

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **9961**
December 2, 1985]

EQUAL CREDIT OPPORTUNITY
— Revision of Regulation B
— Official Staff Commentary on Regulation B

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

The following statement has been issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has issued final revisions to its Regulation B — Equal Credit Opportunity — that will assist creditor compliance and increase protection for credit applicants. The final revisions will become effective December 16, 1985, but creditors may continue to comply with the Board's current regulation until October 1, 1986.

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 unneeded provisions. The revisions to Regulation B include:

- procedures for dealing with incomplete applications and a broader selection of sample forms for informing applicants of the reasons for credit denial.
- changes in the data notation requirements applicable to dwelling-related mortgage loan applications.
- changes in the definition of applicant to give guarantors legal standing in the courts when there is an alleged violation of the regulation's signature provisions.

The major portions of the existing regulatory provisions remain virtually unchanged.

The Board is also publishing an official staff commentary to interpret the revised Regulation B.

Enclosed — for depository institutions in this District — is the text of the Board's revision of Regulation B, including the Official Staff Commentary on that regulation, which has been reprinted from the *Federal Register* of November 20, 1985. The regulation and the commentary are effective December 16, 1985. Additional copies will be furnished upon request directed to our Circulars Division (Tel. No. 212-791-5216).

The revised Regulation B pamphlet will be sent to all those on our lists maintaining sets of regulations as soon as it is available. Questions regarding the regulation or the commentary may be directed to our Regulations Division (Tel. No. 212-791-5914).

E. GERALD CORRIGAN,
President.

FRASER
FEDERAL RESERVE

**Wednesday
November 20, 1985**

Part IV

**Federal Reserve
System**

**12 CFR Parts 202 and 202a
Equal Credit Opportunity; Revision of
Regulation B; Official Staff Commentary;
Final Rule**

[Enc. Cir. No. 9961]

FEDERAL RESERVE SYSTEM**12 CFR Parts 202 and 202a****[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:** Final rule and final official staff interpretation.

SUMMARY: The Board is issuing a final rule revising Regulation B, its regulation implementing the Equal Credit Opportunity Act (ECOA). This rule results from the Board's review of Regulation B pursuant to its policy of periodically reviewing all of its regulations. The Board 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 also considered whether the regulation could more effectively carry out the purposes of the act. The Board has made changes in the data notation requirements applicable to dwelling-related mortgage loan applications, and in the definition of "applicant" to give guarantors legal standing in the courts when there is an alleged violation of the signature provisions of the act or the regulation. In light of renewed concern about availability of business credit to women and members of minority groups, the Board considered (but deferred a decision on) revising the rules applicable to business credit transactions; the Board will monitor developments in this area, and if it appears that regulatory changes are needed, the Board will take appropriate action. The Board also considered but did not revise the regulation to cover consumer leasing under the ECOA. The Board has updated some provisions of the regulation and revised others to facilitate creditor compliance. The revisions include streamlined procedures for dealing with incomplete applications and a broader selection of sample forms for informing applicants of the action taken on applications. The major portions of the existing regulatory provisions remain virtually unchanged.

The Board is also publishing an economic impact analysis and an official staff commentary. The commentary interprets the requirements of revised Regulation B—incorporating prior Board and staff interpretations. Good-faith compliance with the commentary affords creditors protection

from civil liability under section 706(e) of the ECOA.

EFFECTIVE DATE: Effective December 16, 1985, Part 202 is redesignated as Part 202a (Part 202a will be removed on October 1, 1986).

A new Part 202 is added to be effective on December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Regarding the regulatory amendments and official staff commentary, John C. Wood (Senior Attorney), 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, DC 20551 (202-452-2412); regarding the economic impact statement, 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, DC 20551 (202-452-2910); or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202-452-3244).

SUPPLEMENTARY INFORMATION: (1) *Introduction.* In keeping with its policy of reviewing all of its regulations periodically, the Board published a notice of intent to review Regulation B on June 21, 1983 (48FR 28285). On March 18, 1985, the Board published proposed revisions to Regulation B (50 FR 10890), and has now adopted a revised regulation in final form. The revised regulation and official staff commentary will become effective December 16, 1985. However, creditors have the option of continuing to comply with the Board's current regulation and existing interpretations, which remain in effect, until October 1, 1986.

Several new rules may require operational changes:

- Applications subject to data notation requirements under section 202.13 will have to be in writing and creditors will be required to note the applicant's sex and race or national origin by visual observation or surname for applicants who do not voluntarily provide that information.

- Under the new rules for incomplete applications, a creditor may act on the application and notify the applicant of the action taken in accordance with § 202.9(a) or, alternatively, may notify the applicant in writing that additional information is needed, under new § 202.9(c). The written notice of incompleteness must specify what information is needed and designate a reasonable time period for the applicant to provide the information.

- Under the rules for record retention, a creditor will be required to maintain

records for 25 months or withdrawn applications as well as on incomplete applications.

Other revisions, though substantive, will not require changes in operational procedures:

- The revised definition of applicant gives legal standing to guarantors and like parties (enabling them to sue for violations of the regulation's signature rules) but imposes no new requirements on creditors.

- The Board has redefined the criteria that a credit scoring system must meet to qualify as "demonstrably and statistically sound" in order to use the applicant's age as a factor. The change makes clear that the criteria can be met by "decision tree" and other systems, but does not affect the standing of systems that meet the current criteria.

The aforementioned rules and other regulatory changes are discussed in detail below.

(2) *Background.* The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), signed into law in 1974, makes 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 rulewriting 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 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, to ensure the participation of interested parties early in the review. Based upon its own internal analysis and public comments received, as well as information from other sources, the Board proposed a revised version of Regulation B in March 1985. The Board received 166 comments on that proposal from creditors, Federal Reserve Banks, federal and state agencies, trade

associations, consumer groups, and others.

The Board believes, on the basis of the 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 problems. 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.

In light of the indications that major revisions are not needed, the Board's revisions leave most of the regulatory provisions substantially unchanged. This is in contrast to the extensive changes made when the Board engaged in similar reviews 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 have no major problems in complying with Regulation B. Many creditors may find burdensome the notification requirements applicable to credit denials and other adverse action, but these provisions are drawn directly from the statute. Some creditors asked the Board to provide clarification on various points; others believe that the regulation is working effectively and encouraged the Board to leave 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.

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 effectively facilitate creditor compliance. Accordingly, an official staff commentary has been prepared. The commentary provides needed guidance in a less formal manner than the regulation. It is discussed further in section (5) of this notice; the commentary text follows the regulatory text set forth in section (7).

The revised 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 the official 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. The substance of all but two of the 19 footnotes contained in the current regulation has been moved to the official staff commentary, making the regulation itself less cumbersome to use.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, the revisions to Regulation B that pertain to third-party disclosures were approved under authority delegated to the Board by the Office of Management and Budget.

An economic impact statement, required by section 604 of the Regulatory Flexibility Act (5 U.S.C. 604), appears in section (6) below.

(3) *Treatment of business credit and consumer leasing.* Two areas that received special attention in the review of Regulation B (although no changes resulted) deserve mention: the treatment accorded to business credit transactions and coverage of consumer leases under Regulation B.

The Board considered whether any changes might be appropriate in the rules applicable to business credit under the regulation, in light of renewed public and congressional concern about the availability of credit to businesses owned by women and members of minority groups. The ECOA and Regulation B apply to all credit transactions, including business credit. Regulation B modifies the rules applicable to business credit transactions, relieving creditors from some of the more technical procedural requirements of the regulation. These exceptions do not, however, affect the basic ECOA protections against discrimination. For example, a creditor may not take the business applicant's

marital status into account, and may not request information about a married applicant's spouse except when the spouse has some connection to the business. A creditor must comply with rules that prohibit requiring the spouse to guarantee the loan. Women and other business credit applicants are entitled to notice of the action taken and, upon request, to a written statement of the reasons for a denial. They have the right to ask the creditor to retain records for the full 25-month period applicable in consumer credit transactions.

