

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10782** ]  
May 10, 1995 ]

**EQUAL CREDIT OPPORTUNITY**  
**Proposed Amendment to Regulation B**  
**Regarding the Collection of Certain Data in Connection with Credit Applications**  
*Comments Invited by June 27, 1995*

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

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

The Federal Reserve Board has issued for public comment a proposal to permit, but not require, banks and other creditors to request information on the race, color, sex, religion and national origin of applicants for credit.

The proposal, to amend the Board's Equal Credit Opportunity Regulation (B), would permit creditors to collect this data voluntarily for all types of credit applications.

Comment should be received by the Board by June 27.

Regulation B contains a general prohibition on collection of data relating to an applicant's race, color, sex, religion or national origin. The proposal would *allow* data collection only. Consumers would not be required to provide this information and creditors would be prohibited from collecting the information by visual observation or by any other means, if the consumer chose not to supply it.

Printed on the following pages is the text of the proposal, which has been published in the *Federal Register*. Comments thereon should be submitted by June 27, 1995, and may be sent to the Board of Governors, as specified in the Board's notice, or to our Compliance Examinations Department.

WILLIAM J. McDONOUGH,  
*President.*

# Proposed Rules

Federal Register

Vol. 60, No. 80

Wednesday, April 26, 1995

Opportunity). The proposed amendment would eliminate the general prohibition on collecting data relating to an applicant's race, color, sex, religion, and national origin, giving creditors the option to ask applicants to provide the information on a voluntary basis. This amendment would allow data collection only; creditors still would be prohibited from considering an applicant's race, color, sex, religion, and national origin in their credit decisions.

**DATES:** Comments must be received on or before June 27, 1995.

**ADDRESSES:** Comments should refer to Docket No. R-0876, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Jane Gell, Sheilah Goodman or Natalie Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

## SUPPLEMENTARY INFORMATION:

### I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, sex, religion, national origin, marital status, 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 act is implemented by the Board's Regulation B (12 CFR part 202).

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Regulation B; Docket No. R-0876]

### Equal Credit Opportunity

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for comment a proposed amendment to Regulation B (Equal Credit

When first passed in 1974, the ECOA barred discrimination based on sex and marital status only. The Board's regulation, issued in 1975, prohibited creditors from noting the sex of an applicant, or inquiring about an applicant's childbearing or childrearing intentions. The regulation also limited when creditors were allowed to inquire about marital status or ask for information about a spouse or former spouse. These provisions were opposed by creditors at the time, but received strong support from women's groups and others who believed that if creditors did not have this information, they could not use it to discriminate.

The ECOA was amended in 1976 to expand its coverage to the present scope. That year, the Board proposed amendments to Regulation B which extended the general prohibition on inquiries into an applicant's sex and marital status to most of the newly covered categories: race, color, religion, and national origin. The response to the proposal was mixed. Most consumer groups and regulatory agencies opposed the prohibition because they believed that it would be extremely difficult to detect discrimination without this information, while creditors generally favored the prohibition. The Board implemented the regulation as proposed, applying the same reasoning that supported the 1975 proposal—if creditors could not collect this information they would not be able to use it to discriminate against applicants.

At the same time, several exceptions to the general prohibition on data collection were added to Regulation B. The broadest exception relates to data notation in home purchase and refinance mortgage loan transactions involving the applicant's principal dwelling. Since 1976, Regulation B has required creditors to collect "monitoring information" (age, sex, marital status, and race or national origin) for mortgage loan applicants. This requirement was added to the regulation because of the concern expressed by consumer groups and regulatory agencies regarding the need for the data to help detect mortgage lending discrimination.

The regulation also allows creditors to collect data if required by another regulation, order, or agreement of a court or enforcement agency to monitor or enforce compliance with the ECOA, Regulation B, or any other federal or state statute or regulation. This exception was included in the regulation so that lenders would not have to choose between competing regulations or statutes. For example, the Small Business Administration (SBA) requires lenders participating in its 7(a),

or SBA guaranteed, loan program to collect race and sex information from each applicant. Under the regulatory exception, lenders can comply with the SBA requirements without violating Regulation B.

Similarly, creditors can collect data pursuant to the Home Mortgage Disclosure Act (HMDA) without concerns about violating Regulation B. Since 1990, HMDA has required creditors to collect race or national origin and sex data from applicants for home mortgage loans. HMDA's data collection requirement is broader than Regulation B's because it applies to most applications for home improvement loans, as well as applications for home purchase and refinance, received by lenders subject to HMDA.

