

NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION SHARE INSURANCE FUND

LETTER NO. 174

DATE: August 1995

DEAR BOARD OF DIRECTORS: In an effort to expand their ability to make more loans, many credit unions have begun risk-basing their loans.

Credit unions should engage in risk-based lending, not as a means of re-pricing existing balance sheets, but as a tool to reach out to the under-served and take a risk that might otherwise be avoided. Risk-based lending involves setting a tiered pricing structure that assigns loan rates based upon an individual's credit risk. Through a carefully planned risk-based lending program, credit unions may be able to make loans to somewhat higher-risk borrowers, as well as better serve their more credit-worthy members.

Attached is an informational white paper, which is intended to present a balanced view of the advantages, as well as potential pitfalls, of risk-based lending. This paper is not intended to be all-encompassing. However, it does provide adequate reference material to help you determine whether a risk-based lending program may be appropriate for your credit union.

Safety and soundness should remain of paramount importance when considering any new program and throughout the life of any program. Risk-based lending may be appropriate for credit unions with financially sound operations. If you have any questions after reviewing the attached paper, you should contact your district examiner.

Norman E. D'Amours
Chairman of the Board

Enclosure

-- ATTACHMENT --

NCUA INFORMATIONAL WHITE PAPER

This paper is for informational purposes only and is not intended to endorse any one method of credit underwriting. Credit unions are strongly encouraged to consult legal counsel prior to implementing new lending policies, products, or programs.

I. RISK-BASED LENDING

A. Introduction

Risk-based lending allows credit union management to assess the risks involved in different types of loan products and price these products based upon the inherent risk associated with individual borrowers. The end result is a more diversified loan portfolio mixing lower-yielding, lower risk loans with higher-yielding,

but riskier loans. Prior to beginning a risk-based lending program, it is important that the credit union board determine the parameters for the riskier loans based on the credit union's financial condition, business plan, lending and collection history, and asset liability management (ALM) program.

Risk-based lending philosophy does not intend for a credit union to grant "bad loans," however, it assumes that proper pricing and conservative terms may justify higher risk loans. Credit unions offering risk-based lending should aim towards diversification and management of risk. This can be accomplished by establishing policies, procedures, and pricing ranges broad enough to serve low-risk, average, and higher-risk borrowers. The key to successful risk-based lending is to ensure that prices (rates) correctly reflect the risk and costs involved. Risk-based lending is not suitable for every credit union and the financial and operational issues involved should be fully explored prior to entering a RBL program.

Often risk-based loans are referred to by terminology such as "Credit Rebuilder," "Lend a Hand," or "Fresh Start" for the higher risk categories, "Standard Rate" for the average risk loans, and "Reward," "Gold/Platinum," or "Grade A" for the lowest risk categories. References to higher risk loans that have negative connotations such as "High Risk Member" or "Below Average Borrower" should be avoided.

The credit union can become the lender of choice for all members by offering the best possible rate based upon each individual's credit history. The less credit-worthy members benefit by qualifying for a loan with their credit union instead of resorting to higher-cost alternatives such as finance companies and auto manufacturers. On the other hand, members with good credit histories can qualify for lower rates without being forced to turn to other institutions or financing sources that may offer lower rates to qualifying applicants.

B. Advantages of Risk-Based Lending

Provide service to a greater number of members (including those with limited economic means)

Can be used for various types of loans (installment, lines of credit, credit cards, real estate, etc.)

Enhances the ability to offer individualized service and credit counseling

Allows marginal borrowers to improve credit-worthiness and credit history

Increases ability to cross-sell and extend service relationships

Improves image of the credit union

Improves the credit union's competitive advantage

Increases the flexibility of loan policy to accommodate the broad-based needs of its membership

May increase loan volume

May improve asset diversification

Increases income to cover increased costs associated with greater risks (if loans are correctly priced)

Promotes management of risk versus minimization of risk

C. Possible Disadvantages

Requires restructuring of lending policies

Requires significant training and education of credit union officials, management, staff, and members

Demands close attention to consumer compliance issues Requires maintenance and periodic re-evaluation (validation of criteria)

May result in increased delinquency, loan losses, collection costs Involvement may be limited based upon available liquidity and funds management considerations

May result in uncontrolled loan growth

May result in inappropriate application of lending policies

D. Consumer Compliance Issues

All loans are subject to various regulations and laws designed to protect the consumer. Regulation B (Equal Credit Opportunity Act - ECOA) and The Fair Housing Act (FHA) are specifically designed to regulate the lending industry to make credit equally available to all creditworthy borrowers. These laws prohibit discrimination against applicants based 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), receipt of public assistance income, or the exercise in good faith of any right under the Consumer Credit Protection Act. In addition, the FHA prohibits discrimination on the basis of familial status and handicapped status. To run a successful risk-based lending program, as with any loan program, compliance with ECOA, FHA, and The Fair Credit Reporting Act (FCRA), as well as any other applicable laws or regulations, must be ensured.

