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PENSION BENEFIT GUARANTY CORPORATION

Status Summary

The Pension Benefit Guaranty Corporation (PBGC) was created by Congress in September, 1974 through enactment of the Employee Retirement Income Security Act of 1974 (ERISA), title IV. The purposes of title IV are:

"1. to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

2. to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies," and

3. to prescribe such premiums established by the Corporation as may be necessary to provide sufficient reserve to carry out its functions under this title.

PBGC shares responsibility under ERISA with the Department of Labor and the Internal Revenue Service. PBGC administers two pension insurance plans: plan termination insurance for single employer plans and plan insolvency insurance for multiemployer plans. Administrators of single employer plans are required to notify PBGC prior to termination of a plan. PBGC determines if there are sufficient assets to pay the benefits guaranteed by law. If the benefits are adequate, PBGC authorizes the distribution of assets pursuant to the plan and applicable law. If the assets are insufficient, PBGC becomes trustee of the plan.

Under the new Multiemployer Act PBGC is authorized to provide financial assistance to a multiemployer plan that is unable to pay benefits that are guaranteed under the Act.

The major PBGC sex discrimination issue is the use of sex-based actuarial tables in calculating pension benefits. Both sex-based and unisex tables are used in pension plans to value participant benefits. PBGC as trustee for an insufficient plan will apply the factors in the plan to determine early retirement benefits or an optional form of payment chosen by a participant under the plan. If a plan, for which PBGC acts as a trustee, fails to specify factors for determining periodic benefits, PBGC applies criteria that provide for equal monthly benefits to men and women. However, in awarding certain lump sum benefits as trustee for an insufficient plan, PBGC's policy and practice is to value a benefit through use of sex-based actuarial tables. The result is a lower lump sum award for men. This policy is under study by PBGC.

PBGC has no authority over sufficient plans, therefore, it cannot affect the use of sex-based tables for those plans.

REPORT OF THE

PENSION BENEFIT GUARANTY CORPORATION

FOR THE

TASK FORCE ON LEGAL EQUITY FOR WOMEN

Submitted to: Gloria S. Branker
Program Specialist
Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

on: February 3, 1983

by: Peggy Anne Hansen
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2020 K Street, NW, Room 4300A
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Contents:

Background:

The Pension Benefit Guaranty Corporation (PBGC) was created by Congress in September, 1974 through enactment of the Employee Retirement Income Security Act of 1974 (ERISA), Title IV. The purposes of Title IV are:

> "1. to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,
>
> 2. to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and
>
> 3. to maintain premiums established by the Corporation under section 4006 at the lowest level consistent with carrying out its obligation under this title."

The preamble to final regulations on Limitation of Guaranteed Benefits published in The Federal Register, Vol. 41, No. 29 on February 11, 1976 (29 C.F.R. Part 2609-now at 29 C.F.R. Part 2621), states that it is PBGC's position "that all participants of the same age should receive the same benefit protection from PBGC, regardless of the participant's sex, in recognition of the similar income needs of all retired workers. Further, this approach is consistent with the uniform treatment accorded males and females under plan accrual and vesting schedules. "(Attachment 1)"

The regulations, policies and procedures over which PBGC has control under ERISA have been written and implemented under that umbrella. PBGC brochures, pamphlets, fact sheets, and other publications reflect the sex-neutrality sensitivity of PBGC staffs.

Because of the jurisdictional responsibility that PBGC shares with the Departments of the Treasury and Labor under ERISA, it is recommended that this report be read with reference to the reports from both of those Departments. PBGC's report was not coordinated with either of them, and, therefore, reflects the research, analysis, and recommendations of the PBGC committee only.

Introduction:

The development of pension reform must take into account the significant recent changes in the workforce profile. First, the most dramatic change since the passage of ERISA in 1974 has been the increase in the percentage of women in the labor force. Second, there has been a steadily rising number of female-headed households. Third, approximately two thirds of the elderly population is female. Fourth, elderly females are, as a group, one of the poorest segments of our society. It has been projected that by the year 2000, the only people in the United States living in poverty will be elderly women and female heads of households and their dependents.

The primary purpose of a pension system is to sustain a certain quality of life for retired workers and their families which they enjoyed during their productive years. Women, as a group, earn less than 60% of what men earn. Women are the child-bearers and principle child-caretakers. Generally, if both spouses are employed, the husband's job determines where the family goes which means that the wife is more likely to change employers more frequently than the husband.

Since the amount of a pension is usually based on a formula which includes the number of years of uninterrupted service with the same employer and the wages earned with that employer, women are far less likely to be vested. If women are vested, the pensions they earn will be much smaller than those earned by men.

Senator Robert Dole introduced S. 19 on January 26, 1983. The bill calls for studies and/or correction of some of the detrimental effects on women which are inherent in the present Federal pension laws. S. 19 would lower the age threshold for participation in a pension plan from age 25 to 21, and would allow up to one year of absence due to childbirth without loss of credit for prior service if the employee returns to work. These provisions would not diminish any benefits accruing to men, but would be more equitable to women because the provisions reflect the realities of women's working and family lives.

Other specific provisions proposed in S.19 are discussed later in this report.

