FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7924
July 28, 1976]

PROPOSED REVISION OF REGULATION B IMPLEMENTING THE 1976 AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

Following is the text of a statement issued July 15 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today proposed for public comment a revision of its Regulation B, to implement the 1976 Amendments to the Equal Credit Opportunity Act.

The Board will receive written comment on its proposals through September 1, 1976. The Board also announced it will hold a hearing on the proposals on August 12 and 13, 1976.

The 1976 Amendments to the Act prohibit discrimination in extensions of credit based on race, color, religion, national origin, age, receipt of income from public assistance programs and good faith exercise of rights under the Consumer Credit Protection Act. The Amendments become effective March 23, 1977. The original ECOA, effective last October 28, prohibited discrimination on the basis of sex or marital status.

The Board's Regulation B, implementing the original Equal Credit Opportunity Act, and the proposed revision of the Regulation B announced today, were written at the direction of Congress. The proposed revision of the regulation would supersede the existing Regulation B. However, the existing regulation remains in effect until the effective date of the new amendments next March 23, and creditors are required to comply with it until then.

The Board's regulation would continue to be enforced by the Federal agencies designated in the Act.[1]

The principal provisions of Regulation B, as proposed, would be:

Coverage: The regulation would cover anyone who regularly participates—in the ordinary course of business—in decisions whether or not to extend credit. This would include anyone, other than those who only occasionally extend credit, who provides or extends credit and participates in the credit decision.

Sex and marital status: The provisions of the existing regulation, dealing only with prohibitions of discrimination in extensions of credit based on sex and marital status remain essentially unchanged in the proposed revision of Regulation B.

Applications: Since many creditors, particularly small creditors, have had difficulty designing credit application forms, the Board proposed to assist them by supplying model forms. Creditors who used the model forms would be assured of being in compliance. However, creditors could continue to design their own forms, or could revise the model forms, but they would then bear responsibility for being in compliance with the information requirements of the regulation.

Adverse action: This is a new definition in the Board's proposed revised Regulation B. It describes actions that would require a creditor to provide an applicant with a statement of reasons for an adverse action. It also would set in motion fulfillment of requirements relating to written notice of any adverse action taken, notice of rights under ECOA and the requirements of the proposed regulation concerning retention of records.

The Board proposed definitions both of what constitutes an adverse action, and what does not.

Adverse action has occurred:

—if a creditor refuses to grant credit in an amount and on terms acceptable to the applicant.

[1] Enforcement agencies are: Comptroller of the Currency, Board of Directors of the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator, National Credit Union Administration, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Federal Trade Commission, Interstate Commerce Commission, Securities and Exchange Commission and Small Business Administration.

—if the creditor terminates an account or makes an unfavorable change in the terms of an account so long as the action does not affect all or a substantial portion of a class of the creditor's accounts.

—if an applicant has intentionally informed a creditor that the applicant wants his or her credit limit to be increased and the creditor refuses.

Adverse action has not occurred:

—if the applicant accepts amounts and terms of credit different from those applied for.

—if a creditor's action is due to inactivity, default or delinquency by an applicant.

—if a creditor who does not raise an applicant's credit limit has not been made aware that the applicant wished to increase the limit. For instance, a refusal to authorize a point-of-sale transaction that exceeds a previously established credit limit would not be an adverse action.

Notification of action and statement of reasons: The Board proposed, to carry out requirements of the revised Act, that whenever an adverse action has been taken the applicant should receive notice of the action, a statement telling the applicant of rights under ECOA and a statement of specific reasons for the adverse action (or disclosure of the applicant's right to get such an explanation). The content of all the notices is substantially the same as in the existing regulation, but they are to be provided together in order to enhance public understanding.

A change from the existing regulation is a proposal that the statement of rights under ECOA should be provided only to persons against whom an adverse action has been taken, rather than supplying it to all applicants.

The proposal provides a sample notice of ECOA rights. Unlike the existing regulation, it need not be used verbatim but may be in language substantially the same as the language of the sample notice. The text of the proposed sample notice is identical to the existing notice, except that the prohibitions of the 1976 Amendments to the Act have been added.

The Board also provided a sample statement of specific reasons for adverse action. This is similar to the existing statement of reasons for adverse action except for a change in the title, to indicate that it must be used in all cases of adverse action and not, as at present, only in cases of denial or termination of credit. Creditors who use the sample form supplied would be in compliance with the regulation and the Act.

The Act provides that creditors who received 150 or fewer applications for credit in the preceding year be allowed to give the above notices orally.

Retention of records: Requirements under the Board's proposed revision of Regulation B for the preservation of records are essentially the same as in the existing regulation. The chief difference is that the retention period proposed is 25 months (since the amended Act establishes a statute of limitations of 24 months) instead of the present 15 months.

Age: To implement the prohibition of the Act against assigning negative weight to advancing age of an applicant for credit, the Board proposed that elderly applicants capable of contracting must not be assigned a lower score, on account of age, than applicants who get the best score for age. That is, if an applicant is 65 and the creditor assigns the highest value for age to applicants of 55 to 60 years, the 65-year-old applicant must get at least as good a score on account of age as do applicants of 55 to 60 years. However, advancing age could be used as a favorable element.

The amended Act provides that a creditor may consider age in a properly developed empirically derived credit system—credit scoring for age. The Board proposed that such a system be defined as one that predicts on the basis of a numerical score, an applicant's probable willingness and financial ability to repay the requested credit. The score would be derived from points assigned to key questions determined and weighted in accordance with past experience with applicants for credit. The Board also proposed standards for what would constitute a demonstrably and statistically sound credit system as one developed by the application of, and in accordance with, generally accepted sampling procedures and principles, having a statistically significant relation to credit risk under accepted standards of analysis, and developed for the purpose of predicting the creditworthiness of applicants in relation to the legitimate business interests of the creditor such as to minimize bad debt losses and operating expenses. (Section 202.2(o)).

Inquiries may be made concerning age in all cases, but the use of this information would be restricted under the Board's draft rules, to the assessment of creditworthiness and may not be used arbitrarily to cut off or diminish credit due to an applicant's age.

The proposal would forbid creditors to require a reapplication, change the terms of an account or terminate an account because a person reaches a certain age or retires, if the applicant has not demonstrated unwillingness or inability to repay.

The Board specified that considerations of age would apply only to natural persons, not to businesses.

Creditors' request for information: With two additions, to conform to the 1976 Amendments to the Act, the Board's proposed rules with respect to creditors' requests for information are approximately the same as in the existing regulation.

The two new rules proposed are:

1. Except for authorized data gathering purposes and special purpose credit programs, a creditor may not request information on an application as to race, color, religion, sex or national origin of the applicant, or others associated with the applicant in the application.

2. A creditor may not request information concerning the exercise by the applicant of any right under the Consumer Credit Protection Act.

Rules for the use of information obtained: In making its proposals for the use of information obtained the Board noted that in the legislative history of the amended Act, the courts are directed to take account of the "effects" test developed in employment discrimination cases. The Board interprets the use of an "effects" test with respect to credit to mean:

> " . . . the use of certain information in determining creditworthiness, even though such information is not specifically proscribed, may violate the amended Act if the use of that information has the effect of denying credit to (a substantial portion) of a class of persons protected by the Act . . . unless the creditor is able to establish that the information has a manifest relationship to creditworthiness."

Even then, the Board said:

> " . . . if an aggrieved applicant could show that a creditor could have used a less discriminatory method which would serve the creditor's need to evaluate creditworthiness as well as the challenged method, a violation may be found to exist."

Special purpose credit programs: In general, this proposed new section of the regulation would permit otherwise discriminatory actions by creditors who offer certain types of special credit assistance programs intended to achieve social or economic goals. In such circumstances the creditor may refuse to extend credit solely because an applicant does not qualify under the special requirements of a particular program recognized under the proposed regulation. These include:

1. Credit assistance programs expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons.

2. Credit assistance programs administered by a non-profit organization (as defined by the Internal Revenue Code, Section 501(c) as amended), for the benefit of its members or for the benefit of an economically disadvantaged class of persons.

3. Any special purpose credit program offered by a for-profit organization to meet special social needs that are in accord with the provisions of the regulation regarding such programs. (Section 202.8(a)(3)(i)(ii) and (iii)).

Information obtained for monitoring purposes: Solely for the purpose of generating comment on whether data should be obtained, and on how and what the data should be, the Board included a proposal in its draft revised regulation that would, if adopted, require real estate creditors to note certain characteristics of applicants to facilitate enforcement of the Equal Credit Opportunity Act.

The Board invited comment on the following issues for its consideration in the event that requirements for data gathering are adopted as a means of monitoring compliance with the ECOA.

1. Should such a requirement be limited to credit extended for residential real estate?
2. Should it be limited to notation of race, or sex, or both, or should other types of prohibited discrimination such as religion, also be noted?

3. What system of classification should be used to note race—"White" and "Non-White," self description by the applicant, or a system using such terms as "American Indian," "Alaskan Native," "Asian," "Pacific Islander," "Black," "Hispanic" and "White"?

4. Should any required inquiries be incorporated in the application form, or be on a separate sheet?

5. Should applicants be required to answer questions as to race and sex? If the applicant declines, should the creditor be required to note his own observations? Should a personal interview be required as part of the application for the purpose of this notation for monitoring compliance? Are there other preferable approaches to monitoring compliance?

6. Should economic as well as demographic data be gathered, and if so, what economic data? What economic data do creditors normally obtain? Should creditors be required to note income, number of dependents, etc?

The Board included for comment an illustrative example of possible regulatory language that could be used to institute a requirement that creditors must obtain information on the characteristics of persons applying for real estate credit, as a means of monitoring compliance.

Exemptions: The amended Act provides that the Board may exempt from one or more provisions of the Act credit transactions "not primarily for personal, family or household purposes" if the Board finds that such an exemption would not interfere with carrying out the purposes of the Act.

The Board, consequently, requested comment on a series of questions as to what classes of credit transactions, if any, should be exempted. These questions are:

Should an exemption be related to the amount of a borrower's or creditor's assets? Or to the amount of the transaction (for example, one involving an amount of $200,000 or more or $500,000 or more)? Or to the creditor's volume of business? What other factors may be relevant in distinguishing between those classes of transactions that should remain subject to the amended Act and those which may be exempted in whole or in part? For example, should non-consumer transactions be treated differently regarding retention of records, notification of action taken, reasons for adverse action, and other procedural requirements?

In addition to possible exemptions for business credit, the Board invited comment on the question as to how securities, incidental and utilities credit should be handled.

Inconsistent State laws: The amended Act authorizes the Board to determine if State laws dealing with credit discrimination are inconsistent with Federal law or regulation. Due to the great variety of State laws on this subject, the Board proposed that all State laws on credit discrimination should be considered inconsistent until reviewed by the Board and determined to be inconsistent or consistent. Later supplements to the Board's proposal, to be prepared before the effective date of the Act and the regulation (March 23, 1977) will set forth criteria the Board will use in making its determinations and will provide procedures by which State officials may seek review of their laws.

Printed below is an excerpt from the *Federal Register* (Vol. 41, No. 140) of July 20, 1976, containing the text of the proposal. Comments thereon should be submitted by September 1, 1976, and may be sent to our Bank Regulations Department.

PAUL A. VOLCKER,
President.

FEDERAL RESERVE SYSTEM

[12 CFR Part 202]

[Docket No. R-0031]

EQUAL CREDIT OPPORTUNITY

Notice of Proposed Rulemaking and Notice of Hearing

The Board of Governors is considering amendments to Regulation B, Equal Credit Opportunity (12 CFR 202), to implement the 1976 Amendments to the Equal Credit Opportunity Act (Pub. L. 94-239). The original Equal Credit Opportunity Act (hereinafter referred to as the "Act"), which went into effect on October 28, 1975, prohibits discrimination in any aspect of a credit transaction on the basis of sex or marital status. The 1976 Amendments to the Act were signed into law on March 23, 1976, and became effective on March 23, 1977. They extend the Act's prohibition of discrimination to include discrimination based on race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of income from a public assistance program and the good faith exercise of rights under the Consumer Credit Protection Act. Since the Amendments substantially change the Act, numerous changes in existing Regulati B are necessary.

The existing regulation remains in fect, however, until March 23, 1977, a creditors are required to comply with provisions until that time.

On April 27, 1976, the Board held preliminary hearing to receive pub comments and suggestions relating implementation of the Amendmer The Board will hold a hearing on Aug 12 and 13 on the proposed amendme to Regulation B.

