FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8037
January 20, 1977]

REVISED REGULATION B

Implementing the 1976 Amendments to the Equal Credit Opportunity Act

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

Following is the text of a statement issued December 29, 1976 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today announced revision of its Regulation B—Equal Credit Opportunity—to carry out the 1976 Amendments to the Equal Credit Opportunity Act (ECOA).

The revised Act and the revised Regulation will become effective March 23, 1977. At that time the revised Regulation will supersede the existing Regulation B in its entirety. The existing Regulation, like the original ECOA, deals only with discrimination in the extension of credit on the basis of sex or marital status. The requirements of the existing Regulation remain in effect until next March 23.

The Amendments by Congress this year broadened the scope of the Act to forbid discrimination in credit transactions on seven new prohibited bases:[1]* race, color, religion, national origin, age, receipt of income from public assistance programs and good faith exercise of rights under the Consumer Credit Protection Act of 1968 (which includes the Truth in Lending, Fair Credit Billing, Equal Credit Opportunity, Fair Credit Reporting and Consumer Leasing acts).

The Act directs the Federal Reserve to write regulatory rules to carry it out. The Board's rules on equal credit opportunity are enforced by 12 Federal agencies (listed at the end of this announcement, together with the types of creditors those agencies supervise). Consumers with complaints of discriminatory treatment in credit transactions should inform the appropriate Federal agency, in writing, by telephone or in person.

The Board adopted the revised Regulation B after extensive consultations with consumer and creditor groups and a two-day hearing at which testimony was presented by 33 individuals, consumer and creditor representatives, the Department of Justice and other governmental agencies. The Board published for public comment proposed new equal credit opportunity regulations to implement the 1976 Amendments to the Act on July 15 and a revision of these proposals on November 3. The revised Regulation B, as announced today, takes account of some 1100 comments received on the Board's proposals, and of suggestions made at a meeting of the Board's Consumer Advisory Council on November 10 and 11.

The principal features of Regulation B, as revised to carry out the 1976 Amendments to the Equal Credit Opportunity Act are:

General Rule Prohibiting Discrimination: The Regulation specifies that "a creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction."

Discrimination is defined as "to treat an applicant less favorably than other applicants."[2] This general rule applies to everyone who is a creditor. Creditors are relieved from some of the mechanical requirements of the Regulation, however, when extending certain types of credit, discussed later under the headings of special treatment and special purpose programs. A creditor is "a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit."

Adverse Action: Regulation B, as revised, defines what does and does not constitute adverse action on an application for credit.[3] The main features of the definition are:

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* Footnotes will be found at the end of this announcement. Where it seems advisable the footnotes indicate principal differences in the revised Regulation B as compared to the existing Regulation—other than additions to implement the 1976 amendments to the Act. These footnotes also include some references to differences in the Regulation as adopted and as proposed. [*The reprinted Federal Register material, which follows the Board's statement, includes a detailed account and explanation of changes that have been made in the Regulation.*]

Adverse action *has been taken* when a creditor

—Has declined to grant credit in substantially the amount or on substantially the terms requested by the applicant, unless the applicant accepts a counter offer by the creditor.

—Terminates an account, or makes an unfavorable change in terms (such as the interest rate, number of payments, etc.) that does not apply to all or most of that creditor's accounts.

Adverse action *has not occurred* when the creditor

—Makes a change in the terms of an account that is expressly agreed to by the applicant.

—Takes any action, or forbears to take an action, in connection with inactivity, default or delinquency in the account.

—Refuses to extend credit requested at the point of sale or of making of a loan because the credit requested would exceed a previously established credit limit. (A point of sale refusal is an adverse action if it is made for any reason except exceeding the previously established credit limit.)

—Refuses to extend credit not allowed by applicable law.

—Refuses to extend a type of credit the creditor does not offer.

After taking adverse action, the creditor must send the applicant a written notice as specified in the Regulation (Section 202.9) and in this announcement under the headings Notice of Action Taken and Statement of Specific Reasons.

Data Notation for Enforcement Purposes: The Board adopted, almost unchanged, the proposal it made in November to add a new section to Regulation B requiring creditors to inquire as to the sex, marital status, race-national origin and age of applicants for residential mortgage credit, but with the proviso that applicants have the right to decline to supply such information if they wish. The inquiries are to be made only with respect to applications for purchase money mortgage credit on one- to four-family residences. The race or national origin categories to be used are: American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, Hispanic or Other. If the applicant elects to use "Other" the applicant may specify any desired category. The marital status categories to be requested are married, unmarried, or separated. The questions, at the creditor's option, may be listed on the application form or on a separate form that refers to the application. This information may be used for enforcement purposes only.

The Board added a provision[4] that any agency with enforcement responsibilities under the Act may substitute its own monitoring program in place of that in Regulation B.

Measures to Avoid Discrimination on the Basis of Age: The amended Act provides that it is not discriminatory to consider age in a credit-scoring system based on experience if the system is demonstrably and statistically sound in accordance with the Board's regulations, so long as the system does not operate to assign the age of an elderly applicant a "negative factor or value."

To implement this new provision of the Act the Board:

—Added a new definition in Regulation B, stating that a negative factor or value, in relation to age in a credit-scoring system, would be one that gives an elderly applicant for credit an age score less favorable than the creditor's experience warrants, or less favorable than the score, on account of age, given by the creditor to any age group that is not elderly.

—Defined elderly as age 62 or more.

Thus, applicants age 62 or more may not be given a score for their age that is lower than the best score assigned to any non-elderly group.

For ages 62 and above, scores may vary according to the creditor's experience, so long as they are not less than the best score assigned any group below 62.

Main Characteristics of a Non-Discriminatory Credit-Scoring System:

1. It must be empirically derived. Regulation B describes this as meaning a credit-scoring system that evaluates creditworthiness primarily by allocating points (or some other means of assigning weights) to key attributes of the applicant and the credit.

2. It must also be demonstrably and statistically sound.

Regulation B requires that such a system:

—be developed using either the creditor's entire population of applicants or data groups obtained by properly sampling that population;

—predict creditworthiness with respect to the business interests of the creditor;

—be validated during the development process as to its predictive ability;

—be thereafter revalidated at whatever regular intervals are necessary.

A creditor may borrow a demonstrably and statistically sound, empirically derived credit-scoring system, or the credit experience on which such a system may be based, but the borrowed system must be validated from the creditor's own experience, at once or as soon as the creditor's own experience is available.

A system that is not proved valid using the creditor's own experience shall not be considered a demonstrably and statistically sound empirically derived credit-scoring system, from that point in time.

Judgmental Evaluation of Applicants: The Act permits creditors to use, instead of a credit-scoring system, their own judgment as to the creditworthiness of an applicant. This may include inquiries by the creditor as to the applicant's age and whether the applicant's income comes from a public assistance program. These inquiries may be made by a creditor making a judgmental evaluation of an applicant, but only as a means of determining pertinent facts about the applicant's ability to repay the credit applied for, that is, creditworthiness. Thus, a creditor using a judgmental system may not use elderliness, or the fact an applicant's income comes from public assistance, as sufficient factors, in themselves, to deny credit.[5]

Credit-Related Insurance: Regulation B permits differentiation in the availability, rate and terms of credit-related insurance (casualty, life, health, accident and disability) offered to applicants for credit.

However, the Regulation also provides that creditors may not deny credit, or terminate an account, because such insurance is not available due to an applicant's age.

In applications for such insurance information may be requested about the applicant's age, sex and marital status.[6]

Special Purpose Credit Programs:[7] This section of Regulation B is meant to make room, under the law, for credit programs designed—without intent to evade the Equal Credit Opportunity Act—to benefit special groups of economically disadvantaged persons, or to meet special social needs, even though such programs may exclude some groups the Act protects from discrimination in the extension of credit. For example, a program designed to benefit disadvantaged American Indians may exclude non-Indians. But such a program may not discriminate on the basis of marital status.

Such programs may not discriminate on any of the bases prohibited under the Act and Regulation B, except that all participants in a special purpose credit program may be required to have in common one or more characteristics, so long as this exclusion of other characteristics was not designed to circumscribe equal credit opportunity laws.

Special purpose credit programs eligible under this provision of Regulation B are:

1. Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons;
2. Any credit assistance program operated by a not-for-profit organization as defined by the Internal Revenue Code of 1954, for the benefit of its members or of an economically disadvantaged class of persons;
3. Any special purpose program in which a for-profit organization participates to meet social needs, provided:

   —The program has a written plan that identifies those it is designed to benefit and sets forth procedures and standards for helping them with credit, and

   —The program makes credit available to a class of persons who probably would not otherwise get it, or would get it on less favorable terms.

Solicitation and consideration of information pertinent to establishing whether applicants share a common characteristic required by a special purpose credit program is not unlawful discrimination.

Where financial need is a criterion for the extension of credit under a special purpose program, inquiries otherwise not permissible concerning marital status, income from alimony, child support, separate maintenance

and the spouse's financial resources may be asked and considered in determining eligibility of applicants to participate in the program.

Relation to State Law:[8] The Regulation states as a general rule that it alters, affects or preempts only those State laws that are inconsistent with the Regulation and then only to the extent of the inconsistency. A State law is not inconsistent with the Regulation if it differs by being more protective of the applicant than is Federal law.

Together with Regulation B the Board issued a Supplement to the Regulation setting forth in detail the procedures and criteria under which a State may seek an exemption.

Special Treatment of Some Types of Credit:[9] Regulation B permits partial exemptions from the general prohibitions of the Regulation for transactions involving public utilities credit, securities credit, incidental credit,[10] business credit and credit extended to governments. These are set forth in Section 202.8 of the Regulation.

Required Notifications: Regulation B requires four types of notifications to applicants for credit. The first three, which must be supplied together when adverse action occurs are Notification of Action Taken, Notification of Rights under the Equal Credit Opportunity Act and either a Statement of Specific Reasons for Adverse Action or a written statement of the right to such reasons. The fourth is notice to married couples of their right to have credit information included in credit reports in both names under certain conditions. This is called "Credit History for Married Persons."

Notice of Action Taken: A creditor must notify an applicant of action taken on an application either implicitly (for example, when an applicant gets a requested credit card or a loan) or explicitly

Within 30 days:

—after receiving a completed application;

—after taking adverse action before an application is competed;

—after taking adverse action in connection with an existing account.

Within 90 days:

—after an applicant has been notified by the creditor of an offer of credit substantially different from the request made by the applicant, and the applicant has not expressly accepted or used the credit offered.

A notice to an applicant that adverse action has been taken must be in writing and it shall contain a statement of the action taken, a notice of rights under ECOA, the name and address of the Federal agency responsible for compliance (as listed at the end of this announcement) and a statement of specific reasons for adverse action, or disclosure of the applicant's right to have such a statement. This notification must be made within 30 days after the creditor receives a request for a statement. The applicant must file a request within 60 days after notice of the action taken.

Statement of Specific Reasons: The Regulation specifies that a statement of reasons for adverse action must be specific—a general statement, such as that the applicant did not score high enough on a credit-scoring system does not suffice.

A creditor may use a statement or checklist of reasons for adverse action of his own devising, or all or part of a sample form supplied by the Board in the Regulation (in Section 202.9(b)(2)). Use of the sample form, when properly completed, will satisfy the requirements of the Regulation. A statement of reasons for adverse action may be given orally but, if so, the creditor shall notify the applicant of the applicant's right to receive a statement of reasons in writing.