The Board believes that these provisions should fully protect women and members of minority groups against unlawful discrimination in business credit transactions, but has not ruled out changing the regulation to increase protections. In particular, the Board discussed whether the rules should be modified to require creditors to give business applicants who are denied credit a written notice of their right to receive a statement of reasons for the denial. Modifying the business credit rules would require new rulemaking, however, since the Board's March 1985 proposal did not contain proposed changes to these rules. The Board has deferred a decision on whether to initiate such rulemaking. In the meantime, the Board is developing an educational pamphlet on the application of the ECOA and Regulation B to business credit transactions for distribution to business owners through government agencies, women's groups, and other organizations. Better informing women and minority business owners about their rights under the law could be an effective way to assist them in enforcing those rights, and less costly than subjecting business credit fully to the rules applicable in consumer credit transactions. The Board will monitor developments in this area, and if it appears that the regulatory changes are needed, the Board will take appropriate action.

In the review of Regulation B, the Board also addressed the issue of whether to establish a uniform rule extending ECOA coverage to consumer leases. In *Brothers v. First Leasing*, 724 F.2d 789 (9th Cir.), cert. denied, 105 S. Ct. 121 (1984), the U.S. Court of Appeals for the Ninth Circuit held that consumer leases are defined by the Consumer Leasing Act are subject to the ECOA. The appellate ruling in *Brothers* is binding law in California and other states within the jurisdiction of the Ninth Circuit, and is being enforced in those states by the Federal Reserve and other regulatory agencies.

On policy grounds there is some support for a regulatory amendment to cover lease transactions. It seems inconsistent to allow lessors to consider marital status, sex, and other characteristics while creditors are prohibited from doing so. In addition, some lease transactions are similar in many ways to credit transactions; indeed, financing leases, or open-end leases, have been held to be functionally equivalent to credit.

Nevertheless, the Board believes that the Ninth Circuit interpreted the ECOA's definition of credit too broadly when it concluded in the *Brothers* case that the granting of a lease is an extension of credit. The Congress has consistently viewed lease and credit transactions as distinct and mutually exclusive financial transactions and has treated them separately under the Consumer Credit Protection Act. The Board believes that the Congress did not intend the ECOA, which on its face applies only to credit transactions, to cover lease transactions unless the transaction results in a "credit sale" as defined in the Truth in Lending Act and Regulation Z. In addition, aside from the *Brothers* case there is little evidence of discrimination by lessors based on the personal characteristics of lessees, in contrast to the situation that existed with respect to credit transactions before the ECOA was enacted. Furthermore, core provisions of Regulation B if applied to leasing transactions could impose significant burdens for certain segments of the industry—such as furniture and appliance leasing. (Other lessors would be less affected; financial institutions that engage in automobile leasing, for example, already comply with Regulation B in many cases.)

In light of those considerations, the Board has not applied Regulation B to leasing. Instead, the Board will monitor the practices followed in lease transactions through contacts with government agencies, the leasing industry, and consumers. The Federal Reserve's enforcement activities in the Ninth Circuit will also provide the Board with first-hand experience regarding the application of Regulation B to consumer leases. Should it later appear that action is warranted, the Board will engage in rulemaking or make legislative recommendations as appropriate.

(4) *Regulatory revisions.* The following discussion covers the revisions to Regulation B section by section. In a number of sections, changes in the text have been made for the purpose of simplification or clarification, with no substantive change in the regulatory requirements; these

minor changes are not covered in the discussion.

Section 202.1—Authority, Scope and Purpose

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) has been added to outline the purpose of Regulation B, consistent with the format followed in other Board regulations.

Paragraph (b) of the current regulation, concerning administrative enforcement, has been moved to new § 202.14, as has paragraph (c), on penalties and liabilities. Paragraph (d), regarding procedures for the issuance of official staff interpretations, has been moved to new Appendix D.

Section 202.2—Definitions

In this section, the Board has made a substantive change to the definition of "applicant" and a change to the definition of "empirically derived, demonstrably and statistically sound, credit scoring system" that will broaden its applicability, as discussed below. Other changes are structural or editorial, without substantive effect.

The references to notification of action taken, statement of reasons for denial, and record retention in the definition of "adverse action" in paragraph (c)(1) of the current regulation have been deleted as unnecessary. Editorial revisions have been made in paragraph (c)(1)(i), which now explicitly defines a counteroffer, and other subparagraphs of this definition. No substantive change is intended.

The Board has revised the definition of "applicant" in paragraph (e) to include guarantors, sureties, endorsers, and similar parties for purposes of § 202.7(d), which contains rules regarding signatures. The Board had proposed in March to define such parties as applicants without limitation. The final version of the definition was modified in response to the concerns of industry commenters who believed that the unlimited inclusion of guarantors and similar parties in the definition might subject creditors to a risk of liability for technical violations of various provisions of the regulation.

The principal effect of the change is to give guarantors and similar parties standing to seek legal remedies when a violation occurs under § 202.7(d). The regulation prohibits creditors, in certain situations, from requiring the signature

of an applicant's spouse as 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." The Board has included guarantors and similar parties within the definition of "applicant" to resolve this question of standing.

Material regarding notification to an applicant that an application is incomplete has been deleted from the definition of "application" in paragraph (f) and incorporated into § 202.9(c), a new provision dealing with incomplete applications.

The Board has broadened the definition of an "empirically derived, demonstrably and statistically sound, credit scoring system" contained in paragraph (p). The current language appears to limit the applicability of the definition to a system that uses the allocation of points or the assigning of weights. The revised language makes clear that, if the system is developed using accepted statistical principles and methodology, a decision-tree or other type of credit scoring system that meets these standards also qualifies. Other conforming technical revisions to this paragraph have resulted in no substantive change. Credit scoring systems that meet the criteria as stated in the current definition will continue to qualify as "demonstrably and statistically sound" under the revised definition.

Other changes to the definitional section include the deletion of: footnote 2 to the introductory material, the last sentence in the definition of "open-end credit" in paragraph (w), footnote 3 to the definition of "prohibited basis" in paragraph (z), the definition of "public assistance program" in paragraph (aa), and the rule of construction in paragraph (dd). Comparable material appears in the official staff commentary, 202.1(a)-1; 202.2(w)-1; 202.2(z)-1 and -3; and comment 4 to the Introduction, respectively. Paragraph (cc), a rule of construction regarding captions, has been deleted as unnecessary.

Section 202.3—Limited Exceptions For Certain Classes of Transactions

The Board has restructured this section for easier reference. In the revised regulation, the definition of each type of credit is immediately followed by the list of exceptions applicable to it. There are no substantive changes to any of the existing provisions.

The definition of public utilities credit in paragraph (a) has been slightly revised to correspond more closely to the definition in Regulation Z (Truth in Lending).

In the section on business credit, the rules relating to notification and record retention have been placed in paragraph (d)(3) and labeled "modified requirements," to emphasize that they only modify the procedures ordinarily required by Regulation B, rather than provide total exceptions. Paragraph (d)(3)(i) incorporates official staff interpretation EC-0009, and makes clear that a creditor is required to notify the business credit applicant of the action taken on an application or of its incompleteness. 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 or of incompleteness.

The list of exceptions applicable to government credit in paragraph (e) has been simplified without substantive change.

Section 202.4—General Rule Prohibiting Discrimination

No changes have been made to this section.

Section 202.5—Rules Concerning Taking of Applications

With the exception of paragraph (e), changes in this section are structural or editorial. Captions have been added to facilitate use of the regulation. With the deletion of the preceding footnotes, footnote 4 has been renumbered footnote 1; the part of the footnote that has been deleted from the regulation appears in the official staff commentary, 202.5(b)-1. Footnote 5 and portions of paragraphs (b)(3) and (d)(2) also have been deleted; comparable material appears in the official staff commentary, 202.5(d)(1)-1; 202.7(e)-2; and 202.5(d)(2)-2 and -3, respectively. Footnote 6 has been deleted as obsolete.

Revised paragraph (e) requires that written applications be taken for dwelling-related loans that are subject to the data notation requirements of § 202.13. (In all other types of credit transactions, written applications continue to be optional.) This change, along with the changes in data notation requirements discussed under § 202.13, will increase the information available to enforcement agencies to monitor compliance. A creditor may comply with the new requirement by writing down the information that it normally considers in making a credit decision; use of a form is not required. Some of the material in paragraph (e) of the

current regulation concerning the use of the Board's model application forms has been moved to the introductory section in Appendix B.