Recommendation:

Support S.19 concepts

I. SEX BASED AND UNISEX MORTALITY TABLES

A. Insufficient Plans

1. Participants' benefits are valued using separate sex-based mortality tables each of which also reflects health of the participant, that is whether the participant is healthy, meets disability conditions only under the plan, or meets disability conditions under Social Security. The cumulative plan value equals the total value of individual participant's benefits.

2. Individual benefits to each participant are determined using both sex-based and unisex mortality tables.

   a. Unisex tables are used when a benefit must be cut back because of any limitation on guaranteed benefits (29 C.F.R. Part 2621).

   b. Where plan factors exist, PBGC applies those factors to determine the early retirement benefit and an optional form of monthly payment chosen by a participant under a plan. Thus factors used to determine the amount of the monthly plan benefits may be sex-distinct or unisex. PBGC has no control over whether the plan specifies certain conversion factors, or what has been prior plan practice. Since plan practice and specified conversion factors are usually sex-based, at least for form conversions (frequently early retirement factors are unisex), they require different monthly benefit amounts for women and men. If no such factors exist, PBGC uses the factors in 29 C.F.R. 2621 which results in equal monthly benefits payments to women and men. PBGC could change its regulations to provide that it will use plan factors only when they are unisex factors. This problem may disappear if, as the result of court cases or legislation, plans will be required to use unisex conversion factors. Changing to sex-neutral tables in all pension plans would take care of the problem.

3. Lump sum benefits (the value of guaranteed benefits) are less for men than for women of the same age with equal monthly annuity benefits.

The current policy and practice of PBGC is to value the benefit using sex-based tables to determine the actual amount to be received by a participant (the value of a guaranteed benefit).

By direction of the Executive Director of PBGC, this policy issue is under study at the present time. The questions are:

1. Should PBGC change its policy and adopt unisex tables?

2. If so, how should those tables be constructed?

B. Sufficient Plans

If the plan has enough assets to pay "guaranteed" benefits (vested benefits subject to statutory limits), the plan administrator determines the amounts and form of benefits according to the plan provisions (which may or may not be discriminatory) over which PBGC has no control.

C. (Attachment 2) Summary of brief filed January 20, 1983 in Arizona Governing Committee v. Norris, No. 82-52. Gender-neutral annuity pricing is not a revolutionary change, actuaries say. BNA's

Daily Reporter System, Daily Labor Report, 1-31-83 (No. 21) A-1.

II. Joint and Survivor Benefit Issues (ERISA Title I, §205 and ERISA Title II amending the Internal Revenue Code)

A. There is no statutory requirement that plan administrators must have evidence that a spouse has knowledge of a participant's selection of no joint and survivor benefit. Most vested pension plan participants are male. Most joint and survivor spouses are female. The participants (usually male) may make a unilateral decision to get greater benefits while they live, and, without the knowledge or agreement of their marriage partners, leave them with no benefits. This has more discriminatory impact on women than on men.

Recommendation:

Support S. 19 which provides for mandatory written consent of spouses of participants to be notarized or witnessed by the plan administrator.

B. Although, under the statute, a plan must make available pre-retirement survivor benefits when participants meet early retirement requirements and continue to work, the benefit may be optional. As in A. above of this part, optional coverage can have greater discriminatory impact on women than on men.

Recommendation:

The consequences of legislating mandatory coverage should be studied. Mandate written consent of spouses of participants to be notarized or witnessed by the plan administrator.

C. There is a lack of spousal (usually female) protection under the statute where early retirement-eligible participant (usually male) terminates employment, decides for any reason to defer receipt of early retirement benefits, and dies before normal retirement age or commencement of benefit payments.

Recommendation:

Change statute to require that deferred vested benefits be joint-and-survivor-effective whether or not the participant has retired prior to the participant's death.

D. Annual pension plan reports and employee benefit statements which are given to participants do not include any notice that if the employee dies before the specified reitrement date, there will be no payment to the spouse.

Recommendation:

Mandate that such notice be printed in the report and on the employee benefit statement.

E. In the spirit of Title I of ERISA, which mandates that the joint and survivor annuity form is the normal form for married participants under all pension plans which provide annuities, the assurance of protection of future divorced spouses of participants should be studied. For instance, should or could there be a pro rata share guaranteed in the plan itself to a non-participant spouse at the time of divorce?

III. Language

A. Employee Retirement Income Security Act of 1974 (ERISA), P.L. 93-406.

1. Pronoun references to the Secretaries of Labor and the Treasury, the Comptroller General, participants, employers, employees, petitioners, attorneys, plan sponsors, ministers, trustees, etc., are masculine when the nouns are singular.

Recommendation:

Revise language by repeating the noun instead of using the pronoun, or, where appropriate, use plurals. Frequent uses of "the Secretary of Labor or his delegate..." should be eliminated by adding the statement: "For the purposes of this Act (Title, Sub. Title, etc.) 'Secretary of the Treasury' or 'Secretary of Labor' means the 'Secretary of the Treasury or such Secretary's delegate', or 'Secretary of Labor or such Secretary's delegate'."

