For Harry

May 28, 1998

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

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 provide credit for 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, by direction of the Federal Trade Commission

Aida Alvarez
Administrator, Small Business Administration

Enclosure

# 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).

#1216

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220
June 18, 1999

Fair Lending

# IMMEDIATE DELIVERY!!!!!

## FAX TO: FAIR LENDING GROUP

| | |
|---|---|
| **HUD** | |
| Peter Kaplan | 708-4886 |
| Gail W. Laster | 708-3389 |
| Kenneth Zimmerman | 708-2703 |
| Kenneth Markison | 708-5689 |
| Brian Doherty | 708-2703 |
| **OCC** | |
| Mike Bylsma | 874-5322 |
| Steve Cross | 874-5221 |
| Steve Lindsey | 874-5221 |
| Russ Bailey | 874-5221 |
| **DOJ** | |
| Stuart Ishimura | 514-1116 |
| Joan Magagna | 514-1116 |
| Sandy Ross | 514-1116 |
| **TREASURY** | |
| Michael Barr | 622-5672 |
| Cliff Kellogg | 622-5672 |
| Melissa Weiss | 622-0256 |
| **OTS** | |
| Paul Robin | 906-5735 |
| Tim Burniston | 906-5735 |
| David Enzel | 906-7606 |
| Ellen Seidman | 898-0230 |
| **WHITE HOUSE** | |
| Sarah Rosen | 456-2223 |
| Lisa Green | 456-2223 |
| Paul Weinstein | 456-7028 |
| Peter Rundlet | 456-5053 |
| **FTC** | |
| Jodie Bernstein | 326-3799 |
| David Medine | 326-2558 |
| Peggy Twohig | 326-2558 |
| **OFHEO** | |
| Ann Dewey | 414-3823 |
| Judith Naiman | 414-6504 |
| Tina Dion | 414-6504 |

FROM: Michael Barr
Deputy Assistant Secretary
Community Development Policy

We would like to convene a Fair Lending Group meeting on **Wednesday, June 23, at 3:30pm, in Room 2127 (Grant Room).** Please confirm your attendance by internet if you are available to meet on Wednesday, June 23. Irma Tucker's internet address is irma.tucker@do.treas.gov, or my internet address is michael.barr@do.treas.gov . **Attached is the agenda for the meeting.**

# FAIR LENDING MEETING
JUNE 23, 1999
3:30PM - ROOM 2127 (GRANT ROOM)

1. **HOEPA (Treasury issues paper)**
2. **Credit Scoring (OTS lead discussion)**
3. **Testing (HUD update)**
4. **Reg. B/Reg. C (vote status update)**

Need to discuss w/ Sarah

**MEMORANDUM**

FROM: Michael Barr

TO: Fair Lending Interagency Working Group

DATE: July 14, 1999

RE: Attached draft

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Attached please find a draft of a document describing proposed changes to the regulations implementing the Home Ownership and Equity Protection Act. Once we have reached agreement on the document, I propose that it be the basis for memoranda from each of us to our respective agency or department heads requesting approval to approach the Fed informally to gauge its interest in the proposed reforms. Please forward your comments and suggested edits to Don Graves or Dan Sokolov as soon as possible.

## Fair Lending: Proposal to Seek Federal Reserve Board Regulatory Changes Under the Home Ownership Equity Protection Act

**Summary:** Treasury and other agencies should approach the Federal Reserve Board (FRB) to seek to persuade it to adopt by regulation enhanced protections for consumers in the home-equity lending market.

The expansion of credit to Americans of even the most limited means is a welcome development, but it has increased opportunities for unscrupulous lenders to take advantage of vulnerable or disadvantaged populations. Americans who are poor but own homes – especially the elderly – have been particular targets of abusive practices in the home-equity lending market. In that market, homeowners pledge their homes as collateral for high-priced consumer loans (usually for home repairs, improvements or debt consolidation). Abusive practices in the home-equity lending market include, for example, falsifying loan applicants' income or the appraised value of the property and overcharging consumers with illegitimate fees. Other common practices, such as balloon payments far beyond the means of borrowers and penalties for early repayment of loans, also tend to be traps for the uneducated and unwary.

