FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

January 8, 1990

DALLAS, TEXAS 75222

Circular 90-03

To: The Chief Executive Officer of all
member banks and others concerned in
the Eleventh Federal Reserve District

SUBJECT

Final Amendments to Regulation B

DETAILS

In response to the Women's Business Ownership Act of 1988 (P. L. 100-533, 102 Stat. 2689) and comments received on its proposal to amend Regulation B issued July 14, 1989 (54 FR 29734), the Federal Reserve Board has revised its Regulation B implementing the Equal Credit Opportunity Act (ECOA) (15 U.S.C. sec. 1691-1691f). Mandatory compliance is required by April 1, 1990.

The revisions specify that creditors must (1) provide a notice disclosing an applicant's right to a written statement of reasons if credit is denied and (2) retain records in accordance with the ECOA on credit applications involving businesses with gross revenues of $1 million or less. These new rules generally are similar to the rules that govern nonbusiness, or consumer, credit, the primary difference being in the recordkeeping requirements for loan applications. Creditors, however, that elect to apply the rules governing nonbusiness (consumer) credit to all transactions will be in full compliance with the act and regulation.

Applications from businesses with revenues exceeding $1 million, as well as applications for trade credit, credit incident to factoring arrangements, and similar types of business credit will continue to be subject to the modified rules for notification and record retention set forth in various sections of Regulation B.

A copy of the Board's notice and a synopsis of the new rules on the ECOA and business credit dated December 1989 are attached. The synopsis is supplied to assist banks in compliance.

MORE INFORMATION

For more information, please contact Eugene Coy (214) 744-7480; or Dean A. Pankonien (214) 651-6228. For additional copies of this circular, please contact the Public Affairs Department at (214) 651-6289.

Sincerely yours,

William H. Wallace

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SYNOPSIS OF NEW RULES ON THE ECOA AND BUSINESS CREDIT
December 1989

Beginning April 1, 1990, new rules will apply to business credit under the Federal Reserve Board's Regulation B. The rules implement amendments to the Equal Credit Opportunity Act contained in the Women's Business Ownership Act of 1988, and address concerns about access to credit for businesses owned by women and minorities. Lawmakers believed that while financing is a problem for most small businesses, women business owners may experience greater difficulties because of sex discrimination.

The new requirements are intended to inform business applicants of their rights under the law and to provide records so that supervisory agencies can better discern whether unlawful discrimination is taking place.

RULES BASED ON APPLICANT'S REVENUE SIZE

The legislative history indicated that the Board should impose the new requirements to ensure that ECOA rights were available to the owners of small business entities. The Board's regulations implement the law and set these two basic requirements when the business earns less than $1 million in annual revenues (and different rules, described below, for larger entities):

(1) the lender must give a notice disclosing the applicant's right to a written statement of reasons if credit is denied.

(2) the lender must keep records on loan applications--whether the loan was granted or denied--for one year (counting from the date that the applicant was notified of the lender's credit decision).

BANKS' COMPLIANCE PROCEDURES

For banks, the first step toward compliance is to decide on the approach that best fits in with the bank's business lending operations, taking such matters as business volume into account. There are various options.

Adopt consumer rules for all transactions

The new rules for business credit are very close to the rules in consumer credit transactions. A bank could apply the consumer rules ad be in full compliance with the act and regulation. This approach would involve the following:

Credit decisions and written notices. The creditor could inform the applicant orally when a loan is granted, but would have to put it in writing when credit is denied. In the latter case, the bank would have the choice of (1) automatically giving the reasons for the denial in writing, or (2) giving notice of the applicant's right to a written statement of reasons, also in writing, and giving the actual statement only when asked.

Records. The bank could retain records for 25 months, as in consumer credit. Or, the bank could opt to follow the consumer rules on notices and the business credit rule of 12 months on recordkeeping.

Use One Set of Rules for All Business Transactions

The bank could apply the same rules across the board--that is, those that govern when a business applicant's revenues are under $1 million--in all business transactions regardless of revenue size, as follows:

Credit decisions and notices. The bank could tell the applicant of the credit decision orally, whether an application is granted or denied. It would have two options for giving notice of the applicant's right to a written statement of reasons (the Board has provided sample notices for each):

(1) Give the applicant who is denied credit either the reasons in writing or notice of the right to a written statement of reasons (also in writing). In either case, this action must be taken within 30 days of receiving a completed application, the same as in consumer transactions. (An application is complete when the bank has all the information needed for a decision, including business plans, tax returns, etc.)

