

8(a) Standards for Programs

Section 202.8(a)(3) addresses special-purpose credit programs offered by for-profit organizations, or in which for-profit organizations participate. Under the proposed rule, that section would have been revised to delete the phrase "special social needs." The meaning of the phrase is specifically set forth in § 202.8(a)(3)(i) and (ii). Although few commenters addressed the issue, there was some concern that by removing the phrase, a creditor might not understand that the program must meet special social needs. Upon further analysis, because the legislative history of this provision is clear that special-purpose credit programs offered by for-profit organizations must meet special social needs, and because the statute includes the phrase, the proposed revision was not adopted.

Section 202.9—Notifications

A technical revision has been made to § 202.9(a)(3)(i)(B). The proposed revision to § 202.9(a)(3)(ii)(A) has not been adopted. Section 202.9(b)(2) has been revised as proposed.

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

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

A technical revision has been made to § 202.9(a)(3)(i)(B) to omit the proposed language requiring a creditor to provide the disclosure of an applicant's right to a statement of reasons in a form the applicant may retain. New § 202.4(d) requires that disclosures provided in writing be clear and conspicuous and in a form the applicant may retain. Since the disclosure required by § 202.9(a)(3)(i)(B) must be in writing, the language referring to retention is deleted as unnecessary.

The regulation provides for exceptions from certain notification and record retention requirements for business credit. The Board is required periodically to review the exceptions to determine whether they should be retained. The ECOA provides that the Board may extend an exception 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. As discussed below, the Board expressly finds that application of additional provisions of the ECOA to business credit would not contribute substantially to effectuating the purposes of the Act.

In the proposal, the Board stated its belief that applying the notification rules in full, or changing the current threshold of \$1 million in gross revenues to distinguish between large and small businesses for purposes of Regulation B, would not contribute substantially to effectuating the purposes of the ECOA. 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; nearly the same percentage of all businesses (85 percent) currently fall below that threshold. In addition, a gross revenue test is likely easier for creditors to administer than other suggested tests, such as basing the exceptions on the sophistication of the applicant. Commenters did not oppose this aspect of the proposal.

The Board proposed to revise § 202.9(a)(3)(ii)(A) 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 denial or other adverse action. Under the regulation, 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. But although the regulation requires creditors to notify business credit applicants (orally or in writing) of the adverse action, it does not require notification of the right to obtain the statement of reasons. The Board stated in its proposal that requiring the disclosure should not significantly increase the compliance burden for creditors, and would benefit applicants who may not be aware of their right to the written statement of reasons.

Some commenters supported or did not oppose the proposed change; some commenters urged that creditors be required to provide business applicants with a written notice of reasons for adverse action, or of the right to request such reasons. Other commenters suggested that notification of the right to reasons is unnecessary because businesses in this category are sophisticated and communication between the creditor and the applicant is extensive and ongoing.

Based on the comments and further analysis, the Board believes that notification of the right to request the reasons for adverse action would not contribute substantially to effectuating

the purposes of the ECOA. Accordingly, the final rule does not include the requirement.

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

9(b)(2) Statement of Specific Reasons

Section 202.9(b)(2), adopted as proposed, clarifies 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 guarantor did not meet the creditor's standards of creditworthiness" is insufficient.

The legislative history of the requirement to provide specific reasons for adverse action indicates that the purposes of the disclosure are to help achieve the anti-discrimination goals of the ECOA and to educate and inform consumers. These dual purposes are served by the clarification in § 202.9(b)(2). For example, the disclosure may discourage a creditor from discriminating based on a co-applicant's or guarantor's race, sex, age, or other prohibited basis. Also, the disclosure may help educate and inform applicants, co-applicants, or guarantors as to reasons for denial that are not apparent from looking at their credit report.

Many commenters were concerned about the co-applicant's or guarantor's privacy when the reasons for adverse action pertaining to creditworthiness are given to the primary applicant. When a person agrees to be a co-applicant, guarantor, or similar party, however, there is (or should be) a general understanding that information will be shared. Accordingly, the rule has been adopted as proposed.

Section 202.10—Furnishing of Credit Information

There are no revisions to this section.

Section 202.11—Relation to State Law

There are no revisions to this section.

Section 202.12—Record Retention

The proposed revisions to § 202.12(b)(1)–(4) have not been adopted. New § 202.12(b)(7) has been adopted, as proposed.

12(b) Preservation of Records

Section 703(a)(4) of the ECOA 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 for no less than one year, unless otherwise excepted. Section 202.12(b) requires creditors to retain credit applications and other records for