

# Equal Credit Opportunity Act (Regulation B)

By:  
**Anthony Lamm**



1608 Walnut Street Suite 703  
Philadelphia, Pa. 19103  
(215) 399-0913  
[www.lammlaw.com](http://www.lammlaw.com)

# Regulation B

## I. Equal Credit Opportunity Act (Regulation B) 12 C.F.R. 202 7(d)

- A creditor shall not require the signature of an applicant's spouse or other person other than a joint applicant on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness.

*If it's already approved - being approved - So, there should not be discrimination based on this Act.*

# Regulation B

*Wanted everyone, including wives to be able to get credit for cars*

II. Regulation B aims to promote the availability of credit to all creditworthy applicants without regard to sex or marital status and other factors, and prohibits creditor practices that discriminate on the basis of any of these factors. 12 C.F.R 201.1(b)

*But first you have to be creditworthy*

III. Spouse Guarantor Rule *a Creditor Practice*

- Prohibits a creditor from requesting an applicant's spouse to guaranty a credit instrument, even if the creditor requires someone to execute a guaranty. 12 C.F.R. 202.7(d)5.

*prohibits even asking could you sign*

*it doesn't have to be spouse to the bank*

**ELFA**

Equipping Business for Success

# Regulation B

## Spouse Guarantor Rule (continued)

- The applicant's spouse may serve as an additional party supporting an application, but the creditor should not require that the spouse be the additional party. *They can get another person to step up.*
- Before ECOA, a creditor could insist that the applicants' wives become guarantors to reach assets for collateral jointly held, even though a creditworthiness analysis would show that the spouses additional signature was not required by the creditors' own standards.

ECOA offer  
guarantor as  
additional  
collateral

Even though it  
was not  
necessary  
by the  
very  
BEST  
credit standards

**ELFA**

Equipping Business for Success



# Regulation B

## Spouse Guarantor Rule (continued)

### A. Exceptions: Secured Credit

12 C.F.R. 202.7(3) was promulgated for the protection of applicant's spouses so that they did not have to become jointly liable for the debt along with the applicant itself.

*Limitation*

12 C.F.R. 202.7(3) provides that “...if an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary or reasonably believed by the creditor to be necessary under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights or assign earnings.”

# Regulation B

## IV. Who an Applicant is?

- The question of whether signing a guaranty is an application for credit or that the guarantor is an applicant is pivotal to whether a creditor violates Regulation B by requiring the applicant's spouse to sign a guaranty and also whether that act by the creditor can be used as an affirmative defense available to a guarantor who has been brought to charge concerning the guarantor's liability on the debt.

A. Does the definition of the word "applicant" as used in ECOA and Regulation B include guarantors?

1. RL BB Acquisitions, LLC v. Bridgemill Commons Dev. Group, LLC, 754 F. 3d 380; 2014 U.S. App. Lexis 10907; 2014 FED App. 0123p (6th Cir); 2014 WL 2609616.
2. Hawkins v. Cmty. Bank of Raymore, 761 F.3d 937, 2014 U.S. App. Lexis 15006 (8th Cir); 2014 WL 3826820.

# Regulation B

## Who an Applicant Is? (continued)

- B. RL BB Acquisitions: Finds that Regulation B's definition of applicant includes guarantors as applicants and, the spouse/guarantor can raise a violation of ECOA and use Regulation B as an affirmative defense.
- C. Hawkins: the Court concluded that the text of the ECOA clearly provided that a person did not qualify as an applicant under the statute solely by virtue of executing a guaranty to secure the debt of another and therefore in this case, the creditor did not violate ECOA by requiring the spouses to execute the guarantees.

Rationale: A guaranty is collateral and secondary to the underlying loan transaction between the lender and the borrower. While a guarantor no doubt desires for a lender to extend credit to a borrower, it does not follow from the execution of a guaranty that a guarantor has requested credit or otherwise been involved in applying for credit. Thus, a guarantor does not request credit and therefore cannot qualify as an applicant under the unambiguous text of the ECOA.