(2) Give a notice to all applicants of the right to a written statement of reasons in the event of a denial. It can be given during the application stage, rather than after credit is denied, but must be in a form the applicant can keep (such as on a document given to the applicant, or on a separate sheet).

Of course, the bank may also give the reasons for the denial orally; most bankers say they always do this with business applicants. But giving the reasons orally does not change the obligation, set by the statute, to give the written notice of

rights. (A bank is allowed to give the notice of rights orally when the application takes place entirely by telephone.)

Records. The bank could keep all records from business applications for one year. Or it could segregate loan files based on the revenue size of the business, keeping records for one year only if revenues were $1 million or less.

Follow Two Sets of Rules for Business Credit

The bank could adopt the above set of rules as applicable, and use the following procedures when revenues exceed $1 million:

Credit decisions and notices. The bank must inform the applicant of the credit decision, orally or in writing, within "a reasonable time" of receiving a complete application. (The Board has said that 30 days is always "reasonable.") There is no required disclosure of the applicant's right to a written statement, although the applicant is in fact entitled to such a statement on request.

Records. The bank must keep records of an application for at least 60 days after notifying the applicant of the credit decision. After that, records may be discarded unless the applicant (1) asks for a written statement of the reasons for denial, or (2) asks that records be kept for the one-year period.

OTHER RULES

Other rules apply to all business transactions regardless of revenue size: limits on when a creditor may require a guarantor or ask questions about a business owner's marital status, for instance, the same as in consumer transactions. Most important is the "general rule" of Regulation B, which bars discrimination in any aspect of a business credit transaction (in such matters loan terms, for instance) because of race, sex, marital status, or any other "prohibited basis."

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0671]

RIN 7100-AA97

Equal Credit Opportunity Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments mandate that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial. Creditors are also required to retain records relating to business credit applications for at least one year.

The revisions to Regulation B implement the statutory amendments and define coverage based on a credit applicant's gross revenues. Creditors must provide written notices and retain records in accordance with the new law on credit applications involving businesses with gross revenues of $1 million or less. Applications from businesses with gross revenues greater than $1 million and applications for trade credit and similar types of business credit are subject to modified notice and recordkeeping rules provided in Regulation B. Business credit transactions, regardless of the revenue size of the business, remain covered by all other relevant provisions of the Equal Credit Opportunity Act and Regulation B.

EFFECTIVE DATE: December 8, 1989, but mandatory compliance is not required until April 1, 1990.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3667: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR part 202. A staff commentary to the regulation, 12 CFR part 202 Supp. I, applies and interprets its requirements. The fourth proposed update to the commentary to Regulation B, including interpretations of the ECOA amendments on business credit, is published elsewhere in this **Federal Register.**

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions from some of the regulation's requirements for certain types of credit, including extensions of credit primarily for business, commercial or agricultural purposes ("business credit"). The current exceptions for business credit relate to written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons.

The Women's Business Ownership Act Amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B did not provide business credit applicants, particularly small-business owners, adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Public Law No. 100-533, 102 Stat. 2689. The primary intent of the statutory amendments is to provide small-business owners the same procedural rights under the ECOA that are afforded to consumer credit borrowers. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial in writing and (2) retain records on business credit applications for at

least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirements of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

The Revisions to Regulation B

On July 14, 1989, the Board published for comment a proposed rule to amend Regulation B to implement the amended statute. (54 FR 29734) The Board received approximately 200 comment letters on the proposal. More than half of the commenters generally objected to the legislation without addressing specific aspects of the Board's proposal. About one-third of the letters provided comment on the proposed rules. There was general support for the use of gross revenues as the test to identify the business credit applicants intended by the Congress to be covered by the amendments, though some commenters preferred that coverage be based on a loan size or some dual revenue and loan-size test. Some expressed concern about the costs associated with the proposed record retention rules.

