



FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

DALLAS, TEXAS 75222

April 20, 1989

Circular 89-26

TO: The Chief Executive Officer of all
member banks, bank holding companies
and others concerned in the Eleventh
Federal Reserve District

SUBJECT

**Slip sheet with amendments to the Official
Staff Commentary on Regulation B -- Equal Credit
Opportunity**

DETAILS

The Board of Governors of the Federal Reserve System has published amendments in slip-sheet form to Regulation B, effective January 1989. The new slip sheet should be inserted in Volume 2 of your Regulations Binders.

ATTACHMENTS

The slip sheet is enclosed.

MORE INFORMATION

For more information, please contact Dean A. Pankonien at (214) 651-6228. For additional copies of the slip sheet contact the Public Affairs Department at (214) 651-6289.

Sincerely yours,

William H. Wallace

Amendments to the Official Staff Commentary on Regulation B January 1989*

The following comments were amended effective April 1, 1988.

SECTION 202.6—Rules Concerning Evaluation of Information

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6(b) Specific Rules Concerning Use of Information

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Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of section 202.8.

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3. *Consideration of age in a judgmental system.* * * *

As the examples above illustrate, the evaluation must be made in an individualized, case-by-case manner; and it is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to base its decision on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other "pertinent elements of creditworthiness" that are drawn from the particular facts and circumstances concerning the applicant.

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* The complete commentary, as amended effective April 1, 1988, consists of—

- the Regulation B commentary pamphlet dated January 1986 (see inside cover) and
- this slip sheet.

SECTION 202.7—Rules Concerning Extensions of Credit

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7(d) Signature of Spouse or Other Person

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Paragraph 7(d)(5)

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2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See section 202.6(c) on consideration of state property laws.)

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SECTION 202.12—Record Retention

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12(b) Preservation of Records

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a written

copy of a document (for example, an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

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SECTION 202.13—Information for Monitoring Purposes

13(a) Information to Be Requested

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5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

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The following comments were added or amended effective April 1, 1987.

SECTION 202.2—Definitions

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2(f) Application

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5. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit

report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)-3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

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2(z) Prohibited Basis

1. *Persons associated with applicant.* "Prohibited basis" as used in this regulation refers not only to certain characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. * * *

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SECTION 202.3—Limited Exceptions for Certain Classes of Transactions

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3(a) Public-Utilities Credit

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3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in section 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

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SECTION 202.9—Notifications

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9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(1)

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3. *Incomplete application—denial for incom-*

pleteness. When an application is incomplete regarding matters that the applicant can complete and the creditor lacks sufficient data for a credit decision, the creditor may deny the application, giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under section 202.9(c).

Current comments 9(a)(1)-3 through 9(a)(1)-6 are redesignated comments 9(a)(1)-4 through 9(a)(1)-7, respectively.

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SECTION 202.13—Information for Monitoring Purposes

13(a) Information to Be Requested

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5. *Transactions not covered.* The information collection requirements of section 202.13(a) apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for home equity lines and other applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements of section 202.13(a).

Current comment 13(a)-5 is redesignated 13(a)-6.

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APPENDIX B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The residential loan application

form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of this regulation in some transactions but not others because of the form's section "Information for Government Monitoring Purposes." Creditors that are governed by section 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by section 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under section 202.13(d) may use the form as issued, in compliance with that substitute program.

2. *FHLMC/FNMA form—home-improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section "Information for Government Monitoring Purposes." Creditors that are governed by section 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by section 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under section 202.13(d) may use the form as issued, in compliance with that substitute program.