

MARKS & WEINBERG, P.C.

REJECTION NOTICES: YOU CAN'T JUST SAY NO (1994)

Most lenders and lessors think that rejecting a credit application is the end of the matter. Unfortunately, in today's legal environment, saying "no" may give rise to a host of new problems. A straw poll reveals that lenders and lessors use different means of rejecting loan or lease applications, varying from detailed written rejections to oral communications and reliance on third parties to deliver the message.

Generally, our advice is to keep any rejection as simple as possible, giving the rejected party no reason to think that it was misunderstood (inviting an unwanted resubmission) or to have grounds to believe that some form of unfair dealing, discrimination, anti-competitive intent or even libel is involved. This advice is tempered by federal law.

Designed as an anti-discrimination statute for use in commercial transactions as well as consumer credit transactions, the Equal Credit Opportunity Act ("ECOA") has been in operation for over 10 years. Many small ticket lessors and lenders, however, pay it little heed.

Compliance with ECOA is not all that difficult, but the penalties for failure to comply can be serious, including damages for emotional distress and humiliation, class actions and punitive damages. Although the Federal Reserve Board has stated that ECOA is not intended to apply to true lease transactions, a 1984 case extended it to consumer leases and most commentators agree that equipment lessors, like lenders, should comply with ECOA.

Regulation "B" issued under ECOA requires that a form notice be delivered in the event of any "adverse action" if the applicant's gross revenues are less than \$1 million per year. The notice must contain either a statement of the



specific reasons for the action taken or disclosure of the applicant's right to receive such a statement within 30 days if requested within 60 days of receipt of the notice. Where the applicant is a larger business, having gross revenues in excess of \$1 million in the preceding fiscal year, notification may be given orally and the reasons are only required to be given if requested in writing within 60 days of such notice.

An important exception exists for businesses with annual gross revenues of \$1 million or less. Such lenders may give the rejection notice orally and disclosure of the right to receive a statement of reasons for rejection may be given at the time of application instead of when the adverse action is taken, so long as the disclosure is in a form which the applicant may retain and includes the name, address and telephone number of the person or office from which the explanation may be obtained. In the case of an application made over the telephone, the creditor may orally notify the applicant of its right to a statement of reasons for an adverse action.

We usually advise lenders making loans to small businesses and small ticket lessors that the credit application should contain the required disclosure of the applicant's right to receive specific reasons for rejection. If there is any reason to believe that the applicant is going to be litigious or that trouble may otherwise result from the rejection, the ECOA notice should be sent out after rejection.

Above all, lenders and lessors should be sensitive to the need to avoid saying too much. It is also important to avoid inconsistency between explanations to the applicant and any notation in the file or any statement made to a third party regarding the reasons for rejection.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit www.leaseattorney.com or contact Barry Marks at 205-251-8303 or Ken Weinberg at 205.251.8307.

