

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7617]
April 25, 1975

PROPOSED NEW REGULATION B IMPLEMENTING
THE EQUAL CREDIT OPPORTUNITY ACT

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

Printed below is the text of a statement issued April 22 by the Board of Governors of the Federal Reserve System, proposing a new regulation—to be designated Regulation B—to implement the provisions of the Equal Credit Opportunity Act, which prohibits discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction:

The Board of Governors of the Federal Reserve System today proposed regulations to implement the Equal Credit Opportunity Act, which forbids discrimination by creditors on the basis of sex or marital status.

The new Act goes into effect October 28. It makes the Federal Reserve responsible for writing implementing regulations. Enforcement is the responsibility of the Federal Trade Commission, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and nine other Federal agencies. The Act covers all who regularly extend credit to individuals, including banks, finance companies, department stores, credit card issuers, and government agencies such as the Small Business Administration.

The Board also announced a hearing on the proposed regulation to be held before Members of the Board beginning May 28. The Board will receive written comment on its proposed regulation—to be designated Regulation B—through June 30.

In making its proposal, the Board said:

“The enactment of the Equal Credit Opportunity Act constitutes a determination by the Congress that the sex or marital status of an applicant shall not be used, as such, in evaluating the applicant’s creditworthiness.

“The proposed regulation attempts to reconcile the statutory goal of equal access to credit—without regard to sex or marital status—with the need to preserve the creditor’s ability to distinguish, in his own judgment, between applicants that are, or are not, creditworthy.

“For example, the proposed regulation would not permit a creditor to downgrade an applicant merely because the applicant was divorced. But it would allow the creditor to decide whether an applicant’s ability to repay had been impaired by divorce, or other change in marital status.

“The Board has attempted in the proposed regulation—issued after extensive consultation with women’s groups, other consumers and creditors—to facilitate both broader and fairer access to credit.

“All interested parties are encouraged to submit their views. All comment received will be carefully weighed in formulating the final regulation.”

The principal ways in which the proposed regulations would affect the practices of creditors include:

1. *Credit scoring on the basis of marital status.* The draft would forbid making it a rule that married persons are more creditworthy than unmarried persons or those who are separated.
2. *Reasons for denying credit.* The draft would require the creditor to supply a written statement of reasons for denying or terminating credit when any rejected applicant requests an explanation.
3. *Credit accounts.* The draft regulation would permit the creditor to limit the common “family” type of “joint” account (issued in the name of one spouse but usable by the other spouse) to married applicants only, since the creditor would rely on State laws to hold one spouse liable for the debts of the other.

4. *Alimony and child-support payments.* Creditors would be required to include in their assessment of creditworthiness an evaluation of an applicant's income in the form of alimony or child support.

5. *Childbearing.* Creditors would be forbidden to ask whether an applicant makes use of birth control methods or whether the applicant intends to have children.

6. *Income.* Creditors would not be permitted to discount any part of a person's income because of sex or marital status.

7. *Recordkeeping.* By October 28, 1976—12 months after the effective date of the Act—accounts used by both a husband and wife would have to be maintained in both of their names.

The Equal Credit Opportunity Act was passed by the Congress and signed by President Ford in October 1974.

The Act provides for suits by aggrieved applicants against creditors for actual damages and for punitive damages up to \$10,000 for each aggrieved party. In class actions, penalties up to \$100,000, or 1 per cent of the creditor's net worth, whichever is less, may be assessed.

The first and second sections of the proposed regulation provide background as to the new Act and definitions of key terminology.

Section 3 of the draft regulation outlines the following proposed general requirements:

—There must be no delay of any decision to accept or reject a credit application based in whole or in part upon the sex or marital status of the applicant.

—Creditors may not discourage potential applicants from applying.

—Application forms may not include terms identifying the applicant's sex or marital status, but a blank space may be provided for an applicant to add a title if the applicant wishes to do so.

—Terms in the application form must be neutral as to sex. Only terms "married," "unmarried" and "separated" are acceptable where any inquiry as to marital status is permitted.

—Application forms must state that if a rejected applicant requests it, the applicant must be given a clear and meaningful statement by the creditor of the reasons for denial or termination of credit, and this information must be retained by the creditor for two years.

Section 4 of the proposed regulation would implement provisions of the Act making it unlawful for a creditor to discriminate on the basis of sex or marital status with respect to any aspect of a credit transaction.