Section 202.6—Rules Concerning Evaluating of Applications

The few changes in this section are structural or editorial only. Captions have been added to facilitate use of the regulation. Footnote 7 of the current regulation has been renumbered footnote 2. The last sentence of the footnote, citing portions of the legislative history of the act dealing with the "effects test," has been deleted from the regulation; comparable material appears in the official staff commentary, 202.6(a)-2. Footnotes 8 and 9 of the current regulation, as well as the material in paragraph (b)(5) regarding factors that a creditor may consider in determining the likelihood of consistent payments, have been deleted; comparable material appears in the official staff commentary to § 202.6(b). The provision regarding inadvertent errors has been deleted from paragraph (b)(6) and has been incorporated in new § 202.14(c).

Section 202.7—Rules Concerning Extensions of Credit

Except for minor revisions to the rules governing the treatment of open-end accounts in paragraph (c), revisions to this section are structural or editorial, without substantive effect, and include the addition of captions for ease of reference.

In paragraph (c)(1)(i), a reference to paragraph (c)(2) has been added to clarify the relationship between the two paragraphs. Paragraph (c)(2) has been revised in minor ways from the current provision. New language makes clear that the provision applies only in the case of an applicant who is contractually liable. The term "earned by" has been deleted to clarify that the provision applies to any instance in which the creditor relied upon the income of the applicant's spouse 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. In the proposal published in March, "current credit limit" was substituted for existing language because it appeared to be a more appropriate test for determining the applicant's overall ability to repay than the "amount of credit currently extended." Because some creditors do not have predetermined credit limits, the final version refers to the "current credit available."

Some editorial revisions have been made in the signature rules of paragraph (d), without substantive effect.

Paragraph (d)(2) has been 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; see the official staff commentary, 202.7(d)(2)-1. The material concerning factors that the creditor may consider regarding property owned by the applicant has been deleted. Comparable material appears in the official staff commentary, 202.7(d)(2)-1. In response to public comment, the "reasonable belief" standard omitted from the March proposal has been retained in the regulation.

Paragraph (d)(5) of the current regulation has been divided into two paragraphs, (d)(5) and (6), without substantive effect.

Paragraph (e) prohibits 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 paragraph has been broadened to include "other credit-related insurance" as well as credit life and other specific types already listed. The provisions in current paragraph (e) regarding differences in rates and the like have been deleted; comparable material appears in the official staff commentary to § 202.7(e).

Section 202.8—Special Purpose Credit Programs

The wording of this section has been edited in various places for clarity, without substantive effect.

Section 202.9—Notifications

Substantive as well as structural and editorial changes have been made to this section. As in other sections, captions have been added throughout for ease of reference.

In this section the Board had proposed in March to substitute the words "denying" or "denial" of credit or "changing adversely" for the term "adverse action." The proposed change was based on the Board's belief that use of the term "adverse action" in the regulation raises unnecessarily negative connotations and has also led creditors to believe that they must use that term in communicating with applicants who are denied credit. In response to public comment and upon further analysis, the Board has retained use of the term "adverse action" in this section. The substitution of a term defined by the act and regulation with such undefined (and not necessarily synonymous) words as

"denial" could lead to confusion and inadvertent noncompliance. Guidance on use of the term "adverse action" has been provided in the official staff commentary, 202.9-1.

Language has been added to paragraph (a)(1)(i) to make clear that a creditor's counteroffer must be made within 30 days of the receipt of a completed application. Material that appears in the current regulation, permitting notification of the approval of an application to be either express or implied, has been deleted. Comparable material appears in the official staff commentary, 202.9(a)(1)-2. Editorial changes made to paragraph (a)(1)(iv) have no substantive effect.

In addition to the current requirements of paragraph (a)(2), the revised rule requires that an adverse action notice contain the name and address of the creditor, identification that is customarily but not always provided. That information will give rejected applicants a clearer indication of whom to contact if there are questions about the content of the notice. Editorial changes have been made to paragraph (a)(2)(ii), without substantive effect.

Paragraphs (a) (3) and (4) of the current regulation have been redesignated as paragraphs (f) and (g), and are discussed below.

Material in paragraph (b)(1) allowing modification of the model ECOA notice, to include references to similar state law and a state enforcement agency, has been deleted. Comparable material appears in the official staff commentary, 202.9(b)(1)-1.

The second sentence of paragraph (b)(2) of the current regulation has been deleted. It states that a creditor may design its own notice form or use all or a portion of the Board's sample form, which if properly completed will satisfy the requirements of paragraph (a)(2)(i). Comparable language is contained in the revised introduction to Appendix C. The sample form itself has also been deleted. It has been replaced by a number of sample notices in new Appendix C, as discussed below.

Current paragraph (b)(3), concerning the format of disclosures, has been deleted. Comparable material appears in the official staff commentary, 202.9-4; see also 202.9(b)(1)-1.

Current paragraph (c) has been redesignated paragraph (d) and is discussed below. New paragraph (c) establishes a streamlined procedure for dealing with incomplete applications. It provides that if a creditor receives an application that is incomplete regarding matters that the applicant can complete, within 30 days the creditor must either

notify the applicant of its decision, under paragraph (a) of this section, or notify the applicant that additional information is needed. The latter notification must specify the information needed, designate a reasonable time period for submission of the information, and inform the applicant that unless the information is provided there will be no further consideration of the application. (Form C-6 in Appendix C is a sample form for a notice of incompleteness under this paragraph.) If the applicant fails to respond within the designated time period, the creditor has no obligation to provide further notification of any kind. If the applicant provides the requested information in a timely manner, the creditor must then take action on the application and give appropriate notice under paragraph (a). Paragraph (a)(1)(ii), concerning the denial of an incomplete application, has been revised to include conforming language.

Paragraph (d) on oral notifications is currently paragraph (c); changes are strictly editorial. Paragraph (e), currently paragraph (d), provides a special rule on withdrawn applications. It is virtually identical to the current provision.

Paragraph (f) is virtually identical to current paragraph (a)(3). Paragraph (g) is comparable to current paragraph (a)(4). That portion of current paragraph (a)(4) dealing with liability for acts of third parties has been deleted. Comparable material appears in the official staff commentary, 202.9(g)-3.

Paragraph (e) of the current regulation, regarding inadvertent errors, has been deleted. Comparable language is contained in new section 202.14(c). Paragraph (f) of the current regulation has also been deleted; comparable material appears in the official staff commentary, 202.9-3.

Section 202.10—Furnishing of Credit Information

This section has been rewritten and restructured for clarity, with obsolete material deleted. There is no substantive change from the existing rules. Current footnotes 11 and 12 have been deleted; comparable material appears in the staff commentary, 202.10-3 and 202.10(a)-1. Some material in current paragraph (c), dealing with the legal effect of signing a request to change the manner in which information is furnished, has been deleted. Comparable material appears in the official staff commentary, 202.10(a)-2. Current paragraph 10(d) regarding inadvertent errors has also been deleted; comparable language is contained in new § 202.14(c).

Section 202.11—Relation to State Law

This section is virtually identical to the current section except for editorial changes. Footnote 16 has been deleted as unnecessary.

Section 202.12—Record Retention

The revised section requires creditors to maintain records on withdrawn applications as well as on incomplete applications. Other revisions are minor. Captions have been added for ease of reference.

Paragraph (a) permits the retention in files, under certain circumstances, of information that is generally prohibited. Paragraphs (a) (2) and (3) of the current regulation have been merged into paragraph (a)(2), so that a creditor is allowed to retain (without violating the regulation) prohibited information that it receives from a credit bureau, provided the creditor did not specifically request that information. There is no reason for giving special protection, as the current rule seems to do, when prohibited information is obtained from a credit bureau at the specific request of the creditor. A violation will not occur if a creditor requests and receives a credit report that happens to contain prohibited information. The words "at any time" have been deleted as unnecessary, and footnote 17 to paragraph (a) has been deleted as obsolete.

Paragraph (b)(1) requires retention of records for 25 months after the creditor notifies an applicant of action taken on an application. This paragraph has been revised to require the same record retention after a notification of incompleteness because, as discussed under section 202.9, a notification of incompleteness may substitute for notification of action taken in certain instances. In addition, footnote 18 to paragraph (b)(1) has been deleted; comparable material appears in the official staff commentary, 202.12(b)-1 and -2.

