

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7706]
September 10, 1975

TEXT OF PROPOSED REGULATION B
Implementing the Equal Credit Opportunity Act

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

Our Circular No. 7704, dated September 8, 1975, contained the text of a press statement issued on September 5 by the Board of Governors of the Federal Reserve System regarding a revised proposal for a new Regulation B to implement the provisions of the Equal Credit Opportunity Act. The Act prohibits discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

The Board's statement indicated that the Equal Credit Opportunity Act is scheduled to go into effect on October 28, 1975, and that it makes the Federal Reserve responsible for writing implementing regulations. 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. Compliance, under the Act, will be 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.

Printed on the following pages is the complete text of the revised proposal as issued for comment by the Board of Governors. Comments on this proposal should be submitted by September 26, and may be sent to our Bank Regulations Department.

PAUL A. VOLCKER,
President.

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

[12 C.F.R. Part 202]

CONSUMER CREDIT PROTECTION ACT

Equal Credit Opportunity Act;
Supplemental Notice of Proposed Rulemaking

In the April 25, 1975 issue of the Federal Register (40 FR 18183), the Board published a proposed rule which would prohibit discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction. Numerous comments were received and public hearings were held on May 28 and 29, 1975. In response to the comments received in writing and those presented at the hearings, the Board has revised the proposed rule. Pursuant to the authority of Section 703 of the Equal Credit Opportunity Act (Pub. L. 93-495) which amends the Consumer Credit Protection Act (15 U.S.C. § 1601 et seq.) the Board hereby publishes the revised proposed Part 202 (Regulation B) for comment as follows:

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SECTION 202.1 AUTHORITY, SCOPE AND PURPOSE

(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 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 shall make that credit equally available to all creditworthy persons without regard to sex or marital status.

SECTION 202.2 GENERAL RULE

A creditor shall not discriminate against any applicant, on the basis of sex or marital status with respect to any aspect of a credit transaction.

SECTION 202.3 DEFINITIONS

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

(a) "Act" means the Equal Credit Opportunity Act (Pub. L. 93-495; 88 Stat. 1521 et seq.).

(b) "Account" means an extension of credit.

(c) "Applicant" means any person who applies to a creditor directly for an extension of credit, or who applies to a creditor indirectly by using an existing credit plan to obtain an amount exceeding a previously established credit limit. With respect to any creditor the term also includes any person to whom credit is or has been extended by that creditor.

(d) "Application" means an oral or written request by an applicant for an extension of credit which is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of a credit card to obtain an amount of credit not exceeding a previously established credit limit.

(e) "Application form" means a document, furnished by a creditor to be completed by an applicant, which requests information from the applicant to be used in evaluating creditworthiness. The term does not include a document filled out by a creditor which an applicant signs.

(f) "Arrange for the 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 participates in the decision to extend credit to an applicant. The term does not include participation in a credit transaction which is limited to honoring a credit card.

(g) "Consumer credit" means credit offered or extended to an individual in which the property or service which is the subject of the transaction is primarily for personal, family or household purposes.

(h) "Contractually liable" means expressly obligated to repay a debt by reason of having signed an agreement to that effect.

(i) "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.

(j) "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 property or services on credit.

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

(l) "Credit transaction" means every aspect of an applicant's dealings with a creditor including, but not limited to, solicitation of prospective applicants by advertising or other means; information requirements; investigatory procedures; standards of creditworthiness; terms of credit; furnishing of credit information and collection procedures.

(m) "Discriminate against" means to treat an applicant or prospective applicant less favorably than others.

(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 the 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 of existing credit without any special effort to collect at or after maturity.

(o) "Marital status" means the state of being unmarried, married, or separated, as defined by applicable State law. For purposes of this Part, the term "unmarried" includes a person who is divorced or widowed.

(p) "Open end credit" means credit extended pursuant to a plan under which the creditor may permit the applicant to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(q) "Person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

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

202.4 APPLICATIONS

(a) General. A creditor may request any information in an application not prohibited by the Act or this Part.

(b) Discouraging applications. A creditor shall not make any statements to applicants or prospective applicants which would discourage a reasonable person from applying for credit or pursuing an application for credit on the basis of sex or marital status.

(c) Application forms. Where application forms are used by a creditor, such forms shall:

(1) ask whether the account which the applicant is requesting is one which the applicant's spouse may use or for which the applicant's spouse will be contractually liable ("use" of an account throughout this Part refers only to open end accounts);

(2) ask the spouse's name and address, if the applicant indicates that a spouse may use the account or will be contractually liable for it;

(3) if the application form asks the applicant's marital status, use only the terms "married," "unmarried" or "separated." However, an inquiry as to the payment of alimony, child support or maintenance or reliance upon the receipt of such payments is not prohibited by this section;

(4) where an applicant is requested to designate a title (such as Mr., Mrs., Ms. or Miss), state prominently that the designation of such title is optional;

(5) have printed upon them in a type size no smaller than that used throughout most of the application form the following statement:

The Federal Equal Credit Opportunity Act requires that all creditors, including banks, savings and loan associations, small loan companies, retail stores and others, make credit equally available to all creditworthy customers without regard to sex or marital status. The federal agency which administers compliance with this law concerning this (bank, store, etc.) is (name and address of the appropriate agency).

