



Brigham Young University—Hawaii
Office of Compliance Research Memo
Equal Credit Opportunity Act (ECOA)

Law/Act:	Equal Credit Opportunity Act (ECOA)	
U.S. Code Citation:	15 U.S.C. §§ 1691-1691f	
Public Law Citation:	P.L. 93-495 § 703; P.L. 111-203 § 1071	
Code of Federal Regulations Citation:	12 C.F.R. pt. 1002	
Responsible Regulator:	Consumer Financial Protection Bureau	
BYU–Hawaii Responsible Officer:	Chief Financial Officer / Administrative VP	
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PURPOSE

The Equal Credit Opportunity Act (ECOA) and its implementing regulations, referred to as Regulation B, ensure that creditors do not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age.¹ Furthermore, the law prohibits discrimination based on an applicant's receipt of income from a public assistance program, or the exercise of any right under the Consumer Credit Protection Act.² By prohibiting credit practices that discriminate based on any of these factors, Regulation B serves to "promote the availability of credit to all creditworthy applicants[.]"³

HISTORY

When enacted, ECOA gave the Board of Governors of the Federal Reserve System the authority to "prescribe regulations to carry out the purposes of [ECOA]." In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred this authority to the Consumer Financial Protection Bureau (CFPB).⁵ In 2011, the CFPB restated the Federal Reserve's regulations in the Code of Federal Regulations.⁶

APPLICABILITY TO BYU–HAWAII

Regulation B, issued by the CFPB to implement ECOA,⁷ applies to all persons who are creditors, meaning persons who, in the ordinary course of business, regularly participate in credit decisions, set the terms of credit, or refer applicants to creditors.⁸

BYU–Hawaii offers a number of private loans to its students.⁹ As such, BYU–Hawaii is considered a creditor and therefore must comply with Regulation B.¹⁰

REQUIREMENTS

General Rules

¹ 15 U.S.C. § 1691(a)(1) (2016); 12 C.F.R. § 1002.1(a)-(b) (2016).

² 15 U.S.C. § 1691(a)(2)-(3); 12 C.F.R. § 1002.1(b).

³ 12 C.F.R. § 1002.1(b).

⁴ Equal Credit Opportunity Act, Pub. L. No. 93-495, § 703, 88 Stat. 1500, 1522 (1974).

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1085, 124 Stat 1376, 2083 (2010).

⁶ 12 C.F.R. pt. 1002.

⁷ *Id.* § 1002.1(a)

⁸ *Id.* § 1002.2(l) (defining "creditor"); *id.* § 1002.2(j) (defining "credit").

¹⁰ 12 C.F.R. § 1002.1(a).



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According to Regulation B, creditors must not discriminate against an applicant on any of the following prohibited bases:¹¹

- race
- color
- religion
- national origin¹²
- sex
- marital status¹³
- age (provided the applicant has the capacity to enter into a binding contract)¹⁴
- the fact that a person's income is partly or fully provided by a public assistance program
- the exercise of any right under the Consumer Credit Protection Act

Discrimination means treating an applicant less favorably than other applicants.¹⁵ Additionally, creditors must not make any advertising or other statements that would discourage a reasonable person, on any of the preceding bases, from making or pursuing an application.¹⁶

Requests for Information

Generally, a creditor shall not request information from an applicant, or any other person connected with a credit transaction, regarding race, color, religion, national origin, or sex in connection with a credit transaction.¹⁷ However, a creditor may make such an inquiry if they are performing a self-test for the purpose of gathering data to determine compliance with ECOA.¹⁸ If a creditor is performing a self-test and makes an inquiry regarding race, color, religion, national origin, or sex, the creditor must disclose the following information orally or in writing:

- the applicant will not be required to provide the information
- the creditor is requesting the information to monitor its compliance with ECOA
- federal law prohibits the creditor from discriminating based on the requested information
- if applicable, information will be collected based on visual observation if not provided by the applicant¹⁹

Additionally, an applicant may be asked to indicate a title such as Ms., Miss, Mr., or Mrs. on an application form, provided the form discloses that the title designation is optional.²⁰ The application must otherwise use gender neutral terms.²¹

¹¹ 15 U.S.C. § 1691(a)(1) (2016); 12 C.F.R. § 1002.2(z); 12 C.F.R. § 1002.4(a).

¹² "A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account." 12 C.F.R. pt. 1002, supp. I.

¹³ 12 C.F.R. § 1002.2(u) (defining marital status as "the state of being unmarried [single, divorced, widowed]; married; or separated").

¹⁴ *Id.* § 1002.2(d).

¹⁵ *Id.* § 1002.2(n).

¹⁶ *Id.* § 1002.4(b).

