FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **9814**
March 18, 1985]

EQUAL CREDIT OPPORTUNITY

Revision of Regulation B

To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:

The following is quoted from the text of a statement issued by the Board of Governors of the Federal Reserve System announcing a proposed revision of its Regulation B, "Equal Credit Opportunity":

The Federal Reserve Board has issued for public comment revisions to Regulation B (Equal Credit Opportunity) that would simplify the regulation and update some of its provisions.

In addition, the revisions would bring the data collection requirements for dwelling-related loans into greater uniformity with the rules imposed by the Comptroller of the Currency, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation. The major portions of the existing regulatory provisions, however, remain virtually unchanged.

Comment is requested by June 14, 1985.

Regulation B prohibits creditors from discriminating in any credit transaction because of the applicant's race, national origin, sex, marital status, age or certain other characteristics. The Board's action is part of its Regulatory Improvement Project. Under this project, the Board is reviewing and revising all its regulations to update them, simplify their language and eliminate obsolete or unneeded language or provisions.

In addition to simplifying the regulation, the proposed revisions would:

- revise the definition of a credit applicant to include guarantors.
- require creditors to collect information on the race, national origin, and sex of the applicant for dwelling-related loans, including home improvement and mobile home loans.
- provide additional sample forms to creditors for informing applicants of the reasons for credit denial.

To facilitate creditor compliance, the Board is also issuing a proposed staff commentary.

Printed on the following pages is a summary of the Board's notice in this matter. The complete text of the proposal will be published in the *Federal Register*; single copies of that text may be obtained upon request directed to the Circulars Division of this Bank. Comments thereon should be submitted by June 14, 1985, and may be sent to our Regulations Division.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0541]

EQUAL CREDIT OPPORTUNITY

Revision of Regulation B;
Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and proposed official staff interpretation.

SUMMARY: The Board is publishing a proposal to revise Regulation B, its regulation implementing the Equal Credit Opportunity Act (ECOA). This proposal stems from the Board's review of Regulation B, pursuant to its policy of reviewing periodically all of its regulations. The Board's review considered ways the regulation could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and whether the regulation could more effectively carry out the purposes of the act. The Board proposes some changes in the data collection requirements applicable to dwelling-related mortgage loan applications, and a change in the definition of "applicant" to give guarantors (who already have certain protections under Regulation B) legal standing in the courts when there is an alleged violation of the regulation. The Board also proposes to update some provisions and revise others to facilitate creditor compliance. The revisions proposed include streamlined procedures for dealing with incomplete applications and a broader selection of sample forms for informing applicants of the reasons for credit denials.

The major portions of the existing regulatory provisions, however, remain virtually unchanged. This result is in keeping with the Board's analysis and with comments from creditors, enforcement agencies, and consumer and civil rights representatives, who generally believe that the regulation is achieving its intended goals and should be maintained substantially in its present form.

The Board is also publishing for public comment an official staff commentary that incorporates existing Board interpretations and that addresses questions about regulatory matters on which creditors and enforcement agencies have sought guidance over the years.

DATE: Comments must be received by June 14, 1985.

ADDRESS: Comments may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to Docket No. R-0541.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed regulatory amendments and staff commentary, Lucy H. Griffin or John C. Wood (Senior Attorneys), Adrienne D. Hurt (Staff Attorney), or James K. Baebel (Senior Review Examiner), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412); regarding the economic impact analysis, Glenn Canner (Director, Micro-Consumer Projects) or Robert D. Kurtz (Staff Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2910).

SUPPLEMENTARY INFORMATION: (1) General. The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), signed into law in 1974, made it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex or marital status. Under amendments enacted by Congress in 1976, the act also bars discrimination on the basis of race, color, religion, national origin, age, receipt of public assistance, and the good-faith exercise of rights under the Consumer Credit Protection Act. The Federal Reserve Board was given rule-writing authority to issue implementing regulations, and issued Regulation B (12 CFR Part 202) in October 1975, amending it in December 1976 to incorporate the act's expanded coverage.

The Board's policy under its Regulatory Improvement Project calls for the periodic review of each Board regulation. In keeping with that policy, the Board has made a detailed review to consider whether Regulation B could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and to consider also whether the regulation could more effectively carry out the purposes of the ECOA. The Board published a notice of intent to review the regulation in June 1983 (48 FR 28285), in order to ensure the participation of interested parties early in the review.

The initial phase of the review has now been completed. The Board believes, on the basis of public comments and other available information, that the regulation is achieving its intended goals. The Federal Reserve Banks and the other federal enforcement agencies report no major compliance problem. As a rule, creditors appear to consider the Regulation B requirements to be manageable, and view the regulation as providing certainty about how to comply with the ECOA. Civil rights and consumer advocates continue to view the regulation as providing important protections. To the extent that consumers' views can be discerned from Board-sponsored surveys, consumers appear satisfied with the treatment they are receiving in the credit market.

Based on its review, the Board is now proposing a number of revisions to Regulation B. One proposed revision would modify the coverage of the data collection requirements for certain dwelling-related loans. The modification would establish greater uniformity among the financial regulatory agencies, as discussed under section 202.13, below. Another proposed change would expand the definition of "applicant" to cover guarantors, in order to give legal standing to persons who have certain rights under Regulation B but who do not currently have a legal remedy when there is a violation of those rights. (Refer to the discussion under section 202.2(e), below.)

The Board also is proposing technical changes to the regulation to make compliance easier for creditors without diminishing consumer protections. The

revised regulation would, for example, provide creditors with a streamlined notification procedure for dealing with incomplete applications, and would give creditors a broader selection of sample forms for notifying an applicant of a credit denial and of the reasons for the denial. (For a detailed discussion of these proposals, see section 202.9 and Appendix C, below.)

The proposed regulation is shorter than current Regulation B by about one-sixth -- a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to a proposed staff commentary. The regulation also has been improved by the rewriting of some sections and the editing of others to state the requirements more clearly. All but two of the 19 footnotes contained in the current regulation have been moved to the proposed staff commentary, making the regulation itself less cumbersome to use.

In light of the indications that major revisions are not needed, the proposal leaves most of the regulatory provisions unchanged. This is in contrast to the extensive changes made when the Board engaged in a similar review of Regulation Z (Truth in Lending) and Regulation C (Home Mortgage Disclosure). The more limited nature of the revisions to Regulation B comes from the different circumstances that have surrounded the review of the regulation:

- The Board's review of the Truth in Lending and Home Mortgage Disclosure regulations implemented statutory amendments that, particularly in the case of Truth in Lending, made significant reductions in the disclosure requirements. In contrast, there are no statutory amendments of any kind to be implemented under the ECOA.

- The volume of litigation under the ECOA and Regulation B has been quite limited, and by and large the court decisions that have been reported do not reflect the need for simplification of requirements that was evident in the case of Truth in Lending.

- It became apparent, in the course of the review, that creditors consider Regulation B's current requirements to be manageable. Many creditors may find burdensome the notification requirements for adverse action, but they also generally recognize that these provisions are drawn directly from the statute. Some creditors encourage the Board to provide clarification on some points; others believe that the regulation is working and express a preference for leaving the regulation substantially unchanged.

- Civil rights and consumer advocates have opposed any diminution of ECOA protections. Because the ECOA is civil rights legislation, and not strictly a consumer protection law, there is particular concern that the Board not cut back on any protections currently provided.

- When issued in 1976, Regulation B was written in nontechnical language, and the regulation is for the most part already easy to understand.

Consequently, the following general principles have been applied in the review and revision of the regulation:

- Make changes to the regulation that will facilitate compliance, provide clearer guidance about the Board's intent, clarify the standards to be used by the regulatory agencies, or enhance the act's protections.

- Minimize changes that would provide only marginal (or no) benefit to the industry; or that, similarly, would not significantly clarify the regulation or enhance protections.

In the review of the regulation, it was frequently found that no substantive change in regulatory provisions was required -- that elaborating on a given point in a staff commentary could more effectively facilitate creditor compliance. Accordingly, an official staff commentary has been prepared and is being proposed for comment. It provides needed guidance in a less formal manner than the regulation.

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The complete text of the Board's notice, including an economic impact analysis, may be obtained from the Federal Reserve Banks or from the Board's Division of Consumer and Community Affairs, 20th and C Streets, N.W., Washington, D.C. 20551.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

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(Ref. Cir. No. 9814]

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Based on its review, the Board is now proposing a number of revisions to Regulation B. One proposed revision would modify the coverage of the data collection requirements for certain dwelling-related loans. The modification would establish greater uniformity among the financial regulatory agencies, as discussed under section 202.13, below. Another proposed change would expand the definition of "applicant" to cover guarantors, in order to give legal standing to persons who have certain rights under Regulation B but who do not currently have a legal remedy when there is a violation of those rights. (Refer to the discussion under section 202.2(e), below.)

The Board also is proposing technical changes to the regulation to make compliance easier for creditors without diminishing consumer protections. The

revised regulation would, for example, provide creditors with a streamlined notification procedure for dealing with incomplete applications, and would give creditors a broader selection of sample forms for notifying an applicant of a credit denial and of the reasons for the denial. (For a detailed discussion of these proposals, see section 202.9 and Appendix C, below.)

The proposed regulation is shorter than current Regulation B by about one-sixth -- a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to a proposed staff commentary. The regulation also has been improved by the rewriting of some sections and the editing of others to state the requirements more clearly. All but two of the 19 footnotes contained in the current regulation have been moved to the proposed staff commentary, making the regulation itself less cumbersome to use.

In light of the indications that major revisions are not needed, the proposal leaves most of the regulatory provisions unchanged. This is in contrast to the extensive changes made when the Board engaged in a similar review of Regulation Z (Truth in Lending) and Regulation C (Home Mortgage Disclosure). The more limited nature of the revisions to Regulation B comes from the different circumstances that have surrounded the review of the regulation:

- The Board's review of the Truth in Lending and Home Mortgage Disclosure regulations implemented statutory amendments that, particularly in the case of Truth in Lending, made significant reductions in the disclosure requirements. In contrast, there are no statutory amendments of any kind to be implemented under the ECOA.

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- It became apparent, in the course of the review, that creditors consider Regulation B's current requirements to be manageable. Many creditors may find burdensome the notification requirements for adverse action, but they also generally recognize that these provisions are drawn directly from the statute. Some creditors encourage the Board to provide clarification on some points; others believe that the regulation is working and express a preference for leaving the regulation substantially unchanged.

- Civil rights and consumer advocates have opposed any diminution of ECOA protections. Because the ECOA is civil rights legislation, and not strictly a consumer protection law, there is particular concern that the Board not cut back on any protections currently provided.

- When issued in 1976, Regulation B was written in nontechnical language, and the regulation is for the most part already easy to understand.

Consequently, the following general principles have been applied in the review and revision of the regulation:

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- Minimize changes that would provide only marginal (or no) benefit to the industry; or that, similarly, would not significantly clarify the regulation or enhance protections.

In the review of the regulation, it was frequently found that no substantive change in regulatory provisions was required -- that elaborating on a given point in a staff commentary could more effectively facilitate creditor compliance. Accordingly, an official staff commentary has been prepared and is being proposed for comment. It provides needed guidance in a less formal manner than the regulation. The proposed commentary is discussed further in section (4) of this notice.

An economic impact analysis of the proposed regulatory revisions has been prepared as required by section 603 of the Regulatory Flexibility Act (5 U.S.C. 603). The analysis appears in section (3) below.

In accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, and 5 CFR 1320.13, the proposed revisions to Regulation B that pertain to third party disclosures will be submitted to the Board for review under Office of Management and Budget delegated authority after consideration of the comments received during the 90-day public comment period.

(2) Proposed changes to regulation. The following discussion covers the proposed revisions to Regulation B section by section. In a number of sections, changes are being proposed for the purpose of simplification or clarification of the text, with no substantive change in the regulatory requirements; where these changes are self-evident from reading the proposed text itself, they are not covered in the discussion.

Section 202.1 - Authority, Scope and Purpose

Proposed section 202.1 differs from the existing section in that certain provisions now appear elsewhere in the proposed regulation. Existing paragraphs (b), concerning administrative enforcement, and (c), on penalties and liabilities, appear in a new section 202.14; existing paragraph (d), regarding procedures for the issuance of staff interpretations, is in new Appendix D.

Paragraph (a), on authority and scope, remains unchanged except for the addition of a reference to the control number assigned to Regulation B by the Office of Management and Budget as required by the Paperwork Reduction Act; other minor changes include the deletion of footnote 1 as unnecessary. A new paragraph (b) is being added to outline the purpose of Regulation B, consistent with the format followed in other Board regulations.

Section 202.2 - Definitions

In this section, the Board proposes a substantive change to the definition of "applicant" and a change to the definition of "empirically derived, demonstrably and statistically sound credit system" that will broaden its applicability. Other changes are structural or editorial, without substantive effect. Material deleted from the regulation, for example, is being incorporated into the proposed staff commentary, as noted below.

The Board proposes to revise the definition of "applicant" in paragraph (e) to include guarantors, sureties, endorsers, and similar parties. The existing definition excludes them. The principal effect of this change would be to give guarantors and similar parties standing under the act to seek legal remedies when a violation occurs. The existing regulation prohibits creditors, in certain situations, from requiring an applicant to obtain a guarantor, surety, cosigner, or similar party. If a creditor violates this provision, however, a guarantor whose signature has been illegally required currently has no legal remedy because section 706 of the act confers standing to sue only upon an "aggrieved applicant." Including guarantors and similar parties within the definition of "applicant" would resolve the question of standing.

The Board believes that no operational problems would be created by the proposed change. Guarantors and similar parties are already excepted from the coverage of various sections of the regulation. For example, under section 202.9, a creditor need give a notification only to a "primary applicant," which would exclude a guarantor; under section 202.10, a creditor is required to follow certain procedures for reporting credit history only as to persons who are contractually liable "other than as a guarantor, surety, endorser, or similar party." The Board requests comment, however, on whether specific exclusion of guarantors from coverage under other sections is appropriate.

Under paragraph (f), which defines "application" and "completed application," material dealing with notice of incompleteness is being deleted. It is being incorporated into revised section 202.9(c), a new provision dealing with incomplete applications.

The Board proposes to broaden the definition in paragraph (p) of an "empirically derived, demonstrably and statistically sound credit system." Credit scoring systems that meet the standards as stated in existing paragraph (p) will continue to qualify under the proposed definition. The existing language appears to limit the applicability of the definition to systems that use the allocation of points or the assigning of weights. The revised language makes clear that a system will meet the definition so long as the system is developed using acceptable statistical principles and methodology. Thus, decision-tree and other types of credit systems that meet these standards also qualify. Other conforming technical revisions result in no substantive change.

