

December 11, 1992

Betty J. Richardson General Mills Toledo Federal Credit Union P.O. Box 923, Toledo, Ohio 43693

Re: Regulation B (Your October 28, 1992, Letter)

Dear Ms. Richardson:

You have asked whether General Mills Toledo Federal Credit Union may require a loan applicant to have a certain amount of employment seniority to receive an unsecured loan. Such a policy is permissible as long as it does not have a discriminatory effect on a protected class.

ANALYSIS

General Mills Toledo Federal Credit Union (FCU) has a maximum limit for unsecured loans of \$4500. The amount is determined by employment seniority as follows:

2 months to 2 years - \$1,000.00
2 years to 3 years - \$1,500.00
3 years to 5 years - \$2,500.00
5 years and over - \$4,500.00

The FCU also requires that 10% of the amount borrowed be in the members account when there is less than 2 years seniority.

The Equal Credit Opportunity Act (the "ECOA") makes it unlawful for any creditor to discriminate against any applicant, with respect to a credit transaction:

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under this chapter. 15 U.S.C. ~1691(a).

The question that you raise is not facially covered within the ambit of the ECOA or the applicable Regulation B. 12 C.F.R. Part 202. "[A] creditor may consider any information obtained so long as the information is not used to discriminate against an applicant on a prohibited basis." 12 C.F.R. ~202.6(a). Only if the credit policy is determined to have a discriminatory effect, even though no such discrimination can be detected on the face of the policy, may a possible ECOA violation occur. The "effects test" is a judicial doctrine, which, in essence, holds that policies may be described as discriminatory if the policy has a negative impact on persons intended to be protected by law, even if there is no intent to discriminate.

In light of the "effects test" and good business practice, the loan risk assumptions underlying your loan requirements should be regularly reviewed in order to determine whether they, in fact, relate to credit losses and whether they have the effect of discriminating against one of the classes of individuals included in Section 202.2(z) of Regulation B. For example, we note that the requirement of five years continual employment for a \$4500 signature loan may have a discriminatory effect if a large portion of a protected class participates in seasonal or migratory work in your area. We suggest that you obtain the opinion of local counsel concerning these matters and other applicable state laws governing discrimination.

One additional note. We have contacted the Federal Reserve Board and they concur with our opinion that

although the policy on its face does not violate Regulation B, there is a potential problem if the policy has a discriminatory effect.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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