FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **10305**
July 26, 1989]

REGULATION B — EQUAL CREDIT OPPORTUNITY

Comment Invited by September 15 on Proposals Regarding Small-Business Credit Applications

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

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

> The Federal Reserve Board has issued proposed amendments to its Regulation B, Equal Credit Opportunity, that implement provisions of the Women's Business Ownership Act regarding notifications and recordkeeping for business credit applications.
>
> Comment is requested by September 15.
>
> The Board's proposed revisions to the regulation, in general, would require creditors to give small business applicants written notice of the right to obtain the reasons for a credit denial. The proposed changes would also require the retention of records on business credit applications for 25 months. These requirements would apply to applications from businesses with $500,000 or less in gross revenues. The proposed rules correspond closely to the rules that govern nonbusiness credit applications. A creditor that follows the provisions for nonbusiness credit would be in full compliance with the act and regulation.

Printed on the following pages is the text of the Board's proposals, as published in the *Federal Register* of July 14, 1989. Comments thereon must be submitted by September 15, 1989, and may be sent to the Board, as specified in the notice, or to our Compliance Examinations Department.

E. Gerald Corrigan,
President.

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0671]

Equal Credit Opportunity; Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments, enacted on October 25, 1988, require creditors to give written notice to business credit applicants of their right to a written statement of reasons for credit denials or other adverse action. The law also requires creditors to maintain records used in evaluating credit applications.

The proposed revisions to Regulation B would implement the statutory amendments and define coverage. Coverage of business credit applications generally would depend on the applicant's gross revenues: an application would be subject to the amendments if it involves a business applicant with gross revenues of $500,000 or less, except in the case of an application for trade credit and similar types of credit. The latter applications and applications from businesses with gross revenues greater than $500,000 would remain subject to modified rules currently provided by § 202.3(d) of Regulation B, although certain revisions to that section are also being proposed by the Board at this time.

The Board will adopt a final rule following a 60-day comment period, after review of the comments received. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

DATE: Comments must be received on or before September 15, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0671. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452-2412 or 452-3867: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA also provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR Part 202. A staff commentary to the regulation, 12 CFR Part 202 Supp. I, applies and interprets the requirements of Regulation B.

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions, set forth in § 202.3 of Regulation B, from certain of the regulation's requirements for the following types of credit: Credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); extensions of credit to federal and state governments; and extensions of credit primarily for business, commercial or agricultural purposes ("business credit").

The current exceptions for business credit relate to the following areas: Written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons. Business credit transactions remain subject to all other provisions of Regulation B (which includes for example, rules that make it unlawful for a creditor automatically to require loan guarantees from a nonapplicant spouse).

The Women's Business Ownership Act amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B do not provide business credit applicants, particularly small-business owners, with adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Pub. L. No. 100-533, 102 Stat. 2689. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial and (2) retain records on business credit applications for at least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirement of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

(2) The Proposed Revisions to Regulation B

The Board proposes to revise Regulation B to implement the ECOA amendments regarding notice of credit denials and record retention; define the business credit applications to which the revised rules will apply; and revise the regulatory provisions that will govern all other business credit transactions.

General Coverage

The legislative history makes clear that the primary intent of the statutory amendments is to provide small-business owners, particularly women entrepreneurs, the same ECOA rights that are afforded to consumer credit borrowers. There is evidence of congressional intent that the amendments should not apply to applications by large corporations or to certain types of business credit (such as applications for trade credit and credit incident to factoring arrangements). *See* House Committee on Small Business, Selected Documents Pertaining to the Women's Business Ownership Act of 1988, 100th Cong. 2d Sess. (Comm. Print).

There is, however, no commonly accepted definition of a small business. The Board therefore considered various tests for determining coverage for purposes of the ECOA and Regulation B—for example, the asset size of the business entity, and the number of employees of the business entity. In many instances, however, the

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correlation between "small" and some of these characteristics depends on the nature of the business, industry dominance, and other factors. The Board also considered using the size of the loan transaction, but transaction size does not differentiate between small- and large-business credit applicants. Wanting to provide a simple test for determining coverage of transactions by Regulation B, the Board ultimately decided to propose a cutoff based on gross revenues.

Applications from businesses that had gross revenues of $500,000 or less in the preceding fiscal year would be subject to regulatory provisions implementing the statutory amendments on notice of credit denials and record retention. (A creditor would be permitted to rely on the applicant's assertions about the revenue size of the business). Applications to start a business would be included in this category. Applications for trade credit, credit incident to factoring arrangements, and similar types of credit—as Well as credit applications from businesses with revenues exceeding $500,000—would continue to be subject to the modified rules for notification and record retention set forth in § 202.3(d)(3) of Regulation B, discussed later in this notice.