2. There are numerous references to "his spouse" in relation to a "participant." The clear meaning of "his spouse" is "wife." This could be interpreted as exclusionary where the spouse of a participant is the husband.

Recommendation:

Change "his spouse" to "participant's spouse."

B. Multiemployer Pension Plan Amendments Act of 1980 P.L. 96-364.

The language in the amendments is less exclusionary than in ERISA. Most of the exclusionary language exists in quotes picked up from ERISA and would be changed through "housekeeping" if exclusionary language in ERISA itself were eliminated.

Recommendations:

Eliminate sexist language in ERISA.

SMALL BUSINESS ADMINISTRATION

Status Summary

The Small Business Administration (SBA), in its first submission, reported on positive current programs and existing sex discrimination prohibitions in its laws, regulations, policies, and practices. The Agency will address problem areas in its next report.

Quarterly Report to the Task Force on Legal Equity

I. SBA Mandate

The Small Business Administration (SBA) is a small, independent federal agency, created by Congress in 1953 to assist, counsel, and champion the millions of American small businesses which are the backbone of this country's competitive free-enterprise economy. It derives its authority from the Small Business Act, 15 U.S.C. 631 *et seq*.

The mission of SBA is to help people get into business and stay in business. To do this SBA acts as an advocate for small business. The Agency also provides prospective, new, and established persons in the business community with financial assistance, management counseling, and training. SBA also helps get and direct government procurement contracts for small firms.

The Agency makes special efforts to assist women, minorities, the handicapped and veterans to get into business and stay in business because such persons face unusual difficulties in the private marketplace.

The agency has more than 100 offices throughout the country.

II. A review of the current in-place, positive programs reveals the following:

A. Laws. Section 4(h) of the Small Business Act (15 U.S.C. 633) specifically provides:

"in carrying out the programs administered by the Small Business Administration including its lending and guaranteeing fuctions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration,..."

B. Regulations. 13 CFR Part 113 sets forth the policies of the Federal Government and the SBA Administrator regarding nondiscrimination in financial assistance programs of SBA. See copy attached. Section 113.1(b) states "...it is unlawful for any recipient creditor to discriminate against any applicant, with respect to any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age...," Gender-discrimination review is part of SBA's regulatory review. All new regulations and proposed changes to old regulations are reviewed by the Agency's Office of General Council at which time a review is made for gender-discrimination language. Additionally, SBA staff persons who write regulations are aware of the requirement to abstain from sex discrimination.

C. Policies. In July 1982, the current Administrator of the Small Business Administration has made the Women's Business Ownership (WBO) Program an agency priority.

D. Practices. The Women's Business Ownership Program in SBA has the mission to increase the strength, profitability and visibility of women's business ownership in the United States by enhancing equal access to and greater opportunities for participation in appropriate government and private sector resources and programs. Women business owners are an increasingly important part of the business community. Estimated projections based on IRS reports suggest that as of 1980, women-owned businesses comprised between 22% and 25% of all businesses and accounted for $40.1 billion in receipts and $6.2 billion in net income. Some of the goals for the Program for 1983 and 1984 are as follows:

PRIVATE SECTOR:

The Office of Women's Business Ownership (OWBO) is meeting with representatives of major corporations to seek ways in which we can work together to assist women business owners enter the economic mainstream. There is a lot of interest in the area of women entrepreneurs and we are very optimistic that the private sector will prove to be a valuable ally.

MANAGEMENT ASSISTANCE:

OWBO is funding seven pilot training projects to assist women business owners survive business crisis. These projects, developed by the SBA district offices, will soon be in operation. At the end of the year we will be able to evaluate the strengths of the various approaches and encourage district offices around the nation to implement the most successful models. The projects are located in Minneapolis, Concord, Augusta, Seattle, Omaha, Columbus, and Puerto Rico. (See the attached memorandum for a further description of these training projects.)

TRAINING:

The OWBO has continued funding the American Woman's Economic Development Corporation (AWED) via a three year matching grant. AWED provides long-term in-depth training to women business owners and short-term counseling specific to the particular needs of present and potential women business owners.

WOMEN'S BUSINESS OWNERSHIP COORDINATORS & REPRESENTATIVES:

OWBO has mobilized our Women's Business Ownership Regional Coordinators and District Representatives in every regional and district office. Every Representative and Coordinator is being trained to make sure they understand our program and know the resources that are available to women business owners in the public and private sectors. This field assistance will be invaluable in improving the service that SBA provides to women-owned business.

PROCUREMENT

For the past 3 years we have established prime contracting goals for federal agencies and departments. That goal has grown from $211.5 million in FY 80 to what we hope will be $1 billion in FY 83. We negotiate each goal with the individual agencies and then monitor their progress during the year.

1981 Prime Contract Goal: $400 Million - $630 Million Actual.

PASS: We have also made a concerted effort to increase the number of women listed on the Procurement Automated Source System. We have increased the numbers of women listed on PASS from 800 in 1979 to almost 12,000 or 16% of all businesses listed on PASS in 1982.

PASS is an important tool for assisting women in obtaining opportunities to gain contracts in both the public and private sector. We are determined to make the system work because we see it as one of the best marketing systems currently in place. We are now in the process of mailing out an additional 15,000 PASS applications to a national mailing list of women entrepreneurs. This should result in another large increase in the numbers of women listed on the system.