Structural changes include the proposed deletion of the following: footnote 2 to the introductory material in section 202.2; footnote 3 to paragraph (z), the definition of "prohibited basis"; paragraph (aa), the definition of "public assistance program"; and the rules of construction in paragraphs (cc) and (dd). Comparable material appears in the proposed staff commentary. In

paragraph (c), the definition of "adverse action," the cross reference to notification of action taken, statement of reasons for denial, and record retention is being deleted as unnecessary.

Section 202.3 - Limited Exceptions for Certain Classes of Transactions

The Board proposes to restructure this section for easier reference. In the proposed restructuring, the definition of each type of credit is immediately followed by the list of exceptions applicable to it. There is no substantive change to any of the existing provisions.

The definition of public utilities credit, proposed paragraph (a), is slightly revised and corresponds more closely to the one in Regulation Z (Truth in Lending). The list of exceptions applicable to governmental credit, proposed paragraph (e), is being simplified without substantive change.

In paragraph (d) on business credit, the provisions relating to notification of credit denial and to record retention are being placed in paragraph (d)(3), labeled "modified requirements," to emphasize that they essentially modify the procedures ordinarily required by Regulation B, rather than provide total exceptions. Paragraph (d)(3)(i) incorporates official staff interpretation EC-0009 to make clear that a creditor that denies a business credit application or takes other adverse action is required to notify the applicant of the action taken. The provision concerning record retention has been edited to make clear that the time period for requesting record retention runs from the notification of action taken.

Section 202.5 - Rules Concerning Taking of Applications

The Board proposes to formalize the taking of written applications for the types of credit subject to the data collection requirements of section 202.13 (i.e., certain types of dwelling-related loans); the requirement for written applications appears in revised paragraph (e). In all other types of credit transactions, written applications continue to be optional. A creditor may comply with the requirement by writing down the information that it normally considers in making a credit decision; use of a form is not required. Further discussion of written applications is presented in the material relating to section 202.13, below.

Other changes to this section are merely structural. Catchlines are being added to facilitate use of the regulation. Some of the material contained in existing paragraph (e) concerning the use of the model application forms contained in Appendix B is being moved to the introductory section of Appendix B.

In addition, existing footnote 4 is being renumbered footnote 1; the part of the footnote that is deleted from the regulation appears in the commentary. Footnote 5 and portions of existing paragraphs (b)(3) and (d)(2) are also being deleted; comparable material appears in the proposed staff commentary. Footnote 6 is being deleted as obsolete.

Section 202.6 - Rules Concerning Evaluation of Applications

The few changes proposed in this section are strictly structural. Catchlines are being added to facilitate use of the regulation. Existing footnote 7 is being renumbered footnote 2. The last sentence of the footnote, which currently cites portions of the legislative history of the act dealing with the "effects test," is being deleted from the regulation. No substantive change results; comparable material appears in the proposed staff commentary. Existing footnotes 8 and 9, as well as the material in existing paragraph (b)(5) regarding the factors that a creditor may consider in determining the likelihood of consistent payments, are also being deleted from the regulation, with comparable material appearing in the proposed staff commentary.

One of the topics on which the Board sought comment in the June 1983 Federal Register notice concerned paragraph (b)(6) of this section, which requires creditors to consider information pertaining to credit history shared with a spouse. The Board asked whether the regulation should be revised to more specifically identify under what circumstances and to what extent information offered by the applicant should be considered by the creditor. Most of the comments on this issue argued against any change in the regulation. No change is being proposed in the regulation. The proposed staff commentary addresses some of the issues raised.

Section 202.7 - Rules Concerning Extensions of Credit

Except for minor revisions to the rules governing treatment of open-end accounts, proposed revisions to this section are structural or editorial, without substantive effect, and include the addition of catchlines for the reader's convenience.

The provisions of paragraph (c) on existing open-end accounts are being revised in minor ways. New language in paragraph (c)(2) makes clear that the provision applies only in the case of an applicant who is contractually liable. The term "earned by" is being deleted to clarify that the provision applies to any situation where the income of the applicant's spouse was relied upon in granting the credit. "Information available to the creditor" replaces existing language because it is believed to be a more appropriate basis for determining whether a creditor may require reapplication. "Current credit limit" is substituted for existing language because the credit limit is a more appropriate test for determining the applicant's overall ability to repay than the "amount of credit currently extended."

In the June 1983 Federal Register notice, the Board solicited comment on two specific areas regarding existing open-end accounts. First, the Board asked whether specific procedures should be provided for reapplications. The majority of commenters were opposed to having procedures established by the regulation. They believed creditors should have the same latitude to determine reapplication procedures as for initial applications. They also believed that a specific rule would be counterproductive and particularly burdensome because application procedures vary widely among creditors. In the absence of any indication that there is a problem under the procedures that creditors now use,

the Board proposes to leave the regulatory provision unchanged. (See the proposed staff commentary to section 202.7(c).)

The Board also solicited comment as to whether the terms "contractually liable" and "authorized user" need clarification or change. On the basis of the comments, the Board believes that the current use of the term "contractually liable" as defined by the regulation is sufficiently understood by the industry, and is proposing no change. The Board has similarly decided not to define "authorized user," in order to allow creditors continued flexibility in defining the rights and obligations of such parties.

There are some proposed editorial revisions in the signature rules, but no substantive change. Paragraph (d)(2) is being revised to make clear that, in applications for unsecured credit, if the applicant relies on jointly owned property, the creditor may require the signature of the co-owner only to assure access to the property but not to impose personal liability. The material concerning factors that the creditor may consider regarding property owned by the applicant has been deleted in the proposed version, but comparable material is in the proposed staff commentary.

Existing footnote 10 to paragraph (d)(5) concerning guarantors and similar parties is being deleted, but comparable material appears in the proposed staff commentary. Also, the last sentence of existing paragraph (d)(5) now appears as paragraph (d)(6), to better emphasize that all of the signature rules (i.e., paragraphs (d)(1) through (d)(5)) apply to guarantors.

The provisions regarding credit-related insurance, paragraph (e), prohibit a refusal to grant credit because certain types of credit-related insurance are not available due to the applicant's age. The coverage of this provision is being broadened to include "other credit-related insurance" as well as the specific types (credit life, health, etc.) already listed. The Board requests comment on the effect of this change, if any. The other provisions in existing paragraph (e) regarding differentiation in rates and the like are being deleted; comparable material appears in the proposed staff commentary.

Section 202.8 - Special Purpose Credit Programs

The wording of this section is edited in various places for clarity, without substantive change.

Section 202.9 - Notifications

The Board proposes to add a new paragraph (c) to provide a streamlined procedure for dealing with incomplete applications. Other proposed revisions to this section are strictly structural or editorial, without substantive change.

In the June 1983 Federal Register notice concerning the review of Regulation B, the Board solicited comment regarding incomplete and withdrawn applications. Some of the commenters criticized what they believed to be a double notice burden in the case of incomplete applications: notifying an

applicant that the application is incomplete, and later notifying the applicant that credit has been denied because the application remains incomplete.

In response to these comments, the Board proposes to streamline procedures for dealing with incomplete applications. Paragraph (c) provides that if a creditor receives an application that is incomplete regarding matters that the applicant can complete, the creditor shall either notify the applicant of its decision within 30 days, in accordance with section 202.9(a), or notify the applicant within that time that additional information is needed. The latter notification would specify the information needed, designate a time period for the applicant to submit the information, and inform the applicant that unless the information is provided there can be no further consideration of the application. If the applicant failed to respond within the designated time period, the creditor would have no obligation to provide further notification of any kind. If the applicant provided the requested information in a timely manner, the creditor would then take action on the application and give appropriate notice in accordance with section 202.9(a) and (b). Paragraph (a)(1)(ii), dealing with the denial of an incomplete application, is being revised to include conforming language. Forms C-9 and C-10 in Appendix C are sample forms for notice of incompleteness under paragraph (c).

In response to public comment, the Board proposes to make changes to section 202.9 with respect to use of the term "adverse action." The words "denying" or "denial" of credit are being substituted for the words "adverse action." The Board believes that use of the term "adverse action" raises unnecessarily negative connotations, and has also led creditors to believe that they must use that term in communicating with applicants who have been denied credit. The Board believes that the provisions of paragraphs (a) and (b) remain sufficiently clear as to the creditor's obligation to notify an applicant when, in instances other than the denial of an application, the creditor takes action that warrants the sending of a notice under paragraph (b).

Other changes to this section are primarily editorial. The Board proposes to delete material that appears in existing paragraph (a)(1)(i), permitting notification of approval to be either express or implied; material in existing paragraph (b)(1), allowing the model ECOA notice to include references to similar state law and a state enforcement agency; existing paragraph (b)(3), permitting inclusion of other required disclosures or other information generally; and existing paragraph (f), which provides a presumption of delivery. Comparable material appears in the proposed staff commentary. In existing paragraph (b)(2), the model notice of reasons for adverse action is being deleted. It is being replaced by a number of model notices in a new Appendix C, as discussed below.

Existing paragraph (d) provides a special rule on withdrawn applications that the Board believes is not needed; it is being deleted. There has also been some restructuring of the section. Existing paragraphs (c), (a)(3), (a)(4), and (e) are renumbered (d) through (g), respectively. That portion of existing paragraph (a)(4) dealing with liability for acts of third parties is being deleted; comparable material appears in the proposed staff commentary.

Section 202.10 - Furnishing of Credit Information

This section is being totally rewritten and restructured for clarity and to delete obsolete material, but there is no substantive change from the existing rules. Footnote 11 to existing paragraph (a)(1) and footnote 12 to existing paragraph (a)(3) are being deleted; comparable material appears in the proposed staff commentary. Material in existing paragraph (c), dealing with the effect of signatures on liability and on the names in which an account is maintained, is being deleted, with comparable material appearing in the proposed staff commentary.

Section 202.11 - Relation to State Law

Existing footnote 16 is being deleted as unnecessary.

Section 202.12 - Record Retention

The Board proposes to make minor revisions to this section, as discussed below.

Paragraph (a) permits the retention in files, under certain circumstances, of information that is generally prohibited. Existing paragraph (a)(2) applies this permission to information obtained from credit bureaus, and existing paragraph (a)(3) to information obtained from an applicant or others without the specific request of the creditor. These two paragraphs are being merged into a single paragraph (a)(2), so that the rule of "without specific request" will also apply to information from credit bureaus. There appears to be no justification for giving special protection, as the current rule seems to do, if prohibited information is obtained from a credit bureau at the specific request of the creditor. There would be no violation under the proposed revision, however, if a creditor requested a credit report which happened to contain prohibited information. The words "at any time" are being deleted as unnecessary. Existing footnote 17 to paragraph (a) is being deleted as obsolete.

Paragraph (b)(1) requires retention of records for 25 months after a creditor notifies an applicant of action taken on an application. The proposal revises this provision to require the same record retention after a notification of incompleteness because, as discussed under section 202.9 above, a notification of incompleteness under section 202.9(c) may substitute for notification of action taken in certain instances. In addition, existing footnote 18 to paragraph (b)(1) is being deleted; comparable material appears in the proposed staff commentary.

A reference to the United States Attorney General is being added to paragraph (b)(3), to require retention of records until final disposition of an enforcement proceeding or investigation conducted by the Attorney General.

Under existing paragraph (b)(4), record retention is required in situations where, because the application is "shopped" among multiple creditors and another creditor has granted credit, a creditor does not have to notify the applicant of action taken. As revised, the record retention provision is somewhat broader. It applies whenever a creditor receives an application but

is not required to comply with notification requirements, e.g., when an applicant submits an application for credit but then withdraws it prior to notification of the creditor's decision. This change would ensure more complete records of applications in order to better allow regulatory agencies to assess creditors' compliance.

Section 202.13 - Information for Monitoring Purposes

The Board proposes to revise this section in several respects. In general, the revisions relate to types of loans covered and to the method of collecting data on the applicant's sex and race/national origin.

Section 202.13 currently requires a creditor that takes a written application for a loan to purchase residential real property, with a lien on that property as security, to ask the applicant to note certain personal characteristics: race/national origin, sex, marital status, and age. Applicants themselves may provide the requested information if they choose; however, they are not required to do so. The data are requested to assist the enforcement agencies in determining if a creditor is approving or denying credit in a prohibited manner. The regulation permits other enforcement agencies to adopt more extensive data collection programs; the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the Office of the Comptroller of the Currency (OCC) have done so.

The Board's Consumer Advisory Council issued a report in July 1983 on the Federal Reserve's implementation of its responsibilities under the Community Reinvestment Act (CRA). The Council recommended a number of enhancements to the Board's efforts in carrying out the mandate of CRA and the antidiscrimination goals embraced by the ECOA and the Fair Housing Act. One recommendation was that the Board seek out and use improved methods for collecting and analyzing data on personal characteristics of applicants, so that examiners would be better able to detect prohibited discrimination. The Council also suggested that the Board consider requiring creditors to use written applications to collect the data on applicants' personal characteristics.

When it considered the Council's recommendations, the Board also considered public comment it had received regarding the problems of bank holding companies whose subsidiary banks are subject to the jurisdiction of different financial regulators. Depending on which federal agency supervises the particular banks, there are different data collection rules. (The attached table briefly outlines the types of credit currently covered by the various agency rules and also describes coverage under the proposed rule, with emphasis added.)

Believing that a single rule applicable to all institutions would both reduce compliance burdens and enable the agencies to collect the data necessary to monitor compliance with the ECOA and the Fair Housing Act, the Board wrote to the other financial supervisory agencies and invited their participation in developing uniform requirements on data collection.

Staff members of the FDIC, the FHLBB, the OCC, the Board, and the National Credit Union Administration (NCUA) have met to review their existing regulations and to consider a uniform approach. The Board proposal being

Comparison of Present and Proposed Coverage by Type of Loan

OCC Special Rule (national banks)	° Any loan for the purpose of purchasing, construction-permanent financing, or refinancing of a house to be occupied as a principal residence and which will secure the loan.
FDIC Special Rule (state-chartered non-member banks)	° Any loan for the purpose of purchasing, constructing, refinancing, improving, or maintaining a dwelling to be occupied as a principal residence and which will secure the loan.
FHLBB Special Rule (S&Ls)	° Any loan related to a dwelling.
Present Reg. B (member banks and all other creditors)	° Any written application for consumer credit for the purpose of purchasing residential real property (including construction-permanent financing) where the loan will be secured by the property.
Proposed Rule	° Any application for credit primarily for the purchase (including construction-permanent financing), refinancing, repair, or improvement of a dwelling occupied, or to be occupied, by the borrower as a principal residence, where the extension of credit will be secured by the dwelling.

published for public comment incorporates many of the observations made by this interagency staff group, though none of the other agencies has formally endorsed the proposal. The proposal would decrease the compliance burden for some creditors but increase the burden for others.