Actions specifically *prohibited* by the proposed regulation include:

—Assignment of any value to sex or marital status in a credit scoring or point scoring plan.

—Inquiry about, or use of information as to, the applicant's use of birth control methods, childbearing intentions or childbearing capability in evaluating creditworthiness.

—Discounting any part of an individual's income, due to sex or marital status, in considering an application for credit.

—Failure in denying an application to consider the credit history of "family" accounts where an applicant applies for credit independently of his or her spouse.

—Terminating credit on an existing account because of a change in an applicant's marital status without evidence that the applicant's financial circumstances had been unfavorably affected. However, creditors may require re-application for credit, so as to determine whether the applicant's ability or willingness to repay has deteriorated. The policy must apply evenly to both sexes.

—Requiring or using any unfavorable information about a spouse or former spouse (except that allowed in section 5 of the regulation) where an applicant applies for credit independently of his or her spouse.

—Use of advertising or sales promotions that discourage applications for credit because of sex or marital status (but affirmative advertising directed at people of a specified sex or marital status is allowable, if it indicates that all applications will be judged on the basis of creditworthiness).

—By October 28, 1976, to fail to maintain records of accounts in the names of both spouses, when both are authorized to use the account, or to fail to report all information about such accounts in the names of both spouses.

Section 5 of the proposed regulation enumerates actions specifically *permitted*, including:

—Generally, that extending credit to a married couple where, and only where, State laws make either spouse liable for the debts of the other is not discriminatory. Specifically:

—Inquiries as to marital status are allowable if the creditor routinely makes such inquiry in assessing creditworthiness, and if the inquiry is made to ascertain the rights and remedies of the creditor applicable to the particular extension of credit, and not for the purpose of discriminating on the basis of marital status.

—Permissible inquiries regarding a spouse may have the following scope:

(1) Where an applicant seeks individual credit—name and address of the non-applicant spouse; whether the spouses are separated; the extent to which the applicant may become liable for the other's debts.

(2) Where the applicant seeking credit relies on the creditworthiness of the non-applicant spouse—name and address of the other spouse and whether they are separated; the indebtedness, employment, business address and income of the other spouse, and other routinely applied standards of creditworthiness.

Credit may be denied if an applicant refuses to answer any permissible inquiries concerning marital status. A good faith effort to answer, however, is no ground for denial.

(3) Creditors may require the signatures of both spouses under two circumstances in order to pass clear title, to create valid liens, or to waive inchoate (potential) rights to property or to assign earnings:

—Where State law requires both signatures for these purposes;

—Where State law is not clear but it is probable that both signatures are necessary.

(4) In a community property state, where one spouse alone seeks unsecured credit, but may designate other persons as users of the credit, the signature of both spouses may not be required unless that applicant does not have enough separate property *and* does not control enough community property to satisfy the obligation; and no State law makes one spouse liable for the debts of the other.

(5) State law notwithstanding, a creditor may extend separate credit to each spouse if each applies separately and voluntarily and the credit contract makes this clear. Where this preempts State law, each spouse is solely responsible for the credit separately obtained.

—Where separate credit is extended, the creditor must treat each account separately in determining finance charges or loan ceilings, under conditions described in the regulation.

(6) In the following three circumstances a creditor may call for a new application for credit, in order to re-evaluate creditworthiness, and may terminate credit, or change the conditions upon which it is extended, where warranted by changes in the applicant's ability or willingness to repay:

—A change in the applicant's marital status.

—Bankruptcy of the applicant's spouse.

—A denial of responsibility for an account by any person liable for it.

The creditor must apply the same policy to both sexes on like occasions.

Enclosed is a copy of the proposed regulation. Comments thereon should be submitted by June 30, 1975, and may be sent to our Bank Regulations Department.

Additional copies of this circular and the enclosure will be furnished upon request.

ALFRED HAYES,
President.

Federal Reserve System
Office of Saver and Consumer Affairs
[12 C.F.R. PART 202]

CONSUMER CREDIT PROTECTION ACT

Equal Credit Opportunity Act

Notice of Proposed Rulemaking

The Board of Governors of the Federal Reserve System is proposing for comment regulations implementing the Equal Credit Opportunity Act which prohibits discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction. These regulations are designed to provide guidance for all creditors and borrowers as to which acts and practices are prohibited and permitted within the meaning of the Act. The regulation applies to all creditors whether they are individuals, businesses, or governmental entities.