Notice of Rights under ECOA: The Board supplied in Regulation B a model notice of rights of applicants for credit under the ECOA. It provided that a creditor complies by supplying a notice that adheres substantially to the content of the Board's model notice, and that the creditor may include a reference in the notice to any similar State statute or regulation. The model notice, revised to take account of the 1976 Amendments to the Equal Credit Opportunity Act, follows:

> 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 that 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).

Credit History for Married Persons:

For accounts established *on or after* June 1, 1977, a creditor who furnishes credit information to other creditors shall:

1. Determine whether both spouses can use an account or are contractually liable, and
2. Designate any such account in a way to reflect the participation of both spouses.
3. Furnish information in a manner that will enable the agency to provide access to the information about the account in the name of both spouses.
4. Where credit information is furnished in response to an inquiry regarding a particular applicant, furnish it only about the spouse concerned in the inquiry.

For accounts established *before* June 1, 1977, a creditor furnishing credit information to another creditor shall either:

1. Not later than June 1, 1977

—Determine if it is an account usable by both spouses or on which both are contractually liable, and

—If so, designate it in a manner to reflect the participation of both spouses, and

—Comply with the reporting requirements above.

2. Mail or deliver, before October 1, 1977, to all applicants in whose name an account is carried on the creditor's records one copy of the notice called "Credit History for Married Persons."

For open-end accounts (such as credit card accounts) this requirement may be satisfied by mailing one notice at any time before October 2, 1977, to all accounts for which any billing statement is sent between June 1 and October 1, 1977. For closed-end accounts a creditor may delete from the Credit History for Married Persons references to who may use the account.

The text of the notice to married persons follows:

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please fill in and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change or increase your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning it in both our names.

_____ Account number

_____ Print or type name

_____ Print or type name

_____ Signature of either spouse

The Board provided that either spouse's signature is sufficient to avoid permitting one spouse to exercise a veto over access to the credit history of the account.

Provisions regarding information that may be or may not be requested or obtained on applications; rules regarding evaluation of applications, and specific rules on extensions of credit are substantially similar to those in existing Regulation B.

The Board intends to publish in the near future sample model application forms to aid in compliance.

Record Retention: A creditor may retain any information prohibited by the Act or Regulation where such information was obtained from any source before March 23, 1977, or at any time from credit reporting agencies or from the applicant or others without specific request by the creditor or to monitor compliance with the Act.

Creditors shall retain for 25 months after notifying an applicant of action taken in connection with an application:

—any application form received, other information concerning the applicant's characteristics or for enforcement purposes and copies of notification of action taken, statement of specific reasons for adverse action and any written statement by the applicant alleging violation of the Act or Regulation B.

Where a creditor has notification it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or Regulation B the information cited above shall be retained until final disposition of the matter.

Penalties: Creditors other than governmental entities who fail to comply with the Act or Regulation B are subject to civil liability for actual and punitive damages in individual or class actions. Liability for punitive damages is limited to $10,000 in individual actions and to the lesser of $500,000 or one per cent of the creditor's net worth in class actions.

Infractions resulting from inadvertent error—a mechanical, electronic or clerical error that a creditor demonstrates was not intentional and occurred despite procedures reasonably adapted to avoid such error—are not violations of Regulation B or the Act.

FOOTNOTES

[1] A footnote in the Regulation (Sec. 202.6(a)) notes that the legislative history of the Act indicates the Congress intended that an "effects test," such as has been developed in application of equal employment opportunity law, be applicable in determining whether a creditor's judgment of creditworthiness is or is not discriminatory.

[2] A footnote in the section of the Regulation (Sec. 202.2(z)) dealing with the prohibited bases of discrimination says in part:

"The definition (of prohibited bases) is not limited to characteristics of the applicant . . . but refers also to the characteristics of individuals with whom the applicant deals. This means, for example, that, under the general rule (against discrimination) a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. . . ."

[3] Not in existing Regulation B but similar to the November proposal for amending the Regulation.

[4] Not in the Board's July or November proposals.

[5] This section is new in Regulation B. It varies from the Board's November proposal chiefly in making it clear that the definition of pertinent element of creditworthiness applies only where a judgmental evaluation of an applicant's creditworthiness is being made.

[6] The proviso forbidding creditors to deny or terminate credit because credit-related insurance is not available due to the applicant's age, and the admissibility of questions on insurance application regarding age, sex and marital status were not part of the November proposal.

[7] This section has been considerably revised in detail from the November proposal, although it remains basically the same. It is not a part of existing Regulation B.

[8] This section is generally the same as in the Board's November proposal, but is derived from the amended Act and therefore differs from existing Regulation B. The Board deleted from this section a part of the November proposal that would have preempted State laws that did not permit inquiries permitted on model Federal Reserve forms, since such State laws may be more protective than the Federal law.

[9] This section was adopted by the Board with little change from the November proposal, the chief exception being that in some cases the exemption from the general prohibition on inquiries about sex has been deleted. Also, business credit applicants may request an explanation of adverse action and request that records of an adverse action be retained.

[10] Incidental credit is credit extended for the convenience of the consumer on an informal basis by those who are not regularly in the business of being creditors, and that does not involve a finance charge or more than four payments. Incidental credit may be extended through the use of a credit card by other than the issuer of the card.

FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks
Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks
Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks
Federal Deposit Insurance Corporation Regional Director for the Region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for savings banks insured by FDIC)
The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions
Regional Office of the National Credit Union Administration serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board
Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission
Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act
Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies
U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers
Securities and Exchange Commission
Washington, D.C. 20549

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations
Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Retail, Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate)
Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

Printed on the following pages is the text of the revised Regulation B, effective March 23, 1977, which has been reprinted from the *Federal Register* of January 6, 1977. The regulation will be sent to you in pamphlet form as soon as possible.

Any questions regarding this matter may be directed to our Bank Regulations Department. Additional copies of this circular will be furnished upon request.

PAUL A. VOLCKER,
President.

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Reg. B; Docket No. R–0031]

PART 202—EQUAL CREDIT OPPORTUNITY

Amendments to Regulation B To Implement the 1976 Amendments to the Equal Credit Opportunity Act

The original Equal Credit Opportunity Act (Pub. L. 93–495, the "Act"), which went into effect on October 28, 1975, prohibits discrimination in any aspect of a credit transaction on the basis of sex or marital status. The 1976 Amendments to the Act (Pub. L. 94–239) were signed into law on March 23, 1976, and will go into effect on March 23, 1977. They extend the Act's prohibition of discrimination in credit transactions to include discrimination based on race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of income from a public assistance program, and the good faith exercise of rights under the Consumer Credit Protection Act.

Since the Amendments substantially changed the Act, numerous changes were necessary in existing Regulation B, which implements the Act. The Board of Governors proposed for comment a revised version of Regulation B on July 20, 1976 (41 FR 29870), and held hearings on August 12 and 13, 1976. On the basis of comments received and testimony presented, the Board published a second proposal for comment on November 8, 1976 (41 FR 49123).

After consideration of the additional comments received, the Board has revised the second proposal (the "November proposal"). The changes are discussed in detail below. The revised Regulation B, published herein, will become effective on March 23, 1977. Creditors are required to comply with the provisions of the existing Regulation B until that time.

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

Sections 202.1(a) and (b) are identical to the November proposal. In section 202.1(c)(1), the words "actual and punitive" have been inserted before "damages" to clarify that under the Act a creditor's civil liability extends to both actual and punitive damages, and that the dollar limitations in section 706(b) of the Act apply only to the liability for punitive damages. The final clause of section 202.1(c)(2) has been modified to conform more closely to the statutory language; "or approval" has been added after "such rule, regulation, [or] interpretation," and "rescinded" has been added after "is amended." The rest of this section is identical to the November proposal.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

Section 202.2(a)—Definition of "Account". The definition is identical to the November proposal and substantially similar to the definition in existing Regulation B.

Section 202.2(b)—Definition of "Act". The definition is identical to the November proposal.

Section 202.2(c)—Definition of "Adverse action". The definition is drawn from section 701(d)(6) of the amended Act and is similar to the November proposal. Section 202.2(c)(1) describes the actions by a creditor that will trigger the requirements imposed by the Act and the regulation relating to notification of action taken, statement of reasons for adverse action, and record retention. Paragraph (i) is based on the statutory language of section 701(d)(6); it provides that adverse action occurs where an applicant requests credit and the creditor refuses the request. In addition, paragraph (i) encompasses the situation in which a creditor rejects an applicant's initial request, but makes a counter-offer. This approach combines provisions of paragraphs (i) and (ii) of the November proposal. If the applicant uses or accepts the counter-offer, no adverse action occurs. However, if the applicant does not use or expressly accept the credit, adverse action does occur.

Paragraphs (ii) and (iii) describe other actions on the part of the creditor that constitute adverse action.

Section 202.2(c)(2) lists the actions that do not constitute adverse action. Paragraph (i) provides that a change in the terms of an account "expressly agreed to by an applicant" is not adverse action. Paragraph (ii) provides that adverse action does not occur if a creditor takes action or forbears from taking action regarding inactivity, default, or delinquency on an account. Paragraph (iii) provides that a refusal to authorize a point of sale or loan transaction that would exceed an applicant's existing credit limit is not adverse action. This paragraph differs from the November proposal in not requiring that the applicant be advised of the credit limit in advance. However, a point of sale refusal of credit is adverse action if the refusal occurs for a reason other than exceeding the pre-established credit limit.

Paragraphs (iv) and (v) provide that a refusal to extend credit because applicable law prohibits the creditor from extending such credit, or because the creditor does not offer the type of credit requested, does not constitute adverse action. The latter provision is intended to apply, for example, where an applicant requests a credit card from a creditor that does not issue credit cards. However, if an applicant requests a loan at an interest rate of 2 percent and this request is refused because the creditor's policy is to make loans only at 18 percent, this refusal is adverse action. Paragraph (v) is not intended to exempt this type of refusal.

Section 202.2(d)—Definition of "Age". The definition is identical to the November proposal. It indicates that the amended Act's protection against discrimination based on age extends only to

natural persons and not to business entities.

Section 202.2(e)—Definition of "Applicant". The definition is identical to the November proposal. It is similar to the definition in the existing regulation.

Section 202.2(f)—Definition of "Application". The definition of "application" is identical to the November proposal and is substantially similar to existing Regulation B.

Although the definition of a "completed application for credit" has been modified, it remains substantially the same as in the November proposal. The words "such information" in the final clause of the first sentence replace "the approvals or reports" to make clear that the requirement of reasonable diligence is not limited to governmental approvals or reports. The final sentence requires that, where an application is incomplete as to matters susceptible to completion by the applicant, the creditor shall make a reasonable effort to notify the applicant and allow a reasonable opportunity for completion of the application.

Section 202.2(g)—Definition of "Board". The definition is identical to the November proposal.

Section 202.2(h)—Definition of "Consumer credit". The definition is identical to the November proposal

Section 202.2(i)—Definition of "Contractually liable". The definition is identical to the November proposal.

Section 220.2(j)—Definition of "Credit". The definition is identical to the November proposal.