Types of covered transactions. The Board proposes to modify section 202.13, which currently covers only applications for residential purchase money loans, to also cover refinancing, repair, or improvement of a dwelling that is or will be occupied by the borrower as a principal residence, when the credit will be secured by the dwelling. The proposal would increase the types of credit covered for state member banks, credit unions, mortgage bankers, and certain other lenders.

The focus of the proposal on credit related to dwellings reflects the longstanding national concern about discrimination in housing-related credit. The proposal would cover most of the areas of credit that are subject to the Fair Housing Act, representing a significant portion of the housingrelated credit extended in the country. Limiting the proposal to credit related to dwellings makes it less likely to impose a substantial burden on creditors. If it were expanded to cover types of credit other than dwellings, as some persons have suggested, the economic burden of redesigning and purchasing new forms would be severely increased.

Coverage of secured home improvement loans is included because they appear to be an important element throughout the country in revitalizing many older neighborhoods. Home improvement lending is considered essential to helping meet the housing needs of many people in today's housing market.

Mobile home loans also would be covered. In the U.S. Department of Commerce's 1981 Annual Housing Survey, mobile homes accounted for 4.7 percent of the total number of homes in the United States, yet they accounted for 10.3 percent of all owner-occupied homes where the annual household income was less than $12,500. A significant portion of the lower-priced housing market consists of mobile homes purchased to be placed on lots that are owned or rented by the purchasers. Regulation B presently excludes dwellings from coverage if they are not considered real property under state law. To exclude these dwellings from coverage merely because they are not defined by some state laws as real property (since they are not permanently attached to the ground) appears to be unwarranted.

Rule for obtaining of data. The creditor would be required, under the Board's proposal, to request the race/national origin, sex, marital status, and age of the applicant, as in the existing regulation. Unlike the present rule, however, if the applicant did not voluntarily provide the requested information, the creditor would have to note the sex and race/national origin of the applicant on the basis of visual observation or surname. This is the rule currently used by the FDIC, the FHLBB, and the OCC. Thus, the proposal would represent a change for state member banks, credit unions, and mortgage bankers, all of which are currently collecting the information only on a voluntary basis. Requiring that creditors note the race/national origin and sex of applicants who choose not to do so would provide better data by which to determine a creditor's compliance with the ECOA and the Fair Housing Act. The requirement

would also serve to remind creditors that these factors may not enter into determinations of creditworthiness.

Written applications. The Board also proposes to formalize the taking of written applications for the types of credit covered by section 202.13. (This requirement for written applications appears in revised section 202.5(e). A creditor may satisfy the requirement by writing down the information that it normally considers in making a credit decision.) Enforcement of civil rights would be enhanced because enforcement agencies could make more informed determinations about a creditor's compliance with the ECOA and the Fair Housing Act if application files contained better documentation. Written credit applications and other supporting information that creditors generally use, such as appraisals and credit histories, would also assist in determining why a particular course of action was taken on an application.

Requiring written applications for such loans does not appear to impose any significant additional burden on creditors, since virtually all creditors already take written applications for these types of credit. Most banks and thrift institutions already are required to take written applications or to maintain equivalent records for most loans covered by the data collection provisions, under rules established by the FDIC, OCC, FHLBB, and NCUA. In addition, most mortgage bankers use standardized loan documents, including credit application forms, because of the growth of the secondary market for dwelling-related loans. FHLMC/FNMA forms are readily available that would meet the proposed requirements on data collection.

Substitute monitoring programs. Existing section 202.13(d) authorizes other enforcement agencies to adopt substitute monitoring programs. If the proposed rule were implemented, the vast majority of the types of credit presently covered by other financial regulatory agencies' special rules on collection of monitoring data would also be covered by Regulation B. To the extent that these agencies continue to engage in substitute monitoring, there would be greater but not total uniformity. The Board requests specific comment on whether paragraph (d) should be deleted.

Section 202.14 - Enforcement, Penalties, and Liabilities

This is a proposed new section, consisting of material from current section 202.1(b) and (c). The material has been edited for purposes of simplification, but there is no substantive change. Paragraph (a) reflects the transfer of the enforcement functions of the Civil Aeronautics Board to the Secretary of Transportation (49 FR 50994, December 31, 1984).

Appendix A - Federal Enforcement Agencies

Appendix A, which lists the federal enforcement agencies, is not being republished at this time. Changes will be made, when the Board publishes revised Regulation B in final form, to reflect the substitution of the Secretary of Transportation for the Civil Aeronautics Board.

Appendix B - Model Application Forms

The introductory material to Appendix B incorporates material from existing section 202.5(e), so that all directions for the proper use of the model forms will appear in one place. The existing portion of the introductory material that permits creditors to add three specific items to the model forms is deleted, because creditors may add any item not prohibited by section 202.5 (not merely these three). The discussion of the FHLMC 65/ FNMA 1003 form is deleted; comparable material appears in the staff commentary. The Board is also publishing a sample disclosure and information request that would comply with revised section 202.13. If the proposal regarding monitoring data discussed above is ultimately adopted, this disclosure and request form would become part of the model application form for dwelling-related loans. The model application forms themselves are not being republished at this time because no other change is proposed. Comment is requested, however, on what changes (if any) may be necessary or appropriate in any of the model forms.

Appendix C - Sample Notification Forms

In the June 1983 Federal Register notice, the Board requested comment concerning the sample adverse action notice, including what changes should be made to the notice and whether more than one form should be provided. Based on the comments, the Board proposes to replace the single existing sample notice, which appears at section 202.9(b), with a number of sample notices. This proposed new appendix to the regulation contains ten sample notification forms. Forms C-1 through C-4 are sample statements of reasons for credit denial or other adverse action. Forms C-5 and C-6 combine the statement of reasons with notice of a counteroffer. Form C-7 is a sample notice for use with a credit scoring system; form C-8 is a disclosure of the right to request a statement of reasons, as provided for in section 202.9(a)(2)(ii). Forms C-9 and C-10 are requests for additional information, as provided for in proposed section 202.9(c).

As presented below, only forms C-4, C-6, and C-7 include the notice of rights under ECOA required by section 202.9(b)(1). In all of the other forms, the creditor would add it as indicated by the notation. Forms C-9 and C-10, the sample notices requesting additional information, do not require the ECOA notice because those forms do not relate to a credit denial.

Forms C-5 and C-6 as presented do not include the Fair Credit Reporting Act notice; it would need to be added if applicable.

As stated in the introductory material to proposed Appendix C, the sample forms are illustrative. In developing its own forms, a creditor would of course have to list the factors on which it based a credit denial.

Although ten sample forms are being published for comment, it may be that fewer than ten forms are needed. The Board requests comment on which of the proposed forms would be most useful to creditors and most informative to consumers.

The sample notices would be entirely optional for creditors, as is true of the existing notice. Accordingly, if any or all of the proposed forms are ultimately adopted in place of the existing sample form, creditors may continue to use the existing sample form (or any other notice form), provided that it sets forth accurately the factors the creditor considers and is completed properly.

Appendix D - Issuance of Staff Interpretations

This proposed new appendix would replace section 202.1(d) of the existing regulation, which deals with requests for and issuance of staff interpretations of Regulation B. Because of changes in the procedures for staff interpretations (particularly the introduction of the official staff commentary as the vehicle for such interpretations), this appendix differs from existing section 202.1(d); it is modeled primarily on Appendix C to Regulation Z, which deals with staff interpretations under that regulation.

Appendix E - State Exemptions

Proposed Appendix E would replace Supplement I to the existing regulation, which sets forth procedures relating to exemptions on the basis of similar state law. The revised version is modeled on Appendix B to Regulation Z, which also provides state exemption procedures; consequently it is shorter and simpler than existing Supplement I, but the substance is largely unchanged.

(3) Economic impact analysis. Introduction. The Board's review suggests that (1) the definition of applicant be expanded to cover guarantors in order to give guarantors legal standing to sue when they believe a violation of their rights has occurred, (2) the effectiveness of compliance enforcement can be enhanced if creditors are required to take written applications for housing-related loans and to collect certain data regarding personal characteristics of these loan applicants, and (3) clarification and modification of the regulation are needed in the areas of incomplete and withdrawn applications.

The potential benefits and costs of the proposed revisions to Regulation B are discussed in this initial economic impact analysis. Two appendices are attached. Appendix A contains a summary of a Board study of economies of scale in the cost of complying with the Truth in Lending Act and Equal Credit Opportunity Act (ECOA). Appendix B contains a summary of a Board study of consumer perceptions regarding the benefits of ECOA protections. These studies were examined for their implications regarding the Regulation B review.

Redefinition of "applicant" to include guarantors. An applicant has standing to sue under Regulation B but a guarantor does not. The proposed rule would redefine "applicant" in section 202.2 to include guarantors. This modification of the rule would allow guarantors, who believe they have been injured by an ECOA violation, to bring suit, thereby enhancing consumer protections.

The new provision may increase creditors' costs by increasing their exposure to litigation. Litigation would increase to the extent guarantors

sue regarding alleged Regulation B violations, and the alleged violations would not have been litigated by applicants themselves. Initial analysis by the Division of Consumer and Community Affairs suggests that this situation would arise infrequently. Applicants would normally bring suit in their own right; and guarantors (if they had standing to sue) would merely join in the lawsuit. (Guarantors are often the spouse or business associate of the applicant.) If it becomes a matter of course in legal actions involving defaulted loans that both the applicant and the guarantor claim injury from the same alleged violation, litigation expense could be increased; the increase probably would be small since the same alleged violation is involved.

Written applications and collection of monitoring data. Provisions in section 202.5 of the proposed rule will for the first time require covered creditors to take written applications for certain housing-related loans.[1/] In addition, creditors would be required by section 202.13 to collect monitoring data on the race and other personal characteristics of applicants for these housing-related loans.[2/] Regulation B presently requires creditors to request information from applicants regarding their race, sex, age and marital status only on written applications for a home purchase loan to be secured by the property. The current regulation does not require written applications for mortgage loans, nor does it require loan officers to note information on the personal characteristics (race/national origin, sex) of loan applicants if the customers does not volunteer such information upon request.

The proposed rule changes, to require written applications and to collect monitoring data, are expected to enhance consumer protection through more effective enforcement. They would also provide greater uniformity. Currently, banks and savings and loans regulated by the FDIC, the OCC, and the FHLBB are required by rules established by these agencies to take written applications and to collect monitoring data on most housing-related loans.[3/] Commercial banks regulated by the Federal Reserve System (FRS) are not presently required to take written applications nor record monitoring data if not provided voluntarily by the applicant. Federally chartered credit unions are required by the National Credit Union Administration to take written applications but are not required to collect monitoring data. Mortgage bankers are not currently required to take written applications. However, since these firms generally sell loans they originate in the secondary market, they typically use standardized written application forms as a matter of course. Consequently, the proposed rules are unlikely to have a significant impact on these firms.

1/ Section 202.5 provisions would require written applications for credit requests covering loans primarily for the purchase, construction/permanent financing, repair or improvement of a dwelling occupied or to be occupied by the borrower as a principal residence. Only applications where the extension of credit will be secured by the dwelling are covered in the proposed rule.

2/ Data to be collected include race/national origin, sex, marital status and age of all applicants.

3/ Regulation B currently allows agencies charged with ECOA enforcement responsibilities to establish their own rules regarding the collection of monitoring data.

Current ECOA enforcement techniques call for the consumer compliance examiners to use all available data to test for the presence or absence of discrimination on a prohibited basis, such as race, sex, marital status or national origin. The primary data for examiners are creditor loan files. In the case of the banks supervised by the Federal Reserve System, the absence of written applications and information on personal characteristics of loan applicants in many cases substantially reduces the examiners' ability to perform tests for possible discrimination.4/ Adoption of the proposed rules would therefore enhance consumer protection by facilitating more effective enforcement.

The extent to which the proposed rule would enhance consumer protection is uncertain. For example, the FDIC, OCC and FHLBB have cited a very small number of creditors for discrimination on the basis of race or national origin even though these agencies have access to written applications and monitoring data. The inability to detect ECOA violations may reflect widespread creditor compliance with ECOA provisions. To some extent the low number of violations may indicate that discrimination is effectively deterred by creditors' knowledge that examiners have access to written applications and monitoring data. Under these circumstances, the number of cases of actual discrimination detected by examiners would likely be small. To the extent the deterrent effect is important, adoption of the proposed rule would enhance consumer protection.

A further benefit of the proposed rule changes would be greater uniformity among the regulatory agencies. As a consequence, companies subject to monitoring requirements of more than one regulatory agency would benefit to the extent they would be able to use uniform application forms and employee training procedures for all banks in their company.

Since most creditors are currently covered by rules that require written housing-related loan applications and the collection of monitoring data, the proposed rule changes are unlikely to impose significant costs on covered institutions. The creditors most likely to be affected by the proposed rule changes are banks supervised by the Federal Reserve System and credit unions. According to information available to the Board, most state member banks currently use written applications for housing-related loans. It is estimated that about 10 percent of the FRS supervised banks do not take written applications on such loans; most of these are small banks. Mortgage and home improvement loan application forms available from the Federal Home Loan Mortgage Corporation or from the Federal National Mortgage Association cost about 20 cents per form.5/ Using data collected pursuant to the Home Mortgage Disclosure Act, it is estimated that state member banks received about 80,000 mortgage and home improvement loan applications in 1983. Therefore, the estimated total cost of forms for written applications for these types of loans for all member banks is approximately $16,000 a year. The

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4/ Survey results indicate that in 1980 about 25 percent of applications for housing-related loans from banks examined by the Federal Reserve did not contain monitoring data.

5/ The proposed regulation would not require creditors to use these specific application forms; however, use of these forms would satisfy the requirement to use written application forms.

actual cost to obtain forms because of the proposed rule would be less to the extent member banks already take written applications.6/

The proposal to require collection of monitoring data also imposes costs on creditors. Costs include employee training expenses and costs to modify existing written application forms if the monitoring data is to be included on the loan application form, or costs to print and store for record retention a separate form with the required monitoring data.

A final cost associated with a requirement to collect monitoring data involves the loss of personal privacy some loan applicants may feel if creditors note their personal characteristics even though they choose not to voluntarily supply such information. Such costs are difficult to quantify. However, information available to the Board indicates that in 1980 at least 10 percent of the applicants for housing-related loans at state member banks refused to voluntarily provide monitoring data when asked to do so. Presumably, these individuals are the most likely to be offended by the proposed rule change.

