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ANNUAL REPORT TO THE CONGRESS

ON

THE EQUAL CREDIT OPPORTUNITY ACT

FOR THE YEAR 1979

Board of Governors of the Federal Reserve System

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ACQUISITIONS

The fourth Annual Report on the Equal Credit Opportunity Act (ECOA) discusses the enforcement of the act and Regulation B by the Federal Reserve System and assesses the compliance of state member banks with the act; it also examines the enforcement activities of other federal agencies and their assessments of the compliance of creditors that they supervise. The report then describes the Consumer Advisory Council and its activities relating to the act and regulation and gives an account of the uniform guidelines for enforcement of the Equal Credit Opportunity Act, Regulation B, and the Fair Housing Act. Finally it reviews the Board's administrative functions under the act and describes the amendments and interpretations adopted or proposed in 1979, the legislative recommendations for amending the act as submitted to the Board by other agencies, and the educational efforts by the Board and other enforcement agencies.

This report does not contain recommendations of the Board for statutory amendments. Such recommendations, if any, will be made in the 66th Annual Report of the Board of Governors to the Congress.

I. ENFORCEMENT AND ASSESSMENT OF COMPLIANCE

A. Federal Reserve System

1. Special Civil Rights Enforcement Activities

In February 1979, the Board announced an expanded program to improve the compliance of state member banks with the consumer protection laws, particularly the ECOA and other civil rights statutes. The program provided Federal Reserve Banks with a variety of resources to be used, in part, to implement strengthened procedures to detect unlawful credit discrimination. Allocations were doubled for the hiring of additional consumer affairs and civil rights examiners, regional seminars were conducted, examiner training was increased, census data

were distributed to give examiners a demographic picture of the communities that state member banks serve, and the Federal Reserve Compliance Handbook was published and distributed. The Handbook outlines new examination procedures and provides tools, such as those for a standardized comparison of credit applicants, to help examiners detect credit discrimination. The Handbook, which includes a substantial section on the history of civil rights legislation in this country, also details a new procedure that requires consideration of on-site investigations of consumer complaints of a serious nature, such as those alleging credit discrimination. Other features of the program include the continuation of an educational-advisory service for member banks provided by the Federal Reserve Banks, and an adjustment of the frequency of special consumer affairs and civil rights examinations so that banks with lower ratings receive examinations more frequently than heretofore.

2. Examinations

The Federal Reserve System enforces the act and Regulation B through its examination of state member banks and investigation of consumer complaints. Specially trained consumer affairs and civil rights examiners from the Federal Reserve Banks conduct the examinations; and the Board's Division of Consumer and Community Affairs reviews selected examination reports to determine the compliance status of individual banks and to evaluate and improve the examination program.

To ensure that its examiners are thoroughly familiar with Regulation B and other consumer and civil rights laws, the Board conducted two 2-1/2 week schools in 1979, attended by 58 System examiners and several

representatives of other regulatory agencies. Instructors included examiners from the Reserve Banks, review examiners and attorneys from the Board's staff, and staff members from other agencies, such as the Department of Justice. The instruction included a thorough history of civil rights laws and an analysis of specific court cases and their effect on civil rights legislation.

After adoption of the new enforcement program, the Board's staff conducted a series of three regional seminars at the Reserve Banks to inform the field staff of the new procedures. As an aid in the examiners' further education, the Board also rotates examiners from the Reserve Banks to work with the Board staff. In addition, the Board's staff is in frequent communication with System examiners to keep them informed about current developments.

In 1979, about 77 percent of the state member banks examined were reported as not being in full compliance with Regulation B, not a significant improvement over 1978, when 78 percent of the banks examined were reported as having violations of the regulation. Since improved examination techniques are likely to lead to more discoveries of violations, the Board believes that actual compliance may have improved more than is indicated by the figures. Examples of the kinds of violations that were found are failure to send notification of adverse action within 30 days, failure to comply with signature rules, failure to disclose specific reasons for a denial of credit, failure to establish a procedure to collect monitoring information; and failure to explain that "other income," such as alimony, need not be revealed unless the applicant wants that income considered in determining creditworthiness.

