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Implementing Regulation B Spousal Signature Provisions



The Equal Credit Opportunity Act and its implementing rule, Regulation B, prohibit any creditor from discriminating based on sex or marital status, among other protected statuses. All the federal banking agencies are involved in examining compliance with Regulation B; however, the Dodd-Frank Act transferred authority over implementation and interpretation from the Federal Reserve to the Consumer Financial Protection Bureau. Since the Dodd-Frank Act, we have seen a renewed emphasis on Regulation B during compliance examinations, and in many of these cases the primary issue has been violations of the spousal signature provisions.

Marital Status Rules Under Regulation B

When an applicant applies for individual credit, a lender generally may not ask about the applicant's marital status. There are two exceptions to this rule: (1) if the credit

transaction will be secured; or (2) if the applicant either resides in a community property state or supports the debt with assets located in a community property state. A lender is free to inquire about marital status when there is a request for joint credit, regardless of whether the credit will be secured or unsecured.

Regulation B provides that a lender may not require a signature of anyone other than an applicant or joint applicant if the applicant otherwise meets the lender's creditworthiness standards. However, third-party signatures may be required to the extent necessary to perfect a lien on jointly held property serving as collateral for a secured loan or, in the case of an unsecured loan, to allow the lender to reach jointly held property relied upon to satisfy the lender's creditworthiness standards. In addition, co-signors or guarantors can be required as necessary to meet the lender's standards.

An applicant's spouse may serve as an additional party, but requiring the spouse to be an additional party violates Regulation B. A loan officer may request support in the form of additional collateral or a guaranty, but the choice of guarantor must be left to the applicant. The loan officer should make clear that the spouse need not be the guarantor. If a borrower then offers his or her spouse to sign on to a loan, this decision should be documented in the loan file. Otherwise, when the loan is reviewed by an examiner, there will be no evidence to show that the bank did not require a spousal signature in violation of Regulation B.

Note that in business credit applications, a bank may require personal guarantees of those individuals with qualifying relationships to the entity, such as members of a limited liability company or directors of a closely held corporation. This right to require guarantees does not extend to a spouse of a person with a qualifying relationship to the borrower, unless the spouse has his or her own qualifying relationship. If additional support is needed to meet the lender's creditworthiness standards, a spousal guarantee may be provided at the borrower's option, but may not be required by the bank.

Given that the spousal signature requirements of Regulation B do not apply to joint applicants, this exception is often utilized by banks where two spouses will be parties to a loan. A person's intent to apply for joint credit must be appropriately evidenced at the time of application. The easiest way to document intent to apply for joint credit is to require an affirmative statement signed or initialed by the applicants stating they intend to apply for joint credit. This can be accomplished as part of a written loan application, as a stand-alone document, or as part of a joint financial statement. Signatures on a promissory note or submission of a joint financial statement without a specific affirmation of intent to apply for joint credit are not acceptable evidence under Regulation B. It is important to note that intent to apply for joint credit must be documented at the time of application for any extension of credit, including loan renewals.

Same-Sex Marriage Under Regulation B

Per a June 2014 memorandum issued by CFPB Director Richard Cordray in response to the U.S. Supreme Court striking down Section 3 of the Defense of Marriage Act as unconstitutional, the CFPB has stated it intends to recognize same-sex marriages when interpreting Regulation B and other fair lending regulations under CFPB jurisdiction. The CFPB will consider a person married nationwide if the marriage is legal in the state in which it was obtained. Domestic partnerships, civil unions or other relationships will not be included as marriage

for Regulation B purposes. Based on this CFPB memorandum, it is clear that banks must extend the spousal signature protections of Regulation B to same-sex married couples even if the state in which the bank is located does not itself recognize same-sex marriage.

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Regulation B Compliance Program

If the regulators find that a bank violated Regulation B, the bank could be subject to enforcement actions, civil liability, lowered CRA ratings and lowered compliance ratings. In addition, examiners can require a bank to conduct extensive loan reviews to identify other issues, provide written advice of the violation to affected customers and release spouses as co-borrowers and guarantors. In recent examinations, we have seen banks face substantial Regulation B spousal signature issues even where the bank has a clean Regulation B compliance record. All it takes is one lender to inappropriately require spousal signatures or fail to adequately document Regulation B compliance to affect an entire bank.

To avoid Regulation B compliance issues among a bank's loan officers, the board of directors and officers should make compliance a priority by ensuring the bank has appropriate written Regulation B spousal signature procedures in place, either as part of the loan policy or as a stand-alone policy, and to provide adequate training and oversight of the lending staff. In addition, the use of a written affirmation of intent to apply for joint credit needs to be included as part of the application process and the lenders need to use it appropriately and have it signed at the time of application. Further, banks should be careful when obtaining spousal signatures as co-borrowers or guarantors, and only obtain them as necessary to meet creditworthiness standards. In situations where a spouse is not a joint applicant, the loan file must be clear that a spousal signature was offered by the borrower in response to a request for additional credit support. **BN**