Several statutes, including the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), and the Home Ownership and Equity Protection Act (HOEPA), are designed to protect American consumers against illegitimate creditor practices. HOEPA, which was passed in 1994 in the form of amendments to TILA, targets abuses in the home-equity lending market. It was intended to protect homeowners from loan agreements that are likely to result in default, through disclosure requirements and prohibitions of certain onerous terms, without actually limiting the rates that creditors may charge or banning high-priced loans.

Abusive and deceptive practices persist despite these statutes. Recognizing this reality, Congress directed the FRB and the Department of Housing and Urban Development (HUD) to recommend improvements to TILA, RESPA, and HOEPA. In a joint report in July 1998, the agencies presented a number of helpful recommendations that would provide consumers with greater information to shop for loans, as well as clear up consumers' confusion regarding the key terms of loan agreements. In addition, the agencies recommended the adoption of substantive protections against abusive lending practices with respect to loans covered by HOEPA. HUD made a number of specific recommendations with respect to these protections. In May 1999, the President called on Congress and the agencies to adopt these reforms, as well as additional measures we believe are necessary to protect consumers adequately from spurious and abusive practices in the home-equity lending market. Legislative reforms will no doubt take time to enact.

In the meantime, the FRB can make certain improvements to existing law under its authority to promulgate regulations and orders. We have discussed these changes in the Fair Lending Working Group (with staff from the OCC, OTS, FTC, HUD, Justice and Treasury) and we believe that these changes should include:

- Lowering the current HOEPA APR trigger from 10% over comparable Treasury securities to 8% over such securities;

- Broadening the class of costs counted toward the HOEPA trigger, including all amounts paid by a borrower;
- Making fraudulent practices now illegal under the Federal Trade Commission Act (the FTCA) also illegal under HOEPA, thereby expanding the enforcement authority of the banking regulators and the FTC, and adding additional penalties for non-compliance;
- Regulating the extent to which consumers may finance fees charged for a high-cost loan;
- Expanding the HOEPA provisions barring prepayment penalties and balloon payments;
- Clarifying that the phrase "pattern and practice" under HOEPA has the same meaning as that phrase as it is used in the Fair Housing Act (FHA), 42 U.S.C. § 3613;[1]
- Requiring creditors to document the income of loan applicants and other pertinent data;
- Requiring creditors to inform high-cost-loan applicants of available home counseling programs prior to closing, which should help to lower the number of foreclosures.

The FRB currently has statutory authority to make many of these changes by amending Regulation Z, 12 CFR part 226, the regulation that implements TILA and HOEPA. HOEPA authorizes the FRB to decrease the interest-rate trigger (but not below 8% above comparable Treasury securities), 15 U.S.C. § 1602(aa)(2), and to include in the points-and-fees trigger, in addition to charges enumerated in the statute, "such other charges as the Board determines to be appropriate," 15 U.S.C. § 1602(aa)(4)(D).

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1 Congress left to the courts the task of defining the phrase "pattern and practice" as it is used in the FHA. The courts have given the phrase a broader interpretation under the FHA than at least one court has given the same phrase under HOEPA. As it is used in HOEPA, the phrase has been interpreted by a district court to require proof of "a representative sample of [the lender's] loans analyzed empirically." Newton v. United Companies Financial Corp., 24 F. Supp. 2d 444, 457 (E.D. Pa. 1998) (holding proof inadequate despite evidence of asset-based lending by defendant to several plaintiffs). That is ostensibly a stricter requirement than the courts have imposed in interpreting the identical phrase under the FHA and other civil rights acts. Although the FHA's pattern-and-practice requirement cannot be satisfied by an isolated instance, unlike the requirement enunciated in Newton, supra, it *can* be satisfied by proof of several examples of such conduct, at least if they occur within a relatively short period. See, e.g., United States v. Balistrieri, 981 F.2d 916, 929-30 (7th Cir. 1992) (holding evidence of discriminatory treatment of five black testers over a little more than a month sufficient).