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES

This section includes material contained in §§ 202.1, 202.12 and 202.13 of the existing regulation.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

Section 202.2(a)—Definition of "Account". The Board proposes a minor change in the definition in existing Regulation B to clarify that, when the word "use" is employed in relation to the word "account" in the regulation, it refers only to open end credit accounts.

Section 202.2(b)—Definition of "Act". The definition of Act is unchanged from existing Regulation B, except to substitute for the statutory citation a reference indicating that the Equal Credit Opportunity Act is Title VII of the Consumer Credit Protection Act, as amended.

Section 202.2(c)—Definition of "Adverse Action". This is a new definition. It is drawn from section 701(d)(6) of the amended Act. The definition describes the actions of a creditor which will trigger the requirement imposed by section 701(d)(2) of the amended Act to provide an applicant against whom adverse action is taken with a statement of reasons for the action. In addition, the definition sets in motion the requirements of § 202.9(b) of the proposed regulation relating to written notice of the adverse action taken and the ECOA notice, and the requirement under § 202.12(b) of the proposed regulation to retain records.

Under the proposed definition, adverse action occurs if a creditor refuses to grant credit in an amount and on terms acceptable to the applicant. Thus, a refusal to grant the amount of credit or the terms requested is not adverse action if the applicant accepts the amount and terms offered. An additional point to note is that adverse action as defined in section 701(d)(6) of the amended Act includes not only unfavorable action at the time of application but also unfavorable action after the initial credit extension. Hence, adverse action also occurs if the creditor terminates an account or makes an unfavorable change in the terms of an account where the creditor's action does not affect all or a substantial portion of a class of the creditor's accounts. The phrase "or an unfavorable change in the terms of an account which does not affect all or a substantial portion of a class of the creditor's accounts" allows a creditor to make a change in the terms of all of its open end accounts or in a class of those accounts (such as its credit card acounts but not its overdraft loan accounts) without the change being deemed adverse action. As proposed, adverse action also includes a refusal to increase the amount of credit available to an applicant who has informed the creditor that the request for such increase is intentional. Under this standard, a refusal to increase the credit limit of an applicant who has applied for the increase in accordance with the creditor's customary application procedures would be adverse action.

The proposed definition also indicates what action does not constitute adverse action. Adverse action does not occur if an applicant agrees to an unfavorable change in the terms of the account. Thus, an inrease in the annual percentage rate pursuant to the terms of a variable interest rate, or the elimination of a preferred annual percentage rate upon termination of employment pursuant to the agreement establishing the preferred rate would not be adverse action. Nor does adverse action occur if a creditor's action is taken because of inactivity, default, or delinquency by an applicant. A creditor may terminate an account or decline to renew a credit card because of non-use in acordance with its customary standards for such action, refuse to refinance a loan which is in default, or refuse to authorize credit pursuant to a credit card which has been revoked for nonpayment without taking adverse action. Finally, adverse action does not occur if the creditor has not been made aware that the applicant wishes to increase a previously established credit limit. Under this exclusion, a refusal to authorize a point-of-sale transaction that exceeds an existing credit limit for the applicant would not be adverse action.

Section 202.2(d)—Definition of "Age". This is a new definition. It indicates that the amended Act's protection against discrimination based on age extends only to natural persons and not to business entities.

Section 202.2(e)—Definition of "Applicant". The Board proposes a minor editorial change in the definition of applicant in existing Regulation B to express more succinctly the fact that the term includes both a person who requests credit and a debtor. The Board also proposes to add the phrase "and includes any person who is or may be contractually liable with respect to an extension of credit" in order to make clear that the amended Act's protection against discrimination on a prohibited basis extends to persons such as guarantors.

Section 202.2(f)—Definition of "Application". The definition of application remains substantially unchanged from that in existing Regulation B.

The Board proposes to add a new definition of a "completed application for credit" in accordance with section 701(d)(1) of the amended Act, which requires a creditor to notify an applicant of its action on the application within 30 days, or such longer reasonable time as set by the Board, after receipt of a completed application for credit. The definition indicates that an application is not to be considered complete until a creditor has had a reasonable opportunity to obtain all of the information that it regularly obtains and employs in evaluating the type of application involved, such as credit reports, any additional information from the applicant, and any necessary approvals by governmental agencies. The last clause of the definition precludes a creditor from purposefully delaying an application. The Board believes that defining a completed application in this fashion is a reasonable interpretation of the applicable statutory language and that the definition obviates the need to specify different notification periods for different situations.

Section 202.2(g)—Definition of "Board". This is a new definition incorporating the statutory definition of Board in section 702(c) of the amended Act.

Section 202.2(h)—Definition of "Consumer Credit". This definition is substantially similar to that in existing Regulation B, but the phrase "offered or" has been deleted since section 702(d) of the amended Act defines credit in terms of an actual debt, and the concept of offering credit is encompassed in the definition of credit transaction.

Section 202.2(i)—Definition of "Contractually Liable". The Board proposes to delete the words "having signed" from this definition as it appears in existing Regulation B. The Board believes that this proposal does not constitute a substantive change and would underscore the point that the definition includes those situations in which the use of a credit card by a person pursuant to terms made known to the user imposes liability upon that person for all debts arising on the account, even though that person has not actually signed an agreement with the card-issuing creditor.

Section 202.2(j)—Definition of "Credit". Except for minor editorial changes, this definition is identical to that in existing Regulation B.

Section 202.2(k)—Definition of "Credit Card". This definition is identical to that in existing Regulation B.

Section 202.2(l)—Definition of "Creditor". The Board proposes to combine in this definition the definitions of "arrange for the extension of credit" (§ 202.3(e)) and "creditor" (§ 202.3(j)) as they appear in existing Regulation B by defining a creditor as anyone who regularly participates in the decision of whether or not to extend credit. Thus, any person who regularly provides or extends credit and participates in the credit decision is a creditor, unless that person's participation is limited to honoring a credit card. The Board also proposes to add the phrase "in the ordinary course of business" before the word "regularly." The Board believes that this effectuates the intent of the Congress to exclude from the class of covered creditors those persons who only occasionally extend credit. As in existing Regulation B, assignee, transferees or subrogees who participate in the credit decision are creditors, but under the proposal, such persons would not be liable for a violation of the amended Act or the regulation by their assignor, transferor or subrogor if they did not know or have reasonable notice of the violation.

Section 202.3(m)—Definition of "Credit Transaction". The Board proposes to add the phrase "in connection with a prospective or existing extension of credit" to the definition of credit transaction as it appears in existing Regula-

tion B to emphasize the subsequent language in both the existing and proposed definition: "including * * * solicitation of prospective applications by advertising or other means * * *" The Board also proposes to add the phrase "revocation, alteration or termination of credit" to enumerate further the aspects of a credit transaction that are covered. The Board does not believe that these additions effect any substantive change from the definition in existing Regulation B.

Section 202.2(n)—Definition of "Discriminate Against An Applicant". This definition is substantially similar to the definition in existing Regulation B. The Board proposes to delete the phrase "on the basis of sex or marital status" because, under the amended Act, a creditor may not discriminate on other bases besides sex and marital status.

Section 202.2(o)—Definition of "Empirically Derived Credit System". Under section 701(b)(3) of the amended Act, a creditor may consider age in an empirically derived credit system, if such system is demonstrably and statistically sound as determined in accordance with standards prescribed by the Board. The proposed definition represents the Board's interpretation of the statutory language and its understanding of the steps necessary to insure the statistical validity and predictive ability of such a system.

The proposal first defines what constitutes an empirically derived credit system. Such a system is one that predicts, on the basis of a numerical score, an applicant's probable willingness and financial ability to repay the requested credit. The score is derived from the points assigned to the applicant's answers to key questions on the application. The key questions are determined and weighted in accordance with a creditor's experience with past applicants, including those who repaid as agreed, or repaid slowly, or did not repay at all. The experience used must be appropriate, that is, not outdated, and may be "borrowed" from a similarly situated creditor if a creditor does not have sufficient appropriate experience. In addition, the system may include a creditor's individual judgment of applicants as long as it is primarily controlled by the empirically derived aspect of the system, and the system may include other information beyond the application, such as a credit report which is also scored.

The proposed definition prescribes the Board's standards for what constitutes a "demonstrably and statistically sound" system. First, if the entire applicant experience of the creditor is not used in developing the system, the sample of applicants must be obtained in accordance with generally accepted sampling principles and procedures, some of which are enumerated. Second, the key questions and related scores must be appropriately linked to determining creditworthiness under accepted standards of analysis. Third, the system must be validated either against a holdout sample of past applicants if the remainder of the creditor's past applicants were used in developing the system or against a sample of past applicants not used in developing the system, and must be revalidated against subsequent applicants of the creditor at appropriate intervals. The Board has not defined what constitutes an appropriate interval. A creditor should revalidate whenever any significant change occurs that leads that creditor to believe that its system is significantly less predictive. Finally, a creditor must adjust its system based upon the validation or revalidation results. Note, however, that a creditor may, as a matter of business judgment, set the acceptance score high or low depending upon whether it desires to minimize bad debt losses or increase credit volume.

Section 202.2(p)—Definitions of "Extend Credit" and "Extension of Credit." This definition is substantially the same as § 202.3(m) of existing Regulation B with a few editorial changes. For example, the phrase "granted in the form of a credit card" has been replaced by "pursuant to an open end credit plan."

Section 202.2(q)—Definition of "Good Faith." This definition is new, being derived from section 1-201(19) of the Uniform Commercial Code. The amended Act prohibits discriminating against those who exercise rights under the Consumer Credit Protection Act believing that their complaint is valid.

Section 202.2(r)—Definition of "Inadvertent Error". This is a new definition. It is drawn from § 202.11(a) of existing Regulation B.

Section 202.2(s)—Definition of "Judgmental System of Evaluating Applicants". This is a new definition. The purpose of the proposal is to create one definition to include all systems for predicting creditworthiness other than "demonstrably and statistically sound empirically derived credit systems." The term is used in § 202.6(b)(1)(ii).

Section 202.2(t)—Definition of "Marital Status". This definition is identical to that contained in § 202.3(n) of existing Regulation B.

Section 202.2(u)—Definition of Negative Factor or Value". Section 701(b)(3) of the amended Act forbirds assigning a negative factor or value to an elderly applicant's age in the operation of a demonstrably and statistically sound empirically derived credit system. Under this definition, a creditor could not assign a factor or value to the age of an elderly applicant that is less favorable than the value or factor assigned to the class of applicants most favored by the creditor on the basis of age. Thus, for example, if a creditor's system assigned the highest weight to the 60–69 age class, then a 70-year-old (or older) applicant could not be assigned a lesser weight. A greater weight could be assigned, however, if appropriate under the creditor's experience.

Section 202.2(v)—Definition of "Open End Credit". This definition is identical to that in § 202.3(o) of existing Regulation B.

Section 202.2(w)—Definition of "Person". This definition is identical to that in § 202.3(p) of existing Regulation B.

Section 202.2(x)—Definition of "Pertinent Element of Creditworthiness". This definition is new. Under section 701(b)(2) of the amended Act, a creditor may make inquiry concerning an applicant's age or whether the applicant's income derives from a public assistance program if such inquiry is for the purpose of determining a pertinent element of creditworthiness. The Board proposes to define pertinent element of creditworthiness as that information that has a manifest relationship to creditworthiness.

Section 701(b)(2) of the amended Act might be interpreted as prohibiting any inquiry about age except in limited circumstances but there are serious practical problems associated with such an approach. The Board is of the opinion that the statutory language also may be interpreted as permitting inquiries about age in all cases, while restricting the manner in which creditors may use the information thus obtained. The Board believes that the intent of the Congress was to prohibit creditors from arbitrarily cutting off credit on the basis of a person's age.

Section 202.2(y)—Definition of "Prohibited Basis". This definition is new. It incorporates the characteristics that a creditor may not use in any aspect of a credit transaction, except as otherwise provided in the amended Act and regulation.

Section 202.2(z)—Definition of "Public Assistance Program". This is a new definition. The phrase is defined in order to provide some examples of types of income supplements which may not form a basis for discrimination by a creditor under section 701(a)(2) of the amended Act.

Section 202.2(aa)—Definition of "State". This definition is identical to that in existing Regulation B.

Section 202.2(bb)—Captions and Catchlines. This section is new. Its purpose is to indicate the nonsubstantive nature of the captions and catchlines used in the regulation, and it is derived from § 226.2(11) of Regulation Z.

SECTION 202.3—CLASSES OF TRANSACTION EXEMPTED FROM PROVISIONS OF THIS PART

This section has been reserved for the inclusion at some future date of provisions exempting certain classes of transactions from one or more provisions of the amended Act and regulation.