Based on express findings required by the act, the comments, and further analysis, the Board has issued herein a final rule that defines the business credit applications to which the new notice and recordkeeping rules apply and provides alternative ways for complying with the notice requirements. Some commenters had suggested that the dollar amount of the revenue cutoff be lower. Smaller financial institutions were concerned that the amendments would have a disproportionate impact on their institutions because the proposed cutoff would cover virtually all of their loans. Other commenters believed that the revenue cutoff should be much higher. In the final rule, the Board has increased the test for coverage from $500,000 to $1 million in gross revenues. This figure covers approximately 86 percent of all for-profit businesses and will afford the ECOA's procedural rights to a wider variety of businesses. The Board has also revised the provisions on notice and recordkeeping that govern all other business credit transactions, and has eliminated an exception that used to permit marital status inquiries in business credit applications.

The new notice and record retention rules applicable to business credit generally are similar to the rules that govern nonbusiness credit. The primary difference relates to recordkeeping rules—12 months for business credit and 25 months for nonbusiness credit. Creditors that elect to follow the rules governing nonbusiness credit for all transactions will be in full compliance with the act and regulation. Similarly, creditors may, but are not required to, treat all applications for business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with the new requirements.

The new provisions contained in paragraph (a)(3)(i) of § 202.9 (Notifications) and paragraphs (b)(1)–(4) of § 202.12 (Record Retention) govern applications from businesses that had gross revenues of $1 million or less in its preceding fiscal year. Applications for trade credit, credit incident to factoring arrangements, and similar types of business credit—as well as credit applications from businesses with revenues exceeding $1 million—are subject to the modified rules for notification and record retention set forth in §§ 202.9(a)(3)(ii) and 202.12(b)(5) of Regulation B, respectively.

(2) Section-by-Section Summary

The following is a section-by-section summary of the final rule implementing the amendments to the ECOA contained in the Women's Business Ownership Act.

Section 202.2—Definitions

2(g)—Business Credit

The definition of business credit previously contained in § 202.3(d)(1) has been moved to § 202.2 (Definitions), paragraph 2(g). The definition of "Board," previously contained in § 202.2(g), has been removed to avoid the need to renumber succeeding paragraphs. As used in the regulation, the term Board means the Board of Governors of the Federal Reserve System.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

3(a)–(d)—Public Utilities, Securities, Incidental and Government Credit Exceptions

In addition to business credit, Regulation B provides exceptions from certain provisions for credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); and extensions of credit to federal and state governments. In the July proposal, the Board solicited comment on the appropriateness of retaining the special rules for these classes of transactions. Except in the case of incidental credit, the Board received no unfavorable comment. The final rule retains the current exceptions in § 202.3 of the regulation for all four categories without change, except that the government credit exception has been redesignated § 202.3(d).

The Board believes that the limited exceptions remain appropriate. The exceptions for public utilities credit are minimal and relate to marital status inquiries, reporting credit information to third parties, and record retention. Public utilities credit is subject to most of the regulatory requirements including, for example, the rules governing information that may be considered in evaluating applications and the rules for notifying applicants of credit denials. Securities credit is subject to the Securities Exchange Act of 1934 which continues to impose duties upon securities brokers and dealers to ascertain certain information about business entities and individuals applying for credit, such as legal relationships and the types of ownership interest in property. Therefore, the Board believes that the exceptions from Regulation B's restrictions (on inquiries about spouses and marital status and on obtaining the signatures of guarantors and cosigners) remain appropriate. Extension of credit to governments or governmental subdivisions are subject to the general rule barring unlawful credit discrimination; the costs of compliance clearly outweigh any protections that might be afforded by applying all of the other ECOA requirements.

One commenter opposed the incidental credit exception on the ground that consumers are not receiving the full protections of the act because some retail sellers deliberately structure financing arrangements to fall within the exception. Notwithstanding this comment, the credit transactions to which the exception applies are largely incidental to some other activity (such as the providing of health care or other professional services) where the creditor extends credit as an accommodation to the consumer and is not in the business of extending credit.

Business credit exceptions

The provisions of paragraph (d) on business credit have been moved to other sections or eliminated as discussed below. Paragraph (e) on credit

to governments has been redesignated paragraph (d).

Former paragraph (d)(1) containing the definition of business credit has been moved to § 202.2(g). Former paragraph (d)(2) contained exceptions for all business credit transactions relating to marital status inquiries and credit reporting; the final rule eliminates both exceptions as discussed below. The substance of the rules in paragraph (d)(3) notifications is now in § 202.9(a)(3)(ii). The substance of the rules on record retention in that paragraph is now in § 202.12(b)(5).