Incomplete applications. The current rule requires that adverse action notification be given when reasonable efforts by creditors to obtain missing information regarding an application fail to elicit a response from the applicant. Under the proposal, creditors would not be required to provide adverse action notification if the applicant does not supply the information needed to complete the application within a reasonable period. As a consequence, creditors would need to provide one less notice in these circumstances, thereby reducing costs. Consumer protections would not be significantly reduced since applicants who do not respond in a reasonable time period to a creditor's request for additional information probably are no longer interested in the loan from that creditor, or expect to be denied credit based on the lender's evaluation of that additional information.

Record retention of withdrawn applications. Under the current rule, there are no record retention requirements with respect to applications expressly withdrawn by the applicant. As a result, consumer compliance examiners are unable to determine whether some creditors are misclassifying denied applications as withdrawn. The absence of records on withdrawn applications hampers an examiner's investigation of an unusually low application denial rate which the creditor claims reflects a high rate of withdrawn applications. Therefore, the proposal to require record retention of applications withdrawn by the applicant may increase the effectiveness of enforcement.

If the proposal were adopted, most creditors would incur costs to expand record storage space for applications expressly withdrawn by the applicant. The cost per record of additional storage space will vary among

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6/ Available evidence indicates that many small banks do not currently use written applications. Consequently, the proposed rule requiring creditors to take written applications will have a disproportionate (although small) effect on smaller creditors.

creditors depending on record storage technology (mechanical versus electronic) and current storage capacity utilization. If examiners are correct in their belief that in general there are few nonbusiness applications expressly withdrawn by applicants relative to denials, then compliance costs of the proposal would be small for most creditors. Business applications expressly withdrawn would not have to be retained under the proposal because of the business credit provisions in section 202.3.

Small Entities

Recent research on compliance costs for consumer protection regulations suggests that the smallest commercial banks have incurred the greatest compliance costs per account (see appendix A). Similarly, the potential compliance costs associated with some of the proposed revisions to the regulation would tend to fall disproportionately on the smallest banks. In particular, the proposed requirement that creditors take written applications for dwelling-related credit would create additional costs for creditors who currently do not do so. According to the Board's consumer compliance examiners, about 10 percent of the FRS supervised banks would need to start using written application procedures, and most of these banks are relatively small. Although this proposed rule will have a somewhat harsher effect on small banks, the marginal costs of this new requirement are not likely to be large for any creditor.

Overall, the proposed revisions to Regulation B are unlikely to have a significant impact on small creditors' compliance costs.

A Summary of an FRB Study of Economies of Scale
In the Cost of Complying With the TILA and ECOA (Appendix A)

This appendix summarizes the implications for the Regulation B review of a recent study of economies of scale in the cost of complying with the Truth in Lending and Equal Credit Opportunity laws.7/

The data for the study are from a 1981 survey of financial institutions conducted by the Federal Reserve Board to determine compliance costs associated with selected consumer protection laws. Compliance costs in the survey are reported for eight functional areas of banks' operations: (1) administration; (2) labor; (3) training of officers and nonofficers; (4) legal services; (5) printing or notices; (6) postage; (7) premises, furniture, supplies, and equipment; and (8) other costs.8/ Compliance costs were not

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7/ G. Elliehausen and R. Kurtz, "Economies of Scale in the Cost of Complying with the Truth in Lending and Equal Credit Opportunity Laws," Working Paper, Board of Governors of the Federal Reserve System, March 1984.

8/ The survey does not attempt to measure opportunity costs such as changes on loan losses due to information restrictions in credit evaluations or signature restrictions that affect contractual liability or availability of collateral.

estimated for the specific Regulation B provisions under review. Nonetheless, by considering the impact of specific provisions on activities in these functional areas, some general conclusions on the effect of the Regulation B proposals can be obtained.

The study examines economies of scale in compliance costs for Regulations Z and B combined. Only about one-third of the respondents reported compliance costs for Regulations Z and B separately. Consequently, the number of cases was too small to permit statistical analysis of each regulation separately. The major finding of the study is that there are economies of scale in compliance costs for these regulations for commercial banks at levels of output up to 375,000 consumer credit accounts, beyond which there are small diseconomies of scale. At the lowest output levels, there are large unexploited scale economies. This suggests that the regulations impose a competitive disadvantage on banks with small consumer credit portfolios. The implication for the Regulation B review is that there is a need to evaluate changes to regulatory requirements in terms of the relative burden on creditors with different consumer credit portfolio size.

The survey results indicate that labor and administration expenses account for about 50 to 70 percent of total compliance costs at all levels of output and that compliance costs increase about proportionately with wage rates, suggesting that compliance activities for Regulations Z and B are labor intensive. However, administrative costs account for smaller shares of compliance costs at moderate and higher output levels. This result suggests that scale economies may arise from a more efficient use of high cost administrative personnel at banks with larger consumer credit portfolios. The implication for the Regulation B review is that the disproportionate impact of the regulation can be reduced by designing requirements that can be performed routinely by nonadministrative personnel and that do not require a high level of supervision or monitoring.

Respondents to the survey were asked for their perception of the most costly regulatory requirement in Regulation B. They reported the most costly requirement in Regulation B to be adverse action notification. The implication for the Regulation B review is that compliance costs might be reduced if unnecessary adverse action notices could be eliminated or requirements modified to allow creditors to provide notices at lower cost.

A Summary of FRB Studies of Consumer Perceptions of Discrimination and Effectiveness of the ECOA (Appendix B)

Since passage of the ECOA, a number of researchers have attempted to examine credit market conditions before passage of the antidiscrimination law. Unfortunately, their efforts have been hampered by a lack of adequate data.[9/] The unavailability of adequate data for testing for the existence

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9/ The following statistical studies provide information on discrimination in consumer credit markets: J. Marshall, "Discrimination in Consumer Credit," in A. A. Heggestad and J. J. Mingo, eds., The Costs and Benefits of Public Regulation of Consumer Financial Services (Abt Associates 1979); R. L.

of discrimination has led researchers to use survey data to study consumers' perceptions of discrimination. Perceptions of discriminatory treatment cannot be regarded as proof that discrimination exists or does not exist, but perceptions may reflect consumers' experience and provide some information on the extent of any problems.

In 1981-82, the Federal Reserve Board sponsored survey questions to update and expand on information on perceptions of discrimination from the 1977 Consumer Credit Survey. First, respondents were asked to identify variables that they thought were important to creditors in deciding to grant credit. Applicants' credit and financial characteristics were mentioned most frequently as important variables in both 1981-82 and 1977, while personal characteristics such as age, race, sex, and marital status were mentioned relatively infrequently (less than 10 percent of mentions). Although respondents belonging to ECOA-protected groups were more likely than nonprotected respondents to believe that personal characteristics were important to creditors, most ECOA-protected respondents did not believe that personal characteristics were very important to creditors in deciding whether to grant credit. In both surveys, ECOA-protected respondents generally believed that credit would be more difficult to obtain than other groups of consumers. However, ECOA-protected groups were less likely to believe credit would be difficult to obtain in 1981 than in 1977.

A second series of questions asked respondents about credit turndowns and limitations. Responses to the 1981-82 and 1977 surveys are virtually identical. Only a few respondents reported that personal characteristics were given as reasons for credit turndowns and limitations. When asked directly whether their age, race, nationality, sex, or marital status may have been a factor, over three-fourths of the respondents who were turned down or limited indicated that they did not believe that these characteristics were factors in the creditors' decision.

In order to obtain information about possible creditor screening, respondents to the 1981-82 surveys were asked whether they thought about using credit but did not apply because they expected that they might be turned down. About 10 percent of respondents reported that they thought about applying for credit. In most cases, the reasons respondents thought they would be turned down were related to their credit history or financial characteristics. Personal characteristics were seldom involved. In about a quarter of the cases, respondents indicated that the creditor suggested that a turndown might occur.

9/ (cont'd)
Peterson, "An Investigation of Sex Discrimination in Commercial Banks' Direct Consumer Lending," Bell Journal of Economics, vol. 12 (Autumn 1981), pp. 547-561; R. B. Avery, "Discrimination in Consumer Credit Markets," Research Papers in Banking and Financial Economics (Board of Governors of the Federal Reserve System, Division of Research and Statistics, Financial Studies Section, 1982); and W. K. Brandt and R. P. Shay, "Consumer Perceptions of Discriminatory Treatment and Credit Availability and Access to Consumer Credit Markets," in Federal Reserve Bank of Boston, The Regulation of Financial Institutions, Conference Series No. 21, 1979.

Respondents to the 1981-82 surveys were also asked about the usefulness of disclosure of reasons for adverse action. Although approximately half of the respondents who had been turned down or limited reported that they had thought a turndown or limitation might happen, for the reasons given, nearly three-fourths of those who had been turned down or limited indicated that knowledge of the reasons for adverse action had been useful to them. Respondents indicated that the reasons given were helpful because they wanted to know why they were turned down and to understand the credit granting process. But respondents also reported that the reasons given were often not specific enough or did not tell them anything they did not know already.

Respondents were also asked about the usefulness of the written disclosure statement. Receipt of a written statement apparently was not as important to consumers as knowledge of reasons for adverse action. Respondents who reported that they did not receive a written statement were just as likely as those who received written statements to say that knowledge of reasons for adverse action had been useful. However, about half of those receiving a written statement indicated that the written statement was not useful, and a third reported that verbal information was just as good as a written statement.

(4) Discussion of proposed official staff commentary. The Board is publishing a proposed commentary on the regulation. The final commentary will be issued as an official staff interpretation providing creditors with protection under section 706(e) of the Equal Credit Opportunity Act. Under that section, creditors acting in conformity with an official staff interpretation are protected from liability for violations arising from those actions.

The commentary format follows that already used for other Board regulations such as Regulation Z (Truth in Lending), and Regulation M (Consumer Leasing). The commentary will replace all existing staff interpretations, both official and unofficial, and official Board interpretations, that have been issued in response to individual inquiries or fact situations. Thus the commentary will replace six existing Board interpretations, thirteen official staff interpretations, and fifteen informal staff letters. The commentary will be the sole vehicle for interpreting the regulation.

As is the case with other staff commentaries, this commentary will give more general guidance, rather than the specific guidance given in letters. It is designed, however, to assist creditors in applying the regulation to specific fact situations. Further, the commentary uses material of general application to be useful to the widest possible audience.

Following the format used in the commentary to Regulation Z, each paragraph in the commentary is identified by the relevant section, and in some cases by subsection, of the regulation. For example, commentary to § 202.4 is labeled 4-1 while commentary to § 202.7 is further broken down and designated according to the particular subsection addressed, such as comments 7(c)-1 and 7(d)(2)-1. Unlike the commentary to Regulation Z, the commentary to Regulation

The Board has previously determined that several state laws are not preempted by the ECOA and Regulation B. These nonpreemption determinations relate to laws that deal with the age of majority, notices to unmarried cosigners,

and Spanish language translations of credit documents. Following the rule in Regulation Z, the Board proposes to include in the commentary only those determinations that result in the preemption of a state law or regulation. Consequently, the nonpreemption determinations are being omitted from the proposed staff commentary.

Three other Board interpretations -- 202.601, 202.801, and 202.901 -- have been integrated into the proposed staff commentary.

Official staff interpretation EC-0009 has been incorporated into the text of section 202.3(d) of the regulaton, which now makes clear that a creditor that denies a business credit application must give the applicant notice of that denial within a reasonable time.

Certain official staff interpretations have been omitted for various reasons. Interpretation EC-0001, which addressed the requirements for sending credit history notices by June 1977, is obsolete. Interpretation EC-0004 is being omitted because the subject matter -- the application of state laws governing graduated rates, maximum loan ceilings, and rate splitting -- does not appear to warrant the amount of detailed treatment provided in that letter.

Others have been omitted because they appear to have limited applicability: EC-0011, which concluded that Regulation B generally does not apply to a lending operation carried on by a foreign corporation making loans solely outside the United States; and EC-0010, which dealt with the permissibility of inquiries about a potential customer's religion by a seller of religious books.

Interpretations that approved certain creditor forms -- EC-0012 and EC-0015 -- are being incorporated into the commentary to Appendix B, which will become the vehicle for approving credit application forms used or distributed by federal or state agencies or federally chartered operations. EC-0013 related to a form no longer in use, and is omitted.

The answers provided in the other official staff interpretations have served as the basis for the sections of the proposed staff commentary to which they relate. Material from some of the 15 staff opinion letters originally published as public information letters also has been used.

Comment is welcomed on the substance of the material contained in the proposed commentary and on any material which creditors believe should also be included. Commenters are encouraged to focus on material of particular interest to them, and need not address every provision.

List of Subjects in 12 CFR Part 202

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

(5) Regulatory text. Certain conventions have been used to highlight the proposed revisions (except in sections that have been revised in their entirety). New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

Pursuant to the authority granted under section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend 12 CFR Part 202 as follows:

1. 12 CFR Part 202 would be amended by removing the word "Part" every place it appears and inserting in its place the word "regulation"; by removing the word "subsection" every place it appears and inserting in its place the word "paragraph"; and by removing footnotes 1, 2, 3, 5, 6, and 8 through 19 and redesignating footnotes 4 and 7 as footnotes 1 and 2, respectively.

2. Section 202.1 would be revised to read as follows:

▶SECTION 202.1 - AUTHORITY, SCOPE AND PURPOSE

(a) Authority and scope. This regulation is 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, it applies to all persons who are creditors, as defined in section 202.2(l). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 7100-0192.

(b) Purpose. The purpose of this regulation is to require creditors to make credit equally available to all creditworthy customers without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to 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. The regulation prohibits certain creditor practices that would discriminate on the basis of one of these factors. The regulation also requires creditors to notify applicants of action taken on their applications, to report credit history in the names of both spouses on an account, and to retain records of credit applications. To assist enforcement efforts, the regulation requires creditors to collect monitoring information for certain loans in which the creditor takes a security interest in the applicant's principal dwelling.◀

3. Section 202.2 would be amended by revising the title and paragraphs (e), (f), and (p); removing existing paragraphs (aa), (cc), and (dd); and redesignating paragraph (bb) as paragraph (aa), to read as follows:

SECTION 202.2 - DEFINITIONS [AND RULES OF CONSTRUCTION]

* * * * *

(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] ▶become◀ contractually liable regarding an extension of credit [other than a guarantor, surety, endorser, or similar party]. ▶The term includes guarantors, sureties, endorsers and similar parties.◀

(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] ▶The creditor shall exercise◀ 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.]