Authority. For the purpose of implementing the Equal Credit Opportunity Act (Pub. L. 93-495) which amends the Consumer Credit Protection Act (15 U.S.C. § 1601 et seq.), and pursuant to the authority of Section 703 of the Equal Credit Opportunity Act, the Board of Governors of the Federal Reserve System proposes a new Part 202 (Regulation B).

Table of Contents

- 202.1 Authority, Scope, Purpose, Etc.
- 202.2 Definitions and Rules of Construction
- 202.3 General Requirements
- 202.4 Prohibited Discrimination
- 202.5 Acts Permitted

SECTION 202.1 - AUTHORITY, SCOPE, PURPOSE, ETC.

(a) Authority, scope and purpose. (1) This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to the Equal Credit Opportunity Act (Pub. L. 93-495; 88 Stat. 1521 et seq.) This Part applies to all persons who regularly extend, offer to extend, arrange for or offer to arrange for, the extension of credit as defined under paragraph (j) of Section 202.2 for any purpose whatsoever and in any amount.

(2) This Part implements the Act, the purpose of which is to require that financial institutions and others engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status.

(b) Administrative enforcement. (1) As set forth more fully in Section 704 of the Act, administrative enforcement of the Act and this Part with respect to certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board acting directly or through the Federal Savings and Loan Insurance Corporation, Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission and the Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, Section 704 of the Act assigns enforcement of the Act and this Part to the Federal Trade Commission.

(c) Penalties and Liabilities (1) Sections 706(a) through (e) of the Act provide for civil liability for actual and punitive damages against any creditor who fails to comply with the Act and this Part. Section 706(b) places a \$10,000 limitation on the amount of punitive damages an aggrieved applicant may seek in an individual capacity and Section 706(c) limits a creditor's class action liability for punitive damages to the lesser of \$100,000 or 1% of the creditor's net worth at the time the action is brought. Section 706(d) provides that an aggrieved applicant may seek equitable relief in the nature of a permanent or temporary injunction, restraining order, or other action. Section 706(e) further provides for the awarding of costs and reasonable attorney's fees to an aggrieved applicant who brings a successful action under Sections 706(a) through (d).

(2) Section 706(f) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation or interpretation by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or otherwise determined to be invalid for any reason.

(3) Section 706(g) provides that, without regard to the amount in controversy, any action under this title may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. Under

Section 705(e) an aggrieved applicant shall have the option of pursuing remedies under the provisions of this title in lieu of, but not in addition to, the remedies provided by the laws of any State or governmental subdivision relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

SECTION 202.2 - DEFINITIONS AND RULES OF
CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction apply:

(a) "Act" refers to the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act);

(b) "account" means an extension of credit;

(c) "advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer or catalog, on radio, television or public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag, which is delivered or made available to an applicant or prospective applicant in any manner whatsoever;

(d) "applicant" means any person who is solicited or applies for an extension of credit. The term includes, but is not limited to, any person to whom credit is or has been extended in any form;

(e) "application" means a request by an applicant for an extension of credit which is made in accordance with ordinary procedures used by the creditor in connection with the type of credit requested. The term includes any information requested of the applicant before taking final action on the request for credit;

(f) "arrange for extension of credit" means to provide or offer to provide credit, which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit:

(1) receives or will receive a fee, compensation, or other consideration for such service, or

(2) has knowledge of the credit terms and participates in the preparation of the application or contract documents required in connection with the extension of credit.

It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction;

(g) "authorized user" means any person in addition to an obligor who is explicitly permitted to obtain credit by the terms of an agreement between a creditor and the obligor;

(h) "Board" means the Board of Governors of the Federal Reserve System;

(i) "condition of credit" means any term, requirement or procedure instituted by a creditor which affects an applicant's rights or responsibilities including, but not limited to, credit ceilings, rates, security interests, contractual remedies, penalties, informational requirements, investigatory procedures, collection procedures and number of authorized users of an account;

(j) "credit" means the right granted by a creditor to an applicant to defer payment of a debt, or to incur debt and defer its payment, or to purchase property or services and defer payment therefor;

(k) "credit card" means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit;