In addition, the FRB is *required* by HOEPA to prohibit acts or practices in connection with mortgage loans that the Board finds to be unfair, deceptive, or designed to evade HOEPA's provisions, and to prohibit acts or practices in connection with refinancing of mortgage loans that it finds to be associated with abusive lending practices or otherwise not in the interest of the borrower. 15 U.S.C. § 1639(l). These mandates supply the FRB with authority to regulate or prohibit unfair, deceptive and fraudulent practices.[2]

Congress' directive to the FRB to "issue such regulations as may be necessary to carry out" HOEPA, P.L. 103-325 § 155, 108 Stat. at 2197 (Sept. 23, 1994), arguably empowers the agency to incorporate the courts' definition of "pattern and practice" under the FHA into its regulation implementing HOEPA's ban on a "pattern and practice" of asset-based lending. See Chevron v. NRDC, 467 U.S. 837, 843 (1984) ("The power of an administrative agency to administer a congressionally created program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." (quotation and ellipsis omitted)). Because the delegation of a law-declaring function is implied, rather than express, however, the issue is not free from doubt.

The power to promulgate regulations necessary to carry out the statute arguably also extends to requiring lenders to (1) collect income and other information from consumers and (2) inform applicants of available home counseling. To be sure, the statute does not expressly authorize or require either of these measures. Requiring lenders to inform applicants of available home counseling, however, is a reasonable means to carry out a principal purpose of the statute –

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[2] The Federal Trade Commission Act (FTCA) also requires the Board to adopt regulations to prevent "unfair or deceptive acts or practices" by banks. 15 U.S.C. § 57a(f)(1). In addition, it requires the FRB to adopt credit practice regulations adopted by the FTC. Id. The FRB indeed adopted Regulation AA, Unfair or Deceptive Acts or Practices (12 CFR 227), following promulgation of a similar regulation by the FTC. Regulation AA applies

to reduce unnecessary loan defaults by maximizing consumer understanding of borrowing risks. Likewise, requiring lenders to collect income and other pertinent information will further another principal purpose of the statute – to curb abusive lending, especially asset-based lending – by enabling both lenders and the agencies to detect illegitimate practices. There is precedent for an information-collection requirement in the absence of express statutory authorization. Regulation B, promulgated by the FRB to implement the Equal Credit Opportunity Act (ECOA), requires creditors to collect information about the race, gender, marital status, and age of mortgage applicants. 12 C.F.R. § 202.13. The grant of authority under which the FRB imposed that requirement – a directive to "prescribe regulations to carry out the purposes of this subchapter," see 15 U.S.C.A. § 1691b(a)(1) & note following – was no more specific than HOEPA's delegation of rulemaking authority to the FRB.[3]

Three additional reforms – expanding the statutory prohibitions on balloon payments and early payment penalties, and creating liability for asset-based lending in the absence of a pattern or practice of such conduct – may require legislation, depending on the extent of the reforms. Congress already has spoken to these issues with some specificity. See 15 U.S.C. § 1639(c) (barring prepayment penalty but stating exceptions); 1639(e) (barring balloon payments for mortgages of less than 5 years); 1639(h) (barring a "pattern and practice" of asset-based lending). Nevertheless, the extent to which these protections can be tightened by additional regulations, perhaps under FRB's authority to ban abusive or deceptive practices, should be explored.

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only to banks and their subsidiaries, however. See 12 CFR § 227.11(c). The FRB could amend Regulation Z to make clear that Regulation AA also applies to all other persons whose lending activity comes under HOEPA.

[3] The ECOA statutory provision requiring lenders to "maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or to enforce any action pursuant to the authority of this chapter," 15 U.S.C. 1691b(a)(4) – which could be read as authorizing the FRB to impose an information

collection requirement – was not enacted until 1988, see P.L. 100-533 § 301, 102 Stat. at 2692 (Oct. 25, 1988), after the FRB already had promulgated such a requirement by regulation.