During examinations, Reserve Bank examiners explain the nature of any violations found and outline the corrective action necessary for compliance.

At the conclusion of the examination, state member banks either are usually in compliance or have agreed to take specific actions to prevent recurrence of violations.

In 1979, the Board entered into two cease-and-desist orders with state member banks that had failed to correct practices in violation of Regulation B and other consumer credit laws. The first bank had repeatedly failed to disclose the optional nature of requests for information regarding other sources of income and to correct its prohibited use of terms regarding marital status on forms used in determining the creditworthiness for individual unsecured credit. The second bank had a standard policy of requiring spouses of married borrowers to sign debt instruments on mortgage loan transactions and it violated other provisions of Regulation B as well. Both cease-and-desist orders were settled on a consent basis, and both settlements required, among other things, appointment of a compliance officer and the training of bank employees in consumer protection and civil rights laws.

3. Consumer Complaints

The Federal Reserve System replies to complaints and inquiries in many areas of consumer activity. Responses range from providing consumers with information or explanations of laws to investigations that may reveal errors on the part of state member banks. In the latter case, the bank is required to take corrective action. In keeping with the Board's special civil rights enforcement efforts, separate procedures have been developed that require consideration of the on-site investigation of complaints alleging illegal credit discrimination, as mentioned previously.

From January 1, 1979, to November 30, 1979, the Board received 51 complaints alleging violations of Regulation B by state member banks. About

75 percent, or 38 complaints, charged unfair denial, termination, or change in terms of credit. Fourteen of these complaints alleged unfair treatment on the basis of characteristics protected by the act: five alleged unfair treatment based on sex; three, on age; two, on race, color, or national origin; two, on source of income; one, on marital status; and one, on exercise of rights under the Consumer Credit Protection Act. The other complaints can be broken down as follows: six, on credit history; three, on level of income; one, on length of residency; one, on length of employment; and thirteen, on miscellaneous bases.

Of the 38 complaints, 29 percent were resolved through correcting the complainant's misunderstanding of the law; 27 percent through investigation that revealed no bank error; 3 percent through investigation that revealed a factual dispute between the complainant and the bank, so the consumer was referred to an attorney; 3 percent through investigation that revealed a possible bank violation; and 3 percent were referred to other agencies for resolution. As of November 29, 1979, the remaining 32 percent were still under investigation.

B. Other Agencies

Most of the federal agencies responsible for enforcing the Equal Credit Opportunity Act and Regulation B have indicated that compliance seems to have improved in 1979. Statistics from summaries of examination reports of the Board, the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the National Credit Union Administration (NCUA), show varying levels of improved compliance. The Small Business Administration (SBA), the United States Department of Agriculture (USDA), the Civil Aeronautics Board (CAB), and the Farm Credit Administration (FCA), all report that compliance among the creditors they supervise generally appears good.

1. Federal Trade Commission (FTC)

The Division of Credit Practices in the FTC's Bureau of Consumer Protection is responsible for research, investigation, and enforcement activities related to multiregional and national creditors. To identify potential violators of the act, the Division of Credit Practices relies upon information supplied by consumer complainants, consumer and civil rights organizations, and referrals from other federal and state enforcement agencies. When investigations reveal significant law violations, the FTC may seek adjudication, either through its own adjudicative processes or through a U.S. district court; if litigation is not warranted, it may recommend acceptance of an agreement to cease-and-desist from violations and to provide remedial relief to aggrieved consumers.

According to the FTC, the level of overall compliance with the act has increased among creditors within its jurisdiction. At the same time, the FTC has said that certain types of discriminatory practices are believed to persist--practices such as improper requests for signatures of, or information about, an applicant's spouse. The sales finance and small loan industries were mentioned particularly in relation to such practices.