Section 202.2(k)—Definition of "Credit card". The definition is identical to the November proposal.

Section 202.2(l)—Definition of "Creditor". The definition is substantially identical to the November proposal. The provisions on potential liability of assignees for violations committed by other creditors is now limited to situations in which the assignee had reasonable notice of the illegal acts. In this respect, this definition is identical to the July proposal.

Section 202.2(m)—Definition of "Credit transaction". The definition is identical to the November proposal. It modifies existing Regulation B by deleting the phrase "solicitation of prospective applicants by advertising or other means." Discriminatory advertising practices remain subject to § 202.5(a), which prohibits discouraging applications.

Section 202.2(n)—Definition of "Discriminate against an applicant". The definition is identical to the November proposal and is substantially similar to the definition in existing Regulation B.

Section 202.2(o)—Definition of "Elderly". This is a new definition which sets the exact age at which an applicant is deemed elderly. Age 62 was chosen since that is the earliest age at which retirement benefits are paid by the Social Security Administration.

The addition of this definition necessitates the relettering of subsequent definitions.

Section 202.2(p)—Definition of "Empirically derived credit system". The definition is similar to the November proposal. It implements section 701(b)(3) of the amended Act. Section 202.2(p)(1) describes an "empirically derived credit system." Such a system is defined as a credit scoring system that evaluates, on the basis of a numerical score, the likelihood of an applicant's repaying the credit requested. The score is based on key attributes of the applicant and the credit which have been selected and weighted in accordance with the creditor's experience with past applicants. The system must be based on experience which is not outdated. The system may include a subjective evaluation of other information as long as the determination of creditworthiness is primarily controlled by the empirically derived aspects of the system.

Section 202.2(p)(2) of the definition prescribes the Board's standards for a "demonstrably and statistically sound" system as required by the amended Act. First, if the entire applicant population of the creditor is not used in developing the system, the sample groups of applicants which are used must be obtained in accordance with appropriate sampling principles so as to fairly represent the characteristics of the underlying population. If proper methods are used in the system's development, consideration of the characteristics of the applicant population need not include actual sampling or scoring of rejected applicants.

Second, the Board's standards permit a creditor, as a matter of business judgment, to set the acceptance score high or low depending upon its business objectives.

Third, the system's predictive ability must be validated during the development process. One method of validation is to apply the model to accumulated credit experience and then to use statistical tests to compare predictive ability with actual results. In addition, there are other methods available to ascertain whether the model will perform at a statistically significant rate. No particular confidence level is specified in the regulation; however, system developers may note that courts in employment cases have shown a preference for a 95 percent level.

Fourth, the system's predictive ability must be regularly revalidated as it is used. The techniques used for revalidation, the frequency with which it occurs, and the population of applicants used to test continuing predictive ability will vary depending upon the creditor and credit system involved. Usually revalidation will use the same statistical tests as the initial validation, except that more recent credit experience is used.

Section 202.2(p)(3) provides that a creditor may borrow either a fully developed credit system or credit experience from which an empirical system can be developed. A borrowed system or a system based on borrowed information must meet the standards prescribed in subsections (1) and (2) above. In addition, a creditor adopting a borrowed system or using borrowed data must validate the system against its own credit experience, as soon as such information is available. Thus, if the borrowing creditor has accumulated credit experience using a judgmental system or a different scoring system, the borrowed system can be validated using this information even before the borrowing creditor commences use of the new empirical system. However, if the creditor has no credit experience of its own, then validation may be deferred until such experience is accumulated. If a borrowed system fails to pass a test of its validity then it is no longer a demonstrably and statistically sound, empirically derived credit system. The borrowing creditor must then either discontinue use of the system or use it accepting the risks and requirements inherent in a judgmental system.

Section 202.2(q)—Definition of "Extend credit" and "Extension of credit". The definitions are identical to the November proposal.

Section 202.2(r)—Definition of "Good faith." The definition is identical to the November proposal.

Section 202.2(s)—Definition of "Inadvertent error". The definition was drawn from § 202.11(a) of existing Regulation B, relating to mechanical errors, and is identical to the November proposal.

Section 202.2(t)—Definition of "Judgmental system of evaluating applicants". The definition is identical to the November proposal. The term is intended to encompass all systems for evaluating creditworthiness other than "demonstrably and statistically sound, empirically derived credit systems."

Section 202.2(u)—Definition of "Marital status". The definition is identical to the November proposal.

Section 202.2(v)—Definition of "Negative factor or value". Section 701(b)(3) of the Act forbids the assigning of a negative factor or value to the age of an elderly person in the operation of a demonstrably and statistically sound, empirically derived credit system. The definition of "negative factor or value" is similar to the November proposal. However, because of the addition of a definition of the word "elderly," the effect of this definition upon a credit scoring system is now very different.

Since the November proposal did not define "elderly," under that proposal each applicant would have been "elderly" with respect to all younger applicants. Accordingly, an applicant could not have been given a score lower than that of any younger applicant, regardless of the creditor's experience. Comments indicated that, as a general rule, older persons are the most creditworthy group on the basis of age, but that certain groups of middle-aged applicants are less creditworthy than younger applicants. The November proposal would have caused undue distortion in the points assigned to age and might have led system users to cease using age as a variable. If elderly applicants are empirically the most creditworthy, then dropping age as an indicator could have had the effect of reducing the amount of credit extended to older persons.

Because "elderly" is now defined as age 62 and above, the regulation has a different impact upon scoring systems. Generally a demonstrably and statistically sound, empirically derived credit system which uses age as a scoring factor should assign to an elderly applicant the number of points indicated by experience. However, in no event may an elderly applicant receive fewer points for age than are assigned to the class of applicants that are not elderly and are most favored on the basis of their age. The highest score on the basis of age given to applicants who are less than 62 creates a floor; persons 62 or older may not be given a score beneath that floor. Except for this limitation, applicants may be given the number of points on the basis of age which experience indicates.

Section 202.2(w)—Definition of "Open-end credit". The definition is identical to the November proposal.

Section 202.2(x)—Definition of "Person". The definition is identical to the November proposal.

Section 202.2(y)—Definition of "Pertinent element of creditworthiness". The definition is similar to the November proposal. Section 701(b)(2) of the amended Act permits a creditor to inquire about an applicant's age or whether an applicant's income derives from a public assistance program, if such inquiry is for the purpose of determining pertinent elements of creditworthiness. The Board has defined pertinent element of creditworthiness as information having a demonstrable relationship to a determination of creditworthiness. The definition varies from the November proposal by expressly stating that this definition relates only to judgmental systems. In addition, use of the term "manifest" in connection with the information's relation to creditworthiness has been deleted. Creditors should be on notice, however, that court decisions pertaining to the so-called "effects test" do require that the relationship between the defendant's practices and the defendant's actual needs be "manifest." This definition does not preclude a court applying the effects test to credit practices from reading a requirement of manifestness into the relationship between credit practices and creditworthiness.

Section 202.2(z)—Definition of "Prohibited basis". The definition is substantially similar to the November proopsal. The phrase is defined in terms of those characteristics that, under the amended Act, may not be considered in any aspect of a credit decision or may be considered only in a limited fashion. A footnote interprets the statutory language of section 701(a)(1) as referring not only to an applicant's race, color, religion, national origin, sex, marital status, or age, but also to such characteristics of other persons who may be indirectly involved in the transaction. This definition differs from the November proposal by expressly stating that an exercise of rights under a State law substituted for the Consumer Credit Protection Act is equally protected by the Act and this regulation.

Section 202.2(aa)—Definition of "Public assistance program". Section 701(a)(2) of the amended Act prohibits discrimination against an applicant "because all or part of the applicant's income derives from any public assistance program." The definition provides some examples of such programs, but the term is not limited to the types of income cited. This definition differs from the November proposal by no longer requiring that the periodic income supplement be directed. A program's assistance may be indirect while still falling within the ambit of this definition.

Section 202.2(bb)—Definition of "State". The definition is identical to the November proposal.

Section 202.2(cc)—Captions and catchlines. The section is intended to indicate the non-substantive nature of captions and catchlines. It is derived from § 226.2(ll) of Regulation Z.

Section 202.2(dd)—Footnotes. The section gives footnotes to the regulation the same legal effect as the text.

Section 202.3—Special Treatment for Certain Classes of Transactions

Four classes of transactions are given special treatment in the existing Regulation B: incidental, business, securities, and public utilities credit. Section 202.3 provides specialized treatment for these classes and for one additional class, credit extended to governmental units. The Board has determined to adopt this section as proposed with the changes discussed below.

Public comments suggested that no reason relating to creditworthiness justifies an inquiry concerning the sex of an applicant for utilities, business, or incidental credit. In response to these comments, the Board has modified this section to provide that § 202.5(d)(3), which prohibits inquiries about an applicant's sex, applies to public utilities and business credit transactions. This prohibition is also applicable to incidental credit transactions unless information relating to the sex of an applicant is required for medical records or similar purposes. This exception is intended to allow persons providing health services to rely upon medical records as a source of information when extending credit, even though the records may contain information relating to the sex of an applicant.

A number of commentators urged the Board to prohibit inquiries as to marital status in business credit transactions. The Board has not followed this suggestion because to do so would require the revision of forms and, in view of the variety and volume of business transactions, the revision would be costly and disruptive. Furthermore, it is doubtful that this burden would be justified since the traditionally close personal contact between business creditor and applicant makes it likely that marital status will be known by the creditor regardless of the informational bar.

The Board believes that, as a general rule, applicants for business credit are more sophisticated than applicants for consumer credit and, thus, there is no need to explain reasons for adverse action to all business credit applicants. Applicants for business credit who wish to know the reason for adverse action may, of course, request an explanation from the creditor as provided in § 202.3(e)(2). Similarly, § 202.3(e)(4) grants business credit applicants the right to request retention of records by the creditor within 90 days of adverse action. Under § 202.3(e)(2), the period during which the request must be made commences only when the applicant is notified orally or in writing of the adverse action by the creditor.

The Board has determined that special treatment for business transactions is also warranted for record retention provisions of the regulation. The requirements to retain records involve significant costs for creditors. The recordkeeping requirement would be particularly burdensome since applications for commercial credit typically involve a much greater volume of documents than applications for consumer credit.

Section 202.4—General Rule Concerning Discrimination

The section is identical to the November proposal.

Section 202.5—Rules Concerning Applications

Section 202.5(a)—Discouraging applications. The section is identical to the November proposal.

Section 202.5(b)—General rules concerning requests for information. Section 202.5(b)(1) is unchanged from the November proposal. It corresponds to § 202.5(a) of existing Regulation B, except that the phrase "continued ability to repay" was deleted to underscore the fact that a creditor's access to information is not limited to determining the probable continuity of an applicant's income. Thus, the only barriers to a creditor's obtaining, as opposed to considering, information are those contained in § 202.5. Footnote 4 makes clear that § 202.5(b)(1) neither limits nor abrogates laws regarding privacy, privileged information, or similar matters.

Section 202.5(b)(2) deals with information collection relating to the monitoring or enforcement of compliance with the amended Act, Regulation B, or other Federal or State laws. The first sentence refers explicitly to the information collection requirements of § 202.13. It has been revised from the November proposal by the addition of an introductory phrase, "notwithstanding any other provision of this section," to clarify that this provision supersedes information barriers contained in subsections (c) and (d) of § 202.5. Any State law that precludes a creditor from requesting an applicant's race/national origin, sex, and marital status, and thus conflicts with § 202.13, is preempted by § 202.11(b)(1)(iii).

