# FEDERAL RESERVE BANK OF NEW YORK

[ Circular No. **10789**
June 30, 1995 ]

## OFFICIAL STAFF COMMENTARIES

## — Proposed Changes to the Official Staff Commentary to Regulation C

*Comments Invited by August 7*

## — Revisions to the Official Staff Commentary to Regulation B

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

The following statements have been issued by the Board of Governors of the Federal Reserve System:

**Proposed Commentary to Regulation C**

The Federal Reserve Board has issued for comment proposed changes to its staff commentary to Regulation C, Home Mortgage Disclosure.

Comment is requested by August 7.

The proposed commentary provides guidance on various issues including the treatment of prequalifications, participations, refinancings, home equity lines, mergers, and loan applications received through a mortgage broker.

**Revised Commentary to Regulation B**

The Federal Reserve Board has published final revisions to its official staff commentary to Regulation B — Equal Credit Opportunity. The revisions are effective as of June 5.

The revisions to the commentary provide guidance on several issues including disparate treatment, special purpose credit programs, credit scoring systems, and marital status discrimination.

Printed on the following pages is the text of the proposal to the Regulation C Commentary, which has been published in the *Federal Register.* Comments thereon should be submitted by August 7, 1995, and may be sent to the Board of Governors, as specified in the Board's notice, or to our Compliance Examinations Department. In addition, enclosed is the text of the revised Commentary to the Board's Regulation B, which has also been reprinted from the *Federal Register.* Questions regarding either Regulation B or the Official Staff Commentary to that regulation should be directed to our Compliance Examinations Department (Tel. No. 212-720-5914).

WILLIAM J. MCDONOUGH,
*President.*

# Proposed Rules

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

**[Regulation C; Docket No. R–0881]**

### Home Mortgage Disclosure

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

**ACTION:** Proposed rule; staff interpretation.

**SUMMARY:** The Board is publishing for comment a staff commentary to Regulation C (Home Mortgage Disclosure). The commentary applies and interprets the requirements of Regulation C. The proposed commentary provides guidance on various issues including the treatment under Regulation C of prequalifications, participations, refinancings, home

equity lines, mergers, and loan applications received through a broker. The Board believes the proposed commentary will reduce burden and ease compliance by clarifying a number of issues, by providing flexibility in compliance, and by consolidating the guidance that is currently available from a variety of sources.

**DATES:** Comments must be received on or before August 7, 1995.

**ADDRESSES:** Comments should refer to Docket No. R–0881 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 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 a.m. and 5 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 Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412; for the hearing impaired *only,* Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The Board has received many requests from other supervisory agencies and from financial institutions suggesting adoption of a staff commentary to Regulation C to provide guidance on compliance with the regulation. In response, the Board is proposing to issue a staff commentary (12 CFR part 203 (Supp. I)) that interprets the regulation. The Board believes the commentary will provide significant assistance to institutions by clarifying a number of issues and providing flexibility in compliance with the regulation. The proposed commentary follows the narrative format used in most of the Board's other staff commentaries, such as those issued to interpret Regulation Z (12 CFR part 226) and Regulation B (12 CFR part 202). The proposed commentary provides general guidance in applying the regulation to various transactions, and would be updated periodically to address significant questions that arise.

## II. Explanation of Proposed Commentary

The proposed commentary incorporates much of the guidance in *A Guide to HMDA Reporting—Getting It Right!,* developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board), and the Department of Housing and Urban Development. Other sources of material in the proposed commentary include supplementary information published in the **Federal Register** notice of the amendments to Regulation C recently adopted by the Board (59 FR 63698, December 9, 1994) and other **Federal Register** notices on Regulation C, and portions of Appendix A to the regulation. The Board believes that consolidating the guidance that is currently available from a variety of sources into one source will ease compliance and reduce burden.

The Board solicits suggestions on additional issues that are not addressed in this proposal but that may need clarification, and will consider adding commentary material to address such issues in the final version of the commentary.

In cases where provisions of Regulation C have been modified by the amendments issued by the Board in December 1994 (scheduled to take effect on a mandatory basis in calendar year 1996), the relevant commentary provisions relate to those amendments rather than the existing regulatory requirements.

Most of the proposed commentary material is self-explanatory. The following discussion, however, provides some explanation on a few of the points covered in the proposal.

### Section 203.1—Authority, Purpose, and Scope

*1(c) Scope*

*Refinancings*

Proposed comments 1(c)–3 and –4 clarify that an origination includes the refinancing of a home purchase loan for purposes of determining coverage and exemptions from coverage. The comments provide guidance on alternate ways an institution may identify transactions to determine coverage and data collection requirements.

*Participations*

Proposed comment 1(c)–7 would allow the reporting of an institution's partial interest in a participation loan, at the institution's option. Among other things, this would allow an institution to report its partial interest in a large-dollar home purchase or home improvement loan. Of course, given the exclusion in section 203.4(d) from reporting the purchase of an interest in a loan pool, the present comment is intended to allow the reporting of partial interests where the reporting institution has a direct interest in the loan itself, and not an interest in a security such as a mortgage-backed security.