The $500,000 cutoff which the Board is proposing would provide coverage for credit applications involving some 70 percent of the businesses operating today. The Board believes that this test would ensure ECOA rights for most small businesses and at the same time not cover very large corporate entities. In seeking an appropriate dollar cutoff to delineate a small-business entity, for purposes of the ECOA and Regulation B, the Board looked to other legislation for guidance. The dollar test being proposed—$500,000 in gross revenues—corresponds to the test that was used to establish an exemption for small businesses under the minimum wage legislation recently passed by both the Senate and the House of Representatives. *See* Amendments to the Fair Labor Standards Act, H.R. 2, 100th Cong. 2d Sess. (1989)(subsequently vetoed by the President).

Notice of the Right to Reasons for a Credit Denial

The statutory amendments require creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for a denial of their loan applications. Under the Board's proposal, creditors would follow the notification rules in § 202.9(a)(3) of Regulation B, a new provision governing credit applications from businesses with $500,000 or less in gross revenues. Applications from businesses with revenues exceeding that amount would be governed by § 202.3(d) of the regulation, discussed below.

The proposed rules applicable to business credit closely parallel the rules that govern nonbusiness credit. Creditors that follow the present Regulation B rules governing nonbusiness credit will be in full compliance with the act and regulation. The Board's proposal does, however, contain one or two provisions that would offer creditors some flexibility and facilitate compliance.

Under the proposed rule, creditors would continue to be allowed to notify business credit applicants of a credit decision orally or in writing. (Nonbusiness credit applicants must be notified in writing when credit is denied or other adverse action is taken.) Notice of the credit decision would be given in accordance with the timing requirements of § 202.9(a)(1) of the regulation—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant). If credit negotiations involve a series of countaroffers, the notice requirements of § 202.9 of the regulation would not be triggered by each counteroffer. *See* Regulation B, § 202.9(a)(1)(iv) and the accompanying official staff commentary.

The Board proposes to allow creditors to satisfy the requirement of providing a written notice of the right to a statement of reasons for a credit denial in one of two ways. First, the creditor could give the notice to all business applicants at the time of application provided the notice is given in a form the applicant may retain. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant. For example, the notice could be printed on an application form or financial statement. The disclosure should be noticeable, but there are no special requirements regarding location, type size, or type face.

Alternatively, the creditor could follow the rule used for nonbusiness credit and give notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide the specific reasons for a credit denial, instead of merely giving notice of the right.

Whether a notice is provided at the time of application or when adverse action is taken, the notification must contain all the information required under § 202.9(a)(2) of Regulation B, except that—as noted above—creditors would be permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor.

Appendix C to Regulation B contains sample notification forms. The Board is proposing to add two notices—proposed forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice of a statement of reasons for a credit denial. The reasons for a credit denial contained in form C–7 are illustrative only. Form C–8 is a sample disclosure of the right to a statement of reasons of the type that would be given at the time of application.

A creditor may design its own notification forms or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and proposed § 202.9(a)(3), respectively, for applications for business credit.

Oral Notification for Telephone Applications

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is considered an application under § 202.2(f) of Regulation B. The Board recognizes that creditors that accept telephone applications might find it difficult to comply with the written notification requirements. Proposed § 202.9(a)(3) of the regulation therefore provides that when an application for business credit is made by telephone, compliance with the notification requirements would be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In this instance, the additiona1 information otherwise required on a written notification need not be recited. For example, a creditor does not have to give an oral disclosure of the ECOA notice specified in § 202.9(b)(1) of the regulation.

A request for an advance under an existing line of credit is not considered an "application" for credit and therefore

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does not trigger the notification requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2). Inquiries from potential applicants seeking only credit information also are not covered by the notification requirements. Such inquiries are, however, subject to § 202.5(a) of Regulation B, which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Retention of Records Used to Evaluate Applications

Regulation B generally requires creditors to retain records for a 25-month period that starts when the creditor notifies an applicant of the action taken on an application for credit. The purpose of record retention is to evidence compliance with or enforce any action under the ECOA by preserving records that may disclose patterns of lending policies or practices, to help support or refute allegations of discrimination. A 25-month period was established by the regulation because an aggrieved applicant has two years in which to file a lawsuit alleging violations of the ECOA.

The statutory amendments to the ECOA require that creditors retain records on business credit applications for not less than one year, though the Board has the discretion to set a longer period for record retention. The Board is proposing that records for applications involving businesses with gross revenues of $500,000 or less be retained for 25 months, the same time period required for the retention of nonbusiness credit records. As in the case of notification, the Board would like to provide as much uniformity between business and nonbusiness credit rules as possible. The Board believes that doing so would facilitate creditor compliance by eliminating confusion that might result from having different rules for business and nonbusiness credit. The Board invites comment on whether requiring records to be retained for 25 months, instead of 12 months, would impose a significant incremental burden.