The FTC has also reported that investigation of the practices of mortgage lenders, sales finance, and small loan companies suggests that various subtle forms of discrimination may be replacing the more blatant discriminatory lending practices documented during the enactment of the ECOA. Practices such as discriminatory discouragement of applications, the FTC has noted, are not detectable through the use of traditional investigative techniques because such techniques produce no documents and are not part of the written operating procedures of the companies involved.

In 1979, the FTC took formal action against two major creditors for violating the ECOA. The first, which involved a large retail company, resulted in a consent judgment which required, among other things, that the company provide consumers with specific principal reasons for adverse action when their applications for credit are denied. The second, also resolved through a consent agreement, enjoined a large sales finance company from certain illegal practices, such as using prohibited marital status information in the evaluation of applications, failing to provide specific principal reasons for adverse action, and failing to comply with recordkeeping requirements of the regulation. Several investigations of other creditors that did not warrant formal actions were resolved voluntarily after the creditors had agreed to modify their policies and practices.

Based on FTC reports, fewer complaints relating to discrimination in credit were received in 1979 than in the previous year.

2. National Credit Union Administration (NCUA)

The NCUA enforces consumer protection and civil rights laws through examination of federal credit unions and investigation of consumer complaints. The NCUA has reported a number of efforts to provide for more effective enforcement of consumer protection laws, such as doubling the number of NCUA regional consumer affairs analysts, establishing separate examinations for consumer compliance, and establishing eight consumer-compliance examiner districts for each of the NCUA's six regions.

The NCUA has reported that, during the one-month period ending September 30, 1979, 44 percent of the 172 institutions examined had violations of Regulation B. The NCUA says that, for the most part, the violations resulted

from unacceptable loan applications, failure to identify loan accounts for proper credit reporting, and improper signature requirements.

The NCUA has reported receiving 150 complaints related to the Equal Credit Opportunity Act. Of those, 61 alleged discrimination based on race or national origin; 16, on sex; 15, on marital status; 9, on age; 5, on receipt of public assistance; 2, on the exercise of rights under the Consumer Credit Protection Act; and 31, on miscellaneous bases. The NCUA also received 11 complaints regarding adverse action notices.

3. Federal Deposit Insurance Corporation (FDIC)

The FDIC enforces the ECOA and Regulation B with regard to insured nonmember banks. Its program allows for each bank to be examined at least once every 18 months. Examiners report violations to regional offices, which are responsible for encouraging voluntary compliance by the banks before recommending administrative action.

The FDIC has reported that during the period from October 1, 1978, through September 30, 1979, the FDIC reviewed 5,824 pages of reports on violations of Regulation B. Apparent violations were indicated in 2,938, or about 50.4 percent, of these reports, compared with 51.3 in 1978.

The violations most frequently reported--in 22 percent of the reports--involved failure to provide adverse action notifications. Failure to advise applicants that "other income" need not be revealed unless the applicant wants it considered as income was noted in 6.2 percent of the reports, improper requests for a spouse's signature was cited in 6.1 percent, and the failure to designate accounts in which both spouses participate was listed in about 6 percent. During the first ten months of 1979, the FDIC brought five cease-and-desist actions charging violations of the act and Regulation B.

The FDIC has reported receiving 406 complaints and 90 inquiries concerning equal credit opportunity. The largest percentage concerned the notice of adverse action, alleged discrimination based on sex or marital status, and alleged discrimination based on race or age.

4. Federal Home Loan Bank Board (FHLBB)

The ECOA is enforced by the FHLBB through examinations, and the investigation of consumer complaints. If voluntary compliance is not achieved, the FHLBB may issue a cease-and-desist order. Consumer complaints are referred to the supervisory agents, who are responsible for investigation and resolution, and the disposition of each case is reported to the FHLBB.

Between October 1, 1978, and September 30, 1979, the FHLBB conducted 3,350 regular examinations; of these, 1,198, or about 36 percent, revealed violations of ECOA. Since the FHLBB reported 53 percent of creditors under their jurisdiction as being in apparent violation in 1978, compliance would seem to have significantly improved in 1979.