Under paragraph (b)(3), currently paragraph (b)(4), record retention is required of creditors who, under paragraph (a)(4) of the current regulation, do not have to give notice to an applicant of action taken. (This result occurs when an application has been "shopped" among several creditors and at least one creditor has granted credit.) As revised, the record retention provision also requires a creditor to retain records when an applicant submits an application for credit but then withdraws it prior to notification of the creditor's decision. This change will ensure more complete records of

applications and better enable regulatory agencies to assess creditors' compliance.

A reference to the Attorney General of the United States has been added to paragraph (b)(4), currently paragraph (b)(3), to require retention of records until final disposition of an enforcement proceeding or investigation conducted by the Attorney General. Current paragraph (c) regarding inadvertent errors has been deleted. Comparable language is contained in new § 202.14(c).

Section 202.13—Information For Monitoring Purposes

This section requires creditors to request applicants for particular types of dwelling-related loans to provide certain information about their race or national origin, sex, age, and marital status. The purpose is to enable enforcement agencies to monitor creditors' compliance with the ECOA and Regulation B. In March, the Board proposed a number of changes in the section, with two purposes: first, to attempt to achieve greater uniformity in the data notation rules applicable to various groups of creditors; and second, to improve the ability of the Federal Reserve System and other agencies to carry out their responsibilities under the ECOA, Fair Housing Act, and Community Reinvestment Act. Revised § 202.13 differs from both the current regulation and the proposed version in some respects.

Under revised paragraph (a), a creditor must request information regarding an applicant's race or national origin, sex, marital status, and age upon receiving an application for the purchase or the refinancing of a dwelling occupied or to be occupied by an applicant as a principal residence, where the extension of credit will be secured by the dwelling. This differs from the current regulation in the following ways:

(1) The revised rule covers all applications for the specified types of loans, while the current rule applies only to written applications. (Section 202.5(e) of the revised regulation further requires that applications subject to § 202.13 be taken in writing, as discussed above.)

(2) The revised rule applies to refinancings as well as purchase loans (including construction-permanent financing).

(3) The revised rule covers loans related to the borrower's principal residence, including manufactured or mobile home loans whether or not the structure is attached to real property. The current provision, in contrast, only covers manufactured homes that are

considered real property under state law.

The March proposal would have covered, in addition, credit applications for the repair or improvement of the borrower's principal residence. The Board received 104 comments on the proposed revisions to § 202.13. Over half of the commenters generally opposed the proposal. Some argued that the addition of home improvement loans would be unduly burdensome not only because it would require data notation on additional loans but in particular because it would impose data notation requirements on new groups of creditors, those that do not make purchase money mortgage loans but do engage in secured home improvement lending. Moreover, some of them—finance companies and home improvement contractors, for example—are not subject to periodic examination as are financial institutions, making the usefulness of the notation questionable. The Board believes that the final revisions to this section move in the direction of uniformity without imposing undue burdens.

Under revised paragraph (b), a creditor is required to request the race or national origin, sex, marital status, and age of an applicant, as in the current regulation. If the applicant does not voluntarily provide the requested information, the creditor must note the sex and race or national origin of the applicant on the basis of visual observation or surname. This is the rule currently used by the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency. Thus, the revision represents a change for state member banks, credit unions, and mortgage bankers, all of which currently collect the information only on a voluntary basis. The revision establishes a uniform rule for institutions supervised by federal financial regulatory agencies and will provide better data by which to determine a creditor's compliance with the ECOA and the Fair Housing Act. Paragraph (c) requires disclosure of the revised requirement.

Paragraph (d) of the current regulation permits other enforcement agencies to substitute their own monitoring programs for the Regulation B procedures. The Board requested specific comment on whether paragraph (d) should be deleted. Comments both from other federal enforcement agencies and from creditors were generally unfavorable. Therefore, the paragraph has been retained.

A provision for inadvertent errors in data notation is contained in new § 202.14(c).

Section 202.14—Enforcement, Penalties and Liabilities

This is a new section, consisting primarily of material from current § 202.1 (b) and (c). The material has been edited for purposes of simplification, without substantive effect.

Paragraph (a), identifying administrative enforcement agencies, is comparable to current § 202.1(b), and reflects the transfer of the enforcement functions of the Civil Aeronautics Board to the Secretary of Transportation (49 FR 50994, December 31, 1984). Paragraph (b), discussing penalties and liabilities, is comparable to current § 202.1(c)(1). Paragraph (c) incorporates material from current §§ 202.6(b)(6), 202.10(d), and 202.12(c) regarding inadvertent errors, and adds a similar provision relating to § 202.13.

Appendix A—Federal Enforcement Agencies

Changes have been made to this appendix to reflect the current addresses of the various enforcement agencies.

Appendix B—Model Application Forms

The introductory material to this appendix incorporates material from § 202.5(e) of the current regulation, so that all directions for the proper use of the model forms appear in one place. The material permitting the addition of three specific items to the model forms has been deleted because creditors may add any item not prohibited by § 202.5 (not merely these three). The discussion of the FHLMC 65/FNMA 1003 form has been deleted; approval of that form appears in the official staff commentary, app. B-1. The Board has also adopted a sample disclosure and information request form that may be used to comply with revised § 202.13; this disclosure and request form appears on page 2 of the model application form for residential real estate loans. No other change has been made to the model application forms. The model forms are being reprinted in this notice.

Appendix C—Sample Notification Forms

The regulation currently provides a sample adverse action notification form in § 202.9(b)(2) that creditors may use to satisfy the requirements of § 202.9(a)(2)(i). In the June 1983 notice of intent to review Regulation B, the Board requested comment concerning that

sample form. The Board then developed a number of sample notices in response to suggestions received from various sources, including the industry, members of the Board's Consumer Advisory Council, staff of other enforcement agencies, and the Reserve Banks.

Ten sample forms were published in the March proposal. The Board requested comment on which of the proposed forms would be most useful to creditors and most informative to consumers. Comments on the proposed model forms were largely favorable; there was some concern, however, that ten forms were too many. Commenters specified which forms they felt were more useful than others, and also suggested changes in the text of a number of the forms.

New Appendix C to the regulation contains six sample notification forms. The Board dropped proposed forms C-2, C-4 and C-10, combined forms C-5 and C-6, and revised the text of some of the forms. The availability of a variety of model forms, in different formats, should better convey to creditors that they have wide latitude in the design and wording of their own forms.

No single form contains a comprehensive listing of possible reasons for denial. Creditors must incorporate into their forms the factors on which they actually base their credit evaluations; they should not simply reprint a model form and check a factor that most closely approximates the reason for adverse action. Forms C-1 through C-4 are sample statements of reasons for a credit denial or other adverse action. Form C-3 is a sample notice for use with a credit scoring system. Form C-4 combines the statement of reasons with notice of a counteroffer. Form C-5 is a sample disclosure of the right to receive a specific statement of reasons for a credit denial or other adverse action. Form C-6 is a request for additional information, as provided for in § 202.9(c); in that circumstance, the ECOA notice is not required.

Use of sample notices is entirely optional, as is true of the existing notice. A creditor may continue to use the existing sample form if the form sets forth accurately the factors the creditor considers.

Appendix D—Issuance of Staff Interpretations

This new appendix replaces § 202.1(d) of the current regulation, which deals with requests for and issuance of official staff interpretations of Regulation B. Because of changes in the procedures (particularly the introduction of the official staff commentary as the vehicle

for such interpretations), this appendix differs from current § 202.1(d); it is modeled on Appendix C to Regulation Z, which deals with staff interpretations under that regulation.

(5) *Discussion of official staff commentary.* The Board is publishing an official staff commentary to the revised regulation. Good-faith compliance with the commentary affords creditors protection from civil liability under section 706(e) of the ECOA.

A proposed version of the commentary was published in the *Federal Register* on March 18, 1985 (50 FR 10890). Some changes to the substance of the proposal were requested by the commenters; a number have been adopted in the final commentary. Certain provisions have been revised and clarified. In addition, comments have been added, modified or deleted as necessary.