Procurement Workshops: We have in the past participated in and initiated procurement workshops designed to answer the questions that most women have about the procurement process. We are now designing a one day procurement workshop that can be given all across the nation. This workshop will be given before opportunity fairs and procurement meetings. The first section will provide technical details and the second section will consist of a panel of women business owners who have been successful in gaining Federal contracts.

PUBLIC INFORMATION:

OWBO plans to update several SBA publications that have proven to be valuable resources to women. These include: The Directory of Federal Assistance Programs for Women Business Owners, the Women's Handbook, and a sequel to the Handbook for women ready to expand their businesses. All of these publications are widely distributed and well received.

In addition to these management assistance publications, OWBO will be issuing a newsletter to over 25,000 women business owners to keep them informed concerning federal and private sector initiatives on their behalf.

RESEARCH:

In response to a GAO report, OWBO is funding a gender-based contract with the U.S. Human Resources Corp. of San Francisco to evaluate the degree to which existing SBA programs meet the needs of women business owners. The findings of this project are due in 1983. This will provide verifiable data concerning how the needs of women are being met.

OWBO has funded a contract to research the role of women concerning the operation and continuity of family-owned businesses.

OWBO has made a grant to add a video component to an earlier National Association of Bank Women program which assists women already in business to acquire capital for expansion and diversification.

OWBO is conducting an appraisal and developing an annotated bibliography of the economic and social literature which deals with gender issues in small business ownership.

DATA BASE

The office is working to improve and increase the data base on women business owners in accordance with the President's State of Small Business Report to Congress in March, 1982. A study to determine the payback rate by gender shows there is no substantial gender difference in loan payback. Recent statistics show that women business owners have increased from a 1977 base of 702,000 to almost 3 million.

The Office of Women's Business Ownership has a vital need for current data. Toward that end the office is in the process of:

(a) Coordinating with the Bureau of Census for a 1982 Special Characteristics Economic Survey to update the 1977 Survey.

(b) Coordinating with SBA's Office of Advocacy to identify women owned firms in their Small Business Data Base.

(c) Purifying Office of Women's Business Ownership mailing list for the purpose of merging with the Office of Advocacy's Data Base.

E. SBA is committed to a continual review of its regulations, procedures and practices in order to assure women receive full and equitable treatment from the agency.

F. Paperwork Management Section in SBA reviews all Standard operating procedures (SOPs) to ensure that there is no gender discrimination. The Office of General Council reviews all rules and regulations to ensure there is no gender discrimination. Persons who write such documents in SBA have been made aware of the requirement to abstain from using or correct any existing gender discrimination. The Office of Women's Business Ownership oversees these activites to prevent overt discrimination or a disproportionate impact in the policies and practices of SBA.

G. Publications - The Office of Women's Business Ownership works with other program offices to ensure women business owners are included in all SBA publications which refer to business persons.

The SBA proposes to review its laws, regulations, policies and procedures to correct any gender discrimination. The results of this review and corrections made or recommended will be contained in future reports.

SBA U.S. Small Business Administration Washington, DC 20416

Memorandum

Date: October 1, 1982

From: Laura Levine

Subject: District Office Survival Projects

To: Carolyn D. Schoenberg

As you requested, the following outlines each District Office project and the approximate costs.

Minneapolis
The Minneapolis District Office in collaboration with NAWBO will be presenting The Business Leadership Training Program under the direction of the McBer Co., of Boston. The BLTP consists of a 9-day course held on two consecutive weekends. As its' name implies, the goal of the course is to provide training for leadership in business by stimulating the standing of existing businesses, developing skills in management and goal setting. In addition, a financial module will be added to provide skills in cash flow analysis, capital retention and improved profitability ratios.

Sarah Johnson is the coordinator in Minneapolis.

Concord
In conjunction with the New Hampshire Vocational Technical Institute in Nashua, the Concord District Office will be providing Accounting I and II courses. A session on math anxiety will also be included in the program

Mary Dumas is the coordinator in Concord.

Augusta
In conjunction with the University of Maine at Augusta, the Augusta District Office will present a series of topical sessions in marketing, accounting, law, financial management and management support. Additionally, the sessions will be followed by a series of tutorials designed to provide technical assistance and individual counseling. Business and professional women will serve as trainers.

Paul Bianchini is the coordinator in Augusta.

Seattle
The Seattle District Office will be presenting a in-depth training and counseling program to increase and sharpen business owners skills in marketing and financial management/analysis. The women recruited will be using data from their own businesses in all "work" sessions under the supervision of instructors and counselors. In addition to presenting the program in the Seattle/Tacoma/ Bellevue area, it will be presented in the other 4 districts in Region VII.

Joyce Long is the coordinator in Seattle.

cont'd

Omaha

In conjunction with the Nebraska Small Business Development Center, the Omaha District Office will be utilizing videotaped presentations for use in their survival training program. The five segments to be included are:

- Strategic Planning
- Cash Flow Planning
- Interpersonal Relationship Skills and Motivation
- Capital Formation
- Employee Development

Additionally, the presentations will be videotaped for replication purposes.