The Board solicits comment on whether reporting participation interests in this manner will address home mortgage lending by a consortium of lenders. A consortium may be structured in several ways. If a consortium is a nonprofit mortgage lender, it would not be covered under Regulation C. If the consortium is a for-profit mortgage lender that meets the tests for coverage under Regulation C, it would report applications and loans originated by the consortium. If the consortium is structured so that participating lenders underwrite and originate a loan, each lender may report its partial interest in the loan.

### Section 203.2—Definitions

*2(b) Application*

*Prequalifications*

Financial institutions must report action taken upon applications for (as well as originations and purchases of) home purchase and home improvement loans (including refinancings). Institutions have asked the Board for clarification on the correct treatment under Regulation C of prequalification and preapproval programs.

In its amendments to Regulation C issued in December 1994, the Board deferred a final determination on whether and how lenders ought to report prequalifications (or preapprovals). Instead, the Board provided that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar year 1994 or 1995.

The Board believes that prequalification requests (as that term is used in the proposed commentary) are not applications for purposes of Regulation C, even though they may be applications under Regulation B. Proposed comment 2(b)–2 provides guidance so that institutions can distinguish a request for a prequalification from an application under Regulation C.

The Board may consider proposing amendments to Regulation C to address prequalifications and preapprovals, including whether institutions should be required to report some or all preapproval requests. (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) If, for example, coverage included all preapprovals, the Board might consider adding to the purpose codes "code 5. Preapproval" to distinguish preapprovals from other application procedures. The Board may also consider adding a new action taken code, such as "code 7. Loan preapproved" to distinguish situations where a loan is preapproved but not originated from other actions taken on applications.

*2(e) Financial Institution*

*Foreign banks*

Proposed comments 2(e)–1 and –2 discuss coverage of various types of branches and other offices of foreign banks for purposes of Regulation C. The definition of a covered institution in HMDA refers, in part, to banks as defined in the Federal Deposit Insurance Act (FDI Act). The FDI Act definition of "bank" includes certain types of branches and offices of foreign banks, and excludes other types. Accordingly, certain branches and offices of foreign banks, which meet the FDI Act definition of "bank," are covered by HMDA as depository institutions (assuming they are not excluded by some other exemption). Other branches and offices of foreign banks, which do not meet the FDI Act definition, are covered by HMDA only if they meet the tests for coverage of nondepository institutions.

*2(g) Home-purchase Loan*

*Home Equity Lines*

Under Regulation C, institutions have the option to report that portion of a home equity line of credit that the borrower indicates, at the time of application or when the account is opened, will be used for home improvement purposes. Proposed comment 2(g)–6 sets forth the same position with regard to home equity lines to be used for home purchase purposes. As in the case of home equity lines for home improvement, the institution may choose not to report home equity lines at all. If the institution reports home equity originations, the institution must also report home equity applications that did not result in originations. If the institution chooses to report a home equity line, it should report only the amount indicated at time of application or establishing the credit line, to be used for purposes of purchasing a dwelling.

**Section 203.3—Exempt Institutions**

*3(a) Exemption Based on Location, Asset Size, or Number of Home-purchase Loans*

*Mergers*

Proposed comment 3(a)–2 deals with reporting responsibilities in situations where two financial institutions merge. The proposed comment is based on material in the *Guide to HMDA Reporting,* but additional detail has been added concerning mergers involving a covered and an exempt institution. (Other material from the section of the *Guide* relating to mergers and changes in supervisory agencies appears in proposed comments 3(a)–3 and 5(a)–1.)

**Section 203.4—Compilation of Loan Data**

*4(a) Data Format and Itemization*

*Paragraph 4(a)(6)*

*Location of Property—BNAs*

Proposed comment 4(a)(6)–4 allows institutions to report block numbering areas (BNAs) for properties located in counties for which census tracts have not been established. This option would provide more detailed information that may be used to examine and assess an institution's housing-related lending.

*Paragraph 4(a)(7)*

*Income of Applicants*

Proposed comment 4(a)(7)–5 provides guidance regarding data reporting requirements for applicant income. The comment clarifies that institutions must report all income used to make the credit decision. This figure would include any income the institution considers in qualifying the applicant, even if the funds are not factored into the debt-to-income ratio analysis.

**III. Form of Comment Letters**

Comment letters should refer to Docket No. R–0881. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a hard copy version.

**List of Subjects in 12 CFR Part 203**

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

## PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 2801–2810.

2. Part 203 would be amended by adding a new Supplement I—Staff Interpretations after the Appendices to read as follows:

**Supplement I to Part 203—Staff Interpretations**

*Introduction*

1. *Status.* This commentary in this supplement is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues staff interpretations of Regulation C (12 CFR part 203).

*Section 203.1—Authority, Purpose, and Scope*

*1(c) Scope.*

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term "refinancing" refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed or modified (such as in certain "modification, extension, and consolidation agreements"), the transaction is not a refinancing. (Paragraph V.A.5. Code 3. of Appendix A of this part.)

3. *Refinancing—coverage.* For purposes of determining whether an institution is covered by Regulation C or is exempt, an origination of a home purchase loan includes the refinancing of a home purchase loan. (Paragraphs I.B., I.C. and I.D. of Appendix A of this part.) When an institution refinances an existing obligation, the institution must either:

i. Assume that if the refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase purposes, and that the new obligation is a refinancing of a home purchase loan under Regulation C.

c. If the existing obligation was unsecured, the institution may assume that it was not for home purchase purposes, and that the new obligation is not a refinancing of a home purchase loan under Regulation C.