The second sentence of § 202.5(b)(2) permits creditors to comply with regulations, orders, or agreements (issued by or entered into with a Federal or State

court or enforcement agency) that require the collection of information to monitor or enforce compliance with the amended Act or other State or Federal law, such as the Federal Fair Housing Act, administered by the U.S. Department of Housing and Urban Development. The Board has substituted the words "may obtain" for "shall obtain" to clarify that the provisions of the second sentence of (b)(2) are permissive and not mandatory. In addition, the scope of the provision has been expanded by the inclusion of the word "regulation" in the first clause and by the insertion of the words "or enforce" within the phrase "to monitor compliance."

Finally, § 202.5(b)(3) clarifies the point that some information barriers of § 202.5 are not applicable to special purpose credit programs as defined in § 202.8, or with regard to § 202.7(e) relating to insurance.

Section 202.5(c)—Information about a spouse or former spouse. Sections 202.5 (c) and (d) are specific exceptions to the general rule of § 202.5(b)(1). Sections 202.5(c) (1) and (2) are identical to the November proposal and are derived from § 202.5(b) of the existing regulation. Paragraph (iv), relating to reliance on community property, differs from the corresponding provision of existing Regulation B, which permits a creditor to request and consider information about an applicant's spouse if the applicant "is relying on community property * * * as a basis for repayment of the credit requested." The revised provision permits such inquiries whenever the applicant "resides" in a community property State or when the applicant, in applying for credit, is relying on property that is relying on property that is located in a community property State.

Section 202.5(c)(3) has been expanded. As in the November proposal, it permits a creditor to ask an applicant to list any account upon which the applicant is liable and to disclose the name and address in which such an account is carried. A second sentence has been added that permits a creditor to ask about other names in which the applicant has previously received credit.

Section 202.5(d)—Information a creditor may not request. Except for editorial changes, this section is the same as the November proposal. Section 202.5(d)(1) restates the provisions of §§ 202.4(c) (1) and (2) of existing Regulation B, except that the language, "or as required to comply with State law governing permissible finance charges or loan ceilings," was deleted as unnecessary, since § 202.11 (b)(1)(ii) preempts any provision of State law regarding married persons.

The structure of § 202.5(d)(1) has been changed from the existing regulation to state the rule relating to marital status inquiries more clearly. If an applicant applies for an individual, unsecured account, a creditor may not inquire about the applicant's marital status unless the community property exception, which conforms to § 202.5(c)(2)(iv), applies. Creditors should note that this informational bar applies notwithstanding the existence of a State necessaries law or family expense statute.

In the second sentence of § 202.5(d)(1), the phrase that appeared in the November proposal, "in all other instances," has been replaced by the phrase "Where an application is for other than individual, unsecured credit * * *" In addition, the limitation regarding terms that may be used in marital status inquiries is stated in a separate sentence, to clarify that the limitation applies in all instances where such inquiries are permissible, including in community property States. Section 202.5(d)(1) also makes clear that a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

Section 202.5(d)(2) replaces §§ 202.4 (c)(3) and 202.5(d)(1) of existing Regulation B relating to alimony, child support, and separate maintenance. The first sentence of this provision states the general requirement that a creditor must first disclose to an applicant that income from alimony, child support, or separate maintenance need not be revealed by the applicant unless the applicant is relying on such income to establish creditworthiness. The second sentence is intended to alert creditors that a general inquiry regarding source of income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance income. Therefore, unless an inquiry is phrased in terms of salary, wages, or similarly specified income as opposed to general inquiries about income, disclosure by the creditor concerning the optional nature of such a listing is required.

Because the disclosure regarding alimony, child support, or separate maintenance income is required both in oral and on written applications, the word "appropriately" has been substituted for "first conspicuously."

A number of commentators urged the Board to delete the word "separate" from "separate maintenance" in the 202.5 (d)(2) disclosure provision, on the ground that many application forms that comply with the existing version of Regulation B do not draw such a distinction and, thus, could be considered inadequate under the new regulation. The Board has adopted the provision as proposed. However, since these comments express a valid concern, the Board has added a footnote to 202.5(e) of the regulation that permits a creditor to continue "to use any application form that complies with the requirements of the October 28, 1975, version of Regulation B iuntil its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first."

Section 202.5(d)(3) expressly prohibits a creditor from asking about an applicant's sex, and incorporates the courtesy titles provision of § 202.4(c)(4) of existing Regulation B. As in § 202.5(d) (2), the word "appropriately" has replaced the words "first conspicuously" for the reasons mentioned above.

Section 202.5(d)(4) incorporates the limitation regarding child bearing inquiries contained in the first sentence of § 202.5(h) of the existing regulation; the second sentence of § 202.5(h) is found in § 202.6(b)(3) of this regulation. The provision makes clear that the prohibition as to child bearing inquiries does not preclude a creditor from asking about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures. For purposes of clarification, the Board has added a final clause to emphasize that a creditor may ask questions relating to dependents only if it asks all applicants such questions.

Section 202.5(d)(5) prohibits inquiries about the race, color, religion, or national origin not only of applicants but also of any other person in connection with a credit transaction, except as provided by § 202.5(b)(3) relating to special purpose credit programs or as required by § 202.5(b)(2) for compliance-monitoring purposes. The final sentence explicitly permits a creditor to inquire about an applicant's permanent residence and immigration status.

Section 202.5(e)—*Application forms.* The content of § 202.5(e) remains essentially unchanged from the November proposal. However, a number of comments noted that certain provisions of this regulation might necessitate changes in creditors' forms less than a year after creditors modified their forms to comply with the October 28, 1975 version of the regulation. In order to minimize the financial burden of any further changes that may be required, a footnote has been added, permitting creditors to continue to use application forms that comply with the requirements of the 1975 version of Regulation B until present stocks of those forms are exhausted or until March 23, 1978, whichever occurs first.

In response to numerous comments, § 202.5(e) has also been redrafted to underscore the point that Regulation B does not require the use of written applications or, if written forms are used, does not require the use of any of the sample applications approved by the Board. If a creditor chooses to use written applications, it has four options. First, a creditor may design its own forms. Second, a creditor may use forms prepared by another person, for example, another creditor or a trade association. Third, a creditor may use any appropriate model form included in Appendix B of Regulation B. (The Appendix B forms will be published separately in the near future.) Finally, a creditor may use a modified version of any appropriate Appendix B form.

The phrase "appropriate model form" has been used to emphasize that the five forms contained in Appendix B are each designed for use in a different situation. For example, one form is intended for use only in open end, unsecured credit transactions; another is intended for use in community property States. Therefore, the protection accorded creditors

using the model forms applies only if the form "appropriate" to a particular situation is used or modified as provided in § 202.5(e).

Section 202.5(e) enumerates the three ways in which a creditor may modify an appropriate Appendix B form to satisfy its needs. First, a creditor may ask for additional information if such a request is not prohibited by § 202.5. Second, a creditor may delete any information request. Third, a creditor may rearrange the order of the questions. In each instance, however, a creditor must include the appropriate notices in the appropriate places if information regarding courtesy titles, alimony, child support, or separate maintenance payments, or marital status is solicited.

The modification of an appropriate Appendix B form by deleting or rearranging informational items will not affect a creditor's protection under section 706(e) of the amended Act from civil liability arising from the use of the form. If a creditor adds an informational item not expressly permitted by the regulation, the creditor may not rely upon the protection of § 706(e) with respect to that additional item.

Finally, the language of the November proposal expressly permitting creditors to add the ECOA notice to their forms has been deleted for two reasons. First, footnote 6 addresses the problem of using forms that contain the ECOA notice prescribed by the October 28, 1975 version of Regulation B. Second, supplying an ECOA notice at the time that an applicant applies for credit will not satisfy the requirement of § 202.9(a) that such a notice be provided when adverse action is taken.

Section 202.6—Rules Concerning Evaluation of Applications

Section 202.6 deals with the use of information in the evaluation of credit applications, and elaborates on the substantive provisions of section 701 (a) and (b) of the amended Act.

Section 202.6(a)—General rule concerning the use of information. Section 202.6(a) is substantially similar to the November proposal. Subject to two qualifications, the basic provision of this section is that a creditor may consider, in evaluating an application, any information that it obtains. The first qualification is that no information may be used to discriminate against an applicant on a prohibited basis, except as provided in § 202.8 regarding special purpose credit programs. Second, a creditor's use of information is limited by the specific prohibitions contained in §§ 202.5 and 202.6 of the revised regulation. The rule adopted in § 202.6(a) subsumes the first sentence of § 202.5(k) of existing Regulation B.

The use of the words "to discriminate" is intended to underscore the fact that the general rule regarding use of information is not limited to intentional acts of discrimination. The amended Act proscribes intentional discrimination and also may be interpreted as prohibiting actions that have the effect of discriminating against applicants on any prohibited basis.

The footnote has been shortened in the final version. It refers to the legislative history of the amended Act, which shows that Congress intended certain judicial decisions enunciating the "effects test" in the employment area to be applied in the credit area, especially with respect to the allocation of burdens of proof.

As a judicial doctrine, the effects test is not well suited to regulatory implementation. In addition, it is, of course, subject to change as it is examined and applied by the courts.

Section 202.6(b)—Specific rules concerning use of information. Section 202.6(b) is substantially similar to the November proposal and contains specific limitations on the use of information. Section 202.6(b)(1), which bars (with certain exceptions) a creditor from taking any prohibited basis into account in evaluating creditworthiness, is identical to the November version.

Footnote 8 does not broaden the authority granted by § 202.5 to ask about marital status; rather, where the creditor can ask marital status under § 202.5, the footnote permits a creditor to consider it in connection with rights and remedies.

Section 202.6(b)(2) has been adopted without change from the November proposal. Paragraph (i) expressly prohibits a creditor from taking into account an applicant's age (provided the applicant is old enough to enter into a binding contract) or whether an applicant receives income from any public assistance program, except as otherwise provided in the section. The wording of paragraphs (ii) and (iii) emphasizes the distinction between the consideration of age in empirically derived credit systems and judgmental systems. In a judgmental system, a creditor is permitted to consider an applicant's age and whether an applicant's income derives from any public assistance program, but only for the purpose of determining a pertinent element of creditworthiness. A creditor may use age itself as a predictive variable in a credit scoring system, but only if such system is a demonstrably and statistically sound, empirically derived system. Paragraph (iv) is based on section 701(b)(4) of the amended Act and provides that, in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when age is used to favor the applicant.

With respect to § 202.6(b)(3), the Board has inserted language, which appears in existing Regulation B, to make clear that creditors are barred from considering statistics relating to childbearing only in connection with evaluating creditworthiness. Thus, for example, a creditor may consider such statistics in connection with marketing research.

Section 202.6(b)(4) is identical to the corresponding provision in the November proposal.

Section 202.6(b)(5) has been adopted as it appeared in the November proposal, except for the addition of annuity, pension, and other retirement income as income that creditors may not discount or exclude from consideration. This subsection corresponds to §§ 202.5(d)(2) and 202.5(e) of existing Regulation B.