Craig Rice is the coordinator in Omaha.

Puerto Rico

The Puerto Rico District Office will be providing direct counseling and group counseling in financial controls and selling techniques. Training will be provided by a woman business owner, the Puerto Rico Department of Commerce and Enterprises Development Association, a non-profit organization. Also, Applied Management Systems will offer computer related services to the women.

Ivan Suner is the coordinator in Puerto Rico.

Columbus

The Columbus District Office in addition to providing survival training, will be compiling a directory of women entrepreneurs in the Ohio area. Workshops are being designed by a woman enterpreneur who has taught survival training at Ohio State University.

Lisa Perrin is the coordinator in Columbus.

All programs will cover issues in taxation, inventory liquidation and valuation and bankruptcy considerations should it be necessary. Several SBA films and publications will be utilized as will the services of SCORE/ACE where appropriate.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Honorable Paul A. Volcker
Chairman
Board of Governors of the Federal
Reserve System
Federal Reserve Building
Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Equal Credit Opportunity Act; Docket No. R-0185

Dear Mr. Chairman:

I am writing to submit comments on the Board's proposed withdrawal of proposed amendments to the Equal Credit Opportunity Act (hereinafter ECOA) (47 F.R. 23741, June 1, 1982). These comments are submitted in my capacity as Director of the Office of Women's Business Enterprise, established by the Small Business Administration in 1980 to represent the views and interests of present and potential women small business owners.

According to the Bureau of the Census 1977 Economic Censuses, there are 702,000 women-owned businesses in the United States, accounting for $41.5 billion of receipts. As a share of the national total, 7.1% of all business firms are women-owned, and account for 6.6% of all business receipts (excluding large corporations). Between 1972 and 1977 the percentage of women-owned firms increased by 30 percent and receipts of those firms increased 72 percent. The credit needs of this growing sector of the economy are further emphasized by the fact that in fiscal year 1981, the SBA awarded 27.5% of its direct loans and 5% of its guaranteed loans to women-owned small businesses.

PL 93-495, the ECOA, Title VII of the Consumer Credit Protection Act, became effective October 28, 1975. The purpose of ECOA is to prevent creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act.

While ECOA applies to both consumer and commercial credit transactions, the implementing Regulation affords special treatment for commercial credit transactions. In accordance with Regulation B, a creditor who extends credit for commercial purposes is exempt from certain procedural requirements of ECOA. Currently, ECOA and Regulation B provide as follows:

1. creditors are not prohibited from requesting information concerning the commercial credit applicant's marital status;

2. creditors are not required to retain records relating to the commercial credit application unless the applicant requests retention; and

3. creditors are not required to provide written reasons for an adverse credit action against a commercial credit applicant or to automatically disclose an applicant's right to request a statement of reasons ("notice of adverse action") unless the applicant requests such notice.

After careful consideration of the proposed business credit amendment, we take the following positions:

1. the amendments regarding marital status information and record retention could be withdrawn without severe prejudice to small business or women small business applicants;

2. the amendment regarding notice of adverse action should be implemented, with the result that every creditor will automatically provide a notice of adverse action in commercial credit transactions, or disclosure of an applicant's right to reasons upon timely request; and

3. these procedures should be required for any credit transaction involving $500,000 or less.

The reasons for our positions are set forth below.

WITHOUT NOTICE OF ADVERSE ACTION, PROTECTIONS UNDER ECOA ARE UNENFORCEABLE WITH RESPECT TO BUSINESS CREDIT APPLICANTS

The substantive ECOA protections against discrimination extend not only to consumer credit transactions, but also to commercial credit transactions. Since the substantive provisions of ECOA are unenforceable without the procedural safeguards, the procedural requirements should also extend to commercial credit transactions.

In particular, the requirement of notice of adverse action should extend to commercial credit transactions. Without notice of adverse action, the applicant has no information or documentation with which to support an allegation of discrimination. Consequently, protections afforded by ECOA are rendered unenforceable in court. It makes no sound public policy sense to extend substantive protections to both consumer and commercial credit applicants, while withholding enforcement assurances from commercial applicants.

Requiring automatic notice of adverse action forces creditors to concentrate on sound business reasons for not extending credit. In cases where such sound reasons cannot be, or are not cited, the possibility arises that reasons prohibited by the Act are at work. These notices of adverse action help signal possible discriminatory behavior.

While business credit applicants are expected to be able to protect their own interests, some procedural protection is nevertheless necessary. Even though commercial credit applicants currently have the right to request notice of adverse action, it is doubtful that even knowledgeable applicants would be aware of such a right. Consequently, commercial credit applicants need the protection that the procedural requirements afford.

NOTICE OF ADVERSE ACTION WILL ENCOURAGE CREDITORS TO OBJECTIVELY ANALYZE THE APPLICATION AND TO REVIEW THE REASONS FOR ADVERSE ACTION

If creditors are required to give notice of adverse action, they will be forced to objectively analyze and review their reasons. This review supports the intent of ECOA to educate creditors, making them aware of the fact that discrimination may exist and encouraging creditors to comply with ECOA voluntarily.