* * * * *

(p) Empirically derived ▶and other◀ credit system>s<. (1) [The term means a] ▶A◀ credit scoring system ▶is any system◀ that evaluates an applicant's creditworthiness [primarily by allocating points (or by using a comparable basis for assigning weights) to] ▶mechanically, based on◀ 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) are 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) determine] ▶, and that determines◀, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A▶n empirically derived,◀ demonstrably and statistically sound [, empirically derived] credit system is a system:

(i) >in which the data are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and< [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] ▶evaluating◀ 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;] ▶is developed using acceptable statistical principles and methodology;◀ and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles ▶and methodology◀ and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use [a] ▶an empirically derived,◀ 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] ▶paragraph (p)◀ (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 subsection (2)(iii), 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] ▶no longer be an empirically derived,◀ demonstrably and statistically sound [, empirically derived] credit system for that creditor.

* * * * *

[(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)] ▶(aa)◀ 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.]

4. Section 202.3 would be revised with the exception of several paragraphs that would be redesignated but would remain unchanged in content. The redesignations would be as follows: paragraphs (b)(1), (2), and (3) as paragraphs (a)(2)(i), (ii) and (iii); paragraphs (c)(1) through (8) as

paragraphs (b)(2)(i) through (viii); and paragraphs (d)(1) through (8) as paragraphs (c)(2)(i) through (viii). The revised section would read as follows:

▶SECTION 202.3 - LIMITED EXCEPTIONS FOR CERTAIN CLASSES OF TRANSACTIONS

(a) Public utilities credit. (1) Definition. For purposes of this section, public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extentions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by any government unit.

(2) Exceptions. The following provisions of this regulation shall not apply to public utilities credit:◀***

▶(b) Securities credit. (1) Definition. For purposes of this section, securities credit refers to 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.

(2) Exceptions. The following provisions of this regulation shall not apply to securities credit:◀***

▶(c) Incidental credit. (1) Definition. For purposes of this section, incidental credit refers to extensions of consumer credit, other than of the types described in paragraphs (a) and (b):

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

(ii) on which no finance charge as defined in section 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.

(2) Exceptions. The following provisions of this regulation shall not apply to incidental credit: ◀***

▶(d) Business credit. (1) Definition. For purposes of this section, business credit refers to 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) and (b).

(2) Exceptions. The following provisions of this regulation shall not apply to business credit:

(i) section 202.5(d)(1) concerning information about marital status; and

(ii) section 202.10 relating to furnishing of credit information.

(3) Modified requirements. The following provisions of this regulation apply to business credit as specified below:

(i) section 202.9(a) and (b) relating to notifications: the creditor shall notify the applicant, orally or in writing, when credit is denied or when other adverse action has been taken; the creditor need provide a written statement of the reasons and the ECOA notice specified in section 202.9(b) only if the applicant makes a written request for the reasons within 30 days of that notification;

(ii) section 202.12(b) relating to record retention: the creditor shall retain records as provided in section 202.12(b) if the applicant, within 90 days after notification that adverse action has been taken, requests in writing that records be retained.

(e) Governmental credit. (1) Definition. For purposes of this section, governmental credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) Applicability of regulation. Except for section 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to governmental credit.◀

* * * * *

5. Section 202.5 would be amended by revising paragraphs (b)(2), (b)(3), (d)(2), and (e); revising footnote 1 to paragraph (b)(1); revising the headings for the section and for paragraphs (b), (d), and (e); and adding headings to paragraphs (b)(2), (b)(3), (c)(2), (c)(3), and (d)(1) through (d)(5), to read as follows:

SECTION 202.5 - RULES CONCERNING ▶TAKING OF◀ APPLICATIONS

* * * * *

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

(2) ▶Exception for required collection of information.◀ Notwithstanding [any other provision of] ▶the limitations imposed by◀ this section, a

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1/ This [subsection is not intended to] ▶does not◀ 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 section 202.6 (rules concerning evaluation of applications).]

creditor shall request ▶information about◀ an applicant's race/national origin, sex, and marital status ▶for monitoring purposes◀ as required in section 202.13 [(information for monitoring purposes)] ▶for credit related to certain loans secured by the applicant's dwelling◀. 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 ▶U.S.◀ Attorney General or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) [The provisions of this section limiting permissible information requests, are subject to the provisions of section 202.7(e) regarding insurance and sections 202.8(c) and (d) regarding special purpose credit programs.] ▶Exception for special purpose credit. A creditor may also obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in section 202.8.◀

(c) Information about a spouse or former spouse. ***

(2) ▶Permissible inquiries.◀ ***

(3) ▶Other accounts of the applicant.◀ ***

(d) [Information a creditor may not request] ▶Other limitations on information requests.◀ (1) ▶Marital status.◀ ***

(2) ▶Disclosure about income from alimony, child support, separate maintenance.◀ 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] ▶making such an inquiry◀ 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) ▶Sex.◀ ***

(4) ▶Childbearing, childrearing.◀ ***

(5) ▶Race, color, religion, national origin.◀ ***

(e) [Application forms.] ▶Written applications. A creditor shall take written applications for the types of credit covered by section 202.13(a).◀ A creditor need not [use] ▶take◀ written applications ▶for other types of credit◀. If a creditor [chooses to use] ▶uses◀ [written] ▶application◀ forms, it may design its own ▶forms◀, 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 subsections (c) and (d)].

6. Section 202.6 would be amended by revising paragraph (b)(5); revising footnote 2 to paragraph (a); and adding headings to paragraphs (b)(2) through (b)(7), to read as follows:

SECTION 202.6 - RULES CONCERNING EVALUATION OF APPLICATIONS

(a) General rule concerning use of information. *** 2/

(b) Specific rules concerning use of information. ***

(2) ▶Age, receipt of public assistance.◀ ***

(3) ▶Childbearing, childrearing.◀ ***

(4) ▶Telephone listing.◀ ***

(5) ▶Income.◀ *** [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) ▶ Credit history.◀ ***

2/ 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.]

(7) ▲Immigration status.◀ ***

* * * * *

7. Section 202.7 would be amended by revising paragraphs (c)(2), (d)(2), (d)(5), and (e); adding a new paragraph (d)(6); and adding headings to paragraphs (c)(1), (c)(2), (d)(1), (d)(3), and (d)(4) to read as follows:

SECTION 202.7 - RULES CONCERNING EXTENSIONS OF CREDIT

* * * * *

(c) Action concerning existing open end accounts.
(1) ▶Limitations.◀ ***

(2) ▶Requiring reapplication.◀ A creditor may require a reapplication regarding an open end account on the basis of a change in [an applicant's] ▶the◀ marital status [where] ▶of an applicant who is contractually liable if◀ the credit granted was based ▶in whole or in part◀ on income [earned by] ▶of◀ the applicant's spouse ▶and◀ if ▶information available to the creditor indicates that◀ the applicant's income [alone at the time of the original application would] ▶may◀ not support the [amount of] ▶current◀ credit [currently extended.] ▶limit.◀

(d) Signature of spouse or other person. (1) ▲Rule for qualified applicant.◀ ***

(2) ▶Unsecured credit.◀ 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] ▶that the applicant owns jointly with another person◀ to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the [applicant's spouse or] other person ▶only◀ on [any instrument] ▶the instrument(s)◀ [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.] ▶that, under the law of the state in which the property is located, would enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.◀

(3) ▶Unsecured credit -- community property state.◀ ***

(4) ▶Secured credit.◀ ***

(5) ▶Guarantors, co-signers.◀ *** [For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.]

▶(6) Rights of guarantors, co-signers. For the purposes of this paragraph, a creditor shall not impose requirements upon a guarantor,

co-signer, or similiar additional party that the creditor is prohibited from imposing 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] ▶A◀ creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, [or] disability ▶, or other credit-related◀ 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.]

8. Section 202.8 would be amended by revising paragraphs (a), (b), and (c), to read as follows:

SECTION 202.8 - SPECIAL PURPOSE CREDIT PROGRAMS

(a) Standards for programs. Subject to the provisions of paragraph (b), the act and this [part are not violated if] ▶regulation permit◀ a creditor [refuses] to extend ▶special purpose◀ credit to [an] applicant▶s◀ [solely because the applicant does not qualify under the special] ▶who meet eligibility◀ requirements [that define eligibility for] ▶under◀ the following types of [special purpose] credit programs: ***

(b) [Applicability of other rules.] ▶Rules in other sections.◀ (1) ▶General applicability.◀ All of the provisions of this regulation shall apply to each of the special purpose credit programs described in paragraph (a) [to the extent that those provisions are not inconsistent with] ▶except as modified by◀ the provisions of this section.

(2) ▶Common characteristics.◀ A program described in paragraphs (a)(2) or (a)(3) shall qualify as a special purpose credit program [under subsection (a)] 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] ▶any prohibited basis; however,◀ all program participants may be required to share one or more [of those] ▶common◀ characteristics ▶(for example, race, national origin, or sex)◀ so long as the program was not established and is not administered with the purpose of evading the requirements of the act or this regulation.

(c) Special rule concerning requests and use of information. If all participants in a special purpose credit program described in paragraph (a) 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] ▶(for example, race, national origin,

or sex)◀ and if the [special purpose credit] program otherwise satisfies the requirements of paragraph (a), then, notwithstanding the prohibitions of sections 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 characteristic(s). [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.]

* * * * *

9. Section 202.9 would be amended by revising paragraphs (a)(1) and (2); redesignating existing paragraphs (a)(3) and (4) as paragraphs (e) and (f); revising paragraph (b)(1) and (2); removing paragraph (b)(3) and the sample statement-of-reasons form from paragraph (b)(2); redesignating existing paragraph (c) as (d) and revising the heading to (d); adding a new paragraph (c); removing existing paragraph (d); redesignating existing paragraph (e) as (g); removing existing paragraph (f); and revising redesignated paragraphs (f) and (g). The amended section would read as follows:

SECTION 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,] ▶or denial of◀ the application [(notification of approval may be express 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] ▶denying◀ an [uncompleted] application ▶that is incomplete, unless notice is provided in accordance with section 202.9(c)(2)◀;

(iii) 30 days after [taking adverse action regarding] ▶terminating or changing adversely the terms of◀ an existing account; [and] ▶or◀

(iv) 90 days after [the creditor has notified] ▶notifying◀ 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 ▶when credit is denied or terminated◀. Any notification given to an applicant [against whom] ▶when credit is denied or when other◀ 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] ▶, if it is requested◀ within 60 days of [such] ▶the creditor's◀ notification; the disclosure [to] ▶shall◀ include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the [statement of] reasons orally, the [notification shall also include a disclosure of] ▶creditor shall also disclose◀ the applicant's right to [have any oral statement of reasons] ▶having them◀ confirmed in writing within 30 days [after a written] ▶of the applicant's◀ request [for confirmation is received by the creditor].

(b) Form of ECOA notice and statement of specific reasons.

(1) ECOA notice. [A creditor satisfies] ▶To satisfy◀ the requirements of paragraph (a)(2) 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 creditor shall provide◀ the following notice or one that is substantially similar:

* * * * *

[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] ▶The◀ statement of reasons for adverse action [shall] ▶required by paragragh (a)(2)(i) must◀ be [sufficient if it is] specific and indicate[s] 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 subsection (a)(2)(i).] 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. ▶A creditor may formulate its own statement of reasons in checklist or letter form; sample forms and clauses are provided in Appendix C.◀

[(3) Other information. The notification required by subsection (a)(1) 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) Incomplete applications. (1) Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant (unless the applicant has expressly withdrawn the application) either:

(i) of action taken, in accordance with section 202.9(a); or

(ii) of the incompleteness, in accordance with paragraph (c)(2).

(2) A creditor shall send a written notice to the applicant (a sample of which is provided in Appendix C) stating that additional information is needed from the applicant and specifying the information that is needed; designating a reasonable period of time for the applicant to provide the information; and informing the applicant that the failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated period of time. Should the applicant supply the requested information within the designated period of time, the creditor shall take action on the application in accordance with paragraph (a).

(3) At its option, a creditor may inform the applicant orally that additional information is needed, but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1).◀

[(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 subsection (a)(1).]

[(c)] ▶(d)◀ Oral notifications ▶by small-business creditors◀. ***

[(a)(3)] ▶(e)◀ Multiple applicants. ***

[(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.]

[(a)(4)] ▶(f)◀ Multiple 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.] ▶When an application on behalf of the applicant is made to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must

comply with this section, directly or through a third party. In the case of notification by a third party, the identity of each creditor taking adverse action shall be disclosed.◀

[(e)] ▶(g)◀ Failure of compliance. ***

10. Section 202.10 would be revised to read as follows:

SECTION 202.10 - FURNISHING OF CREDIT INFORMATION

▶(a) Designation of accounts. (1) New account. Upon establishing an account, a creditor that furnishes credit information shall designate the account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party).

(2) Existing account. Within 90 days after receipt of a written request, a creditor shall designate an account to reflect the participation of both spouses.

(b) Routine reports to consumer reporting agency. If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) Reporting in response to request. If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

(d) 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.◀

11. Section 202.12 would be amended by revising paragraphs (a) and (b)(1), (3) and (4), to read as follows:

SECTION 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 regulation, shall not constitute a violation [of the act or this part where] ▶if◀ such information was obtained:

(1) from any source prior to March 23, 1977; or

(2) [at any time] from consumer reporting agencies [; or (3) at any time from] ▶,◀ an applicant ▶,◀ or others without the specific request of the creditor; or

[(4)] ▶(3)◀ [at any time] as required to monitor compliance with the act and this regulation 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 ▶(or of incompleteness, under section 202.9(c))◀, the creditor shall retain as to that application in original form or a copy thereof:

(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 regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) * * *

(iii) * * *

* * * * *

(3) In addition to the requirements of paragraphs (b)(1) and (2), [any] ▶a◀ creditor [that] ▶shall retain information as required by those paragraphs if it◀ has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation▶, by the U.S. Attorney General or◀ by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or [that] ▶if it◀ has been served with notice of an action filed pursuant to section 706 of the act and [sections 202.1(b) or (c)] ▶section 202.14◀ of this regulation[,]▶. The creditor◀ shall retain the information [required in subsections (b)(1) and (2)] 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] ▶When a◀ creditor ▶receives an application but is◀ not required to comply with ▶the notification requirements of◀ section 202.9 ▶,◀ [(notifications)] ▶the creditor◀ shall retain for [the time period specified in subsection (b)] ▶25 months◀ all written or recorded information in its possession concerning the applicant, including [a] ▶any◀ notation of action taken [in connection with any adverse action].

