FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation B, which implements the Equal Credit Opportunity Act (ECOA or Act), pursuant to the Board's policy of periodically reviewing its regulations. The Act makes it unlawful for creditors to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, marital status, sex, age, and other specified bases. Major proposed revisions include removing the general prohibition against noting information about applicant characteristics such as national origin or sex, although such information still generally may not be considered in extending credit; requiring creditors to retain records for certain prescreened credit solicitations; and extending the record retention period for most business credit applications. Proposed revisions to the Official Staff Commentary are also included.

DATES: Comments must be received by November 10, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1008, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Kathleen C. Ryan, Staff Attorneys, Jane Jensen Gell, Senior Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on ECOA and Regulation B

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, prohibits a creditor from discriminating against an applicant in any aspect of a credit transaction on the basis of the applicant's race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). The ECOA is implemented by the Board's Regulation B.

When enacted in 1974, the ECOA prohibited discrimination on the basis of marital status and sex. In 1976, the Act was amended to add all of the other prohibited bases of discrimination. Over the years, several significant amendments have been made to the ECOA, including the following. In 1989, the ECOA was amended by the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692) to require that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial, and to impose a record retention requirement for certain business credit applications. In 1991, the ECOA was amended by the Federal Deposit Insurance Corporation Improvement Act (Pub. L. 102–242, 105 Stat. 2236) to provide applicants with a right to obtain a copy of any appraisal report used in connection with an application for credit to be secured by residential real property; the amendments also expanded the enforcement responsibilities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended the ECOA to create a privilege for information developed by creditors as a result of ''self-tests'' they conduct.

II. The 1998 Review of Regulation B

Pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1994, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Board is reviewing Regulation B. The Board's last comprehensive review of Regulation B occurred in 1985. The Board began the current review of Regulation B in March 1998 by publishing an Advance Notice of Proposed Rulemaking (Advance Notice) (63 FR 12326, March 12, 1998). In addition to soliciting general comment on revisions to the regulation, the Board identified specific issues for comment involving: (1) Preapplication marketing practices, (2) the distinction between an inquiry about credit and an application for credit, (3) data notation for nonmortgage products, (4) the definition of creditor, (5) documentation for business credit, and (6) exceptions for business credit.

The Board received 330 comment letters on the Advance Notice. Most commenters addressed only the six issues identified in the Advance Notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation B and the official staff commentary. In addition to comments on the proposed revisions, the Board requests specific suggestions for other revisions that would facilitate compliance with, or improve, the regulation.

III. Discussion of Proposed Revisions to the Regulation

Major proposed revisions include rules that remove the general prohibition against the notation—but not the use—of certain prohibited basis information (§ 202.5); extend the record retention period for certain business credit applications (§ 202.12); and require record retention for preapproved credit solicitations (§ 202.12). The following discussion covers the proposed revisions to the regulation section-by-section. A section-by-section discussion of proposed revisions to the commentary appears in Part IV.

Section 202.1—Authority, Scope and Purpose

No revisions are proposed in this section.

Section 202.2—Definitions

Revisions are proposed in the definitions of adverse action, application, and creditor in §§ 202.2(c)(1) and (c)(2), 202.2(f), and 202.2(l).

2(c) Adverse Action

2(c)(1)

Adverse action on a class of accounts—Section 202.2(c)(1)(ii) provides that adverse action includes a creditor's termination of or unfavorable change to the terms of an account, unless the action affects ''all or a

substantial portion of a class of the creditor's accounts.'' Commenters asked the Board to clarify the exception—namely, the meaning of ''class of accounts'' and ''substantial portion'' of a class of accounts. Section 202.2(c)(1)(ii) would be revised to clarify the exception by changing the language from ''substantial portion'' to substantially all'' so that a creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action.

The ECOA and Regulation B require creditors to give consumers reasons for an adverse credit decision. The notice requirement enables some recipients to identify and remedy credit problems, and may also help detect unlawful credit discrimination. The exception in § 202.2(c)(1)(ii) is intended to address the circumstance where a creditor takes action that affects all or most of a type of its accounts, rather than targeting specific customers, and an adverse action notice seems unnecessary. For example, if a creditor terminates its secured credit card program entirely, adverse action notices will not likely serve the intended educational or anti-discrimination goals.

2(c)(2)

Section 202.2(c)(2)(iii) would be revised to conform to changes proposed under § 202.2(c)(1)(ii).

2(f) Application

The Board believes that a request for a preapproved loan under procedures in which a creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a designated period of time—even if subject to conditions—is an application. A ''preapproval'' without procedures involving a written commitment would be treated as a prequalification for purposes of the regulation. Section 202.2(f) of the regulation would be revised accordingly. In addition, technical revisions would be made to the definition of application for clarity.

2(l) Creditor

Section 202.2(l) would be revised to clarify that the definition of ''creditor'' applies to a person who regularly participates in making a credit decision, including setting terms—not just the decision of whether to extend or deny credit. (*See* detailed discussion of the definition of ''creditor'' in ''Part IV. Discussion of Proposed Revisions to the Official Staff Commentary'' under § 202.2(l).)

Section 202.3—Limited Exceptions for Certain Classes of Transactions

Revisions are proposed in §§ 202.3(a)(2), 202.3(b)(2), and §§ 202.3(c)(1) and (2) relating to public-utilities, securities, and incidental credit.

The regulation provides certain exceptions for public-utilities, securities, incidental, and government credit. Each of these types of credit remains subject to the general prohibition on discrimination; the exceptions generally cover issues such as record retention, inquiries about marital status and spousal information, and furnishing credit information. Credit that does not meet the definitions is subject to the full coverage of Regulation B.

The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception for a class of transactions if the Board determines, after making an express finding, ''that the application of [the Act] or of any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act].'' 15 U.S.C. 1691b. After analysis, the Board believes that extending some of the exceptions is still appropriate, and that applying the rules of Regulation B in their entirety would not contribute substantially to effectuating the purposes of the Act, as discussed below.

3(a) Public-Utilities Credit

3(a)(2) Exceptions

Public-utilities credit refers to extensions of credit that involve public-utility services if the charges for the service, delayed payment, and any discount for prompt payment are filed with or regulated by a governmental unit, such as a public-utilities commission. Public-utilities credit is subject to all of the regulatory requirements except those relating to collecting information about marital status, furnishing credit information to consumer reporting agencies, and retaining records. The proposed rule would retain the relief from the record retention requirements only. Regulation B permits inquiries into an applicant's marital status only in limited circumstances. The exception from this provision permits creditors offering public-utilities credit to request information concerning marital status in all instances. The Board believes this exception is no longer needed and is proposing to remove the exception. Specific comment is solicited on this change.

The proposed rule also would remove the exception relating to the furnishing of credit information under § 202.10 (concerning accounts held or used by spouses). The requirements of § 202.10 apply only to creditors that furnish credit information to consumer reporting agencies or to other creditors. Such creditors are required to furnish information that reflects the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. Creditors are considering public-utilities payments more frequently as a source of repayment history for underwriting purposes. Thus, the Board believes that it would be helpful to consumers if public-utility companies that furnish credit payment information were subject to the same reporting requirements as other creditors subject to the ECOA. The Board seeks comment on this approach.

The regulation requires creditors to retain certain records. Public-utilities credit is not subject to the record retention requirements. The Board would retain the exception regarding record retention because public-utility companies must keep records pursuant to regulations of other governmental bodies—often for longer periods of time than required by the ECOA. The Board believes that extending this exception is appropriate because requiring record retention would not contribute substantially to effectuating the purposes of the Act.

3(b) Securities Credit

3(b)(2) Exceptions

Securities credit is credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation under that act. Brokers and dealers are required to inquire about the financial activities of spouses to comply with the rules of the Securities Exchange Act and the National Association of Securities Dealers. For this reason, Regulation B excepts securities credit from several provisions including, among others, signature rule requirements, rules relating to record retention, and requesting information about the sex of an applicant. Given that the Board proposes to remove the prohibition against the collection of information about certain applicant characteristics, the current exception in § 202.3(b)(2)(iii) would be redundant. The Board believes that it is appropriate to extend the other exceptions related to information concerning a spouse or former spouse, marital status, name designations, open-end accounts, spousal signature

requirements, the furnishing of credit information, and record retention. Securities credit is subject to an extensive regulatory scheme, and applying those provisions of Regulation B would not contribute substantially to effectuating the purposes of the ECOA. Technical revisions would be made for clarity, with no substantive change intended.

3(c) Incidental Credit

3(c)(1) Definition

Currently, incidental credit is limited to consumer credit that is not: (1) Made pursuant to the terms of a credit card account, (2) subject to a finance charge under Regulation Z (Truth in Lending), or (3) payable by agreement in more than four installments. This type of credit might be extended, for example, by a local merchant that does not normally extend credit, to a long-standing customer; or by a doctor or lawyer, as an accommodation to a patient or a client.

The proposed rule would expand the exception for incidental credit to include incidental business credit, as the Board believes that full regulatory coverage of such credit does not contribute substantially to effectuating the purposes of the Act. Incidental business credit would be defined as business credit that is not made pursuant to the terms of a credit card account, is not subject to interest charges or fees, and is not payable by agreement in more than four installments. The Board solicits specific comment on this proposed change.

3(c)(2) Exceptions

Incidental credit is excepted from a number of provisions in the regulation including requesting information about an applicant's marital status, spouse or former spouse, and certain sources of an applicant's income. The proposed rule would eliminate the exception for requesting information about the sex of an applicant, in light of the Board's proposal to remove the prohibition against the collection of information related to a prohibited basis. The proposed rule would extend the other exceptions concerning information about an applicant's spouse or former spouse, marital status, income sources, signatures, notifications, the furnishing of credit information, and record retention. The Board believes that, given the nature of the credit extension, applying these rules would not contribute substantially to effectuating the purposes of the Act.

3(d) Government Credit

With regard to government credit, the exceptions apply to extensions of credit made *to* governments or governmental subdivisions, agencies or instrumentalities. The Board believes that extending these exceptions remains appropriate, as applying the rules would not contribute substantially to effectuating the purposes of the Act.

Section 202.4—General Rule Prohibiting Discrimination

Revisions are proposed in § 202.4. In the Advance Notice, the Board solicited comment on how and to what extent creditors are using prohibited bases in preapplication marketing—specifically, prescreened solicitations—to determine whether the coverage of the regulation should be expanded to such practices. Although this section includes a discussion of the issue, the proposed rule does not recommend expanding the regulation's coverage to prescreened solicitations; however, § 202.12(b)(7) would require creditors to retain certain records related to preapproved credit solicitations.

General Rules

Section 202.4 would be revised to incorporate general rules that apply under the regulation, some of which are currently in other sections of the regulation and official staff commentary. The Board believes this approach would facilitate compliance with the regulation. Section 202.4(a) would provide the general rule against discrimination. Section 202.4(b) would provide the general rule against discouraging applications. Section 202.4(c) would provide the rule for when written applications are required.