The rules governing record retention are contained in § 202.12 of Regulation B. Creditors are required to retain the original or a copy of any application document and other written or recorded data used in evaluating an application. (A "copy" includes carbon copies, photocopies, microfilm copies, copies produced by a computerized system, or copies produced by any other accurate retrieval system.) Typically, such data might include financial statements, tax returns, and business plans. The creditor must also retain a copy of any statement of reasons for a credit denial provided to an applicant. Any documents that are returned to the applicant upon the applicant's request need not be retained.

Regulation B does not require creditors to use written application forms to satisfy the record retention requirements of the regulation. In situations where no formal written application is used, or where there is little documentation concerning an application because a creditor is dealing with a customer of long standing or for some other reasons, the documentation necessary for record retention would be minimal.

Where a creditor provides a notice of rights, a creditor may evidence compliance in various ways. The creditor need not retain acknowledged copies of the actual notice of rights given to each individual applicant. A creditor could evidence compliance by having a sample copy of the type of notice provided to applicants and demonstrating that there are procedures in place to ensure that notices are being provided.

Notification and Record Retention Requirements for Applications by Businesses With Gross Revenues in Excess of $500,000, and Applications for Trade and Similar Credit

The proposed rules for notification and record retention discussed above would govern credit applications by businesses with gross revenues of $500,000 or less. Credit applications by businesses with gross revenues exceeding $500,000, and applications for trade credit, credit incident to factoring and similar credit (regardless of the applicant's revenues) would be subject to modified rules contained in § 202.3(d) of Regulation B. (Trade credit and credit extensions incident to factoring arrangements, typically involve the financing of inventory, equipment or accounts receivable. Some of these transactions may involve numerous oral, instant-credit decisions made on a daily, or even hourly, basis under the credit relationship, and the legislative record indicates congressional intent that these transactions should not be subject to the new statutorily mandated provisions.)

The Board is proposing certain revisions to the rules in § 202.3(d) to simplify their application for both applicants and creditors, and to make it easier for creditors to comply by providing more uniformity among the various timing requirements for notice and record retention. Under the current regulation, a creditor must notify a business credit applicant of a credit denial, orally or in writing, within a reasonable time after receiving a completed application. (Notice provided in accordance with the timing requirements of § 202.9(a)(1) of Regulation B is deemed "reasonable" in all instances.) The applicant currently has the right to a written statement of the specific reasons for a credit denial, but must submit a written request within 30 days of a denial in order to obtain the reasons. Under the proposed revisions, applicants would have up to 60 days after a denial (as in nonbusiness credit) to request written reasons for the denial.

The current regulation requires creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant makes a written request to have records kept, the creditor must retain the records for 25 months. As in the case of the reasons for a credit denial, however, the creditor need not inform the applicant of the right to make the request. Under the proposed revisions to § 202.3(d), if the creditor receives a written request for a statement of reasons, the creditor would be required both to give the reasons and also to retain records for a 25-month period. Thus, rejected applicants would not need to make two distinct requests regarding the credit decision. Absent a request, a creditor would not have to retain records beyond the 60-day period in which a request might be received.

Elimination of Current Business Credit Exception Concerning Marital Status Inquiries

The ECOA prohibits creditors from discriminating on the basis of marital status in any aspect of a credit transaction. Section 202.5(d)(1) of Regulation B generally prohibits creditors from asking about marital status when an applicant applies individually for unsecured credit. Currently, however, individuals applying for business credit may be asked about their marital status whether the credit is to be secured or unsecured, under an exception provided by § 202.3(d)(2)(i).

The Board proposes to eliminate that exception. As a result, inquiries about a business credit applicant's marital status would now be governed by the rules that apply to nonbusiness credit. Inquiries about marital status would be permissible only if an applicant applies for secured credit, applies jointly for credit, resides in a community property state, or relies on property located in such a state as a basis for repaying a debt. See *generally* Regulation B,

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§ 202.5(d)(1) and accompanying commentary.

Elimination of Exception Regarding Reporting Credit Information to Third Parties

The Board proposes to delete from § 202.3(d) the exception from § 202.10, the regulatory provision that governs the reporting of credit histories on joint accounts held by spouses. Under § 202.10, a creditor that furnishes credit information to third parties (for example, to a credit bureau or another creditor) must reflect the participation of both spouses on any account held jointly by married persons, even if one spouse is merely an authorized user on the account. This provision is intended to ensure that married women are able to develop credit histories in their own names so that in the event of widowhood or divorce, for example, they are not left without a credit history. The Board believes this provision has no applicability in the context of business credit accounts because any credit history reported about such an account pertains to the business entity and not to the individuals owning the business. The Board therefore believes that providing an exception from this provision is unnecessary, and proposes to eliminate the exception.

