



Orally Declining a Credit Application

Question: I am not sure what the guidelines are about orally declining a customer's credit request. Do we still have to send them a decline letter? What are some of the guidelines?

Answer by Dan Persfull: You will find the guidelines in section 202.9 of Reg. B and the Official Staff Interpretations to 202.9.

For consumer requests, written notification is required unless your financial institution received 150 or less applications during the preceding calendar year.

Business notification requirements can be found at 202.9(a)(3).

(You can find the pertinent sections of the regulation in BOL's Alphabet Soup section.)

Unmarried Applicants - Separate Loan Applications?

Question: Do unmarried applicants have to fill out separate loan applications? Does it matter if it is a Residential application or a Retail application? I keep having this same argument with the loan officers. I attended the ABA National Compliance School in Oklahoma recently, and I do believe that it was said unmarried applicants must fill out separate ones. If this is so, where can I find the "law" or "reg" on this to actually prove my point?

Answer by Dan Persfull:

I may be mistaken but I think you must have heard them wrong.

Do you require married applicants to complete separate applications? No, I didn't think so. If you require non-married applicants to submit separate applications then you are discriminating based on marital status.

Look to 202.6(b)(8) and its Commentary.

Renewal of Balloon Note

Question: We obtain a new credit report at renewal of balloon notes. These loans are secured by a 1-4 family dwelling and are consumer purpose. Our

borrowers do not submit a new application for the renewal. Do we need to provide the new "notice to home applicants" since we do obtain a credit report?

Answer by Dan Persfull:

The answer will depend on what you are using the credit report for. Also, an application can be oral or written. If the applicant has not applied to renew the balloon, then what is your legitimate reason for pulling the report?

If you are pulling the credit report to make a decision to renew or not and that report contains a credit score, then it would be my opinion the notice would be required.

If the report is being used for something other than the renewal, then it probably would not.

g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS —

“(1) IN GENERAL — Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the 'lender') shall provide the following to the consumer as soon as reasonably practicable:

“(E) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION — This subsection shall not require any person to —

(iii) disclose any credit score or related information obtained by the user after a loan has closed;

Credit Score Disclosures on Consumer Loans

Question: FCRA/FACTA: Am I required to provide credit score disclosures on all consumer loan applications or only on mortgage applications?

Answer by Dan Persfull: The 212 disclosures are required on all consumer purpose loans to be secured by 1-4 units of residential real property.

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Notice to Home Applicant and Credit Score

Question: I am using the Notice to the Home Applicant and Credit Score Disclosure that is found in the Banker Tools section. I am curious about the numbers that are listed in the drop down menus before the choices. Do they have a significance and, if not, can I delete them out of the template? I am confused because if I choose "Number of revolving accounts" it looks like the customer has 26. An additional question: Does this disclosure have to be also sent out when we have an old Credit Bureau in our file from a previous loan.

Answer by Dan Persfull:

The numbers are the corresponding factor codes. My advice would be to leave them because the reasons, due to space limitation, do not exactly match the reason on the report. Therefore the applicant can refer to code 31, 26, 18, etc.

If the old report contains a credit score, and you use that report then the notices would be required. Remember one of the factors disclosed is the date the score being used was obtained.

FCRA Credit Score Disclosure Question

Question: Is the credit report disclosure applicable if a borrower is borrowing against a 1 to 4 family rental unit? Is the disclosure applicable for an Ag loan under 10 acres if the home is a personal residence and used for collateral?

Answer by Dan Persfull: If the loan request is initiated by a consumer, is for a consumer purpose and is to be secured by a 1-4 units of residential real property the request is subject to the credit score disclosure requirements.

Annual Review of Credit Report

Question: I am a commercial Credit Analyst. We currently have our borrowers (guarantors of commercial debt) sign a Certification and Authorization form so we can pull a personal credit report every time we do an annual review. Is this required or can we just do this annually because of the lending relationship? We now have our new borrowers sign a form that gives us consent to access a personal credit report annually as long as there is a lending relationship. Suggestions or comments?