Section 202.4(d) would contain new clear and conspicuous and retainability standards that the Board is proposing to apply to the disclosures and other information required to be in writing. In March 1998, the Board requested public comment on a proposal to permit the electronic delivery of disclosures for four of its consumer protection regulations: Regulation B; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending; and Regulation DD, Truth in Savings (63 FR 14533–14552, March 25, 1998). Except for Regulation B, each of those regulations expressly provides that creditors must present required information in a clear and conspicuous manner, in a form the consumer may keep. Accordingly, the Board proposed that the clear and conspicuous and retainability standards be applied to information required under Regulation B (63 FR 14552, March 25, 1998). Their inclusion in § 202.4 is consistent with that proposal.

Prescreened Solicitations

The ECOA prohibits discrimination by a creditor against an *applicant* on a prohibited basis regarding any aspect of a credit transaction. Regulation B defines an applicant as a person who has requested or received credit. A credit transaction is defined by Regulation B as covering every aspect of an applicant's dealings with a creditor, beginning with requests for information. Thus, the coverage of the ECOA is generally limited to a person who has, at a minimum, sought credit information. The law does not generally extend to a creditor's preapplication marketing practices—such as the selection of persons solicited for a credit card. The regulation applies only after individuals respond to a creditor's offer of credit. But because a person could be discouraged from seeking credit or credit information, the regulation expressly prohibits a creditor from engaging in any practice that would discourage a reasonable person (on a prohibited basis) from applying for credit. The regulation also applies to advertising.

Creditors use a number of techniques to identify potential recipients of credit. For instance, creditors will often specify criteria to consumer reporting agencies, which then draw on information from credit files to compile mailing lists of persons who meet those criteria. This marketing technique—involving prescreened solicitations—is typically carried out through mailed solicitations as well as by telemarketing.

There has been concern through the years that Regulation B generally does not apply to preapplication marketing. During the 1985 review of Regulation B, the staff presented to the Board the issue of whether prescreened solicitations should be made subject to the regulation, but recommended against coverage. While recognizing the potential for unfair treatment in such practices, available evidence did not support a finding that creditors were improperly making use of prohibited characteristics. Moreover, it was thought that prescreened solicitations could result in a greater availability of credit to many consumers. Accordingly, the Board did not propose to expand the regulation's coverage to such practices.

Over the past several years, the Board has become aware (through its own observations and those of other federal financial regulatory agencies) of instances in which creditors, primarily in the credit card industry, use age to identify potential recipients of

preapproved credit. In some instances, creditors have used zip codes to exclude credit solicitations in low-income areas that represent predominantly minority neighborhoods. In other cases, creditors have used ethnicity or gender to target potential customers in affirmative-outreach programs.

The Board raised the issue of prescreened solicitations for public comment in its Advance Notice. Specifically, the Board requested comment on how and to what extent creditors are using a prohibited basis in preapplication marketing. Of the industry commenters who addressed preapplication marketing, only a few discussed the extent to which the selection criteria include a prohibited basis. These commenters indicated that except for using age to identify consumers too young to be approved for credit, or to identify potential customers for unique products such as reverse mortgages, they do not directly use prohibited bases in preapplication marketing.

The majority of commenters—primarily creditors and their trade associations—addressed the more general issue of whether the Board should expand the regulation's coverage to preapplication marketing practices. Most of these commenters opposed any expansion. These commenters were concerned that an expansion of Regulation B would prevent creditors from marketing their products to those most likely to respond. They stated, for example, that a creditor offering products that are used predominantly by women might be prohibited from targeting consumers on a mailing list for a magazine geared toward women. Some commenters believed that the regulation's protections need not apply to prescreened solicitations because they are only one aspect of a creditor's overall marketing program, and that consumers who are not solicited may nevertheless obtain credit from the creditor. A few questioned the Board's legal authority to expand the regulation's coverage beyond ''applicants.''

Others—including most of the federal financial enforcement agencies and consumer advocates that commented—favored expanding the coverage of Regulation B to preapplication marketing practices. Some of these commenters expressed concern that currently a creditor is permitted to use a prohibited basis to limit or avoid extending credit by target marketing to certain groups. Other commenters believed that regulatory coverage of solicitations is necessary to fulfill the Act's purpose, arguing that those not solicited are denied information that could lead them to apply for credit. Some commenters expressed concern about the inconsistent approaches between the Fair Housing Act, which extends coverage to preapplication marketing, and the ECOA, which does not.

Prescreened credit solicitations are not new, particularly credit card solicitations. The use of prescreened solicitations has become more commonplace beyond credit cards, however, and in some instances may be the primary vehicle for offering credit. In the marketing of some credit cards, prescreened solicitations often offer discounted introductory rates, attractive terms, and enhancements (such as purchase discounts) to those solicited that may not be available through other application channels. Prescreened solicitations can be used to target consumers most likely to use a particular credit product, or to target segments of the population that in the creditor's experience are most likely to respond to the offer of credit. Conversely, prescreened solicitations can be used to exclude some consumers from offers of credit. They can also be used to target consumers in certain neighborhoods for less favorable credit products or less favorable terms.

Covering credit solicitations without providing many exceptions could have unintended consequences. For example, it could result in prohibiting practices that increase credit availability. Targeted marketing through prescreened solicitations can effectively increase access to credit for consumers. Moreover, while there is anecdotal evidence that creditors do target potential applicants on the basis of age and geographic location, such evidence is somewhat limited; it does not suggest that the application of Regulation B rules is warranted at this time. Because of concerns about the potential impact on some segments of the population, however, the Board believes that taking other steps would enable the Board and the other enforcement agencies to monitor solicitation practices in a more systematic way than has been possible to date.

The ECOA directs the Board to prescribe regulations to carry out the purposes of the Act. Further, section 703(a)(1) of the Act authorizes the Board to make ''such classifications * * * adjustments and exceptions * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [the law] * * * or to prevent circumvention or evasion * * * .'' 15 U.S.C. 1691b. The Board proposes to use this exception authority to require creditors to keep records related to certain prescreened solicitations—namely, preapproved credit solicitations. The Board's proposal adds a new § 202.12(b)(7).

For purposes of the proposed rule, a preapproved credit solicitation is defined as the ''firm offer of credit'' described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act (FCRA). Under the FCRA, a person that receives a list of consumers from a consumer reporting agency in connection with credit transactions not initiated by the consumers must generally offer credit to the consumers on the list, subject to certain exceptions. 15 U.S.C. 1681b(c)(1)(B). A creditor must maintain the criteria used to select the consumers for three years after the date the credit offer is made. 15 U.S.C. 1681m(d)(3). The Board's draft rule would require creditors to retain (for 25 months after a creditor solicits potential applicants for credit) certain information related to preapproved credit solicitations: the list of criteria used to select potential customers, the text of the solicitation mailing, correspondence (to and from selected potential customers) related to complaints—whether formal or informal—about the solicitation, and the portion of the marketing plan (including any response model) to which the solicitation relates.

The draft rule would require creditors to retain information that the Board believes they already retain for business and other reasons. The Board solicits comment on the incremental burden associated with retaining information beyond the records creditors already retain under the FCRA or for business purposes.

The information required by the proposed rule—the criteria for selection, the solicitation, correspondence, and the marketing plan to which the solicitation relates—should allow for an effective review and analysis of creditors' possible use of prohibited bases in preapproved credit solicitations. For entities that are regularly examined, the Board believes that the most effective way to review and evaluate creditor practices would be through the use of the examination process.

Section 202.5—Rules Concerning Taking of Applications

Section 202.5 of the regulation would be revised.

Because the ECOA makes it unlawful for creditors to consider any of the prohibited bases of discrimination in a credit transaction, Regulation B generally has prohibited creditors from inquiring about, or noting, those

applicant characteristics in any aspect of a credit transaction. This general prohibition was intended to discourage discrimination, based on the premise that if creditors cannot inquire about or note such information, they are less likely to unlawfully consider the information. For home mortgage lending (given frequent allegations and concerns about unlawful discrimination) the regulation has required creditors, since 1977, to note the applicant's national origin or race, marital status, sex, and age in applications for home purchase loans, so that enforcement agencies can better monitor home mortgage lenders' compliance with the ECOA. The Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.* (implemented by Regulation C), imposed a similar data collection requirement in 1989 that applies to mortgage loans more broadly, encompassing home improvement loans in addition to home purchase loans.

In 1995, the Board proposed to remove the prohibition against noting an applicant's race, color, religion, national origin, and sex for *nonmortgage* credit products. The proposed revision was published at the time the banking agencies were revising regulations that implement the Community Reinvestment Act; the proposal responded to concerns about whether creditors were meeting the needs of their communities, particularly for small business and small farm lending. The majority of the comments received on the 1995 proposal opposed removal of the prohibition, generally expressing concern that voluntary data notation would lead to mandatory data collection and result in substantially increased costs and burden. In addition, many commenters raised concerns about the quality of the data that would be obtained, given that supplying information would be voluntary and not all applicants would choose to provide it. Commenters who supported removal of the prohibition believed that the data would allow creditors to better identify underserved groups and design programs to address unmet credit needs; they also believed that it would provide useful data for evaluating creditors' compliance with fair lending laws. After extensive deliberation, the Board withdrew the proposal in December 1996, and stated that, given the political sensitivity of the issues involved, the matter was better left to the Congress.

The Board's 1998 Advance Notice solicited comment on whether the Board should again consider removing the prohibition for nonmortgage credit products, in its review of Regulation B. The Advance Notice raised the issue in response to concerns that continue to be expressed by the Department of Justice and some of the federal financial enforcement agencies, pointing to anecdotal evidence of discrimination in connection with small business and other types of credit. These agencies believe that the ability to obtain and analyze data about race and ethnicity (such as creditors might collect on a voluntary basis) would aid fair lending enforcement. In addition, some creditors continue to express interest in being able to note—on a voluntary basis—information about the ethnicity, sex, and race of their applicants and borrowers to evaluate compliance with fair lending laws, as well as for marketing and outreach initiatives. Small-business owners and community groups also continue to strongly support data notation, particularly for small business lending.

More than 300 commenters addressed the issue in response to the Advance Notice. Many commenters—primarily banks and banking trade associations—urged the Board not to remove the prohibition. These commenters believed that, if the prohibition were to be removed, examiners and others would pressure depository institutions to collect data. They feared that a requirement to collect data would soon follow, which would impose a substantial burden on institutions. These commenters expressed concern that creditors that obtained data about race, ethnicity, and other applicant characteristics would be subjected to greater scrutiny by enforcement agencies. They also stated that data notation is intrusive of consumers' privacy, and would encourage a perception of creditors' using the data to discriminate. Some commenters stated that data noted on a voluntary basis would be unreliable and that the lack of standards for notation could render the quality of data questionable. (In some cases, commenters used this criticism to argue against lifting the prohibition; in other cases, they used it to argue for mandatory data collection.) Commenters also suggested that the current rule effectively discourages discrimination because loan officers often do not have access to information that would enable them to discriminate on a prohibited basis.