Lisa Green
07/14/99 01:10:55 PM

Record Type: Record

To: Jonathan A. Kaplan/OPD/EOP@EOP, Melissa G. Green/OPD/EOP@EOP

cc:
Subject: Prep for 2:00 Meeting

The following is information that I think Gene will want to know prior to the 2:00 meeting. Please let me know if you think I've forgotten anything? Melissa, I'll stop by at about 1:45 to be ready to brief Gene:

**OPL**
- Letter has already been sent by Mary Beth thanking all Corporate leaders that participated in the trip. (I will have a copy if Gene wants to see what it said)
- Followup meetings have been scheduled for this week and next with Washington Reps and senior executives from companies that did and did not participate on the trip. (Jay/Marybeth will report at 2:00 meeting)

**IGA**
- Bill White/Mickey are working to include New Markets and a speech by the President as part of the NGA conference Aug 7-10. This is considered a heavy lift since there are 32 Republican Mayors. Underwood and Patton are very supportive of the idea, but IGA may ask Gene to make a call to enlist their help in getting us on the agenda.
- Mayors and local electeds from the cities we visited are thrilled. (Barbara Hunt will be prepared to report at the meeting about phone calls, letters to the President,etc. indicating their support of our effot -- i.e. the mayor of Clarksdale sent a letter to Lott expressing his disappointment that Lott did not participate in this historic trip).
- Several local governments have already been contacted directly by business interests/companies interested in investing in their communities. (Barbara will report at 2:00 meeting)

**Legislative Affairs**
- Sen. Kennedy and Sen. Conrad have expressed interest in co-sponsoring legsilation as a result of the trip.
- Drafts of the NMVC Firms bill have been distributed by SBA. Treasury, Rangel and Rockefeller are waiting with baited breath to get an okay to introduce the Tax Credit piece prior to next week's markup of the Tax Bill. HUD is waiting to distribute drafts of APIC piece until FHLB issue is resolved.
- Lot's to discuss on Legislative Strategy -- maybe need a separate meeting to provide a complete update. Most important issue is guidance on when/how the legislation will be introduced. Do we have a date for the proposed legislative event --- should we be pushing for one?

**Upcoming Events**
- Waiting for info from Jon and Pete on POTUS Schedule

**Additional NM Deliverables**
- Dreamworks announced their LA program on Monday without mentioning the President's initiative (see press release that was distributed to Maria and Gene from Minyon --- I will have a copy with me).
- Data Collection - Proposal for an Executive Order - One of the deliverables that we were working on and didn't complete prior to the trip was an EO to create an interagency working group that would develop statistical information and provide data helpful to companies as they evaluate investment

opportunities in New Markets. The model for the type of report that would be published is the Child Welfare annual indicators report which just received front page coverage by the Washington Post a few days ago. I think this is a good followup deliverable that we should pursue (but I'm not sure that Gene knows about it in any detail) and it is on the agenda.

**Anything else?????**

THE WHITE HOUSE

WASHINGTON

July 14, 1999

~~Mr. Jesse White, Jr.~~
~~Federal Co-Chairman~~
Appalachian Regional Commission
1666 Connecticut Avenue NW, Suite 600
Washington, D.C. 20235

Dear ~~Mr. White, Jr.~~

Thank you for participating in the President's Tour of America's New Markets. Your personal involvement and commitment to the tour was important to the credibility of the trip and complimented the President's message of private sector investment in under-served areas. Your leadership on these issues is greatly appreciated.

Attached please find a few articles on last week's tour that I thought you might enjoy. Again, thank you for your participation.

I hope to speak with you again soon.