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 replaces six existing Board interpretations, thirteen official staff interpretations, and fifteen informal staff letters that were designated public information letters. The commentary is the sole means for issuing official interpretations of the regulation.

As is the case with other staff commentaries, the commentary to Regulation B gives general guidance, and is designed to assist creditors in applying the regulation to specific fact situations. Following the format used in the commentary to Regulation Z, each paragraph in the commentary is identified by the relevant section or paragraph of the regulation. For example, commentary to § 202.7 is designated according to the particular paragraph addressed, such as comments 7(c)-1 and 7(d)(2)-1.

The Board has previously ruled that several state laws in Alabama, California, and Nebraska 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. The have been omitted from the official staff commentary, which will follow the rule in Regulation Z of including only those determinations that result in the preemption of a state law or regulation.

Official staff interpretation EC-0009 has been incorporated into the text of § 202.3(d) of the regulation, which now makes clear that a creditor that denies a business credit application must give the applicant notice of action taken or of

incompleteness within a reasonable time.

Certain official 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 has been omitted because it appears that the subject matter—the application of state laws governing graduated rates, maximum loan ceilings, and rate splitting—does not continue to warrant the detailed treatment provided in that letter. EC-0010, which dealt with the permissibility of inquiries about a potential customer's religion by a seller of religious books, has been omitted because of its limited applicability.

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

The answers provided in other official staff interpretations have served as the basis for the sections of the official staff commentary to which they relate. This includes EC-0011 regarding the applicability of Regulation B to lending operations outside of the United States, which had been omitted from the March proposal; see 202.1(a)-2. Material from some of the 15 staff opinion letters originally published as public information letters also has been used.

Proposed comment 202.2(1)-1 has been omitted from the final version. It appeared to create unnecessary confusion regarding possible liability for officers or employees of a creditor. The proposed comment had been included as a reminder that a court may hold an officer or employee accountable for individual acts of illegal discrimination, and not to suggest that officers or employees would be held liable for technical violations of the regulation. Since courts will make determinations about individual responsibility in any specific case involving illegal discrimination, withdrawal of the comment seems appropriate.

Proposed comment 202.7(d)(3)-2 also has been omitted from the final version of the official staff commentary. The comment, which was based on Public Information Letter 15, dealt with consideration of a spouse's earnings in community property states, taking the position that in an equal management state a creditor may not require the signature of the nonapplicant spouse on an application, note, or other credit

instrument. A U.S. district court in California recently ruled for the defendant in *United States v. ITT Consumer Financial Corp.*, No. C-83-3924 JPV (N.D. Cal. Sept. 18, 1985) (order granting motion for summary judgment), allowing ITT to obtain the signature in such circumstances. (A decision by the government on the filing of a notice of intent to appeal is pending.) The U.S. District Court of Arizona, in *Clark v. Avco Financial Services*, No. 80-272 (D. Ariz. June 24, 1981), took a position contrary to the California ruling. Although the Board continues to believe that the position stated in proposed comment 202.7(d)(3)-2 as published in March 1985 is correct, this portion of the commentary is being omitted in view of the conflicting court decisions.

(6) *Economic impact analysis.*

Introduction. The benefits and costs of the revisions to Regulation B are discussed in this economic impact analysis.

Redefinition of "applicant" to include guarantors. An applicant for credit has standing to sue under Regulation B but a guarantor does not. The rule redefines "applicant" in § 202.2(e) to include guarantors for purposes of the § 202.7(d) signature rules. This modification of the rule allows guarantors who believe they have been injured by an ECOA violation to bring suit, thereby enhancing 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 signature rule violations, and the alleged violations would not have been litigated by applicants themselves. Analysis by the Division of Consumer and Community Affairs suggests that this situation will probably arise infrequently. Applicants normally bring suit in their own right; and guarantors, if they have 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 may be increased; the increase will probably be small since the same alleged violation is involved.

Written applications and notation of monitoring data. Provisions in § 202.5 will for the first time require covered creditors to take written applications for certain home purchase and refinancing loans. Section 202.5 provisions will require written applications of credit requests covering loans for the purchase or refinancing of a dwelling occupied or

to be occupied by the borrower as a principal residence. Creditors can satisfy the requirement for taking written applications by writing down information that they normally consider in making a credit decision. In addition, creditors are required by § 202.13 to record monitoring data on the race or national origin, sex, age, and marital status of an applicant for home purchase and refinancing loans secured by the dwelling. If the applicant does not volunteer such information upon request, loan officers are required to observe and note the loan applicant's race or national origin and sex. The applicant must be informed orally or in writing about the purpose and provisions of § 202.13.

At present, Regulation B requires creditors to request the monitoring data from applicants for home purchase loans only if the application is in writing. The current regulation does not require written applications for home purchase loans or notation of monitoring data not volunteered by the applicant.

The changes are expected to enhance consumer protection through more effective enforcement. 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 or national origin, sex, age, or marital status. The primary data for examiners are creditor loan files. In the case of banks supervised by the Federal Reserve System (FRS), 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. (Survey results indicate that in 1980 and 25 percent of applications for housing-related loans from banks examined by the Federal Reserve did not contain monitoring data.) The changes will facilitate more effective enforcement.

While banks regulated by the FRS are not required at present to take written applications nor record monitoring data if not provided voluntarily by the applicant, this is not the case for many other creditors. Regulation B allows agencies charged with ECOA enforcement responsibilities to establish their own rules regarding the recording of monitoring data. Banks and savings and loan associations regulated by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Home Loan Bank Board (FHLBB) are required by rules established by these agencies to take written applications

and record monitoring data on most housing-related loans. Federally chartered credit unions are required by the National Credit Union Administration to take written applications but are not required to record 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.

The new rule requiring creditor notation will create uniformity in the compliance rules established by the various regulatory agencies regarding home purchase and refinancing loans. The major beneficiary of uniform rules will be the mortgage banking industry. Mortgage banking firms are currently in an untenable position. On the one hand, they must comply with Regulation B provisions that prohibit the notation of monitoring data by the loan officer when the applicant declines to provide the data. On the other hand, in order to sell loans in the secondary market, the loan application generally must include the monitoring data.

The extent to which the revised rule can be expected to result in the detection of an increased number of ECOA violations is uncertain. For example, the FDIC, OCC, and FHLBB have cited a very small number of creditors for discrimination even though these agencies have had access to written applications and monitoring data for a number of years. 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 will likely be small. To the extent the deterrent effect is important, adoption of the rule will enhance consumer protection.

The changes are unlikely to impose significant costs on the industry because most creditors are currently covered by rules established by the FDIC, OCC, and the FHLBB that require written housing-related loan applications and the recording of monitoring data. The creditors most likely to be affected by the changes are banks supervised by the FRS, and to a lesser extent, federally chartered credit unions. These financial institutions would incur costs to modify existing written application forms if the monitoring data and section 202.13

disclosure statement are to be included on the loan application form, or costs to print and store for record retention a separate form with the required monitoring information. (Complying mortgage loan application forms available from the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association cost about 20 cents per form.) Currently, a few small banks supervised by the FRS do not request monitoring data because they do not take written applications for home purchase or refinancing loans. Public comments indicate that these banks view the monitoring data requirements as a significant disturbance to the "relaxed" atmosphere in which business is conducted.

A final burden associated with a requirement to record 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. Information available to the Board indicates that in 1980 about 10 percent of the applicants for home purchase loans at state member banks declined to voluntarily provide monitoring data when asked to do so. Presumably, these individuals are the most likely to be offended by the change. On the other hand, there is no record of consumer complaints about the recording of the monitoring data, even though the OCC, FDIC, and FHLBB have been requiring information for many years.

Incomplete applications. The current rule requires that adverse action notification be given when efforts by a creditor to obtain missing information regarding an application fail to elicit a response from the applicant. Under the revised regulation, creditors are not 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 may provide one less notice in these circumstances, thereby reducing costs. Consumer protections will 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 is no record retention requirement with respect to an application expressly withdrawn by the applicant. 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 change requiring record retention of applications withdrawn by the applicant may increase the effectiveness of enforcement.