* * * * *

12. Section 202.13 would be revised, to read as follows:

SECTION 202.13 - INFORMATION FOR MONITORING PURPOSES

▶(a) Information to be requested. (1) Any creditor that receives an application for credit primarily for the purchase, refinancing, repair or

improvement of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of any application for such credit the following information regarding the applicant(s):

(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) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium unit, cooperative unit and manufactured (mobile) home.

(b) Obtaining of information. Questions regarding race/national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor must then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) Disclosure to applicant(s). The creditor shall inform the applicant(s) in writing 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 statutes that prohibit creditors from discriminating against applicants on those bases. The written disclosure shall also inform the applicant(s) that the creditor is required to note the race/national origin and sex of the applicant(s) on the basis of visual observation or surname if the applicant(s) chooses not to provide the information. Sample disclosures are contained in Appendix B.

(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).◀

13. Section 202.14 would be added, to read as follows:

▶SECTION 202.14 - ENFORCEMENT, PENALTIES AND LIABILITIES

(a) Administrative enforcement. (1) As set forth more fully in section 704 of the act, administrative enforcement of the act and this regulation 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), National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

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

(b) Penalties and liabilities. (1) Sections 706(a) and (b) and 702(g) of the act provide that any creditor who fails to comply with any requirement imposed under the act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Liability for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief, and section 706(d) authorization for the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Sections 706(g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the act or this regulation, 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 regulation, the Attorney General may bring a civil action.◀

* * * * *

14. Appendix B would be amended by revising the introductory material and adding a sample disclosure entitled "Information for Government Monitoring Purposes," to read as follows:

APPENDIX B - MODEL APPLICATION FORMS

This appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecured transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property or occurring in community property states; and the fifth for use in secured residential real estate transactions. [The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.] ▶The appendix also contains a model disclosure for use in complying with the disclosure requirements of section 202.13 for certain dwelling-related loans.◀

The forms contained in this appendix are models; their use by creditors is optional. In all instances, the use or modification of these forms is governed by [section 202.5(e) of this Part and] the directions contained in this appendix.

▶If a creditor chooses to use the forms contained in this appendix it may change the forms:

(1) by asking for additional information not prohibited by section 202.5;

(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.◀

[In addition to deleting any information request printed on the forms or rearranging their format, as specified in section 202.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

(1) an inquiry about the names in which an applicant has previously received credit as authorized in section 202.5(c)(3);

(2) a request to designate a courtesy title as authorized in section 202.5(d)(3); or

(3) an inquiry about an applicant's permanent residence and United States immigration status as authorized by section 202.5(d)(5).]

▶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 and instructions contained in this appendix, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of section 202.5 of this regulation.◀

[The fifth form contained in this appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 Rev. 3/77 form, except for type face and the inclusion on the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form

FHLMC 65/FNMA 1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with paragraphs (c) and (d) of section 202.5 of this Part.]

* * * * *

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for a loan related to a dwelling in order to monitor the lender's compliance with equal credit opportunity and fair housing laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish the information, under federal regulations this lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please initial below.

BORROWER: I do not wish to furnish this information (initials) _____

RACE/ [] American Indian, Alaskan Native [] Asian, Pacific Islander

NATIONAL [] Black [] Hispanic [] White

ORIGIN [] Other (specify) _____

SEX [] FEMALE [] MALE

CO-BORROWER: I do not wish to furnish this information (initials) _____

RACE/ [] American Indian, Alaskan Native, [] Asian, Pacific Islander

NATIONAL [] Black [] Hispanic [] White

ORIGIN [] Other (specify) _____

SEX [] FEMALE [] MALE

15. Appendices C and D would be added, to read as follows:

APPENDIX C - SAMPLE NOTIFICATION FORMS

This appendix contains ten sample notification forms. The sample forms in C-1 through C-8 are intended for use in notifying an applicant that credit has been denied. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider.

If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only bank references (and disregard finance company references altogether); their statement of reasons should disclose "insufficient bank references" (not "insufficient credit references"). Similarly, a creditor that considers bank references and other credit references as separate factors should treat the two factors separately and disclose them as appropriate. The creditor should either add those other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of residence" rather than "too short a period of residence."

The sample forms in C-9 and C-10 are designed for use in notifying an applicant that their application is incomplete and is subject to denial or no further consideration if not completed. Use of these forms constitutes full compliance with paragraph (c) of section 202.9.

Appendix C

FORM C-1 -- NOTIFICATION OF ACTION TAKEN

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

PART I - PRINCIPAL REASONS(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

____Credit application incomplete

____Provided too few credit references

____Credit references are insufficient

____Unable to verify credit references

____Temporary or irregular employment

____Unable to verify employment

____Length of employment

____Amount of credit requested excessive for income

____Excessive obligations in relation to income

____Unable to verify income

____Length of residence

____Temporary residence

____Unable to verify residence

____No credit history

____Insufficient credit history

____Poor past credit performance with us

____Delinquent past or present credit obligations with others

____Garnishment, attachment, foreclosure, repossession, collection action, or judgment

____Bankruptcy

____Value or type of collateral not sufficent

____Other, specify:_____

FORM C-1, page 2

PART II - DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE. This section need only be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. The reporting agency that provided information played no part in the creditor's decision and is unable to supply specific reasons why credit was denied. You do, however, have a right to inspect and receive a copy of the information in your credit file at the consumer reporting agency, upon making a request.

Name: _____

_____

Address: _____

_____

Telephone number: _____

___ Our credit decision was based in whole or in part on 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, no later than 60 days after you receive this notice, for disclosure of the nature of the adverse information obtained from an outside source other than a consumer reporting agency.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

You should know that: [ADD ECOA NOTICE]

FORM C-2 -- NOTIFICATION OF ACTION TAKEN

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

PART I - PRINCIPAL REASON(S) FOR ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

____Offered down payment insufficient

____Provided us with insufficient bank references

____Appraised value of property insufficent

____Other, specify:_____

PART II - DISCLOSURE OF USE OF INFORMATION OBTAINED FROM OUTSIDE SOURCE.
This section need only be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

_____ In evaluating your application, we contacted the credit reporting agency listed below, and the information they provided affected our decision. You have a right to know the information they provided to us. To learn about this information, please contact:

Name _____
Address _____
_____
Telephone _____

_____ In evaluating your application, we obtained information about you from a person or business, and the information they provided affected our decision. You have a right to know the information provided to us by that person or business if you write to us and request it within 60 days. Please write to us at our office address.

[ADD ECOA NOTICE]

FORM C-3 -- NOTIFICATION OF ACTION TAKEN

Applicant's Name and Address Date

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/ an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

YOUR INCOME:

____ is below our minimum guidelines.
____ is insufficient to sustain payments on the amount of credit requested.
____ reveals that current obligations are excessive in relation to income.
____ could not be verified.

YOUR EMPLOYMENT:

____ length of employment is not sufficient to qualify at this time.
____ could not be verified.

YOUR CREDIT HISTORY:

____ history of making payments when due was not satisfactory.
____ could not be verified.

YOUR APPLICATION:

____ lacks sufficient credit references.

OTHER: _____

_____

The consumer credit reporting agency contacted that provided information which influenced our decision in whole or in part was [name, address and telephone number of the credit bureau]. Any questions regarding information contained on your consumer credit report should be directed to [credit bureau].

If you have any questions regarding this letter you should contact us at [creditor's name address and telephone number].

You should know that: [ADD ECOA NOTICE]

FORM C-4 -- STATEMENT OF DENIAL

Date

Dear Applicant:

Thank you for your request of June 14, 19XX for a loan in the amount of $9,500 to purchase a new automobile.

I regret that we cannot grant you the funds you requested. We require that loan customers have a satisfactory history of repaying previous debts in a timely fashion. Your credit report showed that you have not paid previous borrowings on time.

In considering your application we obtained a credit report from the XYZ Credit Bureau located at XXX Main Street, Anytown, Anystate, which affected our decision. Their telephone number is XXX-XXXX.

You should know that 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 (with certain limited exceptions), 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).

I regret that we could not be of service to you at this time.

Sincerely,

Credit Officer

FORM C-5 -- STATEMENT OF DENIAL AND COUNTEROFFER

Date

Dear Applicant:

We have received your application for credit. We are unable to offer you credit on the terms that you requested for the following reasons(s): _____ _____. We can, however, offer you credit on the following terms: _____. If this offer is acceptable to you, please notify us within [amount of time].

[Add FCRA disclosure, if applicable]

[ADD ECOA NOTICE]

FORM C-6 -- STATEMENT OF DENIAL AND COUNTEROFFER

Date

Dear Applicant:

Thank you for your application for a home improvement loan in the amount of $45,000.

I regret that we are unable to grant you the amount of credit you have requested. It is the policy of our firm to grant home improvement loans for a maximum term of 15 years and you have requested the loan for 20 years.

We would be pleased to make you the loan in the amount you requested for a term of 15 years at a rate of ____% which would require monthly payments of $_____ for 180 months. If you would like to accept this offer please notify us no later than _____.

You should know that the federal government prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age, or because they receive income from a public assistance program or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name of agency], XXX Street, Anytown, Anystate XXXXX, (XXX) XXX-XXXX.

We look forward to hearing from you by _____.

Sincerely,

Credit Officer

FORM C-7 -- STATEMENT OF REASONS FOR DENIAL (CREDIT SCORING)

Date

Dear Applicant:

Thank you for your recent application for _____. We regret that we are unable to approve your request.

Your application was processed by a credit scoring system which assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The areas in which you did not score well compared to other applicants were:

* Bank references
* Occupation
* Credit rating

In evaluating your application we obtained information from a credit reporting agency that in whole or in part influenced our decision. The credit reporting agency played no part in our decision other than providing us with credit information about you. You have a right to know the information provided to us. It can be obtained by contacting:

Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided 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).

FORM C-8 -- DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant:

Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open account/grant loan/increase credit limit] to you at this time.

If you would like a statement of specific reasons why your application was denied, please contact us within 60 days of the date of this letter. We will provide you with the reasons within 30 days after your request. Please contact us at:

Creditor's name
Creditor's address
Creditor's telephone number

If a consumer reporting agency was used in connection with your application, its name, address, and telephone number is shown below. You can find out about the information contained in your file (if one was used) by contacting:

Credit Bureau:

Phone:

Sincerely,

[ADD ECOA NOTICE]

FORM C-9 -- NOTICE REGARDING INCOMPLETENESS OF APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Date

Dear Applicant:

We have received your application for credit. The following information is needed to make a decision on your application: _____

_____

We need to receive this information by (date). If we do not receive it by that date, we will regrettably be unable to grant you the credit requested.

Sincerely,

Credit Officer

FORM C-10 -- NOTICE REGARDING INCOMPLETE APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Date

Dear Applicant:

Thank you for your application for a loan in the amount of $8,500 to purchase a new car.

In order to make a decision on whether we can grant you the amount you have requested we need some additional information about your income. Since you are self employed we would like to have copies of your tax returns for the past two years. As soon as we receive this information we will resume consideration of your request.

If we do not receive the information from you by _____, I regret we will be unable to grant you the loan on the basis of the current application.

Sincerely,

Credit Officer

▶APPENDIX D - ISSUANCE OF STAFF INTERPRETATIONS

Official Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.◀

16. Supplement I is revised and redesignated as Appendix E, to read as follows:

▶Appendix E - STATE EXEMPTIONS

Application

Any state may apply to the Board for a determination that a class of transactions subject to state law is exempt from the requirements of the act and this regulation. An application must be in writing and signed by the appropriate state official. It should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Supporting Documents -

An application should be accompanied by:

(1) The text of the state statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the state law with the corresponding provisions of the federal law.

(3) The text of the state statute or regulation that provides for civil and criminal liability and administrative enforcement of the state law.

(4) A statement of the provisions for enforcement, including an identification of the state office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate federal agencies to ensure adequate enforcement of state law in regard to such creditors.

(5) A statement of reasons to support the applicant's claim that an exemption should be granted.

Public Notice of Application

Notice of an application will be published, with an opportunity for public comment, in the Federal Register, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decison.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all applications made, including any documents and other material submitted in support of the application, will be made available for public inspection and copying. A copy of the application also will be made available at the Federal Reserve Bank of each District in which the applicant is situated.

Favorable Determination

If the Board determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the Federal Register, and a copy furnished to the applicant and to each federal official responsible for administrative enforcement.

The appropriate state official shall inform the Board within 30 days of any change in its relevant law or regulations. The official shall file with the Board such periodic reports as the Board may require.

The Board will inform the appropriate state official of any subsequent amendments to the federal law, regulation, interpretations, or enforcement policies that might require an amendment to state law, regulation, interpretations, or enforcement procedures.

Adverse Determination

If the Board makes an initial determination that an exemption should not be granted, the Board will afford the applicant a reasonable opportunity to

demonstrate further that an exemption is proper. If the Board ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the Federal Register and a copy furnished to the applicant.

Revocation of Exemption

The Board reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Before taking such action, the Board will notify the appropriate state official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Board ultimately finds that revocation is proper, notice of the Board's intention to revoke such exemption will be published in the Federal Register with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the Federal Register. A copy of such notice will be furnished to the appropriate state official and to the federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that state shall then be subject to the requirements of the federal law.◀

(6) Text of proposed official staff commentary. The proposed Official Staff Commentary on Regulation B (ECO-1, Supp. I to 12 CFR Part 202) reads as follows:

OFFICIAL STAFF COMMENTARY -- ECO-1

INTRODUCTION

1. Official status. Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve System. This commentary is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good faith compliance with this commentary affords protection under section 706(e).

2. Issuance of interpretations. Any person may request an official staff interpretation. Interpretations will be issued at the staff's discretion and incorporated in this commentary following publication for comment in the Federal Register. Official staff interpretations will be issued only by means of this commentary.

3. Status of previous interpretations. Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary, effective _____.

4. Comment designations. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 202.7(d) are further divided by subparagraph, such as comment 7(d)(3)-1 and 7(d)(3)-2.

SECTION 202.1--AUTHORITY, SCOPE, AND PURPOSE

1(a) Authority and scope

1. Scope. The Equal Credit Opportunity Act and Regulation B apply broadly to all credit -- commercial as well as personal -- without regard to the nature or type of the credit or creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Truth in Lending (Regulation Z). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Truth in Lending. Moreover, the act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

1(b) Purpose

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

SECTION 202.2--DEFINITIONS

2(c) Adverse action

Paragraph 2(c)(1)(ii)

1. Termination. When a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is "adverse action" for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under section 202.9.