Sincerely,

Mary Beth Cahill
Assistant to the President and
Director of Public Liaison

DREAMWORKS SKG

cc:
Lisa Green
Marie
Gene
Jeff
J. Munyon

**FOR IMMEDIATE RELEASE**
**Monday, July 12, 1999**

**CONTACT: Andy Spahn**
**(818) 733-6336**
**Niki Tennant**
**(213) 473-2355**

## DREAMWORKS ANNOUNCES UNPRECEDENTED $5 MILLION GIFT TO JOB TRAINING PROGRAM

Steven Spielberg, Jeffrey Katzenberg, and David Geffen announced today that they, along with their studio DreamWorks SKG, are making a combined $5 million commitment to "JobLink," an innovative entertainment industry training program developed by Los Angeles City Councilmember Ruth Galanter.

According to Katzenberg, this financial support is a signal of DreamWorks' ongoing commitment to bring diversity to Los Angeles' entertainment industry. "Steven, David and I made a commitment, both personally and for DreamWorks, to invest in the future of the City of Los Angeles. Even though we are not going to Playa Vista, we are still going to proceed with that commitment to the City of Los Angeles and the surrounding communities. We want to create opportunities and provide training for people who normally don't have access to the entertainment industry. We applaud Councilmember Galanter for making JobLink a reality so that disadvantaged and disenfranchised L.A. residents will have career opportunities in the industry. We are proud to support her in her efforts."

"I created JobLink to bring the industry within reach of those who have been historically underrepresented," said Councilwoman Ruth Galanter. "Although DreamWorks will not be locating at Playa Vista, this $5 million gift represents an unprecedented commitment to help open doors to the industry."

Within the coming months, Galanter's office will put together an advisory board for JobLink that will include representatives from DreamWorks, Galanter's office, community representatives and close involvement by the community colleges. This board will determine criteria by which community-based, college-based, and high school-based programs will receive funding from JobLink.

Last April, Galanter and Katzenberg announced a new Entertainment Studies program within the Los Angeles Community College District as one of the first initiatives of the JobLink program. The Entertainment Studies program will have an entertainment studies core curriculum, as well as an advanced curriculum in Information Technology. DreamWorks executives and staff will participate in the design of the curricula, serve as guest lecturers and technical advisors, and offer work-based learning opportunities such as internships and mentorships.

"This is a landmark in job training assistance to the impoverished communities of Los Angeles," said Pastor Cecil E. Murray, Senior Pastor of First A.M.E. Church. "DreamWorks is building dreamers using the magic of Hollywood."

Kelly Candaele, trustee for the Los Angeles Community College District, congratulated DreamWorks for their donation to JobLink. "I commend Steven Spielberg, Jeffrey Katzenberg, and David Geffen on their follow-through and commitment to our community colleges. This is an amazing opportunity for our students, our faculty and our administration. Kudos to Councilmember Galanter for bringing this partnership to fruition. We expect our relationship with DreamWorks to blossom into a long-lasting one that will benefit many, many students and encourage other studios to participate in JobLink."

###

Lisa Green
07/14/99 01:10:55 PM

Record Type: Record

To: Jonathan A. Kaplan/OPD/EOP@EOP, Melissa G. Green/OPD/EOP@EOP

cc:
Subject: Prep for 2:00 Meeting

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**Anything else?????**

Treasury

Julia M. Payne@EOP
06/23/99 05:46:00 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Statement by the President

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release June 23, 1999

STATEMENT BY THE PRESIDENT

I am pleased that the Federal Reserve Board has acted on my Administration's request by voting this morning to propose, under the Equal Credit Opportunity Act, that lenders may choose to collect information about the race and gender of individuals applying for loans beyond home mortgages. This action is an important step to expand access to capital for all Americans. Allowing creditors to collect data for business and consumer loans will create greater innovation and increased access to credit, a higher level of voluntary compliance, and more effective fair lending enforcement.

Along with my Administration's reform of the Community Reinvestment Act regulations, enactment of the Community Development Financial Institutions legislation, and the proposed New Markets Initiative, today's historic action by the Federal Reserve Board will ensure that more Americans have access to capital. The record has shown that the Administration's Community Empowerment strategy is working in helping to revitalize our distressed inner city neighborhoods and rural communities by spurring more private investment, igniting the spark of entrepreneurship, and providing opportunity for more Americans.

