Remarks by Governor Lawrence B. Lindsey
on the proposed amendment to Regulation B
December 20, 1996

Thank you, Mr. Chairman. The members of the Committee on Consumer and Community Affairs have reviewed and endorse the proposal to withdraw the proposed amendment to Regulation B which would allow, but not require, creditors to ask for the race, sex, color, religion, and national origin of credit applicants. The Committee members reached this conclusion after a long and thoughtful consideration of all of the arguments and potential ramifications of the matter.

The issue before us is not some technical matter of law or economics. Nor is it some narrow question of ideal regulatory implementation. Rather, it is at the center of a heartfelt and ongoing debate in America about the direction of public policy with respect to individual characteristics.

We fully recognize that there are few areas which are more sensitive and engender more passion than issues surrounding race, gender, national origin, and religion. And rightly so. Such issues go to the heart of our own sense of who we are as well as our understanding of what we stand for as a nation. However, we must not let the sensitivity of these issues stand in the way of a candid discussion of the public policy issues at hand.

While there are many views on these matters, two major schools of thought appear to dominate the discussion. One school holds matters such as race, gender, national origin, and religion to be irrelevant, having no place in how an individual should be treated. One might characterize this view, with regard to race in particular, as the race-blind position. In this view, to ask about such matters and, where answers are not forthcoming, to ascribe a

category to an applicant, is philosophically abhorrent. This view holds that from a policy perspective, adopting the proposed changes in Regulation B would be counterproductive in that it would move the nation away from establishing a race-blind society.

The alternative view holds that in order to assure that individuals of all races, genders, national origins, and religions are treated fairly, one must be free to categorize people according to these characteristics and analyze the results. In this view, regulation cannot be race-blind, but must be race-conscious. This view holds that from a policy perspective, the changes in Regulation B are a necessary step, permitting institutions to be conscious of the racial (and other) characteristics of their applicants, thereby allowing them to adjust decision making processes as necessary to ensure equality of treatment.

At their core these two philosophies are mutually incompatible. They have different goals and objectives about how public policies should be designed, the role individual characteristics should play in public policy, and really about what type of nation we should live in. These differing philosophies are deeply and genuinely held by adherents on both sides.

In light of these divergent philosophies, it is the view of members of the Committee on Consumer and Community Affairs that this is a POLITICAL matter in the most fundamental meaning of that term. As such, the appropriate mechanism for making decisions regarding this issue is the legislative process. It is our elected representatives in the U.S. Congress and the President who should decide which of these competing philosophies is the right one for America. While the seven of us each individually have our own view on this matter, it would be bad civics, and inimical to the need for public debate and consideration

of this matter, for us to impose our views on the country.

In fact, a consideration of the history of this issue suggests that the Board has consistently deferred to the political process in these matters. The Board's initial judgment after the passage of the 1974 Equal Credit Opportunity Act and its 1976 amendment was that a race- and gender-blind result was intended. Much of the legislative record suggested instances of Mary Jane Smith not being able to get credit but M.J. Smith being approved. Hence, Regulation B sought to prohibit creditors from asking for this information. Later, we amended this rule to require the collection of such information with regard to mortgages at the behest of the Department of Justice which was in the midst of fair housing litigation. Various legislative actions with regard to the Home Mortgage Disclosure Act have also prompted us to modify our practice.

We believe that this history is consistent with our view of good civics, and urge that action in this matter should take place through the legislative process. Our recommendation is not that the legislature necessarily choose to maintain the status quo, but that the legislative process and not the regulatory one is the right method by which consideration of this issue should proceed.

In addition to this overarching issue, there are two additional matters which warrant discussion. The first involves the impact of this decision on community development, a topic about which I am personally concerned and in which the members of the Committee as well as this Board have taken great interest. The Committee does not view this decision as harmful to community development. Let me explain why this is the case.

Under the new Community Reinvestment Act (CRA) regulations, detailed data on

community development, housing, and small business lending will be collected at the level of the census tract. This information can be used to determine the volume of bank lending extended for the development and revitalization of any community. What the CRA data do not contain are the characteristics of the borrower. A specific example of this for illustrative purposes only would be that we can determine the number of loans and dollar amount of small business lending in a given census tract, but cannot tell whether the businesses receiving those loans are owned by African Americans or Korean Americans.

To some people, it may matter very much whether the small business people in this census tract are of African or Korean descent. But, this gets to the heart of the issue discussed above, about whether we should be a race-blind or a race-conscious society. It is not however, a technical matter of optimal community development policy. As a technical matter regarding the level of community development activity, if one were really interested solely in the development of a given community, a good case could be made that agnosticism with regard to the characteristics of the individuals doing the investing might be the best approach. The history of many of our cities has been one of different ethnic groups supplanting each other both as residents and as owners of the small businesses in the area. It seems difficult to understand how adding yet another filter regarding the characteristics of borrowers could facilitate this process.

The second matter that is important to emphasize regards enforcement of existing laws. It is and always has been the case that the Justice Department, regulatory agencies, or a state or municipality could override Regulation B with regard to any institution it was investigating for discrimination. It is important to emphasize therefore that the array of fair

lending enforcement tools now available will not be affected by the Committee's recommendation.

I would now like to invite Governor Meyer to share his views. We will then join the staff in addressing any questions you may have.