4. *Refinancing—data collection.* For purposes of data collection (paragraph V.A.5. Code 3. of Appendix A of this part) an institution must either:

i. Assume that if a refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase or home improvement loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase or home improvement loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase or home improvement purposes, and that the new obligation is a refinancing under Regulation C.

5. *Meaning of "broker" and "investor institution."* The term "broker" (or correspondent) refers to any party (whether a bank, thrift, credit union, mortgage banker, mortgage broker, or other type of depository or nondepository institution) that takes and processes loan applications from applicants and that has an arrangement with another party (an "investor institution") under which the investor institution (1) reviews the application prior to closing, (2) makes a credit decision, and (3) determines whether to acquire the loan at or after closing. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

6. *The broker rule—originations.* If an investor institution reviews a loan application from a broker prior to closing, makes a decision to extend credit, and then acquires the loan at or after closing, the investor institution originates that loan for purposes of Regulation C, whether the loan closes in the name of the broker or the investor institution. If a broker submits a loan application to more than one investor, each investor reports the action it has taken on the application. For example, each investor denying the application reports a denial. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

7. *Broker's use of investor institution's underwriting criteria.* A broker makes a decision to extend credit based on underwriting criteria set by an investor institution, but without the investor institution's review before closing. Under these facts, the broker originates that loan for purposes of Regulation C (unless the broker is an agent or contract underwriter for the investor institution), and the investor institution that acquires the loan after closing purchases the loan under Regulation C. If the broker is subject to Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down (either because they do not meet the investor's underwriting guidelines or for some other reason).

8. *Post-closing review by the investor institution.* An investor institution agrees with a broker to purchase loans that meet the investor institution's underwriting guidelines, which the broker uses in making credit decisions on loan applications. The investor institution reviews loans only after closing to confirm that the loans meet its underwriting guidelines. Under these facts, the broker originates the loans and the investor institution purchases the loans under Regulation C. If the broker is covered by Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down. The investor reports only those loans it purchases.

9. *Third-party underwriting guidelines.* An investor institution agrees to purchase from a broker loans that have government or private insurance, but does not review loan applications prior to closing. The broker evaluates loan applications using the insurer's guidelines, or delivers applications to the insurer for a determination on whether it will insure the loan. After closing, the investor institution purchases those loans that have been insured. Under these facts, the broker makes the credit decisions and the investor institution purchases the loans under Regulation C. The investor reports those loans it purchases; it does not report other loans. If the broker is covered by Regulation C, it reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down.

10. *Participation loan.* If an institution participates in the underwriting and origination of a home purchase or home improvement loan, it may report the transaction as an origination to the extent of its participation interest, or it may choose not to report the transaction. If an institution chooses to report originations, it must also report applications that do not result in originations (for example, denials). When a single institution originates the loan and subsequently sells participation interests to other institutions, those institutions report their interests as purchased loans. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

*Section 203.2—Definitions*

*(2)(b) Application.*

1. *Consistency with Regulation B.* The definition of "application" in Regulation C is virtually identical to the definition of "application" in Regulation B (Equal Credit Opportunity, 12 CFR Part 202). Accordingly, guidance in the official staff commentary to Regulation B is generally applicable to the definition of an application under Regulation C. (Paragraph IV.A. of Appendix A of this part.)

2. *Prequalification.* A prequalification request is generally considered to be a request by a prospective loan applicant to a lending institution for a preliminary determination on whether the prospective applicant would likely qualify for credit under the institution's standards, or on how much credit the prospective applicant would likely qualify for. Further, a prequalification request is generally evaluated by the institution through a procedure that is separate from the institution's normal loan application process. A prequalification request is not an application under Regulation C, even though it may constitute an application under Regulation B, requiring a lender to notify an applicant of the action taken. (Paragraphs I. and IV.A. of Appendix A of this part.)

*(2)(c) Branch office.*

1. *Depository institution.* A branch of a depository institution does not include a loan production office or the office of an affiliate, nor does it include the office of a third party such as a loan broker. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.)

2. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.) (But see paragraph V.C.6. of Appendix A of this part, requiring nondepository institutions to report property location even in MSAs where they do not have a physical location.)

*(2)(d) Dwelling.*

1. *Scope.* The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower. Thus, vacation or second homes and rental properties are dwellings under Regulation C. Dwellings include mobile or manufactured homes, multifamily structures (such as apartment buildings), and condominium and cooperative units. Recreational vehicles such as boats or campers are not dwellings. (Paragraphs I.B., IV., and V.A.5. of Appendix A of this part.)

*(2)(e) Financial institution.*

1. *Branches of foreign banks—treated as a bank.* Both a federal branch and a state-licensed insured branch of a foreign bank are a "bank" under the Federal Deposit Insurance Act, and are covered if they meet the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1). (Paragraphs I.A. and I.B. of Appendix A of this part.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25A or 25 of the Federal Reserve Act (Edge Act and agreement corporations) are covered by Regulation C if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2(e)(2) and 203.3(a)(2). (Paragraphs I.C. and I.D. of Appendix A of this part.)

*(2)(f) Home-improvement loan.*

Paragraph (2)(f)(1).