Many other commenters—including most of the federal financial enforcement agencies, the Department of Justice, the Department of Housing and Urban Development, small businesses and their trade associations, consumer advocates, community organizations, and some banks—favored removing the prohibition. A number of commenters favored removing it for all nonmortgage credit products, but most of those who favored lifting the ban were focused on small business lending. Some of these commenters believed that the most effective way to monitor and enforce fair lending compliance on small business loans is with mandatory collection, although they see voluntary notation for such loans as an important first step. They said that allowing data notation would enable creditors and government agencies to monitor for possible discriminatory practices, and might enable creditors to better target underserved markets for small business or other lending. Some commenters suggested that, in the case of home mortgage lending, the mandatory collection and disclosure of data have increased access to those products for low-income and minority consumers.

The Board proposes to remove the prohibition against noting information about an applicant's race, color, religion, national origin, and sex for all credit products. Consideration of such information in evaluating creditworthiness, except as permitted by law, would continue to be prohibited by the ECOA and Regulation B. The Board recognizes that removing the prohibition would allow loan officers to have access to information on applicant characteristics that might not otherwise be available and, thus, could provide the opportunity for unlawful discrimination. Also, the Board recognizes that the usefulness of the data for fair lending enforcement purposes would depend on whether creditors implement standards for uniform collection of the data—such as by product, for all applicants, for all borrowers, etc. On balance, however, removing the prohibition for all nonmortgage credit may allow issues of credit discrimination to be better addressed. Because notation would be on a voluntary basis, creditors could target those products where particular concern exists about potential discrimination.

The proposed rule provides that applicants may not be required to provide information about their race, color, religion, national origin, or sex. It also requires creditors who request information on applicant characteristics to disclose—at the time they request the information— that providing it is optional, and that the creditor will not take the information (or the applicant's decision not to provide the information) into account in any aspect of the credit transaction. (See proposed § 202.5(a)(4).) (A proposed model notice is included in Appendix C.) The Board seeks comment on this approach.

Section 202.5(a) would be moved to § 202.4. Sections 202.5(b)–(d) would be redesignated as §§ 202.5(a)–(c), and the rules in those sections barring information requests about sex, race, color, religion and national origin would be removed. The proposed removal does not extend to substantive rules relating to marital status that effectuate the antidiscrimination provisions of the Act. Some technical edits would be made to newly-designated §§ 202.5(a)(1), (a)(2), and (a)(3), and to newly-designated §§ 202.5(b)(2) and (b)(3). Part of existing § 202.5(d)(5) concerning inquiries about permanent residency and immigration status would be moved to newly-designated § 202.5(c)(5). Also, § 202.5(e) would be moved to § 202.4 to facilitate compliance with the regulation.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in § 202.6(b).

6(b) Specific Rules Concerning Use of Information

6(b)(8)

Section 202.6(b)(8) would be added to clarify that a creditor may not evaluate married and unmarried applicants by different standards. The Board believes that this guidance— currently in the commentary—is more appropriately placed in the regulation.

6(b)(9)

A new paragraph 202.6(b)(9) would be added to make clear that a creditor may not consider race, color, religion, national origin, or sex to determine an applicant's creditworthiness, except as permitted by law; nor may the creditor consider the applicant's decision not to provide the information.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

Section 202.7(d)(1) would be revised to clarify the rule concerning joint applications for credit. Regulation B does not require written applications for business credit. Often, requests are made orally or without a formal written application. In such cases, a creditor usually requests that the applicant submit a financial statement for evaluation. As a general rule, Regulation B prohibits creditors from requiring the signature of a person other than the applicant on any credit instrument if the applicant is individually creditworthy. Where the financial statement submitted by the applicant lists jointly held property and is signed by both property owners (attesting to the accuracy of the data), some creditors are treating the financial statement as an indication that the owners are making a joint application for credit. In those cases, both owners often are being required to sign the promissory note—even where the request for credit has been made only by the property owner engaged in operating the business. The Board believes that a joint property owner's signature on a financial statement (to attest to the accuracy of information) alone does not represent definitive evidence of a joint application.

In the Advance Notice of Proposed Rulemaking, the Board asked whether additional guidance should clarify the mechanisms through which an application for joint credit can be evidenced. Although some commenters stated that a written application is the best mechanism to establish an application for joint credit, other commenters believed the Board should provide additional guidance on the issue.

The Board does not propose to require written applications for business credit. Section 202.7(d)(1), however, would be revised to clarify that the submission of joint financial information or other evidence of jointly held assets does not of itself constitute an application for joint credit. The rule would apply to both consumer and business credit. In addition, the official staff commentary would be amended to suggest ways in which a creditor may obtain a clear indication of a joint application. (See proposed comment 7(d)(1)–3.)

Section 202.8—Special-Purpose Credit Programs

Technical revisions are proposed in § 202.8(a)(3).

8(a) Standards for Programs

Section 202.8(a)(3) of the regulation, which addresses special-purpose credit programs offered by for-profit organizations, would be revised. The Board believes that paragraphs (a)(3)(i) and (ii) set forth the criteria; the phrase regarding ''special social needs'' would be deleted to eliminate confusion.

Section 202.9—Notifications

Revisions are proposed in §§ 202.9(a)(3) and 202.9(b)(2).

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

9(a)(3) Notification to Business Credit Applicants

The regulation provides for exceptions from certain notification and record retention requirements for business credit if the business had gross revenues in excess of $1 million in its preceding fiscal year, or if the business requested an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit. The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception if the Board determines, after making an express finding, ''that the application of [the Act] or any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act].'' (*See* 15 U.S.C. 1691b.)

The Advance Notice of Proposed Rulemaking requested comment on whether the limited exceptions are still appropriate. Some commenters stated that the exceptions should be eliminated; they believe business applicants, like consumer applicants, need adverse action notices to ensure that they have been treated fairly and not denied credit on a prohibited basis. Most commenters, however, favored retaining the current exceptions. These commenters stated that business applicants tend to be more sophisticated than consumer applicants and, therefore, generally do not need the same protections as consumers. Some commenters suggested changing the test for when the exceptions apply; some commenters suggested lowering the $1 million threshold. Others suggested using the amount of the credit request rather than the size of the business.

The Board believes that applying the rules in full or changing the current test, which is based on a $1 million gross revenue threshold, would not contribute substantially to effectuating the purposes of the ECOA. Accordingly, the Board believes the exceptions based on the current threshold are still appropriate and should be extended. The $1 million threshold is consistent with the legislative history of the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692), which amended the ECOA. That history suggests that the amendments were intended primarily to apply to small businesses. When the rule was adopted in 1989, 86 percent of all businesses had gross revenues of $1 million or less a year. Retaining the $1

million threshold would provide nearly the same percentage of all businesses (currently 85 percent) with the additional protections. In addition, the Board believes that a gross revenue test is easier for creditors to administer than other suggested tests, such as basing the exceptions on the sophistication of the applicant.

Section 202.9(a)(3)(ii) would be revised to require that creditors disclose, to businesses with gross revenues in excess of $1 million in the preceding fiscal year, the right to a written statement of reasons for adverse action. Currently, creditors must provide a written statement of reasons for adverse action if the applicant requests the statement within 60 days of being notified of adverse action. Requiring disclosure of the right should not significantly increase burden for creditors, and will benefit applicants who may not be aware of their right to the written statement of reasons.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2) Statement of Specific Reasons

Section 202.9(b)(2) would be revised to clarify that whether a creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that ''the joint applicant did not meet the creditor's standards of creditworthiness'' is insufficient.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in this section.

Section 202.11—Relation to State Law

Technical revisions would be made in this section.

Section 202.12—Record Retention

Revisions are proposed in § 202.12(b). Proposed § 202.12(b)(7) provides the record retention requirements for preapproved credit solicitations. (See detailed discussion in § 202.4.)

12(b) Preservation of Records

Section 703(a)(4) of the Act requires creditors to retain records or other data related to business loans ''as may be necessary'' to evidence compliance with the Act. These records must be retained no less than one year, unless otherwise excepted. Currently, § 202.12(b) requires creditors to retain credit applications and other records for 12 months for business credit. Under the proposal, a 25-month record retention period would apply to credit applications involving businesses with gross revenues of $1 million or less; the rule would remain unchanged for credit applications involving other businesses.

The Board believes that increasing the record retention period would assist the federal financial regulatory agencies, in particular, in monitoring and enforcing compliance with the Act, given the relatively low volume of business loans on a yearly basis for some institutions, and given the agencies' reduction of examination frequency (from 18 to 24 months, and in some instances to 36 months). Sections 202.12(b)(1), (2), (3), and (4) would be revised accordingly. In 1989, the Board proposed to establish a 25-month record retention period. Creditors expressed concern about the space required to store documents and the costs associated with longer storage, and the Board adopted the 12-month record retention period. The Board believes these concerns may no longer be compelling given technological advances and the use of electronic storage. The Board seeks specific comment on the potential burden associated with retaining information for the additional period.

12(b)(7) Preapplication Marketing Information

A new paragraph 202.12(b)(7) would be added to the regulation to include the record retention requirements for certain preapplication marketing information.

Section 202.13—Information for Monitoring Purposes

No revisions are proposed in this section.

Section 202.14—Enforcement, Penalties and Liabilities

Revisions are proposed in § 202.14(c). Technical revisions would be made in § 202.14(b).

14(c) Failure of Compliance

Section 202.14(c) would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.15—Incentives for Self-Testing and Self-Correction

Minor revisions are proposed in § 202.15(d)(1).

15(d)(1) Scope of Privilege

Section 202.15(d)(1)(ii) would be revised, consistent with proposed changes to §§ 202.4 and 202.5(a).

Appendix A to Part 202—Federal Enforcement Agencies

Revisions are proposed in Appendix A to reflect changes in the names and addresses of some agencies.

Appendix B to Part 202—Model Application Forms

Appendix B would be revised to reflect proposed revisions to § 202.5. Technical revisions would also be made for clarity.

The ''Residential loan application'' model form would be replaced with an updated ''Uniform residential loan application'' form (FHLMC 65/FNMA 1003). The Board solicits specific comment on whether revisions should be made to the other model application forms.

Appendix C—Sample Notification Forms

Appendix C would be revised to reflect proposed revisions to § 202.5. A new model form C–10 would be added to provide the disclosure requirements for creditors who request information voluntarily on applicant characteristics. Also, the Board solicits specific comment on whether revisions should be made to the existing sample notification forms.

IV. Discussion of Proposed Revisions to the Official Staff Commentary

The following discussion covers the proposed revisions to the official staff commentary section-by-section. Such revisions include clarifying: the definition of adverse action (§ 202.2(c)); the definition of application in regard to certain preapprovals (§ 202.2(f)); the disclosure requirement if a creditor asks for applicant characteristics (§ 202.5(a)); and the nonapplicability of the self-testing privilege to information requested voluntarily about applicant characteristics (§ 202.15(b)).

Section 202.1—Authority, Scope, and Purpose

No revisions are proposed in this section of the commentary.

