

Business Credit News

CREDIT REPORTS 210-225-7106
COLLECTION 210-225-7106
E-MAIL: bcms@nacmtx.com
FAX SERVICES 210-225-1777
WEB SITE: www.nacmtx.com

National Association of Credit
Management of Texas, Inc
4407 Walzem Rd #205
San Antonio, TX 78218

**NOVEMBER 2015 Chairman: Terry Ludzenski
Holt Cat**

“ECOA – Yes It Applies to Commercial Credit”

Federal law, such as the Patriot Act, focuses on ways to combat terrorism, especially from the Middle East and Asia. Racial profiling, although illegal, continues today in many industries such as travel and defense. May a credit professional refuse to extend credit to an applicant, say, a sole proprietor originally from the Middle East? The Equal Credit Opportunity Act (ECOA) says no. ECOA is a federal statute that prohibits credit grantors from discriminating in the granting of credit based on prohibited basis, and requires creditors to comply with certain notifications, and retain records.

The Equal Credit Opportunity Act is part of the Consumer Protection Act that was included in Lyndon Johnson’s Civil Rights Legislation in the late 60’s and was enacted by Congress in the 1970’s. It was originally written for consumer credit but in 1989, the Federal Reserve Board who has oversight responsibility, issued Regulation B to amend and/or implement items that were not relevant in the original ECOA. Regulation B went into effect the following year, 1990, and remains in effect today. ECOA is a federal statute that prohibits credit grantors from discriminating in the granting of credit based on a prohibited basis, including race, color, religion, national origin, gender, marital status or age. As ECOA is a federal statute, it applies to all states and U. S. territories. ECOA is intended to promote the availability of credit without regard to characteristics that have nothing to do with creditworthiness. In the original ECOA legislation, the only concern about discrimination was towards the individual as most businesses were corporations and there was no classification as a minority owned business in the 60’s. Creditors were not required to notify applicants of action taken on their applications or to retain records of credit applications.

ECOA's prohibitions against discrimination are aimed primarily at the evaluation of a credit application by a credit grantor. The general rule is that a credit grantor can consider any information it obtains in evaluating whether to extend credit so long as the information is not used to discriminate against an applicant on a prohibited basis. The ECOA applies to all credit as defined in Regulation B; consumer, commercial, utility, agricultural, bank, mortgage, credit card, etc.

Regulation B also defines that ECOA only applies when "credit" is considered to be extended. "Credit" is defined as "the right granted a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefore."

Regulation B applies to "credit transactions" which are defined as "every aspect of an applicant's dealings with a creditor regarding the application for credit and/or the existing extension of credit (including ; information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; the alteration, or termination of credit; and collection procedures").

Regulation B requires credit grantors to provide written notification to applicants. This is often referred to as the 30/60/30 Day Rule.

Under Regulation B, a credit grantor must provide notice to the applicant of action taken with the request for credit within 30 days after a completed application received by the credit grantor.

The possible decisions or actions a creditor can make under ECOA are; an adverse action (denial), a counteroffer, or granting the credit requested by the applicant (debtor).

An adverse action is defined as:

- a. Refusal to grant credit in the amount or terms requested.
- b. Termination of an account or an unfavorable change in terms; or
- c. Refusal to increase the amount of credit available.

An example of (a) is if the application is denied outright or if the application contains a place for the applicant to indicate the amount of credit they want, say \$100,000, and the credit assigned is less than the \$100,000 requested.

An example of (b) is closing the account, reducing the accounts existing credit line/limit, changing the terms to less than what the customer originally had, such as open account to COD.

An example of (c) is a customer asks to have their \$100,000 credit line increased to \$200,000 and the request is denied.

These are all examples of adverse actions under ECOA.

If adverse action is taken, notice must be provided by the credit grantor to the applicant or customer that they have the right to request the reasons for the adverse action in writing within 60 days of such action. Notification may be made verbally if the application was verbally made, otherwise it has to be received in writing.

The applicant/ customer then has 60 days from receipt of the credit grantor's adverse action letter to request an explanation for the adverse ruling.