1. *Home improvement.* A home improvement loan is a loan to be used for improvements to a dwelling or to the real property on which the dwelling is located. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.) Examples include:

i. Installation of a swimming pool;

ii. Construction of a detached garage;

iii. Landscaping; or

iv. Purchase of appliances to be installed as fixtures to the dwelling.

2. *Multiple properties.* A home improvement loan includes a loan secured by one dwelling, with the proceeds to be used to improve another dwelling. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

3. *Mixed-use property.* A loan to improve property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home improvement loan. (Paragraphs IV. and V.A.5. Code 2.)

4. *Multipurpose loan.* A loan to make home improvements (even though less than 50 percent of the total loan proceeds are to be used for this purpose) may be treated as a home improvement loan provided that the institution classifies the loan as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

5. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home improvement. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 2.c. of Appendix A of this part.)

6. *Reliance on statement of borrower.* An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home improvement purposes. (Paragraphs IV. and V.A.5. Code 2.c of Appendix A of this part.)

Paragraph (2)(f)(2).

1. *Classification.* The requirement that a loan be "classified" as a home improvement loan provides flexibility to institutions in determining which loans to report. An institution meets the requirement if it has entered a loan on its books as a home improvement loan, or has otherwise identified or coded the loan as a home improvement loan. For example, an institution that has marketed a loan, "booked" it, or reported it on a "call report" as home improvement loan has "classified" it as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

(2)(g) Home-purchase loan.

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling, with the proceeds to be used to purchase another dwelling. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. (Paragraphs IV.A., IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

3. *Commercial and other loans.* A home purchase loan includes a loan for home purchase purposes originated outside an institution's mortgage lending division (such as a loan for the purchase of an apartment building handled by the institution's commercial loan department). (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

4. *Farm loan.* If the property being purchased is used primarily for agricultural purposes—even if the property includes a dwelling—a loan to purchase the property is not a home purchase loan. (Paragraphs IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

5. *Construction/permanent loan.* Construction-only loans are "temporary" financings under Regulation C and are not reported. If the institution commits to provide both the construction and the permanent financing, however, the loan is a home purchase loan for purposes of Regulation C. (Paragraphs IV.A. and B.2 and V.A.5. Code 1. of Appendix A of this part.)

6. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home purchase. An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home purchase purposes. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

*Section 203.3—Exempt Institutions*

*3(a) Exemption based on location, asset size, or number of home-purchase loans.*

1. *General.* An institution that ceases to be a financial institution (as that term is defined in § 203.2(e)) or that becomes an exempt institution under this section may stop collecting HMDA data beginning with the first calendar year after the event that resulted in noncoverage. For example, a bank whose assets drop to $10 million or less on December 31 of a given year collects data for that full calendar year, but need not collect data for the succeeding year. (Paragraph I. of Appendix A of this part.)

2. *Coverage after a merger.* Data collection responsibilities under several scenarios are described below for the calendar year of the merger. (Paragraph I. of Appendix A of this part.)

i. Two institutions are exempt from Regulation C. The institutions merge, producing a covered institution. No data collection is required; the surviving institution begins HMDA data collection in the following calendar year.

ii. A covered and an exempt institution merge. The covered institution is the surviving institution. Data collection is required for the covered institution's transactions; data collection is optional for transactions of the previously exempt institution (for example, transactions handled in offices of the previously exempt institution).

iii. A covered and an exempt institution merge. The exempt institution is the surviving institution. Data collection is required for the covered institution's transactions taking place prior to the merger, and is optional for transactions taking place after the merger date and attributable to the covered institution.

iv. Two covered institutions merge. The surviving institution is required to collect all data for both institutions; it may file a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, the receiver of a failed institution), but no merger or acquisition is involved, the institution treats the loans as purchased loans. (Paragraph V.B. of Appendix A of this part.)

*Section 203.4—Compilation of Loan Data*

*4(a) Data format and itemization.*

1. *Quarterly updating.* An institution should make a good-faith effort to enter all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in an origination—fully and accurately within 30 days after the end of each calendar quarter. If the quarterly update shows that some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C. (Paragraph II.E. of Appendix A of this part.)

Paragraph 4(a)(1).

1. *Application date—consistency.* In reporting the date of application, an institution enters the date an application was received or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

2. *Application date—application received through broker.* For an application forwarded by a broker, an institution enters the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

3. *Application date—reinstated application.* If an applicant asks an institution to reinstate a counteroffer that the applicant previously rejected (or to reconsider a denied application), the institution may treat the request as the

continuation of a single transaction if the applicant's request occurs within the same calendar year as the prior disposition of the application. Alternatively, the institution may treat the request as a separate transaction and the date of the request as the application date. (Paragraph V.A.2. of Appendix A of this part.)

Paragraph 4(a)(3).

1. *Loans outside an MSA.* If a loan relates to property not located in an MSA (or to property in an MSA where the institution has no home or branch office under Regulation C), the institution may report the actual occupancy status or use the code for "not applicable." (Paragraphs V.A.7.c. and V.C.6. of Appendix A of this part.)

2. *Multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status for the property that is reported under comment 1 to paragraph 203.4(a)(6). (Paragraph V.A.6. of Appendix A of this part.)

Paragraph 4(a)(4).