For the past several years, various creditors, consumer groups, state and federal agencies, and congressional representatives have requested that the Board amend Regulation B to allow creditors to collect race and sex data, primarily in connection with small business loans but also for consumer credit, such as installment loans. These requests have increased with the current focus on credit discrimination and fair lending.

Creditors have expressed a variety of reasons for wanting to collect these data. Some say they would like to be able to better audit their lending programs to ensure that they are in compliance with fair lending laws. Others want the data so that they can respond more effectively to Community Reinvestment Act (CRA) protests. In addition, some creditors have indicated that they want to collect data so that they can better evaluate their community outreach programs and the effectiveness of their marketing programs.

Some regulatory agencies have expressed an interest in the data because they believe that it may increase their ability to detect discrimination. Community groups have expressed similar reasons for wanting the data, that is, so that they can monitor creditors' compliance with the CRA and fair lending laws. It should be noted, however, that the proposed amendment would not require creditors either to collect data or disclose the data that they collect to the public.

## II. Proposed Regulatory Provisions

The proposed amendment to Regulation B would eliminate the general prohibition on collecting data relating to an applicant's race, color, sex, religion, or national origin. The Board is soliciting comment on whether creditors should be allowed to collect

data concerning an applicant's religion. The Board has not received any requests to allow creditors to collect data on religion, and, as a general matter, government monitoring forms do not typically request such information. It would be unusual, however, to permit data collection for all protected characteristics except religion.

The Board believes that race, color, sex, or national origin data may be valuable to consumers and creditors alike, regardless of the product. The Board recognizes that for certain credit products the amount and quality of the data collected may be of limited use, for example with credit cards where most applications are taken by mail or telephone. Nonetheless, the Board's proposal would remove the prohibition for all credit products. The Board is concerned that removing the prohibition for only certain credit products would add needless complication to the regulation, and make compliance more burdensome for creditors. The Board is seeking comment on this approach.

The amendment would allow data collection only; consideration of an applicant's race, color, sex, religion, and national origin in a credit decision would still be prohibited. Consumers could not be required to provide this information and creditors would not be required to collect the information through visual observation. The amendment would prohibit creditors from collecting race, color, sex, religion, or national origin information by visual observation, surname, or otherwise, if the consumer chooses not to supply it. The Board is soliciting comment on this approach.

## III. Form of Comment Letters

Comment letters should refer to Docket No. R-0876, and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

## IV. Regulatory Flexibility Analysis

Compliance with the proposed amendment is voluntary, and therefore the amendment does not of itself impose cost. For those institutions that choose to request the data, there will be some costs associated with redesigning application forms, developing or adapting software programs, training

personnel, and with developing systems to evaluate the information. Since it is unclear how many institutions will adopt these procedures, it is not possible to estimate the costs to institutions in general.

**V. Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), there is no reporting or recordkeeping burden associated with Regulation B or this amendment.

**List of Subjects in 12 CFR Part 202**

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Certain conventions have been used to highlight the proposed revisions to the part. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

**PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)**

1. The authority citation for part 202 continues to read as follows:

**Authority:** 15 U.S.C. 1691-1691f.

2. Section 202.5 is amended as follows:

- a. Redesignating paragraph (b)(3) as paragraph (b)(5);
- b. Adding a new paragraph (b)(3);
- c. Adding a new paragraph (b)(4);
- d. Revising paragraph (d)(3); and
- e. Removing paragraph (d)(5).

The revisions and addition read as follows:

**§ 202.5 Rules concerning taking of applications.**

\* \* \* \* \*

(b) \* \* \*

(3) **▶ Permitted inquiries and collection of information.** A creditor may request applicants to provide their race, color, sex, religion, and national origin as part of the application. Applicants may not be required to supply the requested information. If an applicant chooses not to supply the information, the creditor may not note or otherwise record the race, color, sex, religion, and national origin of the applicant based on visual observation, surname or other means.

(4) **Residency and immigration status.** A creditor may inquire about an

applicant's permanent residency and immigration status.

(5) **◀ \* \* \***

\* \* \* \* \*

(d) \* \* \*

(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.

\* \* \* \* \*

(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 residency and immigration status.]

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, April 20, 1995.

**Jennifer J. Johnson,**  
*Deputy Secretary of the Board.*

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