credit Opportunity Act (ECOA). Among other things, the final rule addresses the collection of applicants' personal characteristics in connection with non-mortgage credit and record retention for prescreened solicitations. The final rule amending Regulation B is effective April 15, 2003. However, to allow time for any necessary operational changes, the mandatory compliance date is April 15, 2004.

The ECOA prohibits discrimination on the basis of a credit applicant's national origin, marital status, religion, color, sex, race, age, receipt of public assistance benefits, or the exercise of rights under the Consumer Credit Protection Act.

In 1976, the Board adopted a general prohibition against creditors inquiring about, or noting, applicant characteristics such as race or national origin in connection with non-mortgage credit. By restricting access to such information, the existing prohibition serves to deter credit discrimination. But it also prevents creditors from examining their own lending policies and practices using information about applicant characteristics.

The Board is now creating an exception that will allow creditors to collect personal characteristics in a self-test for compliance with the ECOA. This exception will enable creditors to develop compliance programs that utilize applicant data in a controlled and targeted manner. The self-test must meet standards set by the regulation, which carries out a provision contained in the ECOA. Under the regulation, a self-test is a program, practice, or study designed and used by a creditor specifically to determine compliance with the ECOA. The regulation requires the creditor to take corrective action when the results of the self-test indicate that "it is more likely than not" that a violation occurred.

The results of a self-test can be made privileged, provided the creditor carries out corrective action where appropriate. This means, for example, that the results cannot be obtained in an examination or investigation alleging a violation of the ECOA. Other information—such as whether a creditor conducted a self-test, the methodology used, or the scope of the test—is not privileged. Creditors who conduct a self-test and request information about personal characteristics must disclose to applicants that providing the information is optional, that it is being collected to monitor for

compliance with the ECOA, that it will not be used in making the credit decision, and, where applicable, that information may be noted based on visual observation or surname.

The final rule also requires creditors to retain for 25 months certain records related to prescreened solicitations, such as the list of criteria used to select potential customers. The retention of these records is intended to allow the systematic review and analysis of creditors' possible use of race, age, national origin, and other prohibited bases of credit discrimination in connection with prescreened solicitations.

The Board has also amended the official staff commentary to Regulation B that gives guidance on the requirements of the regulation.

Additional Information

You may view and print Docket R-1008 at the Board's website at <http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030305/attachment.pdf>. A model form is included in the regulation to ease compliance.

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's Internet site, at <http://www.frbsf.org/banking/letters>. Paper copies of the Board's notice (**Docket R-1008**) are available from our Corporate Services Department. To request copies to be sent by mail, please call (415) 974-2060.

For additional information about the final rule, please contact our Banking Supervision and Regulation Department at (415) 974-3329.

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