Section 202.2—Definitions

Revisions are proposed in comments to §§ 202.2(c)(1) and (c)(2), 202.2(f), 202.2(l), and 202.2(z).

2(c) Adverse Action

2(c)(1)

Counteroffers in connection with credit solicitations—Proposed comment 2(c)(1)(i)–2 addresses credit solicitations. The comment would clarify that where a consumer who receives a solicitation requests a specific

amount of credit and the creditor offers a different amount, the creditor's action constitutes a counteroffer.

Adverse action on a class of accounts—Proposed comment 2(c)(1)(ii)–1 would clarify the terms ''substantially all'' and ''class of accounts.'' Existing comments 2(c)(1)(ii)–1 and –2 would be renumbered.

2(c)(2)

Express agreement—Proposed comment 2(c)(2)(i)–1 would clarify when an adverse action notice is required for a change in the terms of an account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not affect a creditor's ability to change the terms under its agreement with the consumer.

Current delinquency or default—An adverse action notice is not required if a creditor takes action on an account due to a current delinquency or default on that account. Comment 2(c)(2)(ii)–2 would be revised, and an example would be added, to clarify this interpretation.

Activity on a different account—Proposed comment 2(c)(2)(ii)–3 would clarify that an adverse action notice is required if a creditor treats an account as delinquent or in default due to activity on another account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not address what activity constitutes a delinquency or default under the agreement between the parties.

2(f) Application

Inquiries about or applications for credit

In the Advance Notice, the Board solicited comment on whether it should provide additional guidance to further clarify the current distinction between an inquiry about credit and an application for credit. Specifically, the Board asked whether it should devise a different test for determining when a discussion becomes an application and, if so, what should be the test.

The ECOA requires creditors to provide notice of action taken within certain time frames following the creditor's receipt of a completed application. Regulation B defines an application as ''an oral or written request for an extension of credit that is made in accordance with procedures established by the creditor for the type of credit requested.'' This enables the creditor to establish as formal or informal a process as it wishes.

The official staff commentary, through examples, encourages creditors to provide consumers with information that will assist them in the credit shopping process. The flexibility provided allows creditors to give information without entering into a formal application process, and thus to avoid triggering the notice and recordkeeping rules. To deter creditors from discouraging prospective applicants on a prohibited basis, however, the rule deems a creditor's negative response to an inquiry to represent the denial of an application for credit. That is, a credit inquiry can be deemed an application if, in giving credit information to a potential applicant, the creditor evaluates information about the individual, decides that the individual does not meet the creditor's criteria for creditworthiness, and informs the individual accordingly. In that case, an adverse action notice is required and records are retained.

Many industry commenters expressed concern that the current test is difficult to apply because when a creditor has ''declined'' a request is not always clear. According to these commenters, it is often unclear when a creditor's discussion of negative factors, such as a person's poor payment history on loans, triggers an adverse action notice. Some commenters noted that, due to this lack of clarity, they often provide an adverse action notice to consumers to whom they give negative information—a procedure they view as burdensome and not necessarily helpful to many consumers. They believe the notice may discourage some consumers from later applying for credit, especially if those consumers initially were only seeking information.

Other commenters supported the current test; they believe that the test provides the flexibility they need. These commenters expressed reservations about changing a rule that creditors are already familiar with. They also expressed concern that a change in the rule could require creditors to change the way they conduct business. Some commenters, including industry and consumer representatives, stated that adverse action notices should be given whenever consumers are informed that they are ineligible or lack the qualifications for credit, regardless of the stage in the credit process.

In response to commenters' concerns about when an adverse action notice is required, the Board considered whether a different test is appropriate. The Board focused on creditors' use of new delivery channels for loan products and information (such as the Internet), and growth in credit counseling and prequalification programs. Many of these developments result in consumers asking for and receiving information about credit products—and about their own creditworthiness—prior to submitting an application for credit.

The Board solicited comment on a number of issues concerning the definition of ''application.'' The Board asked whether a ''bright-line'' test would best distinguish between an inquiry and an application (for example, whether obtaining a credit report should always trigger an application). Some commenters believed that such a test could eliminate confusion and inconsistent treatment among lenders. Others opposed a bright-line test, stating that any proposed test needs to have sufficient flexibility to accommodate evolving approaches to lending (such as prequalification requests) and homeownership and small business loan counseling. Commenters noted that given rapid changes in lending practices and technology, today's bright-line test might not be appropriate in the future.

The Board also asked whether it would be desirable or possible to apply the current notification rules to homeownership counseling programs that engage in credit evaluations; often, a credit report is obtained to determine the consumer's financial circumstances and to assist in an ongoing counseling process. Most commenters did not believe the current rules should be applied to such programs. They generally supported a rule that would encourage counseling without imposing burdensome notification requirements.

Finally, the Board solicited comment on whether the issue of distinguishing an inquiry from an application also arises in nonmortgage credit, such as credit card, automobile, and small business lending. Most commenters believed the issues were similar, and that there was nothing unique about nonmortgage credit that requires a different test; they generally believed that, for purposes of consistency, all credit should be subject to the same test.

Given changes in technology, and creditors' use of varying procedures and mechanisms to deliver their credit products, on balance the Board believes that retaining the flexibility of the current test is appropriate. Comment 2(f)–3 would clarify that prequalifications are subject to the test currently applicable to inquiries. Under that test, a creditor provides an adverse action notice if the creditor communicates a denial. Proposed comment 2(f)–5 gives an example of preapprovals that are treated as applications, in keeping with the

proposed addition to § 202.2(f) of the regulation. Existing comment 2(f)–5 would be redesignated.

2(l) Creditor

The ECOA and Regulation B prohibit a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The ECOA's definition of creditor includes anyone who ''regularly extends'' or ''regularly arranges for'' the extension of credit, as well as any assignee of an original creditor who ''participates in the decision'' to extend credit. Regulation B combines these concepts and defines a creditor as a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit, including persons such as a potential purchaser of an obligation who influences the creditor's decision. Brokers or others who regularly refer applicants to creditors (or who select or offer to select creditors to whom applications can be made) are creditors for purposes of §§ 202.4 and 202.5(a) (the prohibitions against discrimination and discouragement) which are §§ 202.4(a) and (b), respectively, under the proposed rule. Regulation B also provides that a person (who may otherwise be a creditor) is not a ''creditor'' with respect to a violation of the ECOA or the regulation committed by another creditor unless the creditor ''knew or had reasonable notice of'' the act, practice, or policy that constituted the violation before becoming involved in the credit transaction.

In the Advance Notice of Proposed Rulemaking, the Board requested comment on the definition of the term ''creditor.'' The Board noted that creditors'' distribution systems for lending services and products have expanded over the years, and that creditors have increasingly asked for guidance about how the term applies when a lender acts in conjunction with other creditors and discrimination occurs. Specifically, the Board solicited comment on whether it is feasible for the regulation to provide more specific guidance given that most issues will depend on the facts of a particular case. A slight majority of commenters asked the Board to provide more specific guidance. Some of these commenters requested that the Board provide a clearer description of the conduct that triggers liability. Other commenters requested that the Board expressly state the types of persons that are considered to be creditors under the regulation. Some commenters opposed more specific guidance on the belief that whether the definition applies must be determined on a case-by-case basis.

The Board also solicited comment on whether the current test—which relies on whether a person knew or had reasonable notice of an act of discrimination—should be modified. Some commenters believed that the test should be modified to clarify that a creditor is not responsible for the acts of another creditor where the creditor does not have control over the other creditor's activities. Some commenters stated that the Board should change the test to ''actual'' notice. Other commenters were concerned that the Board may change the test to impose a stricter standard; these commenters believed that a stricter standard could force creditors to discontinue many types of credit programs. Some consumer advocates expressed concern that the current test encourages creditors to pass on the ultimate underwriting responsibilities to avoid knowledge of another creditor's activities. Most commenters believed the current test should not be modified. Some of these commenters stated that the Board should clarify through the staff commentary what constitutes ''reasonable notice.''

Finally, comment was solicited on whether the regulation should address under what circumstances a creditor must monitor the pricing or other credit terms when another creditor (for example, a loan broker) participates in the transactions and sets the terms. Some commenters believed the regulation should address monitoring to explicitly state that there is no such requirement. Some of these commenters stated that creditors would not have sufficient information to evaluate another creditor's practices and policies. Other commenters stated that monitoring could force creditors to restrict the third parties with whom they do business based on the size and capability of their monitoring systems. Some commenters believed that the regulation should explicitly state that there is a monitoring requirement implicit in the ''reasonable notice'' test. A slight majority of commenters opposed the regulation's addressing whether a creditor must monitor the acts of other creditors.

The Board considered whether, given the wide variety of ways that creditors conduct business involving more than one creditor, a new test could provide clearer guidance. While the application of the current test is subject to interpretation, the Board believes that it is not possible to specify with particularity by regulation the circumstances under which a creditor may—or may not—be liable for a violation committed by another creditor. Accordingly, Regulation B retains the ''reasonable notice'' standard for when a creditor may be responsible for the discriminatory acts of other creditors.

The Board believes that, depending on the circumstances, the ''reasonable notice'' standard may carry with it the need for a creditor to exercise some degree of diligence with respect to third-parties' involvement in credit transactions, such as brokers or the originators of loans. The Board also believes, however, that it is not feasible to specify by regulatory interpretation the degree of care that a court of law may find to be required in specific cases.

Comment 2(l)–2 would be revised to clarify the type of creditors subject only to the general prohibitions against discrimination and discouragement.

2(z) Prohibited Basis

A technical revision would be made to comment 2(z)–1 for clarity. Comment 2(z)–3 reflects the change in the name of the Aid to Families with Dependent Children program.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

A technical revision would be made to comment 3–1 for clarity.

Section 202.4—General Rule Prohibiting Discrimination

Substantial revisions are proposed in comments to § 202.4.

Former comment 4(a)–1 would be divided into two comments 4(a)–1 and 2. Additional examples of disparate treatment would be included in comment 4(a)–2. Proposed comments 4(b)–1 and 2 are existing comments 5(a)–1 and 2, respectively, with minor revisions. References to ''potential'' applicants in existing comment 5(a)–1, which is comment 4(b)–1 under the proposal, would be changed to ''prospective'' applicants with no substantive change intended. Proposed comments 4(c)–1, 2, and 3 are existing comments 5(e)–1, 2, and 3, respectively. Proposed comment 4(d)–1 is new and would clarify the clear and conspicuous requirement.

Section 202.5—Rules Concerning Taking of Applications

Substantial revisions are proposed in comments to § 202.5.

Comments 5(a)–1 and 2 would be moved to proposed comments 4(b)–1 and 2, respectively, consistent with proposed changes to the regulation. Comments 5(b)(2)–1, 2, and 3 would be removed, consistent with proposed

changes to the regulation. Comments 5(d)(1)–1 and 5(d)(2)–1, 2, and 3 would be redesignated. Comments 5(e)–1, 2, and 3 would be removed and transferred to § 202.4(c) of the commentary.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section of the commentary.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in comments to §§ 202.6(b)(1), (b)(2), (b)(5), and (b)(8).