¹⁷ *Id.* § 1002.5

¹⁸ *Id.* § 1002.5(b)(1); *see also id.* § 1002.15(b)(1)(i) (defining "self-test").

¹⁹ *Id.* § 1002.5(b)(1)(i)-(iv).

²⁰ *Id.* § 1002.5(b)(2).

²¹ *Id.*



Typically, a creditor must not inquire about the spouse or former spouse of an applicant.²² However, a creditor may inquire about the spouse or former spouse of an applicant under the following circumstances:

- The spouse will be permitted to use the account.
- The spouse will be liable on the account.
- The applicant is relying on the spouse's income as a basis of repayment for the credit requested.
- The applicant is relying on community property as a basis of repayment for the credit requested.
- The applicant is relying on alimony, child support, or other payments from a spouse or former spouse as a basis of repayment for the credit requested.²³

There are a number of additional limitations on information requests.²⁴ If an applicant is seeking any form of individual unsecured credit, the creditor may not inquire as to the applicant's marital status.²⁵ The creditor also may not inquire as to whether any stated income is derived from alimony, child support, or separate maintenance payments.²⁶ Finally, a creditor shall not inquire about an applicant's use of birth control or intention or capability to bear children.²⁷ However, a creditor may inquire about the number and ages of an applicant's dependents, provided the information is requested without regard to sex, marital status, or any other prohibited basis.²⁸

Evaluation of Applications

When evaluating applicants for creditworthiness, the creditor may use any information obtained from the applicant as long as it is not used to discriminate against an applicant on prohibited bases.²⁹

Prohibited bases include:

- *Age/receipt of public assistance:* A creditor should not take into account the age of the applicant. In a credit scoring system, the creditor may use age as a predictive variable, provided the age of the elderly is not considered a negative factor. A creditor may use an applicant's age or information regarding whether an applicant's income derives from any public assistance program for the sole purpose of determining a person's creditworthiness. A creditor may use the age of an elderly applicant to favor the elderly applicant in extending credit.³⁰
- *Childbearing/childrearing:* A creditor should not assume that certain categories of people will bear or rear children or will receive diminished or interrupted income in the future.³¹
- *Telephone listing:* A creditor shall not take into account whether an applicant has a telephone listing but may take into account whether there is a telephone in the applicant's residence.³²
- *Income:* A creditor cannot exclude an applicant's income from consideration because of a prohibited basis or because the income is derived from part-time employment, annuity, pension, or another retirement benefit. A creditor may take into account the amount and

²² *Id.* § 1002.5(c)(1).

²³ *Id.* § 1002.5(c)(2)(i)-(v).

²⁴ *Id.* § 1002.5(d).

²⁵ *Id.* § 1002.5(d)(1).

²⁶ *Id.* § 1002.5(d)(2).

²⁷ *Id.* § 1002.5(d)(3).

²⁸ *Id.*

²⁹ *Id.* § 1002.6(a).

³⁰ *Id.* § 1002.6(b)(2)(i)-(iv).

³¹ *Id.* § 1002.6(b)(3).

³² *Id.* § 1002.6(b)(4).



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probable continuance of an applicant's income. If likely to be consistent, child support, alimony, and separate maintenance payments shall be considered as income.³³

- *Credit history*: A creditor that uses credit history in evaluating creditworthiness of similarly qualified applicants must consider the credit history of accounts permitted for use by the applicant or the applicant's spouse, any information presented by the applicant that may indicate the considered credit history does not accurately reflect the applicant's credit worthiness, and the credit history of any account under the name of the applicant's spouse that accurately reflects the applicant's creditworthiness.³⁴
- *Marital status*: Creditors shall not evaluate married and unmarried applicants by different standards. A creditor shall not treat joint applicants differently based on the status of their marital relationship (if they are unmarried, married, or likely to be married).³⁵
- *Race, color, religion, national origin, or sex*: Creditors shall not consider race, color, religion, national origin, or sex a basis of evaluation unless it is permitted or required by law.³⁶

In the evaluation of creditworthiness, immigration status and citizenship of the United States of America may be considered in order "to ascertain the creditor's rights and remedies regarding repayment."³⁷ Likewise, a creditor's application of state property laws that affect creditworthiness does not constitute unlawful discrimination.³⁸

Notification of Applicants

When a creditor approves, denies, or makes a counteroffer to a complete credit application, the creditor must notify applicants of action taken within thirty days of receiving the application.³⁹ Similarly, notice must be given within thirty days after taking adverse action on an incomplete application or existing account.⁴⁰ Notification shall be made within ninety days after a counteroffer is made to the applicant if the applicant has refused to use or accept the credit offered.⁴¹

Notifications of adverse action are required to be in writing and must include the following contents:

- Statement of action taken
- Name and address of the creditor
- Statement of the provisions of section 701(a) of ECOA
- Name and address of the Federal agency that administers compliance with respect to the creditor
- Statement of specific reasons for action taken or a disclosure of the applicant's right to a statement of specific reasons within thirty days (if the request is timely) and contact information for the person or office who can provide the reasons.⁴²

³³ *Id.* § 1002.6(b)(5).

