

What a new Nevada spousal credit law means for lenders

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Nevada recently amended its Equal Opportunity for Credit statute to give special rights to credit applicants who do not have individual credit histories because their accounts were established in their spouses' names. (See Nevada SB311, effective October 1, 2019). The Nevada law applies to a creditor offering any credit product in Nevada, including a finance company that participates in the decision to extend credit as an assignee of an original creditor, which may include auto finance companies.

A credit applicant who was or is married, and has no credit history, may now request that a creditor consider the applicant's credit history to be identical to that of the applicant's spouse which was established during the marriage. The creditor may request proof of the marriage and the dates of the marriage. A creditor that does not comply with an applicant's valid request will be considered have discriminated against the applicant based on his or her marital status.

The new Nevada law goes farther than federal law in giving special rights to a married applicant with no individual credit history. Federal law requires a creditor to consider, if requested by the applicant, the history of an account reported in the name of the applicant's spouse or former spouse when available, and *when the applicant can demonstrate that the account accurately reflects his or her own creditworthiness*. The applicant could demonstrate this through, for example, records showing payment from a joint account, or records showing that the applicant's income provided the funds to make the payments on the account.

Unlike federal law, Nevada law does not require the applicant to demonstrate that the spousal account reflects his or her own creditworthiness. Instead, Nevada law presumes equal creditworthiness based on the fact of the marriage. Because of this difference, compliance with federal law will be insufficient in Nevada. Fortunately, it does not appear that compliance with the Nevada requirement will violate federal law in terms of the credit application. Because the Nevada statute requires the applicant to request that the creditor consider the spouse's credit history, a creditor is not required to ask about marital status in the credit application. However, the Nevada requirement may pose problems for creditors in complying with other federal law. A creditor cannot pull a credit report without a permissible purpose under federal law, and a state requirement does not provide a permissible purpose. Although federal law allows a creditor to pull a report on a current spouse in community property states like Nevada, there is no permissible purpose to pull a report on a former spouse without consent.

Importantly, the Nevada law is **limited to the situation where an applicant has "no credit history."** The statute does not explain what "no credit history" means. So it is reasonable to assume the requirement would only apply where the applicant has no credit history at all, positive or negative. The law would not appear to allow an

applicant to replace or supplement his or her own negative credit history with the positive credit history of the spouse when applying for individual credit.

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