30-30-30

Argument will be it's not really
voluntary
institutions will work to [illegible] for [illegible]

Message Sent To:

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 30, 1999

For Harry

# IMMEDIATE DELIVERY!!!!!

## FAX TO: FAIR LENDING GROUP

| | |
|---|---|
| **HUD** | |
| Peter Kaplan | 708-4886 |
| Gail W. Laster | 708-3389 |
| Kenneth Zimmerman | 708-2703 |
| Kenneth Markison | 708-5689 |
| Brian Doherty | 708-2703 |
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| Mike Bylsma | 874-5322 |
| Ralph Sharpe | 874-5521 |
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| Paul Robin | 906-5735 |
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| Sarah Rosen | 456-2223 |
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| David Medine | 326-2558 |
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| Ann Dewey | 414-3823 |
| Judith Naiman | 414-6504 |
| Tina Dion | 414-6504 |

FROM: Michael Barr
Deputy Assistant Secretary
Community Development Policy

There **WILL NOT** be a Fair Lending Group meeting on, **Wednesday, June 30. The next Fair Lending meeting will be on Wednesday, July 14, at 3:30pm, in Room 2127.** Please confirm your attendance by internet if you are available to meet on Wednesday, July14. Irma Tucker's internet address is irma.tucker@do.treas.gov, or my internet address is michael.barr@do.treas.gov .

1) Please review the draft paper that was provided to you at the last meeting and provide comments to Don Graves (donet.graves@do.treas.gov) by Tuesday (June 30). A new version will be completed by the end of the week for review, in the hopes that we can have something more formal by July 12.

# Agenda
## Wednesday, July 14, 1999
## 3:30pm - 5:00pm
## Room 2127

- **Reg. B and HOEPA.**
- **HUD to Talk About Testing**

**At our next meeting which will be July 21, the following will be discussed.**

- **OTS to do a Presentation on Credit Scoring**
- **Reg. B and HOEPA.**

DEPARTMENT OF THE TREASURY
WASHINGTON

Have Gay make me a copy when she returns. Only got 1. Don't need it now. Thx. S.

September 14, 1999

# IMMEDIATE DELIVERY!!!!!

## FAX TO: FAIR LENDING GROUP

| | |
|---|---|
| **HUD** | |
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| David Enzel | 906-7606 |
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FROM: Michael Barr
Deputy Assistant Secretary
Community Development Policy

Attached is the Joint Agency Comments on Notice of Proposed Rulemaking Under Regulation B. Please submit your comments by September 27th. Your comments can be fax to 622-1049 or by internet to Donet Graves. His internet address is donet.graves@do.treas.gov.

DRAFT August 27, 1999 11:00 am

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

## I. Voluntary Data Collection

The Department of the Treasury, the Department of Justice, the Department of Housing and Urban Development, the Federal Trade Commission, the Comptroller of the Currency, the Office of Thrift Supervision, and the Small Business Administration ("the agencies") join in welcoming and supporting the Federal Reserve Board's proposal to amend Regulation B to permit lenders to collect data concerning the race, color, religion, sex, or national origin of loan applicants. Permitting collection of such data will enable creditors to increase credit availability to economically disadvantaged groups and will facilitate private sector and government detection of discriminatory practices.

### A. *Experience with Mortgage Loans Shows that Data Collection Has Not Been Used to Discriminate and Has in Fact Increased Access to Credit*

In 1977, the Board revised 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's disclosure requirements are 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 199__, mortgage originations for Hispanics and blacks grew by __ percent and __ percent, respectively, more than ____ times as rapidly as the __ 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 that Would Expand Access to Business and Consumer Credit*

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 demands of its potential customers. The current prohibition in Regulation B of 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 and marketing programs, by making it difficult for financial institutions to determine whether new products or marketing programs in fact expand minority access to credit. Collecting, processing, and analyzing race, gender, and other data would help creditors 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 [create?][1] 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 data that would enable them to assess fully the need for a special purpose credit program and, therefore, implement an appropriate and effective program. [Indeed, our experience has been that the special purpose credit program provision of Regulation B is underused.] 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.