³⁴ *Id.* § 1002.6(b)(6).

³⁵ *Id.* § 1002.6(b)(8).

³⁶ *Id.* § 1002.6(b)(9).

³⁷ *Id.* § 1002.6(b)(7).

³⁸ *Id.* § 1002.6(c).

³⁹ *Id.* § 1002.9(a)(1)(i); see 12 C.F.R. § 1002.2(c) (explaining that a denial of credit is "adverse action").

⁴⁰ *Id.* § 1002.9(a)(1)(ii)-(iii); see 12 C.F.R. § 1002.2(c) (defining "adverse action" to include refusal to grant credit, termination of an account, or negative changes to an account).

⁴¹ *Id.* § 1002.9(a)(1)(iv).

⁴² *Id.* § 1002.9(a)(2).



There are slightly different notification rules in the case of business credit applications.⁴³

Extensions of Credit

Marital Status and Change of Name. A creditor shall not refuse an individual account to a creditworthy applicant based on sex, marital status, or any other prohibited basis.⁴⁴ A creditor must allow an applicant to open or maintain an account under their legal name, which could include a birth-given surname, spouse surname, or combined surname.⁴⁵ An applicant who is liable by contract on an existing open-end account will not be required by the creditor to reapply, change the terms of the account, or terminate the account on the applicant's reaching of a certain age or changing of their name.⁴⁶ If credit was granted based on a spouse's income, an applicant may be required to reapply.⁴⁷ If a married person in a community property state requests unsecured credit, a creditor may require the signature of the spouse on any contract necessary to make the community property available to satisfy the debt in the event of default.⁴⁸ Community property is a system in which "each spouse contributes labor (and in some states, capital) for the benefit of the community [and] . . . each spouse owns an automatic 50% interest in all community property[.]"⁴⁹

Cosigners. An applicant does not need a cosigner if he or she personally qualifies under the creditor's standards of creditworthiness for the requested credit.⁵⁰ Submission of jointly held assets or joint financial statements will not be deemed as applications for joint credit.⁵¹ If the applicant relies in part on the property of another, the creditor may require the other's signature.⁵² If an applicant requires the personal liability of an additional party, the creditor "may request a cosigner, guarantor, endorser, or similar party."⁵³ If the applicant is married, the spouse can, but is not required to, be the additional party.⁵⁴ Requirements cannot be imposed upon an additional party that a creditor is prohibited from imposing on an applicant.⁵⁵

Insurance. "A creditor shall not refuse to extend credit . . . because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of applicant's age."⁵⁶

Special Purpose Credit Programs

⁴³ *Id.* § 1002.9(a)(3)(i) (business with annual revenues of \$1 million or less); *id.* § 1002.9(a)(3)(ii) (business with annual revenues exceeding \$1 million).

⁴⁴ *Id.* § 1002.7(a).

⁴⁵ *Id.* § 1002.7(b).

⁴⁶ *Id.* § 1002.7(c)(1)(i)-(iii).

⁴⁷ *Id.* § 1002.7(c)(2).

⁴⁸ *Id.* § 1002.7(d)(3).

⁴⁹ INTERNAL REVENUE SERVICE. INTERNAL REVENUE MANUAL pt. 25, ch. 18 § 1.1.2 (Mar. 4, 2011), *available at* https://www.irs.gov/irm/part25/irm_25-018-001.html. The community property system has been adopted by nine states, none of which are Hawaii. *Id.*

⁵⁰ 12 C.F.R § 1002.7(d)(1).

⁵¹ *Id.*

⁵² *Id.* § 1002.7(d)(2).

⁵³ *Id.* § 1002.7(d)(5).

⁵⁴ *Id.*

⁵⁵ *Id.* § 1002.7(d)(6).

⁵⁶ *Id.* § 1002.7(e).