Section 703(a) of the amended Act provides that the Board may exempt from one or more provisions of the amended Act any class of credit transactions "not primarily for personal family or household purposes." In order to exempt such transactions, however, the Board must make an express finding that "the applictaion of such provision or provisions would not contribute substantially to carrying out the purposes of this title."

The Board invites comment regarding which classes of transactions (if any) should be exempted from one or more provisions of the amended Act and Regulation B. If exemptions are to be granted, a number of questions about criteria arise: Should an exemption be related to the amount of a borrower's assets? Or to the amount of the transaction (for example, one involving an amount of $200,000 or more or $500,000 or more)? Or to the creditor's volume of business (comparable to the exemption from the requirement of written notification and reasons for adverse action provided in section 701(d)(5) of the amended Act for creditors who act on 150 or fewer applications a year)? The Board invites interested members of the public to address the question of what other factors may be relevant in distinguishing between those classes of transactions that should remain subject to the amended Act and those which may be exempted in whole or in part. For example, should non-consumer transactions be treated differently regarding retention of records, notification of action taken, reasons for adverse action, and other procedural requirements?

Section 202.10 of existing Regulation B provides for specialized treatment for business credit and for incidental, securities and utilities credit. The continuation of the specialized treatment for such credit is dependent upon the Board's making an express finding that the application of certain provisions of the amended Act or Regulation B would not contribute substantially to carrying out the purposes of the Act. Therefore, the Board also invites the public to address the question of how securities, incidental and utilities credit should be addressed in the amended Regulation B.

Section 202.4—General Rule Concerning Discrimination

Section 202.4 incorporates the general prohibition against discrimination which is contained in section 701(a) of the amended Act. This general rule parallels the rule in § 202.2 of existing Regulation B, but reflects the amendments to the Act. In addition to sex and marital status discrimination, the general rule prohibits discrimination on the basis of race, color, religion, national origin, or age (provided that the applicant has contractual capacity), because all or part of an applicant's income derives from a public assistance program, or because an applicant in good faith has exercised any right under the Consumer Credit Protection Act.

Section 202.5—Specific Rules Concerning Applications

Section 202.5(a)—Discouraging Applications. This section is substantially the same as § 202.4(a) of existing Regulation B. The words "on a prohibited basis" have been substituted for the words "on the basis of sex or marital status" to indicate the broadened coverage of the amended Act.

Section 202.5(b)—General Rule Concerning Requests for Information. Section 202.5(b)(1) replaces § 202.5(a) of existing Regulation B. The proposal makes clear that a creditor's access to information is not limited to determining the probable continuity of income.

Section 202.5(b)(2) provides that a creditor is not required to request any particular information regarding an applicant. The proposal sets forth two exceptions to this general rule. A creditor is required to request the race and sex of an applicant under proposed § 202.13 (information collection for monitoring purposes). A creditor may also be required to request certain information from applicants to comply with an order of, or enforcement agreement with, an enforcement agency or court. Such agreement or order could arise in connection with the monitoring of compliance with the amended Act or some other law, such as the Fair Housing Act.

Section 202.5(c)—Information About a Spouse or Former Spouse. This section and § 202.5(d) are specific limitations to the general rule stated in § 202.5(b) of the proposed regulation. Section 202.5(c) is substantially the same as § 202.5(b) of existing Regulation B, except that the words "and consider" have been deleted because, in the scheme of the proposed regulation, § 202.5 deals only with requests for information, while § 202.6 treats consideration of information received.

Section 202.5(d)—Information a Creditor Cannot Request. Section 202.5(d)(1) restates the provisions of § 202.4(c)(1) and (2) of existing Regulation B.

The Board proposes to delete the phrase "or as required to comply with State law governing permissible finance charges or loan ceilings." The Board believes that this language is unnecessary because the amended Act preempts any such State laws insofar as they require inquiries into marital status. If an applicant who has received joint credit from a particular creditor subsequently applies for a separate loan from the same creditor, the creditor may be required to aggregate the accounts to determine permissible finance charges. However, such aggregation must be done without regard to marital status. In a State with loan ceilings, the proposed regulation requires that the ceilings be applicable to the amount of credit which may be extended to an individual, without regard to that person's marital status. Thus, to comply with this type of State law, the creditor needs to know only whether the applicant is already obligated to that creditor. The fact that a spouse is a co-obligor is not relevant.

Proposed § 202.5(d)(2) dealing with alimony, child support and maintenance payments replaces § 202.4(c)(3) and § 202.5(d)(1) of existing Regulation B. The rewording does not represent any substantive change. It merely clarifies the fact that an applicant has the option of not disclosing the receipt of such income if the applicant chooses not to have the creditor utilize that income in determining the applicant's creditworthiness.

Proposed § 202.5(d)(3) deals with inquiries about an applicant's sex. Section 202.4(c)(4) of existing regulation B prohibits such inquiries implicitly; proposed § 202.5(d)(3) expressly prohibits them except as required by § 202.13 (information collection for monitoring purposes). The proposal also incorporates language from § 202.4(c)(4) of existing Regulation B regarding courtesy titles and the use of sex-neutral terms on application forms.

Proposed § 202.5(d)(4) is substantially the same as the first sentence of § 202.5(h) of existing Regulation B regarding questions relating to the bearing and rearing of children. (The second sentence of existing § 202.5(h) would become § 202.6(b)(2) of this proposal). The words "or rearing" have been added to make the coverage of this section parallel to § 202.6(b)(2) of this proposal in recognition of the fact that inquiries regarding the rearing of children may constitute an indirect inquiry into plans or intentions regarding childbearing. This section does not preclude a creditor from inquiring about an applicant's dependent-related financial obligations, so long as the inquiries are made of all applicants and are not directed at a group or groups of applicants on the basis of sex, marital status or some other prohibited basis.

Except to the extent required by § 202.13, proposed § 202.5(d)(5) prohibits inquiries into the race, color, religion or national origin not only of the applicant but also of other persons indirectly involved in the credit transaction.

Since applicants are protected against discrimination on the basis of having exercised in good faith any right under the Consumer Credit Protection Act, proposed § 202.5(d)(6) precludes a creditor from routinely inquiring into the exercise of such rights. However, where the creditor learns of a disputed account from a credit report, for example, this section does not prevent the creditor from requesting information relating to the circumstances of the dispute from the applicant or the creditor with whom the dispute arose.

Section 202.5(e)—Application Forms. Many creditors have experienced difficulty in designing application forms that comply with the requirements of existing Regulation B, and creditors have incurred substantial expense in procuring proper forms. The Board has included two sample forms in the proposed regulation to facilitate compliance by creditors, one for open end, unsecured credit and one for closed end, secured credit. Additional sample forms may be included in the final version of the revised regulation. If these sample forms are adopted in the regulation, creditors would not be required to use them. If a creditor elected not to use the sample forms and decided to design its own forms, the creditor would bear responsibility for insuring that its forms were in compliance with the information restrictions of the regulation.

SECTION 202.6—SPECIFIC RULES CONCERNING EVALUATION OF APPLICATIONS

Proposed § 202.6 deals with the use of information in evaluating credit applications. Many of the provisions are drawn from § 202.5 of existing Regulation B. The purpose of this restructuring is to group together material dealing with the evaluation stage of the credit-granting process. The proposal both incorporates and elaborates upon the substantive provisions contained in section 701 (a) and (b) of the amended Act and represents what the Board believes are appropriate interpretations of the statutory language.

Section 202.6(a)—General Rule Concerning Use of Information. The Board proposes this section as a continuation of the general rule concerning the use of information stated in § 202.5(a) of existing Regulation B, with some changes to reflect the amendments to the Act. The basic provision of the section is that, in evaluating an application, a creditor may consider any information that it obtains. This general rule is subject to two qualifications. First, a creditor may not use any information for the purpose of discriminating against an applicant on a prohibited basis, except as provided in § 202.8 regarding special purpose credit programs. Second, a creditor's used of information is also curtailed by certain specific prohibitions contained in §§ 202.5 and 202.6 of the proposed regulation. As proposed, this section would subsume the first sentence of § 202.5(k) of existing Regulation B. The Board also proposes to delete the phrase "concerning the probable continuity of an applicant's ability to repay" found in § 202.5(a) of existing Regulation B as unnecessary in the proposal.

The amended Act proscribes intentional discrimination and also may be interpreted as prohibiting actions that have the effect of discriminating against applicants on any prohibited basis. Language similar to that contained in section 701(a) of the amended Act is found in Title VII of the Civil Rights Act of 1964 relating to prohibitions of discrimination in employment, and has been interpreted as prohibiting the use of requirements for employment or promotion that are discriminatory in effect even though neutral in purpose, unless such requirements are demonstrated to have a manifest relationship to the job in question.

As explained in footnote 6 to proposed § 202.6(a), the legislative history of the amended Act shows that Congress intended certain judicial decisions enunciating this "effects test" from the employment area to be applied in the credit area. The Board interprets the application of an "effects test" to the credit area to mean that the use of certain information in determining creditworthiness, even though such information is not specifically proscribed by proposed § 202.6(b), may violate the amended Act if the use of that information has the effect of denying credit to a class of persons protected by the amended Act at a substantially higher rate than persons not of that class, unless the creditor is able to establish that the information has a manifest relationship to creditworthiness. Even then, if an aggrieved applicant could show that a creditor could have used a less discriminatory method which would serve the creditor's need to evaluate creditworthiness as well as the challenged method, a violation may be found to exist.

The Board proposes to delete § 202.5 (b), (c) and (d) of existing Regulation B as unnecessary, since the Board believes that those provisions are subsumed into the general rule of proposed § 202.6 (a).

Section 202.6(b)—Specific Rules Concerning Use of Information. Proposed § 202.6(b) in part embodies the limitations on the use of information found in § 202.5 of existing Regulation B. Proposed § 202.6(b)(1) is a broadened and refined version of existing § 202.5(f). It prohibits a creditor from taking any prohibited basis, not just sex or marital status, into account in evaluating creditworthiness. In accordance with section 701(b) (2) and (3) of the amended Act, however, it expressly allows consideration of age and receipt of income from a public assistance program. Footnote 8 contains several examples in this respect to illustrate the scope of this exception to the proposed rule. Footnote 7 points out that the section does not preclude consideration of age when utilized to favor an elderly applicant, or consideration of marital status or source of income for the purpose of ascertaining a creditor's rights and remedies in accordance with § 701(b)(1) and (4) of the amended Act.

Proposed § 202.6(b)(2) incorporates the prohibition in § 202.5(h) of existing Regulation B regarding a creditor's considering assumptions or aggregate statistics on childbearing and related matters.

Proposed § 202.6(b)(3) incorporates, with a few changes, § 202.5(g) of existing Regulation B. The Board proposes to delete the phrase "in a credit scoring system or other method of evaluating applications" as unnecessary. Another proposed change would permit creditors to consider the existence of a telephone at the business of applicants for nonconsumer credit.

Proposed § 202.6(b)(4) continues and broadens the prohibitions contained in § 202.5(e) of existing Regulation B and incorporates existing § 202.5(d)(2).

Proposed § 202.6(b)(5) incorporates § 202.5(j) of existing Regulation B with little substantive change. It also incorporates § 202.11(a) of existing Regulation B concerning mechanical, electronic or clearical errors as applicable to this section. The Board proposes to add the phrase "when available" in (i) to reflect the fact that such credit history may not always be available, and to substitute the word "creditworthiness" in (ii) and (iii) for "willingness or ability to repay" because creditworthiness more completely expresses what a credit history is intended to reflect. Finally, the Board proposes in (ii) to allow an applicant to present information to explain a lack of or a bad credit history because a credit history or its absence may not accurately reflect on applicant's creditworthiness.

SECTION 202.7—SPECIFIC RULES CONCERNING EXTENSIONS OF CREDIT

This section contains provisions drawn from §§ 202.4, 202.5 and 202.7 of existing Regulation B. The final provision, § 202.7(e), is new.

Section 202.7(a)—Separate Accounts. This section is substantially the same as § 202.4(b) of existing Regulation B. The Board proposes to add a footnote to make clear that a creditor may not refuse to grant a separate account on any basis prohibited by the amended Act, the section being intended to highlight a common past discriminatory practice.

Section 202.7(b)—Designation of Name. Proposed § 202.7(b)(1) is identical to § 202.4(e) of existing Regulation B. The Board proposes to add a new section indicating that a creditor may ask whether the applicant has applied for or received credit in another name. The purpose of this new language is to allow creditors to gain access to an applicant's full credit history.