6(b)(1)

Comment 6(b)(1)–1 would be removed. The portion of the comment related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies would be moved to comment 6(b)(8)–1 in light of proposed changes to the regulation. Other portions of comment 6(b)(1)–1 related to evaluating married and unmarried applicants by the same standards would be moved to § 202.6(b)(8) of the regulation. Comment 6(b)(1)–2 would be renumbered.

6(b)(2)

Technical revisions would be made to comment 6(b)(2)–3 with no substantive change intended. Also, a technical amendment to comment 6(b)(2)–6 reflects the change in the name of the Aid to Families with Dependent Children program.

6(b)(5)

Comments 6(b)(5)–1 and 6(b)(5)–4 would be revised for further clarity and to remove references to ''protected income.'' No substantive change is intended.

6(b)(8)

The Board is proposing to add a new § 202.6(b)(8) to the regulation to clarify that a creditor may not evaluate married and unmarried applicants by different standards. New comment 6(b)(8)–1 would be added to incorporate part of the language from existing comment 6(b)(1)–1 related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in comments to § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

A new comment 7(d)(1)–1 would clarify that when an applicant is individually creditworthy, a creditor may not require the signature of any person besides the applicant on a credit instrument. Existing comment 7(d)(1)–1 would be redesignated as comment 7(d)(1)–2. Comment 7(d)(1)–3 would be added to provide guidance on how creditors may document that applicants have requested joint credit.

Section 202.8—Special Purpose Credit Programs

Minor revisions are proposed in comments to §§ 202.8(a), 202.8(c), and 202.8(d).

8(a) Standards for Programs

Comment 8(a)–5 would be revised to clarify how creditors can determine the need for a special-purpose credit program.

8(c) Special Rule Concerning Requests and Use of Information

Comments 8(c)–1 and 2 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

8(d) Special Rule in the Case of Financial Need

Comment 8(d)–1 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

Section 202.9—Notifications

Revisions are proposed in comments to §§ 202.9, 202.9(b)(2), and 202.9(g). Minor revisions would be made to comment 9–5 concerning prequalifications. Also, the discussion of preapprovals would be removed. Certain preapprovals are included in the proposed definition of ''application'' in § 202.2(f) of the regulation.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2)

Comment 9(b)(2)–7 would clarify the rules on providing reasons for adverse action in a combined credit scoring and judgmental system.

9(g) Applications Submitted Through a Third Party

Comment 9(g)–1 would be revised to clarify the information that must be included in an adverse action notice provided on behalf of more than one creditor, with minor revisions made for clarity.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in comments to § 202.10.

Section 202.11—Relation to State Law

No revisions are proposed in comments to § 202.11.

Section 202.12—Record Retention

Revisions are proposed in comments to § 202.12(b), consistent with a proposed change to the regulation concerning retention of certain preapplication marketing information.

12(b)(7) Preapplication Marketing Information

Three new comments to proposed § 202.12(b)(7) would be added to clarify the record retention requirements for certain preapplication marketing information. (*See* detailed discussion in ''Part III. Discussion of Proposed Revisions to the Regulation'' under § 202.4.)

Section 202.13—Information for Monitoring Purposes

Revisions are proposed in comments to §§ 202.13(a) and (b).

13(a) Information To Be Requested

Comment 13(a)–7 would be removed, consistent with proposed revisions to the regulation.

13(b) Obtaining of Information

Comment 13(b)–4 would be revised to make the treatment of applications received electronically consistent with comment 203.4(a)(7)–5 of Regulation C (Home Mortgage Disclosure), 12 CFR part 203, for the purpose of collecting monitoring information.

Comment 13(b)–7 would be deleted to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.14—Enforcement, Penalties, and Liabilities

No revisions are proposed in comments to § 202.14.

Section 202.15—Incentives for self-testing and self-correction

Revisions are proposed in comments to § 202.15(b)(3).

15(b)(3)

As discussed earlier, the Board proposes to remove the prohibition in Regulation B against the notation of information about an applicant's race, national origin, religion, color, or sex in connection with nonmortgage credit products. The Board has received questions about whether the self-testing

provisions of § 202.15 would apply to the voluntary collection of this information.

A self-test is defined as a program, practice, or study that is designed and used specifically to determine compliance with the ECOA and Regulation B, and creates data or factual information that is not available and cannot be derived from loan application files or other records related to credit transactions. If a self-test meets this definition, the results are privileged and cannot be obtained by a government agency in any examination or investigation, or by an agency or an applicant in any proceeding or civil action alleging a violation of Regulation B. The privilege may be lost or waived, however, under certain circumstances.

Creditors that elect to collect information about credit applicants' race or ethnicity, for example, will likely do so on the application form or in the application process. The Board believes that such collection of data in connection with nonmortgage credit, even though voluntary on the part of the creditor, is not a self-test privileged under the ECOA. The collection of information about an applicant's characteristics, standing alone or in combination with other information obtained or derived from loan application files or other records, does not qualify for the privilege. Comment 15(b)(3)(ii)–2 would be added to clarify this point.

Appendix B to Part 202—Model Application Forms

Comments 1 and 2 to Appendix B would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Appendix C—Sample Notification Forms

No revisions are proposed in comments to Appendix C.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1008, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The collections of information that are proposed for revision by this rulemaking are found in 12 CFR Part 202. This information is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondent/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0201.

The current estimated total burden for this information collection is 123,892 hours; about 95 percent of this burden arises from disclosures to credit applicants, both consumers and businesses, and 5 percent arises from recordkeeping requirements. This amount reflects the burden estimate of the Federal Reserve System for the 988 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. Under Paperwork Reduction Act regulations, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

It is believed that the paperwork burden will increase slightly due to the three proposed additions to the recordkeeping requirements: retaining certain information related to preapproved credit solicitations; keeping records associated with the proposal removing the general prohibition against obtaining information about characteristics of applicants for nonmortgage credit; and extending the retention period for most business credit applications from twelve to twenty-five months. In particular, the Federal Reserve solicits comment on (1) the incremental burden associated with retaining certain information on preapproved credit solicitations beyond the records creditors already retain under the FCRA or for business purposes, and (2) the number of institutions that will collect the proposed permissible information on characteristics of applicants for nonmortgage credit and the amount of burden this voluntary information collection will impose.

The Federal Reserve estimates that there will be no additional burden imposed by the requirement to disclose to credit applicants that providing applicant characteristic information is optional and that creditors will not take the information into account in any aspect of the credit transaction; the Federal Reserve has provided a proposed model notice to help alleviate the burden on creditors. The Federal Reserve also estimates that there will be no additional burden imposed by the requirement to notify businesses with gross revenues in excess of $1 million of their right to a written statement of reasons for adverse action.

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. Any information collected by the respondents, however, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). The adverse action disclosure is confidential between the institution and the consumer involved.

Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Chief, Financial Reports Section, Division of Research and Statistics, Mail

Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis—a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are addressed in the supplementary material above.

Some provisions in the proposal should reduce burden. For example, creditors are not required to provide a notice of action taken for incidental credit. By broadening the definition of incidental credit to cover incidental business credit, fewer notices would be required.

The proposal to lift the prohibition against data notation for nonmortgage products should not impose any burden on institutions, because data notation would be voluntary. However, to the extent creditors collect this data, the proposal would require a disclosure to be given to applicants. This would impose a new requirement for creditors that request data. The Board has sought to minimize burden by proposing a model form.

Creditors would be required to retain certain records in connection with preapproved credit solicitations. This would impose a new requirement. However, the Board has sought to minimize burden by tracking existing legal requirements and current business practices. For example, users of consumer reports are required to retain some prescreening information under the Fair Credit Reporting Act. The proposal parallels this requirement. In addition, many lenders retain part or much of the solicitation information for business purposes, such as to evaluate marketing plans.

Creditors would be required to retain records for a longer period of time for certain types of business credit. Creditors would be required to retain records for 25 months rather than 12 months. This approach would track the record retention rules for consumer credit and could simplify compliance. Burden should be minimized in light of the variety of methods that could be used to retain these records.

In light of the purposes of the Equal Credit Opportunity Act, the Board believes it is not feasible to create different rules for large and small creditors; and therefore, except as discussed above, alternatives for small creditors are not provided. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 202

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

Certain conventions have been used to highlight the proposed revisions to the text of the regulation and the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Paragraphs are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, 12 CFR part 202 is proposed to be revised as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Regulation B (Equal Credit Opportunity)

Sec.

202.1 Authority, scope and purpose.
202.2 Definitions.
202.3 Limited exceptions for certain classes of transactions.
202.4 General **[**rule**]** **►**rules**◄** **[**prohibiting discrimination**]**.
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Appendix A to Part 202—Federal Enforcement Agencies

Appendix B to Part 202—Model Application Forms

Appendix C to Part 202—Sample Notification Forms

Appendix D to Part 202—Issuance of Staff Interpretations

Supplement I to Part 202—Official Staff Interpretations

Authority: 15 U.S.C. 1691–1691f.

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(l). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 202.2 Definitions.

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

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

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

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

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

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or **[**a

substantial portion] ►substantially all◄ of a class of the creditor's accounts; or

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

(2) The term does not include:

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

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

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or [a substantial portion] ►substantially all◄ of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

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

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

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

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

Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures [established] ►used◄ by a creditor for the type of credit requested. ►The term includes a request for a preapproval under procedures in which a creditor will issue to creditworthy persons a written commitment for credit up to a specified amount that is valid for a designated period of time, even if the commitment is conditional.◄ The term ►application◄ does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§ 202.3(a), (b), and (d).

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

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

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

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

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

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

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

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

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

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

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

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

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

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new

credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

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

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

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

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

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

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

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

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

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

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

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public-utilities credit*—(1) *Definition.* Public-utilities credit refers to extensions of credit that involve public-utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* [The following provisions of this regulation] ►Section 202.12(b) relating to record retention◄ [do]►does◄ not apply to public-utilities credit[:]►.◄

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

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

(iii) Section 202.12(b) relating to record retention.]

(b) *Securities credit*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

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

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

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

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

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

[(vi)] ►(v)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and [(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

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

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

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4) ►for consumer credit, or not subject to interest charges or fees for business credit◄; and

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

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

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

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

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

[(v)] ►(iv)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vi)] ►(v)◄ Section 202.9 relating to notifications;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and

[(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

(d) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability* of regulation. Except for § 202.4►(a)◄, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General rule►s◄ [prohibiting discrimination].

►(a) *Discrimination.*◄ A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

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

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 202.13(a).

(d) *Disclosures and other required information.* A creditor shall provide the disclosures and information required to be in writing by §§ 202.5, 202.5a, 202.9, and 202.13(c), in a clear and conspicuous manner and in a form the person may retain.◄

§ 202.5 Rules concerning [taking of applications] ►requests for information◄.