The total number of Regulation B violations reported was 8,658. The majority were due to requests for improper information, failure to notify applicants properly of adverse action or to conform to requirements for adverse action notices, and failure to obtain monitoring information.

During the period January 1, 1979, through November 30, 1979, the FHLBB received 172 consumer complaints alleging various types of discrimination. Of these, 7 alleged discrimination based on age; 39, on geographical area; 32, on sex; 21, on marital status; 34, on race or national origin, and 39, on miscellaneous bases.

5. Office of the Comptroller of the Currency (OCC)

The OCC has reported a 1978-79 reorganization affecting consumer affairs activities in order to oversee more effectively the agency's consumer compliance functions.

Between July 1, 1978, and June 30, 1979, 1,779 national banks were examined for compliance with the ECOA and other laws. A total of 14,911 violations of Regulation B was discovered. The most frequently reported violations of regulatory requirements include those governing the content of adverse action notices, the collection of monitoring information, requests for information about marital status, and signatures.

Between July 1, 1978, and June 30, 1979, the OCC received 1,084 consumer complaints involving the ECOA. The OCC has reported that about one-third alleged a bank's failure to give adequate notice of the reasons for credit denial, while about two-thirds were related to bank credit cards.

6. Small Business Administration (SBA)

The SBA is responsible for assuring that the administration and its recipients comply with requirements of the act and of Regulation B. During the 1979 fiscal year, 21,481 recipients were monitored for compliance with the act.

The SBA has reported that most creditors appear to be in compliance. Routine reviews of a few temporary disaster offices indicated a possible problem on the part of some temporary employees who may have violated the age provisions of Regulation B. All loan applications are being reviewed, and relevant applicants are being contacted.

In 1979, the SBA received 20 consumer complaints alleging that discrimination had played a part in credit denial.

7. Securities and Exchange Commission (SEC)

The SEC is responsible for examining broker-dealers registered with the SEC. When violations of consumer laws are found, voluntary compliance is sought; follow-up examinations are used to insure such compliance. In case of continuing violations, the SEC investigates and may bring an injunction against a noncomplying broker-dealer. The SEC also enforces the act through investigation of consumer complaints.

In 1979, no violations of the ECOA were reported; one consumer complaint related to the act was received and resolved.

8. Civil Aeronautics Board (CAB)

The CAB is responsible for insuring compliance by air carriers with the act and with Regulation B. It is authorized to seek a cease-and-desist order against any creditor under its jurisdiction that violates the act. In cases of serious and continued noncompliance, it may also seek an injunction in court. In addition, the Airline Deregulation Act of 1978 empowers the CAB to assess civil penalties of up to \$1,000 for each violation of its regulations.

According to the CAB, a satisfactory level of compliance exists among U.S. and foreign airlines. The CAB has reported receiving approximately 150 complaints involving the ECOA and Regulation B in 1979. These have been processed informally. The CAB instituted an investigation into one airline's consumer credit practices, but found no violations.

9. Interstate Commerce Commission (ICC)

The ICC enforces the act for regulated common carriers. In its view, common carriers are forbidden to discriminate in the granting of credit by the Interstate Commerce Act and by several ICC credit regulations. The ICC has reported no formal action taken and no complaints received under the ECOA.

10. Farm Credit Administration (FCA)

Administrative enforcement of Regulation B and the ECOA is accomplished by the FCA through its examination of federal land banks, federal land bank associations, federal intermediate credit banks, and production credit associations.

The FCA reports few instances of noncompliance and no significant problems in administering its responsibilities under the act. In 1979, the FCA received 11 complaints alleging illegal discrimination in credit. All except two have been withdrawn or resolved to the satisfaction of the complainants. Of the complaints received in 1979, two alleged discrimination based on race; one, on age and religion; one, on national origin; five, on sex and/or marital status; one, on marital status; and two, on an unspecified basis.

