

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1168]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, and the staff commentary to the regulation. Regulation B would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations E, M, Z and DD appear elsewhere in today’s **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1168 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to

regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to

§ 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT:

Minh-Duc Le, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant’s national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The act also excepts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors. The ECOA is implemented by the Board’s Regulation B (12 CFR part 202). An official staff commentary interprets the requirements of Regulation B (12 CFR part 202 (Supp. I)).

II. Proposed Revisions

Section 202.2—Definitions

2(bb) Clear and Conspicuous

The ECOA does not address a standard for the form of disclosures. Regulation B, however, requires creditors to disclose information provided in writing in a clear and conspicuous manner. *See* § 202.4(d). Guidance on how creditors may comply with the clear and conspicuous standard

is contained in the staff commentary. *See* comment 4(d)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board’s Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation B by adding a definition of “clear and conspicuous” in § 202.2(bb), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation B also would be revised to add comments 2(bb)–1 and –2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed