DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 19, 1998

Equall Credit on Lending

IMMEDIATE DELIVERY!!!

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FROM: Michael Barr

Attached is the final version of the Regulation B Letter which is being sent to agency heads for signature. The Regulation C Letter is attached as well. Please submit any and all comments on the Regulation C Letter, by COB, Thursday, May 21. Our fax number is 622-5672.

William W. Wiles
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1008

Dear Mr. Wiles:

We are submitting this comment in response to the Board's advance notice of proposed rulemaking with respect to Regulation B, which implements the Equal Credit Opportunity Act (ECOA).

In particular, we are writing to express our strong support and encouragement for the Board to propose an amendment to Regulation B to allow lenders voluntarily to collect information about the race and gender of applicants for non-mortgage credit. While the Board recently considered the issue, we believe that its importance warrants a fresh look.

The current regulatory prohibition needlessly inhibits the ability of financial service providers to learn about and respond to market opportunities to better serve underserved communities. The prohibition makes it difficult for institutions to know whether products intended to expand access to credit, including to minorities, reach their intended customer base. Allowing creditors to collect data for business and consumer loans will likely lead to innovation and increased access to credit, a greater level of voluntary compliance, and more effective fair lending enforcement.

We also support additional changes to Regulation B concerning pre-application marketing practices.

We are enclosing more detailed comments and supporting attachments.

Sincerely,

Robert E. Rubin
Secretary of the Treasury

Janet Reno
Attorney General

Andrew Cuomo
Secretary of Housing and
Urban Development

Julie Williams
Acting Comptroller of the Currency

Ellen Seidman
Director, Office of Thrift Supervision

Robert Pitofsky
Chairman
Federal Trade Commission

JOINT AGENCY COMMENTS ON ADVANCE NOTICE OF PROPOSED RULEMAKING UNDER REGULATION B

I. Voluntary Data Collection

A. *Data Collected on Mortgage Loans Have Not Been Used to Discriminate and Have Increased Access to Credit for Home Mortgages*

In 1977, the Board published a revision of Regulation B, which implements the Equal Credit Opportunity Act (ECOA), to prohibit creditors from collecting data on the race, sex, marital status, color, religion or national origin of loan applicants, in order to avoid discriminatory use of such data. However, the Board made an exception to this general prohibition by requiring creditors to collect such information on home mortgage loans. At that time, little was known (but assumptions were made) about the nature and scope of lending discrimination. Since then, much has been learned about mortgage lending discrimination. The original fear that race, national origin and gender data collected under the Home Mortgage Disclosure Act (HMDA) would be used for discriminatory purposes has not been realized. Instead, the requirement for recording and reporting applicant data has contributed to increased access to credit for minority loan applicants, assisted creditors in complying with the law and in developing innovative products, and aided federal supervisory and enforcement efforts.

Recent data suggest that HMDA is having a salutary effect. During the 1990s, lending to minorities has increased dramatically relative to non-minorities, and in 1996, total home purchase loans (conventional and government-backed) to both blacks and Hispanics reached record high levels. Between 1993 and 1996, mortgage originations for Hispanics and blacks grew by 56 percent and 53 percent, respectively, more than three times as rapidly as the 14 percent increase registered for white borrowers. Though minority home ownership rates remain low relative to non-minorities, the gap is diminishing. As Chairman Greenspan has stated, "[o]ur experience with mortgage applications is one that underscores the role that free market competitive pressures can play in undermining discrimination and improving the profitability of business activity."

B. *Lifting The Prohibition For Other Types Of Loans Would Eliminate an Unnecessary Regulatory Restriction and Foster Innovation*

In today's competitive financial services market, a creditor cannot afford to be subject to a regulatory prohibition that limits its ability to have the information it needs to be responsive to the credit demands of its market. The current prohibition in Regulation B on the collection of the race and gender of loan applicants for non-mortgage credit results in an unfortunate, and in our view, unnecessary, restriction on how a bank, thrift or other creditor conducts its business. The restriction has the unintended consequence of limiting a creditor's ability to expand its customer base because it lacks important information necessary to identify potential new markets or to develop innovative products to serve those markets. In particular, it inhibits the ability of financial service providers to meet the needs of underserved communities with innovative new financial products, by making it difficult for financial institutions to understand whether new products expand access to credit for minorities. Race and gender data would help to provide a creditor with the information it needs to help meet the credit needs of particular communities.

Permitting creditors to collect race and gender data from applicants for non-mortgage credit would also enhance access to credit, by enabling lenders to identify gaps in their efforts to serve customers. For example, Regulation B sets out a limited exception to its general prohibition in order to permit lenders to establish "special purpose credit programs" to serve economically disadvantaged persons, including members of a prohibited basis group. However, to use this exception, a lender must submit a written plan that supports the need for the program. Because lenders are currently prohibited from collecting race and gender information from applicants for non-mortgage credit, lenders often lack the supporting data that would enable them to take full advantage of the special purpose credit program exception. In our judgment, if creditors were permitted to collect race and gender information from applicants for non-mortgage credit, overall lending to minorities, women, and other economically disadvantaged persons would increase.

In addition, after the Board's decision in December of 1996 not to eliminate the prohibition, institutions that have made commitments to lend to underserved markets have expressed a desire to monitor information relating to loan applicants that would enable them to determine the number and dollar volume of loans originated to minority or women borrowers. Eliminating the prohibition in Regulation B would enable these creditors to monitor their commitments.

With voluntary data collection, lenders would have maximum flexibility to collect and use applicant data. The creditor might choose not to collect data on all non-mortgage loan products; lenders could focus data collection, for example, on large volume loan products that involve personal dealings with customers or on particular small business product lines. Lenders would also be free to disclose statistical information publicly, if they believe that would be useful, or not to disclose such information.

C. *Evidence Indicates That Discrimination in Business and Consumer Lending Remains a Serious Problem*

There is much evidence that discrimination remains a significant barrier in non-mortgage credit markets, based upon both anecdotal information and studies that indicate disparate treatment in business and consumer lending. *See* Attachment A (background paper on studies of business and consumer credit discrimination and evidence that data collection can improve access to credit).

D. *Allowing Voluntary Collection of Data Would Permit Creditors to Monitor Their Own Performance*

The supervisory and enforcement agencies have consistently encouraged institutions to conduct self-evaluations of their lending practices. However, creditors cannot conduct fair lending self-evaluations for non-mortgage lending without appropriate monitoring information. Many institutions have sought permission from supervisory agencies to collect such information in order to monitor their fair lending compliance.

To be fully effective, self-evaluation and subsequent corrective action for problems found requires documentation of loan applicant data such as the race, ethnicity, sex, and age of applicants. Without the data that creditors are prohibited from collecting under Regulation B, lenders currently have no systematic way to evaluate their own fair lending performance in these markets, or to defend themselves with hard data against any charges of biased lending practices.

E. *Without Monitoring Information, the Ability of the Agencies to Detect Discrimination on the Basis of Race or National Origin in Consumer or Business Loans is Limited*

The prohibition also inhibits effective monitoring and enforcement of ECOA. Without the necessary data, enforcement agencies must rely on other investigative techniques that are less efficient, accurate, or complete. In the home mortgage area, data collected under the HMDA is critical to the decision whether or not to delve deeper into an institution's lending practices when complaints are raised. Indeed, the prohibition has the effect of skewing enforcement efforts towards cases involving discrimination by regulated creditors in the home mortgage market, because the enforcement agencies do not have sufficient information to enforce the ECOA effectively with respect to business and consumer loans, particularly those made by non-depository institutions. Moreover, when evidence of discriminatory lending practices is found, self-evaluation – which would include the voluntary collection of monitoring data – and prompt corrective actions by the lender as needed will be considered as a substantial mitigating factor in considering any remedies. *See Policy Statement on Discrimination in Lending*, 59 Fed. Reg. 18,266-69 (April 15, 1994).

II. Pre-application Marketing Practices

We believe that the Board should clarify that creditors may not discriminate on a prohibited basis in their pre-application marketing practices. Pre-application marketing practices are becoming an increasingly significant factor in determining which consumers obtain credit, and at what price. This type of marketing is now frequently used to market special rates and terms for credit cards and increasingly, home equity and other types of loans. Regulation B should be amended to keep pace with the evolving marketing practices of the industry, by prohibiting discrimination on prohibited bases in marketing.

Regulation B should also prohibit creditors from considering prohibited bases in pre-screening solicitations for credit. Under the current regulation, a creditor could intentionally decide not to send credit card solicitations to individuals residing in areas in which the population is predominantly African American or Hispanic without violating Regulation B. As a result, such individuals are effectively discouraged from applying for those credit offers because they are denied the information that would cause them to approach the creditor and apply. We suggest that the Board address this issue by explaining that the consideration of one or more prohibited bases in deciding to whom to send solicitations for credit constitutes discouraging applicants in violation of 12 C.F.R. section 202.5(a), and that the consideration of factors that are close proxies for a prohibited basis may constitute evidence of such discouragement.

The Board notes in the advance notice of proposed rulemaking that in some instances pre-screening on a prohibited basis may facilitate the identification of potential customers and provide greater access to credit for some customers (*e.g.*, using age to target older individuals or college students for credit solicitations and related financial services). We believe that the Board's exception authority would enable it to allow such pre-screening where it serves to expand credit opportunities, while simultaneously prohibiting pre-screening where it limits access to credit on a prohibited basis. The ECOA authorizes the Board to exempt a class of transactions, or a particular type of transaction within a class, if the Board determines that the application of all or part of the regulation to such transactions would not contribute substantially to effectuating the purpose of the regulation. 15 U.S.C. section 1691b(a)(1).

DRAFT

William W. Wiles
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1001

Dear Mr. Wiles:

We are submitting this comment in response to the Board's advance notice of proposed rulemaking (ANPR) with respect to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA).

First, we urge the Board to propose amending Regulation C to require institutions that report under HMDA to record the reasons for denial of loans on their Loan Application Registers. The Office of the Comptroller of the Currency and the Office of Thrift Supervision currently require such reporting for institutions that they regulate, and such information has proved to be highly useful in assessing an institution's compliance with the fair lending laws. In addition, the Department of Housing and Urban Development is currently proposing to revise its rules to require the recording of such information for institutions issuing FHA insured loans.

In our experience, the information assists supervisory agencies in evaluating patterns of lending or denials. Such information, for example, helps the agencies to determine whether patterns of denial may reflect discrimination, or are supported by valid business objectives. By computing denial rate disparities among consumers by reason for denial, the data are used to focus examination and investigation efforts on areas where disparities are the greatest, where problems are more likely to arise. The data showing the reasons for denying a loan helps the agency to examine the creditor's decision making process to discern whether the process may be discriminatory. Such information would also help to advance the public discourse about home mortgage discrimination.

Collection of such data would not be burdensome. All institutions are already required under the Equal Credit Opportunity Act (ECOA) to note such information on adverse action reports for loan applications that are denied, and the data are easily transfereable to HMDA registers, which already contain a field for such information.

Second, we recommend that the Board propose to revise Regulation C to take account of the growth in pre-approval credit evaluations as standard industry practice.

The growth in pre-approval evaluations has meant that an increasing number of mortgage applicants are denied access to credit prior to coming under the purview of current Regulation C. We are concerned that the potential for discrimination exists in this arena. We are attracted to the ANPR's suggested approach to this issue, under which reporting preapproval decisions would simply track the requirements of Regulation B with respect to declined preapproval requests. A minimal burden would be required to transfer the information already required to be recorded on adverse action reports to the HMDA registers. The "bright line" test suggested in the ANPR also deserves further study.

In some cases, HMDA reporting at this stage may necessarily omit certain information, such as property location or precise loan size. In our judgment, home counseling programs need not report assisting customers, even if such assistance involves verifying credit information, as long as the home counseling program does not use such information to decide, for itself or as agent, whether or not to extend credit to a customer.

Third, we recommend that the Board propose to revise Regulation C to require the identification of transactions involving mobile homes, given the significant differences in underwriting standards, denial rates, and other features from transactions involving traditional homes. In our experience, the aggregation of mobile home and traditional home transactions in HMDA data reduce the usefulness of such data for financial institutions to monitor their lending activities, and for supervisory agencies and the public to understand trends in the provision of home mortgages or to assess the potential for discrimination. We believe that the data would be more useful and signficantly easier to analyze if transactions involving mobile homes were repored using a separate code.

Sincerely,

DRAFT

Robert E. Rubin
Secretary of the Treasury

Janet Reno
Attorney General

Andrew Cuomo
Secretary of Housing
and Urban Development

Julie Williams
Acting Comptroller of the Currency

Ellen Seidman
Director, Office of Thrift Supervision

Bob Pitofsky
Federal Trade Commission

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection

FAX TO: FAIR LENDING GROUP

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FROM: Peggy Twohig, FTC (5 pages, including cover)

RE: FTC Comments on Draft Regulation C Comment Letter

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Credit Practices

Peggy L. Twohig
Assistant Director

Direct Dial
(202) 326-3210

MEMORANDUM

To: Fair Lending Group
From: Peggy L. Twohig
Subject: FTC Comments on Draft Regulation C Comment Letter
Date: May 21, 1998

Attached is a marked-up draft of the Regulation C letter with FTC staff comments. The only substantive comment we have is that the statement about what the ECOA already requires in terms of adverse action notices and reasons for denial is not accurate. We suggest the following substitute:

> Creditors already must keep track of the reasons for their loan denials in order to comply with Equal Credit Opportunity Act (ECOA). The ECOA requires creditors to either provide denied applicants with an adverse action notice stating the reasons for the loan denial, or to provide this information to the applicant upon request. Creditors therefore must have procedures in place to identify the reasons for loan denials.

Alternatively, this might work:

> Creditors already must keep track of the reasons for their loan denials in order to ensure compliance with the adverse action notice requirements of the Equal Credit Opportunity Act.

DRAFT

FTC Staff Comments

William W. Wiles
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Docket No. R-1001

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In our experience, the information assists supervisory agencies in evaluating patterns of lending or denials. Such information, for example, helps the agencies to determine whether patterns of denial may reflect discrimination, or are supported by valid business objectives. By computing denial rate disparities among consumers by reason for denial, the data are used to focus examination and investigation efforts on areas where disparities are the greatest, where problems are more likely to arise. The data showing the reasons for denying a loan help~~s~~ the agency to examine the creditor's decision making process to discern whether the process may be discriminatory. Such information would also help to advance the public discourse about home mortgage discrimination.

Collection of such data would not be burdensome. All institutions are already required under the Equal Credit Opportunity Act (ECOA) to note such information on adverse action reports for loan applications that are denied, ~~and~~ the data are easily transfer~~e~~able to HMDA registers, which already contain a field for such information.

Not accurate
See memo for suggested alternative

Second, we recommend that the Board propose to revise Regulation C to take account of the growth in pre-approval credit evaluations as standard industry practice.

With respect to other issues raised in the ANPR, we have the following additional comments. We recognize that,

The growth in pre-approval evaluations has meant that an increasing number of mortgage applicants are denied access to credit prior to coming under the purview of current Regulation C. We are concerned that the potential for discrimination exists in this arena. We are attracted to the ANPR's suggested approach to this issue, under which reporting preapproval decisions would simply track the requirements of Regulation B with respect to declined preapproval requests. A minimal burden would be required to transfer the information already required to be recorded on adverse action reports to the HMDA registers. The "bright line" test suggested in the ANPR also deserves further study.

~~A~~ In some cases, HMDA reporting at ~~this~~ the preapproval stage may necessarily omit certain information, such as property location or precise loan size, but we believe that the reporting of other data would be very useful nevertheless. Also, with respect to home counseling programs, ~~I~~in our judgment, ~~home~~ ~~counseling~~ these programs need not report assisting customers, even if such assistance involves verifying credit information, as long as the home counseling program does not use such information to decide, for itself or as agent, whether or not to extend credit to a customer.

Third, we recommend that the Board propose to revise Regulation C to require the identification of transactions involving mobile homes, given the significant differences in underwriting standards, denial rates, and other features from transactions involving traditional homes. In our experience, the aggregation of mobile home and traditional home transactions in HMDA data reduces the usefulness of such data for financial institutions to monitor their own lending activities, and for supervisory agencies and the public to understand trends in the provision of home mortgages or to assess the potential for discrimination. We believe that the data would be more useful and signficantly easier to analyze if transactions involving mobile homes were reported using a separate code.

Sincerely,

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Chairman, by direction of the