11. U.S. Department of Agriculture (USDA)

The ECOA gives the USDA enforcement authority over activities subject to the Packers and Stockyards Act of 1921. The USDA reports no significant problems associated with the limited program under this act.

The USDA also administers a large number of credit programs through the Farmers Home Administration. Although enforcement authority for those credit programs rests with the FTC, the USDA's Office of Equal Opportunity processes complaints and, along with the Farmers Home Administration staff, conducts compliance reviews of the credit programs.

II. CONSUMER ADVISORY COUNCIL

Established in 1976 to advise the Board on consumer-related matters, the Consumer Advisory Council includes consumer, creditor, and academic representatives. At its three meetings in 1979, the Council discussed how the

anti-discrimination rules of Regulation B should be applied to certain practices of creditors who use credit-scoring systems. The practices considered included the following: (1) assigning a score to the number of jobs the applicant has or the number of sources of income; (2) not assigning a score to the amount of the applicant's income from part-time employment, pension, or alimony; (3) giving judgmental reasons for adverse action on a credit application rather than those arising from the creditor's scoring system; and (4) selecting reasons for adverse action from among the 20 reasons in a model statement included in Regulation B, even though the creditor uses a credit-scoring system with attributes that are not reflected in the model statement.

With respect to the first practice, the Council recommended, by a vote of 13 - 3, that the Board not prohibit the practice as such, but instead allow the agencies charged with enforcement of Regulation B to determine on a case-by-case basis whether scoring the number of jobs or sources of income of an applicant has the effect of unlawfully discriminating against an applicant on a prohibited basis. With respect to the third practice, the Council voted 11 - 0 to recommend that creditors using a credit-scoring system be allowed to give rejected applicants either judgmental reasons or reasons based on the arithmetic of the credit-scoring system. The Council discussed the other two practices but reached no consensus.

III. UNIFORM ENFORCEMENT GUIDELINES

The five federal agencies that are represented on the Federal Financial Institutions Examination Council--the Board of Governors, the FDIC,

the FHLBB, the NCUA, and the OCC--have jointly proposed uniform guidelines for the enforcement of the ECOA, its implementing Regulation B, and the Fair Housing Act. The guidelines were field tested by several of these agencies in 1979. At the end of the year, the results were being compiled and reviewed for further consideration in early 1980 by the Council.

IV. ADMINISTRATIVE FUNCTIONS

In 1979, the Board of Governors issued one amendment, one official Board interpretation, and two official staff interpretations of Regulation B. It also requested comment on how the regulation should apply to certain credit-scoring practices.

A. Amendments and Interpretations

1. Clarification of the Definition of Creditor

On April 23, 1979, the Board amended Regulation B to make it clear that, for the purposes of the rules prohibiting discrimination, the definition of creditor includes not only those who grant credit but also those who regularly refer customers to creditors. Examples are automobile dealerships, home improvement contractors, and real estate brokers who regularly direct customers to creditors. To ensure that such parties are not overburdened by regulatory requirements, they are not subjected to the mechanical requirements of Regulation B governing applications, adverse action, and credit reporting, for instance.

2. Determination that a New Jersey Statute Governing Credit Applications is Not Inconsistent with the Equal Credit Opportunity Act and Regulation B

On September 26, 1979, the Board issued an interpretation determining that a New Jersey statute that prohibits marital status inquiries in connection with a credit application is not inconsistent with the act and with Regulation B. However, when commenters raised a number of questions about the effect of the New Jersey law, the interpretation was suspended on January 11, 1980, pending a ruling on the New Jersey statute from the State Attorney General's Office.

3a. Determination that the National Credit Union Administration's Model Loan Application Forms Comply with Regulation B

On June 8, 1979, the Board issued an official staff interpretation stating that the NCUA's model credit application form is in compliance with the requirements of Regulation B. The interpretation, which became effective on July 30, 1979, is intended to ease the regulatory burden on credit unions, most of which are small institutions lacking a large staff and access to adequate legal counsel.