The ECOA encompasses all aspects of a credit transaction (such as advertising, inquiries, the application process, administration of accounts, the treatment of delinquent accounts, collection practices, etc.). Credit unions must avoid potentially discriminatory practices throughout the life of the loan.

Risk-based lending consumer compliance requirements are no different than the consumer compliance requirements for traditional lending programs. However, when embarking upon a risk-based lending program, credit unions should be highly cognizant of the three key analyses that courts have identified for proving discrimination under ECOA. These factors are:

- (1) Overt Discrimination occurs when a lender blatantly discriminates on a prohibited basis.
- (2) Disparate Treatment includes overt, as well as more subtle disparities in treatment resulting from treating applicants differently on a prohibited basis. This is more likely to occur when dealing with marginally qualified applicants and is sometimes referred to as the "quality of assistance" provided to an applicant. A difference in treatment, not proof of prejudice or a conscious intent to discriminate, is required to be shown.
- (3) Disparate Impact can be shown when a practice is applied consistently to all applicants, but the practice has a discriminatory effect on a prohibited basis that is not justified by business purpose. Disparate impact is most likely to occur as a result of use of a long-standing written policy or procedure.

The "effects test" is used to determine disparate impact. This test measures whether a credit practice, while on its face is neutral and is applied equally, has a disproportionately negative effect (disparate impact) of discriminating against a protected class. For example, a lender's policy not to extend credit to applicants that change jobs three or more times during a two-year period, while facially neutral, may disproportionately exclude minority applicants from obtaining loans. To justify such a policy, a lender would be required to prove a business purpose for the policy and that no less discriminatory alternative is available.

Credit practices must be justified by business purpose and must be considered reasonable. If the business purpose standard is met and a less discriminatory alternative is not available, the use of the policy or practice may be defended. This area of the law is evolving and specific guidelines given today may change tomorrow. A well-documented system of underwriting, combined with periodic re-testing of the criterion is encouraged to avoid violating the effects tests.

Reasonableness of the creditworthiness criteria derived must be periodically re-tested. Frequency of testing will be dependent upon the accuracy of the original assumptions. To ensure reasonableness, credit and pricing decisions should be supported by:

1. Actual experience with loans having similar characteristics;
2. An empirically derived, demonstrably sound statistical analysis;
3. Industry-wide data available from outside credit services;

4. A well-documented estimate of the servicing, counseling and collection costs.

Credit unions can reduce the chance of fair lending violations by establishing sound policies and procedures, as well as proper employee training and supervision. Credit unions may implement "self-testing" procedures. "Self-testing" occurs when a lender arranges for "testers" or "shoppers" to pose as loan applicants to determine how applicants are treated by the credit union employees.

To encourage fair lending self-testing, the National Credit Union Administration will not ask credit unions to disclose the results of their self-testing programs. Self-testing, identification, and corrective actions do not eliminate legal liability or insulate the lender from lawsuits, or enforcement actions. They could, however, be considered to be substantial mitigating factors in determining the nature of any enforcement action and what penalties or other relief would be appropriate.

A credit union may also perform a self-assessment of its risk-based lending program. Self-assessments can be completed internally or by outside consultants/specialists. The self-assessment process involves comparative file reviews, interviews with key employees, policy/procedure review, etc.

In addition, strict compliance with adverse action notice rules of Regulation B (ECOA) and the Fair Credit Reporting Act (FCRA) is required. The ECOA requires that the lender specifically disclose the principal reasons for denial or other adverse action. The FCRA requires the lender to disclose when it has based its decision, in whole or in part, on information from a source other than the applicant or from its own files (i.e., credit scoring system). Notice requirements vary with the situation and credit union management is responsible for proper implementation. Generally, the disclosure of the principal reason(s) for denial or other adverse action will depend upon the credit evaluation system used by the lender (credit scoring, judgmental, or combined).