1. *Multiple purpose loan.* If a loan relates to other purposes in addition to home purchase or home improvement, the institution reports the entire amount of the loan, even though not all of the proceeds are for home purchase or home improvement. (Paragraph V.A.8. of Appendix A of this part.)

2. *Home equity line of credit.* An institution that reports home equity lines reports only the amount that the applicant indicates will be used for home improvement or home purchase purposes. (Paragraph V.A.8.c. of Appendix A of this part.)

3. *Counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan amount as the amount actually granted. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the amount initially requested. (Paragraph V.A.8.f. of Appendix A of this part.)

4. *Participation loan.* An institution reporting a participation loan origination enters the amount of its interest. (Paragraph V.A.8. of Appendix A of this part.)

Paragraph 4(a)(5).

1. *Action taken—counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan as an origination. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

2. *Action taken—rescinded transaction.* If an applicant rescinds a transaction after closing, an institution reports the action taken as an origination or as approved but not accepted. (Paragraph V.B. of Appendix A of this part.)

3. *Action taken—purchased loan.* An institution reports only purchased loans, not loans that the institution has declined to purchase. (Paragraph V.B. of Appendix A of this part.)

4. *Action taken—conditional approval.* If an institution issues a loan approval subject to the applicant's meeting certain underwriting or other conditions and the conditions are not met, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

5. *Action taken date—approved but not accepted.* For a loan approved by the institution but not accepted by the applicant, the institution reports either the date of the commitment letter sent to the applicant or any deadline that the institution gave the applicant for accepting the offer. The institution should be consistent in its practice. (Paragraph V.B.3.b. of Appendix A of this part.)

6. *Action taken date—origination.* Generally, for originations, an institution enters the settlement or closing date. For a loan that an investor institution acquired through a broker and reports as an origination, the institution enters the settlement date, the closing date, or the date the institution acquired the loan from the broker. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

7. *Action taken date—construction/permanent loan.* For a construction/permanent loan, the institution reports the date the institution enters into the construction-loan transaction or when the loan converts to the permanent financing. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

Paragraph 4(a)(6).

1. *Multiple properties.* For a loan secured by one dwelling and made for the purpose of purchasing or improving another dwelling or dwellings, an institution reports the location of the property taken as security. For a loan secured by two or more dwellings, and for the purpose of purchasing or improving one of those dwellings, an institution reports the location of the purchased property. (Paragraph V.C. of Appendix A of this part.) For example:

i. For a loan to purchase or improve property A, secured by property B, report the location of B (the property taken as security);

ii. For a loan to purchase or improve properties A and B, secured by property C, report the location of C (the property taken as security);

iii. For a loan to purchase or improve property A, secured by properties A and B, report the location of A (the property purchased or improved); and

iv. For a loan to purchase or improve properties A and B, secured by properties A and B, the institution may report the location of A or B (one of the properties taken as security). Alternatively, the institution may report the loan in two entries on its Loan/Application Register (using unique identifiers and allocating the loan amount between A and B).

2. *Loans purchased from another institution.* The requirement to report the location of a property in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that itself did not have a home or branch office in that MSA (and thus may not have collected the property location information). (Paragraph V.C. of Appendix A of this part.)

3. *Mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution may enter the code for "not applicable." (Paragraph V.C. of Appendix A of this part.)

4. *Use of BNA permitted.* Block numbering areas (BNAs) are statistical subdivisions delineated by state agencies and the U.S. Census Bureau for grouping and numbering blocks in counties for which census tracts have not been established. BNAs (which generally are identified in census data by numbers in the range 9501 to 9999.99) may be entered if no census tract number exists. (Paragraph V.C.4. of Appendix A of this part.)

Paragraph 4(a)(7).

1. *Applicant data—joint applicant.* If a joint applicant does not file the application in person and does not provide the monitoring information, the institution reports using the code for information not provided by applicant in mail or telephone application. (Paragraph V.D. of Appendix A of this part.)

2. *Applicant data—application completed in person.* When an applicant meets with a loan officer to complete an application that was begun previously (for example by mail or telephone), the institution must treat the application as taken in person and request the monitoring information. A loan closing is not a meeting with a loan officer to complete an application. (Paragraph V.D. of Appendix A of this part.)

3. *Applicant data—completion by applicant.* An institution reports the monitoring information an applicant provides. If an applicant fails to provide the requested information for an application taken in person, the institution enters the data on the basis of visual observation or surname. If an applicant checks the "other" box the institution must report using the "other" code. (Paragraph V.D. of Appendix A of this part.)

4. *Applicant data—interactive video application.* An institution that uses an interactive application process with video capabilities should treat these applications as taken in person and collect the information about race or national origin and sex of applicants. (Paragraph V.D. of Appendix A of this part.) (See Appendix B of this part for procedures to be used for data collection.)

5. *Income data—income relied upon.* Except for income of cosigners (sureties) and guarantors, an institution enters the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution uses an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to meet underwriting standards and approve the loan, the institution reports both salary and bonus. (Paragraph V.D.5. of Appendix A of this part.)

6. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in evaluating creditworthiness, the institution should report only the income of the one

applicant. (Paragraph V.D.5. of Appendix A of this part.)

7. *Income data—cosigners and guarantors.* Although an institution may rely on the income of cosigners and guarantors in making a credit decision, an institution does not report this income. Because cosigners and guarantors generally are not "applicants" under Regulation B, they are not treated as co-applicants under Regulation C. (Paragraph V.D.5. of Appendix A of this part.)