(l) "creditor" means any person who regularly extends credit, or arranges for the extension of credit, or offers to extend or arrange for the extension of such credit. The term includes assignees, transferees or subrogees of an original creditor who participate in the decision to extend credit in any form, but does not include a person whose only participation in a credit transaction is to honor a credit card;

(m) "discriminate" means to treat one applicant differently from another;

(n) "extension of credit" means the granting of credit in any form and includes, but is not limited to, credit granted in addition to any existing credit or credit limit; credit granted in the form of a credit card whether or not such card has been used; the refinancing of any credit; the consolidation of two or more obligations; the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the continuing in force of a previously issued credit card; or the continuance, without any special effort to collect before maturity, of any existing credit or credit limit;

(o) "family account" means credit extended pursuant to an agreement which provides that both one spouse, who is the sole obligor, and the other spouse, who is an authorized user, are entitled to use the account.

(p) "family expense statute" means a principle of State law which provides that the needs of a family unit or any member thereof may be purchased by either spouse, and that each spouse is jointly and severally liable for any such obligation, regardless of whether one of them knew of or consented to the other's purchases or obligations;

(q) "legal name" means any first and last name permitted under the law of the State in which an applicant resides; it may include, but is not limited to, a birth given surname retained by a married person and a combined surname adopted by married persons;

(r) "marital status" means the state of being unmarried, married, divorced, separated or widowed as defined by applicable State law;

(s) "necessaries" means a principle of State law which provides that purchases made by one spouse for the needs of a family unit or any member thereof are the legal liability of the other spouse, regardless of whether he or she knew of or consented to the particular purchase or obligation;

(t) "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, sole proprietorship, joint venture, partnership, cooperative or association;

(u) "standard of creditworthiness" means a criterion used by a creditor to evaluate an applicant's or non-applicant spouse's willingness or ability to repay an obligation. Such standards may include, but are not limited to, occupation, income, assets, length of time in a particular job or profession, length of residence at a particular address or in a particular community, outstanding obligations and credit history; and

(v) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

SECTION 202.3 GENERAL REQUIREMENTS

(a) Applications. (1) A creditor shall act on an application within the period of time said creditor generally requires to reach a credit decision, but in no event shall any creditor fail to act, or delay a decision on an application, in whole or in part, on the basis of sex or marital status. Where a creditor is unable to obtain adequate credit information concerning the applicant, a request by the creditor to the applicant for additional information shall not constitute delay under this section, provided that the creditor reaches a decision promptly after such information is made available or determined to be unavailable.

(2) A creditor may inquire as to marital status only where the inquiry meets the requirements of Sections 202.5(b) and (c) herein. No application may include any terms identifying the applicant's title, (such as Mr., Mrs., or Ms.) but may provide a blank space for insertion of such a title by any applicant who so desires.

(3) Every application shall:

(i) use only terms which are neutral as to sex unless otherwise required by an enforcement agency enumerated in Sections 202.1(b)(1) and (2) herein for purposes of monitoring compliance with this Part;

(ii) use only the terms "married", "unmarried" and "separated" where any inquiry as to marital status is permitted by Section 202.5(b) herein;

(iii) state that where an applicant applies for credit individually and does not rely on the creditworthiness of his or her spouse, the only information about the spouse that should be provided is that permitted by Section 202.5(c)(1) herein.

(iv) state that every applicant to whom credit is denied or terminated is entitled to a clear and meaningful statement in writing of the reasons for denial or termination if the applicant so requests.

(4) A creditor shall furnish any applicant who has applied for credit and to whom credit is denied or terminated, a clear and meaningful statement in writing of the reasons for the denial or termination of credit if the applicant so requests.

(b) Preservation of records. (1) For a period ending two years after the date a creditor takes final action on a request for credit, the creditor shall retain:

(i) the application and all other written information or facsimiles thereof used to evaluate the applicant;

(ii) a copy of any statement submitted by the applicant alleging discrimination prohibited by this Part; and

(iii) a copy of any statement furnished to the applicant pursuant to Section 202.3(a)(4) herein.

(2) Any creditor who has actual notice that it is under investigation by an enforcement agency enumerated in Sections 202.1(b)(1) and (2) herein, or has been served with notice of an action filed pursuant to Section 202.1(c) herein, shall retain all information required to be retained under Section 202.3(b)(1) herein in excess of two years if such agency or proceedings so require.

SECTION 202.4 PROHIBITED DISCRIMINATION

(a) General Rule. It shall be unlawful for any creditor to discriminate on the basis of sex or marital status with respect to any aspect of a credit transaction.

