

ABA Staff Analysis: Joint Credit Reports and Fair Lending to Joint Applicants April 2010

Several bankers have reported to ABA that examiners have been criticizing banks about their practices with respect to charging for credit reports involving joint applicants. While particular cases often involve a combination of issues, the element attracting all the attention involves charging married joint applicants one fee for a joint credit report while charging unmarried joint applicants higher fees for separate credit reports. This happens when a “joint” inquiry is made for a married couple but separate individual inquiries are made for unmarried joint applicants. The difference in price is based on the credit bureau fee schedule: many banks simply pass-through the credit bureau fee.

The Equal Credit Opportunity Act, as implemented by Federal Reserve Regulation B, specifies that “a creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.” 12 CFR 202.4(a). As defined, the prohibited bases include “marital status.”

ABA has met with FDIC representatives in Washington, D.C. and spoken to Federal Reserve staff as well as credit bureaus and their representatives. While the difference in fees is small, the regulators’ position is that charging different fees for similarly situated married and unmarried joint applicants is a fair lending violation. We have been informed that FDIC did refer one such case to the Justice Department. Justice returned the case to FDIC in reliance on the FDIC’s remedy.

The regulators have not yet issued official guidance, and so ABA provided initial analysis as part of its April 12, 2010 edition of *THE Compliance Source*. We are now updating that analysis based on additional facts we have learned from ongoing discussions with the Consumer Data Industry Association (CDIA), the trade association that represents credit bureaus.

Our further discussions with CDIA inform us that all credit bureaus offer an option for a bank to submit a joint inquiry for credit reports, which will result in the delivery of two different consumer reports via the single request. (Presentation of this information may vary across credit repositories.) This inquiry option is available for banks which are processing a joint application for credit.

There are a few important facts to consider regarding the joint inquiry option:

- While some credit bureaus allow for the submission of a joint inquiry even where the joint applicants live at different addresses, this is not the case for all credit bureaus.
- The joint inquiry is not limited to married couples which are making a joint application for credit. The option may be used to order two credit reports for any joint application.
- The joint inquiry may, depending on the credit bureau or reseller with which a bank contracts, result in a favorable price relative to ordering two credit reports via two separate inquiries. It is this possible pricing differential that is most important.

Some banks have mistakenly submitted joint inquiries only for married applicants and have not used the joint inquiry option for unmarried applicants. In doing so a bank may have ended up passing through a higher charge to the unmarried joint applicants than the charge for married joint applicants.

The key to treating **similarly situated** applicants the same is to ensure that they are not paying different amounts for the credit reports due to the method of ordering credit reports (joint v. individual inquiries). To do so a bank should treat all joint applicants (married or not) where they share the same address the same, and similarly treat all joint applicants (married or not) living at different addresses the same when it comes to ordering credit reports. In doing so the bank will then pass on to the consumers the same charges whether the joint applicants are married or not, or are living at the same address or not.

Note that these cases can be very fact specific, and you should be careful about your other credit practices when handling joint applicants. ABA recommends that you take time to review your current

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practices for pulling and charging for credit reports for joint applicants to ensure that you are treating similarly situated individuals the same.

Questions? Contact [Leslie Callaway](#), [Mark Kruhm](#), or [Rob Rowe](#) for more information.

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