

## Legal Alert

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**QUESTION: WHY SHOULD I CARE ABOUT ALL OF THE DETAILS OF COMPLIANCE WITH THE EQUAL CREDIT OPPORTUNITY ACT?**

**ANSWER: BOTH ACTUAL AND PUNITIVE DAMAGES ARE AVAILABLE FOR VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT.**

### ***Noncompliance with the Equal Credit Opportunity Act can be expensive!***

Key Bancshares of Maine, Inc. probably wished it had never heard of Joseph J. Ricci. Fifteen million dollars in punitive damages were upheld against Key Bancshares of Maine, Inc. and other defendants in the case of *Ricci v. Key Bancshares of Maine, Inc.*, 662 F.Supp. 1132 (U.S. D.Ct. Maine 1987). Four million dollars of the punitive damages were attributed to violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691-1691f (1982).

Three million dollars of the punitive damages were assessed against Key Bancshares "for discrimination based on plaintiff Ricci's national origin, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*" You "sorta" understand why punitive damages of \$3 million might be awarded by a jury if it thinks that a bank discriminated based on someone's Italian heritage!

Surprisingly, however, \$1 million was awarded to one of the plaintiffs because Key Bancshares failed to "provide a statement of reasons for denial of credit, in violation of the Equal Credit Opportunity Act." Getting clobbered for \$1 million in punitive damages for messing up your credit paperwork hurts! The punitive damages were upheld because there was "an abundance of evidence" that the bank failed to give the legally required written statement of reasons for refusing to extend credit. First, the bank failed to communicate the reasons for denying credit. Later, the bank provided incomplete and deceptive communications. See why I told you that compliance with the details of the ECOA is important?

***What should my company do to comply with the Equal Credit Opportunity Act?***

The Equal Credit Opportunity Act and Regulation B of the Federal

Reserve Board prohibit discrimination against credit applicants because of race, color, religion, national origin, sex, marital status, age, receipt of welfare, or assertion of Consumer Credit Protection Act rights. Don't even do anything that might discourage credit applicants from asking for credit for any of those reasons. You can't even ask about certain prohibited information as part of the credit process.

### ***Notifications required.***

Creditors must notify credit applicants if they deny credit, grant credit in an amount less than what was requested, or cancel credit. Your company's processes and systems need to notify credit applicants of the actions you take within certain deadlines.

- Notify applicants of the action taken with regard to the credit application within thirty (30) days of approval, counteroffer, or adverse action on the application.
- Let applicants know thirty (30) days after taking adverse action on any incomplete application. In other words, let them know that the application was incomplete and cannot be granted.
- Give thirty (30) days notice after taking adverse action on existing accounts.

### ***Suggested simplification of your notification process.***

- Tell all credit applicants when they first apply for credit that they have the right to a statement of the reasons for any adverse action taken, if they ask.
- The initial notification should include the disclosure of the applicant's right to request that a statement of specific reasons for the adverse action be provided within thirty (30) days, *so long as the statement is requested by the applicant within sixty (60) days of notification of the credit decision.*
- Include the notification that the government prohibits discrimination on the basis of all the prohibited categories and classifications with the initial disclosure of the right to request information.

### ***Keep records!***

Keep records to prove that you did not discriminate in granting credit. Keep your records demonstrating your procedures. Keep copies of the applications received and the notices provided. Time limits vary for how long to keep records, but civil actions to enforce the Equal Credit Opportunity Act and Regulation B must be brought within two (2) years after the violation. Make sure you keep your records long enough to be able to defend your business from any claimed violations.

### ***Compliance is worth it!***

When you think about whether you need to comply with the

paperwork and reporting requirements of the Equal Credit Opportunity Act, you need to keep in mind the potential amount of damages that could be awarded for neglecting the paperwork. Actual damages "may include out-of-pocket monetary losses, injury to credit reputation and mental anguish, humiliation or embarrassment," according to *Fischl v. General Motors Acceptance Corp.*, 708 F.2d 143 (U.S. Ct. App., 5th Cir., 1983). That court also reminded that punitive damages may be awarded, regardless of proof of actual damages, "if the creditor's conduct is adjudged wanton, malicious or oppressive, or if it is deemed to have acted in reckless disregard of the applicable law." If the claimant is awarded either actual or punitive damages, attorneys' fees can be added to the judgment.

Next time you feel like tossing the credit application in the trash without providing the reasons for the denial of credit, consider that "*reckless disregard of the applicable law*" may entitle your rejected customer to punitive damages. If your credit policies and procedures fail to provide for consistent notices required by the Equal Credit Opportunity Act, you may have exposed the company to a class action lawsuit. If you multiply the damages by all of the people who did not receive the proper notifications, the number could be staggering!

Please let me know if you need assistance complying with the Equal Credit Opportunity Act or other credit laws.

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