(d) Oral applications. (1) Where a creditor does not use application forms, the creditor shall:

(i) fulfill the requirements of Section 202.4(c) (1), (2), (3) and (4) orally or in writing;

(ii) fulfill the requirements of Section 202.4(c)(5) in writing, except that where application is made by telephone, compliance with this subsection may be accomplished orally or in writing.

(2) Where oral application is made for an amount of credit to exceed an existing limit on an applicant's open end account, the requirements of Section 202.4(c) do not apply.

(e) Designation of name. A creditor shall not prohibit an applicant from using any particular name on the basis of the applicant's sex or marital status.

SECTION 202.5 EVALUATION OF APPLICATIONS

(a) General. A creditor may consider any information not prohibited by the Act or this Part and may deny the credit requested if an applicant is unable or unwilling to provide the information necessary to an evaluation of creditworthiness.

(b) Information about a spouse.

(1) A creditor may request and consider any information concerning the spouse of a married or separated applicant which may be considered about the applicant when the application indicates that the spouse may use the account or is contractually liable upon the account.

(2) A creditor may request only the name and address of the spouse of a married or separated applicant when the application indicates that the spouse will not use the account and is not contractually liable upon the account. However, a creditor may consider information about the payor of alimony, child support or maintenance where an application indicates reliance upon such payments as a basis for creditworthiness.

(c) Alimony, child support and maintenance obligations.

A creditor may ask and consider whether and to what extent an applicant is obligated to make alimony, child support or maintenance payments.

(d) Alimony, child support and maintenance income.

(1) A creditor may ask whether all or a part of the income upon which an applicant is relying as a basis for the credit requested is derived from alimony, child support or maintenance payments.

(2) Where an application indicates reliance on alimony, child support or maintenance payments, a creditor shall consider such payments as income to the extent that such payments are likely to be consistently made. Factors which a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the credit history of the payor, where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(e) Discounting income. A creditor shall not discount the income (including part-time income) of an applicant or an applicant's spouse on the basis of sex or marital status.

(f) Credit scoring. A creditor shall not assign a value to sex or marital status in a credit scoring system or other method of evaluating applications.

(g) Telephone listing in applicant's name. A creditor shall not assign a value to the existence of a telephone listing in the name of an applicant in a credit scoring system or other method of evaluating applications. A creditor may consider the existence of a telephone in the applicant's home.

(h) Childbearing: continued ability to pay. A creditor shall not request information about birth control practices or childbearing capability. However, a creditor may request and consider information concerning the probable continuity of an applicant's ability to repay.

(i) Change of name or marital status. In the case of an existing open end account, a creditor shall not take any of the following actions solely on the basis of a change of name or marital status in the absence of evidence of inability to repay;

- (1) require a reapplication;
- (2) terminate the account; or
- (3) require a change in the terms of the account.

(j) Credit history. Where an applicant's credit history would be considered by the creditor in evaluating an applicant of similar qualifications for a similar type and amount of credit, a creditor shall:

- (1) consider the credit history of accounts designated as accounts which may be used by both spouses or for which both are contractually liable, and accounts reported in the applicant(s) name or names as listed in the application, whether such information is obtained from consumer reporting agencies or others; and
- (2) consider the credit history, when available, of any account established prior to November 1, 1976, which an applicant can demonstrate reflects accurately his/her willingness or ability to repay.

(k) Delay in evaluating applications. A creditor shall not fail to act upon, or unreasonably delay a decision upon an application in whole or in part on the basis of sex or marital status. In the event a creditor is unable to obtain adequate credit information, a request by the creditor for additional information does not constitute unreasonable delay under this section.

(l) Use and retention of prohibited information. A creditor may not use any information prohibited by the Act or this Part in evaluating applications. However, where such information was obtained prior to November 1, 1976, retention of such information in the creditor's files does not violate the Act or this Part.

(m) State property laws. Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this Part.

(n) Notification of action taken. A creditor shall within a reasonable time notify the applicant of action taken upon the application. Where such notification is in writing it shall have printed upon it in a type size no smaller than that used throughout most of the notice the statement contained in Section 202.4(c)(5) of this Part.

SECTION 202.6 FURNISHING OF CREDIT INFORMATION

(a) Accounts established after November 1, 1976. A creditor, when furnishing information to consumer reporting agencies or others concerning any account established after November 1, 1976, which the application indicates may be used by both spouses or upon which both spouses are contractually liable, shall designate the account to

(b) Accounts established prior to November 1, 1976.