(b) Acts Prohibited. Except as otherwise provided in this Part, prohibited discrimination within the meaning of this Act includes, but is not limited to, the following acts or practices by a creditor:

(1) to apply different standards of creditworthiness or conditions of credit with respect to any aspect of a credit transaction, in whole or in part, on the basis of sex or marital status;

Standards of Creditworthiness

(2) to assign a value to sex or marital status in a credit scoring or point scoring plan;

(3) to request, require or use information about birth control practices, childbearing or childrearing intentions or capability in evaluating creditworthiness;

(4) to fail to consider alimony, child support or maintenance payments in the same manner as income from salary, wages or other source where the payments are received pursuant to a written agreement or court decree and the payments are likely to be consistently made in the future. Factors which a creditor may consider in making a determination of the likelihood of future payments include, but are not limited to, the length of time payments have been received; the regularity of receipt; whether full or partial payments have been made; and the credit history of the payor, where available to the creditor;

(5) to apply different standards of creditworthiness or conditions of credit, in whole or in part, on the basis of the sex or marital status of the sole or principal supporter of a family unit;

(6) to discount all or any part of the income of an applicant or, where applicable, the income of an applicant's spouse, in applying standards of creditworthiness or conditions of credit, in whole or in part, on the basis of sex or marital status;

(7) where an applicant applies for credit independently of his or her spouse, to fail to consider the credit history, when available, of those family account(s) on which the applicant's spouse or former spouse is (or was) the sole obligor and the applicant is (or was) the authorized user, if the applicant would be denied credit without consideration of such information;

(8) to terminate credit or to impose new conditions of credit on an existing account because of a change in an applicant's marital status without evidence of any unfavorable change in the applicant's financial circumstances. A creditor may require that a new application be made after a change in marital status in order to ascertain whether the applicant's financial circumstances have changed; and may terminate credit or change the conditions of credit where warranted by the creditor's standards of creditworthiness only if the same policy is applied to both sexes upon like changes in marital status;

(9) to request, require or use any information concerning the spouse or former spouse of any applicant who applies for credit individually, and does not rely on the creditworthiness of his or her spouse or former spouse, other than the information allowed by Section 202.5(c)(1) herein;

Conditions of Credit

(10) to fail to establish separate accounts for qualified married applicants who so request;

(11) to fail to extend credit to a qualified applicant in any legal name designated by the applicant, except where the creditor has reason to believe that the name is being used for purposes of fraud or misrepresentation. This shall not require a creditor to imprint more than one name on any or all of the credit cards issued for an account;

(12) to delay a decision, or to fail to act on an application, in whole or in part, on the basis of sex or marital status;

(13) to request or require the signature of a spouse or other person on a credit instrument or other document required as a condition of credit when the individual applicant meets the creditor's standards of creditworthiness without such a signature;

(14) to discourage an applicant from applying for credit, in whole or in part, on the basis of sex or marital status;

(15) to publish any advertisement, or engage in any solicitation which, in effect, discourages applicants because of sex or marital status from making an application or from expecting credit privileges or benefits which would otherwise be available. However, this shall not preclude the publication of affirmative advertising

directed at a class of people which can be identified by sex or marital status, if such advertising clearly indicates that applications for credit will be evaluated without regard to sex or marital status;

Reporting and Maintenance of Credit Information

(16) to furnish adverse credit information concerning an applicant based on the credit history of the applicant's spouse or former spouse except where the applicant is (or was) legally liable for, or an authorized user of, the spouse's or former spouse's accounts at the time the adverse credit experience occurs (or occurred);

(17) twelve months after the effective date of this regulation, to fail to maintain records of accounts in the names of both spouses when such accounts authorize the use of credit by both spouses; and, when reporting information concerning such accounts to consumer reporting agencies or others, to fail to report all information in the names of both spouses.

SECTION 202.5 ACTS PERMITTED

(a) General provisions. (1) A creditor may request and consider any information about the financial obligations of an applicant including, but not limited to, those incurred pursuant to a written support agreement or court decree after separation or divorce.

(2) A creditor may inquire of an applicant as to the probable continuity of the applicant's ability to repay within the limitations of Section 202.4(b)(3) herein, and may consider the applicant's response in determining creditworthiness.