If the applicant / customer requests an explanation of reasons for adverse action within 60 days, the credit grantor is required to provide a statement of reasons within 30 days of receiving the request for an explanation of adverse action. The creditor is not required to provide specific reasons for the adverse action. The creditor can reply and state as the reasons for denial, "adverse credit history"; "lack of business experience"; "lack of working capital"; or "too much secured debt," or any generic reason. However, if the reason for the adverse action was based on information obtained from a credit reporting agency, then the name of the agency must be provided the applicant / customer. That includes Dun & Bradstreet and NACM.

ECOA requires credit grantors to retain records for all adverse actions including applicants denied credit. The records a credit grantor must retain are the credit application, the credit grantor's notification of action, the statement of specific reasons for the adverse action and the applicant's written statement alleging violation of ECOA, if there was one.

The period of time that the records must be retained depends on the amount of the gross revenues of the applicant / customer. For credit applicants with gross revenues of \$1 million or less, the records must be kept for 13 months after notification. For applicants with gross revenues in excess of \$1 million, records

must be kept for at least 60 days after notification. However, if an applicant requests that the records be retained, the creditor must retain the records for 13 months.

Retention of records is also required beyond 13 months if the credit grantor has notice that it is under investigation, is subject to an enforcement proceeding, or is served with notice of an action filed. Then records must be kept until the later of the 13 months or the final disposition of the matter, unless an earlier time is allowed by court order. The statute of limitations for the applicant / customer to commence an action against the credit grantor is two years (federal law) after applying for credit.

In our next Newsletter we will discuss how to avoid and/or defend your organization from an ECOA complaint.

David Balovich is an accomplished author and public speaker. He is presently the North Region credit manager for Holt Cat.

***** NOVEMBER 2015 *****

Day	Date	Group	Location	Time
Tues	3	Austin Construction	Texas Land & Cattle, 6007 N IH 35 & Hwy 290, Austin TX	11:30
Tues	10	Coastal Bend Group	Holt Cat, 1319 S Padre Island Dr. Corpus Christi TX	11:30
Wed	11	Rio Grande Group	302 N Mile 2 ½ East, Mercedes TX	11:30
Thurs	12	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:00
Tues	17	Austin Construction	Texas Land & Cattle, 6007 N IH 35 & Hwy 290, Austin, TX	11:30
Wed	18	Victoria Credit Group	Sky Restaurant, 236 Foster Field, Victoria TX	11:30
Thurs	19	Ad Media Credit Group	Phone Conference Meeting 1-800-791-2345	2:00
Thurs	19	HVAC Credit Group	Texas Air Products, 11122 Gordon Rd, San Antonio TX	11:30
Thurs	19	Fuel & Lube/Heavy Eq.	Phone Conference Meeting 1-800-791-2345	2:30
Fri	20	SW Electrical Group	Onion Creek Country Club, 2510 Onion Creek Pkwy, Austin TX	11:30
Tues	24	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30
DEC	2	Laredo Credit Group	Phone Conference Meeting 1-800-791-2345	2:30

***** CREDIT REPORTS.....

INDUSTRY CREDIT GROUPS.....

COLLECTION RECOVERY.....

A company with financial problems does not acquire them overnight. It has usually experienced one to three years of surfaced difficulty. The earlier these warning signals are identified and analyzed the greater the chance of effective correction action.

Are you using NACM Credit Reports and Industry Group Meetings to help you identify and analyze? Are you using NACM Collection Recovery for the past due account(s)? Call NACM, your Association for all your credit needs and service at (210) 225-7106 or 800-256-5306.

NACM COLLECTION SERVICE

Our collections staff is willing and certainly able to take on those tough, overdue accounts to which you've been devoting too much of your valuable time. We act promptly, personally contacting the debtors on the same day we receive your accounts. We are equal opportunity collectors, that is, no matter where your debtors live in the nation or who they are, we will find them and collect. In cases where we don't collect, we charge no fee, albeit we do so grudgingly.....we don't like failure. For your protection, all funds collected are placed in trust accounts. Also, all employees and attorney's are bonded. When you hit that wall in your collection efforts, give us a call at (210)225-7106 or you can fax your problems to us at (210)293-1501.

We still have some Bond & Lien Booklets available for purchase. If you are interested in obtaining one please give us a call at (210)225-7106.