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

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

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

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

►(4) *Obtaining information.* Except as otherwise permitted or required by law, a creditor shall not require an applicant to supply information about race, color, religion, national origin, or sex in connection with a credit transaction. A creditor that requests information on applicant characteristics shall disclose, orally or in writing, at the time the information is requested, that:

(i) Providing the information is optional; and

(ii) That the information (or the applicant's decision not to provide the information) will not be taken into account in any aspect of the credit transaction.◄

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

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

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

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

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

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

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

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account [upon] ►on◄ which the applicant is liable and to provide the name and address [in which] ►of the person in whose name◄ the account is [carried] ►held◄. A creditor may also ask ►an applicant to list◄ the names in which [an] ►the◄ applicant has previously received credit.

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

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

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

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

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

►(5) *Permanent residency, immigration status.* A creditor may inquire about an applicant's permanent residency and immigration status in connection with a credit transaction.◄

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

§ 202.5a Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of the appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request

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

shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 202.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 202.9 of this part or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisals available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

§ 202.6 Rules concerning evaluation of applications.

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

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

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

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

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

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

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

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

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

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

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

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

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

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

►(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's decision not to provide the information) in any aspect of a credit transaction.◄

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

§ 202.7 Rules concerning extensions of credit.

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

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

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change

[2] The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

in the applicant's name or marital status:

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

(ii) Change the terms of the account; or

(iii) Terminate the account.

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

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. ►A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.◄

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit-community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

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

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

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

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

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

§ 202.8 Special purpose credit programs.

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

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

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

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

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

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

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

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

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

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

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

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

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

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

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

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

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

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2), except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) ►Within a reasonable time of the action taken,◄ [Notify] ►notify◄ the applicant, orally or in writing, [within a reasonable time] of the action taken ►and of the applicant's right to a written statement of reasons◄; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant►, joint applicant, or similar party◄ failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

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

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

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

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

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

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

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

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

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section,

directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of credit information.

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

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

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

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to state law.

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

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

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

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

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

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

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

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

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

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

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

(i) The class of credit transactions is subject to state law requirements substantially similar to the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

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

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

§ 202.12 Record retention.

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

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

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

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

(b) *Preservation of records*—(1) *Applications.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of action taken on an application or of incompleteness ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain in original form or a copy thereof:

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

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

(A) The notification of action taken; and

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

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

(2) *Existing accounts.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of adverse action regarding an existing account ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain as to that account, in original form or a copy thereof:

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

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

(3) *Other applications.* For 25 months [(12 months for business credit)] after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9 ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months [(12

months for business credit)] ►(except as provided in paragraph (b)(5) of this section)◄ if [it] ►the creditor◄ has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

►(7) *Preapplication marketing information.* For 25 months after the date that a creditor solicits potential customers for credit (12 months for business credit subject to paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) Any preapproved credit solicitation, the list of criteria the creditor used to select potential recipients of the solicitation, any correspondence (to and from the selected recipients) related to complaints about the solicitation; and

(ii) Any component of a marketing plan to which such solicitation relates.◄

§ 202.13 Information for monitoring purposes.

(a) *Information to be requested.* ►(1)◄ A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

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

[(2)] ►ii.◄ Sex;

[(3)] ►iii.◄ Marital status, using the categories married, unmarried, and separated; and

[(4)] ►iv.◄ Age.

►(2)◄ *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining* [of] *information.* Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) ►of this section◄.

§ 202.14 Enforcement, penalties and liabilities.

(a) *Administrative enforcement*[.] (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

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

(b) *Penalties and liabilities*[.] (1) Sections 706(a) and (b) and 702(g) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704(b), (c), and (d) and 702(g) of the Act, violations of the Act or ►this regulation◄ [regulations] also constitute violations of other federal laws. Liability for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

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

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this ►regulation◄ [part], it may refer the matter to the Attorney General of the United States. In addition, if the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration

has reason to believe that one or more creditors engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this regulation, the agency shall refer the matter to the Attorney General. Furthermore, the agency may refer a matter to the Attorney General if the agency has reason to believe that one or more creditors violated section 701(a) of the Act.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors engaged in a pattern or practice in violation of the Act or this ►regulation◄ **[**part**]**, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, conducting a consumer compliance examination, or otherwise) that a violation of the Act or this regulation has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall notify:

(i) The Secretary of Housing and Urban Development; and

(ii) The applicant that the Secretary of Housing and Urban Development has been notified and that remedies for the violation may be available under the Fair Housing Act.

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

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d)**[**(1)**]** *Scope of privilege***[**.**]**►—(1) *Use of privileged self-test.*◄ The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § ►202.4(b)◄ **[**202.5(a)**]**) in any proceeding or civil action in which a violation of the Act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this

paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

Appendix A to Part 202—Federal Enforcement Agencies

The following list indicates the federal agencies that enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National Banks, and Federal Branches and Federal Agencies of Foreign Banks

Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Avenue, Suite 3710, Houston, Texas 77010.

State Member Banks, Branches and Agencies of Foreign Banks (other than federal branches, federal agencies, and insured state branches of foreign banks), Commercial Lending Companies Owned or Controlled by Foreign Banks, and Organizations Operating Under Section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Nonmember Insured Banks and Insured State Branches of Foreign Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving►s◄ banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

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

Air Carriers

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

Creditors Subject to ►Surface Transportation Board◄ [Interstate Commerce Commission]

Office of Proceedings, [Interstate Commerce Commission, Washington, DC 20523] ►Surface Transportation Board, Department of Transportation, 1925 K Street NW, Washington, DC 20423◄

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, ►409 Third Street, SW,◄ [1441 L Street, NW,] Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20549.

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

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

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

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

Appendix B to Part 202—Model Application Forms

►1.◄ This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions[. The appendix also] ►which◄ contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

►2.◄ The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

►3.◄ If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs ►(b) and◄ (c) [and (d)] of § 202.5 [of this regulation].

BILLING CODE 6210–01–P

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

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

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

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

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

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

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

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

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

[Open-end, unsecured credit]

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

ASSETS OWNED (use separate sheet if necessary.)

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

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

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

(Credit References) Date Paid

1. $

2.

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

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

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

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

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

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

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: ____

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

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

Previous Street Address: _____ Years there: ____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: ____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

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

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: ____

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

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

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: ____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

[Closed-end, secured credit]

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

ASSETS OWNED (use separate sheet if necessary.)

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

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

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

(Credit References) Date Paid

1. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

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

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

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

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

Name Address

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

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

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

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

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

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

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

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

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

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

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

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

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

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

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

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

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

ASSETS OWNED (use separate sheet if necessary.)

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

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

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

(Credit References) Date Paid

1. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

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

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

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

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

Name Address

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

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

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

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

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

SECTION A—INFORMATION REGARDING APPLICANT

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

Present Street Address: _____ Years there: _____

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

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

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

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

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

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

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

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

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

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

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

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

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

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

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

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

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

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

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

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

ASSETS OWNED (use separate sheet if necessary.)

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

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

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

(Credit References) Date Paid

1. $

2.

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

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

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

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

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

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

Name Address

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

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

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: ☐ VA ☐ Conventional ☐ Other: ☐ FHA ☐ FmHA

Agency Case Number | Lender Case No.

Amount $ | Interest Rate % | No. of Months | **Amortization Type:** ☐ Fixed Rate ☐ Other (explain): ☐ GPM ☐ ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP) | No. of Units

Legal Description of Subject Property (attach description if necessary) | Year Built

Purpose of Loan ☐ Purchase ☐ Construction ☐ Other (explain): ☐ Refinance ☐ Construction-Permanent

Property will be: ☐ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ☐ made ☐ to be made
	$	$		Cost: $

Title will be held in what Name(s) | Manner in which Title will be held | Estate will be held in: ☐ Fee Simple ☐ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)

III. BORROWER INFORMATION

Borrower	Co Borrower
Borrower's Name (include Jr. or Sr. if applicable)	Co-Borrower's Name (include Jr. or Sr. if applicable)
Social Security Number / Home Phone (incl. area code) / Age / Yrs. School	Social Security Number / Home Phone (incl. area code) / Age / Yrs. School
☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated / Dependents (not listed by Co-Borrower) no. ages	☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Separated / Dependents (not listed by Borrower) no. ages
Present Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.	Present Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.
Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent _____ No. Yrs.

IV. EMPLOYMENT INFORMATION

Borrower	Co Borrower
Name & Address of Employer ☐ Self Employed / Yrs. on this job / Yrs. employed in this line of work/profession	Name & Address of Employer ☐ Self Employed / Yrs. on this job / Yrs. employed in this line of work/profession
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $	Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)
Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $	Name & Address of Employer ☐ Self Employed / Dates (from - to) / Monthly Income $
Position/Title/Type of Business / Business Phone (incl. area code)	Position/Title/Type of Business / Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income *	$	$	$	Rent	$	
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	**Total**	$	$

*** Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.**

Describe Other Income ***Notice:*** **Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.**

B/C		Monthly Amount
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ☐ Jointly ☐ Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value	$
Face amount: $	
Subtotal Liquid Assets	$
Real estate owned (enter market value from schedule of real estate owned)	$
Vested interest in retirement fund	$
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (itemize)	$
Total Assets a.	$

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Job Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$	
Net Worth (a minus b) ➡ $	**Total Liabilities b.**	$

VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		$	$	$	$	$	$
	Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII. DECLARATIONS

If you answer "yes" to any questions a through i, please use continuation sheet for explanation.

	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	☐	☐	☐	☐
b. Have you been declared bankrupt within the past 7 years?	☐	☐	☐	☐
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	☐	☐	☐	☐
d. Are you a party to a lawsuit?	☐	☐	☐	☐
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	☐	☐	☐	☐
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	☐	☐	☐	☐
g. Are you obligated to pay alimony, child support, or separate maintenance?	☐	☐	☐	☐
h. Is any part of the down payment borrowed?	☐	☐	☐	☐
i. Are you a co-maker or endorser on a note?	☐	☐	☐	☐
j. Are you a U.S. citizen?	☐	☐	☐	☐
k. Are you a permanent resident alien?	☐	☐	☐	☐
l. **Do you intend to occupy the property as your primary residence?** If "Yes," complete question m below.	☐	☐	☐	☐
m. Have you had an ownership interest in a property in the last three years?	☐	☐	☐	☐
(1) What type of property did you own–principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home–solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX. ACKNOWLEDGMENT AND AGREEMENT

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) the property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation of the property will be as indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and I/we have a continuing obligation to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

Certification: I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER

☐ I do not wish to furnish this information

Race/National Origin: ☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) _____

Sex: ☐ Female ☐ Male

CO-BORROWER

☐ I do not wish to furnish this information

Race/National Origin: ☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) _____

Sex: ☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by: ☐ face-to-face interview ☐ by mail ☐ by telephone	Interviewer's Signature Date	
	Interviewer's Phone Number (incl. area code)	

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date	Co-Borrower's Signature:	Date
X		X	

Appendix C to Part 202—Sample Notification Forms

►1.◄ This appendix contains nine sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a) (1) and (2)(i) [of this regulation]. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a) (1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 202.5a.

