

# Equal Credit Opportunity Act- Regulation B; Docket No. R-1008

November 10, 1999

## Introduction

On behalf of our low-income clients, the National Consumer Law Center (NCLC)[1] is responding to the Federal Reserve Board's proposed rules revising Regulation B (Equal Credit Opportunity Act). These comments are intended to address the issues of greatest concern to low-income individuals and communities, focusing on ensuring fair access to credit for these populations.

## Equal Credit Opportunity - Regulation B

1. Data Collection. The Board's decision to allow voluntary collection of race, gender, marital status, color, and national data on small business and consumer loans is an important first step in improving enforcement of Regulation B in these areas. However, NCLC believes that the Board's ultimate objective should be mandatory collection of this data. Mandatory collection will ensure that the information is used consistently and will be more effective in detecting and eliminating discriminatory practices. NCLC encourages the Board to move to mandatory reporting after a few years of experience with improving data accuracy under voluntary collection.

2. Prescreened Solicitations. NCLC disagrees with the Board's decision not to expand Regulation B's coverage to prescreened solicitations. There is ample evidence of the prime market engaging in redlining by targeting its solicitations to middle and higher income neighborhoods. Lower income communities are more likely to be victims of reverse redlining, specifically targeted by sub-prime and other high rate creditors for the most expensive credit offers. Segmenting the market by only offering the "good deals" to certain higher-income communities is the equivalent of discouraging applications in other areas. If creditors segment the market based on prohibited bases, they should be liable under the ECOA. The proposed rule preserves the inconsistent coverage of the ECOA, which applies to other types of creditor marketing practices, but not to prescreened solicitations. A further inconsistency is that the proposed rule conflicts with the Fair Housing Act, which does cover prescreened solicitations. The proposed rule allows creditors the flexibility to violate the law by discriminating on prohibited bases. The Board's concern that coverage of preapplication solicitations would prevent creditors from using affirmative-outreach programs to target minority and older groups can be easily addressed. Regulation B sets out a clearly delineated and limited exception to the general rule prohibiting discrimination on a prohibited basis. Special purpose credit programs may require that program participants share a common characteristic, such as race, national origin, or sex. [2] For example, a special purpose credit program may be set up to assist minorities, women, or young applicants. A similar exception could be made in this instance. Otherwise, the Board is merely providing a smokescreen for creditors to discriminate against the exact populations the Regulation is meant to protect. While NCLC disagrees with the Board's decision not to expand coverage, we support the Board's decision to require creditors to keep records regarding criteria used to select potential customers for pre-screened solicitations. We hope that this will lead to future review of these practices.

3. Exemptions for Public Utilities. NCLC supports the Board's decision to remove most of the exemptions from Regulation B coverage currently available to public utilities. Under the current version of Regulation B, public utilities credit is subject to all of the regulatory requirements except those relating to collecting information about marital status, furnishing credit information to consumer reporting agencies, and retaining records. The proposed rule retains the exemption from the record retention requirements only. NCLC agrees with the Board that exemption from other requirements is no longer needed. Public utilities payments are one of the

most important ways for many consumers to build or rebuild credit. For some households, especially low and moderate income, public utility payments may be the only means of proving that a consumer meets his/her current obligations. Requiring public utilities to report this information to credit bureaus under the same standards as other creditors will help low and moderate income consumers present a more comprehensive and balanced view of their payment histories and greatly enhance their ability to obtain affordable credit. In addition, treating regulated public utilities more like other creditors will create less confusion during the current era of utility deregulation. Holding regulated public utilities to the same standards as other creditors will help avoid confusion as to which regulated, semi-regulated, or deregulated utilities will also be covered by these exemptions.

4. Counteroffers. NCLC supports the Board's change to the Official Staff Commentary to clarify that when a consumer receives a solicitation request for a specific amount and the creditor offers a different amount, the creditor's action constitutes a counteroffer. The corresponding duty to provide a notice of counteroffer to the consumer will help alert many unsuspecting consumers that the credit being offered is not what they initially requested or were told they would get.

5. Reasons for Adverse Action. NCLC applauds the Board's decision to require creditors to provide specific reasons for adverse credit decisions.

6. Appendix C: Sample Notification Form. NCLC requests that the Board add to the sample form a reason for turn-down similar to "number of recent inquiries on credit bureau report." This will assist consumers who rarely know that the number of inquiries is an adverse factor in assessing credit.

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[1] The National Consumer Law Center, Inc. is a nonprofit Massachusetts corporation, founded in 1969, specializing in consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of thirteen practice treatises and annual supplements on consumer credit laws, including Credit Discrimination (2d ed. 1998), Truth In Lending (3d ed. 1995 and Supp.), Repossessions and Foreclosures (3d ed. 1995 and Supp.), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers.

[2] Reg. B, 12 C.F.R. § 202.8.