
Coates' Canons Blog: Local Government Utilities and the Equal Credit Opportunity Act—Part I: Notice Requirements

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Dale Linquent is a resident of Carolina Village. He has lived in three different apartments in as many years and each time has left an outstanding utility balance on his account. This year the village board adopted a new water ordinance specifying that an applicant will not be able to open a new account with the utility if he/she owes any outstanding delinquencies on a water account. Furthermore, if an applicant has incurred a delinquency on a village water account within the past three years, he/she must either pay a deposit of \$120 (which is the average amount of a residential bill for two months of service) or have an individual who has not incurred a delinquency on a village water account within the past three years co-sign on the account.

Dale moves into his fourth apartment and attempts to open a new water account. Utility Jones, the village's utility manager, informs him that he first must pay off the \$93 in delinquencies and penalties owed on his prior accounts. Mr. Jones also informs Dale that he must pay the \$120 deposit or have another eligible individual co-sign on the account. Dale agrees to pay the outstanding balance of \$93. He does not have the funds to also pay the deposit, though. He informs Utility Jones that he cannot come up with the money for the deposit and he cannot find anyone willing to co-sign on the account. He is thus unable to establish utility service.

Dale explains his dilemma to his buddy Ida Suue. Although not a lawyer by trade, Ida fashions herself a bit of a legal guru. She tells Dale that the city cannot effectively deny him service by making him pay a deposit or get a co-signer because that clearly violates some federal law she once read about. Dale calls the utility department the next morning and informs Utility Jones that he intends to sue the village for violating federal law. Should the village be worried?

Yes and no. Ida actually is correct that federal law applies in this situation. In fact, there are two different federal statutes that are implicated—the Equal Credit Opportunity Act (ECOA), **15 U.S.C. Sect. 1691**, and the Fair Credit Reporting Act (FCRA), **15 U.S.C. Sect. 1681**. Neither of these statutes prohibits the village from requiring a deposit or co-signer on Dale's account because of the prior delinquencies, but both statutes require that the village comply with notice requirements. And the ECOA prohibits a government utility from engaging in certain other practices related to the establishment and maintenance of a utility account.

This post discusses the notice requirements of the ECOA. Future posts will address other provisions of the ECOA, as well as the notice provisions of the FCRA.

What is the ECOA?

The ECOA is a federal law that makes it unlawful for any creditor to discriminate against an applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, or age (as long as the applicant has the legal capacity to enter into a contract). It also prohibits discrimination because all or a portion of the applicant's income derives from a public assistance program or because the applicant has in good faith exercised any rights under the Consumer Credit Protection Act. The ECOA further imposes affirmative obligations on creditors to provide notice and explanations of certain "adverse credit" actions, including credit denials or conditions that do not equally apply to all credit applicants. The law was enacted in 1974 to "eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to consider for individual credit." *Mays v. Buckeye Rural Elec. Coop.*, 277 F.3d 873, 876 (6th Cir. 2002). **Part 202 of Chapter 12 of the Code of Federal Regulations** (referred to as Regulation B) prescribes the applicable regulations.

Application of ECOA to Government Utilities

The law applies to "any creditor," which is defined to include any government, governmental subdivision, or governmental agency that allows for deferred payment for property or services. That means in North Carolina the law applies to any county, municipality, water and sewer authority, sanitary district, water and sewer district, metropolitan water district, metropolitan sewer district, metropolitan water and sewer district, or other district, authority, commission, or joint agency that (1) provides water, sewer, electric, and natural gas utilities and (2) bills for the services after they are provided.

ECOA Requirements

Generally government utility boards in North Carolina have broad authority to adopt rules and regulations governing the terms and conditions of receiving utility service, including establishing screening criteria for applicants. A unit may, for example, require that an applicant provide proof of ownership or lawful occupancy at the property where service is requested. It may require photo identification or other proof to verify the identity of a person requesting service. It may specify that only property owners may establish an account for service. It may require that applicants submit to a credit check. And it may require that all applicants, or only applicants that meet certain criteria, provide a deposit to establish an account. It may require that all adult occupants at a property co-sign for service. These actions are clearly authorized by North Carolina law. And they are not prohibited by the ECOA.

The ECOA imposes an affirmative duty on a government utility to provide notice and information to an applicant or customer if the utility takes certain of these actions, though. (The ECOA also prohibits certain other practices related to the terms of utility service. As noted above, these will be addressed in a future post.)