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[1] N.b., the regulations do not require submittal of the plan to an agency.

In addition, since the Board decided in December 1996 not to lift the prohibition, institutions that have made commitments to lend to underserved markets have expressed a desire to gather 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 high-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 believed that would be useful, or not to disclose such information.

C. *Lifting the Prohibition Would Facilitate Private Sector and Government Monitoring of Creditor Performance as well as Detection and Prevention of Discrimination*

We agree with the Board's assessment that removing the prohibition on data collection for nonmortgage credit would allow issues of credit discrimination to be better addressed.

1. *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).

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

The supervisory and enforcement agencies consistently have 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 require 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.

3. *Allowing Voluntary Data Collection Would Improve Substantially the Ability of the Agencies to Detect and Deter Unlawful Discrimination*

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 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 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

Citing the potential for discrimination in preapplication marketing practices, the Board's 1998 Advance Notice of Proposed Rulemaking requested comment on the concept of extending Regulation B to prohibit expressly such discrimination. In the discussion accompanying the Board's proposed revisions to the regulation, the Board recognizes that creditors have at times used age to identify potential recipients of preapproved credit and zip codes to exclude credit solicitations in low-income areas that are predominantly minority. Nevertheless, the Board states that evidence of such practices is "somewhat limited" and does not warrant the application of Regulation B anti-discrimination rules "at this time." Instead, it has proposed that, in order to facilitate monitoring of the problem, creditors be required to retain certain information about preapproved credit solicitations that constitute "firm offers of credit" under the Fair Credit Reporting Act.

We welcome and support the Board's proposal to enact this information retention requirement, which should improve monitoring of marketing practices without placing a substantial additional burden on creditors. We believe, however, that the proposal does not go far enough to address discrimination on prohibited bases in preapplication marketing. Our experience in the field suggests to us that such discrimination is a problem sufficiently serious [?] to justify a regulation that prohibits it expressly. The problem is not resolved, as some industry commenters suggested, by their use of non-targeted marketing such as "take-one" applications available at lenders' facilities. Even ostensibly non-targeted marketing does not reach all populations to the same extent. For instance, "take-one" applications placed in banks are not readily available to poor individuals who live in neighborhoods that lack banks. Those individuals generally do not have the same quantity and quality of information about the market that residents of well-off neighborhoods have and, therefore, they are more susceptible to predatory marketing.

Thus, we continue to believe, as we recommended in our May 28, 1998 comment in response to the Advance Notice, that the Board should clarify that the consideration of one or more prohibited bases in deciding to whom to send solicitations for credit constitutes discouraging prospective applicants in violation of 12 C.F.R. § 202.5(a) (proposed § 202.4(b)), and that the consideration of factors that are close proxies for a prohibited basis may constitute evidence of such discouragement.

The Board has declined to adopt such a rule because of its concern for unintended consequences. Indeed, many commenters opposing Regulation B's expansion to preapplication marketing contended that it would prevent creditors from marketing their products to those most likely to respond. As examples of potentially benign targeted marketing on a prohibited basis, they cited the women's clothing store that promotes a private label credit card by mailing prescreened applications to women, and the credit card issuer that purchases a subscriber list from a magazine with a mostly African-American readership. We believe that it is feasible to promulgate a rule that would prohibit invidious discrimination that restricts a group's access to credit while permitting practices represented by these examples, so long as such practices were not merely an effort to circumvent the purposes of Regulation B and ECOA. So, too, could the Board create an exception for affirmative marketing programs designed to expand the availability of credit to certain groups. Indeed, a model for such an exception exists already in the official staff comment to existing § 202.5(a), which provides that "[a] creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor."

At the very minimum, the Board should complement the proposed record retention requirement for prescreened solicitations that constitute firm offers of credit with a limited expansion of the anti-discrimination provisions of Regulation B to such solicitations. This could be accomplished by clarifying that such conduct constitutes discouragement of prospective applicants in violation of existing § 202.5(a), while creating appropriate exceptions.