(3) The extension of credit to a married or separated applicant under a doctrine of "necessaries," a "family expense statute" or any other applicable State law which imposes liability upon either spouse for purchases made by, or credit extended to, the other spouse, does not constitute discrimination on the basis of sex or marital status.

(4) A creditor may limit the availability of "family accounts" to married applicants only where applicable State law includes a doctrine of "necessaries," a "family expense statute" or any other provision which imposes liability upon either spouse for credit purchases made by, or credit extended to, the other spouse.

(b) Inquiry of marital status. (1) a creditor may inquire as to the marital status of an applicant if the creditor routinely makes such an inquiry in extending credit, and if the inquiry is made for the purpose of ascertaining the creditor's rights and remedies, as set forth more fully in Section 202.5(b)(2) herein, applicable to the particular extension of credit, and not for the purpose of discriminating on the basis of marital status.

(2) A creditor may inquire as to marital status in order to determine whether to:

(i) allow the applicant to seek credit as an agent of a non-applicant spouse;

(ii) apply the doctrine of "necessaries," a "family expense statute" or any other applicable State law which imposes liability upon either spouse for credit purchases made by, or credit extended to, the other spouse;

(iii) request or require the joinder of both spouses, as set forth more fully in Section 202.5(e) herein, in order to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings; or

(iv) apply community property laws, where relevant to the requested extension of credit, as set forth fully in Section 202.5(f) herein.

(c) Scope of permissible inquiries regarding a spouse. (1) Where an applicant seeks credit and does not rely on the creditworthiness of a spouse, a creditor may request and consider only the following information with regard to the spouse:

(i) the name and home address of the non-applicant spouse;

(ii) whether the spouses are separated; and

(iii) the obligee and amount of debts owed by the

non-applicant spouse for which the property or income of the applicant is or may become liable under applicable State law.

(2) Where an applicant seeks credit and relies on the creditworthiness of a non-applicant spouse, a creditor, whether applying the doctrine of agency, "necessaries," a "family expense statute" or any other applicable State law which imposes liability upon either spouse for credit purchases made by, or credit extended to, the other spouse, may request and consider only the following information with regard to marital status:

(i) the name and home address of the non-applicant spouse;

(ii) whether the spouses are separated;

(iii) the employment, business address and income of the non-applicant spouse;

(iv) the obligee and amount of debts owed by the non-applicant spouse for which the property or income of the applicant is or may become liable under applicable State law; and

(v) any other factors which, under the creditor's ordinary standards of creditworthiness, would affect a determination of the creditworthiness of the non-applicant spouse.

(3) A denial of credit because an applicant refuses to answer any inquiries concerning marital status which are permitted by this Part shall not constitute discrimination. An applicant's failure to answer such inquiries after a good faith effort to do so is not a refusal to answer for purposes of this section.

(d) Treatment of exemptions of certain types of income from execution by creditors. If any portion of a separated, divorced or widowed person's income is derived from a source which, under applicable federal or State law, is exempt from execution, a creditor may give consideration to such an exemption in determining the applicant's creditworthiness only if the creditor routinely considers such exemptions in evaluating creditworthiness, and if:

(1) under applicable federal or State law, such income may not be assigned as security or collateral for an extension of credit; and

(2) the applicant's non-exempt income or property does not qualify the applicant for the requested extension of credit under the creditor's standards of creditworthiness.

(e) Requests for signatures of both spouses in order to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings. (1) A creditor may request or require the signatures of both spouses only where both signatures are necessary under the applicable statutory or decisional law of a State in order to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings; if such property or earnings are to be the basis or security for the transaction.

(2) Where the law of a State is unclear as to whether the signatures of both spouses are necessary to create a valid lien, pass clear

title, waive inchoate rights to property or assign earnings, a creditor may request or require the signatures of both spouses if done in good faith reliance on a legal or similarly reliable opinion that there exists a reasonable probability that the signatures of both spouses are necessary.

(3) If, under applicable State law and this Part, the signatures of both spouses are necessary to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings, and both signatures cannot be obtained, a denial of credit does not constitute discrimination where, under the creditor's standards of creditworthiness, credit cannot be extended in the amount sought without the particular security or collateral.

If a lesser amount of credit than originally sought by the applicant would be extended by the creditor without the signatures of both spouses, the creditor must so notify the applicant and give him or her the option of applying for a lesser amount of credit.