Because of the revision, some creditors may 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 creditors depending on record storage technology 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 change will be small for most creditors. Business applications expressly withdrawn do not have to be retained under the revised regulation 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. Similarly, the compliance costs associated with the regulatory changes may tend to fall disproportionately on the smallest banks. According to the Board's consumer compliance examiners, a few FRS supervised banks will need to start using written application procedures, and most of these banks are relatively small. Even though many of these small banks may already satisfy the written application requirement by noting down information that they normally consider in making a credit decision, these small banks will be recording the monitoring data for the first time. However, the marginal costs of the revisions to Regulation B are not likely to be large for any creditor, regardless of the creditor's size.

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.

(7) *Regulatory text.* Pursuant to the authority granted under section 703 of the Equal Credit Opportunity Act, 15 U.S.C. 1691b, the Board amends 12 CFR Chapter II as follows:

1. Effective December 16, 1985 Part 202 is redesignated as Part 202a (Part 202a will be removed on October 1, 1986). Part 202a is amended by adding the following note at the end of the table of contents to read:

Effective date note: Part 202 was effective on December 16, 1983, but creditors have the option of continuing to comply with this Part 202a (in lieu of Part 202) until October 1, 1986.

2. A new Part 202 is added to be effective on December 16, 1985 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

Sec.

- 202.1 Authority, scope and purpose.
- 202.2 Definitions.
- 202.3 Limited exceptions for certain classes of transactions.
- 202.4 General rule prohibiting discrimination.
- 202.5 Rules concerning taking of applications.
- 202.6 Rules concerning evaluation of applications.
- 202.7 Rules concerning extensions of credit.
- 202.8 Special purpose credit programs.
- 202.9 Notifications.
- 202.10 Furnishing of credit information.
- 202.11 Relation to state law.
- 202.12 Record retention.
- 202.13 Information for monitoring purposes.
- 202.14 Enforcement, penalties and liabilities.

Appendix A—Federal Enforcement Agencies

Appendix B—Model Application Forms

Appendix C—Sample Notification Forms

Appendix D—Issuance of Staff Interpretations

Supplement I—Official Staff Interpretations

Authority: 15 U.S.C. 1691 et seq.

Effective date note: Effective December 16, 1985, but creditors have the option of continuing to comply with Part 202a until October 1, 1986.

Regulation B (Equal Credit Opportunity)

§ 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 USC 1601 et seq.). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(1). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 USC 3501 et seq. and have been assigned OMB No. 7100-0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any 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; to retain records of credit applications; and to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

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

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

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

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

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

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

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

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when

the refusal is a denial of an application for an increase in the amount of credit available under the account;

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

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

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2).

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

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), 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 is within a previously established credit limit. A *completed application* 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). The creditor shall exercise reasonable diligence in obtaining such information.

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

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

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

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

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to

time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

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

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

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

(p) *Empirically derived and other credit scoring systems.*

(1) A *credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system*, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of 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) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1) (i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

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

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

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

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

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

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the

factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

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

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

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

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

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit*.—(1) *Definition*. 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 extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

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

- (i) Section 202.5(d)(1) concerning information about marital status;
- (ii) Section 202.10 relating to furnishing of credit information; and
- (iii) Section 202.12(b) relating to record retention.

(b) *Securities credit*.—(1) *Definition*. 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 do not apply to securities credit:

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

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

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

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

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

(vi) Section 202.7(d) relating to the signature of a spouse or other person;

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

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

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

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

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

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

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

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

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

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

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

(v) Section 202.7(d) relating to the signature of a spouse or other person;

(vi) Section 202.9 relating to notifications;

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

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

(d) *Business credit.*—(1) *Definition.* Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in paragraphs (a) and (b) of this section.

(2) *Exceptions.* The following provisions of this regulation do 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), (b), and (c) relating to notifications: the creditor shall notify the applicant, orally or in writing, of action taken or of incompleteness. When credit is denied or when other adverse action is taken, the creditor is required to provide a written statement of the reasons and the ECOA notice specified in section 202.9(b) if the applicant makes a written request for the reasons within 30 days of that notification; and

(ii) Section 202.12(b) relating to record retention: the creditor shall retain records as provided in § 202.12(b) if the applicant, within 90 days after being notified of action taken or of incompleteness, requests in writing that records be retained.

(e) *Government credit.*—(1) *Definition.* Government 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 government credit.

§ 202.4 General Rule Prohibiting Discrimination.

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

§ 202.5 Rules Concerning Taking of Applications.

(a) *Discouraging applications.* A creditor shall not make any oral or

written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as provided in paragraphs (c) and (d) of this section, a creditor may request any information in connection with an application.¹

(2) *Required collection of information.* Notwithstanding paragraphs (c) and (d) of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) *Special purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in §§ 202.8 (c) and (d).

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

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

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

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

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

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

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

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which the account is carried. A creditor may also ask the names in

which an applicant has previously received credit.

(d) *Other limitations on information requests.* (1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms "married," "unmarried," and "separated." A creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

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

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

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

(e) *Written applications.* A creditor shall take written applications for the types of credit covered by § 202.13(a), but need not take written applications for other types of credit.

¹ This paragraph does not limit or abrogate any federal or state law regarding privacy privileged information, credit reporting limitations, or similar restrictions on obtainable information.

§ 202.6 Rules Concerning Evaluation of Applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.²

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

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

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

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

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

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

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit, but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an

annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

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

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

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

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

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

§ 202.7 Rules Concerning Extensions of Credit.

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

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts.*—(1) *Limitations.* In the

absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

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

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to 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 states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under

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.

the creditor's standards of creditworthiness; and

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

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

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special Purpose Credit Programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

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

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

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

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards

for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections.* (1) *General applicability.* All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more 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 participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by federal or state law.

§ 202.9 Notifications.

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

reasons. (1) *When notification is required.* A creditor shall notify an applicant of action taken within:

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

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

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

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

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the act; the name and address of the federal agency that administers compliance with respect to the creditor; and either:

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

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

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

(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the act, the creditor shall provide a notice that is substantially similar to the following:

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and

address as specified by the appropriate agency listed in Appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. 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.

(c) *Incomplete applications.*—(1) *Notice alternatives.* Within 30 days after receiving application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

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

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that 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 time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* The requirements of this section (including statements of specific reasons) are satisfied by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) *Withdrawal of approved application.* When 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, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken 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. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of Credit Information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) Any new 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); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the 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 inquiry.* 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.

§ 202.11 Relation to State Law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the act and this regulation and then only to the extent of the inconsistency. A state law is not

inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.*

(1) A state law is deemed to be inconsistent with the requirements of the act and this regulation and less protective of an applicant within the meaning of section 705(f) of the act to the extent that the law:

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

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

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

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

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

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is inconsistent with the requirements of the act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtained individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

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

(e) *Exemption for state-regulated transactions.* (1) *Applications.* A state may apply to the Board for an exemption from the requirements of the act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the act and this regulation or that applicants are

afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the act and this regulation.

§ 202.12 Record Retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the act or this regulation in evaluating applications, without violating the act or this regulation, if the information was obtained:

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

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the act and this regulation or other federal or state statutes or regulations.

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

(i) any application that it receives, any information required to be obtained concerning characteristics of the 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) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

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

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

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

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

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

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

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

§ 202.13 Information for Monitoring Purposes.

(a) *Information to be requested.* A creditor that receives an application for credit primarily for the purchase or refinancing 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 the application the following information regarding the applicant(s):

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

(2) Sex;

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

(4) Age.

"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 or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining of information.* Questions regarding race or 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 shall 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) that the information regarding race or 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 creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A 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).

§ 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 assigned to other authorities, compliance with the requirements imposed under the act and this regulation is 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 that fails to comply with a requirement imposed by the act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704 (b), (c), and (d) and 702(g) of the act, violations of the act or regulations also constitute violations of other federal laws. 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) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

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

(3) Sections 706 (g) and (h) provide that, if an agency responsible for administrative enforcement is unable to obtain compliance with the act or this regulation, it may refer the matter to the Attorney General of the United States. On 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.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not covered by § 202.13, the creditor may act on and retain the application without violating the regulation.

Appendix A—Federal Enforcement Agencies

The following list indicates the federal agencies the enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks

Comptroller of the Currency, Consumer Examinations Division, Washington, DC 20219.