Section 202.6(b)(6) corresponds to § 202.5(j) of the existing regulation, and is unchanged from the November proposal, except for the reinstatement of the inadvertent error defense and the phrase "contractually liable," which appear in the existing regulation. The words "when available" in paragraphs (i) and (iii) refer to the fact that such credit history may not always be available to a creditor. A creditor is required to consider such credit history only "to the extent that a creditor considers credit history in evaluating creditworthiness of similarly qualified applicants for a similar type and amount of credit."

Section 202.6(b)(7) has been adopted without change from the November proposal. It provides that a creditor may consider an applicant's immigration status, whether the applicant is a permanent resident of the United States, and whatever additional information is necessary to ascertain rights and remedies regarding repayment.

Section 202.6(c)—State property laws. This section incorporates the provisions of § 705(b) of the Act and is substantially identical to § 202.5(1) of the existing regulation. The Board has adopted it without change from the November proposal.

Section 202.7—Rules Concerning Extensions of Credit

Section 202.7(a)—Individual accounts. This section is identical to the November proposal. It corresponds to § 202.4(b) of the existing regulation.

Section 202.7(b)—Designation of name. Section 202.7(b) has been adopted without change from the November proposal and is substantially the same as § 202.4(e) of existing Regulation B. The section prohibits a creditor from requiring an applicant to open and maintain an account in a spouse's name, although an applicant may use such a name if desired. The provision permits an applicant to use a birth-given first name with a birth-given surname, spouse's surname, or a combined or hyphenated surname.

This provision should not be interpreted as requiring creditors to redesign systems in order to handle occasional requests for combined names or other names that contain more than the usual number of characters.

Section 202.7(c)—Action concerning existing open end accounts. Section 202.7(c)(1) is identical to the November proposal and is derived from § 202.5(i)(1) of existing Regulation B. It prohibits creditors from taking certain actions on the basis of an applicant's retirement, attainment of a certain age, change of name, or change of marital status.

Section 202.7(c)(2) is substantially similar to the November proposal and is derived from § 202.5(i)(2) of existing Regulation B. It permits a creditor to require a reapplication on the basis of a change in marital status in certain instances where open end credit was granted to an applicant based on income earned by the applicant's spouse. The November proposal, unlike existing Regulation B, would have permitted creditors to require reapplication in those instances on the basis of a change in name as well as on the basis of a change in marital status. Comments pointed out that a change in name does not always indicate a change in marital status, and that only the latter is a cause for possible concern about changed financial circumstances. In addition, women are more likely to change their names upon change in marital status than are men, so that the November version of this provision might disfavor women. Therefore, the Board has decided to delete the words "name or" before "marital status" in § 202.7(c)(2).

Section 202.7(d)—Signature of spouse or other person. Section 202.7(d) corresponds to § 202.7 of existing Regulation B, governing requests for the signature of a spouse or other person. The section has been revised for clarity.

Section 202.7(d)(1) states the general rule contained in § 202.7(a) of the existing regulation, and in the first sentence of § 202.7(d)(1) of the November proposal. It prohibits a creditor from requiring the signature of a spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the credit requested.

The words "or other person, other than a joint applicant" have been added to the November version to accomplish two objectives. The addition of the first part of the phrase makes clear that creditors may not discriminate in imposing signature requirements upon applicants, whether or not the additional signature required is that of the applicant's spouse. In this respect, the addition merely continues the rule of existing § 202.7(a). The second part of the phrase has been added to underscore the fact that where two persons voluntarily apply jointly for credit, a creditor may obtain the signature of the joint applicant.

The remainder of § 202.7(d) comprises exceptions to, and elaborations on, the general rule. Section 202.7(d)(2) relates to unsecured credit where property is relied upon. This subsection includes the second sentence of § 202.7(d)(1) of the November proposal, concerning the factors that creditors may consider in evaluating the property relied upon, with new material that explains that the creditor may require, if evaluation indicates that it is necessary, a signature on any instrument needed to gain access to the property in the event of default. For example, such an instrument might be a waiver of dower rights.

Section 202.7(d)(3) relates to unsecured credit in community property States, and is substantially the same as § 202.7(d)(4) of the November proposal and § 202.7(b) of the existing regulation. The provision adopted by the Board differs from the November proposal in that the criterion defining instruments on which creditors may require signatures is changed from "necessary" to "necessary, or reasonably believed by the creditor to be necessary, under applicable State law." This change is in response to comments indicating the difficulty in some States of determining what instruments are legally required in some instances. It conforms the standard for this subsection to that established for secured credit in existing Regulation B, and for all categories (unsecured relying on property, unsecured in community property State, and secured) in the final regulation.

Section 202.7(d)(4) relates to secured credit, and corresponds to § 202.7(d)(2) of the November proposal and § 202.7(c) of the existing regulation. The phrase "and the applicant's spouse has or will have an interest in the property being offered as security," which appeared in the November proposal, has been deleted because some commentators cited State laws under which, even though a person's spouse has no interest in property owned by the person, the spouse's signature is required to pass clear title. The words "or other person" have been added after "spouse" to take account of the situation where a person other than the applicant's spouse holds an interest in the property being offered as security. Finally, "necessary" has been changed to "necessary, or reasonably believed * * *," as explained above with reference to § 202.7(d)(3).

Section 202.7(d)(5) relates to credit in connection with which the personal liability of a person other than the applicant (and other than a joint applicant or applicants, if any) has been found necessary. An example, given in footnote 10, is the situation where an applicant requests individual credit and relies on income of another person. This subsection corresponds to § 202.7(d)(3) of the November proposal. Aside from the addition of footnote 10, it differs from the November proposal in two respects. First, "an additional party" replaces "a party other than the applicant" to indicate that, where persons apply voluntarily for joint credit, the restrictions stated in this paragraph do not apply. For example, if a person and his or her spouse apply for joint credit, the creditor does not violate Regulation B by obtaining the signature of the spouse. Second, a new sentence has been added, providing that guarantors, cosigners, and the like have the same protection under § 202.7(d) as do applicants. For example, a creditor cannot require the spouse of a guarantor to cosign the guarantee, unless it could require such signature if the guarantor were an applicant for the credit being extended.

Section 202.7(e)—Insurance. The provision is similar to the November proposal. It states that differences in rates and terms of credit-related insurance provided to different applicants, and providing insurance to some applicants but not to others, do not constitute violations of Regulation B. In response to public comment, the Board has added a proviso prohibiting creditors from denying or terminating credit because credit life, health, accident, or disability insurance is unavailable due to the applicant's age. This proviso does not prevent creditors from varying the terms and conditions of credit because of the unavailability, rates, and terms of insurance.

The last sentence of the section, which is also an addition to the November proposal, states that creditors do not violate Regulation B by asking applicants about age, sex, or marital status in connection with insurance applications.

Section 202.8—Special Purpose Credit Programs

In response to comments, the Board has made several substantive and technical changes.

Section 202.8(a)—Standards for programs. Section 202.8(a) has been made subject to the two general rules contained in new § 202.8(b) discussed below. Reversing the position taken in the November proposal, the denial of credit to an applicant under a special purpose credit program constitutes adverse action, triggering the notice provisions of § 202.9. The Board has changed this section for two reasons. First, the revised provision more closely follows the language of 701(c) of the Act. Second, while § 202.8 programs are accorded special treatment by the Act and the regulation, the Board believes that the intended beneficiaries of those programs should have the same right as other applicants to receive a notice of action taken and a statement of reasons for denial.

Section 202.8(a)(1) deals with credit programs expressly authorized by Federal or State law. Despite numerous requests, the Board has not listed any programs that qualify under this provision. A great number of programs may satisfy the requirements of § 202.8(a)(1), but any attempt to list the programs that do qualify would involve a detailed review of the facts in each case and would require an analysis of numerous Federal and State statutes, regulations, and judicial and administrative decisions and interpretations. Therefore, creditors will have to determine, in conjunction with any government agency involved in the program, whether a particular program meets the statutory requirements enunciated in Section 701(c) of the Act.

Section 202.8(a)(2) concerns programs where the credit is offered by not-for-profit organizations. The only change made in this section is the substitution of the phrase "offered by" for the terms "administered by." This substitution was made in response to comments to avoid any misunderstanding

that a program offered by a not-for-profit entity (e.g., a trust) may be administered by a for-profit organization (e.g., a commercial bank).

Section 202.8(a)(3) covers programs involving for-profit organizations. It has been changed in two respects. First, language regarding such an organization's participation in a program has been added to clarify the point that a for-profit organization may satisfy the requirements of this section by extending credit pursuant to a program sponsored by a not-for-profit organization or by another for-profit organization. For example, a student loan program sponsored by a foundation where the loans are made by commercial banks or a program established by a for-profit corporation where economically disadvantaged employees are assisted in obtaining credit from local creditors would qualify.

The second change involved incorporating subsection (a)(3)(iii) into new § 202.8(b)(2).

Section 202.8(b)—*Applicability of other rules.* This section is new. The first paragraph has been added to make explicit what was implied in the previous proposals, namely, that all of the other provisions of the regulation apply to special purpose credit programs to the extent that those provisions are not inconsistent with the specific terms of § 202.8.

The second paragraph incorporates the provisions of § 202.8(a)(3)(iii) of the November proposal and applies them not only to programs involving for-profit organizations (as was the case in the November proposal), but also to programs offered by not-for-profit organizations.

Section 202.8(b)(2) provides that a creditor may determine eligibility for a special purpose credit program using one or more of the prohibited bases; but, once the characteristics of the class of beneficiaries are established, a creditor may not discriminate among potential beneficiaries on a prohibited basis. For example, a creditor might establish a credit program for impoverished American Indians. If the program met the requirements of § 202.8(a), the creditor could refuse credit to non-Indians but could not discriminate among Indian applicants on the basis of sex or marital status.

Sections 202.8 (c) and (d)—*Special rule concerning requests and use of information and Special rule in the case of financial need.* Except for re-lettering, the only modification in these sections is that the phrase "or will be" has been added to the first sentence of each to underscore the point that new special purpose credit programs may be established after the effective date of the regulation. Both sections permit creditors to seek information otherwise barred by the regulation in order to determine eligibility for special purpose credit programs.

SECTION 202.9—NOTIFICATIONS

This section encompasses all of the requirements for the notices that creditors must provide to applicants, except for the credit history notice required by § 202.10(b). These requirements appear in §§ 202.4(d) and 202.5(m) of existing Regulation B.

Section 202.9(a)—*Notification of action taken, ECOA notice, and statement of specific reasons.* This section sets forth the requirements for the content and timing of notices and explains to whom and by whom notices are to be given. Section 202.9(a)(1) requires that the notice of action taken be given within 30 days after a creditor receives a completed application, or within a similar period after taking adverse action. In response to public comment, the Board has added subsection (iv) to § 202.9(a)(1). It provides that a creditor shall notify an applicant of action taken within 90 days after an applicant has been notified by the creditor of an offer to grant credit other than in substantially the amount or in substantially the terms requested by an applicant and the applicant has not expressly accepted or used the credit offered.

