



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

September 5, 1989

Office of General Counsel

GC\RRD:sg  
SSIC 3228  
89-0719

Jacques G. Tessier, Manager  
Boulevard Federal Credit Union  
2479 Niagara Falls Blvd.  
Tonawanda, New York 14150

Re: Regulation B (Your Letter of July 10, 1989)

Dear Mr. Tessier:

You have inquired whether your proposed credit policy will be in violation of the Equal Credit Opportunity Act or Regulation B. Boulevard Federal Credit Union ("Boulevard FCU") would like to amend its current policy for a preferred line of credit. The proposed policy requires a member to be a home owner, have a minimum annual income of \$12,000, and be continually employed for a period of two years before qualifying for the preferred line of credit. The policy does not violate the Equal Credit Opportunity Act or Regulation B on its face; however, it may have a discriminatory effect.

Applicable Law

Regulation B (12 C.F.R. Part 202) is the implementing regulation for the Equal Credit Opportunity Act. It is issued by the Federal Reserve Board.

Section 202.4 of Regulation B (12 C.F.R. §202.4) provides:

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

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Vol. III Part B(10) Housing, Income and Work Requirements

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"Prohibited basis" is defined in Section 202.2(z) (12 C.F.R. §202.2(z)) as:

[r]ace, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the [Federal Reserve] Board.

Section 202.5(a) of Regulation B (12 C.F.R. §202.5(a)) provides:

A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

### Analysis

The requirements you intend to add to your preferred line of credit program (home owner, \$12,000 in annual income, and continual employment for a period of two years) do not, on their face, violate any proscription of Regulation B or the Equal Credit Opportunity Act. However, the credit policies may have a discriminatory effect, even though they appear neutral. The "effects test" is a judicial doctrine which, in essence, holds that policies may be described as discriminatory if the policy has a negative impact on persons intended to be protected by law, even if there is no intent to discriminate. The Federal Reserve Board issues Official Staff Interpretations to Regulation B. Enclosed is the section of the Official Staff Interpretations which concerns the "effects test" (paragraph 2. to Section 202.6).

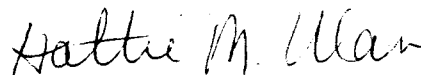
In light of the "effects test" and good business practice, the loan risk assumptions underlining your new requirements should be regularly reviewed in order to determine whether they, in fact, relate to credit losses and whether they have the effect of discriminating against one of the protected classes of individuals included in Section 202.2(z) of Regulation B. For example, depending upon the statistics in your area, your

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requirement of home ownership may have the effect of discrimination against a protected class in violation of Regulation B. Also, we note that the requirement of two years continual employment may have the effect of discrimination if a large portion of a protected class participates in seasonal or migratory work in your area. We suggest that you obtain the opinion of local counsel concerning these matters and other applicable state laws governing discrimination.

We also note Section 701.31 of the NCUA's Rules and Regulations (12 C.F.R. §701.31) which prohibits discriminatory practices relating to real estate-related loans. A "real estate-related loan" is defined in the regulation as "any loan for which application is made to finance or refinance the purchase, construction, improvements, repair, or maintenance of a dwelling." Your letter did not indicate whether your preferred line of credit program involves real estate-related credit. If it does, you must comply with Section 701.31 of the NCUA's Rules and Regulations. This section summarizes the prohibitions on discrimination in real estate lending activities contained in the Federal Fair Housing Act and certain provisions of Regulation B.

Sincerely,



HATTIE M. ULAN  
Assistant General Counsel

Enclosure

- The applicant's obligation to pay alimony, child support, or separate maintenance.
- The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.
- Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.
- The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2)

1. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

5(e) *Written applications.*

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in Appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by section 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b).)

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-889, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

2. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)