The final rule prohibits creditors from inquiring about the marital status of a business credit applicant for unsecured credit. The regulation permits creditors to inquire about marital status if an applicant resides in a community property state or relies on property located in such a state to repay a debt, or applies for secured credit. A few commenters expressed concern that not knowing the marital status of an applicant for unsecured business credit, particularly in the case of a sole proprietor, would adversely affect the creditor's ability to determine ownership rights in property held by the applicant. The prohibition on marital status inquiries, however, does not impair a creditor's ability to inquire about ownership rights in, or the name of any co-owner of, property relied upon by a credit applicant to satisfy a debt in the event of default. (*See generally* § 202.5(d)(1) and accompanying commentary.)

The final rule deletes an exception for business credit from § 202.10 regarding the reporting of credit information for joint accounts held by spouses. Some commenters expressed concern that eliminating the exception might lead to confusion about whether the reporting requirements apply to the business accounts of sole proprietors. Section 202.10 was designed to remedy a situation related to consumer credit accounts, where credit histories used to be reported only in the husband's name and, as a consequence, married women who become divorced or widowed were left without a credit history. The provision is not relevant to business applicants such as corporations or partnerships, nor is it intended to apply to individual business applicants such as sole proprietors. Consequently, as a technical matter, no specific exception is necessary. Nevertheless, to address any possible ambiguity, the Board's official staff commentary to Regulation B will make clear that the credit reporting rules apply only to consumer accounts.

Section 202.9—Notifications

9(a)—Notification of action taken, ECOA notice, and statement of specific reasons

Paragraph (a)(3)—Notification to Business Credit Applicants

Paragraph (a)(3) contains the notification requirements for business credit applicants.

Paragraph (a)(3)(i)

Paragraph (a)(3)(i) implements section 703(a)(5) of the act, which requires creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for the denial of loan applications. These rules govern credit applications from businesses with $1 million or less in gross revenues (including applications from individuals applying for business-purpose credit), except that applications for trade similar credit (regardless of the revenue size of the business) are governed by the rules in paragraph (a)(3)(ii).

Creditors may notify business credit applicants of a credit decision orally or in writing. Notice of the credit decision must be given in accordance with the timing requirements of paragraph (a)(1)—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant).

Creditors must satisfy the requirement to provide a written notice of the right to a statement of reasons in one of two ways. The creditor may follow the rule used for nonbusiness credit and give the written notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide a written statement of the specific reasons for a credit denial, instead of merely giving notice of the right.

Alternatively, the creditor may give the notice to business applicants at the time of application. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant, as long as the notice is given in a form the applicant may retain. The disclosure should be readily noticeable, but there are no special requirements regarding location, type size, or type face.

Whether a notice is provided at the time of application or when adverse action is taken, the notice must contain all the information required by paragraph (a)(2) except that—as noted above—creditors are permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor. Two model forms are provided in Appendix C to the regulation and are discussed below.

Oral notification for telephone applications

The Board recognizes that creditors that handle business credit applications by telephone (for example, when dealing with existing customers) might find it difficult to comply with the written notification requirements. Paragraph (a)(3)(i)(C) therefore provides that when an application for business credit is made solely by telephone, compliance with the notice requirements may be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In such instances, the creditor does not have to recite the information, normally required in a written notification, that is contained in the ECOA notice specified in § 202.9(b)(1).

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is an application under § 202.2(f). A request for an advance under an existing line of credit is not considered an "application" for credit and therefore it does not trigger the notice requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2).

Inquiries from potential applicants seeking credit information are not subject to the notice requirements. Such inquiries are, however, subject to § 202.5(a), which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Paragraph (a)(3)(ii)

The rules on notification in paragraph (a)(3)(ii), formerly part of § 202.3(d)(3), apply to credit applications by businesses with gross revenues exceeding $1 million and applications for all types of trade credit, credit incident to factoring, and similar business credit (regardless of the applicant's revenues). The Board has simplified the application of these rules for both applicants and creditors and

has provided greater uniformity among the timing requirements.

Applicants for business credit covered by paragraph (a)(3)(ii) must be notified of a credit denial, orally or in writing, within a reasonable time after the creditor receives a completed application. (Notice given in accordance with the timing requirements of § 202.9(a)(1) is deemed "reasonable" in all instances.) Under the revisions, applicants have up to 60 days after a denial (the same rule as for business credit below the revenue cutoff and for nonbusiness credit) to request written reasons for the denial. This changes the previous rule, which gave business credit applicants up to 30 days after a credit denial in which to submit a written request.