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A creditor is permitted to provide special purpose credit to eligible applicants under the following types of programs:⁵⁷

- Credit assistance programs authorized by federal or state law for economically disadvantaged persons
- Credit assistance programs authorized by not-for-profit organizations, as defined under section 501(c) of the Internal Revenue Code of 1954,⁵⁸ for the benefit of their members or for the benefit of economically disadvantaged persons
- Special-purpose credit programs offered by for-profit organizations if the program is established and administered as set forth below
 - For-profit organizations' programs need a written plan identifying the intended beneficiaries and the requirements potential beneficiaries need to meet.⁵⁹
 - For-profit organizations may extend credit to people who would be unable to receive credit based on customary requirements.⁶⁰

Special purpose credit programs must not discriminate against an applicant on any of the aforementioned, prohibited bases but can require program participants to share a common characteristic like race, sex, or national origin.⁶¹ A creditor may require information regarding the common characteristics in order to determine an applicant's eligibility.⁶² If the dispersal of credit is based upon financial need, a creditor may request information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources.⁶³

Regarding these programs, the CFPB "does not determine whether individual programs qualify for special purpose credit status," but rather allows the agency or creditor to decide whether or not its program is a special-purpose credit program.⁶⁴ For-profit programs that deem themselves to be special purpose credit programs must have a written plan that contains information "that supports the need for the particular program[.]" as well as information that states how long the program will last or when the program will be reevaluated for continuation.⁶⁵

Retention of Records

⁵⁷ 12 C.F.R. § 1002.8(a)(1)-(3).

⁵⁸ 26 U.S.C. § 501(c) (2016) (listing tax-exempt organizations).

⁵⁹ *Id.* § 1002.8(a)(3)(i).

⁶⁰ *Id.* § 1002.8(a)(3)(ii).

⁶¹ *Id.* § 1002.8(b)(2).

⁶² *Id.* § 1002.8(c).

⁶³ *Id.* § 1002.8(d).

⁶⁴ *Id.* pt. 1002, supp. I.

⁶⁵ *Id.*



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Various record types are to be retained for twenty-five months after their receipt or use, including: applications,⁶⁶ existing accounts,⁶⁷ prescreened solicitations,⁶⁸ and self-tests.⁶⁹

Enforcement Proceedings and Investigations

If a creditor has any notice that it is “under investigation or is subject to an enforcement proceeding for an alleged violation” of ECOA by the enforcement agencies or the attorney general of the United States, then a creditor shall retain its information for over twenty-five months and until the matter (meaning the investigation or enforcement proceeding) has been resolved.⁷⁰

Special Rule for Certain Business Credit Applications. In the case of businesses that had gross revenues exceeding \$1 million in the previous fiscal year, an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor need only retain records for at least sixty days after notifying the applicant of action taken.⁷¹ However, records must be kept for twelve months if the applicant requests the reasons for adverse action or for records to be retained.⁷²

PENALTIES

If ECOA is violated, liability for punitive damages is limited to \$10,000 in individual actions and “the lesser of \$500,000 or 1 percent of the creditor’s net worth in class actions.”⁷³ In addition, “the awarding of costs and reasonable attorney’s fees” is authorized “to an aggrieved applicant in a successful action.”⁷⁴

STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

⁶⁶ *Id.* § 1002.12(b)(1)(i)-(iii) (stating that the term of twenty-five months is to begin after an applicant has been notified of an application’s incompleteness and that written correspondence, such as notification of action taken, statements notifying applicants of the reasons for the adverse action, or statements from applicants alleging a violation of ECOA by the creditor, should be kept on file for twenty-five months); *id.* § 1002.12(b)(3) (stating that for applications not requiring formal notification, the term of twenty-five months is to begin when the creditor receives the application).

⁶⁷ *Id.* § 1002.12(b)(2)(i)-(ii) (stating that the term of twenty-five months is to begin after an applicant has been notified of adverse action taken on an existing account and that written or recorded information regarding adverse action taken or regarding a statement by an applicant alleging a violation of ECOA by the creditor should be retained).

⁶⁸ *Id.* § 1002.12(b)(7)(i)-(iii) (stating that the term of twenty-five months begins after “an offer of credit is made to potential customers” and that the “the text of [a] prescreened solicitation” and the criteria which a creditor used to select recipients of solicitation are to be kept for the full period of twenty-five months).

⁶⁹ *Id.* § 1002.12(b)(6) (stating that the term of twenty-five months begins after a self-test has been completed and that results of a self-test should be kept beyond twenty-five months if the company has legitimate notice “that it is under investigation or is subject to an enforcement proceeding for an alleged violation”); *see also id.* § 1002.15(b)(1)(i) (defining self-test as “any program, practice, or study” that is designed or used to determine compliance and creates new data or factual information not in loan application files or records).

⁷⁰ *Id.* § 1002.12(b)(4).

⁷¹ *Id.* § 1002.12(b)(5).

⁷² *Id.*

⁷³ *Id.* § 1002.16(b)(1).

⁷⁴ *Id.*



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DOCUMENT/REFERENCE	DESCRIPTION
CFPB Consumer Laws and Regulations - ECOA	Detailed explanation of ECOA and Regulation B
Consumer Information - FTC	Explanation of Equal Credit Opportunity rights
Federal Reserve - Lending Regulations and Statutes (Regulation B)	Synopsis of the more important points of Regulation B