2. Classification of accounts. Under the "classification of accounts" exception, a creditor that terminates an entire category of credit plans, such as all overdraft checking lines or an open-end credit card program, has not taken adverse action on the accounts terminated. But a creditor must give adverse action notices when the classification terminated is only a narrow group or subgroup of accounts. For example, if a creditor terminates revolving credit accounts that have low credit limits (e.g., under $400) but keeps open other accounts with higher credit limits, the creditor must comply with the adverse action notification provisions as to the accounts terminated.

Paragraph 2(c)(2)(ii)

1. Exercise of due-on-sale clauses. If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat both the mortgagor and the transferee as being in default. It does not have to give an adverse action notice to either party. (See commentary to section 202.2(e) for treatment of a purchaser who requests to assume the loan.)

Paragraph 2(c)(2)(iii)

1. Point-of-sale transactions. Denial of credit at the point of sale does not constitute adverse action except for circumstances that are specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

- A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.
- The amount of a transaction exceeds a cash advance or credit limit.
- The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.
- The card issuer's authorization facilities are not functioning.
- Billing statements have been returned to the creditor for lack of a forwarding address.

Paragraph 2(c)(2)(v)

1. Type of credit or credit plan. Denial of credit is not adverse action if the credit terms requested differ so much from a creditor's normal credit programs as to represent a type of credit or credit plan not offered by the creditor. For example:

- An applicant requests an open-end line of credit secured by equity in the applicant's home. The creditor makes equity loans but does not offer any open-end credit plan.

However, if the applicant requests a type of credit offered by the creditor but on terms that the creditor does not offer, the creditor's denial of the application is adverse action. For example:

- An applicant requests mortgage credit and requests a loan guarantee under a particular government program. Although the creditor does not participate in that particular guarantee program, it does make mortgage loans.

° An applicant requests residential mortgage credit and requests a graduated payment feature. Although the creditor does not offer a graduated payment program, it does make residential mortgage loans.

° An applicant requests an unsecured loan to buy a boat. Although the creditor requires that it receive a security interest in the boat, it does make boat loans.

The creditor's rejection of these applications requires notification under section 202.9(a)(1) and (2).

2(e) Applicant

1. Request to assume loan. If a mortgagor sells or transfers the property securing a mortgage loan and the buyer/transferee makes an application to the creditor to assume the mortgage loan, the creditor must treat the buyer/transferee as a new applicant.

2(f) Application

1. General. A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. "Procedures established." The term refers to the actual practices followed by a creditor for making credit decisions -- not just its formally stated application procedures. For example, if a creditor has a stated policy requiring all applications to be in writing on the creditor's application form, but does make credit decisions based on oral requests, that creditor takes both oral and written applications, and must act in accordance with section 202.9 for both types of applications.

3. When an inquiry becomes an application. A creditor is encouraged to provide consumers with information about loan terms. If, however, when giving information to the consumer the creditor also evaluates information about the applicant, determines to decline the request and communicates this to the applicant, it has treated the inquiry as an application and must then provide the applicant with the reasons for denial. Thus, whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the applicant says or asks, as illustrated below:

° If a consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan to value ratio, and debt to income ratio, no application has occurred. The employee has only given out information about the creditor's policies.

° If a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the down-payment, then gives the consumer the rate, no application has

occurred. The loan officer asked and used information about the transaction only to give the correct interest rate.

° If a consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended down-payment, but the loan officer only explains the creditor's loan to value ratio policy and other basic lending policies, no application has occurred. The loan officer has provided the consumer with information but has not told the consumer whether or not she qualifies for the loan.

° If a consumer calls to ask about terms for a loan to purchase vacant land and states his income, the sale price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explains that he would need to look at all of the applicant's qualifications before making a decision and offers to send an application form to the consumer, no application has occurred. However, should the employee instead explain to the caller that

his stated income is not sufficient to qualify for the loan amount he is requesting, an application has occurred. The employee has made a credit decision and communicated it to the consumer. The employee should then explain to the consumer that the loan cannot be approved because of the debt to income ratio and offer to send the consumer a written notice of denial if the consumer wishes to receive it.

4. Completed application -- diligence requirement. The regulation defines completed application in terms that give a creditor the latitude to establish its own information requirements, but the creditor must act with diligence to collect any information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly.

2(j) Credit

1. General. Regulation B covers a wider range of credit transactions than Regulation Z because the definition of credit is broader than the definition of credit in Regulation Z (Truth in Lending). For purposes of Regulation B a transaction is credit if there is a right to defer payment of a debt -- regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge. There is no numerical test as in the case of Regulation Z.

2(l) Creditor

1. Officers and employees. The term "creditor" includes employees or officers of the creditor who regularly participate in deciding whether to extend credit.

Such individuals can be held personally liable for violations of the act or regulation.

2. Assignees. The term "creditor" includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether it will purchase the obligation if the transaction is consummated. The term also includes a purchaser who makes its credit criteria known to the credit originator.

3. Referrals to creditors. For certain purposes, the term "creditor" includes persons such as real estate brokers who do not participate in credit decisions but who regularly refer applicants to creditors, or who select or offer to select creditors to whom credit requests can be made. These persons need comply only with section 202.4, the general rule prohibiting discrimination, and with section 202.5(a) on discouraging applications.

2(p) Empirically derived and other credit systems

1. Purpose of definition. The definition under section 202.2(p)(2) sets forth the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems, and may consider age only for the purpose of determining a "pertinent element of creditworthiness." Either system may favor an elderly applicant. (See section 202.6(b)(2).)

2. Periodic revalidation. The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system should be revalidated frequently enough to assure that it continues to meet recognized professional statistical standards.

2(z) Prohibited basis

1. Persons related to applicant. "Prohibited basis" as used in this regulation refers to the race, color, religion, national origin, sex, marital status, or age of an applicant (or officers of an applicant in the case of a corporation). The term also refers to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in section 202.4, a creditor may not discriminate against an applicant because of that person's business dealings with members of a certain religion, because of the national origin of persons to whom the extension of credit relates (e.g., the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. National origin. A creditor may not refuse to grant credit because an applicant comes from a particular country, but may take the applicant's immigration status into account. (See the commentary to section 202.6(b)(7).) A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or governments) of certain countries, or imposing limitations regarding credit extended for their use. Regulation B does not directly address whether a creditor could deny credit on the grounds

that the applicant is not a United States citizen, but such a policy could violate 42 U.S.C. § 1981 (Civil Rights Act of 1866).

3. Public assistance program. Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is "public assistance" for purposes of the regulation. 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. Only physicians, hospitals, and others to whom the benefits are payable must consider Medicare and Medicaid as public assistance income.

SECTION 202.3--LIMITED EXCEPTIONS FOR CERTAIN CLASSES OF TRANSACTIONS

1. Scope. The reduction in requirements provided in this section relieves burdens on several types of credit for which full application of the procedural requirements would be inappropriate. All classes of transactions remain subject to the general rule against discrimination on a prohibited basis, and any other provision not specifically excepted.

3(a) Public utilities credit

1. Definition. This definition applies only to credit for the purchase of the utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose -- for financing the purchase of durable goods, such as a gas dryer or telephone equipment, or for home improvements such as insulation -- is not exempt.

2. Security deposits. A utility company is a creditor if it supplies utility service and bills the user after the service has been provided. Hence a requirement for a security deposit, for example, is a credit term subject to the regulation.

3(c) Incidental credit

1. Examples. If a service provider (such as a hospital, doctor, lawyer or small retailer) allows the client or customer to defer the payment of a bill, this deferral of a debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are exempt from compliance with many of the procedural requirements of the regulation.

3(d) Business credit

1. Definition. The test for deciding whether a transaction qualifies as business credit is one of primary purpose. If it is not clear that a transaction is primarily for business, commercial, or agricultural purposes, then the transaction does not qualify under this section. For example, credit for the purchase or

improvement of rental property may not be business credit unless it is clear that the applicant is in the business of dealing in rental property. Similarly, an open-end credit account used for both personal and business purposes should not be treated as business credit unless the predominant purpose of the account is business-related.

Paragraph 3(d)(3)

1. Notification. A creditor must in all cases notify the business credit applicant of a credit denial or other adverse action. This notification may be written or oral, but it must be given within a reasonable time after the decision is made.

3(e) Governmental credit

1. Credit to governments. The exception relates to credit extended to (not by) governmental entities. For example, credit extended by a creditor in the private sector to a local government is covered by this exception, but credit extended by a federal or state housing agency to consumers does not qualify for special treatment under this category.

SECTION 202.4--GENERAL RULE PROHIBITING DISCRIMINATION

1. Scope of section. Other provisions of the regulation identify specific practices that are expressly prohibited by the act or that are impermissible because they could result in credit discrimination on a basis prohibited by the act. The general rule stated in this section covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. It covers, for example: application procedures, criteria used to evaluate creditworthiness, communications with the applicant, administration of accounts, and treatment of delinquent or slow accounts. Thus, a credit practice that differentiates among applicants on a prohibited basis violates the act because it violates the general rule set forth in this section -- even though the practice is not specifically prohibited in the regulation.

SECTION 202.5--RULES CONCERNING TAKING OF APPLICATIONS

5(a) Discouraging applications

1. Potential applicants. Generally, the regulation's protections apply only to applicants, persons who have requested or received an extension of credit. In keeping with the purpose of the act -- to require that a creditor not discriminate on a prohibited basis in making credit equally available to all creditworthy persons -- section 202.5(a) covers certain acts or practices directed at potential applicants. It bars the creditor from an act or practice that would discourage someone, on a prohibited basis, from applying for credit.

Examples of practices prohibited by this section include:

- A statement that the applicant shouldn't bother to apply, after the applicant states that he is retired.
- A pattern of using advertisements illustrated with people of only one race in a community that is multi-racial.
- Use of phrases or symbols that are known to exclude or offend a particular racial or ethnic group.

2. Affirmative advertising. A creditor may affirmatively solicit or encourage members of protected groups to apply for credit, especially groups that might not normally seek credit from that creditor.

5(b) General rules concerning requests for information

Paragraph 5(b)(1)

1. Requests for information. This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

5(d) Information a creditor may not request

Paragraph 5(d)(1)

1. Indirect disclosure of prohibited information. The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

- The applicant's obligation to pay alimony, child support, or separate maintenance.
- The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.
- Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.
- The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2)

1. Appropriate disclosure. The sample application forms in Appendix B to the regulation illustrate how a creditor can inform applicants of their right not to disclose alimony, child support, or separate maintenance income.

2. Specific inquiry about income. When it inquires about income, a creditor need not give the disclosure about alimony and the like if the inquiry is worded in a way that would not lead the applicant unintentionally to disclose alimony, child support or separate maintenance payments. For example, an

inquiry asking the applicant to list specific types of income such as salary, wages, or investment income need not be prefaced by the disclosure. But if the application form asks for salary or wages, the creditor should also provide space for the applicant to report income from other sources.

5(e) Application forms

1. Requirement for written applications. The requirement of written applications for certain types of dwelling-related loans specified in section 202.13 is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. A creditor will satisfy the requirement for taking written applications by writing down the information that it normally considers in making a credit decision. Model application forms are provided in Appendix B, although use of a form is not required.

2. Telephone applications. A creditor who accepts applications by telephone for dwelling-related credit covered by section 202.13 can meet the requirements for written applications by writing down the information that is provided orally by the applicant. The creditor should also note on the form or other application record that the application was received by telephone.

SECTION 202.6--RULES CONCERNING EVALUATION OF APPLICATIONS

6(a) General rule concerning use of information

1. Scope of rule. When evaluating an application for credit, a creditor may generally use or consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by section 202.5 from obtaining. There are certain limited exceptions for considering age, under section 202.6(b)(2), and other exceptions for special purpose credit, under section 202.8.

2. Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964. Congress intended this doctrine to be applicable to a creditor's determination of creditworthiness. This Congressional intent is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5. Thus, the act and regulation prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a protected class, even though the creditor has no intent to discriminate, and even though the practice appears neutral on its face. The fact that a credit standard has a disproportionately negative impact on a prohibited basis does not make it necessarily unlawful if use of the standard meets a legitimate business need that cannot be achieved by means that are less disparate. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. So long as there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, use of the income standard will likely be permissible. However, to lessen the potential negative impact on

protected groups, a creditor might make adjustments that will still serve its business purposes, for example, by establishing a lower credit limit for those with lower incomes.

6(b) Specific rules concerning use of information

Paragraph 6(b)(1)

1. Prohibited basis -- marital status. A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

2. Prohibited basis -- special purpose credit. A creditor may in some cases consider a "prohibited basis" to determine whether the applicant possesses the characteristic needed for eligibility in a special-purpose credit program.

(See section 202.8.)

Paragraph 6(b)(2)

1. Favoring the elderly. In any system of evaluating creditworthiness, a creditor may take age into account for the purpose of favoring a credit applicant who is age 62 or older.

2. Consideration of age in a credit scoring system. Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in section 202.2(p), with one limitation: an applicant who is 62 years or older must be treated at least as favorably as anyone who is under age 62.

3. Consideration of age in a judgmental system. Any credit scoring system that does not meet the definition in section 202.2(p)(2) is a judgmental system. In a judgmental system, a creditor may not take age directly into account in any aspect of the credit transaction. For example, a creditor may not reject an application or terminate an account because the applicant is approaching age 60, nor base the number of years for maturity of a mortgage on whether the applicant is 35 or 55 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. For example:

- A creditor may take into account information such as the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

- A creditor may consider age to ascertain the adequacy of any security offered when the term of the credit extension exceeds the life

expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30 year mortgage loan, but might qualify with a larger downpayment or a shorter loan maturity.)

- A creditor may consider an applicant's age to assess the significance of the applicant's length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-time residence).

4. Use of a combined system. A creditor that uses a credit scoring system that qualifies under section 202.2(p) may also consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not affect the classification of the credit scoring system as "demonstrably and statistically sound." However, in the judgmental evaluation, the creditor may consider age only for the purpose of determining a "pertinent element of creditworthiness."

5. Consideration of public assistance. When considering income derived from a public assistance program, a creditor may take into account, for example:

- The length of time an applicant will likely remain eligible to receive such income.

- Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (e.g., Aid to Families with Dependent Children or Social Security payments to a minor).

- Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. Consideration of individual applicant. Certain types of income -- such as income derived from part-time employment, alimony, child support or separate maintenance, retirement benefits, or public assistance -- must be evaluated on an individual basis, not based on aggregate statistics. A creditor must assess the reliability or unreliability of an applicant's income on the applicant's actual history, not on statistical measures derived from a group.

2. Payments consistently made. In determining the likelihood of consistent payments of alimony, child support or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available to the creditor.