Section 202.9(a)(2) specifies the content of the notification when adverse action is taken. The notification must contain the statement of action taken required by existng § 202.5(m)(1), the ECOA notice required by existing § 202.4(d), and the statement of specific reasons for adverse action (or disclosure of the right to such a statement) similar to the statement required by present § 202.5(m)(2). The revised regulation requires the notices to be given together because the Board believes that public understanding of the notices will be thereby enhanced. Under the revised regulation, the ECOA notice need be given only when adverse action is taken. A creditor may continue to provide the ECOA notice at the application stage, as long as the notice is also given when adverse action is taken.

Section 202.9(a)(3) provides that, if more than one applicant is involved in a credit transaction, the notification shall be provided to the primary applicant where one is readily apparent.

Section 202.9(a)(4) provides that, if a transaction involves more than one creditor and the applicant is offered and accepts credit from any one of them, no creditor need furnish a notification of adverse action, the ECOA notice, reasons for denial, or disclosure of the right to such reasons. The creditor extending the credit will, of course, give notification of approval by implication, since the applicant will have received the money, property, or services requested. If no credit is granted, or if credit is offered that is not acceptable to the applicant, then each creditor must give the required notification. For example, if an auto dealer "shops" an appliaction to several banks and one bank extends credit, the provision requires only that bank to provide the notice of action taken. However, if none of the banks offers credit or if the credit offered is not acceptable to the applicant, then all the banks must give the required notices, as must the dealer if it is a "creditor" in the transaction.

Where all creditors in a multiple creditor situation are required to furnish the notices, they may arrange for a joint notification to be provided through one party, provided that such a joint notification identifies each creditor that considered the application. Disclosure of each creditor's identity, however, is required only when the notification is provided by a third party. A creditor that directly furnishes the required notification to a rejected applicant need not identify other creditors to whom the application was "shopped."

The last sentence of § 202.9(a)(4) insulates a creditor from liability for acts or omissions of a third party in those cases where the third party agrees to supply the notice, provided that the creditor follows reasonable procedures to insure compliance.

Section 202.9(b)—Form of ECOA notice and statement of specific reasons. This section is identical to the November proposal. It is drawn from existing §§ 202.4(d) and 202.5(m)(2) and (3).

Unlike existing § 202.4(d), which requires creditors to use the sample ECOA notice verbatim, § 202.9(b)(1) provides that substantial adherence to the sample form constitutes compliance. In addition, this section permits inclusion in the notice of a reference to a similar State statute or regulation and State enforcement agency.

The text of the notice is identical to that contained in existing § 202.4(d), except that the additional bases of prohibited discrimination have been added and, in the last sentence, the word "creditor" is used, rather than a blank requiring a description of the particular type of creditor. The latter change will facilitate the giving of notices by third parties on behalf of several different types of creditors.

Numerous public comments strongly urged the Board to amend § 202.9(b)(2) to allow creditors to state as the reason for adverse action the fact that an applicant has "failed to achieve the qualifying score on the creditor's credit scoring system." The commentators argued that such a statement is the only truthful, accurate statement of the reasons for adverse action under a statistically sound credit scoring system.

Section 701(d)(3) of the amended Act provides that "a statement of reasons meets the requirements of this section only if it contains the 'specific' reasons for the adverse action taken." (Emphasis added) The Board is of the opinion that a statement that an applicant has failed to achieve the qualifying score on the creditor's credit scoring system would not satisfy the language or intent of the statute. A statement that the applicant failed to achieve a qualifying score is perhaps the ultimate reason for decline, but is itself a conclusion. Such a statement does not reveal the more funda-

mental reasons why the applicant was declined.

The Board believes that the intent of the Congress was to require creditors to provide applicants with a more meaningful explanation of denial than a statement that denial was caused by a failure to achieve a qualifying score. The Senate Report on the 1976 Amendments states "* * * knowing the reasons for adverse action will, over time, have a very beneficial educational effect on the credit-consuming public and a very beneficial competitive effect on the credit marketplace." (S. Rep. No. 589, 94th Cong., 2d Sess. (1976), p. 7.)

The knowledge that one failed to achieve a minimum score can have little educational value. Providing more fundamental reasons for adverse action, as contemplated by Regulation B, will enhance consumers' awareness of the factors that are considered important by credit-granters and often will enable an applicant to correct erroneous information or supplement information in the application.

Section 202.9(b)(2) provides a suggested form for the statement of specific reasons for adverse action. The form includes a section regarding disclosure of the use of information that was obtained from an outside source, so that a creditor could also satisfy the requirements of the Fair Credit Reporting Act through proper use of this form. The form also contains a section for the ECOA notice.

Section 202.9(c)—Oral notifications. This section is drawn from section 701 (d)(5) of the amended Act and is identical to the November proposal.

Section 202.9(d)—Withdrawn applications. This section is substantially similar to the November proposal.

Section 202.9(e)—Failure of compliance. This section is identical to the November proposal.

Section 202.9(f)—Notification. This section defines what constitutes notification. It provides that a creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 202.10—FURNISHING OF CREDIT INFORMATION

Although numerous changes have been made in this section, the substantive requirements remain substantially the same as the November proposal and existing Regulation B, as amended on September 2, 1976 (41 FR 38759).

Section 202.10(a) requires the designation and furnishing of information on accounts established on or after June 1, 1977 to reflect the participation of each spouse. The words "that furnishes credit information" were added after "creditor" at the beginning of this subsection and § 202.10(b) to make clear that Regulation B does not require creditors to provide credit information to others. Furthermore, if a creditor does not furnish credit information to others, it need not comply with the designation requirements of § 202.10. A creditor that chooses to furnish credit information, however, must do so as prescribed by this section.

Several comments requested clarification of the term "primarily liable," which appears throughout this section but nowhere else in the regulation. "Primarily liable" was substituted for "contractually liable" in the November proposal in order to exclude guarantors or sureties from the coverage of the section. The return to "contractually liable," a defined term, and the addition of the words "other than as guarantors, sureties, endorsers, or similar parties" is intended to clarify the coverage of the section.

Footnote 12 was added at the end of § 202.10(a)(3) to clarify creditors' responsibilities when new parties assume responsibility for payment of a debt. If a creditor that is furnishing credit information on an account learns that a new party or parties have assumed responsibility for payment of the debt, the creditor has the responsibility to determine whether the assumptors are married to each other and, therefore, entitled to have information furnished on the account as required by § 202.10(a)(2) and (3). If the new parties are so entitled, credit information should be reported in the names of the new parties. The regulation does not require the creditor to continue furnishing information in the names of the former parties.

Section 202.10(a)(2) of the November proposal would have required creditors to furnish information in the name of each spouse about whom information was requested, except when furnishing information to consumer reporting agencies. When furnishing information to consumer reporting agencies, creditors would have been required to do so in a manner that would enable the agency to provide access to the information about the account in the name of each spouse.

The approach of the November proposal was based upon the assumption that information is supplied by creditors to consumer reporting agencies without a request for information about a specific account. Comments revealed that, while this is generally true, some creditors furnish information to consumer reporting agencies only in response to a request about a specific account. Therefore, creditors responding to a request from a consumer reporting agency for information about one participant on a joint account, by furnishing information about both spouses, might be in violation of the Fair Credit Reporting Act.

Accordingly, § 202.10(a)(2) of the November proposal was redrafted. Under new subsections (a)(2) and (a)(3), the manner in which information about an account designated under this section must be furnished depends upon whether it is furnished on a routine basis to consumer reporting agencies or pursuant to a request for information on a specific account. In the former situation, it must be provided in a manner that will enable an agency to provide access to the information about the account in the name of each spouse, and in the latter situation in the name of the spouse about whom the information is requested.

Several commentators requested clarification of the requirement in § 202.10(a)(2) of the November proposal that creditors "report the designation" of accounts. Because of the confusion caused by this term and its doubtful value in furthering the purpose of the section, it has been deleted from the regulation.

Section 202.10(b)—Accounts established prior to June 1, 1977. There are two principal ways of complying with the designation and reporting requirements with respect to accounts established prior to June 1, 1977. First, a creditor may review its records and designate the files of married account holders. This is the procedure envisioned by § 202.10(b)(1). In the alternative, a creditor that lacks information regarding use or liability for accounts or does not wish to undertake the search of its records necessary to comply with subsection (1) may mail to all married account holders or to all account holders the notice entitled "Credit History for Married Persons."

In some cases, a creditor may possess the information about use and liability for accounts necessary for designation and reporting about some accounts but not for others. The creditor may use both methods described above, that is, mail the notice to those accounts for which it lacks the necessary information and designate automatically those for which it possesses the information.

The words "one copy of" were added before "notice" in subsection (2) to make it clear that only one notice need be sent to each account for which any billing statement will be sent between June 1 and October 1, 1977.

Footnote 14 allows creditors to delete any reference to "use" of an account when notices are sent to closed end account holders. This change was intended to avoid the confusion that might be caused when consumers holding accounts on which there can be no users received the notice.

The words "at any time prior to October 2, 1977" were added in subsection (b)(2) to allow creditors sending billing statements monthly, regardless of activity on accounts, to begin sending the notices before June 1.

A sentence added at the end of subsection (b)(2) allows creditors to combine the alternate methods of compliance provided in subsection (b) by designating those accounts on which the creditor has the information needed to do so and sending the notice where it does not.

The notice entitled "Credit History For Married Persons" was the subject of several comments requesting clarification of the language of the text. As a result, the word "hold" before "the account" was deleted, and the phrase "are responsible for" was added. As used in the notice, responsibility for an account is the equivalent of contractual liability. No additional reporting requirements are imposed by this change.

With respect to the notice itself, comments reflected a general lack of understanding of the phrase "paid for." Since the phrase merely restated the idea that

if both spouses share contractual liability on an account, they are entitled to share the credit history of that account, the Board has decided to delete the phrase.

The word "complete" was substituted for "fill out" in the notice to make it clear to consumers that all information requested in the notice (typed or printed name, signature and account number) must be supplied before any change in credit information reporting will be made.

The notice in the November proposal ended with the applicant's request to furnish information in the names of both spouses "as follows." The words "as follows" were deleted to make clear that consumers may not request a change in the name in which the account is currently carried. A consumer may only add a name to the account.

In response to comments expressing concern that one spouse might deny the other spouse a credit history, one signature line has been deleted at the end of the notice. The words "of either spouse" have been added after "signature" under the remaining line to indicate that either spouse may authorize the change in the manner in which information is furnished on the account.

Although several comments expressed concern that, without the signature of both spouses, a spouse could request a change even when not entitled to share the credit history, the Board believes that this potential problem is outweighed by the necessity to ensure that all married account holders have access to the credit histories that they have established.

Section 202.10(c) describes how creditors must respond to requests to change the manner in which information is reported on an account. The words "properly completed request" were substituted for "written request" to indicate that creditors need respond only to requests that contain all information necessary to make the change on an account. Language was also added to make clear that a creditor need not change the name in which an account is carried pursuant to a request under this section.

Because the Board has determined that one signature is sufficient to authorize a change in the manner in which information on an account is furnished, and that requiring two signatures might frustrate the intent of the section, the provision allowing creditors to verify a request to provide separate credit histories by signature or otherwise has been deleted.

SECTION 202.11—RELATION TO STATE LAW

Section 202.11(a)—*Inconsistent State laws.* Section 202.11(a) states the general standard for preemption of State law and is identical to the November proposal. It is derived from section 705 (f) of the amended Act.