Other compliance issues that should be considered prior to implementation include Regulation Z (Truth-in-Lending) requirements governing disclosures and advertising, the Credit Practices Rule (part 706 of the NCUA Rules and Regulations), the Home Mortgage Disclosure Act, and the Federal Fair Housing Act.

The opinion of legal counsel is recommended prior to implementation of a RBL program, as well as when material revisions are made, to ensure that the credit union's policies and practices comply with applicable laws and regulations. The opinion obtained should not merely reiterate the regulations, but should specifically state that the credit union's policy does not violate fair lending regulations.

The credit union may be insured against consumer compliance related losses by its surety bond if the appropriate rider has been purchased. The credit union may request that the insurer complete a risk evaluation review of its lending programs to further ensure compliance.

E. Important Considerations

Credit unions must do their homework prior to implementing risk-based lending. The planning phase should be documented and retained by the credit union for future use during the monitoring and evaluation phase of the program. The following are some points to consider during the planning and development phase:

Involve staff in the planning and development phase to ensure understanding and communication of the risk-based lending philosophy.

Train staff to counsel members from initial application through the loan closing to ensure thorough

understanding and emphasize timely repayment.

Plan to service higher risk borrowers, while attracting and retaining low-risk, high quality loans, by setting and adjusting rates accordingly.

Consider beginning a risk-based lending program with a single loan product or establish a limited "test phase" to work out bugs and evaluate the system.

Consult legal counsel and obtain an attorney's opinion on the program prior to implementation.

Consider the effect of interest rate and liquidity risk, as well as credit risk.

Prepare an initial marketing plan which addresses the members' loan needs.

Establish maximum loan amounts and terms, in addition to loan pricing, to ensure that portfolio risk is properly managed.

Obtain board approval.

II. PLANNING, POLICIES, PROCEDURES, MONITORING

A. Planning Phase

(1) Membership Needs

Who are the credit union's members and what is their financial status? Credit unions must first consider if their members' needs will be better served by instituting risk-based lending. A review of rejected loan applications may reveal that risk-based pricing would have allowed a number of these loans to be made.

A member survey may also assist management in deciding whether to implement a risk-based lending program. Through surveys, credit unions can analyze whether members are obtaining loans from alternative financing sources when they do not qualify for a credit union loan or find cheaper credit elsewhere.

(2) Staffing/Training Needs

Staffing levels must be adequate to handle loan underwriting, processing, follow-up, and collections. The credit union should anticipate and plan for increased credit counseling.

To have an effective program, staff must understand the philosophy of risk-based lending. Training on consumer compliance regulations and risk-based lending underwriting must be provided prior to implementation and on an ongoing basis. Initial staff involvement in the planning phase can help ensure that the fundamentals of risk-based lending are understood and accepted.

(3) Financial Condition of the Credit Union

Officials must determine that the financial condition of the credit union is strong enough to support a risk-based lending program. Ongoing analysis in this area is necessary to effectively evaluate the success of the program.

At a minimum, officials should consider the following issues:

- (Is risk-based lending consistent with the credit union's mission?
- (Does risk-based lending fit into the credit union's goals, objectives, and strategic plan?
- (Is capital adequate to absorb potential increased losses? What is the maximum percentage of capital that can be devoted to higher risk loans?
- (What additional reserving needs may be required?
- (Is asset quality acceptable and is diversification needed? What is the maximum percentage of assets that can be earmarked for higher risk loans?
- (Are delinquency levels reasonable and to what extent are they expected to increase?
- (Are loan losses at a reasonable level and to what extent can the credit union afford to increase losses? How much are loan losses expected to increase?
- (Are operating expenses reasonable and what, if any, increases can be expected from this program (i.e., training costs, legal opinions, collection costs, etc.)?
- (What are the expected start-up costs?
- (Can risk-based lending generate sufficient income to cover the cost of servicing, administration, collections, and loan losses (analyze costs/benefits)?
- (Will an outside consultant be needed to assist with training and development of the program and what costs would be associated with this alternative?
- (Does the credit union have adequate liquidity to increase lending? Is loan participation a viable option when liquidity is limited and loan demand exists?
- (Does an adequate ALM program exist and how does this new product fit in? Can officials ensure that they will not have to rely upon high-rate, volatile shares as a long-term liquidity source?
- (Are share rates reasonable and can loans be marketed at reasonable rates to maintain an adequate spread?