3. Consideration of income. There are several acceptable methods for considering income, whether in a credit scoring or a judgmental system:

- A creditor can score or consider the amount of all income stated by the applicant without taking steps to evaluate the income.
- A creditor can evaluate each component of the applicant's income, and then score or consider reliable income separately from income that is not reliable, or the creditor may disregard a portion of income to the extent that it is not reliable before aggregating it with reliable income.
- A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income not evaluated.

In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income.

4. Part-time employment, sources of income. A creditor may take into account the fact that an applicant has more than one source of earned income -- a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently from earned income from a primary source. However, the creditor may not score or otherwise take into account the number of sources with respect to income from protected sources, e.g., retirement income, social security, alimony. Nor may the creditor treat negatively the fact that an applicant's only source of earned income is derived from a part-time job.

Paragraph 6(b)(6)

1. Types of credit references. A creditor has the latitude to set reasonable restrictions on the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, a creditor may not refuse to consider credit information solely because it is from another creditor (such as a credit union that does not regularly report credit history) rather than from a credit bureau. If a creditor denies an application because the applicant's credit references are not among the types that the creditor accepts, the statement of reasons given to the applicant must be specific on this point. (See the commentary to section 202.9.)

Paragragh 6(b)(7)

1. National origin -- immigration status. The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-term resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

SECTION 202.7--RULES CONCERNING EXTENSIONS OF CREDIT

7(a) Individual accounts

1. Open-end credit -- authorized user. A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation by the account holder of an authorized user on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis.

2. Open-end credit -- choice of authorized user. A creditor that permits an account holder to designate an authorized user may not restrict this designation based on relationships that discriminate on a prohibited basis. For example, if the creditor accepts the designation of an applicant's spouse as an authorized user, it may not refuse to accept a non-spouse as an authorized user.

3. Overdraft authority on transaction accounts. If a transaction account includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the account assume liability for any overdraft.

7(b) Designation of name

1. Single name on account. A creditor may require that joint applicants on an open-end account designate a single name for purposes of administering the account and that a single name be embossed on the credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See section 202.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) Action concerning existing open-end accounts

Paragraph 7(c)(1)

1. Termination coincidental with marital status change. When there is a change in an account holder's marital status, a creditor generally may not terminate an account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in the account holder's marital status, when one or both spouses:

- Repudiate responsibility for future charges on the account.
- Request separate accounts in their own names.
- Request that the account be closed.

Paragraph 7(c)(2)

1. Procedure pending reapplication. A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if the credit was based on the qualifications of an applicant who is no longer available to support the credit. The creditor may specify a reasonable time period within which the consumer must submit the required information. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may terminate, suspend, or otherwise restrict access to a contractually liable party only as permitted by section 202.7(c)(1).

2. Updating information. A creditor may periodically request updated information from applicants, but may not use events related to a prohibited basis -- such as an applicant's retirement or change in name, marital status, or age -- to make such a request.

7(d) Signature of spouse or other person

1. Qualified applicant. The signature rules assure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. Unqualified applicant. When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like -- but cannot require that it be the spouse. (See commentary to section 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

1. Joint applicant. The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to a person whose signature is required by a creditor as a condition for granting credit under section 202.7(d)(5).

Paragraph 7(d)(2)

1. Jointly owned property. In determining the value of the applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition and the cost of such action. If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit. For example:

- Offering the signature of the co-owner of the property on an instrument to assure access to the property, but not to impose personal liability.

- Requiring an additional party under section 202.7(d)(5).
- Offering to grant the applicant's request on a secured credit basis.

Paragraph 7(d)(3)

1. Permissible questions. In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may:

- Assume that the applicant is a resident of the state, unless the applicant indicates otherwise.
- Ask the applicant's marital status.
- Obtain any information about the spouse of an applicant that may be requested about an applicant.

2. Consideration of community income. Under the equal management laws of some community property states each spouse, acting alone, may have the power to manage and control all of the community property, including the earnings of the other spouse. In such a state, if one spouse requests unsecured credit relying on the nonapplicant's earnings, a creditor must treat the income as community property. It may not require the signature of the nonapplicant spouse on the application, note, or other credit instrument.

Paragraph 7(d)(4)

1. Creation of enforceable lien. Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. Need for signature -- reasonable belief. Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to assure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. Integrated instruments. When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to perfect the security. But the spouse could be asked to sign an integrated instrument which

makes clear that the spouse's signature is only to perfect security and that signing the instrument does not impose personal liability. For example, a legend placed next to the spouse's signature could make clear that the signature is only to perfect security and does not impose personal liability.

Paragraph 7(d)(5)

1. Qualifications of cosigners. In establishing guidelines for eligibility of cosigners, a creditor may restrict the applicant's choice of cosigners but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the cosigner live in the creditor's market area, but not that the spouse be the cosigner.

2. Income of another person. An applicant who requests individual credit relying on the income of another person (such as a spouse) may be required to provide the signature of that other person to make the income available to pay the debt. In community property states, the signature may be required if the applicant relies on the separate income of another person, i.e., income or other property that, as a matter of state law, is not community property.

3. Renewals. When a fixed-term credit obligation is renewed, a creditor may not carry forward, or continue to require, the signature of a cosigner or other additional party unless the creditor determines the applicant's creditworthiness at renewal continues to warrant an additional party.

Paragraph 7(d)(6)

1. Guarantees. A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. The rules contained in section 202.7(d) bar a creditor from requiring the signature of a guarantor's spouse in the same way that they bar the creditor from requiring the signature of an applicant's spouse. For example, when all officers of a closely held corporation are required to personally guarantee a corporate loan, an officer who is married may not be required to provide the signature of the spouse if no additional signatures would be sought from an unmarried officer.

7(e) Insurance

1. Differentiation. 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 does not violate Regulation B.

2. Insurance information. A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

SECTION 202.8--SPECIAL PURPOSE CREDIT PROGRAMS

8(a) Standards for programs

1. Determining qualified programs. The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an "economically disadvantaged class of persons." The agency or creditor administering or offering a loan program must make these decisions regarding the status of its program.

2. Compliance with program authorized by federal or state law. A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by the administering government agency implementing a special-purpose credit program under section 202.8(a)(1). The responsibility lies with the administering agency to promulgate a regulation that is consistent with applicable federal and state law.

3. Expressly authorized. A credit program expressly authorized by federal or state law includes programs authorized by federal, state or local statute, regulation or ordinance, or by judicial or administrative order.

8(b) Rules in other sections

1. Applicability of rules. A creditor that denies an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must still notify the applicant of action taken as required in section 202.9.

8(c) Special rule concerning requests and use of information

1. Examples. Examples of programs under which the creditor can ask for and consider information related to a prohibited basis are:

- Energy conservation improvements credit programs for the elderly, for which the creditor must consider the applicant's age.
- Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must ask and consider the applicant's minority status.

8(d) Special rule in the case of financial need

1. Examples. Examples of programs in which financial need is a criterion are:

- Housing subsidy programs for low to moderate income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's income, etc.

- Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's financial resources.

2. Student loans. In a guaranteed student loan program, a creditor may obtain the signature of a parent as guarantor when it is required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See sections 202.7(d)(1) and (5).) A signature may not be required when a student has a work or credit history that satisfies the creditor's standards.

SECTION 202.9--NOTIFICATIONS

1. Withdrawn applications. If an applicant expressly withdraws a credit application, the creditor is relieved of the notification requirements under section 202.9. The creditor must, however, comply with the record retention requirements of the regulation. (See section 202.12(b)(4).)

2. Form of notice. The information for notifications required under section 202.9 may appear on either or both sides of a paper if there is a clear reference on the front to any information on the back.

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

Paragraph 9(a)(1)

1. Timing. Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision.

2. Notification of action. Notification occurs when a creditor delivers or mails a notification to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

3. Notification of approval. Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement if it gives the applicant the credit card, money, property, or services requested.

4. Incomplete application. A creditor that receives an application that is incomplete, but that contains sufficient information on which to base a credit decision, may deny the application and notify the applicant of the denial in accordance with section 202.9(a)(1). It need not follow the alternative notice procedure contained in section 202.9(c).

5. Timing of counteroffer. A creditor must notify an applicant of a counteroffer within 30 days of receiving a completed application.

6. Counteroffers. Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or for any particular length of time.

7. Counteroffer -- combined notice. A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with section 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer.

9(b) Form of ECOA notice and statement of specific reasons

Paragraph 9(b)(1)

1. Substantially similar notice. The ECOA notice sent with a notification of a credit denial will comply with the regulation if it is "substantially similar" to the notice contained in section 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems. In addition, a creditor may include as part of the notice a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. Number of specific reasons. A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. Source of specific reasons. The specific reasons disclosed under section 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. Specificity of reason. Creditors need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

4. Credit scoring system. If a creditor bases the denial on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was considered may be excluded from disclosure. The creditor must disclose reasons actually considered (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. Judgmental system. If a creditor uses a judgmental system, the reasons for the denial must relate to those factors in the applicant's record actually reviewed by the person making the decision.

6. Combined credit scoring/judgmental system. If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors actually scored in the system. If the application passes the credit scoring

stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally.

7. Automatic denial. Some credit decision methods contain features that call for automatic denial because one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor) cannot be offset by other information about the applicant. When a creditor denies the credit request because of an automatic factor, the creditor must disclose that specific factor.

8. Credit scoring -- method for selecting reasons. The regulation does not require that any one method be used for selecting reasons for a credit denial that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

9. Combined ECOA-FCRA disclosures. Sample forms C-1 through C-8 of Appendix C provide for two disclosures, one under the ECOA and the other under the Fair Credit Reporting Act (FCRA). The ECOA requires disclosure of the principal reasons for denying an application for an extension of credit. The FCRA requires that when a creditor has based a decision in whole or in part on information from a source other than the applicant or the creditor, that fact must be disclosed. Disclosing that a credit report was obtained and used to deny the application -- the disclosure under FCRA -- does not satisfy the requirement under the ECOA for disclosure of specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy section 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. To satisfy the FCRA requirement, the creditor must also disclose that a credit report was obtained and used to deny credit.

9(c) Incomplete applications

Paragraph 9(c)(2)

1. Reapplication. If the information requested is submitted after the expiration of the time period designated by a creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. Oral inquiries for additional information. If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30 day period specified in section 202.9(c)(1) and (c)(2). If the applicant does provide the information, the creditor shall take action on the application pursuant to section 202.9(a).

9(f) Multiple creditors

1. Third-party notice -- content. If a single adverse action notice is being provided to an applicant on behalf of several creditors, and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

2. Inadvertent error. When a notice is to be provided through a third party, a creditor is not liable for any act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adopted to prevent such violations.

SECTION 202.10--FURNISHING OF CREDIT INFORMATION

1. Scope. The requirements of section 202.10 for designating and reporting credit information apply only to creditors that furnish credit information to credit bureaus or to other creditors. There is no requirement for a creditor to engage in such reporting.

2. Reporting on all accounts. The requirements of section 202.10 apply only to accounts held or used by spouses. However, a creditor has the option of designating all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. Designating accounts. In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. File and index systems. The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by section 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name. A creditor may establish whatever system will enable its employees to locate the credit file.

10(a) Designation of accounts

1. New parties. If a creditor learns that new parties who are spouses have permanently undertaken payment on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties, and should furnish subsequent credit information on the account in the new names.

2. Request to change designation of account. A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

SECTION 202.12 -- RECORD RETENTION

12(a) Retention of prohibited information

1. Use of retained information. Although a creditor may retain information as provided in section 202.12(a), its use of the information remains subject to the limitations of section 202.6.

12(b) Preservation of records

1. Copies. A copy of the original record includes carbon copies, photo copies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer.

2. Computerized decisions. A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with section 202.12(b) by retaining the information actually entered. It need not store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to section 202.13, however, the creditor is required to retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(4)

1. Withdrawn and brokered applications. In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. In such cases, the 25-month requirement runs from the date of application, as when:

- An application is withdrawn by the applicant.
- An application was submitted to more than one creditor on behalf of the applicant, and the application was approved by one of the other creditors.

12(c) Failure of compliance

1. Inadvertent errors. Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not a bona fide error under the regulation.

SECTION 202.13 - INFORMATION REQUESTS FOR DWELLING-RELATED LOANS

13(a) Information to be requested

1. Natural person. The requirements of section 202.13 apply only to applications from natural persons.

2. Principal residence. The requirements of section 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to-four unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. New principal residence. A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of section 202.13.

4. Temporary financing. An application for temporary financing to construct a dwelling is not subject to section 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to section 202.13.

5. Loan purpose. Only loans made for the purposes stated in section 202.13 are covered. For example:

- A loan to finance school expenses is not for a covered purpose even though it is secured by the applicant's principal residence.
- A loan to finance an addition to the applicant's principal residence, and secured by it, to be used as a business office, is for a covered purpose since it is for an improvement to the dwelling.
- A loan to finance both an addition to the applicant's principal residence and a family vacation is not for a covered purpose if the primary purpose of the loan is the vacation.

A creditor may rely on the statement of the applicant about the primary purpose of the loan to determine coverage.

6. Open-end home equity loans. An application for an open-end line of credit based upon the borrower's equity in a principal residence and secured by that dwelling is not subject to section 202.13.

7. Refinancings. An application submitted to the original creditor to change the terms and conditions of an existing extension of credit is not subject to section 202.13 if the monitoring information was obtained on the original application for credit or subsequent financing. However, section 202.13 does cover an application for refinancing that is made to other than the original creditor.

13(b) Method of obtaining information

1. Forms for collecting data. A creditor may collect the information specified in section 202.13(a) either on an application form or on a separate form referring to the application.

2. Written applications. The regulation requires written applications for the types of credit covered by section 202.13. (See the commentary to section 202.5(e).)

3. Telephone, mail applications. If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

- A creditor that accepts applications by telephone does not have to request the monitoring information in the course of the telephone conversation.

- A creditor that accepts applications by mail does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

However, if the applicant later appears in person at the creditor's place of business to complete the processing of the application or to close the loan, the creditor should seek and note the information at that time. (See commentary to section 202.5(e).)

4. Applications through loan shopping services. When a creditor accepts applications through an unaffiliated loan shopping service, that application is not subject to the requirements of section 202.13. (See commentary to section 202.2(e).)

5. Inadvertent notations. If a creditor inadvertently obtains the monitoring information in a transaction not covered by section 202.13, the creditor may act on and retain the application without violating the regulation. (See section 202.12(a).)

13(c) Disclosure to applicant(s)

1. Procedures for providing disclosures. The disclosures to an applicant regarding the monitoring information must be provided in writing. Appendix B contains a sample disclosure. However, a creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information.

By order of the Board of Governors of the Federal Reserve System, March 7, 1985.

(signed) William W. Wiles
William W. Wiles
Secretary of the Board