

are being treated differently from other applicants on the basis of race, age, sex, religion, or national origin; or, for loan originations, whether disparities based on race or other prohibited bases of discrimination may exist in the terms and conditions of loan agreements entered into by similarly situated applicants. A self-test might also be conducted to test account review or collection procedures, or other aspects of the credit transaction where unlawful discrimination might occur. A creditor may not use the data collected under the new exception for other purposes, such as marketing, unless necessary to take corrective action, without losing the self-test privilege.

The data about applicant characteristics collected as part of a self-test may only be used and evaluated by persons conducting the self-test. The data may not be used or evaluated by persons involved in a credit transaction, except in the context of taking corrective action when it is more likely than not that a violation has occurred. The data may not be used in a credit decision. In collecting information about personal characteristics as part of a self-test, creditors must disclose to applicants that providing the information is optional, that the information is being collected to monitor for compliance with the ECOA and will not be used in making a credit decision, and where applicable, that certain information will be noted based on visual observation or surname.

The self-test provision requires that creditors take appropriate and timely corrective action when the self-test shows that it is "more likely than not" that a violation of the ECOA or Regulation B has occurred, even though no violation has been formally adjudicated. 12 CFR 202.15(c)(1) (emphasis added). Creditors should ensure that corrective action is taken on a timely basis and is "reasonably likely to remedy the cause and effect of a likely violation." 12 CFR 202.15(a)(2) and 202.15(c)(1). The commentary to § 202.15(c) suggests various forms of corrective action that may be appropriate, such as correcting institutional policies or procedures that may have contributed to the likely violation and adopting new policies as appropriate, or improving audit and oversight systems to avoid a recurrence of the likely violation. See 12 CFR Supp. I, 202.15(c)(2)–3. The appropriateness of a particular form of corrective action is determined on a case-by-case basis and the scope of the corrective action that is required depends upon the scope of the self-test. See 12 CFR Supp. I, 202.15(c)(2)–1. No corrective action is

required if a self-test does not identify any likely violation of the ECOA or Regulation B. See 12 CFR Supp. I, 202.15(a)(2)–1.

Section 202.5(b)(2) permits a limited inquiry that may indicate the sex of an applicant through an optional designation of title on an application form. This exception is identical to the exception previously contained in former § 202.5(d)(3). No substantive change is intended.

Section 202.5(c) is substantially unchanged. Section 202.5(d)(1)–(3) incorporates the provisions previously contained in former § 202.5(d)(1), (d)(2), and (d)(4) without substantive change.

New § 202.5(e) permits creditors to inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction. This rule was previously contained in former § 202.5(d)(5). The exception for inquiries about the permanent residence and immigration status has been conformed to the general rule in § 202.5(b), which explicitly covers both an applicant and any other person in connection with a credit transaction, such as a guarantor or co-signer.

Section 202.5a—Rules on Providing Appraisal Reports

This section now appears as § 202.14.

Section 202.6—Rules Concerning Evaluation of Applications

Sections 202.6(b)(8) and (9) have been adopted, as proposed.

6(b) Specific Rules Concerning use of Information

6(b)(8)

Section 202.6(b)(8) of the regulation, adopted as proposed, makes clear that a creditor may not evaluate married and unmarried applicants by different standards. Some commenters were concerned that the rule would prevent creditors from considering state property laws. The rule provides that the requirement applies except as otherwise permitted or required by law. Thus, a creditor may consider the rules in §§ 202.5, 202.6, and 202.7 in evaluating applications. But a creditor that aggregates the incomes of married co-applicants, for example, is required to aggregate the incomes of unmarried co-applicants under this rule.

6(b)(9)

Section 202.6(b)(9) has been adopted as proposed, consistent with the Board's decision to retain the general prohibition in § 202.5 (against collecting applicants' personal characteristics) except for the purpose of conducting a

self-test under § 202.15. This provision clarifies that data collected for a self-test may not be used in any aspect of a credit transaction.

Section 202.7—Rules Concerning Extensions of Credit

Section 202.7(d)(1) has been revised.

7(d) Signature of Spouse or Other Person

Section 202.7(d)(1) provides that a creditor may not require the signature of a person other than the applicant, or joint applicant, on any credit instrument if the applicant is individually creditworthy. Over the years, the Board has received questions about how creditors can establish that applicants intend to apply jointly. Although the issue arises in consumer credit, it is more prevalent in the context of business credit. Some creditors have sought to treat the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit. The proposed rule bars a creditor from presuming that the submission of joint financial information constitutes an application for joint credit.

Some commenters disagreed with the proposal, stating that a creditor should always be able to deem the submission of joint information as an application for joint credit. Other commenters believed the rule should simply state that the mere submission of joint information may not be used to establish intent and something more is needed.

Evidence of intent to apply for joint credit requires more than the submission of joint financial information. The fact that a credit applicant owns property with another and submits information concerning the property and the joint owner in order to establish creditworthiness does not mean that both owners intend to be obligated for the extension of credit; other evidence must expressly reflect that intent. Section 202.7(d)(1) has been adopted as proposed. Additional guidance concerning how to evidence intent to apply for joint credit is provided in the official staff commentary in comment 7(d)(1)–3. Also, see the supplementary information to Appendix B concerning revisions to Model Application Forms 1–4.

Section 202.8—Special-Purpose Credit Programs

The proposed revisions to § 202.8(a)(3) have not been adopted.