Section 202.7(c)—Action Concerning Open End Accounts. This section is derived from § 202.5(i) of existing Regulation B. The Board proposes to add language to this section to protect persons reaching a certain age or retiring. If adopted, this provision would prohibit creditors from requiring a reapplication, changing the terms of an account or terminating an account because a person has reached a certain age or has retired. This prohibition would protect only those persons who are contractually liable on an account and who have not demonstrated an unwillingness or inability to repay. A creditor could require a reapplication when credit was granted to an applicant based upon the income of the applicant's spouse.

The Board also proposes to add a footnote explaining that a creditor may conduct a "reevaluation" at any time. During a reevaluation, the creditor may request information concerning the continued creditworthiness of the applicant but may not terminate the account unless information in the applicant's file or obtained in the reevaluation demonstrates an inability or unwillingness to repay.

Section 202.7(d)—Signatures of Spouse or Other Person. The language contained in § 202.7(d)(1) is substantially similar to § 202.7(a) of existing Regulation B, except that all prohibited bases are covered and the bar against requiring the signature of nonapplicant persons has been extended to cover guarantors. For example, a married guarantor could not be required to supply the signature of a spouse where no similar requirement is imposed on unmarried guarantors.

Proposed § 202.7(d)(2)(i) is substantially the same as §§ 202.7(b) (i) and (ii) of existing Regulation B. Likewise proposed § 202.7(d)(2)(ii) is substan

tially the same as § 202.7(c) of existing Regulation B. Section 202.7(d)(3) is new. As proposed, it permits a creditor to obtain the signature of a nonapplicant spouse or other person on an instrument which would facilitate access to an asset used to establish creditworthiness but which is not pledged. A signature could not be required on an instrument imposing personal liability unless the applicable State law required it in order to evidence valid consideration. If adopted, this provision would permit a creditor to obtain the signature of a nonapplicant spouse on a note without violating the general prohibition against requiring a nonapplicant spouse to assume personal liability for a financial obligation incurred by the applicant spouse. The Board proposes to adopt this provision because in some States both spouses must sign the note evidencing the debt if the creditor is to have access to an unpledged asset in the event of default.

Section 202.7(e)—Conditions to Extensions of Credit. This provision is new. It illustrates the operation of the general rule against discrimination on a prohibited basis and is intended to highlight certain discriminatory practices.

SECTION 202.8—SPECIAL PURPOSE CREDIT PROGRAMS

Section 202.8(a)—General Rule and Standards for Programs. Section 202.8 incorporates the provisions of section 701(c) of the amended Act, which allows a creditor offering certain special credit assistance programs to refuse to extend credit on a prohibited basis without violating the amended Act. In such circumstances, a creditor need not provide a notice of action taken, a statement of reasons for denial, or the ECOA notice if an applicant does not qualify under the special requirements of the particular program.

The first exemption relates to "any credit assistance program expressly authorized by law for an economically disadvantaged class of persons" (Section 701(c)(1) of the amended Act and § 202.8(a)(1) of the proposed regulation). In this situation, the class of persons to be benefited will be defined by the applicable law.

The second category encompasses credit assistance programs offered by nonprofit organizations for the benefit of their members, or for the benefit of economically disadvantaged persons (§ 701(c)(2) of the amended Act and § 202.8(a)(2) of the proposed regulation). This category was designed to permit the establishment and operation of three types of credit-granting programs that might otherwise be found to be impermissibly discriminatory. First, this section allows credit unions to refuse to extend credit to non-members. Second, and more broadly, the membership exception permits any nonprofit organization (such as a cooperative association or a religious body) to limit extensions of credit to its members. Third, if an economically disadvantaged group is served, then this category authorizes nonprofit organizations to establish "affirmative action" programs similar to those available under government auspices.

The third category (section 701(c)(3) of the amended Act and § 202.8(a)(3) of the proposed regulation) covers "any special purpose credit program offered by a profit-making organization to meet special social needs." The legislative history of the amended Act indicates that the Congress did not want to preclude profit-making creditors from establishing special programs that would prefer applicants in certain categories, provided that such programs were designed and operated to increase the availability of credit for persons who previously had little or no access to the credit market. Such efforts might include, for example, the provision of credit to young persons without previous credit experience or the extension of credit to public assistance recipients or elderly applicants whose income might not otherwise qualify them for credit.

Proposed § 202.8(a)(3) provides standards to insure that a program utilizes discriminatory characteristics only for the purpose of benefiting specified classes of persons and not as a vehicle to circumvent the requirements of the amended Act and proposed regulation. Thus, the section requires that the programs be established and administered pursuant to a written plan that identifies the beneficiaries of the program and that sets forth the basic procedures and standards for extending credit pursuant to the program. In addition, the program must extend credit to persons who otherwise might not be able to obtain such credit or might not obtain it on as favorable terms. This latter qualification is met if the program organization determines from its own experience or otherwise that the beneficiaries of the program generally (but not necessarily conclusively) would not meet its customary standards of creditworthiness.

Section 202.8(b)—Special Rule Concerning Requests and use of Information. Proposed § 202.8(b) would permit a creditor to ask for and consider information, which the creditor otherwise would not be permitted to obtain, relating to the probihited bases of discrimination in order to determine eligibility for a special purpose credit program.

The Board solicits comment on a broader issue related to this section and to proposed § 202.13, namely, whether revised Regulation B should forbid creditors from requesting certain information from applicants. If creditors are required to obtain certain information (for example, the applicant's sex) for monitoring purposes in real estate credit, should they be barred from requesting that information in other transactions? As explained above, proposed § 202.8(b) allows a creditor to request otherwise prohibited information to determine eligibility for a special purpose credit program. However, unless a profit-making organization is permitted to obtain information relating to the prohibited bases about all its applicants and not only for eligibility purposes, it may not be able to determine the need for an affirmative action program for a protected group or to ascertain the best design for an affirmative action program. For example, evidence presented to the Board suggests that if creditors were permitted to ask about the sex of applicants, certain creditors could construct separate scoring systems for women and men which would increase substantially credit availability for women without reducing credit availability for men.

Section 202.8(c)—Special Rule in Case of Financial Need. If eligibility for a special purpose program is based on need, proposed § 202.2(b) would allow a creditor to request and consider the applicant's marital status and information about the spouse's financial resources which otherwise could not be asked under the regulation.

SECTION 202.9—NOTIFICATIONS

This section encompasses all of the requirements for the notices that creditors must provide to applicants. These requirements appear in §§ 202.4(d), 202.5(m) and 202.6(b) of existing Regulation B. The notice contained in § 202.6(b)(1) of existing Regulation B does not appear in proposed § 202.9 because that notice must be mailed by February 1, 1977, which is prior to the effective date of the proposed amendments to the regulation. In addition, the requirements of §§ 202.4(d) and 202.5(m) of existing Regulation B have been combined in proposed § 202.9 with other changes required by the amended Act.

Section 202.9(a)—Notification of Action Taken, ECOA Notice, and Statement of Reasons. This section sets forth the requirements for the content and timing of notices and explains to whom and by whom notices are to be given. Proposed § 202.9(a)(1) requires that the notice of action taken be given within a reasonable time not exceeding 30 days after a creditor receives a completed application or within a similar period after taking adverse action. The 30-day deadline is specified in section 701(d)(1) of the amended Act. The amended Act authorizes the Board to specify some period longer than 30 days. However, since a completed application has been defined (§ 202.2(f)) to include only an application concerning which a creditor has obtained all necessary information, the Board has not proposed a longer period for notification for any class of transactions.

Proposed § 202.9(a)(1)(i) allows the notice of action taken upon approval to be given by implication, as by the sending of a credit card. The Board believes that this approach is practical and reasonable.

Proposed § 202.9(a)(2) specifies the content of the notification when adverse action is taken. The notification must contain the statement of action taken required by existing § 202.5(m)(1), the ECOA notice required by existing § 202.4(d) and the statement of specific reasons for adverse action (or disclosure of the right to such statement) similar to the statement required by present § 202.5(m)(2). The Board proposes to require

these notices to be given together because the Board believes that public understanding of the notices would be thereby enhanced. An important point to note about the proposal is that it requires the ECOA notice to be given only when adverse action is taken. A creditor, of course, may continue to provide the ECOA notice at the application stage, as long as the notice is also given when adverse action is taken.

Proposed § 202.9(a)(3) provides that, if more than one applicant is involved in a credit transaction, the notification need be given to only one applicant. Similarly, proposed § 202.9(a)(4) provides that, if more than one creditor is involved in a credit transaction, the required notification need be given by only the creditor that extends credit acceptable to the applicant. If no credit is granted, or if credit is offered which is not acceptable to the applicant, then each creditor must give the required notification. For example, if an auto dealer "shops" an application to several banks and one bank extends credit, the proposal requires only that bank to provide the notice of action taken. However, if none of the banks grants credit or if the credit offered is not acceptable to the applicant, then all the banks must give the required notices. In addition, if the dealer is a creditor in the transaction under the definition of that term as used in this regulation (§ 202.2(l)), the dealer would also be obligated to give the notices in the total rejection situation.

Creditors may arrange, however, for all required notices to be provided through one party if each creditor is identified. This procedure is sanctioned by section 701(d)(4) of the amended Act. The last sentence of § 202.9(a)(4) would insulate a creditor from liability for acts or omissions of a third party in those cases where the third party supplies the notice, provided that the creditor follows reasonable procedures to insure compliance. The Board has proposed this arrangement to avoid a situation in which an applicant would receive the desired credit from one source, while also receiving several notices of adverse action from other sources with which the applicant had not dealt.

Section 202.9(b)—Form of ECOA Notice and Statement of Specific Reasons. This section is drawn from existing §§ 202.4(d) and 202.5(m) (2) and (3). Proposed § 202.9(b)(1) includes a sample ECOA notice, but unlike existing § 202.4(d), which requires creditors to use the sample verbatim, the proposal provides that substantial adherence to the sample form constitutes compliance. In addition, the section permits inclusion in the notice of a reference to a similar State statute or regulation and State enforcement agency.

The text of the proposed notice is identical to that contained in existing § 202.4(d), except that the additional bases of prohibited discrimination have been added and, in the last sentence, only the word "creditor" is used, rather than a blank requiring a description of the particular type of creditor. The latter change would facilitate the giving of notices by third parties on behalf of several different types of creditors.

Proposed § 202.9(b)(2) provides a suggested form for the statement of specific reasons for adverse action. Use of the form, properly completed, would constitute compliance with the requirement of the section. However, if a creditor does not use this form, it must design its own form in accordance with the requirements of § 701(d)(3) of the amended Act.

The text of the proposed statement of specific reasons is identical to that in existing § 202.5(m)(3), except for a change in the title reflecting the fact that the statement is required in all instances of adverse action and not just in cases of denial or termination of credit. The footnote is not an addition to the form itself; rather, it limits the permissible use of the category "unemployed" as a reason for adverse action.

Proposed § 202.9(b)(3) provides that the notices required by this section may be combined with other information or disclosures, including disclosures under the Truth in Lending Act, the Fair Credit Reporting Act, and other portions of the Consumer Credit Protection Act.

Section 202.9(c)—Oral Notifications. As authorized by section 701(d)(5) of the amended Act, proposed § 202.9(c) allows the notices required by proposed § 202.9 to be given orally by any creditor which received 150 or fewer credit applications in the preceding calendar year. The legislative history indicates that the Congress intended to relieve small creditors of the burden of preparing formal written notices.

Section 202.9(d)—Withdrawn Applications. This section permits creditors to treat applications as withdrawn in certain circumstances. For example, after all steps have been taken to complete an application, an applicant may decide not to go through with the transaction. In that situation, a creditor would be permitted to consider the application as withdrawn and would not need to provide the required notices.

Section 202.9(e)—Failure of Compliance. This section corresponds to existing § 202.11(a) as it applies to notice requirements. The term "inadvertent error" is defined in proposed § 202.2(r).

Section 202.10—Furnishing of Credit Information

Except for the minor exceptions discussed below, the provisions of proposed § 202.10 parallel those contained in § 202.6 of existing Regulation B. The final version of proposed § 202.10 will reflect the Board's decision on its proposed amendments to existing § 202.6, which were published in the Federal Register on June 4, 1976 (41 FR 22592).

Since the requirements of existing § 202.6(b)(1) must be complied with by February 1, 1977, which is prior to the effective date of the proposed regulation, the provisions of that section are not included in the proposed regulation. Section 202.6(b)(2) of existing Regulation B has ben redesignated § 202.10(b), and existing § 202.6(b)(3) has been incorporated into § 202.10(b). Proposed § 202.10(c) incorporates the substance of existing § 202.11(a).

