

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. The Board further stated that a "preapproval" without procedures involving a written commitment would be treated as a prequalification.

Some commenters supported the proposed revision, noting that preapprovals should be considered applications since creditors require applicants to complete applications before issuing written commitments to lend. Other commenters opposed the proposal, arguing that it would have a chilling effect on lenders offering preapproval programs, and would discourage potential applicants; that the utility of covering preapprovals as applications is questionable since they generally contain contingencies and are subject to verification; and that many applicants requesting preapprovals never return to the creditor to pursue the request, suggesting that notices required by § 202.9 would not be useful.

The Board believes that preapproval requests are applications, because they involve requests for extensions of credit made in accordance with creditors' procedures. The fact that a preapproval request is not a completed application is not relevant, because Regulation B generally applies even to applications that are incomplete. (But see comment 9(c)(1)–1. In addition, Regulation C (Home Mortgage Disclosure) as revised (67 FR 7222, February 15, 2002) includes preapproval requests as applications for purposes of that regulation. In general, the Board believes that the coverage of applications under Regulations B and C should be consistent, to the extent possible. Accordingly, comment 2(f)–5 clarifies that certain preapproval requests constitute applications for purposes of Regulation B. The text of the final comment has been revised slightly to more closely parallel the Regulation C amendment relating to preapprovals.

Commenters raised an issue concerning the treatment of an inquiry in regard to a creditor's preapproval program. For example, if a creditor has a preapproval program involving written commitments and other features discussed in comment 2(f)–5, a request for preapproval under the program constitutes an application. If, however, a consumer merely inquires about the program, but does not initiate a preapproval request under it, commenters questioned whether the creditor must treat the inquiry as an application. The Board believes that

whether the inquiry in this case is an application should be determined under the criteria set forth in comments 2(f)–3 and 9–5.

Finally, some commenters asked whether a preapproval that constitutes an application includes preapproved credit solicitations. Prescreened solicitations are not applications for purposes of Regulation B. (See § 202.12(b)(7)).

2(l) Creditor

Comment 2(l)–2 has been revised to clarify the type of creditors subject only to the general prohibitions against discrimination and discouragement in §§ 202.4(a) and (b), respectively.

Some industry commenters expressed concern that the clarification would include in the definition of creditor persons without discretion to decide whether credit will be extended. The Board recognizes that in the credit application process persons may play a variety of roles, from accepting applications through extending or denying credit. Comment 2(l)–2 is intended to clarify that where the only role a person plays is accepting and referring applications for credit, or selecting creditors to whom applications will be made, the person meets the definition of creditor, but only for purposes of the prohibitions against discrimination and discouragement. For example, an automobile dealer may merely accept and refer applications for credit, or it may accept applications, perform underwriting, and make a decision whether to extend credit. Where the automobile dealer only accepts applications for credit and refers those applications to another creditor who makes the credit decision—for example, where the dealer does not participate in setting the terms of the credit or making the credit decision—the dealer is subject only to §§ 202.4(a) and (b) for purposes of compliance with Regulation B.

2(z) Prohibited Basis

A technical revision has been made to comment 2(z)–1 for clarity. Comment 2(z)–3 has been amended to reflect the change in the name of the Aid to Families with Dependent Children program.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

A technical revision has been made to comment 3–1.

Section 202.4—General Rule Prohibiting Discrimination

Section 202.4 has been substantially revised, as proposed. Former comment

4(a)–1 has been divided into comments 4(a)–1 and –2. Additional examples of disparate treatment have been included in comment 4(a)–2. Comments 4(b)–1 and –2 are former comments 5(a)–1 and –2, respectively, with minor revisions. References to "potential" applicants in former comment 5(a)–1, which is now comment 4(b)–1, have been changed to "prospective" applicants with no substantive change intended. Comments 4(c)–1, –2, and –3 are former comments 5(e)–1, –2, and –3, respectively. New comment 4(d)–1 clarifies the "clear and conspicuous" requirement.

Section 202.5—Rules Concerning Taking of Applications

Section 202.5 has been substantially revised. Comments 5(a)–1 and –2 have been moved to comments 4(b)–1 and –2, respectively, consistent with changes to the regulation. Comment 5(b)–1 has been re-designated as comment 5(a)(1)–1. Comments 5(b)(2)–1, –2, and –3 have been re-designated as comments 5(a)(2)–1, –2, and –3, respectively, consistent with the restructuring of the regulation and the Board's decision to retain the general prohibition against inquiring about, or noting, applicants' personal characteristics for nonmortgage credit, with some exceptions. Comments 5(d)(1)–1 and 5(d)(2)–1, –2, and –3 have not been revised. Comments 5(e)–1, –2, and –3 have been moved to comments 4(c)–1, –2, and –3, respectively, consistent with changes to the regulation.

Section 202.5a—Rules on Providing Appraisal Reports

Former § 202.5a is now § 202.14.

Section 202.6—Rules Concerning Evaluation of Applications

Comments to §§ 202.6(a), 202.6(b)(1), (2), (5) and (8) have been revised.

6(a) General Rule Concerning use of Information

Comment 6(a)–1 has been revised to reflect the exception for collecting applicant characteristics for purposes of a self-test.

6(b) Specific Rules Concerning use of Information

6(b)(1)

As proposed, former comment 6(b)(1)–1 has been divided and certain portions have been moved to § 202.6(b)(8) of the regulation and other portions have been moved to § 202.6(b)(8) of the commentary for clarity. Comment 6(b)(1)–2 has been re-designated as 6(b)(1)–1.