Exceptions for Nonbusiness Credit

The ECOA amendments of 1988 were enacted to modify the business credit exceptions, and no specific mention is made in the legislative record of other nonbusiness credit transactions. The modifications relating to the Board's rulewriting authority, however, also affect the other existing exceptions in § 202.3 (a)–(c) and (e) of Regulation B—for public-utilities credit, securities credit, incidental credit and credit to governmental agencies. Like the exceptions for business credit, the exceptions for these types of transactions will be subject to review every five years. The exceptions exist primarily because the extensions of credit to which they relate generally are incidental to some other service being provided, or because they are subject to regulation by another governmental entity. The nonbusiness exceptions have been republished in this notice. The Board invites specific comment on the appropriateness of retaining these exceptions.

(3) Comments Requested

Interested persons are invited to submit written comments on the proposed amendments and other matters addressed in this notice. Comments must be received by September 15, 1989. After the close of the comment period, based upon its analysis of the comments received, the Board will publish in the **Federal Register** its notice of final action. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation B. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 202

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

(5) Text of Proposed Revisions.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in 15 U.S.C. 1691b of the ECOA, the Board proposes to amend Regulation B (12 CFR Part 202) as follows:

1. The authority citation for Part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.3(a) through (c) and (e) are being republished. Section 202.3 is further amended by removing paragraph (d)(2), adding a new paragraph (d)(2), and revising paragraph (d)(3) to read as follows:

§ 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 207.7(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;

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(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.]

►(2) *Application from business with gross revenues of $500,000 or less.* An application from a business that had, in the preceding fiscal year, gross revenues of $500,000 or less (except an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit) is subject to all the provisions of this regulation. (See § 202.9(a)(3) for rule regarding notification.)◄

(3) [*Modified requirements.*] ► *Application from business with gross revenues in excess of $500,000; extension of trade or similar credit.* An application from a business that had gross revenues in excess of $500,000 in its preceding fiscal year, or an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit, is subject to all the provisions of this regulation, except that §§ 202.9 and 202.12◄ [The following provisions of this regulation] apply [to business credit] as specified below:

(i) ►Notification under◄ § 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] ►shall◄ provide a written statement of the reasons and the ECOA notice specified in § 202.9(b) if the applicant makes a written request for the reasons within [30] ►60◄ days of that notification [; and] ►.◄

(ii) ►Record retention under◄ § 202.12(b) [relating to record retention.] ►: the◄ [The] creditor shall retain records of an application [as provided] ►for the 25-month period specified◄ 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.] ►has requested in writing the reasons for adverse action (as provided in paragraph (d)(3)(i) of this section) or if, within 60 days after being notified of action taken or of incompleteness, the applicant 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 § 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

3. Section 202.9 is amended by adding paragraph (a)(3) to read as follows:

§ 202.9 Notifications.

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

* * * * *

►(3) *Notification rule—application from business with gross revenues of $500,000 or less.* A creditor shall provide the notification required by this section to a business credit applicant with gross revenues of $500,000 or less in the preceding fiscal year (except in the case of an application for trade credit, credit incident to factoring arrangements, or other similar types of credit). The notification given to a business credit applicant when adverse action is taken shall be provided in accordance with paragraph (a)(2) of this section, except that the statement of action taken may be given orally or in writing. A creditor may disclose an applicant's right to a statement of reasons and other information required by paragraph (a)(2) of this section at the time of application, instead of when adverse action is taken, provided the disclosure is in a form that the applicant may retain. For an application made by telephone, the requirements of this section are satisfied by oral notification of action taken and of the applicant's right to a statement of reasons for adverse action.◄

* * * * *

4. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample Forms C–7 and C–8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains [six] ►eight◄ 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. ►Forms C-7 and C-8 are intended for use in connection with applications for business credit under § 202.9(a)(3).◄

* * * * *

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 requirements 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. ►Proper use of Forms C-7 and C-8 will satisfy the requirements of §§ 202.9(a)(2)(i) and (3), respectively, for applications for business credit.◄

* * * * *

►Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

____

Creditor's name

____

Creditor's address

Date ______________

Dear Applicant:

Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

Value or type of collateral not sufficient
Lack of established earnings record
Slow or past due in trade or loan payments
Lack of managerial experience

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis or 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).

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Form C-8—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

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).◄

By order of the Board of Governors of the Federal Reserve System, dated July 10, 1989.

William W. Wiles,

Secretary of the Board.

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