Section 202.11—Relation to State Law

Proposed § 202.11 implements §§ 705(c), (d), (f) and (g) of the Act.

Section 202.11(a)—Separate Extensions of Consumer Credit. Proposed § 202.11(a) is substantially the same as § 202.8(a) of existing Regulation B, except for the addition of the phrase "imposes liability upon a nonapplicant spouse." That language has been added to underscore the Board's interpretation that section 705(c) of the amended Act preempts State necessaries laws and family support statutes when such laws impede the separate extension of consumer credit to individually creditworthy applicants.

Section 202.11(b)—Finance Charges and Loan Ceilings. Proposed § 202.11(b) is identical to § 202.8(b) of existing Regulation B.

Section 202.11(c)—Inconsistent State Laws. Proposed § 202.11(c) deals with two categories of State laws which may be inconsistent in whole or in part with the amended Act or the regulation. The first category includes State laws not dealing with credit discrimination and State laws dealing with credit discrimination but not includng any of the prohibited bases covered by the amended Act. An example is a State law prohibiting credit discrimination against handicapped persons. Under proposed § 202.11(c)(1), such a State law is preempted only to the extent that a creditor is not able to comply with it without violating the federal law. This is the approach taken in § 202.11(b) of the existing regulation.

The other category of State law are those dealing with credit discrimination on any prohibited basis covered by the amended Act. An example is a State law prohibiting discrimination on the basis of sex or marital status. Under proposed § 202.11(c)(2), which incorporates the provisions of section 705(f) of the amended Act, such laws are not preempted except to the extent of any inconsistency with the Act. The Board is authorized under section 705(f) of the amended Act to determine whether such inconsistencies exist, except that the Board may not determine that an inconsistency is present if the State law gives greater protection to the applicant.

The varied nature of such State laws tends to negate the helpfulness of general regulatory guidelines on the subject of what constitutes inconsistency. The Board, therefore, is reluctant to make general determinations as to inconsistency without the advice of the State officials familiar with the laws. Accordingly, proposed § 202.11(c)(2)(i) reflects the Board's exercise of its authority to determine inconsistency by providing that all State laws regarding credit discrimination on any prohibited basis which are similar in nature, purpose

scope, intent, effect, or requisites to the provisions of sections 701 or 702, or both, of the amended Act and the implementing provisions in the regulation are deemed to be inconsistent with federal law until any such law is demonstrated not to be inconsistent. Proposed § 202.11 (c)(2)(ii) outlines the procedure by which State officials may seek Board review. Supplement I, which will be prepared before March 23, 1977, the effective date of the amended Act, will set forth the criteria by which the Board would make the necessary determination.

Section 202.11(d)—Exemption for State Regulated Transactions. Section 705(g) of the amended Act grants to the Board authority to exempt from the requirements of sections 701 and 702 of the amended Act and their implementing provisions in the regulation any class of credit transactions within any State if the Board determines that, under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed by the federal law or that State law provides protection to the applicant, and that there is adequate provisions for enforcement. Proposed § 202.11(d) of the regulation implements this provision of the statute. In order to maintain concurrent federal and State court jurisdiction and continue federal enforcement agency involvement, this section provides, in accordance with section 705(g) of the amended Act, that any violation of an exempted State law is also a violation of the amended Act and the regulation. The procedure and criteria for applying for an exemption will be detailed in Supplement I. This approach parallels that taken in Regulation Z (12 CFR 226.12).

SECTION 202.12—RECORD RETENTION

Section 202.12(a)—Retention of Prohibited Information. Proposed § 202.12 (a) is based upon § 202.5(k) of existing Regulation B. It protects creditors that receive and retain information which they are forbidden to request under § 202.5 if such information was obtained from certain listed sources.

Section 202.12(b)—Preservation of Records. Proposed § 202.12(b) parallels § 202.9(a) of the existing regulation. Since the Amendments to the Act extend the statute of limitation for 1 year to 2 years, the Board proposes to extend the period for which creditors must retain records from 15 to 25 months. This will include the limitations period plus an appropriate period to effect service of process. In addition, the Board proposes to expand the scope of record retention to include information that the creditor may be required to obtain by agencies monitoring compliance with the amended Act or the regulation. The final clause in proposed § 202.12(b)(1)(i), "and not returned to an applicant at the applicant's request," indicates that a creditor may return material to the applicant and need not copy the material before doing so.

Proposed § 202.12(b)(2) is drawn from existing § 202.9(b)(1). Proposed § 202.12(b)(3) incorporates existing § 202.9 (c). Proposed § 202.9(b)(4) is new. It relates to recordkeeping in transactions involving multiple creditors and should be read in conjunction with proposed § 202.9(a)(4). In a multiple creditor transaction, the proposal would require those creditors that do not have to provide the notifications specified in proposed § 202.9(a) nevertheless to retain for 25 months any written or recorded information about the applicant that the creditor has in its possession. Such creditors, however, would not have to obtain any material that they did not otherwise have in their possession.

Proposed § 202.12(b)(5) provides that, in a transaction involving non-consumer credit, a creditor must retain information relating to an application for three months unless during that time the creditor receives a written request from the applicant to retain the information beyond that period. If such a request is received, the creditor would be required to retain the information for 25 months. This proposal incorporates in part the different treatment accorded business credit in § 202.10(c) of existing Regulation B.

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

Section 202.13 is new. It appears in the proposal for the sole purpose of focusing comment on what data should be obtained and how it should be obtained if the Board ultimately decides that data regarding the prohibited bases of discrimination should be gathered.

Testimony at the Board's April 27 hearing, recent Congressional hearings and comments from public groups have raised the question of whether real estate creditors should be required to note the characteristics of applicants to facilitate enforcement of the Equal Credit Opportunity Act.

Various government agencies share authority and responsibility for enforcing the ECOA. While the Board possesses authority for enforcing the ECOA only as to state-chartered member banks, the regulations adopted by the Board under the ECOA apply to all creditors and all forms of credit. Thus, there is a potential for a uniform notation requirement, if adopted by the Board in Regulation B. In view of the overlapping jurisdiction of other agencies, public comment is invited on whether the Board should prescribe a notation requirement in Regulation B.

Assuming the Board decides that a notation requirement should be adopted under Regulation B, the Board invites comment on the following additional issues:

(1) Should such a requirement be limited to credit extended for the purchase of residential real estate and secured thereby?

(2) Should such a requirement be limited to notation of race and/or sex or should data regarding other prohibited bases of discrimination such as religion also be noted?

(3) What classifications should be used to describe applicants as to race? One approach would be to use the categories "White" and "Non-white." A second approach would be to leave a blank space after the question of race to enable applicants to supply the answer which corresponds to their own perception. (Sample: Race _____.) Another approach would be to use a classification scheme developed in the employment field (American Indian or Alaskan Native, Asian or Pacific Islander, Black, Hispanic and White).

(4) Should the required inquiries be incorporated within creditors' application forms or should a separate special form be used?

(5) How should creditors make the inquiries? Should applicants be required to answer the questions? If applicants decline to answer the questions, should the creditor then be required to fill in the information based upon observation? Should a personal interview be required as part of the application? Are there other mechanisms that could be used to insure a response rate adequate to make the data meaningful?

(6) Should economic data be obtained along with any demographic data? If economic data about the applicant and any property to be financed is deemed relevant, what specific data should be obtained? What is the principal economic data ordinarily obtained and relied upon by creditors? For example, should creditors be required to obtain such information as income, number of dependents, etc.?

It is proposed to amend 12 CFR Part 202 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

Sec.

AUTHORITY: Sec. 703 of the Equal Credit Opportunity Act, U.S.C., Title 15, sec. 1691 *et seq.*

§ 202.1 Authority, scope, enforcement, penalties and liabilities.

(a) *Authority and scope.* This Part[1] comprises the regulations issued by the Board of Governors of the Federal Re-

[1] As used herein, the words "this Part" mean Regulation B.

serve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in § 202.2(l).

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part with respect to certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission and Small Business Administration.

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

(c) *Penalties and liabilities.* (1) Section 706 of the Act provides that any creditor to comply with any requirement imposed under the Act or, pursuant to section 702(g), this Part, is subject to civil liability for damages in individual or class actions, and states that an aggrieved applicant may seek, in addition, equitable and declaratory relief. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part, constitute violations of other federal laws which may provide further penalties.

(2) Section 706 further provides that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action for appropriate relief.

(3) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretation or approval issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or otherwise determined to be invalid for any reason.

(4) (i) Any request for formal Board interpretation or official staff interpretation of this Part must be addressed to the Director of the Office of Saver and Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and specifying the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request or an acknowledgement will be sent which sets a reasonable time within which a substantive response will be given.

(ii) Any request for reconsideration of an official staff interpretation of this Part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the FEDERAL REGISTER. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which such response will be given.

(5) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Office of Saver and Consumer Affairs as officials "duty authorized" to issue, at their discretion, official stay interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(6) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests which involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and which raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests which, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or which have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of section 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.[1a]

[1a] Subsection (c)(3) through (6) reflect the action of the Board taken on June 28, 1976, amending section 202.13 of Regulation B effective July 30, 1976, which is reported in 41 FR 28252.

§ 202.2 Definitions and rules of construction.

For the purposes of this Part, unless the context indicates otherwise, the following definitions [2] and rules of construction apply:

(a) *"Account"* means an extension of credit. The word *"use"*, when employed in relation to an account, refers only to open end credit.

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

(c) *"Adverse action."* (1) For the purpose of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in an amount and on terms acceptable to an applicant; or

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

(iii) A refusal to increase the amount of credit available to an applicant when an applicant requests an increase in a way that informs the creditor that the applicant is intentionally seeking an increase.

(2) The term does not include:

(i) A change agreed to by the applicant; or

(ii) Any action taken as a result of inactivity, default or delinquency; or

(iii) A refusal to extend credit when the extension would exceed a previously established credit limit and the creditor has not been informed that the applicant is intentionally seeking an increase.

(d) *"Age"* refers only to natural persons and, in relation to such persons, means the number of fully-elapsed years from the date of the applicant's birth.

(e) *"Applicant"* means any person who requests or who has received an extension of credit from a creditor and includes any person who is or may be contractually liable with respect to an extension of credit.

(f) *"Application"* means an oral or written request for an extension of credit which is made in accordance with procedures established by a creditor for the type of credit requested; the term does not include the use of an account to obtain an amount of credit which does not exceed a previously established credit limit. A *"completed application for credit"* means one in connection with which a creditor has received all of the information the creditor regularly obtains and employs in evaluating applications for the amount and type of credit requested, including credit reports, any additional information requested from the applicant, and any necessary approvals by governmental agencies, provided the creditor has exercised such diligence as the circumstances require.

(g) *"Board"* refers to the Board of Governors of the Federal Reserve System.

[2] Note that some of the definitions in this Part are not identical with those in 12 CFR 226 (Regulation Z).

(h) *"Consumer credit"* means credit extended to a natural person in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.

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

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

(k) *"Credit card"* means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property or services on credit.

(l) *"Creditor"* means a person who in the ordinary course of business regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee or subrogee of an original creditor, but an assignee, transferee or subrogee is not a creditor with regard to any violation of the Act or this Part committed by the original creditor unless the assignee, transferee or subrogee knew or had reasonable notice of the violation. The term does not include a person whose only participation in a credit transaction is to honor a credit card.

(m) *"Credit transaction"* means every aspect of an applicant's dealings with a creditor in connection with a prospective or existing extension of credit, including, but not limited to, solicitation of prospective applicants by advertising or other means; information requirements; investigatory procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration or termination of credit; and collection procedures.

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

(o) *"Empirically derived credit system."* (1) The term means a credit system that predicts creditworthiness primarily by an allocation of points (or comparable basis for assigning weights) to information obtained about applicants in relation to the predictive variables that are finally included in the system, the total number of points for an applicant (or comparable basis for assigning weights)

(i) Depending upon how the applicant, with respect to such predictive variables, compares with a probability sample or a complete census of previous applicants of a creditor who applied for credit within the immediately preceding appropriate period of time; and

(ii) Determining, alone or in conjunction with additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A *"demonstrably and statistically sound" empirically derived credit system* a system:

(i) In which, if a complete census is not used, the sample is obtained by the application of and in accordance with generally accepted sampling principles and procedures, including, as appropriate, pure or stratified random selection from the applicant file, inclusion of rejected as well as accepted applicants in the sampling frame, and weighting of sample subgroups of applicants in relation to the total universe of applicants during the period chosen as the basis for system development; and

(ii) In which the predictive variables finally included in the system are developed from the statistical sample or census of applicants, and the points to be given (or comparable basis for assigning weights) to such predictive variables are determined to have a statistically significant relation to credit risk under accepted standards of analysis; and

(iii) Which is developed for the purpose of predicting the creditworthiness of applicants in relation to legitimate business interests of the creditor utilizing the system, as in minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment; and

(iv) Which is validated as to its predictive ability by statistical tests applied to an independent sample drawn from the applicant file in developing the system, or, in the case of a system developed utilizing a complete census, to a sampled subset of the complete census which was held out and not used in the hypothesis testing and statistical estimation required in the empirical development of the system, and with respect to subsequent applicants of the creditor is revalidated at appropriate periods, and is adjusted as appropriate, if necessary, as a result of such revalidation tests.