(4) Operational Issues

Officials must determine that the credit union is operationally ready to undertake a new program. Board approval of the program should be documented in the minutes. Resources should be evaluated to determine whether additional or outside assistance is needed (or could be beneficial).

At a minimum, officials should consider the following:

- (Does unfulfilled loan demand exist?
- (Is membership stability a problem?
- (Are members forced to go to the competition to obtain loans that the credit union could possibly grant? Can the credit union fill this need while maintaining safe and sound operations?

- (Are resources available to ensure adequate staffing, training, and marketing?)
- (Can the existing reporting systems provide for ongoing monitoring (by collateral or type code)?)
- (Can existing collections systems adequately track and evaluate the success of the program?)
- (Are internal controls adequate to ensure compliance with regulations, policies, pricing, etc.?)
- (Under what conditions would officials consider termination of this program? Can reasonable risk thresholds be established?)

B. Establishment of Policies/Procedures/Quality Controls

Following completion of a cost-benefit analysis, the development of sound policies, procedures, and quality controls are fundamental to the success of any new product. Policies, procedures, and quality control measures must be documented. Communication of the policies and procedures through employee involvement and training should start during the planning phase.

Quality control measures may include, although are not limited to, the following:

Code loans by risk tier (1, 2, 3 or A, B, C) and monitor delinquency and losses by tier. At a minimum, code and track the highest risk tiers. Adjust criteria if delinquency or losses are unacceptable. Retain monitoring reports to support the business purpose of the criteria adjustment.

Evaluate portfolio risk by tracking delinquency and performance of loans based upon the origination date.

Analyze the net income contribution of each tier of the portfolio prior to implementation and quarterly thereafter to determine whether loans are priced appropriately and fairly.

Evaluate all rejected applications (i.e., some applications that are rejected by a scoring system may not measure true credit-worthiness).

Review performing loans after a specified period (i.e., 6-12 months) and upgrade to lower rates when repayment and credit performance places the borrower into a new tier.

Closely monitor member complaints for signs of potential discrimination or problem employees.

Re-evaluate the risk-based lending policies, procedures, and overall program periodically and retain documentation of the evaluation process.

Conduct a self-assessment to review overall program compliance. A self-assessment may be performed internally or through the use of outside consultants.

Consider a "self-testing" program to evaluate the treatment of applicants.

(1) Maximum Limits

Based upon the credit union's financial condition, officials should establish a policy maximum (dollar and/or percentage limits) on the higher risk loan tiers in relation to assets, loans, and capital. In addition, to ensure diversification, the credit union should establish the (1) maximum aggregate amount available to loan to higher risk borrowers and (2) maximum aggregate amount for each type of loan available for higher risk

borrowers. A maximum loan dollar limit per borrower should also be established. An initial testing phase, with lower limits may be recommended to evaluate policies and procedures.

Risk-based loans must be tracked by the credit union to allow periodic evaluation of the program and established limits. Depending upon the data processing system available, a loan collateral code or type-code should be assigned during the loan processing for tracking and reporting purposes.

(2) Pricing/Advertising Considerations

Officials should strive to price loans competitively and reasonably in relation to risks, as well as the credit union's financial condition.

At a minimum, loan pricing decisions should consider:

- Cost of operations (loan servicing, collections, overhead);
- Cost of funds;
- Anticipated loan losses;
- Risk premium (or discount);
- Desired/Required contribution to equity;
- Any associated loan fees (may be deducted from rate).

Advertising for risk-based loan rates must be carefully worded. Use of terminology such as "rates as low as X%" and clarification that the best rates are based "on approved credit" should help to avoid the perception of "bait and switch" advertising.

(3) Underwriting

Risk-based lending requires the establishment of underwriting guidelines for different levels of risk. Credit unions have the option of using a credit scoring system, judgmental review system, or a combination of both. Basically, there is no "one-size fits all" system for risk-based lending. The use of a numeric credit scoring system derived by an impartial third party (i.e., credit reporting agency) to remove any questions of discrimination, is favored by many. Once the method and criteria are established, they must be followed with no exceptions to policy in order to avoid potential ECOA or FHA violations.

(i) Credit Scoring Systems

By applying a risk rating system to information provided on the borrower's application, credit scoring systems facilitate credit decision recommendations. Credit scoring systems consider factors such as debt to income ratio, credit history, job stability, amount of outstanding unsecured debt, residence stability, assets, collateral offered, etc. No prohibited basis may be used as a variable in a scoring system, other than age, which may serve as a predictive factor provided the age of an elderly applicant is not assigned a negative factor or value.