8. *Income data—loan to employee.* An institution may enter "NA" in the income field for a loan to its employee for privacy reasons, even though the institution may have relied on income in making its credit decisions. (Paragraph V.D.5. of Appendix A of this part.)

Paragraph 4(a)(8).

1. *Type of purchaser—loan participation interests sold to more than one entity.* Where a loan is originated by one institution but is sold to more than one entity, the originating institution reports the type of purchaser based on the entity purchasing a majority interest, if any. Otherwise, the institution uses the code for loans not sold in the calendar year covered by the register. (Paragraph V.E. of Appendix A of this part.)

*4(c) Optional data.*

1. *Agency requirements.* The reporting of reasons for denial, although optional under HMDA and Regulation C, may be required information for institutions that are regulated by an agency such as the Office of Thrift Supervision. (Paragraph V.F. of Appendix A of this part.)

*4(d) Excluded data.*

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or "REMIC") is a purchase of an interest in a security and is not reported. (Paragraph IV.B.5. of Appendix A of this part.)

*Section 203.5—Disclosure and Reporting*

*5(a) Reporting to agency.*

1. *Change in supervisory agency.* If the supervisory agency of a covered institution changes, the institution reports data for the year of the change and subsequent years to its new supervisory agency. (Paragraphs I., III. and IV. of Appendix A of this part.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Paragraph I.E. of Appendix A of this part.)

*5(e) Notice of availability.*

1. *Poster—suggested text.* The wording of the poster text provided in Appendix A ("Instructions for Completing the HMDA-LAR") is optional. An institution may use other text that meets the requirements of the regulation. (Paragraph III.G. of Appendix A of this part.)

*Section 203.6—Enforcement*

*6(b) Bona fide errors.*

1. *Bona fide error—data from third parties.* Although an institution may obtain the property location information for applications and loans from third parties (such as appraisers or "geocoding" vendors), the reporting institution is responsible for ensuring that the data are correct. An incorrect census tract number can be treated as a bona fide error (and is thus not a violation of the act or regulation) only if the institution has maintained procedures reasonably adopted to avoid the error, such as performing an audit of the information. (Paragraph V.C. of Appendix A of this part.)

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95-13861 Filed 6-6-95; 8:45 am]

BILLING CODE 6210-01-P

# EQUAL CREDIT OPPORTUNITY

# REVISIONS TO THE OFFICIAL STAFF COMMENTARY TO REGULATION B

Effective June 5, 1995

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0865]

## Equal Credit Opportunity

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

**ACTION:** Final rule; official staff interpretation.

**SUMMARY:** The Board is revising its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations. The revisions to the commentary provide guidance on several issues including disparate treatment, special purpose credit programs, credit scoring systems, and marital status discrimination.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Sheilah Goodman, Natalie E. Taylor, or Manley Williams, 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, contact Dorothea Thompson, Telecommunications Device for the Deaf, (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

### I. 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, age, race, national origin, color, religion, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR Part 202) implements this statute. In addition, the Board's official staff commentary (12 CFR Part 202 (Supp. I)) interprets the regulation. The commentary provides general guidance in applying the regulation to various credit transactions and is updated periodically.

[Enc. Cir. No. 10789]

CMTY B - 23/95

**II. Summary of Revisions to the Commentary**

In December 1994 (59 FR 67235, December 29, 1994), the Board proposed amendments to the staff commentary to Regulation B. The Board received nearly 100 letters on the proposal. After reviewing the comment letters and upon further analysis, the Board is adopting final amendments to the staff commentary.

*Section 202.2—Definitions*

2(c)(1)(i) Application for Extension of Credit

The Board proposed a new comment 2(c)(2)(iii)–2 to address court decisions that misapplied portions of that section. Commenters suggested that to the extent the comment defined types of adverse action, it more clearly fit under section 202.2(c)(1)(i). The Board agrees. The Board is adopting comment 2(c)(1)(i)–1 to clarify that the refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

2(c)(2)(iii) Application for Increase in Available Credit

The Board proposed comment 2(c)(2)(iii)–2 to clarify that a denial of an application to increase available credit or for a change in terms is adverse action. Many commenters expressed concern that the phrase "change in terms" was overly broad, requiring a creditor to provide an adverse action notice in a variety of situations in which it is not now required. The Board has changed the comment heading and has narrowed its scope to refer only to applications to increase credit.

2(p) Empirically Derived and Other Credit Scoring Systems

The Board has adopted comment 2(p)–3, regarding pooled data scoring systems, as proposed.

The proposed comment 2(p)–4 clarified that a credit scoring system—even if "empirically derived, demonstrably and statistically sound"—is subject to review under the ECOA and Regulation B. When a scoring system is used in conjunction with individual discretion, disparate treatment could still occur. In addition, a system could have a disparate impact on a prohibited basis, and could be challenged. Whether such a challenge would be successful depends on a variety of factors, as commenters noted.

More generally, commenters questioned how the standards set out in the proposed comment related to the discussion of disparate impact in comment 6(a)–2. Commenters believed that the proposal's reference to disparate impact was attempting to describe a highly complex area of law in a condensed manner. The Board has deleted the proposed reference to the standards of proof and burdens of persuasion the parties must meet, and instead has added a reference to comment 6(a)–2.