(f) Request for signatures of both spouses in community property States where an extension of credit is sought by one spouse alone.

(1) Where a spouse seeks unsecured credit individually or as a sole obligor who may designate other authorized users, a creditor is permitted to request or require the signatures of both spouses in a community property State only if:

(i) the applicable State law denies the applicant power to manage or control the particular portion of the community property which would be sufficient to satisfy the obligation created for the credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to make him or her worthy of the amount of credit sought without regard to any community property; and

(iii) the creditor does not choose to apply, or the applicable State law does not contain, the doctrine of "necessaries", a "family expense statute" or any other doctrine which imposes liability upon either spouse for purchases made by, or credit extended to, the other spouse.

(2) Where a spouse in a community property State seeks an extension of credit for which a security interest in property is required, the provisions of Section 227.5(e) of this Part apply to determine the situations in which a creditor may request or require the signatures of both spouses in order to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings.

(g) Separate extension of credit to each spouse. (1) A creditor may extend separate credit to each spouse if each applies for credit separately and voluntarily, any state law to the contrary notwithstanding.

(2) Where any State law is pre-empted by this Section, each spouse is solely responsible for any such separate extension of credit. Where, in addition, the signatures of both spouses are necessary under the Act and Section 202.5(e) herein in order to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings, the creditor may require the signatures of both spouses without violating the Act or this Part.

(3) When each spouse separately and voluntarily applies for and obtains separate accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any state or of the United States. In any such case, however, the sum of the finance charges of the two separate accounts shall not exceed the finance charge which the creditor would have charged if the accounts had been combined, unless each spouse shall have separately and voluntarily requested a separate account in a separate, dated and signed personal statement which shall include a statement to the effect that the applicant knows

that the separate account will require the applicant to pay a greater finance charge than if the accounts were combined. The use of printed or otherwise duplicated forms for such statements is prohibited unless the statement declares clearly and conspicuously and with greater prominence than any other portion of the statement, the fact that the applicant will pay a greater finance charge than if the accounts were combined.

(h) Reevaluation of existing accounts. A creditor may require that a new application be made in order to ascertain whether an applicant's financial circumstances have changed; and may terminate credit or change the conditions of credit where warranted by the creditor's standards of creditworthiness upon the occurrence of any of the following events only if the same policy is applied to both sexes on like occasions:

- (1) a change in an applicant's marital status;
- (2) bankruptcy of an applicant's spouse;
- (3) a denial of responsibility for an account by any party liable thereunder.

(i) A creditor shall apply ordinary standards of creditworthiness in determining whether:

- (1) a particular applicant;
- (2) the spouse of an applicant; or
- (3) both an applicant and his or her spouse together meet creditor's requirements for a particular requested extension of credit.

SECTION 202.6 EFFECTIVE DATE

The effective date of these Regulations shall be October 28, 1975.

Notice and Comments. To aid in consideration of this proposal, a hearing will be held before available members of the Board on the terrace floor of its building on 20th and C Street, N. W., Washington, D. C. on May 28 and 29, 1975 beginning at 10:00 a.m. The proceeding will consist of presentations of statements in oral or written form.

Any persons desiring to give testimony, present evidence, or otherwise participate in these proceedings should file with the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, on or before May 14, 1975 a written request containing a statement of the nature of the petitioner's interest in the proceedings, the extent of participation desired, a summary of the matters concerning which petitioner wishes to give testimony or submit evidence, and the names and identity of witnesses who propose to appear.

Interested persons need not participate in the proceedings through oral presentation in order to have their views considered.

Interested persons are invited to submit relevant data, views and arguments concerning this proposal. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received no later than June 30, 1975. Such material will be made available for public inspection and copying upon request, except as provided in § 261.6(a)

of the Board's Rules Regarding Availability of Information. All views previously expressed in written comments on the pending proposal are under consideration by the Board and are available for inspection and copying in Room 1020 of the Board's building. Anyone wishing to submit written comments on the issues to be considered at the hearing may do so at any time before the close of business on May 14, 1975.

This notice is published pursuant to section 553(b) of Title 5 United States Code, and § 262.2(a) of the Rules of Procedure of the Board of Governors of the Federal Reserve System (12 C.F.R. 262.2(a)).

By order of the Board of Governors, April 22, 1975.

(signed) Theodore E. Allison
Theodore E. Allison
Secretary of the Board

[SEAL]