

exceptions for public utilities credit (§ 202.3(a)); create an exception to the general prohibition against inquiring about, or noting, applicant characteristics for nonmortgage credit transactions for the purpose of conducting a self-test (§ 202.5(b)(1)); and require record retention for prescreened credit solicitations (§ 202.12(b)(7)). Other amendments clarify the definitions of “adverse action” (§ 202.2(c)) and “creditor” (§ 202.2(l)); the rules for evaluating married and unmarried credit applicants (§ 202.6(b)(8)); and certain rules about obtaining signatures of nonapplicants (§ 202.7(d)(1)).

#### IV. Section-by-Section Analysis

The following discussion addresses the regulatory revisions section-by-section. Technical and non-substantive revisions generally are not separately discussed. Revisions to the official staff commentary are addressed in parts V and VI.

##### *Section 202.1—Authority, scope and purpose*

There are no revisions to this section.

##### *Section 202.2—Definitions*

Sections 202.2(c)(1) and (2), and 202.2(l) have been revised. Proposed revisions to § 202.2(f) were not adopted.

##### 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.” Under the proposal, “substantial portion” was changed to “substantially all” to clarify 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. This revision emphasized that the exception applies only when the creditor’s action is not based on the individual credit characteristics of the affected account holders. For example, the exception would apply where a creditor terminates all secured credit accounts because it no longer offers that type of credit. The exception would not apply if the creditor terminated only those secured credit accounts that could not be moved into another card program after an evaluation of the individual credit characteristics of the account holders.

Industry commenters expressed concern that the proposal would

significantly narrow the application of the exception. Some of these commenters noted that adverse action notices would serve no useful purpose in the circumstances outside the narrower exception. On the other hand, community groups urged the Board to revise the exception so that it would apply only if *all* accounts in a class were adversely affected.

The revision has been adopted by the Board as proposed. The ECOA and Regulation B require creditors to give consumers reasons for an adverse credit decision. This notice requirement enables some recipients to identify and remedy errors in credit reports and credit problems generally, and may also help in the detection of unlawful credit discrimination. The exception in § 202.2(c)(1)(ii) is intended to address the limited circumstance where an adverse action notice will not likely serve the intended informational or antidiscrimination goals. The Board expects to request supplemental comment on guidance for defining a “class of accounts.”

##### 2(c)(2)

Section 202.2(c)(2)(iii) has been revised to conform to changes in § 202.2(c)(1)(ii).

##### 2(f) Application

The Board proposed to revise § 202.2(f) to include in the definition of application 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. In the final rule, the proposed language on preapprovals is not included in the regulation’s definition of application, but is instead contained in the official staff commentary, which clarifies that certain preapprovals are covered by the definition of application. (See comment 2(f)–5 and the supplementary information thereto.) A technical change in the definition (replacing “established” with “used”) has been made for clarity.

##### 2(l) Creditor

Section 202.2(l) has been adopted substantially as proposed. The final rule changes the words “regularly participates in the decision of whether or not to extend credit” to “regularly participates in a credit decision, including setting the terms of the credit” to clarify the definition of “creditor.”

Some commenters agreed with the proposed clarification, noting that it

makes the rules parallel for insured depository institutions and private-sector loan intermediaries. A few commenters disagreed with the proposal, believing the scope of the definition was unclear. Other commenters asked that the Board clarify that a potential assignee that establishes terms of general applicability for credit extensions that it may acquire, but does not otherwise participate in setting the terms of individual loans, is not a creditor for purposes of the regulation. The final rule clarifies that the definition of creditor includes those who make the decision to deny or extend credit, as well as those who negotiate and set the terms of the credit with the consumer. But a potential assignee who establishes underwriting guidelines for its purchases but does not influence individual credit decisions is not a creditor. (See comment 2(l)–1).

##### *Section 202.3—Limited Exceptions for Certain Classes of Transactions*

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 against discrimination on a prohibited basis. The exceptions generally address issues such as record retention, furnishing credit information, and inquiries about marital status and spousal information.

Revisions were proposed to the exceptions for public utilities, securities, and incidental credit. Based on comments and further analysis, the Board believes that providing certain 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 currently subject to all of the regulatory requirements except those relating to furnishing credit information to consumer reporting agencies, collecting information about marital status, and retaining records. Under the proposed rule, only the exception for record retention would have been retained. The final rule has been modified. As discussed below, public utilities credit