*Section 202.4—General Rule Prohibiting Discrimination*

Comment 4–1 addresses the legal concept known as "disparate treatment," which is a particular type of discrimination. The proposed amendment clarified that disparate treatment might be found even absent a conscious will to discriminate. Some commenters expressed concern that the proposal meant that "intent," as that term has been interpreted by courts in discrimination cases, is not an element of disparate treatment. The Board has revised the comment to clarify that treating individuals differently is not unlawful *per se*. However, treating individuals differently on a prohibited basis is unlawful discrimination ("disparate treatment") if there is no credible, nondiscriminatory reason that explains the difference in treatment. In the examples given, the differential treatment would constitute disparate treatment if the creditor lacked a legitimate nondiscriminatory reason for its action, or if the asserted reason was found to be a pretext for discrimination.

*Section 202.5a—Rules on Providing Appraisal Reports*

5a(a) Providing Appraisals

The Board proposed comment 5a(a)–1 to clarify that section 202.5a applies to applications for credit to be secured by a dwelling, whether the credit is for a business or a consumer purpose. Commenters generally supported the proposed comment. It was suggested that the Board should eliminate a reference to the "consumer's" dwelling, given the definition of "dwelling" used in sections 202.5a(a) and (c). It was noted that "consumer's dwelling" could be read as both more limited than "dwelling" (including only transactions that involve a consumer's dwelling, as "consumer" is defined elsewhere) and more expansive (any dwelling, not limited to one-to-four family dwellings). The Board has revised the comment accordingly.

The Board proposed comment 5a(a)–2 to clarify that section 202.5a applies to a request for renewal of an existing extension of credit secured by a dwelling if the creditor obtains and uses a new appraisal report in evaluating the request.

Section 202.5a does not apply if a consumer requests renewal of existing credit and the creditor does not obtain a new appraisal. Commenters supported this clarification.

5a(a)(2)(i) Notice

The Board proposed comment 5a(a)(2)(i)–1 to clarify the rule for credit involving more than one applicant, which parallels the rule in section 202.9 concerning notices of action taken where there is more than one applicant. Commenters supported this clarification.

5a(a)(2)(ii) Delivery

The Board proposed a new comment 5a(a)(2)(ii)–1 to clarify that in all cases creditors may seek reimbursement for photocopy and postage costs incurred in providing the copy of the appraisal report unless prohibited by state or other law, or unless the consumer has already paid for the report.

The proposal provided that if the creditor does not otherwise charge for the report, as in "no closing cost" loans, the creditor may not require payment solely from those consumers who request a copy of the report. Commenters were divided on this issue. Some noted that these loans benefit consumers by reducing the upfront costs of applying for credit. Several commenters believed that a prohibition on reimbursement for an appraisal report for "no closing cost" loans would have a chilling effect on creditors' willingness to offer these products. Commenters said that for no-cost loans that close, creditors who waive closing costs (including the cost of an appraisal) recover those costs over the term of the loan; they do not recover the cost of the appraisal for no-cost loans that are denied or withdrawn. Commenters requested that in such cases, the Board allow creditors to charge for the cost of the appraisal when applicants ask for a copy of the report.

The statute gives a creditor the right to require an applicant to reimburse the creditor for the cost of the appraisal. Upon further analysis, the Board believes that creditors may collect the costs of an appraisal unless the consumer has already paid for the report.

5a(c) Definitions

New comments 5a(c)–1 and 5a(c)–2 address the scope of the term "appraisal report." Under the proposal, publicly available listings of valuations for dwellings, such as published home sales prices or mortgage amounts, are not

covered. The appraisal rules guard against discriminatory evaluations of a dwelling's value. The Board believes that publicly available reports of home sales prices or tax assessments, among others, are unlikely to be influenced by the type of subjectivity the law is intended to eliminate.

Commenters generally supported the clarifications to the definitions. The Board has adopted the comments as proposed.

*Section 202.6—Rules Concerning Evaluation of Applications*

6(a) General Rule Concerning Use of Information

The Board did not propose commentary under this section. In addressing the issue of disparate impact under proposed comment 2(p)–4, however, many commenters discussed comment 2 to this section. The commenters uniformly expressed concern, in regard to this comment and comment 2(p)–4, about the Board's articulation of the standards of proof and burdens of persuasion under a disparate impact analysis (sometimes referred to as the effects test). The Board recognizes that this is an evolving area of law, one in which creditors and consumers alike would benefit from more specificity. However, given that the Board did not propose any amendments to this section of the commentary, the only change to the existing commentary is the addition of a reference to the Civil Rights Act of 1991, which codifies the standards used for disparate impact under Title VII. The Board will consider addressing these issues further in future commentary proposals.

6(b)(1) Prohibited Basis—Marital Status

The Board proposed to revise comment 6(b)(1)–1 to clarify that if a creditor chooses to offer joint credit, the creditor generally may not take the applicants' marital status into account in credit evaluations, except to the extent necessary for determining rights and remedies under state law. Commenters generally supported this clarification.

A few commenters requested clarification on how the commentary applied to other parties such as cosigners or guarantors. Creditors are not required to combine the debts and incomes of two parties when one of them is a cosigner or guarantor for the other. (Comment 7(d)(5)–1 provides guidance on standards that creditors may use in requesting additional parties.)

