

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:** Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation B, pursuant to the Board's policy of periodically reviewing and updating its regulations. Regulation B implements the Equal Credit Opportunity Act. Among other things, the final rule retains the general prohibition against inquiring about, or noting, applicant characteristics for nonmortgage credit transactions, and creates an exception when such data are collected for the purpose of conducting a self-test. The final rule also requires creditors to retain certain records related to prescreened solicitations for 25 months, to enable Federal financial enforcement agencies to assess whether or how national origin, race, age, or other prohibited bases of discrimination under the ECOA are taken into account in prescreened solicitations. The official staff commentary has also been amended; consideration of several previously proposed amendments has been deferred to allow for supplemental comment.

DATES: Effective April 15, 2003; however, to allow time for any necessary operational changes, the mandatory compliance date is April 15, 2004.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel; Kathleen C. Ryan or David A. Stein, Senior Attorneys; or Minh-Duc T. Le, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:**I. Background**

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, 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. In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The regulation also excepts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors.

When enacted in 1974, the ECOA prohibited discrimination on the basis of marital status and sex. In 1976, the Act was amended to designate other prohibited bases of discrimination, including race and national origin. Over the years, several significant amendments have been made. In 1989, the ECOA was amended by the Women's Business Ownership Act of 1988 (Pub. L. 100-533, 102 Stat. 2692) to require that creditors give business applicants notice 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 the 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 established referral responsibilities on the part of the Federal financial supervisory agencies (for referrals to the Department of Justice and the Department of Housing and Urban Development) for certain violations of the ECOA. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009) amended the ECOA to create a privilege against disclosure for information developed by creditors as a result of "self-tests" they conduct.

II. 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 began a review of Regulation B in March 1998. (The Board's previous comprehensive review of Regulation B was completed in 1985.) An Advance Notice of

Proposed Rulemaking (Advance Notice) was published to solicit general comment on revisions to the regulation, and also identified specific issues for comment (63 FR 12326, March 12, 1998). The Board received 330 comment letters on the Advance Notice. Most commenters addressed only the issues identified in the Advance Notice.

In August 1999, the Board issued a proposed rule (64 FR 44581, August 16, 1999). The major proposed revisions included the following: Removing the general prohibition against creditors' noting or inquiring about applicant characteristics such as race, national origin, and sex for nonmortgage credit; requiring creditors to retain certain records for prescreened credit solicitations; and expanding from 12 to 25 months the record retention period for most business credit applications.

For public utilities, securities, and business credit, credit extended to governments, and incidental credit (for example, credit extended by a physician), Regulation B provides exceptions from certain of the notice, record retention, and other requirements. The Board proposed to retain the general categories of exceptions with some modifications. Other proposed revisions to the regulation (and to the official staff commentary) involved the definition of an "application" (including guidance on the distinction between an inquiry about credit and an application for credit); the definition of "creditor"; the term "adverse action"; the credit evaluation of married and unmarried applicants; and what constitutes evidence of a joint application for credit.

In addition to comments on the proposed revisions, the Board requested specific suggestions for other revisions that would facilitate compliance with, or improve, the regulation. Approximately 750 comments were received on the proposed rulemaking, and are discussed below under the relevant sections. Industry commenters opposed most of the major proposed revisions to the regulation, but provided suggestions for additional revisions to help facilitate compliance with the regulation, such as providing additional reasons, or clarifying existing reasons, for adverse action on the model forms. Most of the comments addressed the proposal to remove the prohibition on data notation, expressing views both for and against.

III. Summary of Revisions to the Regulation

Major revisions adopted by the Board include rules that adjust the limited