►2.◄ Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing *either* the 615(a) or 615(b) disclosure.

►3.◄ The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if ''inadequate down payment'' or ''no deposit relationship with us'' are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

►4.◄ If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose ''insufficient bank references,'' not ''insufficient credit references.'' Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check ''other'' and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

►5.◄ A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§ 202.9(a)(2) (i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of § 202.5a of this part. ►Proper use of Form C–10 will satisfy the requirements of § 202.5(a)(4).◄

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete
____Insufficient number of credit references provided
____Unacceptable type of credit references provided
____Unable to verify credit references
____Temporary or irregular employment
____Unable to verify employment
____Length of employment
____Income insufficient for amount of credit requested
____Excessive obligations in relation to income
____Unable to verify income
____Length of residence
____Temporary residence
____Unable to verify residence
____No credit file
____Limited credit experience
____Poor credit performance with us
____Delinquent past or present credit obligations with others
____Garnishment, attachment, foreclosure, repossession, collection action, or judgment
____Bankruptcy
____Value or type of collateral not sufficient
____Other, specify: _____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

_____

[Toll-free] Telephone number: _____ _____

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

_____

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

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice

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

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date:

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____ is below our minimum requirement.
____ is insufficient to sustain payments on the amount of credit requested.
____ could not be verified.

Your Employment:

____ is not of sufficient length to qualify.
____ could not be verified.

Your Credit History:

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

Your Application:

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

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency].

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

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

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date:

Dear Applicant: Thank you for your recent application for _____ . We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

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

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

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

Creditor's Name: _____
Address: _____
_____
Telephone: _____

Sincerely,

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

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date:

Dear Applicant: Thank you for your application for _____ . We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms: _____
_____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____ .

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age ►(provided the applicant has the capacity to enter into a binding contract)◄ because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right To Request Specific Reasons for Credit Denial

Date:

Dear Applicant: Thank you for applying to us for _____ .

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address [Toll-free]
Telephone number

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating

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

Form C–6—Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name
Address
Telephone number

Date:

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

_____

We need to receive this information by *(date)*. If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

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

Creditor's Name
Creditor's address

Date:

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

(Insert appropriate reason, such as►:◄
Value or type of collateral not sufficient►;◄
Lack of established earnings record►;◄
Slow or past due in trade or loan payments)

Sincerely,

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

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

Creditor's name
Creditor's address

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

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

Form C–9—Sample Disclosure of Right To Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

►Form C–10—Sample Disclosure About Voluntary Data Notation

We are requesting the following information [to monitor our compliance with the federal Equal Credit Opportunity Act]. You are not required to provide this information. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it.◄

Appendix D to Part 202—Issuance of Staff Interpretations

►1.◄ *Official Staff Interpretations.* Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

►2.◄ *Requests for Issuance of Official Staff Interpretations.* A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

►3.◄ *Scope of Interpretations.* No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 202—Official Staff Interpretations

Following is an official staff interpretation of Regulation B ►(12 CFR part 202)◄ issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

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

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary.

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

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

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) ►(12 CFR part 226)◄. Further, the definition of

creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

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

3. *Board.* The term *Board*, as used in this regulation, means the Board of Governors of the Federal Reserve System.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(i)

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

►2. *Counteroffer.* If an applicant responds to a credit solicitation by requesting a specific amount of credit and the creditor provides a different amount, the creditor's action is a counteroffer—even if the solicitation discloses that the consumer may not receive the amount of credit requested. An adverse action notice is required unless the applicant expressly accepts or uses the credit. For example, assume an applicant receives a credit card solicitation offering credit ''up to $10,000,'' and responds by requesting $8,000 in a balance transfer to pay off an existing credit card account; and that the creditor sends a credit card and informs the applicant that a $5,000 balance transfer and an additional $500 of credit has been approved. An adverse action notice is required unless the applicant uses the credit card or expressly accepts the credit offered before the balance transfer occurs.◄

Paragraph 2(c)(1)(ii)

►1. *Termination or unfavorable change to substantially all of a class of the creditor's accounts.* If a creditor terminates or makes an unfavorable change to the terms of all but a small proportion of a class of accounts, the creditor need not give adverse action notices to customers affected by the termination or unfavorable change. Class of accounts is a broad category. For example, overdraft lines of credit or distinct credit card programs such as ''secured'' credit cards represent a class of accounts. But a category designated according to characteristics of customers, such as by their credit scores, is not a class of accounts.◄

[1.] ►2.◄ *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 202.9.

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

►Paragraph 2(c)(2)(i)

1. *Express agreement.* If a creditor changes the terms of an account pursuant to an express agreement, the creditor need not give adverse action notices to customers affected by the change. An express agreement exists where the specific change and the specific circumstance under which the change will occur are stated in the agreement. For example, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer misses two consecutive payments, and the missed payments occur, an increase in the rate is not adverse action. However, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer's financial circumstances change or if the creditor deems itself ''insecure,'' imposing a higher rate is adverse action subject to the notice requirements of § 202.9.◄

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse-action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of ►or other action on◄ an account when the accountholder is currently in default or delinquent on that account. ►For example, if a credit agreement defines default to include the consumer's filing for bankruptcy, an adverse action notice is not required if the creditor terminates the consumer's account when the consumer files for bankruptcy.◄ Notification in accordance with § 202.9 of the regulation generally is required, however, if the creditor's action is based ►not on a current but◄ on a past delinquency or default on the account.

►3. *Performance on a different account.* If a creditor takes adverse action on an account because of the consumer's performance (such as poor payment history) on a different account, an adverse action notice is required—even if the performance is defined as a default under the terms of the credit agreement.◄

Paragraph 2(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

[•]►i.◄ A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

[•]►ii.◄ The amount of a transaction exceeds a cash advance or credit limit.

[•]►iii.◄ The circumstances (such as excessive use of a credit card in a short period of time) ►suggest◄ [suggests] that fraud is involved.

[•]►iv.◄ The authorization facilities are not functioning.

[•]►v.◄ Billing statements have been returned to the creditor for lack of a forwarding address.

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

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

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

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures established.* The term refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit ►decisions◄ [decision] based on oral requests, the creditor's established procedures are to accept both oral and written applications.

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

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

[•]►i.◄ When a consumer calls to ►ask◄ [asks] about loan terms and an

employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ►ratio◄ [ratio], and debt-to-income ratio.

[•]►ii.◄ When a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and ►sales◄ [sale] price of the car and the amount of the ►downpayment◄ [down-payment], then ►gives◄ [given] the consumer the rate.

[•]►iii.◄ When a consumer asks about terms for a loan to purchase ►a◄ home and tells the loan officer her income and intended ►downpayment◄ [down-payment], but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

[•]►iv.◄ When a consumer calls to ask about terms for a loan to purchase vacant land and states his income and the ►sales◄ [sale] price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explaining that he would need to look at all of the ►consumer's◄ [applicant's] qualifications before making a decision, and offering to send an application form to the consumer.

►5. *Examples of an application*. i. An application for credit includes the case in which a person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution evaluates her creditworthiness and issues a letter documenting that she has been preapproved (subject to, for example, adequate collateral value, a contract for sale, and lack of material change in the person's financial circumstances) and stating that the loan offer is valid, say, for 30 days.

ii. Under the same facts as above, if the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval, an adverse action notice must be provided.

iii. If the creditor's procedures do not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.◄

[5]►6.◄ *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

2(g) *Business credit.*

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

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). For purposes of Regulation B►,◄ a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term *creditor* includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term *creditor* includes persons such as real estate brokers►, automobile dealers, home builders, and home-improvement contractors◄ who do not participate in credit decisions but who [regularly] ►solely accept applications,◄ refer applicants to creditors►,◄ or [who] select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4►(a)◄, the general rule prohibiting discrimination, and with § [202.5(a),]►202.4(b), the general rule against◄ [on] discouraging applications.

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

1. *Purpose of definition.* The definition under § 202.2(p)(l)►(i)◄ through (iv) sets the criteria that a credit system must meet in order for the system to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system must be revalidated frequently enough to ►ensure◄ [assure] that it continues to meet recognized professional statistical standards. To ensure that predictive ability is being maintained, creditors must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

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

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

2(w) *Open-end credit.*

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

2(z) *Prohibited basis.*

1. *Persons associated with applicant. Prohibited basis* as used in this regulation refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4►(a)◄, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is *public assistance* for purposes of the regulation. The term includes (but is not limited to) [Aid to Families with Dependent Children]►Temporary Aid to Needy Families◄, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4►(a)◄, barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public*►-◄ utilities credit.

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

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

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) *Government credit.*

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

Section 202.4—General Rule►s◄ [Prohibiting Discrimination]

►Paragraph 4(a)◄

1. *Scope of [section]* ►rule◄. The general rule stated in § 202.4►(a)◄ covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

►2. *Examples. i.*◄ Disparate treatment would be found, for example,

►A. Where a creditor provides information only on ''subprime'' and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. Where a creditor provides more comprehensive information to men than to similarly situated women.

C.◄ [where] ►Where◄ a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

►D.◄ [Disparate treatment also would be found where] ►Where◄ a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

►ii.◄ Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

►Paragraph 4(b)

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis—§ 202.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

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

Paragraph 4(c)

1. *Requirement for written applications.* Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

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

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

Paragraph 4(d)

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.◄

Section 202.5—Rules Concerning [Taking Applications] ►Information Requests◄

[5(a) Discouraging applications.

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

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

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

[5(b)] ►5(a)◄ General rules concerning requests for information.

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

[Paragraph 5(b)(2)

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some types of loans not covered by § 202.13. Certain creditors with assets under $30 million, though covered by HMDA, are not required to collect and report these data; but they may do so at their option under HMDA, without violating the ECOA or Regulation B.

3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from

collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.]

[5(d)] ►5(c)◄ *Other limitations on information requests.*

Paragraph [5(d)(1)] ►5(c)(1)◄

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

[•]►i.◄ The applicant's obligation to pay alimony, child support, or separate maintenance.

[•]►ii.◄ The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

[•]►iii.◄ Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

[•]►iv.◄ The ownership of assets, which could disclose the interest of a spouse.

Paragraph [5(d)(2)] ►5(c)(2)◄

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

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

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

[5(e) Written applications.

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

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

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to section 202.13(b), *Applications through electronic media and Applications through video.)*α

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) *Providing appraisals.*

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

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

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

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

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

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

5a(c) Definitions.

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

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

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

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

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

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

ii. Governmental agency statements of appraised value.

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

Section 202.6—Rules Concerning Evaluation of Applications

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

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

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e ►*et seq.*◄ [*et seq.*]), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

[1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral. Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

2] ►1◄. *Prohibited basis—special purpose credit.* In a special purpose credit

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

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 202.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in § 202.2(p), with one limitation: applicants ►age◄ 62 years or older must be treated at least as favorably as applicants who are under ►age◄ 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* A creditor may segment the population into scorecards based on the age of an applicant. In such a system, one card covers a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card covers all other applicants who are evaluated under the attributes predictive for that broad class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not ►decide whether or not to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant.◄ [take age directly into account in any aspect of the credit transaction.] For example, [the] ►a◄ creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. [For example:] ►As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:◄

[•]►i.◄ A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

[•]►ii.◄ A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)

[•]►iii.◄ A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

[As the examples above illustrate, the evaluation must be made in an individualized, case-by-case manner; and it is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to base its decision on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant.]