An objective review is particularly important because ECOA does not prohibit the possession of certain gender-based information. ECOA does prohibit application of that information in a discriminatory manner.

Due to the subtle and ingrained nature of discrimination, creditors may consciously, or even unconsciously, discriminate in subjectively evaluating an application. Requiring an objective review decreases the probability of both conscious and unconscious discrimination.

NOTICE OF ADVERSE ACTION
WILL AFFORD CONCRETE EVIDENCE
OF SPECIFIC PROBLEMS CONCERNING APPLICANTS

Advocates of withdrawal of the proposed amendment point to the lack of concrete evidence of discrimination. They recognize that such a lack of evidence exists, but are reluctant to accept the procedural requirements necessary to obtain such information. Requirement of notice of adverse action would establish the foundation for obtaining concrete evidence of gender-based discrimination.

If business credit had not been partially exempted from notification requirements, documentation of discrimination would more probably be available. If the proposed amendment is adopted, such documentation may be available in the future. It is unreasonable to expect concrete evidence to exist currently when a major purpose of the proposed adverse notice provision would be to provide such evidence.

The fact that some notice is given under official staff interpretation EC-0009, November 2, 1977, is not sufficient. Notice of adverse action is necessary.

IF THE PROPOSED BUSINESS CREDIT
AMENDMENT WERE IMPLEMENTED
IN ITS ENTIRETY, THE COSTS
TO CREDITORS WOULD PROBABLY
OUTWEIGH THE BENEFITS
TO CREDIT APPLICANTS

The proposed amendment regulates procedure with respect to marital status information, record retention and with respect to notice of adverse action. The marital status information provision and the record retention provision impose burdens on creditors that outweigh the benefits the amendments would provide.

Under the current provisions of ECOA, creditors are generally prohibited from inquiring about an applicant's marital status. Creditors may, however, request marital status information where a loan is a secured loan and may request such information in a community property state. Since this information is so readily obtainable, the procedural prohibition may impose a burden but probably does not provide significant benefits.

Similarly, the record retention requirement may impose an unwarranted burden on creditors. While record retention may be costly to the creditor, record retention expenses for the applicant would be minimal. Furthermore, it is reasonable to place the burden of record retention on commercial credit applicants because they are held to a higher standard of responsibility for records than consumers.

With regard to these two procedural amendments, we agree with the Board's conclusion as stated in its regulatory flexibility analysis that they could be burdensome on creditors, and could acceptably be withdrawn. The impact of these two procedural requirements on creditors can and should be distinguished from the lesser impact of the notice of adverse action requirement.

IF THE NOTICE OF ADVERSE ACTION REQUIREMENT IS IMPLEMENTED, THE BENEFITS TO APPLICANTS WILL OUTWEIGH THE COST TO CREDITORS

While compliance costs of implementing the amendment in its entirety may be prohibitive, the costs of providing notice of adverse action are not. We maintain that the cost of providing notice of adverse action is outweighed by the benefits that accrue to the applicant. Notice of adverse action benefits the applicant by allowing administrative and private enforcement of the ECOA, by affording concrete evidence of specific problems of the applicants, by encouraging creditors to objectively analyze their reasons for adverse action and by encouraging them to comply with ECOA voluntarily. Notice of adverse action will impose a slight administrative burden on creditors, but will probably not increase the cost of credit. In any case, these costs are a justifiable consequence of implementation of the notice requirement. It should be noted that the Small Business Administration currently voluntarily provides automatic notice of reasons for adverse credit judgments to commercial credit applicants.

THE THRESHOLD OF $100,000 IS TOO LOW AND SHOULD BE RAISED TO $500,000

The sound purpose of the threshold is to mitigate the administrative expense of the proposed amendment on creditors. However, the threshold was set at $100,000 by drafters of the proposed amendment in 1978 largely to protect the interests of women and minority small business owners. At that time the large majority of women-owned firms were perceived to have credit needs well under $100,000.

However, as mentioned above, the growth of women and minority owned firms in recent years has been remarkable, and evidence now seems to indicate that a substantial number of such firms would be of sufficient size to effectively utilize credit in excess of $100,000. This growth can be expected to continue.

For all of the above reasons, we suggest that the proposed business credit amendment requiring notice of adverse action be implemented. We also propose that these procedural requirements apply to all transactions involving $500,000 or less.

Thank you for providing us an opportunity to comment on behalf of women small business credit applicants. If you have any questions regarding the above, please contact me or David Metzger of our staff at (202) 653-6620.

Sincerely,

Carolyn D. Schoenberg
Director
Women's Business Enterprise
Office of Advocacy

DEPARTMENT OF STATE

Status Summary

The Department of State (State) provides advice for the formulation and execution of foreign policy. State identifies and analyzes the facts relating to our overseas interests, makes recommendations on policy and future action, and takes the steps necessary to carry out established policy

State's submission indicates that the agency has not yet completed its review of the USC, the CFR, or the Foreign Affairs Manual for purposes of identifying sex based statutes, regulations, policies, and procedures. An update on this Department's efforts in this regard will be included in forthcoming reports.