ECOA Notice and Information Provisions

A government utility must comply with ECOA notice and information requirements if it takes an *adverse action* in connection with a utility account. See 12 C.F.R. 202.9(a)(1) and (2). Under the Act, an *adverse action* occurs if any of the following occur:

1. The utility denies an application for service because an applicant fails to complete the application, fails to meet general criteria for establishing an account, fails to produce required identification or proof of lawful ownership or occupancy, or for any other reason.
2. The utility requires that the applicant comply with additional requirements that are not applicable to all applicants and the applicant refuses (or is unable) to comply with the additional requirements and is therefore denied service. (Examples of additional requirements include, but are not limited to, paying a deposit or obtaining a co-signer, paying a higher rate for service, or having less favorable payment terms than other customers.) Note that it *does not* constitute an adverse action if the applicant complies with the additional requirements and receives service.
3. The utility terminates an account, or changes the terms of the account, unless expressly agreed to by the account holder or unless in connection with inactivity or delinquency on the account.

If a utility takes an adverse action, it must, within 30 days (or 90 days for adverse action (2.)), send **written** notice to the applicant or account holder that includes all of the following:

- A statement of the adverse action taken
- The name and address of the utility
- The name and address of the federal agency that administers compliance (for government utilities it is either the Federal Trade Commission (FTC), Equal Credit Opportunity, Washington DC 20580 or the FTC Regional Office for the region in which the utility is located.)
- The following statement:

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all of part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington DC 20580.

- A list, and brief explanation, of the reason(s) for the adverse action or a statement that the applicant or customer has a right to such a statement of specific reasons if requested within sixty days of receiving this notice. The regulation requires the statement of reason(s) to be specific and indicate the principal reason(s) for taking adverse action. Utilities should disclose up to four principal reasons. If the utility chooses the latter method, it must also include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained.
- If the adverse action was based in whole or in part on a credit report or credit score, the following additional statement must be included:

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: [insert score and date here]. Scores range from a low of ____ to a high of ____ [use current scale].

Key factors that adversely affected your credit score: [Include key factors, such as number of recent inquiries on consumer report.]

If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: [address and telephone number or entity that provided credit score]

A government utility must provide this written notice even if the applicant or customer was informed verbally of the reasons for the adverse action. The FTC provides model notice forms that a government utility can use to ensure full compliance. The sample forms are found in **Appendix C to Part 202 of the Chapter 12 of the Code of Federal Regulations**. Forms

C-1 through C-6 may be used to notify an applicant or customer that an adverse action has been taken. A utility should use Form C-4 if it takes adverse action (2.) above. It should use Form C-5 if it does not automatically disclose the reasons for the adverse action. And it should use Form C-6 to inform an applicant that his/her application is incomplete.

Sample Adverse Action Notice for Hypothetical Example

In the hypothetical situation above, the utility made Dale comply with additional requirements to establish a utility account (that were not applicable to all applicants alike). He did not comply and was, therefore, denied service. That constituted an adverse action under the ECOA. Carolina Village should have sent to Dale the following written notice within 90 days of the denial because of his refusal to pay the deposit or get a co-signer:

July 17, 2015

Dear Mr. Delinquent:

Thank you for your application for water service at 123 Main St., Carolina Village, NC 27777. We are unable to establish the water service account that you requested for the following reason(s):

You incurred one or more delinquencies on prior water accounts with the village within the past three years from the date of this letter.

We can establish the water account at 123 Main St., Carolina Village, NC 27777 if:

You pay a deposit of \$120 or have an eligible individual co-sign for service. To be eligible as a co-signer an individual must reside within the village and must not have incurred a delinquency on a village water account during the past three years from the date of this letter.

If this offer is acceptable to you, please notify us within thirty days by calling (555) 555-5555.

Our credit decision on your application was not based in whole or in part on information obtained in a credit report. [The section of the model form relating to credit reports and credit scores is inapplicable to this situation and does not need to be included.]

You should know that the Federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the Federal Trade Commission, Equal Credit Opportunity, Washington DC 20580.

Sincerely,

Utility Jones

Links

- www.law.cornell.edu/uscode/text/15/1691
- www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III
- www.federalregister.gov/articles/2011/12/21/2011-31714/equal-credit-opportunity-regulation-b