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home►,◄ or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 202.6(b)(2)(iv). In addition, under § 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under § 202.2(p) may consider other factors (such as ►a◄ credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

[•]►i.◄ The length of time an applicant will likely remain eligible to receive such income.

[•]►ii.◄ Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (such as [Aid to Families with Dependent Children] ►Temporary Aid to Needy Families◄ or Social Security payments to a minor).

[•]►iii.◄ Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance [(all referred to as ''protected income'')] on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

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

[•]►A.◄ A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.

[•]►B.◄ A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that is not reliable before aggregating it with reliable income.

[•]►C.◄ A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

►ii.◄ In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a

primary source. [However, the] ►The◄ creditor ►, however,◄ may not score or otherwise take into account the number of sources for [protected] income[—for example,] ►such as◄ retirement income, Social Security, ►Supplemental Security Income, and◄ alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from ►, for example,◄ a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

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

►Paragraph 6(b)(8)

1. *Prohibited basis—marital status.* A creditor may consider an applicant's or joint applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.◄

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for ►rules◄ [rule] governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

[•]►i.◄ Repudiate responsibility for future charges on the joint account.

[•]►ii.◄ Request separate accounts in their own names.

[•]►iii.◄ Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if [(1)] the credit was based on the qualifications of a person who is no longer available to support the credit and [(2)] the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules ►ensure◄ [assure] that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

►1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis.◄

[1.] ►2.◄ *Joint applicant.* The term *joint applicant* refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

►3. *Evidence of joint application.* A creditor must document in some manner a person's intent to become jointly liable for a credit extension. For example, the creditor may provide a check box on an application or on a financial statement for indicating whether two individuals intend to apply for joint credit; or a place for a signature or initials for affirming their intent to apply for joint credit. The method provided must be distinct from the means used by an individual to affirm the accuracy of information submitted on a financial statement, for example.◄

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the form of ownership prior to or at consummation, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to provide additional support for the extension of credit. For example:

A. Requesting an additional party (see § 202.7(d)(5));

B. Offering to grant the applicant's request on a secured basis (see § 202.7(d)(4)); or

C. Asking for the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (e.g., a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

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

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

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

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See § 202.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring a signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of a spouse in appropriate circumstances in accordance with § 202.7(d)(2).

7(e) *Insurance.*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

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

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

5. *Determining need.* In designing a special purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, ►a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or,◄ a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.′

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

8(b) *Rules* [is] ►in◄ other sections.

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

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

1. *Request of prohibited* ►basis◄ *information.* This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5

and 202.6] to determine an applicant's eligibility for a particular program.

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

[•]►i.◄ Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

[•]►ii.◄ Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

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

1. *Request of prohibited* ►basis◄ information. This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5 and 202.6], and to require signatures that would otherwise be prohibited by § 202.7(d).

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

[•] ►i.◄ Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

[•] ►ii.◄ Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See § 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

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

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

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

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

5. *Prequalification* ►requests◄ [and preapproval programs]. Whether a creditor must provide a notice of action taken for a prequalification [or preapproval] request depends on the creditor's response to the request, as discussed in [the commentary to section 202.2(f)] ►comment 2(f)–3◄. For instance, a creditor may treat the request as an inquiry if the creditor [provides general information such as loan terms and] ►evaluates specific information about the consumer and tells the consumer◄ the maximum amount [a consumer] ►she◄ could borrow under various loan programs, explaining the process [the consumer] ►she◄ must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing ►the◄ [a] request for prequalification, ►the◄ [a] creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in ►her◄ [the consumer's] record, the creditor has denied an application for credit.

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

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment [2(f)–5] ►2(f)–6◄.)

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

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding matters that the applicant can complete and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 202.9(c).

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

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

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

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

Paragraph 9(a)(3)

1. *Coverage.* In determining the rules in this paragraph that apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules in the paragraph govern the application. However, if an applicant applies for business purpose credit as an individual, the rules in paragraph 9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term *trade credit* generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 202.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with § 202.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 202.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.

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

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other

adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§ 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

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

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

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

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. ►If the application is not approved or denied as a result of the credit scoring, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.◄

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act ►(FCRA)◄ requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's ►delinquent◄ [delinguent] credit obligations. To satisfy the FCRA requirement, the [credit] ►creditor◄ must also disclose that a credit report was obtained and used to deny credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§ 202.9(c)(1) and (c)(2). If the applicant does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted[.]►, or by a noncreditor third party.◄ [Alternatively, the third party may be a noncreditor.] ►If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.◄

2. *Third-party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.11►—◄Relation to State Law

11(a) *Inconsistent state laws.*

1. *Preemption determination—New York.* Effective November 11, 1988, the Board has determined that the following provisions in the state law of New York are preempted by the federal law:

[•] ►i.◄ Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

[•] ►ii.◄ Article 15, section 296a(1)(c)—Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* Effective July 23, 1990, the Board has determined that the following provision in the state law of Ohio is preempted by the federal law:

[•] ►i.◄ Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

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

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a written copy of a document (for example, an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

[•]►i.◄ An application is withdrawn by the applicant.

[•]►ii.◄ An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) *Self-tests*

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

►12(b)(7) *Preapplication marketing information.*

1. *Preapproved credit solicitations.* The rule requires creditors to retain copies of preapproved credit solicitations. For purposes of this regulation, a preapproved credit solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, annual fee, etc.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation, as identified by the consumer reporting agency, and to determine who will actually be offered credit.

3. *Marketing plan.* The marketing plan to which the solicitation relates refers to any written plan, including any response model, that describes the creditor's goals pertaining to the particular solicitation. Thus, if a creditor sends preapproved credit solicitations to women business owners as part of its goal to increase lending to those persons, the creditor complies with **[**this rule**]**►§ 202.12(b)(7)◄ by retaining that part of the plan designed to accomplish this goal.◄

Section 202.13—Information for Monitoring ►*Purposes*◄ **[***purposes***]**

13(a) *Information to be requested.*

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

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to ►the◄ information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

[7. *Data collection under Regulation C.* See comment 5(b)(2)–2.**]**

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* ►i.◄ If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

[•] ►A.◄When a creditor accepts an application by telephone, it does not have to request the monitoring information.

[•] ►B.◄When a creditor accepts an application by mail, it does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

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

4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, the Internet or a facsimile) without video capability that allows the creditor to see the applicant, the creditor [may treat] ►treats◄ the application as if it were received by mail [or telephone].

5. *Applications through video.* If a creditor takes an application through a medium that allows the creditor to see the applicant, the creditor treats the application as taken in person and must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

6. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C ►(12 CFR part 203)◄ which generally requires creditors to report, among other things, the sex and race or national origin of an applicant on brokered applications or applications received through a correspondent.

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

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

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

Section 202.14—Enforcement, ►Penalties, and Liabilities◄ [penalties, and liabilities]

14(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

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

Section 202.15—Incentives for Self-testing and Self-correction

[*15(a) General Rules*] ►15(a) General rules◄

[*15(a)(1) Voluntary Self-Testing and Correction*] ►15(a)(1) *Voluntary self-testing and correction*◄

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

[15*(a)(2) Corrective Action Required*α ►15*(a)(2) Corrective action required*◄

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

[*15(a)(3) Other privileges*] ►15(a)(3) *Other privileges*◄

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work►-◄product privilege. Self-testing data may still be privileged under this section, whether or not the creditor's assertion of another privilege is upheld.

[*15(b) Self-test Defined*] ►15(b) *Self-test defined*◄

[*15(b)(1) Definition*] ►15(b)(1) *Definition*◄

[*Paragraph 15(b)(1)(i)*α ►Paragraph 15(b)(1)(i)◄

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

[*Paragraph 15(b)(1)(ii)*] ►Paragraph 15(b)(1)(ii)◄

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

[*15(b)(3) Types of Information Not Privileged*] ►15(b)(3) *Types of information not privileged*◄

[*Paragraph 15(b)(3)(i)*] ►Paragraph 15(b)(3)(i)◄

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether pre-application testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

[*Paragraph 15(b)(3)(ii)*] ►Paragraph 15(b)(3)(ii)◄

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

►2. Information noted by a creditor in the credit application process about an applicant's age, race, color, religion, national origin, or sex is not privileged.◄

【*15(c) Appropriate Corrective Action*】 ►*15(c) Appropriate corrective action*◄

1. The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

【*15(c)(1) General Requirement*α ►15(c)(1) *General requirement*◄

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

【*15(c)(2) Determining the Scope of Appropriate Corrective Action*】 ►15(c)(2) *Determining the scope of appropriate corrective action*◄

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are the likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

【*15(c)(3) Types of Relief*】 ►15(c)(3) *Types of relief*◄

【*Paragraph 15(c)(3)(ii)*】 ►Paragraph 15(c)(3)(ii)◄

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant that was subject to discrimination on a prohibited basis, in order to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor would not be required under this paragraph to identify other applicants who might also have been adversely affected.

【*Paragraph 15(c)(3)(iii)*】 ►Paragraph 15(c)(3)(iii)◄

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible from obtaining certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

【*15(d)(1) Scope of Privilege*】 ►15(d)(1) *Scope of privilege*◄

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases, for example, litigation filed solely under a state's fair lending statute. In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); creditors may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

【*15(d)(2) Loss of Privilege*】 ►15(d)(2) *Loss of privilege*◄

【*Paragraph 15(d)(2)(i)*】 ►Paragraph 15(d)(2)(i)◄

1. Corrective action taken by a creditor, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. Disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

【*Paragraph 15(d)(2)(ii)*】 ►Paragraph 15(d)(2)(ii)◄

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

【*Paragraph 15(d)(2)(iii)*】 ►Paragraph 15(d)(2)(iii)◄

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

【*Paragraph 15(d)(3) Limited use of Privileged Information*】 ►Paragraph 15(d)(3) *Limited use of privileged information*◄

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to forfeit the privilege.

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The uniform residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated 【May 1991】 ►October 1992◄ may be used by creditors without violating this regulation even though the form's listing of race or national origin categories in the ''Information for Government Monitoring Purpose'' section differs from the classifications currently specified in § 202.13(a)(1). The classifications used on the FNMA–FHLMC form are those required by the U.S. Office of Management and Budget for notation of race and ethnicity by federal programs in their administrative reporting and statistical activities. 【Creditors that are governed by the monitoring requirements of Regulation B (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect

the information.❱ Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home-improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section ''Information for Government Monitoring Purposes.'' ❰Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to assure that they do not collect the information.❱ Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

Appendix C—Sample Notification Forms

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

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

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

By order of the Board of Governors of the Federal Reserve System, August 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

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