

Business Credit News

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

“AVOIDING AN ECOA LAWSUIT”

In the last newsletter we discussed the ECOA, Regulation B, and the applicants rights when an adverse decision is rendered to their request for credit, an increase in their credit, or when we change their terms.

As you may recall the ECOA, a federal law, along with Regulation B protects the applicant / customer from discrimination not related to creditworthiness along with their rights to the reasons, financial and non-financial for any adverse action taken against them.

How does one avoid or prepare for a ECOA complaint?

A paper trail demonstrating to disgruntled applicants or their attorney, or FTC audits that a credit grantor complies with ECOA can be useful in avoiding unwanted lawsuits. To comply with ECOA, there are several steps a credit grantor may consider adopting. These steps assist the credit grantor in creating a paper trail evidencing compliance with ECOA.

1. Company Policy: consider adopting a stated policy that there shall be no discrimination on a prohibited basis with the extension of credit.
2. Written Manual: consider including in your company's policy manual a statement the company complies with ECOA.
3. Training: Train credit and sales personnel about ECOA. ECOA may also apply to the credit grantor's sales' team if the company gives them the authority to request credit information from the applicant.
4. Credit Application: The credit application should provide for statement of the supplier's compliance with ECOA. The credit application should not include any language or seek information that may lead an applicant to believe that the information requested would be used to discriminate.
5. Personal Guarantee: ECOA does not permit a credit grantor to require a spouse to sign a personal guaranty if that spouse is not directly involved with the applicant.
6. Notification to Applicant: Comply with the 30/60/30 written notification.
7. Record Keeping: Maintain all credit records. Digital records may be recognized.

What type of evidence may prove a violation of ECOA?

1. Overt Discrimination: When a credit grantor blatantly discriminates on a prohibited basis. Expressions of a discriminatory preference may constitute a violation of ECOA even if the credit grantor does not act on the preference. An example: A credit grantor refuses to sell a sole proprietor because of his race or origin.

2. Disparate Treatment: When a credit grantor treats applicants differently based on a prohibited basis. May be overt or subtle and does not require evidence that differences in treatment were caused by prejudice or conscious intention to discriminate.

3. Disparate Impact: When a credit grantor applies a policy or practice uniformly to all applicants, but the policy or practice has a disproportionate effect on groups protected under ECOA. No violation of ECOA if the disparity created by the policy or practice is justified by business necessity and there is no less discriminatory alternative.

The enforcement of ECOA may be through private lawsuit or through administrative enforcement. A creditor failing to comply with ECOA may be subject to civil liability for actual and punitive damages in either individual or class action lawsuits. Punitive damages are capped at \$10,000 in individual lawsuits; and capped at the lesser of \$500,000 or 1% of the creditor's net worth in class action lawsuits. Winning plaintiffs may also recover from the defendant reasonable attorneys' fees and costs.

For many of us the tragedy of September 11 and the laws that were enacted afterwards has changed the way we conduct our credit investigations and approval processes, given the continued threat of domestic terrorism. Laws have been enacted such as the Patriot Act to ensure that our organizations are not selling to subversive organizations directly or indirectly.

In spite of all the post Sept. 11 legislation, neither the U. S. Congress, the Federal Trade Commission, or The Federal Reserve Board of Governors have changed the ECOA's prohibition of denying credit based on national origin, gender, race, etc.

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

***** **DECEMBER 2015** *****

Day	Date	Group	Location	Time
Wed	2	Laredo Credit Meeting	Phone Conference Meeting 1-800-791-2345	2:00
Tues	8	Austin Construction	Texas Land & Cattle, 6007 N IH 35 & Hwy 290, Austin TX	11:30
Thurs	10	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:00
Thurs	17	Austin Ad Media	Phone Conference Meeting 1-800-791-2345	2:00
Fri	18	SW Electrical Group	Onion Creek Country Club, 2510 Onion Creek Pkwy, Austin TX	11:30



One of the real joys of the Holiday Season is the opportunity to express our sincere appreciation for the part you have played in making the Association what is today.