*Section 202.8—Special-Purpose Credit Programs*

8(a) Standards for Programs

The Board proposed comments 8(a)–5 and –6 to clarify the requirements that for-profit organizations must meet to establish special-purpose credit programs under section 202.8(a).

Commenters generally supported both comments. In response to some commenters' concerns, the Board has added language to comment 8(a)–5 clarifying that the program can be designed to benefit a class of people who would otherwise receive credit on less favorable terms, as well as those who would be denied credit.

Two issues have been clarified in comment 8(a)–6. First, some commenters were concerned about the statement that the plan should specify the length of time that it will be in effect and that it be reevaluated after that time. Some commenters said that this added regulatory burden. The Board believes that because special purpose credit programs are designed to fulfill a particular need, they must be reevaluated periodically to determine if there is a continuing need for the program. The comment has been amended to reflect this position. Second, the reference to avoiding a negative effect on individuals who are not in the class the program was designed to benefit, by denying them rights or opportunities they might otherwise have, has been deleted because it is not clear precisely how this condition applies in the credit context.

*Section 202.9—Notifications*

The Board proposed comment 9–5 to address when a creditor must send a notice of action taken under prequalification, preapproval, and similar programs. The comment clarified that the guidance provided in the commentary to section 202.2(f), addressing applications and inquiries, applies to all types of inquiries, including prequalification and preapproval programs. Thus, if a creditor—in giving information to a consumer about a prequalification or preapproval program—decides it will not grant credit, and communicates this to the consumer, the creditor has treated the inquiry as an application (by virtue of having made a credit decision) and must comply with the notification rules in § 202.9. Commenters generally supported the guidance provided in the proposal.

**Appendix C of Supplement I to Part 202—Sample Notification Forms**

The Board proposed a comment to Appendix C to provide examples of additions that may be made to Model Form C–9. The commenters supported the comment and the Board has adopted it as proposed.

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

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

For the reasons set forth in the preamble, the Board is amending 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. In Supplement I to Part 202, *Section 202.2—Definitions,* is amended as follows:

a. Under *2(c) Adverse action.*, preceding 1. *Move from service area.*, a new paragraph heading 2(c)(1)(i), a new paragraph 1., and a new paragraph heading 2(c)(1)(ii) are added;

b. Under Paragraph (2)(c)(2)(iii), a new paragraph 2. is added; and

c. Under *2(p),* the paragraph heading for *2(p)* is revised and new paragraphs 3. and 4. are added.

The additions and revision read as follow:

**Supplement I to Part 202—Official Staff Interpretations**

* * * * *

*Section 202.2 Definitions*

*2(c) Adverse action.*

Paragraph 2(c)(1)(i)

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

Paragraph 2(c)(1)(ii)

1. *Move from service area.* * * *

* * * * *

Paragraph 2(c)(2)(iii)

* * * * *

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

* * * * *

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

* * * * *

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1) (i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

* * * * *

3. In Supplement I to part 202, under *Section 202.4—General Rule Prohibiting Discrimination,* four new sentences are added at the end of paragraph 1. To read as follows:

* * * * *

*Section 202.4—General Rule Prohibiting Discrimination*

1. *Scope of section.* * * * Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate. Disparate treatment would be found, for example, where a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant. Disparate treatment also would be found where a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

* * * * *

4. In Supplement I to part 202, a new *Section 202.5a,* is added in numerical order to read as follows:

* * * * *

*Section 202.5a—Rules on Providing Appraisal Reports*

*5a(a) Providing appraisals.*

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

*5a(a)(2)(i) Notice.*

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

*5a(a)(2)(ii) Delivery.*

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

*5a(c) Definitions.*

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value.

ii. A document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term "appraisal report" does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

* * * * *

5. In Supplement I to Part 202, *Section 202.6—Rules Concerning Evaluation of Applications,* is amended as follows:

a. Under *6(a) General rule concerning use of information.*, the first sentence in paragraph 2. is revised; and

b. Under Paragraph 6(b)(1), three new sentences are added at the end of paragraph 1.

The additions and revision read as follow:

* * * * *

*Section 202.6—Rules Concerning Evaluation of Applications*

*6(a) General rule concerning use of information.*

* * * * *

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.), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). * * *

* * * * *

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* * * * Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

* * * * *

6. In Supplement I to Part 202, *Section 202.8—Special Purpose Credit Programs,* under *8(a) Standards for programs.*, new paragraphs 5. and 6. are added to read as follows:

* * * * *

*Section 202.8—Special Purpose Credit Programs*

(8)(a) Standards for Programs

* * * * *

5. *Determining need.* In designing a special-purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources including governmental reports and studies. For example, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

* * * * *

7. In Supplement I to Part 202, *Section 202.9—Notifications,* a new paragraph 5. is added to read as follows:

* * * * *

*Section 202.9—Notifications*

* * * * *

5. *Prequalification and preapproval programs.* Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request, as discussed in the commentary to section 202.2(f). For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

* * * * *

8. In Supplement I to Part 202, a new Appendix C—Sample Notification Forms is added at the end to read as follows:

* * * * *

**Appendix C—Sample Notification Forms**

*Form C–9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–13862 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board, June 1, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–13863 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P