

Guidance on the Spousal Signature Provisions of Regulation B

I. Overview

Federal Reserve Regulation B, which implements the Equal Credit Opportunity Act (ECOA), specifically limits when a creditor may seek an applicant's spouse as a cosignor or guarantor. These rules vary depending on the circumstances, such as whether:

- the applicant's creditworthiness is supported or secured by property that is jointly owned,
- the application is for joint credit, or
- a community property state is involved.

II. Spousal Signatures: General Rules, Exceptions and Related Requirements

A. General Rules

A creditor cannot ask for or require the signature of an applicant's spouse or any other additional party on a credit instrument if the applicant:

- requests an individual credit account, and
- individually meets the creditor's standards for creditworthiness for the amount and terms of the credit requested.¹

In summary, if the applicant applies for individual credit and meets the creditor's standards for creditworthiness, Regulation B prohibits a creditor from requiring either the additional signature of a cosignor on the credit instrument or a guarantor.²

If the applicant does not meet the creditor's credit standards, the creditor can require a cosignor or guarantor, but it cannot require that the cosignor or guarantor be the applicant's spouse.³

B. Exceptions

However, there are exceptions to the spousal signature rules:

1. Secured credit

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."⁴

2. Unsecured credit

If an applicant requests unsecured credit and relies on jointly owned property to establish creditworthiness, "the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant."⁵

3. Unsecured credit—community property states

"If a married applicant requests unsecured credit and resides in a community property state, **or** if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

- a. applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and
- b. the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property."⁶

Note: What is Community Property?

Community property laws determine, among other things, which spouse has management and control over the marital property, and in turn, who has the legal power to commit the property to support a credit or secure a loan. Creditors making loans (a) to married borrowers who live in a community property state or (b) that are supported or secured by collateral located in a community property state should become familiar with the management and control provisions of the community property law in such states to assure that signatures on security and/or credit instruments are limited to those necessary to perfect their interest in the underlying collateral in the event of the borrower's death or default.

As of the date of this letter, Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin use some form of community property system. Since state laws are subject to amendment and repeal, creditors should confirm this list with counsel.

C. Related Requirements

1. Need for signature on note—definition of "reasonable belief"

In most states that do not follow community property principles, the co-owner does not have to sign the note to grant the creditor access to the property, but only the security documents, such as a mortgage or lien. If a creditor believes that the co-owner's

signature is needed on an instrument that imposes personal liability to assure access to jointly owned property securing the debt, such belief should be supported by a thorough review of pertinent statutory or decisional law or an opinion of the state attorney general obtained prior to requiring the signature.⁷

2. Rules applicable to spousal signatures apply equally to guarantees

A guarantee on an extension of credit is part of a credit transaction and is subject to Regulation B's rules governing spousal signatures and other anti-discrimination provisions. Although a creditor may require that all partners, directors, officers or shareholders of a closely held corporation personally guarantee a loan, it cannot automatically require their spouses to also sign the guarantee, even if the guarantee is supported or secured by jointly owned property. Obtaining the signature of a guarantor's spouse is subject to the same restrictions as obtaining the signature of an applicant's spouse.⁸

In cases where an individual has applied for a business loan, a creditor may require the guarantee of another partner, director, officer or shareholder, but this requirement must be based on the guarantor's relationship with the business. For example, a creditor may require all partners, directors, officers or shareholders of a closely held corporation to guarantee a loan, or an additional partner, director, officer or shareholder to provide a guarantee, but it cannot single out a partner, director, officer or shareholder because he or she is the spouse of the applicant.⁹

3. Integrated note/security agreement

Where a creditor uses an integrated instrument that combines the note and the security agreement, a spouse can be asked to sign the instrument if it is clear, for example, by the use of a legend placed next to the spouse's signature that the spouse's signature is made only to grant the security interest and that signing the instrument does not impose personal liability on the spouse.¹⁰

4. Value of an applicant's interest in joint property

When determining the value of an applicant's interest in jointly owned property, a lender must look to the actual form of ownership of the property before or at consummation of the transaction. The possibility of subsequent changes in the form of ownership (for example, by transfer or divorce) may not be considered. ¹¹

III. Ensuring Compliance with Regulation B's Spousal Signature Provisions

As more and more creditors expand the geographical reach of their lending activities through interstate mergers and acquisitions or by taking applications over the Internet, they need to ensure that all loan officers -- consumer and commercial -- are familiar with the restrictions on spousal signatures found in Regulation B. Additionally, creditors need to know the various requirements of state law with respect to joint and marital property, not only in the states in which they operate, but where their borrowers reside or where jointly owned assets supporting or securing a loan are located.

Creditors should consider a three-prong approach to ensuring compliance with the spousal signature rules:

A. Review and revise loan policies and procedures regarding spousal signatures

1. *Eliminate loan policies or procedures that are inconsistent with Regulation B's spousal signature provisions.*

Specifically, creditors should eliminate loan policies that require:

- the guarantee of a loan to a closely held corporation by the spouses of the partners, officers, directors or shareholders of the corporation;
- the signature of the spouse on the note when the applicant submits a joint financial statement; or
- the signature of the spouse on the note when jointly owned assets are offered as collateral.

2. *Expand loan policies and procedures to provide loan staff with specific guidance on state law regarding necessary signatures, particularly in community property states.*

Creditors should only obtain those signatures necessary to perfect their security interest. When handling an individual application from a married borrower supported or secured by jointly owned property, the creditor must look at the laws of the state where the borrower resides as well as those of the state where the jointly owned property supporting or securing the loan is located. These state laws will determine what documents must be signed by the co-owner of the property in order to perfect the creditor's security interest in the collateral.

3. *Create or amend checklists to address when spousal signatures may be obtained in connection with an individual application for credit.*

Creditors should consider creating or revising loan checklists to ask if an application is for individual credit and if so, whether the loan is supported or secured by jointly owned property and if a co-signor or guarantor is required in order to perfect the creditor's security interest in the jointly owned collateral.

Whenever a co-signor or guarantor is requested in connection with an individual application for credit, the lender should document the basis for requiring the co-signor or guarantor and the guarantor's relationship with the applicant or, in the case of a commercial loan, the company.

B. Provide Periodic Training to Both Consumer and Commercial Loan Staff

The Regulation B requirements regarding spousal signatures apply to all loans, consumer and commercial. Education on the spousal signature rules should be part of any training program for new loan staff. Creditors also should provide periodic refresher training, particularly in the event of any expansion of market reach (for example, the taking of credit applications over the Internet, or a change in product base, such as the introduction of a streamlined small business loan program).

C. Monitoring and Audits

Creditors should incorporate in their compliance program a check for spousal signature violations. Monitoring and audits should include reviews of all documents in a representative sample of loan files, particularly the application, financial statements, documents relating to collateral, as well as the credit instrument and any security documents. Special attention should be taken with respect to loans to closely held corporations and business loans supported by jointly owned residential or personal property or other personal assets, like stock or savings.

¹ 12 C.F.R. § 202.7(d)(1).

² Id.

³ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraphs 202.7(d)(2) and (6).

⁴ 12 C.F.R. § 202.7(d)(4).

⁵ 12 C.F.R. § 202.7(d)(2).

⁶ 12 C.F.R. § 202.7(d)(3)(emphasis added).

⁷ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraph 202.7(d)(4), note 2.

⁸ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraph 202.7(d)(6), note 2.

⁹ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraph 202.7(d)(6), note 1.

¹⁰ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraph 202.7(d)(4), note 3.

¹¹ Official Staff Interpretations, 12 C.F.R. Pt. 202, Supp. I, Paragraph 202.7(d)(2), note 1.