**March 2020**

**Regulation B and Adverse Action Notice Requirements**

*Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union’s attorney.*

**Q. 1. We’re a state chartered credit union, what address should we use for our ECOA notices?**

**A. 1.** State chartered credit unions under $10b in assets are considered a ‘creditor not listed above’ and will use the FTC address listed in Appendix A of ECOA: <https://www.consumerfinance.gov/eregulations/1002-A/2013-22752_20140118#1002-A-p1-2-a>

Federal credit unions will use the NCUA’s address, and all credit unions over $10b in assets will use the CFPB’s address.

**Q. 2. How do we handle adverse action notices when we deny an application through an indirect lender?**

**A. 2.** ECOA has the following guidance for applications submitted through a third party: <https://www.consumerfinance.gov/eregulations/1002-9/2013-22752_20140118#1002-9-g>

g. Applications submitted through a third party. When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

Official Interpretation to 9(g)

9(g) Applications submitted through a third party.

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.
2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.
3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

**Q. 3. We send a notice for an incomplete application, can this notice also serve as an adverse action notice?**

**A. 3.** We highly recommend the Consumer Compliance Outlook newsletter covering adverse action notice requirements under ECOA and FCRA. They have information on common violations regarding incomplete applications, and give some guidance on how you would combine the incomplete application notice and adverse action notice: <https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/>

**Common notice violations.**[10](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#footnotes) Common Regulation B adverse action notification and timing errors relate to handling incomplete applications. Creditors may fail to identify an application as incomplete and, as such, fail to meet notice content and timing requirements. A creditor has two options after receiving an incomplete application: it can (1) take action on the application and notify the applicant according to Regulation B’s standard notice requirements or (2) refrain from taking action and notify the applicant that the application is incomplete.[11](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#footnotes) If the creditor provides a notice of incompleteness, the notice must (1) be in writing, (2) detail the information needed to complete the application, (3) provide a reasonable deadline, and (4) state that the application will not be reviewed if the information is not received.[12](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#footnotes) Regardless of which notice is provided, the notice must be provided within 30 days.[13](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#footnotes)

**Q. 4. If we send a member a counteroffer, do we have to send an adverse action notice on the original request for credit? Or, do we just send the adverse action notice when the member does not accept or fails to respond to the counteroffer?**

**A. 4.** The Consumer Compliance Outlook newsletter covering adverse action notice requirements under ECOA and FCRA has a table titled “When Adverse Action Notices Are Required” that includes the following information: <https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/>

A creditor must provide notice if it has:[a](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#fn)

* Taken adverse action on a completed credit application;
* Taken adverse action on an incomplete credit application;
* Taken adverse action on an existing credit account; or
* Made a counteroffer to an application for credit and the applicant does not accept the counteroffer:[b](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#fn)

Notice is not required if:

* The transaction does not involve credit;
* A credit applicant accepts a counteroffer;
* A credit applicant expressly withdraws an application; or
* The creditor approves a credit application and both parties expect that the applicant will inquire about its status, but the applicant does not inquire within 30 days after application[c](https://consumercomplianceoutlook.org/2013/second-quarter/adverse-action-notice-requirements-under-ecoa-fcra/#fn) (the approved application is treated as withdrawn)

Footnote b A creditor can provide a combined counteroffer and adverse action notice. The creditor would not have to send a separate adverse action notice if the counteroffer is not accepted. See Comment 9(a)(1)-6 of the Official Staff Commentary for Regulation B. External Link

**Q. 5. What are the record retention requirements for an adverse action notice?**

**A. 5.** ECOA requires that applications and adverse action notices are retained for 25 months: <https://www.consumerfinance.gov/eregulations/1002-12/2013-22752_20140118#1002-12-b-1>

b. Preservation of records

1. Applications*.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

1. Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;
2. A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):
   1. The notification of action taken; and
   2. The statement of specific reasons for adverse action; and
3. Any written statement submitted by the applicant alleging a violation of the Act or this part.

2. Existingaccounts*.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

1. Any written or recorded information concerning the adverse action; and
2. Any written statement submitted by the applicant alleging a violation of the Act or this part.

3. Other applications*.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

Official Interpretation to 12(b)(3)

Paragraph 12(b)(3).

1. *Withdrawn and brokered* applications*.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9-2.) In such cases, the 25-month requirement runs from the date of application, as when:
   1. An application is withdrawn by the applicant.
   2. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

**Q. 6. Are adverse action notices required if we deny deposit account products or services?**

**A. 6.** Under ECOA an adverse action notice would not be required since the transaction did not involve credit. If an adverse action was taken based on information contained in a credit report an adverse action notice would be required under FCRA. Using a credit reporting agency such as ChexSystems to deny a deposit account or products or services related to a deposit account would require an FCRA adverse action notice. The preamble to the ECOA’s 2011 final rule discusses this requirement: <https://www.federalregister.gov/documents/2011/07/15/2011-17585/equal-credit-opportunity>

Section 202.2(c) of the ECOA limits the definition of adverse action to decisions regarding credit. The FCRA, however, does not include such a limitation. See section 603(k)(1) of the FCRA. The FCRA therefore applies to adverse action decisions related to credit, but also decisions regarding, for example, a deposit account, insurance product, or employment. Although a credit score may generally be used in making or arranging loans, a credit score may also be used in taking adverse action not related to credit. The Board believes that a person would need to disclose a credit score obtained from a consumer reporting agency as part of the adverse action notice as set forth in section 1100F of the Dodd Frank Act, even if the person used the credit score to take adverse action for a non-lending product. In requiring credit score disclosures, section 1100F does not state that the credit score disclosures are only required for adverse action decisions related to credit.

The CFPB has a consumer blog post on the topic of denied bank accounts which states an adverse action notice would be required: <https://www.consumerfinance.gov/about-us/blog/denied-bank-account-heres-what-you-should-know/>

You also have the right to request a free report if you have received an "adverse action" notice. For example, let’s say a bank turns you down for a checking account based on a checking account report. This is an example of an "adverse action." The bank must provide you with an "adverse action" notice that includes the name and contact information of the checking account screening company from which the bank got the report. You can contact the reporting company and request a free copy of the report.