

is now subject to all of the regulatory requirements except those relating to record retention and marital status information.

Commenters generally supported the proposal to remove the exception relating to the furnishing of credit information under § 202.10 (concerning accounts held or used by spouses). A number of commenters believed that removing the exception would help spouses build credit histories. A few commenters mistakenly thought the proposal required public utility companies that do not currently report payment history information to start reporting such information. 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. Because some creditors now consider public utility payments as a source of repayment history for underwriting purposes, eliminating the exception from § 202.10 seems necessary to facilitate the availability of this information to such other creditors.

Upon further analysis, the Board has retained the marital status exception. Although some public utilities do not currently collect marital status information, or are prohibited by state law from doing so, others may collect such information. Permitting utility firms to collect such information is consistent with eliminating the exception for furnishing credit information—those creditors that collect marital status information and report to credit bureaus will be able to reflect the participation of both spouses on the account.

The final rule retains the exception for 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. Extending this exception is appropriate because requiring record retention pursuant to Regulation B 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 section 7 of the Securities Exchange Act of 1934, regulations under that act, and rules of the self-regulatory organizations. 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, rules governing signature requirements, record retention, and asking about the sex of an applicant.

Because securities credit is subject to an extensive regulatory scheme, the Board proposed to retain the limited exceptions for such credit, with one exception—information about the sex of an applicant. The proposal to eliminate the exception was for consistency with the Board's proposal under § 202.5 to remove the general prohibition against the collection of applicant characteristics for nonmortgage credit. Since the Board has retained the general prohibition, there is a continued need for an exception regarding the sex of an applicant. Technical revisions have been 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 by a local merchant that does not normally extend credit, for example, to a long-standing customer; or by a doctor or lawyer, as an accommodation to a patient or a client.

The proposed rule would have expanded the definition of incidental credit to include incidental business credit. While some commenters supported the expansion, other commenters opposed it because of concerns about discrimination against minority-owned businesses. Upon further analysis, based on commenters' concerns about possible discrimination, the Board has retained the current definition of incidental credit.

3(c)(2) Exceptions

Incidental credit is excepted from a number of provisions in the regulation including those that govern requests for information about an applicant's marital status, an applicant's spouse or former spouse, and sources of an applicant's income. The proposed rule would have eliminated the exception for requesting information about the sex of an applicant, consistent with the Board's proposal under § 202.5 to remove the general prohibition against the collection of applicant characteristics

for nonmortgage credit. Since the general prohibition has been retained, this exception also has been retained.

3(d) Government Credit

The exceptions for government credit apply to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities. The exceptions do not apply to credit extended by such entities; for example, a government agency that extends credit to a consumer who applies for individual credit may not require the signature of another person (including the spouse) on a credit instrument if the applicant is individually creditworthy. The Board believes that extending the exceptions for government credit remains appropriate, as applying the rules would not contribute substantially to effectuating the purposes of the Act.

Section 202.4—General Rules

Section 202.4 has been revised, as proposed, to incorporate general rules that apply under the regulation, some of which were previously in other sections. Specifically, § 202.4(a) contains the general rule against discrimination; § 202.4(b) (former § 202.5(a)) contains the general rule against discouraging applications; and § 202.4(c) (former § 202.5(e)) contains the requirement for written applications in mortgage transactions covered by § 202.13(a).

Section 202.4(d) is new and generally requires written notices and other disclosures to be provided in a clear and conspicuous manner and in a form an applicant may retain. Most of the other consumer protection regulations administered by the Board already contain these standards.

The clear and conspicuous and the retainability standards have been revised in response to commenters' concerns. Some commenters stated that the proposed language appeared to suggest that disclosures under the sections specified (§§ 202.5, 202.5a (now § 202.14), 202.9, and 202.13(c)) are required to be given in writing. While certain disclosures under §§ 202.9 and 202.14 are required to be in writing, others may be provided orally. Accordingly, the final rule provides generally that if a disclosure is given in writing, it must be clear and conspicuous and in a form the applicant may retain.

Other commenters suggested that the retainability requirement should not apply to certain disclosures given on or with an application, such as those under §§ 202.5 and 202.13. These disclosures relate, for example, to the option not to