3b. Determination that a Credit-Card Issuer May Require "Authorized Users" to Assume Contractual Liability for the Account

On July 1, 1979, the Board issued an official staff interpretation effective August 30, 1979, providing that the issuer of a credit card may condition the acceptance of authorized credit-card users upon the users becoming co-obligors and, thus, joint applicants. Such a policy, if applied in a nondiscriminatory fashion, would not violate Regulation B.

4. Proposed Rulemaking: Request for Comment on How the Specific Rules of Regulation B Should Apply to Certain Credit-Scoring Practices

On April 23, 1979, the Board solicited comments on how the specific rules of Regulation B should apply to the following credit-scoring practices:

(1) scoring number of jobs or number of sources of income; (2) not scoring the amount of an applicant's income from part-time employment, pension, or alimony; (3) selecting and disclosing the reasons for adverse action. The closing date for comments was June 20, 1979, but because of the number of requests for an extension, it was later changed to August 20, 1979. On July 24, 1979, the Board issued, as an aid to discussion, a staff paper on the issues involved in the application of antidiscrimination rules to credit scoring.

B. Legislative Recommendations

The USDA has made two recommendations for changes to the ECOA. First, it recommends again that handicapped persons be made a protected class under the act, by adding handicap to the bases of prohibited discrimination. Second, it recommends that the act be amended to place enforcement authority for USDA credit programs in the USDA, instead of in the FTC.

C. Education

In 1979, the Federal Reserve System provided a variety of materials and activities designed to educate consumers and creditors about their rights and responsibilities under the ECOA and Regulation B. More than three million copies of The Consumer Handbook to Credit Protection Laws, probably the Board's most popular publication for consumers, have been printed. It has been widely disseminated by the federal Consumer Information Center, by credit bureaus, and by other bank regulatory agencies. The Consumer Handbook summarizes the main provisions of seven major laws on consumer credit protection: Equal Credit Opportunity, Truth in Lending, Consumer Leasing, Real Estate Settlement Procedures, Home Mortgage Disclosure, Fair Credit Reporting, and Fair

Credit Billing. It also contains a glossary of technical terms used in credit transactions and in laws and regulations on credit protection.

The Federal Reserve has produced and distributed more than 10 million copies of educational pamphlets on the Equal Credit Opportunity Act, including "The Equal Credit Opportunity Act and... Women," "... Age," "... Doctors, Lawyers and Small Retailers," "... Credit Rights in Housing," and "How the New Equal Credit Opportunity Act Affects You." These pamphlets are distributed free in response to inquiries from consumers and during presentations to consumers and creditors by the Federal Reserve staff.

In 1979, the Federal Reserve released a color film, "To Your Credit." Designed for school and television use, the film illustrates the consumer credit protection afforded by Regulations B and Z. So far, in showings by all the Federal Reserve Banks to consumer and student groups, the film has had an audience of about one and one-half million.

Many of the other federal enforcement agencies, including the FDIC, FHLBB, FTC, NCUA, and the OCC, also provide speakers for groups interested in consumer protection and civil rights laws. The SBA provides seminars for women in business during which materials regarding the act are distributed. Most of the agencies distribute consumer education pamphlets on the act in response to consumer inquiries.

The OCC has provided its staff as faculty at various professional schools and schools sponsored by state banking associations. The OCC has also assisted trade groups in the publication of materials designed to assist bank officers in complying with Regulation B and with other consumer and civil rights laws. In 1979, the OCC developed a computerized mailing list of consumer, civil

rights, and community groups, particularly those representing low-income individuals.

The FTC has reported the development and successful promotion of a public service announcement for radio and television designed to educate women about their rights under the act to a separate credit history. It also provides written material to supplement the announcement.

The FDIC has reported that it educates bankers through examinations and bankers' seminars, gives advice to insured nonmember banks upon request through its compliance examiners, and provides information to consumers in response to complaints and inquiries.

END