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

(q) *"Good faith"* means honesty in fact in the conduct or transactions concerned.

(r) *"Inadvertent error"* means a mechanical, electronic or clerical error that a creditor shows by a preponderance of the evidence was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(s) *"Judgmental system of evaluating applicants"* means any system for predicting the creditworthiness of an applicant other than a demonstrably and statistically sound empirically derived credit system.

(t) *"Marital status"* means the state of being unmarried, married or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes a person who is divorced or widowed.

(u) *"Negative factor or value"* in relation to the age of an elderly applicant means utilizing a factor, value or weight that is less favorable regarding elderly applicants than it is regarding the class of applicants most favored by a creditor on the basis of age.

(v) *"Open end credit"* means credit extended pursuant to a plan under which the creditor may permit the applicant to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

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

(x) *"Pertinent element of creditworthiness"* in relation to a system of evaluating applicants means any information about applicants that a creditor obtains and considers and which has a manifest relationship to a determination of creditworthiness.

(y) *"Prohibited basis"* means race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract as defined by applicable State law); or the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[3]

(z) *"Public assistance program"* means any Federal, State or local governmental assistance program that provides a direct continuing periodic income supplement, whether premised on entitlement or neeed. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, Medicare and Medicaid, rent and mortgage supplement or assistance programs, Social

[3] Note the distinction between the first clause of the definition, which is not limited to applicants with those characteristics, and the last two clauses, which are so limited. This distinction means, for example, that it is impermissible to consider in the decision concerning the extension of credit not only the applicant's race or the race of partners or officers of the applicant, but also the race of individuals with whom the applicant deals in business or socially, the race of individuals who are or may be associated with the applicant in connection with the purpose of the extension of credit (for example, the tenants in an apartment complex to be constructed with the loan proceeds), or the race of individuals residing in the neighborhood in which the property that will be collateral for the extension of credit is located. A creditor may take into account in making a credit decision, however, any applicable law, regulation or executive order restricting dealings with citizens or governments of other countries or imposing limitations with respect to credit extended for their use.

Security and Supplemental Security Income, and unemployment compensation.

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

(bb) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the intent of any provision of this Part may be drawn from them.

§ 202.4 General rule prohibiting discrimination.

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

§ 202.5 Specific rules concerning applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants which would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rule concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) A creditor need not request any particular item or type of information concerning an applicant, except as provided in § 202.13 (information for monitoring purposes) or unless ordered to do so by, or required pursuant to an enforcement agreement with, an enforcement agency acting within its statutory authority or by a court, in order to monitor compliance with the Act, this Part, or other law, in which case a creditor does not violate this section by requesting such information.

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

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(iv) of this section which may be requested about the applicant if:

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

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

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

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

(3) A creditor may request the name and address in which an account is carried if the applicant discloses the existence of that account in applying for credit.

(d) *Information a creditor cannot request.* (1) A creditor shall not request, if an applicant applies for an unsecured separate account, the marital status of the applicant, except in a community property State.[5] Whenever a creditor is permitted to request an applicant's marital status under this Part, only the terms "married," "unmarried" and "separated" shall be used.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support or maintenance payments, unless the creditor first discloses to the applicant that such income need not be revealed if the applicant does not choose for the creditor to utilize such income in determining the creditworthiness of the applicant.

(3) Except as provided in § 202.13, a creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Mr., Mrs., Ms. or Miss) if the form discloses that the designation of such title is optional; an application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children.

(5) Except as provided in § 203.13, a creditor shall not request the race, color, religion or national origin of an applicant or other persons directly or indirectly identified with the applicant or the credit transaction.

(6) A creditor shall not request information concerning the exercise by the applicant of any right under the Consumer Credit Protection Act.

(e) *Applicant forms.* A creditor may design its own application forms in conformity with the requirements of this section. Alternatively, if a creditor wishes, it may utilize the application forms contained in Appendix B.[6] A creditor who utilizes a form that conforms to one contained in Appendix B is in compliance with all the requirements of paragraphs (c) and (d), of the section provided that the creditor does not otherwise request information prohibited by paragraphs (c) or (d) and complies with any further infromation requirements of paragraph (b) of this section.

§ 202.6 Specific rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this Part and as long as the information is not used for the purpose of discriminating against an applicant on a prohibited basis, in evaluating an application a creditor may utilize any information the creditor obtains.[7]

(b) *Specific rules concerning use of information.* (1) A creditor shall not take a prohibited basis into account in any system of evaluating the creditworthi-

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[4] This paragraph is not intended to abrogate any federal or State law regarding privacy or privilege of information credit reporting limitations, or similar restrictions on obtainable information. Nor should permission to request information be confused with how it may be utilized. How information a creditor obtains may be used in connection with a determination of creditworthiness is governed by section 202.6.

[5] This provision does not preclude requesting relevant information which may indirectly disclose marital status, such as asking about liability to pay alimony, child support or maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b).

[6] Appendix B presently contains two forms—one for open end, unsecured credit and one for closed end, secured credit. Additional sample forms, including a real estate credit form, will be included in the final version of the Appendix.

[7] Information concerning race, color, religion, national origin, sex or marital status, and the good faith exercise of any right under the Consumer Credit Protection Act may not be considered in determining creditworthiness except in accordance with section 202.8. Information concerning age and income derived from a public assistance program may be considered in determining creditworthiness. Within these guidelines, this subsection permits a creditor to use any information obtained (such as information permitted to be requested or which is otherwise obtained, including, but not limited to, the recognition of State property laws directly or indirectly affecting creditworthiness) in accordance with the requirements of the Act and this Part. In this regard, subsection (b) specifically proscribes in several instances (for example, discounting of income and telephone listing) the use of insufficiently refined general information which is accordingly not causally related to a determination of creditworthiness where the effect of using such information would be to discriminate against an applicant on a prohibited basis, even though the creditor may have no intent to discriminate. The legislative history of the Act indicates that Congress intended this concept, as enunciated in the cases of *Griggs* v. *Duke Power Co.* 401 U.S. 424 and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, to be applicable in connection with a creditor's evaluation of applications. See Senate Report to accompany H.R. 6516, No. 94–589, pp. 4–5; House Report to accompany H.R. 6516, No. 94–210, p. However, it should be recognized that the use of other information not specifically proscribed by subsection (b) in determining the creditworthiness of applicants may deny credit to a class of persons protected by the Act and this Part at a substantially higher rate than persons not of that class. In accordance with the Board's understanding of the *Griggs* decision, such use may be a violation of this subsection unless the creditor establishes that the information has a manifest relationship to creditworthiness. In accordance with the *Albemarle* decision, as the Board understands it, an applicant might then be able to show that other information which a creditor could use, with a less discriminatory effect, would serve the creditor's purpose equally well in predicting creditworthiness. Such a showing, unrebutted by the creditor, would be evidence the creditor was employing the information used merely as a "pretext" for discrimination, e.g., with the intent of discriminating against applicants on a prohibited basis.

ness of applicants,[8] except a creditor may:

(i) Take age into account as a predictive variable actually used in a demonstrably and statistically sound empirically derived credit system if in the operation of that system the age of an elderly applicant is not assigned a negative factor or value; and

(ii) Take age or whether all or any part of an applicant's income derives from any public assistance program into account in determining a pertinent element of creditworthiness for use in a judgmental system of evaluating applicants.[9]

(2) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

(3) A creditor shall not take into account the existence of a telephone listing in the name of the applicant. A creditor may take into account the existence of a telephone in the residence of an applicant for consumer credit, or at the business of an applicant for other than consumer credit.

(4) A creditor shall not exclude from consideration a portion of the income of an applicant or the spouse of the applicant because of a prohibited basis, but a creditor may consider the amount and probable continuance of income levels of any income in evaluating the creditworthiness of an applicant.

(5) To the extent the creditor considers credit history in evaluating applicants of similar qualifications for a similar type and amount of credit, a creditor shall not fail to consider in evaluating credit-worthiness, unless such failure results from an inadvertent error:

(i) When available, the credit history of accounts designated under the requirements of section 202.10 as accounts which the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present tending to indicate that the available credit history does not accurately reflect the applicant's creditworthiness;[10] and

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

§ 202.7 Specific rules concerning extentions of credit.

(a) *Separate accounts.* A creditor shall not refuse to grant a separate account to a creditworthy applicant on the basis of sex or marital status.[11]

(b) *Designation of name.* (1) A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and surname or a birth-given first name and a combined surname.

(2) Paragraph (b)(1) if this section does not preclude a creditor's asking or taking other action to determine whether credit has been applied for or received by an applicant in a name other than that in which the applicant is presently applying.

(c) *Action concerning open end accounts.* (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions with respect to a person who is contractually liable on an existing open end account on the basis of that person's reaching a certain age or retiring, or on the basis of a change of name or marital status:

(i) Require a reapplication; [12] or

(ii) Require a change in the terms of the account; or

(iii) Terminate the account.

(2) A creditor may require a reapplication on the basis of a change in marital status where open end credit has been granted to an applicant based on income which is earned solely by the applicant's spouse.

(d) *Signatures of spouse or other persons.* (1) Except as provided in paragraph (d)(2) of this section, a creditor shall not require the signature of another person, other than a co-applicant, on a credit instrument (including, without limitation, a guaranty agreement) unless such a requirement is imposed without regard to a prohibited basis on all similarly qualified applicants who apply for a similar type and amount of credit.

(2) A creditor may require the signature of:

(i) A non-applicant spouse where a married applicant applies for unsecured credit in a community property State, if the applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness and the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to any community property; or

(ii) A non-applicant spouse or other person where an applicant applies for secured credit, on such instruments as are necessary or are reasonably believed by the creditor to be necessary, under the facts and the applicable statutory or decisional law of the State to create a valid lien, pass clear title, waive or release inchoate rights or present interests in property or assign earnings.

(3) Where an applicant applies for unsecured credit and the creditor in extending the credit relies on assets in which a non-applicant spouse or other person has or may obtain an interest, the creditor may require the signature of such non-applicant for the purpose of obtaining access to the asset in the event of default, as long as the signature does not impose personal liability except as may be required under applicable State law to meet requirements as to consideration.

(e) *Conditions to extensions of credit.* A creditor shall not impose on an applicant because of a prohibited basis conditions to the approval of an extension of credit which are not customarily imposed by the creditor on other applicants.

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[8] This provision does not prevent a creditor from using the age of an elderly applicant when age is used to favor that applicant, or from considering the marital status of an applicant or a source of the applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness.

[9] In relation to income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving unemployment compensation; whether the applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of any dependents to ascertain whether benefits the applicant is presently receiving will continue.

In relation to age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to judge whether the applicant's income (including retirement income, as applicable) will continue at a sufficient level to support the extension of credit until its maturity; and the adequacy of any security offered by the applicant to determine credit risk if the duration of the extension of credit will exceed the life expectancy of the applicant. In this latter regard, an elderly applicant might not qualify for a 5 percent down condominium loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral exceeds the amount of the downpayment. The same applicant may be creditworthy with a larger downpayment and a shorter loan maturity. A creditor may also consider an applicant's age, for example, to assess the meaning of the applicant's length of employment or residence (a young applicant may have just entered the job market, an elderly applicant may recently have retired and moved from a long-time residence).

[10] For example, a lack of recent credit history may be explicable because the applicant is young or has chosen not to use credit for some time prior to retirement. An unfavorable credit history may be explicable because the creditor extending the past credit customarily resorted to legal action or because the subject of the extension of credit was shoddy or defective merchandise.

[11] A refusal to grant a separate account to a creditworthy applicant on any prohibited basis would be a violation of the Act and this Part. This provision is intended to highlight certain common past instances of discrimination now prohibited by the Act and this Part.