Section 202.11(b)—*Preempted provisions of State law.* Subsection (b)(1) describes provisions of State law that are preempted by the Act and Regulation B.

The November proposal would have preempted provisions of State law requiring an applicant's spouse to assume liability for debts incurred by an applicant who has established independent creditworthiness. This guideline, which was intended to preempt State necessaries laws and family expense statutes in limited situations, has been deleted; however, creditors in States where such laws exist must continue to observe the informational bar relating to marital status in § 202.5.

Paragraph (ii) continues the preemption of those provisions of State small loan laws that forbid the separate extension of credit to both parties to a marriage. No change from the treatment of these laws in existing Regulation B is intended.

Paragraph (v) of § 202.11(b)(1) is identical to § 202.11(b)(6) of the November proposal except that the words "or administer" have been added to preempt State laws that forbid either the establishment or implementation of special purpose credit programs as defined by § 202.8.

The Board has deleted subsection (b)(7) of the November proposal, which would have preempted State laws that prohibit inquiries used in a model application form set forth in Appendix B of the regulation, because these laws may be more protective of an applicant. Creditors using the model forms must conform them to informational prohibitions of applicable State laws.

Subsection (b)(2) is new. It requires creditors to request a formal Board interpretation when seeking a determination as to whether a State law is inconsistent with the Act and regulation. The subsection incorporates § 202.1(d) as that section relates to formal Board interpretations. The factors upon which such a determination will be based are set forth in subsection (c) of Supplement I. Notice of a determination will be provided as specified in subsection (e)(1) of Supplement I relating to revocation, as modifications are also incorporated by reference.

The remainder of § 202.11(b) is identical to the November proposal, except that the conjunction "and" that appeared in subsection (b) has been changed to "or" in subsection (b)(1)(iv) to correct an inadvertent drafting error.

Section 202.11(c)—*Finance charges and loan ceilings.* Section 202.11(c) restates § 202.8(b) of existing Regulation B without substantive change. Footnote 10 in § 202.11(c) of the November proposal provided an example of how the regulation affected loan ceilings and finance charges. Because commentators found it confusing, the footnote has been deleted.

Section 202.11(d)—*State and Federal laws not affected.* Subsection (d) saves certain types of laws from preemption even though they may fall within one of the categories of State laws preempted by subsection (b)(1). The coverage of the section has been broadened by adding the word "Federal" before "banking regulations" and by deleting the word "community" before "property." Accordingly, Federal and State banking regulations directed only towards insuring the solvency of financial institutions and State property laws are unaffected by the Act and Regulation B.

Section 202.11(e) — *Exemption for State regulated transactions.* The standards for exemption of State regulated transactions in § 202.11(e) are identical to those in the November proposal, except that under this provision a violation of an exempted State law is a violation of the Federal law only to the extent that it imposes requirements also imposed by the Act or Regulation B. In response to comments, the Board has decided to reinstate the provisions of § 202.11(d)(3)(ii) of the July proposal as the more appropriate way to handle enforcement of exempted State equal credit laws.

SECTION 202.12—RECORD RETENTION

Section 202.12(a)—*Retention of prohibited information.* This section is identical to the November proposal.

Section 202.12(b)—*Preservation of records.* This section is substantially similar to the November proposal.

Section 202.12(c)—*Failure of compliance.* In response to public comment, the Board has added an "inadvertent error" provision to § 202.12. This section provides that a failure to comply with § 202.12 shall not constitute a violation when caused by an "inadvertent error." The term "inadvertent error" is defined in § 202.2(s).

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

The Board has determined to adopt a simple notation requirement applicable to all creditors that extend credit for the purpose of purchasing residential real property. The resulting data are intended to assist the agencies responsible for enforcing the amended Act, and to assist the Department of Housing and Urban Development in exercising its responsibilities under Title VIII of the Civil Rights Act of 1968.

This section is limited to applications for loans for the purpose of purchasing residential real property. The Board believes this limitation is appropriate for several reasons. First, a home is in most cases the single most important purchase a consumer makes, and access to mortgage credit has a profound impact on the quality of life. Second, there have been frequent and serious allegations of discrimination in this area of credit. Third, the per unit cost of notation will be small in relation to the dollar amount of applications for mortgage credit.

A number of commentators urged the Board to require notation of race/national origin, etc., in connection with secured and unsecured home improvement loans on the ground that home improvement loans are covered by the Home Mortgage Disclosure and Fair Housing Acts. The Board has determined not to broaden the category of applications subject to a notation requirement for several reasons. There is no universally accepted understanding of what constitutes a home improvement loan. In addition, the Board is of the opinion that the effectiveness of racial notation as an enforcement tool should be evaluated before this requirement is applied to other types of applications.

This section requires creditors to ask that applicants respond to questions about age, sex, marital status, and race/national origin. The term "race/national origin" is used instead of "race" because certain of the categories required to be used describe national origin rather than race.

The racial categories to be used are categories that are already widely in use in the employment field, plus one additional category, "Other (Specify)," to permit an applicant to supply a different description of his or her race/national origin.

The regulation gives creditors the option of placing questions regarding personal characteristics on the creditor's application form or on a separate form. On the Board's Appendix B model form for residential loan applications, to be published in the near future, the questions will appear on the form itself.

Creditors are not required to supply information about personal characteristics if an applicant declines to do so. The provision requires creditors to inform applicants that answering the questions is voluntary, and that the information is sought by the Federal government for the purpose of monitoring compliance with Federal anti-discrimination laws.

In response to comments from agencies charged with responsibility for administrative enforcement of the Act, the Board has added a new subsection (d), which explains that any monitoring program required by such an agency may be substituted for the requirements imposed by Regulation B. This provision should prevent duplication as well as facilitate experimentation.

It was also suggested that the Board add to Regulation B a requirement that creditors tabulate the responses to the questions about race/national origin, etc. Since creditors affected by § 202.13 are supervised by different enforcement agencies, the Board has determined that to impose a uniform tabulation requirement is not appropriate. The Board expects that the enforcement agencies will devise their own procedures for collection and use of the data, acting under the authority granted by section 704(d) of the Act.

SUPPLEMENT I

Supplement I, which follows Appendix A, sets forth the procedure under which a State may apply for an exemption for any class of transactions from the provisions of sections 701 and 702 of the Act. Applications must be signed by the Governor, Attorney General, or other official of the State having primary enforcement or interpretive responsibilities under the State law in question, and must include a copy of the full text of the State law, a comparison of sections 701 and 702 of the Act with corresponding provisions of the State law, verification of the existence of adequate enforcement mechanisms, and a statement explaining how any differences between the State and Federal law do not result in a diminution of protection to applicants.

Footnote 1 is new. It provides that any reference to State law in Supplement I includes a reference to State regulations implementing the State law and formal interpretations of the law or regulation by a court or authorized agency of that State.

Footnote 3 is also new and provides that any reference to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of the regulation, as well as any formal Board or official staff interpretations of these sections. Also included in any reference to sections 701 and 702 are §§ 705 (a), (b), (c), and (d) of the Act and the corresponding provisions of Regulation B.

Part 202 is being revised as follows:

AUTHORITY: Sec. 703 of Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq.

§ 202.1 Authority, Scope, Enforcement, Penalties and Liabilities, Interpretations.

(a) *Authority and scope.* This Part[1a] comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in § 202.2(l).

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding 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 Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this Part will be enforced by the Federal Trade Commission.

(c) *Penalties and liabilities.* (1) Sections 706(a) and (b) of the Act provide that any creditor who fails to comply with any requirement imposed under the Act or, pursuant to section 702(g), this Part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) 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, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason.

(3) As provided in section 706(f), a civil action under the Act or this Part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General within two years after the alleged violation.

(4) Section 706 (g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action.

[1] The Appendix B forms will be approved by the Board and published in the FEDERAL REGISTER in the near future.

[1a] As used herein, the words "this Part" mean Regulation B, 12 CFR Part 202.

(d) *Interpretations.* (1) A request for a formal Board interpretation or an official staff interpretation of this Part must be addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for an interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request, and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and must specify the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request, or an acknowledgment will be sent that sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of this Part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the FEDERAL REGISTER. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute, and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgment will be sent that sets a reasonable time within which such response will be given.

(3) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests that involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and that raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests that, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or that have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.

§ 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 shall apply: [2]

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant; or

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) A refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(d) *Age* refers only to natural persons and means the number of fully-elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A *completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or 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, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for or an existing extension of credit, including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information;

[2] Note that some of the definitions in this Part are not identical to those in 12 CFR 226 (Regulation Z).

revocation, alteration, or termination of credit; and collection procedures.

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means an age of 62 or older.

(p) *Empirically derived credit system.* (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) Is derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) Determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) *A demonstrably and statistically sound, empirically derived credit system* is a system:

(i) In which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) Which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) Which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) Which is periodically revalidated as to its predictive ability by the use of approprate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subparagraph (2)(iii) of this paragraph then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) *Open end credit* means credit extended pursuant to a plan under which a creditor may permit an 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.

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

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act[3] or any State law upon which an exemption has been granted by the Board.

(aa) *Public assistance program* means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

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

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

§ 202.3 Special Treatment for Certain Classes of transactions.

(a) *Classes of transactions afforded special treatment.* Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) Extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal Govern-

[3] The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in § 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

ment, a State, or a political subdivision thereof;

(2) Extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) Extensions of incidental consumer credit, other than of the types described in paragraph (a) (1) and (2) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) On which no finance charge as defined in § 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) That are not payable by agreement in more than four installments;

(4) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in paragraphs (a) (1) and (2) of this section; and

(5) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) *Public utilities credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(1) of this section:

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.10 relating to furnishing of credit information; and

(3) Section 202.12(b) relating to record retention.

(c) *Securities credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(2) of this section:

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(3) concerning information about the sex of an applicant;

(4) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) Section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) Section 202.7(d) relating to signatures of a spouse or other person;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(d) *Incidental credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(3) of this section:

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) Section 202.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) Section 202.7(d) relating to signatures of a spouse or other person;

(6) Section 202.9 relating to notifications;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(e) *Business credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(4) of this section:

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) Section 202.10 relating to furnishing of credit information; and

(4) Section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) *Governmental credit.* Except for § 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretation, § 202.2 relating to definitions and rules of construction, this section, § 202.4 relating to the general rule prohibiting discrimination, § 202.6(a) relating to the use of information, § 202.11 relating to State laws, and § 202.12(a) relating to the retention of prohibited information, the provisions of this Part shall not apply to extension of credit of the type described in paragraph (a)(5) of this section.

§ 202.4 General Rule Prohibiting Discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 202.5 Rules Concerning Applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in § 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this Part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of § 202.7(e) regarding insurance and § 202.8 (c) and (d) regarding special purpose credit programs.

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) *Information a creditor may not request.* (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State.[5] Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the cate-

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[4] This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by § 202.6 (rules concerning evaluations of applications).

gory "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) *Application forms.* A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own,[6] use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

(1) By asking for additional information not prohibited by this section;

(2) By deleting any information request; or

(3) By rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of this section.

§ 202.6 Rules Concerning Evaluation of Applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this Part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[7]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this Part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[8]

(2) (i) Except as permitted in this section, a creditor shall not take into account an applicant's age (*Provided*, That the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.[9]

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but

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[5] This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subparagraph (b)(1) of this section.