Credit scoring models must be based upon empirically derived, statistically sound methods of evaluating applicants. In general, the use of a properly derived credit scoring system reduces the possibility that loan policies may be discriminatory. A valid credit scoring system will not provide automatic protection or a "safe harbor" from a challenge. Scoring systems require regular monitoring, updating, and retesting to ensure reasonableness as the credit union's portfolio changes.

Credit decisions can be made more quickly by computerized credit scoring rather than by judgmental

review. However, in many cases, applicants that are rejected by credit scoring due to unusual circumstances will require subsequent review by an experienced loan officer.

Credit scoring systems can be custom-made for the individual credit union or based upon generic data. A custom-made scoring system develops evaluation criteria by analyzing the credit union's portfolio and loan losses, and normally requires a sizable portfolio to be considered valid. If expertise is not available in-house, outside assistance is necessary. The cost of such a system through a third party vendor or consultant will depend upon asset size. Since substantial time and financial costs may be incurred, a cost/benefit analysis is recommended.

Generic credit scoring systems are based upon a portfolio created from a sufficient amount of combined regional data to be considered a valid representation. While a custom system will be more accurate than a generic, since it is derived from an individual credit union's data, generic systems are considered useful tools. Generic scoring systems are available through most of the large credit reporting service agencies.

(ii) Judgmental/Loan Officer Review Systems

In some cases, a scoring system is not practical for an individual credit union due to cost or other considerations. Any credit review system other than an empirically derived, demonstrably sound, credit scoring system is termed to be a judgmental review system. Judgmental review requires a well-trained loan officer. Consistent application of the credit union's policies is of paramount importance. Policies must be clearly documented and a matrix may be used to determine risk and the appropriate price.

Judgmental reviews often consider such factors as debt to income ratio, disposable income, loan-to-value, credit report/history, etc., as well as other information obtained from the loan application. Training, quality control reviews, and continual re-evaluation of policies and procedures must be emphasized. Successful judgmental systems require the loan officer to clearly document the loan decision in the loan file.

(iii) Combined Review - Judgmental and Credit Scoring

A combination of the two types of review may provide the credit union with the best of both systems. For example, a combined review system could work by initially processing all applications through the credit scoring system to determine the appropriate risk tier. Applications with scores that meet or exceed the standard (or preferred) rate are approved. Applications that do not qualify for the standard or preferred rate then move on to a loan officer for judgmental review to determine whether the applicant qualifies for a lower tier (higher rate) loan.

The initial credit score is used as a guideline for tiered pricing decisions, however, loan officers are not restricted by the credit scores alone. Credit unions must have clearly written policies to equitably determine which pricing tier is appropriate for each applicant. To assist the credit union in the evaluation of its combined review system, the principle reasons why a credit-scored application was not eligible for the standard (preferred) rate, and was passed on to a judgmental review, should be documented in the loan file.

An adverse action notice may be required when the applicant is offered credit different from that which he or she originally applied for (counteroffer). If the applicant is denied credit based upon the judgmental review, the adverse action notice must reflect the component of the system that the applicant failed (credit scoring, judgmental, or both).

(4) Establish Thresholds for Discontinuance of Program

Risk evaluation thresholds that, if met, would require termination of the program should be established prior to implementation of risk-based lending. Thresholds for discontinuance could include delinquency and loan loss ratios, reduced capital levels, net losses from specific risk tiers, etc.,. Delinquency and loan losses will not surface until the program has been in place for a number of months, therefore, close monitoring and evaluation is critical.

(5) Legal Opinion/Risk Review

Legal counsel should be obtained to review and comment on the credit union's proposed risk-based lending program to ensure compliance with applicable laws and regulations.

In addition to legal counsel review, the credit union officials may want to request the surety bond company to complete a risk review of the risk-based lending program policies, procedures, and related internal controls.

(6) Monitoring and Follow-up

The credit union must establish a tracking mechanism to monitor performance of the risk-based portfolio by assigning computer codes based upon the loan risk tier. At a minimum, all of the highest risk category loans granted should be tracked separately from the other loans in the credit union's portfolio. The credit union's tolerance for reasonable delinquency levels and loan losses must be considered based upon financial performance and operational issues.

Assuming that the portfolio will contain higher risk loans, reserve needs should be evaluated and considered up front. Eventually a historical loss ratio can be derived by tracking each risk category for reserving purposes.