DEPARTMENT OF STATE (4 pages)

The Department of State is responsible for the formulation and conduct of foreign relations. The Secretary of State is charged by statute (22 U.S.C. 3924) with encouraging development of uniform policies and procedures and consolidation of personnel functions among the several independent agencies utilizing the Foreign Service personnel system (others being USIA, AID, Foreign Commercial Service of the Commerce Department, Foreign Agricultural Services of the Agriculture Department, ACDA, and the Peace Corps).

In connection with this statutory requirement, since 1980 a pre-existing practice of issuing personnel regulations jointly by the Department of State and one or more of the other agencies has been greatly expanded. The Foreign Service Act of 1980 (P.L. 96-465) represented a comprehensive effort to eliminate all gender distinctions in the Foreign Service personnel and retirement systems. Following on this enactment, a comprehensive revision of the personnel regulations found in Volume 3 of the Foreign Affairs Manual (FAM) is under way and is expected to eliminate any gender distinctions. The drafting process is scheduled to take one more year. However, all of these regulations are subject to negotiation with at least one union (the American Foreign Service Association) and, if USIA is also a party, to negotiation also with a local of the American Federation of Government Employees. A final issuance date, therefore, is beyond the power of the Department to control.

However, a review of 3 FAM as it now stands has been completed. The only gender distinctions found were in use of masculine words, on some 243 pages out of 1459.

There are ten other volumes of the FAM. A schedule for gender review of those volumes and for revision of those sections of Title 22 of the Code of Federal Regulations (CFR) pertaining to the State Department (Chapter 1) is set forth below.
22 CFR chapter IX, pertaining to the Foreign Service Grievance Board, was reviewed in 1981 when the Board's regulations under the Foreign Service Act of 1980 were issued.

Each volume of the FAM since 1976 has had at its introduction a direction to drafting officers to eliminate masculine pronouns where both sexes are intended in any new directive and an interpretation to users that words meaning or implying the masculine gender include feminine also, unless the context specifies otherwise.

22 CFR Chapter 1

Part 7 - Board of Appellate Review

Part 8 - Advisory Committee Management

Part 10 - Appointment of Foreign Service Officers

All will be revised in due course and at the latest within one year.

Part 9 - Security information regulations (has been replaced by regulations implementing Executive Order 12356).

Part 10 - Employee Responsibilities and Conduct (Has been reviewed and is under negotiation with unions).

Part 14 - Employee-Management Relations (Obsolete; will be repealed in its entirety.)

Part 171 - Access to information (Has been replaced by regulations implementing Executive Order 12356.)

1 FAM Review to be completed by the end of March, 1983.

2 FAM Review to be completed by end of March, 1983.

4 FAM Review to be completed by mid-1984.

5 FAM Review to be completed by mid-1983.

6 FAM Review to be completed by end of 1983.

7 FAM Review to be completed by mid-1983.

8 FAM Review to be completed by mid-1983.

9 FAM Review to be completed by end of 1983.

10 FAM Review to be completed by mid-1983

11 FAM Review has been completed, but no date has been set as yet for completion of revision.

The Office of Small and Disadvantaged Business Utilization is responsible for implementation of the applicable provisions of P.L. 95-507. That Office is following the current review of the Federal Procurement Regulations of the Government, which is scheduled to be completed in October 1983; after which revised Department of State Procurement Regulations can be issued at about the same time. The State Department goal for fiscal year 1982 for female-owned business concerns was $3,616,000 or 2.7% of total estimated prime contracts. The amount achieved was $2,617,000 or 2%. This compares with $2,917,000 for minority owned business (short of the goal of $4,400,000). Goals for fiscal year 1983 have not yet been approved by the Small Business Administration. No set-aside is provided by law for female-owned business, as such.

The Department of State has initiated a program of negotiating executive agreements with foreign countries to facilitate the employment of family members of employees. Such agreements have been concluded with Canada, France, New Zealand, the United Kingdom, Sweden, Norway, Jamaica, Bolivia, and Colombia.

President reagan sends a letter to each United States Ambassador (1 FAM 011.2b) to a foreign country which states, in part:

> "As you assume your duties, I know that you will do so with a strong commitment to impartial and equitable treatment of all U.S. Government personnel under your jurisdiction. Should any perceived inequities be amenable to elimination or mitigation by appeal to or negotiation with the host government, I urge you to pursue this course in a manner consistent with your authority and with international law and established customary practice.*** Additionally, fair treatment of all U.S. Government personnel regardless of race, color, creed, sex or national origin epitimizes our belief in and adherence to the principles of equality of opportunity, a value and concept that form an important element of the American democratic tradition."

END Dept. of State submission
for Third Quarterly Report.

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DEPARTMENT OF TRANSPORTATION

Status Summary

The Department of Transportation (DOT) establishes the Nation's overall transportation policy. DOT is responsible for highway planning, development, and construction; urban mass transit; railroads; aviation; and the safety of waterways, ports, highways and oil and gas pipelines.

DOT is reviewing the USC and CFR to identify provisions that discriminate on the basis of sex. DOT has been asked to pay particular attention to Coast Guard enlistment, promotion, and discharge policies, for unequal treatment on the basis of sex.