[12] The term reapplication where used in this provision does not include a "reevaluation" of creditworthiness, which may then lead to the need for a reapplication if the information developed indicates a lack of continuing creditworthiness. Additional information may be requested in connection with a "reevaluation." However, the requirements of section 202.5 must be observed in relation to any "reevaluation."

§ 202.8 Special purpose credit programs.

(a) *General rule and standards for programs.* The Act and this Part are not violated and adverse action is not taken if, pursuant to any of the following types of special purpose credit programs, a creditor refuses to extend credit to an applicant solely because the applicant does not qualify for credit under the special requirements of the particular program:

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

(2) Any credit assistance program administered by a non-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a profit-making organization to meet special social needs, provided that:

(i) The program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program;

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

(iii) The program is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to contract), income (if any) derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act, except that all program participants may be required to share one or more of those characteristics if the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(b) *Special rule concerning requests and use of information.* If all participants in any of the three types of special purpose credit programs described in paragraph (a) of this section are required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of paragraph (a), then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider in determining eligibility for such program information regarding those common characteristics that all applicants are required to possess. In such circumstances, the solicitation and consideration of that information shall not constitute a violation of the Act or this Part.

(c) *Special rule in the case of financial need.* If one of the criteria for the extension of credit under any of the three types of special purpose credit programs described in paragraph (a) of this section is financial need, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider in determining eligibility for such program information regarding an applicant's marital status and spouse's financial resources. In such circumstances, the solicitation and consideration of that information shall not constitute a violation of the Act or this Part.

§ 202.9 Notifications.

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

(1) *Notification of action taken.* A creditor shall notify an applicant within a reasonable time not to exceed 30 days:

(i) After receiving a completed application, of the creditor's action approving the application or taking adverse action with respect to the applictaion (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property or services in accordance with the application); and

(ii) After taking adverse action with respect to an existing account, of the creditor's adverse action.

(2) *Content of Notification.* Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain a statement of the action taken and the provisions of section 701(a) of the Act, the name and address of the federal agency which administers compliance concerning the creditor giving the notification, and either:

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

(ii) As the creditor may elect, either a disclosure of the right of the applicant to receive a written statement of specific reasons, or of the right to receive an oral statement of specific reasons, within 30 days after the receipt by the creditor of an oral or written request for a statement of reasons made by an applicant within 60 days after the notification of adverse action. The creditor shall also specify the name, address and telephone number of the person or office from which the statement of reasons can be obtained. If a creditor elects to disclose only the right to receive an oral statement of specific reasons, it shall further disclose the right of the applicant to have the statement of specific reasons confirmed in writing within a reasonable time not exceeding 30 days after a written request for such confirmation is received by the creditor.

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to any one of them.

(4) *Multiple creditors.* If a transaction involves more than one creditor and the applicant accepts credit offered, only the creditor extending the credit need comply with this section. If a transaction involves more than one creditor and no credit acceptable to the applicant is offered, then each creditor must comply with this section. The required notifications may be made directly by the creditor(s) or indirectly through a third party, provided in either case that the identity of each creditor is disclosed. Whenever the notification is made through a third party, a creditor is not liable for any disclosure, act or omission of the third party which constitutes a violation of this section if the creditor accurately and timely provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) *Form of ECOA notice and statement of specific reasons.* (1) *ECOA notice.* A statement of the provisions of section 701(a) of the Act and the name and address of the federal agency in substantially the following form satisfies the requirement of subsection (a)(2):

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract in accordance with applicable State law); 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).

The sample statement printed above may be modified immediately following the required references to the federal act and enforcement agency, to include references to any similar State statute, rule or regulation and to a State enforcement agency.

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the primary reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form, or may use the sample form printed below, which, if properly completed, constitutes compliance with the requirements of subsection (a)(2)(i). Statements that an applicant does not meet membership requirements or that the adverse action was based on the creditor's internal standards or policies without further specification, or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF PRIMARY REASON(S) FOR ADVERSE ACTION

1. ------ Credit Application:
   ---- not completed
   ---- lack of credit references
   ---- credit reference too new
   check.
2. ------ Information furnished by: X Credit Bureau, 10 Main Str Anytown, Anystate 00000, Ph No: 000 000-0000.

3. ------ Employment:
---- unemployed [1]
---- temporary or irregular
---- unable to verify
---- length of employment.
4. ------ Income:
---- insufficient
---- unable to confirm
---- information refused.
5. ------ Residence:
---- too short a period
---- temporary.
6. ------ We do not customarily grant credit to any applicant on the terms and conditions you requested.
7. ------ Other (Specify)----------
---

[1] This reason does not refer to unemployment due to retirement, and does not suffice as a reason for adverse action in the case of an applicant who has income from a public assistance program.

(3) *Other information.* The notification required by subsection (a)(1) may include other information so long as it does not detract from the required content of the notification. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act, provided all requirements such as clarity, conspicuousness and placement are satisfied, and may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) *Oral notifications.* The applicable requirements of this section may be satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action to a particular applicant is to be given.

(d) *Withdrawn applications.* If an application is approved by a creditor and the applicant, within a reasonable time not exceeding 30 days, does not consummate the transaction, a creditor may treat the application as withdrawn for the purpose of the notification required by subsection (a)(1).

(e) *Failure of compliance.* A failure to comply with this section is not a violation if caused by an inadvertent error.

§ 202.10 Furnishing of credit information.[13]

(a) *Accounts established on or after November 1, 1976.* (1) For every account established on or after November 1, 1976 a creditor shall:

(i) Determine whether the account is one which an applicant's spouse will be permitted to use or upon which both spouses will be contractually liable, if such accounts are offered by the creditor; and

(ii) Designate any such account to reflect the fact of participation of both spouses.

(2) When furnishing information to consumer reporting agencies or others concerning an account designated under this section or designated prior to the effective date of this Part, a creditor shall report the designation and furnish any information concerning the account:

(i) To consumer reporting agencies, in a manner which will enable the agencies to provide access to information about the account in the name of each spouse; and

(ii) To recipients other than such agencies, in the name of each spouse about whom such information is requested.

(b) *Requests to change manner in which information is reported.* Within 90 days of receipt of a request to change the manner in which information is reported to consumer reporting agencies and others, a creditor, when furnishing information concerning any such account, shall designate the account to reflect the fact of participation of both spouses. The creditor shall report the designation and furnish any information concerning the account to any recipient other than a consumer reporting agency in the name of each spouse about whom such information is requested and, when reporting to consumer reporting agencies, in a manner which will enable such agencies to provide access to information about the account in the name of each spouse. A spouse's signature on a request to change the manner in which information concerning an account is furnished shall not change the legal liability of either spouse upon the account.

(c) *Inadvertent errors.* A failure to comply with this section is not a violation if caused by an inadvertent error if as soon as possible after the discovery of the error the creditor corrects the erors and commences compliance with the requirements of this section, as then applicable.

§ 202.11 Relation to State law.

(a) *Separate extensions of consumer credit.* If application is made for a separate extension of consumer credit, any provision of State law which either proscribes the separate extension of consumer credit to each spouse or imposes liability upon a nonapplicant spouse is preempted if the applicant establishes independent creditworthiness.

(b) *Finance charges and loan ceilings.* If each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges [14] or permissible loan cealings under the laws of any State or of the United States. Permissible loan ceiling laws shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceilings, less the amount for which both spouses are jointly liable.[15]

(c) *Inconsistent State laws.* (1) Except as provided in paragraphs (a) and (b) of this section, the Act and this Part preempt only those State laws, other than State laws with respect to credit discrimination on any prohibited basis, which are inconsistent with the Act or this Part, and then only to the extent of the inconsistency. Such a State law is not inconsistent with the Act or this Part if the creditor can comply with the State law without violating the Act or this Part.

(2)(i) The Act and this Part do not preempt any State laws with respect to credit discrimination on any prohibited basis, except to the extent that those laws are inconsistent with any provision of the Act or this Part, and then only to the extent of the inconsistency. For this purpose, a State law with respect to credit discrimination on any prohibited basis, which is similar in nature, purpose, scope, intent, effect or requisites to the provisions of sections 701 or 702, or both, of the Act and their implementing provisions in this Part, is declared inconsistent with the Act and this Part within the meaning of section 705(f) of the Act, unless and until a contrary determination is made by the Board pursuant to the procedures provided in this subsection.

(ii) A State, through its Governor, Attorney General, or other appropriate official having primary enforcement or interpretive responsibility for its credit discrimination law, may apply to the Board in accordance with Supplement I to this Part for a determination that the State law with respect to credit discrimination on any prohibited basis offers greater protection to applicants than a comparable provision of the Act and its implementing provision(s) in this Part or is otherwise not inconsistent with the Act and this Part, or for a determination with respect to any issues not clearly dealt with or covered by this subsection as to the consistency or lack of consistency of a State law with respect to credit discrimination on any prohibited basis with the Act or its implementing provisions in this Part.

(d) *Exemption for State regulated transactions.* (1) In accordance with the provisions of Supplement I to this Part, any State may make application to the Board for exemption of any class of credit transactions within the State from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this Part. The Board will grant such an exemption only if:

(i) The Board determines that under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed

[13] This section does not change § 202.6 of present Regulation B, except to reflect the effective date of the amendments to the Act, and will ultimately include any action taken on the June 4, 1976 proposal to amend § 202.6 of Regulation B, which is reported in 41 FR 22592.

[14] For example, when the highest finance charge rate may be imposed on credit extensions up to $300 and a married couple is jointly liable for unpaid debt in the amount of $250, a creditor may charge the highest rate on $50 of credit extended on an individual basis to husband or wife.

[15] For example, in a State with a permissible loan ceiling of $1000, if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this Part; and

(ii) There is adequate provision for enforcement.

(2) The procedures and criteria under which any State may apply for the determination provided for in paragraph (d)(1) are set forth in Supplement I to this Part.

(3) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply, and generally to aid in implementing the Act and to allow federal enforcement agencies to retain their authority with respect to any class of credit transactions exempted pursuant to paragraph (d)(1) and Supplement I:

(i) No such exemptions shall be deemed to extend to the civil liability provisions of section 706; and

(ii) After an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this Part, except to the extent that such State law imposes requirements not imposed by the Act and this Part.

(4) Exemptions granted by the Board to particular classes of credit transactions within specified States are set forth in Supplement II to this Part.

§ 202.12 Record Retention.

(a) *Retention of prohibited information.* Retention in a creditor's files of any information prohibited by the Act or this Part in evaluating applications does not violate the Act or this Part where such information was obtained:

(1) From any source prior to March 23, 1977; [16] or

(2) At any time from credit reporting agencies; or

(3) At any time from the applicant or others, without the specific request of the creditor; or

(4) At any time as required to monitor compliance with the Act and this Part or other law.

(b) *Preservation of records.* (1) For a period ending 25 months after the date a creditor notifies an applicant of action on an application, the creditor shall retain as to an applicant, in original form or a copy thereof: [17]

(i) Any application form, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other law, and any other written or recorded information used in evaluating an application and not returned to an applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken;

(B) The statement of specific reasons for adverse action given to an applicant in accordance with section 202.9; and

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

(2) For a period ending 25 months after the date a creditor notifies an applicant of adverse action taken with respect to an account other than in connection with an application, the creditor shall retain as to the account, in original form or a copy thereof: [18]

(i) Any written or recorded information concerning such adverse action, and

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

(3) In addition to the requirements of subsection (b)(1) and (2), any creditor which has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or which has been served with notice of an action filed pursuant to section 706 of the Act and § 202.-1(c) of this section shall retain the information required in paragraphs (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor which does not have to comply with § 202.9 because of credit accepted by the applicant shall retain for the time period specified in paragraph (b) of this section all written or recorded information concerning the applicant, including a notation of action taken in connection with any adverse action.

5. Information required to be retained in accordance with paragraphs (b)(1) and (2) of this section in a transaction involving an application for credit other than consumer credit need only be retained for 3 months after the date the creditor notifies an applicant of action on an application or of adverse action taken other than in connection with an application, unless during that period the creditor receives a written request from the applicant to retain such information, and need thereafter only be retained in accordance with this subsection.

§ 202.13 Information for monitoring purposes.[19]

(a) *Scope and information requested.* (1) For the purpose of the enforcement

[16] Pursuant to present Regulation B, the date for sex and marital status information is June 30, 1976.

[17] A creditor who uses a computerized system need not keep a written copy of a document if it can regenerate the precise text of the document in relation to an applicant upon request.

[18] See footnote 17.