State Member Banks

Federal Reserve Bank serving the district in which the state member bank is located.

Nonmember Insured Banks

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

Savings Institutions Insured by the FSLIC and Members of the FHLB System (Except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

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

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Creditors Subject to Interstate Commerce Commission

Office of Proceedings, Interstate Commerce Commission, Washington, DC 20523.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20540.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above

FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B—Model Application Forms

This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. 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 in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions. The appendix also contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information requested; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, 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 must be 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 modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of § 202.5 of this regulation.

BILLING CODE 6210-01-M

(Open end, unsecured credit)

CREDIT APPLICATION**IMPORTANT:** Read these Directions before completing this Application.Check
Appropriate
Box

- ☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.
- ☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.
- ☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /
 Present Street Address: _____ Years there: _____
 City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Previous Street Address: _____ Years there: _____
 City: _____ State: _____ Zip: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐.

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /
 Relationship to Applicant (if any): _____ Years there: _____
 Present Street Address: _____
 City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐.

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS (Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)**ASSETS OWNED (Use separate sheet if necessary.)**

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
4.						
5.						
6.						
Total Debts			\$	\$	\$	

(Credit References)

1. _____ \$ _____ Date Paid _____

2. _____

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? _____ To whom? _____

Are there any unsatisfied judgments against you? Yes ☐ Amount \$ _____ If "yes" to whom owed? _____

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? _____ Year _____

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

(Closed end, secured credit)

CREDIT APPLICATION**IMPORTANT:** Read these Directions before completing this Application.Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested: \$ _____ Payment Date Desired: _____ Proceeds of Credit: _____
To be Used For: _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / / _____
Years there: _____

Present Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ City: _____ State: _____ Zip: _____ Years there: _____

Present Employer: _____ Years there: _____ Telephone: _____
Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____
Previous Employer's Address: _____

Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No. _____ Institution and Branch: _____

Savings Account No. _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / / _____

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No. _____ Institution and Branch: _____

Savings Account No. _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUSApplicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)**SECTION D—ASSET AND DEBT INFORMATION** (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)**ASSETS OWNED** (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$ _____		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$ _____		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
Total Debts			\$	\$	\$	

(Credit References)

1. _____ Date Paid _____

2. _____

3. _____

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? _____ To whom? _____Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount \$ _____ If "yes" to whom owed? _____Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? _____ Year _____

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name _____ Address _____

If the security is real estate, give the full name of your spouse (if any): _____

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

[Closed end, unsecured/secured credit]

CREDIT APPLICATION**IMPORTANT:** Read these Directions before completing this Application.Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
- ☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested: \$ _____ Payment Date Desired: _____ Proceeds of Credit: _____
To be Used For: _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / / _____
Years there: _____
Present Street Address: _____
City: _____ State: _____ Zip: _____ Telephone: _____
Social Security No.: _____ Driver's License No.: _____
Previous Street Address: _____ Years there: _____
City: _____ State: _____ Zip: _____
Present Employer: _____ Years there: _____
Position or title: _____ Name of supervisor: _____
Employer's Address: _____
Previous Employer: _____ Years there: _____
Previous Employer's Address: _____
Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.)☐ No

Have you ever received credit from us? _____

When? _____

Office _____

Checking Account No.: _____

Institution and Branch: _____

Savings Account No.: _____

Institution and Branch: _____

Name of nearest relative not living with you: _____

Telephone: _____

Relationship: _____

Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / / _____
Relationship to Applicant (if any): _____
Present Street Address: _____ Years there: _____
City: _____ State: _____ Zip: _____ Telephone: _____
Social Security No.: _____ Driver's License No.: _____
Present Employer: _____ Years there: _____ Telephone: _____
Position or title: _____ Name of supervisor: _____
Employer's Address: _____
Previous Employer: _____ Years there: _____
Previous Employer's Address: _____
Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.)☐ No

Checking Account No.: _____

Institution and Branch: _____

Savings Account No.: _____

Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Telephone: _____

Relationship: _____

Address: _____

SECTION C—MARITAL STATUS

(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)**ASSETS OWNED** (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$ _____		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$ _____		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
Total Debts			\$	\$	\$	

(Credit References)

	Date Paid
1. _____	\$ _____
2. _____	

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐ No ☐	If "Yes," for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount \$ _____	If "Yes," to whom owed?
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "Yes," where?	Year _____

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address
------	---------

If the security is real estate, give the full name of your spouse (if any): _____

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____

Date _____

Other Signature
(Where Applicable) _____

Date _____

[Community property]
CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.
- ☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested \$ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / / _____
 Present Street Address _____ City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Previous Street Address _____ City: _____ State: _____ Zip: _____ Telephone: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
 Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
 Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
 Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / / _____
 Relationship to Applicant (if any): _____ Years there: _____
 Present Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
 Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
 Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
 Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
 Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
Total Debts			\$	\$	\$	

(Credit References)

1.	Date Paid
2.	

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? _____ To whom? _____
 Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount \$ _____ If "yes," to whom owed? _____
 Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes," where? _____ Year _____
 Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

(Residential real estate mortgage loan)

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis.

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 Federal Reserve Bank of St. Louis

Review

Appendix C—Sample Notification Forms

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

Form C-1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C-2 through C-5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the section 615(b) disclosure (that a creditor obtained information from an outside source other than a consumer reporting agency that played

a part in the credit decision) where appropriate.

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 a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if "inadequate down payment" or "no deposit relationship with us" are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

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 references from banks or other depository institutions 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 distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such 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."

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

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FORM C-1 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

Applicant's Name: _____ DATE _____

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

___ Length of residence

___ Insufficient number of credit
references provided

___ Temporary residence

___ Unacceptable type of credit
references provided

___ Unable to verify residence

___ No credit file

___ Unable to verify credit references

___ Limited credit experience

___ Temporary or irregular employment

___ Poor credit performance with us

___ Unable to verify employment

___ Delinquent past or present credit
obligations with others

___ Length of employment

___ Garnishment, attachment, foreclosure,
repossession, collection action, or
judgment___ Income insufficient for amount
of credit requested

___ Bankruptcy

___ Excessive obligations in
relation to income___ Value or type of collateral
not sufficient

___ Unable to verify income

___ Other, specify: _____

FORM C-1, page 2

PART II - DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE.

This section should 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. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you.

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 this information.

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

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-2 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

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 requirement.
- _____ is insufficient to sustain payments on the amount of credit requested.
- _____ could not be verified.

YOUR EMPLOYMENT:

- _____ is not of sufficient length to qualify.
- _____ could not be verified.

YOUR CREDIT HISTORY:

- _____ of making payments on time was not satisfactory.
- _____ could not be verified.

YOUR APPLICATION:

- _____ lacks a sufficient number of credit references.
- _____ lacks acceptable types of credit references.
- _____ reveals that current obligations are excessive in relation to income.

OTHER: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. Any questions regarding such information should be directed to [consumer reporting agency].

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

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-3 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS
(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 that 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 reasons why you did not score well compared to other applicants were:

- * Insufficient bank references
- * Type of occupation
- * Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and telephone number of the consumer reporting agency].

If you have any questions regarding this letter, you should contact us at

Creditor's 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 (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).

FORM C-4 -- SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date _____

Dear Applicant:

Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(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] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age 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 and address of the appropriate federal enforcement agency listed in Appendix A]

Sincerely,

FORM C-5 -- SAMPLE 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 an account for you/grant a loan to you/increase your credit limit] at this time.

If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of 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:

Consumer reporting agency's name
Address
Telephone number

Sincerely,

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

**FORM C-6 -- SAMPLE NOTICE OF INCOMPLETE APPLICATION AND REQUEST FOR
ADDITIONAL INFORMATION**

Creditor's name
Address
Telephone number

Date

Dear Applicant:

Thank you for 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 give further consideration to
your credit request.

Sincerely,

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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 creditor's forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I—Official Staff Interpretations [Reg. B; ECO-1]

Following is an official staff interpretation of Regulation B issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.).

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 Board. This commentary is the means 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 a creditor protection under section 706(e) of the act.

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the Federal Register. Except in unusual circumstances, 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.

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

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to section 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)-1 and comment 2(c)(2)(ii)-1.

Section 202.1—Authority, Scope, and Purpose

1(a) Authority and scope.