Answer by Dan Persfull:

Unless your notes are maturing on an annual basis for renewal you do not have a legitimate business purpose to pull an annual credit report on closed-end credit.

Getting the borrower's written permission to do so is your only legal means of obtaining the annual report on closed-end credit.

Denying Credit Based on Status as Non-US Citizen

Question: We have a loan request for automobile loans for an applicant who is not a US citizen, but is here on a work visa. Can we deny this credit due to status as a non-US citizen?

Answer by Dan Persfull:

The following is from the Official Staff Interpretations for Reg. B's 202.6:

Paragraph 6(b)(7)

1. National origin — immigration status. The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. National origin — citizenship. A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

If you use this reason, make certain all applicants within the same residential status is denied. Also, keep in mind that they may not bring a discrimination suit under the ECOA, but they possibly could under the Civil Rights Act.

Credit Score Disclosure When Using Old Report

Question: I attended the seminar with Jack Holzknacht as the speaker (he's great, by the way). My question in regards to the Credit Score disclosure: Does it pertain to pulling a "new" credit report or relying on one that may be a month old?

Example: customer came in on November 1st for an unsecured loan. A new credit report was required. Now the customer comes in on December 2nd and wants a home equity loan for Christmas. Normally, our bank would not require another new report, but would we be required to do the Credit Score disclosure on the real estate loan even though a new report was not required for the new loan? I know this will be a question my loan officers are going to ask me next week.

Answer by Dan Persfull:

The Act says that anyone who uses a credit score in connection with an application initiated after 12/1/04 (the effective date) will provide the credit score information. You are using that score in connection with the loan and one of the requirements is to disclose the date the score used was generated. Therefore in my opinion you would be required to provide the notice.

FACTA Mortgage Notice Requirement

Question: The FACT Act -- Is the notice to the home loan applicant and disclosure of credit score information required to be sent on denied applications as well as approved loan requests, and when should the forms be given to the borrowers (closing, prior to closing, etc.)?

Answer by David Dickinson:

Yes, this disclosure is required if you "use" a credit score on all applications - whether denied or not. It is to be provided within a "reasonable period of time". I think that providing it with the denial or with the GFE is reasonable.

Timing of Negative Info Reporting Notice

Question: Our bank has chosen to mass mail a FACT Act "notice of negative information" to all existing consumer customers and include the notice at loan closing for new customers. Is this ok or must it be done at the time we anticipate reporting it or after reporting it? Is one upfront notice sufficient?

Answer by Dan Persfull:

SEC. 217: REQUIREMENT TO DISCLOSE COMMUNICATIONS TO A CONSUMER REPORTING AGENCY

(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS — After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) *with respect to the same transaction, extension of credit, account, or customer* **without providing additional notice to the customer** .

FCRA Credit Score Disclosure on HE Loans

Question: Is a Disclosure of Credit Score required on all loans secured by 1 to 4 units of residential RE loans, including Home Equity?

Answer by Dan Persfull:

If the loan request was initiated by a consumer for a consumer purpose, yes. Also keep in mind the 1-4 units of residential real property does not have to be the applicant's primary residence and it would also cover the infamous "abundance of caution" loans.

Disclosure of Credit Scores

Question: Regarding disclosure of credit scores, does it only pertain to Mortgage Loan applications? I know it refers to consumer loans secured by 1-4 family residential property. Which is correct?

Answer by Dan Persfull:

ANY loan request initiated by a consumer, for a consumer purpose and is to be secured by 1-4 units of residential real property is covered under section 212.

This would include:

Purchase requests

Construction requests

Refinancing requests

Closed-end home equity requests

Home Equity Lines of Credit requests

AND yes it would even apply if the loan officer takes a 1-4 unit of residential real property as an abundance of caution.