[19] This section constitutes an example of how information for monitoring purposes might be required to be obtained if the Board ultimately decides that such data should be gathered. It does not constitute a specific proposal of the Board on the merits of the question or as to format.

agencies' monitoring compliance with the provisions of the Act and this Part, any creditor that receives an application for consumer credit for the purpose of the purchase of residential real property where the extension of credit is to be secured by a lien on such property shall request as part of any written application for such credit the following information regarding the applicant:

(i) Name;

(ii) Sex and marital status (married, unmarried, separated);

(iii) Race;

(iv) Age;

(v) Periodic income, including, if disclosed by the applicant in accordance with this Part, alimony, child support, and maintenance income;

(vi) Mailing address of the real property proposed as collateral; and

(vii) The amount of credit for which application is made.

(2) "Residential real property" means any structure or portion thereof that is occupied as, or is designed or intended for occupancy as, a residence for one to four families.

(b) *Method of obtaining information.* The information obtained pursuant to the provisions of paragraph (a) of this section may be listed, at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) *Disclosure to applicant.* Regarding information requested about the applicant's race and sex, the applicant shall be informed that the information is being requested by the federal government for the purpose of monitoring compliance with federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on the basis of race and sex. The applicant shall be asked but not required to supply the requested information. If the applicant chooses not to provide that information or any part of it, it shall be supplied, to the extent reasonably feasible, by the creditor based upon observation; and such fact shall be noted on the form on which the information is obtained.

Appendix A—Federal Enforcement Agencies

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

National Banks—Comptroller of the Currency, Washington, D.C. 20219.

State Member Banks—Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks—Federal Deposit Insurance Corporation Regional Director for the Region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)—The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions—Regional Office of the National Credit Union Administration serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board—Director, Bureau of Enforcement, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

Creditors Subject to Interstate Commerce Commission—Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20523.

Creditors Subject to Packers and Stockyards Act—Nearest Packers and Stockyards Administration area supervisor.

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate)—Federal Trade Commission, Washington, D.C. 20580.

Small Business Investment Companies—U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

Brokers and Dealers—Securities and Exchange Commission, Washington, D.C. 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations—Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, D.C. 20578.

Appendix B

Note.—There are two sample forms contained in this Appendix—one for open end, unsecured credit and one for closed end, secured credit. If a creditor offering an open end account wishes to relate the sample open end form to secured credit, then it should delete the note in the marital status block "Complete Only if Joint Account" and add after the Co-Applicant section a section relating to a description of the collateral offered. Conversely, if a creditor offering closed end credit wishes to relate the sample closed end form to unsecured credit, then it should insert in the marital status block (as indicated on the open end, unsecured credit form) the note "Complete Only if Joint Account" and delete the section relating to a description of the collateral offered.

If an applicant voluntarily discloses on an application the receipt of alimony, child support, or separate maintenance and a creditor wishes to inquire further about that income and the spouse or former spouse who pays it, the creditor may insert at the end of the "Note" in the instructions relating to alimony, child support, and separate maintenance the following sentences: "If you choose to disclose such income, complete the Co-Applicant section to the extent that you can regarding your spouse or former spouse who makes those payments. If you need to complete the Co-Applicant section for any other reason stated above, list the requested information about your spouse or former spouse on a separate page." In addition, the creditor may insert in the "Alimony and similar Income" block, after the disclosure notice, the following: "Received Under: Court Order [ ] Written Agreement [ ] Verbal Understanding [ ]".

If a creditor is operating in a community property State, then it should modify the second instruction, inserting after the words "relying on the income of a spouse or another person", the phrase "or community property". Similarly, the creditor should change the last designation of the type of account or credit extension on the upper, left-hand side of the form to read: "[ ] Individual Account [or, Credit] Relying on Income of Spouse or Another Person or Community Property". Finally, such a creditor should delete any reference in the marital status block to the note "Complete Only if Joint Account".

APPLICATION FOR OPEN END, UNSECURED CREDIT

APPLICANT

(Please Check Each Applicable Box)

- ☐ Individual Account
- ☐ Joint Account
- ☐ Authorized User Account
- ☐ Individual Account, Relying on Income of Spouse or Another Person

IMPORTANT: READ THESE DIRECTIONS BEFORE COMPLETING APPLICATION

If this is an application for an individual account and you are relying on your own income and not the income of a spouse or another person as a basis for the extension and repayment of the credit requested, complete only the Applicant section and sign the application.

If this is an application for a joint account or an account that another person will also be authorized to use, or if this is an application for an individual account but you are relying on the income of a spouse or another person as a basis for the extension and repayment of the credit requested, both the Applicant and Co-Applicant sections should be completed. If this is an application for a joint account, both parties should sign the application.

NOTE: Any income you receive from alimony, child support, or separate maintenance is your own income and not the income of a spouse or another person for purposes of this application. Disclosure of such income is voluntary, as stated below.

(Title is Optional)
MS. ☐ MISS ☐
MR. ☐ MRS. ☐
OTHER .....

Last Name ..... First ..... M. I. .....

HOME ADDRESS ..... Time There ..... Yrs. ..... Mos.

City ..... State ..... Zip .....

PHONE NOS. Home Phone ..... Business Phone .....

AGE ..... No. of Dependents .....

Rent ☐ Own Individually ☐ Jointly ☐
Board ☐ Live With Parents ☐

NAME OF LANDLORD OR MORTGAGE HOLDER .....

MONTHLY RENT OR MORTGAGE PAYMENT $ ..... Est. Value of Home $ ..... Mtg. Balance $ .....

PREVIOUS HOME ADDRESS ..... Time There ..... Yrs. ..... Mos.

City ..... State ..... Zip .....

EMPLOYER'S NAME ..... Time There ..... Yrs. ..... Mos.

EMPLOYER'S ADDRESS ..... Dept./Employee No. .....

MONTHLY SALARY $ ..... Position .....

FORMER EMPLOYER Name ..... Time There ..... Yrs. ..... Mos.

Address .....

ALIMONY AND SIMILAR INCOME Alimony, child support, or separate maintenance income need not be listed unless you choose to have such income considered regarding extension and repayment of the credit requested. Monthly Amount $ .....

OTHER SOURCES OF INCOME Monthly Amount $ ..... Source .....

SOCIAL SECURITY NUMBER (OPTIONAL) .....

MARITAL STATUS Complete **ONLY** if Joint Account
Married ☐ Separated ☐ Unmarried (Inc. Divorced and Widowed) ☐

CHECKING ACCT. Institution ..... No. .....

SAVINGS ACCT. Institution ..... No. .....

DEBTS (Inc. Auto, Bank, Finance Co., Retail, Etc.)

Creditor's Name	Address	Acct. No.	Mo. Pymt.	Bal.

OTHER OBLIGATIONS (E.g., Liability to Pay Alimony, Child Support, Maintenance, Legal Judgments) .....

Attach Additional Page If You Need More Space

Have You Gone Through Bankruptcy In Past 7 Years?
Yes ☐ No ☐ When .....

NAME AND ADDRESS OF NEAREST RELATIVE (NOT LIVING WITH YOU) Name .....
Address .....

CO-APPLICANT

Relationship ..... Age .....

NAME .....

ADDRESS .....

EMPLOYER ..... Time There ..... Yrs. ..... Mos.

MONTHLY SALARY $ ..... Social Security No. (OPTIONAL) .....

I/WE CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND ACCURATE AND IS PROVIDED FOR THE PURPOSE OF OBTAINING CREDIT. I/WE AUTHORIZE A CREDIT INVESTIGATION.

APPLICANT'S SIGNATURE ..... DATE .....

CO-APPLICANT'S SIGNATURE ..... DATE .....

APPLICATION FOR CLOSED END, SECURED CREDIT

APPLICANT

(Please Check One)
- ☐ Individual Credit
- ☐ Joint Credit
- ☐ Individual Credit Relying on Income of Spouse or Another Person

IMPORTANT: READ THESE DIRECTIONS BEFORE COMPLETING APPLICATION.

If this is an application for individual credit and you are relying on your own income and not the income of a spouse or another person as a basis for the extension and repayment of the credit requested, complete only the Applicant section and sign the application.

If this is an application for joint credit or if this is an application for individual credit but you are relying on the income of a spouse or another person as a basis for the extension and repayment of the credit requested, both the Applicant and Co-Applicant sections should be completed. If this is an application for joint credit, both parties should sign the application.

NOTE: Any income you receive from alimony, child support, or separate maintenance is your own income and not the income of a spouse or another person for purposes of this application. Disclosure of such income is voluntary, as stated below.

(Title is Optional)
MS. ☐ MISS ☐
MR. ☐ MRS. ☐
OTHER .....

Last Name ..... First ..... M. I. .....

HOME ADDRESS

Time There ..... Yrs. ..... Mos.

City ..... State ..... Zip .....

PHONE NOS.

Home Phone ..... Business Phone .....

AGE

No. of Dependents .....

Rent ☐ Own Individually ☐ Jointly ☐
Board ☐ Live With Parents ☐

NAME OF LANDLORD OR MORTGAGE HOLDER .....

MONTHLY RENT OR MORTGAGE PAYMENT

Est. Value of Home ..... Mtg. Balance .....

$ ..... $ ..... $ .....

PREVIOUS HOME ADDRESS

Time There ..... Yrs. ..... Mos.

City ..... State ..... Zip .....

EMPLOYER'S NAME

Time There ..... Yrs. ..... Mos.

EMPLOYER'S ADDRESS

Dept./Employee No. .....

MONTHLY SALARY

$ ..... Position .....

FORMER EMPLOYER

Name ..... Time There ..... Yrs. ..... Mos.

Address .....

ALIMONY AND SIMILAR INCOME

Alimony, child support, or separate maintenance income need not be listed unless you choose to have such income considered regarding extension and repayment of the credit requested.

Monthly Amount $ .....

OTHER SOURCES OF INCOME

Monthly Amount $ ..... Source .....

SOCIAL SECURITY NUMBER (OPTIONAL) .....

MARITAL STATUS

Married ☐ Separated ☐ Unmarried (Inc. Divorced and Widowed) ☐

CHECKING ACCT.

Institution ..... No. .....

SAVINGS ACCT.

Institution ..... No. .....

DEBTS (Inc. Auto, Bank, Finance Co., Retail, Etc.)

Creditor's Name	Address	Acct. No.	Mo. Pymt.	Bal.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

OTHER OBLIGATIONS (E.g., Liability to Pay Alimony, Child Support, Maintenance, Legal Judgments)

..... Attach Additional Page If You Need More Space

Have You Gone Through Bankruptcy In Past 7 Years?

Yes ☐ No ☐ When .....

NAME AND ADDRESS OF NEAREST RELATIVE (NOT LIVING WITH YOU)

Name .....

Address .....

CO-APPLICANT

Relationship ..... Age .....

NAME .....

ADDRESS .....

EMPLOYER

Time There ..... Yrs. ..... Mos.

MONTHLY SALARY $ ..... Social Security No. (OPTIONAL) .....

DESCRIPTION OF PROPERTY SECURING CREDIT

.....

.....

.....

.....

.....

.....

Is or will property be co-owned? Yes ☐ No ☐

If yes, name of co-owner: .....

I/WE CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND ACCURATE AND IS PROVIDED FOR THE PURPOSE OF OBTAINING CREDIT. I/WE AUTHORIZE A CREDIT INVESTIGATION.

APPLICANT'S SIGNATURE ..... DATE .....

CO-APPLICANT'S SIGNATURE ..... DATE .....

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data or comments. Members of the public are urged to comment not only on provisions they believe should be changed or added, but also on proposed provisions they believe should remain in the regulation. All comments should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 1, 1976. Written comments will be made available for public inspection and copying upon request except as provided in section 261.6(a) of the Board's rules regarding availability of information (12 CFR 261). All material submitted should include the docket number R–0031.

A hearing will be held before available members of the Board on the terrace floor of the Board's building on 20th and C Streets, NW., Washington, D.C. on August 12, 1976 beginning at 9 a.m. The hearing will be continued on the afternoon of August 13 if necessary.

The proceeding will consist of presentation of statements in oral or written form. Interested persons need not participate in the hearing in order to have their views considered.

Any person wishing to testify at the hearing should file with the Secretary of the Board at the address set forth above on or before August 6, 1976, a written request containing a statement of the nature of the petitioner's interest in the proceedings, a summary of the matters concerning which the petitioner wishes to give testimony and the name and identity of witnesses who propose to appear. All requests to appear at the hearing also should include the docket number R–0031.

This notice of proposed rulemaking is published pursuant to the Board's authority under section 703(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691b).

By order of the Board of Governors, July 14, 1976.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-20918 Filed 7-19-76;8:45 am]