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the 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 Regulation Z (Truth in Lending). 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 Regulation Z. Moreover, the act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

Section 202.2—Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(ii)

1. *Move from service area.* If 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 § 202.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under \$400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* 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 the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)-1 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 point of sale is not adverse action except under those circumstances 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) suggests that fraud is involved.
- The 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. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) Applicant.

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

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 as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decision based on oral requests, the creditor's establish procedures are to accept both oral and written applications.

3. *When an inquiry becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the applicant says or asks.

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

- When 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.

- When 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 sale price of the car and amount of the down-payment, then given the consumer the rate.

- When a consumer asks about terms for a loan to purchase 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, without telling the consumer whether she qualifies for the loan.

- When 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, explaining that he would need to look at all of the applicant's qualifications before making a decision, and offering to send an application form to the consumer.

5. Completed application—diligence requirement. The regulation defines a complete application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect 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 (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.

2(1) Creditor.

1. 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 or not it will purchase the obligation if the transaction is consummated.

2. 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 must comply with § 202.4, the general rule prohibiting discrimination, and with § 202.5(a), on discouraging applications.

2(p) Empirically derived and other credit systems.

1. Purpose of definition. The definition under § 202.2(p)(1) through (iv) sets the

criteria that a credit system must meet in order for the system 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." (Both types of systems may favor an elderly applicant. See § 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 must be revalidated frequently enough to assure that it continues to meet recognized professional statistical standards.

2(w) Open-end credit.

1. Open-end real estate mortgages. The term "open-end credit" does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) Prohibited basis.

1. Persons associated with 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 § 202.4, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as 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. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

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 need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. Scope. This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4, barring discrimination

on a prohibited basis, and to any other provision not specifically excepted.

3(a) Public utilities credit.

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

2. Security deposits. A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation.

3(c) Incidental credit.

1. Examples. If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of 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 excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) Business credit.

1. Definition. The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

Paragraph 3(d)(3)

1. Notification. A creditor is required in all cases to notify a business credit applicant of action taken on an application within a reasonable time of receiving a completed application. This notification may be written or oral.

3(e) Government credit.

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

Section 202.4—General Rule Prohibiting Discrimination

1. Scope of section. The general rule stated in § 202.4 covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not

specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule.

Section 202.5—Rules Concerning Taking of Applications

5(a) Discouraging applications.

1. *Potential applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants. Practices prohibited by this section include:

- A statement that the applicant should not bother to apply, after the applicant states that he is retired.
- Use of words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference or a policy of exclusion in violation of the act.
- Use of interview scripts that discourage applications on a prohibited basis.

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

5(b) General rules concerning requests for information.

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) Other limitations on information requests.

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. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

5(e) Written applications.

1. Requirement for written applications.

The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in Appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by section 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b).)

Section 202.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

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 (42 U.S.C. 2000e *et seq.*). Congressional intent that this doctrine apply to the credit area 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. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. 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. If there is a demonstrable

relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

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.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor 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 § 202.2(p), with one limitation: an applicant who is 62 years old or older must be treated at least as favorably as anyone who is under age 62.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not take age directly into account in any aspect of the credit transaction. For example, the creditor may not reject an application or terminate an account because the applicant is 60 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 consider 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 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 the applicant's age to assess the significance of the length of the applicant's 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. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as "empirically derived" under § 202.2(p) may consider other factors (such as credit report or the applicant's cash

flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as "demonstrably and statistically sound."

While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a "pertinent element of creditworthiness." (See comment 6(b)(2)-3.)

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 (such as 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 an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance (all referred to as "protected income") on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing 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 court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.* A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

- A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.
- A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that 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 that is 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. Any

discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual 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 than earned income from a primary source. However, the creditor may not score or otherwise take into account the number of sources for protected income—for example, retirement income, social security, alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict 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, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 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-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* Under the regulation a denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

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 of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

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 on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a non-spouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes

an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction 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 account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rule 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 an account holder's marital status changes, a creditor generally may not terminate the 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 marital status, when one or both spouses:

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

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, reaching a particular age, or change in name or marital status—to trigger such a request.

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 (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. 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 specify a reasonable time period within which the account holder must submit the required information.

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 generally 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 § 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 someone whose signature is required by the creditor as a condition for granting the credit requested.

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:

- Requiring an additional party under § 202.7(d)(5).
- Offering to grant the applicant's request on a secured credit basis.
- Asking for the signature of the co-owner of the property on an instrument that assures access to the property but does not impose personal liability unless necessary under state law.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* 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.

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 only 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 thorough 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 grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

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

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 the 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 that as a matter of state law is not community property.

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the 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 in § 202.7(d) bar a creditor from requiring the signature of a *guarantor's spouse* just as 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, the creditor may not automatically require that spouses of married officers also sign. However, an evaluation of the financial circumstances of an officer may indicate that an additional signature is necessary, and this may be the signature of a spouse in appropriate circumstances.

7(e) Insurance

1. *Differences in terms.* Differences in the availability, rates, and other 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 the loan program must make these decisions regarding the status of its program.

2. *Compliance with a 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 a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state or local statute, regulation or ordinance, or by judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

8(b) Rules in other sections.

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

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

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6 to determine an applicant's eligibility for a particular program.

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

- Energy conservation programs to assist 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 consider the applicant's minority status.

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

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6, and to require signatures that would otherwise be prohibited by § 202.7(d).

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

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

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when

required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§ 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term "adverse action."* The regulation does not require that a creditor use the term "adverse" in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must, however, comply with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

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

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* 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. (See also comment 2(f)-5.)

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

3. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application and notify the applicant under this section as appropriate. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance the incompleteness of the application cannot be given as the reason for the denial.

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

5. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C-4 of Appendix C to the regulation.

6. *Denial of a telephone application.* When an application is conveyed by means of telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

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 or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in § 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 scoring systems, or add 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 § 202.9 (a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor 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 or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action 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.

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

7. *Combined credit scoring and 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 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, even if the factors were also considered in the credit scoring component.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of 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). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA-FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 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 credit must also disclose that a credit report was obtained and used to deny credit. Sample forms C-1 through C-5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the 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 § 202.9 (c)(1) and (c)(2). If the applicant

does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) Applications submitted through a third party.

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted. Alternatively, the third party may be a noncreditor.

2. *Third-party notice—enforcement agency.* 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.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an 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 adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 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 that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate 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 § 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.

10(a) Designation of accounts.

1. *New parties.* When new parties who are spouses undertake a legal obligation 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. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) Preservation of records.

1. *Copies.* A copy of the original record includes carbon copies, photocopies, 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 § 202.12(b) by retaining the information actually entered. It is not required to 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 § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

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. (See, for example, comment 9-2.) In such cases, the 25-month requirement runs from the date of application, as when:

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

Section 202.13—Information for Monitoring purposes

13(a) Information to be requested.

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 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. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 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 § 202.13.

4. *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 § 202.13.

5. *Refinancings.* A creditor who receives an application to change the terms and conditions of an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again, but is not required to do so if it was obtained in the earlier transaction.

13(b) Obtaining of information.

1. *Forms for collecting data.* A creditor may collect the information specified in § 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 § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

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:

- When a creditor accepts an application by telephone, it does not have to request the monitoring information.
- When a creditor accepts an application by mail, it 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.

If it is not evident on the face of the application that it was received by mail or telephone, the creditor should indicate on the form or other application record how the application was received.

4. *Applications through loan shopping services.* When a creditor accepts an application through an unaffiliated loan shopping service, it does not have to request the monitoring information.

5. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.

13(c) Disclosure to applicant(s).

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. 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 if it is requested in writing.

13(d) Substitute monitoring program.

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to that required by this section.

Section 202.14—Enforcement, penalties and liabilities

14(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 an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively only.

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The residential loan application form (FHLMC 65/FNMA 1003) and supplemental form (FHLMC 65A/FNMA 1003A) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

2. *FHLMC/FNMA form—home improvement loan application.* The home

improvement and energy loan application form (FHLMC Form 703/FNMA Form 1012) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

By order of the Board of Governors of the Federal Reserve System, November 13, 1985.

William W. Wiles,

Secretary of the Board.

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