When Inquiries Become Applications

Question: When does a potential borrower's question about a possible loan become a loan application? For example, if a person asks if he'd be able to borrow money, explains he has bad credit and no income and you explain that the bank doesn't lend unless credit is good and cash is available to repay debt - is that person considered an applicant and does a turn-down (notice of adverse action) need to be completed?

Answer by Andy Zavoina:

I would refer you to an FDIC publication. It was an attachment to FIL 35-96 <http://www.fdic.gov/news/news/financial/1996/fil9635.html> but shows currently to be unavailable in e-form. You are referenced to order it. It may well be that it is being updated due to changes in Regs. B and C.

The brochure is "MORTGAGE LOAN PREQUALIFICATIONS:

APPLICATIONS OR NOT

A GUIDE FOR COMPLYING WITH REGULATIONS B AND C"

It is a 14 page booklet. Here is an excerpt from the original copy I have, which would exclude any changes influenced by recent Reg. B and C changes:

"Understanding the distinction between an "inquiry" and an "application" is important for compliance with Regulation B because several requirements apply

only to applications (not inquiries). Regulation B defines a loan application as:

... an oral or written request for an extension of credit that is made in accordance with the procedures established by a creditor for the type of credit requested.

The Federal Reserve's staff interpretations of Regulation B further clarify that the phrase "procedures established":

... refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's established procedures are to accept both oral and written applications.

In other words, in some circumstances, informal inquiries, whether verbal or in writing, must be treated as an application pursuant to Regulation B.

The next section of the interpretations describes one critical circumstance where a lender may turn an oral inquiry into an application, even if the lender's policy is to accept only written applications:

A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the [adverse action] notification requirements under Section 202.9. Whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the applicant says or asks.

When a lender verbally disqualifies a potential borrower, even on a legitimate underwriting basis, the lender, according to Regulation B, is treating an inquiry as an application. While this is allowable under Regulation B, lenders are obligated to follow certain notification and record keeping requirements of Regulation B and Regulation C, the Federal Reserve's implementing regulation for the HMDA. These notification and record keeping requirements apply only to applications and not inquiries.

Therefore, if enough information has been collected to deny a loan, and a denial has been communicated to the applicant, this interaction between a lender and prospective borrower is an "application" for the purposes of Regulation B. This is true, regardless of the amount of information collected by the lender, lender application procedures, fees paid to the lender, whether the prospective applicant has identified a specific property or loan amount, or whether the communication is written or verbal.

In some instances, the distinction between an inquiry and a denied application can be unclear. In recognition of lenders' confusion about Regulation B and prequalification programs, the Federal Reserve's staff interpretations specifically state that:

Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request... For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirement of section 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.⁴ The staff interpretations provide some examples of situations in which only an inquiry has taken place. It is an inquiry:

... when a consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio and debt-to-income ratio.

Even if the lender collects information from a customer, an inquiry may still not be an application. The staff interpretations also clarify that it is not an application:

... when a consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended down-payment, but the loan officer only explains the creditor's loan-to-value policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

Communication with a prospective applicant could still qualify as an inquiry if the lender and prospective applicant determine that the applicant's debt and housing ratios exceed the lender's standards, but the lender points out the compensating factors that could be taken into account that might allow a loan to be approved. In contrast, if the lender fails to point out the bank's discretion to consider positive compensating factors, leaving the prospective applicant with the impression that the lender would not approve the loan, then such communication would have turned an inquiry into a denied application.

In these examples, the determining factor in classifying a particular interaction with a prospective applicant as an inquiry or an application is the communication

of a denial by the lender to the applicant. The denial does not have to be explicit in nature and can be construed as any communication that would lead a reasonable person to conclude that an application would receive negative consideration.

In contrast to declined applications, as long as prospective applicants are being encouraged to proceed, lenders have reasonable discretion in defining what constitutes an application. The Regulation B staff interpretations indicate that “a creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.”⁷ For example, within the flexibility provided by Regulation B, some lenders might consider prequalification certificates to constitute an application, while others might require a borrower to have a contract to purchase a property and file a formal written application in order to generate an application.