Section 202.12—Record Retention

Paragraph (b)—Preservation of Records

The revisions to § 202.12(b) implement section 703(a)(5) of the act, which requires creditors to retain records relating to business credit applications for no less than one year. Paragraphs (b)(1) through (4) are amended to distinguish between business credit records, which must be retained for 12 months, and nonbusiness credit records, which must be retained for 25 months.

The Board had proposed in July that records relating to business credit applicants be retained for 25 months. Similarly, records relating to applications from businesses with revenues above the cutoff and applications for trade and similar credit would have been subject to a 60-day retention period in all cases and to a 25-month retention period when an applicant submitted a written request that records be retained. The Board believed the ease of compliance associated with a more uniform timing rule for all types of credit records would benefit creditors.

Many commenters supported the Board's efforts to achieve consistency in timing rules. However, commercial lenders also described the disparity in the volume of data typically obtained to evaluate consumer and business applications, and objected to the incremental costs associated with storing business records (particularly on denied loans) for 25 rather than 12 months.

The final rule provides for an overall 12-month record retention period for business credit applications. The Board believes that compliance can be monitored adequately by reviewing transactions within this time period. The rules in § 202.12(b)(4), which require the longer retention of records by creditors that are the subject of enforcement procedures and investigations, will continue to preserve records where a creditor's actions come under scrutiny.

Paragraph (b)(5)—Special Rule for Certain Business Credit Applications

Previously, the regulation (in § 202.3(d)(3)) required creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant made a written request to have records kept, the creditor had to retain the records for 25 months. In the revised regulation, the substance of former § 202.3(d) on record retention has been modified and moved to § 202.12(b)(5). That provision now applies only to applications from businesses with gross revenues greater than $1 million, trade credit and similar business credit applications. If a creditor receives a written request for a statement of reasons from such applicants, the creditor is required both to give the reasons and also to retain records for 12 months. This eliminates the need for rejected business credit applicants to make two distinct requests regarding the credit decision and provides uniform rules. Absent a written request from an applicant, a creditor does not have to retain records beyond the initial 60-day period.

Appendix C—Sample Notification Forms

Appendix C to Regulation B contains sample notification forms. The Board is adding two sample notices—forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice for giving a statement of reasons for a credit denial; the reasons for a credit denial contained in the form are illustrative only. Form C–8 is a sample disclosure of the *right* to a statement of reasons, of the type that would be given at the time of application.

A creditor may design its own notices or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and § 202.9(a)(3), respectively, for applications for business credit.

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation B that contains the final Regulatory Flexibility Analysis. A copy may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

(4) Text of revisions

Pursuant to authority granted in 15 U.S.C. 1691b(a) of the ECOA, the Board amends 12 CFR part 202 as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by revising paragraph (g) to read as follows:

§ 202.2—Definitions.

* * * * *

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in § 202.3 (a), (b), and (d).

* * * * *

§ 202.3—[Amended]

3. Section 202.3 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

4. Section 202.9 is amended by adding paragraph (a)(3). Paragraphs (a) (1) and (2) are republished to read as follows:

§ 202.9—Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of

section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a) (1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, orally or in writing, within a reasonable time of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

* * * * *

5. Section 202.12 is amended by revising paragraph (b)(1) introductory text and paragraphs (b)(2)–(4) and adding paragraph (b)(5) to read as follows:

§ 202.12—Record Retention.

* * * * *

(b) *Preservation of records*—(1) *Applications.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

* * * * *

(2) *Existing accounts.* For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(3) *Other applications.* For 25 months (12 months for business credit) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information specified in this section beyond 25 months (12 months for business credit) if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

* * * * *

5. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample forms C–7 and C–8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains eight sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under § 202.9(a) (1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under § 202.9(a) (1) and (2)(ii). For C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3).

* * * * *

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirements of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with § § 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of § 202.9(a)(2) (i) and (ii), respectively, for applications for business credit.

* * * * *

FORM C–7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor's name

Creditor's address

Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as Value or type of collateral not sufficient Lack of established earnings record Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants 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); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants 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); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

By order of the Board of Governors of the Federal Reserve System, dated December 1, 1989.

William W. Wiles,

Secretary of the Board.

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