[6] A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first. The provisions of this Part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

[7] The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p. 5.

[8] This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with § 202.8 (special purpose credit programs).

[9] Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that 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 that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) The credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this Part.

§ 202.7 Rules Concerning Extensions of Credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open end accounts.* (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication; or

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) *Signature of spouse or other person.* (1) Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denied 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 community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,[10] a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of paragraph (d) of this section, a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) *Insurance.* Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this Part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

§ 202.8 Special Purpose Credit Programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this Part are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

(i) The program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, pursuant to the custom-

[10] If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

ary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Applicability of other rules.* (1) All of the provisions of this Part shall apply to each of the special purpose credit programs described in paragraph (a) of this section to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subparagraphs (a)(2) or (a)(3) of this section shall qualify as a special purpose credit program under paragraph (a) of this section only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (*Provided*, That the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(c) *Special rule concerning requests and use of information.* If all participants in a special purpose credit program described in paragraph (a) of this section are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility.

In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(d) *Special rule in the case of financial need.* If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of § 202.7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this Part.

§ 202.9 Notifications.

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

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be expressed or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) *Content of notification.* Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

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

(ii) A disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to 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 statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) *Mutiple creditors.* If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* A creditor satisfies the requirements of paragraph (a)(2) of this section regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

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 that 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).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subparagraph (a)(2)(i) of this section. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

_____

Description of Account, Transaction, or Requested Credit:

_____

_____

Description of Adverse Action Taken:

_____

_____

PRINCIPAL REASONS(S) FOR ADVERSE ACTION CONCERNING CREDIT

- ☐ Credit application incomplete
- ☐ Insufficient credit references
- ☐ Unable to verify credit references
- ☐ Temporary or irregular employment
- ☐ Unable to verify employment
- ☐ Length of employment
- ☐ Insufficient income
- ☐ Excessive obligations
- ☐ Unable to verify income
- ☐ Inadequate collateral
- ☐ Too short a period of residence
- ☐ Temporary residence
- ☐ Unable to verify residence
- ☐ No credit file
- ☐ Insufficient credit file
- ☐ Delinquent credit obligations
- ☐ Garnishment, attachment, foreclosure, repossession, or suit
- ☐ Bankruptcy
- ☐ We do not grant credit to any applicant on the terms and conditions you request.
- ☐ Other, specify: _____

_____

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

/__/ Disclosure inapplicable

/__/ Information obtained in a report from a consumer reporting agency

Name: _____

_____

Street Address: _____

_____

Phone: _____

/__/ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: _____

Creditor's address: _____

_____

Creditor's telephone number: _____

[Add ECOA Notice]

(3) *Other information.* The notification required by subparagraph (a)(1) of this section may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) *Oral notifications.* The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) *Withdrawn applications.* Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subparagraph (a)(1) of this section.

(e) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) *Notification.* A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

§ 202.10 Furnishing of Credit Information.

(a) *Accounts established on or after June 1, 1977.* (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) Determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) Designate any such account to reflect the fact of participation of both spouses.[11]

(2) Except as provided in paragraph (a)(3) of this section, if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.[12]

(b) *Accounts established prior to June 1, 1977.* For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) Not later than June 1, 1977

(i) Determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

(ii) Designate any such account to reflect the fact of participation of both spouses; [13] and

(iii) Comply with the reporting requirements of paragraphs (a)(2) and (a)(3) of this section; or

(2) Mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.[14] The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977 regarding each account for which a billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please complete and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning the account in both our names.

Account number	Print or type name
	Print or type name
	Signature of either spouse

(c) *Requests to change manner in which information is reported.* Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in paragraph (b) of this section a creditor shall designate the account to reflect the fact of participation of both spouses.[15] When furnishing information concerning any such account, the creditor shall comply with the reporting requirements of subparagraphs (a)(2) and (a)(3) of this section. The signature of an applicant or the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(d) *Inadvertent errors.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

§ 202.11 Relation to State law.

(a) *Inconsistent State laws.* Except as otherwise provided in this section, this Part alters, affects, or preempts only those State laws that are inconsistent with this Part and then only to the extent of the inconsistency. A State law is not inconsistent with this Part if it is more protective of an applicant.

(b) *Preempted provisions of State law.* (1) State law is deemed to be inconsistent with the requirements of the Act and this Part and less protective of an applicant within the meaning of section 705 (f) of the Act to the extent that such law:

(i) Requires or permits a practice or act prohibited by the Act or this Part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this Part;

(iv) Prohibits asking age or considering age in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 202.8.

(2) A determination as to whether a State law is inconsistent with the requirements of the Act and this Part will be made only in response to a request for a formal Board interpretation. All requests for such interpretations, in addition to meeting the requirements of § 202.1(d), shall comply with the applicable provisions of subsections (b)(1) and (2) of Supplement I to this Part. A determination shall be based on the factors enumerated in this subsection and, as applicable, subsection (c) of Supplement I. Notice of the interpretation shall be provided as specified in subsection (e)(1) of Supplement I, but the interpretation shall be effective in accordance with § 202.1. The interpretation shall be subject to revocation or modification at any time, as provided in subsection (g)(4) of Supplement I.

(c) *Finance charges and loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceil-

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[11] A creditor need not distinguish between participation as a user or as a contractually liable party.

[12] If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

[13] See footnote 11.

[14] A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

[15] See footnote 11.

ings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.[16]

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of State property laws, laws relating to the disposition of decedents' estates, or Federal or State banking regulations directed only towards insuring the solvency of financial institutions.

(e) *Exemption for State regulated transactions.* (1) In accordance with the provisions of Supplement I to this Part, any State may apply to the Board for an exemption from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this Part for any class of credit transactions within the State. The Board will grant such an exemption if:

(i) The Board determines that, under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this Part; and

(ii) There is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act will continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to paragraph (e)(1) of this section and Supplement I; and, generally, to aid in implementing the Act:

(i) no such exemption shall be deemed to extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) after an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this Part, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this Part.

§ 202.12 Record Retention.

(a) *Retention of prohibited information.* Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this Part, shall not constitute a violation of the Act or this Part where such information was obtained:

(1) From any source prior to March 23, 1977; [17] or

(2) At any time from consumer reporting agencies; or

(3) At any time from any applicant or others without the specific request of the creditor; or

(4) At any time as required to monitor compliance with the Act and this Part or other Federal or State statutes or regulations.

(b) *Preservation of records.* (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof: [18]

(i) Any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other similar law, and any other written or recorded information used in evaluating the application and not return to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this Part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[19]

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

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

(3) In addition to the requirements of paragraphs (b)(1) and (2), of this section, any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or that has been served with notice of an action filed pursuant to section 706 of the Act and § 202.1(b) or (c) of this Part, shall retain the information required in paragraphs (b)(1) and (2) of this section until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with § 202.9 (notifications) shall retain for the time period specified in paragraph (b) of this section all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

§ 202.13 Information for Monitoring Purposes.

(a) *Scope and information requested.* (1) For the purpose of monitoring compliance with the provisions of the Act and this Part, any creditor that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

(i) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) *Method of obtaining information.* Questions regarding race/national origin, sex, marital status, and age may be listed at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) *Disclosure to applicant and joint applicant.* The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

(d) *Substitute monitoring program.* Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

[16] For example, in a State with a permissible loan ceiling of $1,000, if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

[17] Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

[18] "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

[19] See footnote 18.

APPENDIX A.—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks: Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219.

State Member Banks: Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks: Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC): The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board: Director, Bureau of Enforcement, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

Creditors Subject to Interstate Commerce Commission: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20523.

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, D.C. 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations: Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers: (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate), Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

APPENDIX B—MODEL APPLICATION FORMS [RESERVED]

* * * * *

SUPPLEMENT I—PROCEDURES FOR STATE EXEMPTION

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and section 202.11(e) of this Part.

(a) *Application.* Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR 262) for a determination that, under the laws of that State,[1] a class of credit transactions[2] within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than those imposed under sections 701 and 702 of the Act,[3] and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in subsection (b).

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act, regarding the class of credit transactions within that State.

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and explaining why any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subparagraph (b)(1) of this supplement.

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) Administrative enforcement of the State law referred to in subparagraph (b)(1) of this supplement that is substantially similar to, or more extensive than, the enforcement provided under section 704 of the Act;

(ii) Civil liability for a failure to comply with the requirements of the State law that is substantially similar to, or more extensive than that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances substantially similar to those prescribed in section 706 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(iii) A statute of limitations that prescribes a period for civil actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) A scope of discovery relating to a creditor's credit granting standards under appropriate discovery procedures in a court action or agency proceeding that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subparagraph (b)(1) of this supplement, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding Federally-chartered creditors.[4]

The statement should also include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) *Criteria for determination.* The Board will consider the criteria set forth below, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of action transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law to be substantially similar to, or provide greater protection to applicants than the provisions of sections 701 and 702 of the Act, the provisions of State law[5] at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702 of the Act.

(ii) Creditors provide all of the applicable notifications required by the provisions of sections 701 and 702 of the Act, with the content and in the terminology, form, and time periods prescribed by this Part pursuant to sections 701 and 702; however, required references to State law may be substituted for the references to Federal law required in this Part. Notification requirements under State law in additional circumstances or with additional detail that does not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702 of the Act.

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[1] Any reference to State law in this Supplement includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

[2] As applicable, references to "class of credit transactions" in this Supplement include one or more of such classes of credit transactions.

[3] Any reference in this Supplement to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of this Part, the Board's formal interpretations thereof, and official interpretations or approvals issued by an authorized official or employee of the Federal Reserve System. Additionally, any reference to sections 701 and 702 of the Act includes a reference to sections 705 (a), (b), (c), and (d) of the Act and the corresponding provisions of this Part, which, though technically not a part of sections 701 and 702, implement and relate to substantive requirements of sections 701 and 702.

[4] Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless a State establishes to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

[5] This subsection is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the Act.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to or more extensive than, those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those provided by sections 701 and 702 of the Act under conditions or within time periods that are substantially similar to, or more favorable to applicants than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in subsection (b)(1) of this supplement are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act;

(iii) A statute of limitations for civil liability of substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) A scope of discovery relating to a creditor's credit granting standards that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(d) *Public notice of filing and proposed rule making.* In connection with any application that has been filed in accordance with the requirements of subsections (a) and (b) of this Supplement and following initial review of the application, a notice of such filing and proposed rule making shall be published by the Board in the FEDERAL REGISTER, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

(e) *Exemption from requirements.* If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the FEDERAL REGISTER, and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this Part. Any exemption granted shall be effective 90 days after the date of publication of such notice in the FEDERAL REGISTER.

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subsections (b)(1) and (b)(3) of this supplement. The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subsections (b)(2) and (b)(4) of this supplement. The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this Part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(f) *Adverse determination.* (1) If, after publication of a notice in the FEDERAL REGISTER as provided under section (d) of this supplement, the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the FEDERAL REGISTER a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

(g) *Revocation of exemption.* (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the FEDERAL REGISTER. A period of time shall be allowed from the date of such publication for the Board to receive written comments from interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of sections 701 and 702 of the Act, 90 days after the date of publication of the notice in the FEDERAL REGISTER.

By order of the Board of Governors. December 22, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

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