(1) Unless already following the procedures specified in sub-section (a) as to all existing accounts established prior to November 1, 1976, a creditor shall mail to all spouses or, at the option of the creditor, to all individuals who are contractually liable on such accounts the notice set out below, accompanied by a return envelope addressed to the creditor. Such notice may be mailed with a billing statement and all such notices shall be mailed by November 1, 1976, or within 60 days after an account is established, whichever is later, and shall provide as follows:

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act forbids all creditors from discriminating on the basis of sex or marital status in any aspect of a credit transaction. The Act gives every married person the right to have information concerning all the credit accounts held or used jointly with a spouse reported to credit bureaus and creditors in the names of both the wife and husband. Accounts of married persons opened before November 1976--even those opened in the names of both spouses--are customarily reported in only the husband's name. This is generally true regardless of who has been paying the bills or whose income was used to obtain the account. As a result, most married women do not have a credit history in their own names, although their husbands do. If a woman ever needs to obtain credit on her own, for example, when divorced or widowed, a credit history is usually necessary.

If you would like to have the credit information concerning your account with us reported in both your name and the name of your spouse, please check the box, fill out and sign the statement below and return it to us in the enclosed envelope.

 When you furnish credit information on this account, please report all information concerning it in both our names. We would like our names written as follows:

Signature of either husband or wife

(2) A creditor, when furnishing information to consumer reporting agencies or others concerning any account established prior to November 1, 1976, shall designate the account to reflect the fact of participation of both spouses and shall report the designation and furnish all information concerning the account in the names of both spouses beginning no later than 90 days after receipt of a request to do so.

SECTION 202.7 REQUEST FOR SIGNATURE OF SPOUSE OR OTHER PERSON

(a) General. Except as otherwise provided herein, a creditor may require the signature of a spouse or other person on a credit instrument if such a requirement is imposed on all similarly qualified applicants who apply for a similar type and amount of credit without regard to sex or marital status.

(b) Unsecured credit in community property states. Where a married applicant applies for unsecured credit in a community property State, a creditor may request or require the signature of a non-applicant spouse if:

(i) the applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to any community property.

(c) Signatures on certain instruments. Where a married applicant applies for secured credit, the creditor may require the signature of the applicant's spouse on such instruments as are necessary, or are reasonably believed by the creditor to be necessary, to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings under the applicable statutory or decisional law of a State.

SECTION 202.8 SEPARATE ACCOUNTS: RELATION TO STATE LAW

(a) Separate extension of consumer credit. Any provision of State law which prohibits the separate extension of consumer credit to each spouse shall not apply in any case where each spouse voluntarily applies for separate credit from the same creditor. In any case where such a State law is pre-empted, each spouse shall be solely responsible for the debt so contracted. In a community property State, the creditor may enforce an obligation of one spouse alone under this section as separate post-nuptial debts are enforced under applicable State law.

(b) Finance charges and loan ceilings. When each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the 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. Permissible loan ceilings under the laws of any State or of the United States shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceiling less the amount for which

both spouses are jointly liable. For example, in a State with a permissible loan ceiling of \$1000, if a married couple were jointly liable for \$250, each spouse could subsequently become individually liable for \$750.

SECTION 202.9 PRESERVATION OF RECORDS

(a) For a period ending twelve months after the date a creditor takes final action on an application, the creditor shall retain for each applicant, in original form or a copy thereof:

(1) any application form and all other written information used in evaluating creditworthiness;

(2) any statement submitted by the applicant alleging discrimination prohibited by the Act and this Part.

(b) Any creditor who has actual notice that it is under investigation for violation of this Part by an enforcement agency charged with monitoring compliance with this Act, or who has been served with notice of an action filed pursuant to Section 202.12 of this Part shall retain such information until final disposition of the matter or such earlier time as may be ordered by the agency or court.

SECTION 202.10 EXCEPTIONS

(a) Business or securities credit. As to all credit transactions involving other than consumer credit, and as to all credit transactions that are subject to regulation under Sections 7 and/or 11 of the Securities Exchange Act of 1934, a creditor shall only be required to

comply with Sections 202.1, 2, 3, 4(b), 5(k), 10, 11, 12 and 13.

(b) Good faith compliance. It shall not be a violation of Section 202.4 of this Part if the creditor shows by a preponderance of the evidence that at the time of the alleged violation the creditor maintained reasonable procedures to assure compliance with that section.

SECTION 202.11 ADMINISTRATIVE ENFORCEMENT

(a) 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.

(b) 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.

SECTION 202.12 PENALTIES AND LIABILITIES

(a) 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).

(b) 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 of Governors of the Federal Reserve System 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.

(c) 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. For purposes of this Part the violation shall be deemed to occur when the applicant receives notice of a denial.

SECTION 202.13 TRANSITION PERIODS

(a) Except as otherwise specified below, the provisions of this Part take effect on October 28, 1975.

(b) Sections 202.5(a)-(i), (k) and (l) and 9 of this Part take effect on January 31, 1976.

(c) Section 202.4 of this Part takes effect on June 30, 1976.

(d) Sections 202.5(j) and 6 of this Part take effect on November 1, 1976.

Notice and Comments. Interested persons are invited to submit relevant written 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 September 26, 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.

This notice is published pursuant to section 553(b) of Title 5 United States Code, and section 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, September 5, 1975.