DOT reports that the recently enacted Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, contains a provision to assure that equal employment opportunity is provided to women in federally assisted highway projects.

DOT also reports that a review of publications for sex bias is complete and when publications are reissued, "identified sex stereotyping and other indications of discriminatory treatment" will be corrected.

The Department of Transportation (DOT) is responsible for development and implementation of national transportation policy. The nine DOT operating administrations -- the United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Maritime Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration, the Urban Mass Transportation Administration and the Saint Lawrence Seaway Development Corporation -- have extensive safety regulatory, financial assistance, and operational responsibilities, ranging from fisheries law enforcement to operating the air traffic control system to assisting state and local governments funding highway and public transit improvements.

The Department operates under a wide array of statutory authority. Principal among them are:

The Department of Transportation Act of 1966

The Federal Aviation Act of 1958

The Federa-Aid Highway Acts

The Urban Mass Transportation Act of 1966

The Merchant Marine Act of 1936

The Motor Vehicle Information and Cost Savings Act

The National Traffic and Motor Vehicle Safety Act of 1966

Review of Statutes and Regulations

The Department has undertaken a review of its governing statutory authority to identify provisions that discriminate on the basis of gender, either on their face or in effect. Preliminary indications are that there are no areas of substantive concern beyond those previously identified. S.501, Senator Dole's bill to amend Federal laws to eliminate gender based discrimination, would correct several provisions relating to the U.S. Coast Guard.

The recently enacted Surface Transportation Assistance Act of 1982, P.L. 97-424, contained a provision to assure that equal employment opportunity is provided without regard to sex in federally-financed highway construction projects. The statute previously barred discrimination based on race, national origin and religion. The newly enacted provision was originally proposed by the Department in order to remove any ambiguity about equal employment opportunity for women in highway construction projects.

As with its statutory authority, a review has begun of Department of Transportation regulations to identify any instances of discrimination. Again, preliminary indications are that there are not areas of major substantive concern although there are numerous examples of terminological shortcomings. Regulations of the United States Coast Guard and the Federal Aviation Administration that were previously identified as actually or potentially discriminatory have been revised or, in a few cases, are still awaiting revision.

There has been increasing use of gender-neutral terminology in DOT regulations in recent years, pursuant to direction from the General Counsel to use sex-neutral terms in drafting or revising regulations. While similar direction has been given on an informal basis with respect to legislative drafting, the Department's legal offices will be formally advised to avoid gender specific terminology where practicable, as well as discriminatory treatment, in both drafting of Departmental legislation and in providing technical drafting assistance to Committees of the Congress.

Other Actions

All elements of the Dpeartment have completed a review of their publications and have identified sex stereotyping and other indications of discriminatory treatment. As publications are reissued, those problems have been and are being corrected. However, in keeping with government-wide policy, strict fiscal controls have been placed on DOT publications and many have been consolidated or eliminated.

In addition to the General Counsel's direction to DOT legal offices relating to gender-neutral terminology in regulations, the Federal Aviation Administration, the Federal Highway Administration and the U.S. Coast Guard -- the three largest DOT operating administrations -- have issued formal instructions requiring gender neutral terminology. Less formal instructions have been issued in other operating administrations.

In a significant reversal of prior policy and practice, the United States Coast Guard determined in 1979 to admit women to the United States Coast Guard Academy and to authorize women as well as men to serve at sea. As of October 1, 1982, women comprised a significant percentage of Coast Guard Academy Cadets:

Class of 1983 - 19

Class of 1984 - 20

Class of 1985 - 37

Class of 1986 - 37

Fourty-five female officers and eighty-eight women enlisted personnel are currently serving sea duty aboard Coast Guard vessels. On May 3, 1983, there will be three women commanders of 95-foot patrol vessels.

In 1980, the Department issued regulations on the participation of women business enterprises (WBE) in DOT-assisted grant programs. Each recipient of DOT funds, such as state transportation departments, local transit operators, and airport authorities, is required to set reasonable goals for participation of WBE's in federally assisted projects and programs and to require contractors to demonstrate that they have used their good faith efforts to achieve these goals.

In direct contracting, DOT set a WBE goal in FY 1981 of $20 million and actually achieved $25 million. For FY 1982, when overall direct contracting was significantly reduced, the WBE goal was $9 million and the actual achievement was $14.6 million.

The Reagan Administration has appointed women to serve on the following major transportation-related Boards and Commissions: Civil Aeronautics Board; Interstate Commerce Commission; National Rail Transportation Corporation (Amtrak); Consolidated Rail Corporation (Conrail). In addition, women have been appointed to a number of DOT Advisory Committees, including the National Highway Safety Advisory Committee, the National Motor Carrier Advisory Committee, the Technical Pipeline Safety Standards Advisory Committee, and the Chemical Transportation Advisory Committee.

Future Plans

The Department of Transportation will continue its efforts to assure that there is no gender-based discrimination in its stautory authorities, regulations, policies, practices or publications; that there is equal opportunity with respect to the benefits of DOT direct and assisted programs, including benefits derived from procurement, contracting and subcontracting opportunities; and that women are appropriately represented and equitably treated in the Department's work force and Advisory Committees.