Management must periodically evaluate both successful and unsuccessful aspects of the program and should revise or fine-tune the overall program as necessary to achieve accurate and valid information. Reports must be provided to the officials through these interim reviews. Quality control measures must be established. If a scoring system is utilized, periodic retesting is required. Re-testing of risk rating assumptions is recommended at least annually to ensure that the "effects test" is not violated. The objective of testing is to determine the best way to grant risk-based loans with the least discriminatory effect.

III. EXAMINATION PROCEDURES

A. Safety and Soundness Issues

The presence of a risk-based lending program will be noted in the examination report where deemed appropriate. In most cases, adoption of a risk-based lending program is not recommended for credit unions with severe operational problems.

Examiners will evaluate risk-based lending programs based upon materiality in relation to the financial and operational conditions of the credit union. Safety and soundness issues will be noted on the Loan Exceptions or Examiner's Findings workpapers as appropriate. Records of Action to correct material deficiencies will be discussed and developed with officials prior to issuance of the final examination report.

Consumer regulation compliance will be addressed during the compliance review portion of the examination. Any potentially discriminatory practices that are identified during the examination will require correction by the credit union.

The credit union's policies and procedures must be well-documented. Quality control measures must be in place. Ongoing monitoring and re-evaluation by credit union officials is encouraged.

NCUA's review of a risk-based lending programs will focus on safety and soundness issues, regulation compliance, full and fair disclosure, and risk management. At a minimum, examiners will review the following aspects of the risk-based lending program:

- (Are policies and procedures documented and comprehensive?
- (Are policies and procedures followed?
- (Are employees and officials properly trained?
- (How well are overall risks managed?
- (Are reasonable limits established for higher risk loans?
- (Are loan decisions documented in the file?
- (Are quality control measures adequate?
- (Does the credit union have an adequate tracking system?
- (Is the program periodically re-evaluated?
- (Is delinquency monitored by loan tier?
- (Are collections efforts appropriate, consistent, and timely?
- (Does the credit union have a reasonable method for funding the ALL for higher risk loans?
- (Has legal counsel reviewed policies and procedures?
- (Is a credit scoring system being utilized and is the system periodically re-evaluated or retested to maintain predictive validity?

IV. GLOSSARY OF KEY PHRASES

Business purpose: (formerly "business necessity) To prove that a credit evaluation criteria meets a business purpose, there must be a demonstrable relationship between the criteria and an applicant's level of creditworthiness. Business purpose may include such factors as minimization of the risk of losses, the control of operating and administrative expenses, and profitability. If a policy or practice is justified by business purpose and there is no less discriminatory alternative, a violation of the ECOA or the FHA will not exist.

Credit scoring system: A system that evaluates creditworthiness of an applicant based on key attributes of the applicant and aspects of the transaction. Such a system may be used, alone or in conjunction with an evaluation of additional information about the applicant, to determine whether an applicant is deemed creditworthy.

Empirically derived, demonstrably sound (credit scoring system): For a system to qualify as such, the

system must: (1) be based upon data derived from an experimental comparison of sample groups or the population of creditworthy and noncreditworthy applicants that have applied for credit within a reasonably recent period of time;

(2) be developed for the purpose of evaluating the creditworthiness of applicants with respect to common business interests of the lender utilizing the system (i.e., such as minimizing loan losses and operating/administrative expenses);

(3) be developed and validated utilizing recognized statistical principles and methodology; and

(4) be periodically revalidated utilizing appropriate statistical principles and methodology and modified as needed to maintain predictive ability.

A credit scoring system obtained from an outside source must satisfy the above requirements. If the lender is unable to validate the system based upon its own credit experience as set forth above, the system must be validated when sufficient credit experience data becomes available. If the validity test is failed, the system can no longer be considered an empirically derived, demonstrably and statistically sound, credit scoring system for that lender.

Judgmental review system: Any system utilized to analyze creditworthiness other than an empirically derived, demonstrably sound, credit scoring system.

Prohibited basis: Includes race, color, religion, national origin, sex, marital status, or age (provided that the applicant can legally enter a binding contract); the fact that all or part of the applicant's income is derived from public assistance; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted.

Self-testing: Testers or "shoppers" pose as loan applicants to determine how applicants are treated by credit union employees. Self-testing is one method that may be utilized to safeguard against potentially discriminatory practices.