

Equal Credit Opportunity Act

Regulation B - Equal Credit Opportunity

Sec. 202.1 Authority, scope and purpose.

(a) Authority and scope. This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in Sec. 202.2(1). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB control number 7100-0201.

(b) Purpose. The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

Sec. 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) Account means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) Act means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) Adverse action.

(1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an

account that does not affect all or a substantial portion of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) Age refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of Sec. 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in Sec. 202.3 (a), (b), and (d).

(h) Consumer credit means credit extended to a natural person primarily for personal, family, or household purposes.

(i) Contractually liable means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) Credit means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) Credit card means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) Creditor means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of Secs. 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) Credit transaction means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) Discriminate against an applicant means to treat an applicant less favorably than other applicants.

(o) Elderly means age 62 or older.

(p) Empirically derived and other credit scoring systems--

(1) A credit scoring system is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraphs (p)(1) (i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no

longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) Extend credit and extension of credit mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) Good faith means honesty in fact in the conduct or transaction.

(s) Inadvertent error means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) Judgmental system of evaluating applicants means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) Marital status means the state of being unmarried, married, or separated, as defined by applicable state law. The term unmarried includes persons who are single, divorced, or widowed.

(v) Negative factor or value, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) Open-end credit means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) Person means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) Pertinent element of creditworthiness, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) Prohibited basis means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) State means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

Sec. 202.3 Limited exceptions for certain classes of transactions

(a) Public utilities credit--

(1) Definition. Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or

similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) Exceptions. The following provisions of this regulation do not apply to public utilities credit:

- (i) Section 202.5(d)(1) concerning information about marital status;
- (ii) Section 202.10 relating to furnishing of credit information; and
- (iii) Section 202.12(b) relating to record retention.

(b) Securities credit--

(1) Definition. Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) Exceptions. The following provisions of this regulation do not apply to securities credit:

- (i) Section 202.5(c) concerning information about a spouse or former spouse;
- (ii) Section 202.5(d)(1) concerning information about marital status;
- (iii) Section 202.5(d)(3) concerning information about the sex of an applicant;
- (iv) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

- (vi) Section 202.7(d) relating to the signature of a spouse or other person;
- (vii) Section 202.10 relating to furnishing of credit information; and
- (viii) Section 202.12(b) relating to record retention.

(c) Incidental credit.

(1) Definition. Incidental credit refers to extensions of consumer credit other than credit of the types described in paragraphs (a) and (b) of this section:

- (i) That are not made pursuant to the terms of a credit card account;
- (ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) Exceptions. The following provisions of this regulation do not apply to incidental credit:

- (i) Section 202.5(c) concerning information about a spouse or former spouse;
- (ii) Section 202.5(d)(1) concerning information about marital status;
- (iii) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;
- (iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;
- (v) Section 202.7(d) relating to the signature of a spouse or other person;
- (vi) Section 202.9 relating to notifications;
- (vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(d) Government credit-- (1) Definition. Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) Applicability of regulation. Except for Sec. 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

Sec. 202.4 General rule prohibiting discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

Sec. 202.5 Rules concerning taking of applications.

(a) Discouraging applications. A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) General rules concerning requests for information.

(1) Except as provided in paragraphs (c) and (d) of this section, a creditor may request any information in connection with an application. ¹

(2) Required collection of information. Notwithstanding paragraphs (c) and (d) of this section, a creditor shall request information for monitoring purposes as required by Sec. 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) Special purpose credit. A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in Sec. 202.8 (c) and (d).

(c) Information about a spouse or former spouse.

(1) Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) Permissible inquiries. A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit

requested.

(3) Other accounts of the applicant. A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which the account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) Other limitations on information requests--

(1) Marital status. If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms married, unmarried, and separated. A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) Disclosure about income from alimony, child support, or separate maintenance. A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) Sex. A creditor shall not inquire about the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) Childbearing, childrearing. A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) Race, color, religion, national origin. A creditor shall not inquire about the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire about an applicant's permanent residence and immigration status.

(e) Written applications. A creditor shall take written applications for the types of credit covered by Sec. 202.13(a), but need not take written applications for other types of credit.

Sec. 202.5a Rules on providing appraisal reports.

(a) Providing appraisals. A creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) Routine delivery. A creditor may routinely provide a copy of the appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) Upon request. A creditor that does not routinely provide appraisal reports shall

provide a copy upon an applicant's written request.

(i) Notice. A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under Sec. 202.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) Delivery. A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under Sec. 202.9 of this part or 90 days after the application is withdrawn.

(b) Credit unions. A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisals available is not subject to this section.

(c) Definitions. For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term appraisal report means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

Sec. 202.6 Rules concerning evaluation of applications.

(a) General rule concerning use of information. Except as otherwise provided in the Act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. [2](#)

(b) Specific rules concerning use of information.

(1) Except as provided in the act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) Age, receipt of public assistance.

(i) Except as permitted in this paragraph (b)(2), a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending

credit.

(3) Childbearing, childrearing. In evaluating creditworthiness, a creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) Telephone listing. A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit, but may take into account whether there is a telephone in the applicant's residence.

(5) Income. A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) Credit history. To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) Immigration status. A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(c) State property laws. A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this regulation.

Sec. 202.7 Rules concerning extensions of credit.

(a) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) Designation of name. A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) Action concerning existing open-end accounts--

(1) Limitations. In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an

applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

- (i) Require a reapplication, except as provided in paragraph (c)(2) of this section;
- (ii) Change the terms of the account; or
- (iii) Terminate the account.

(2) Requiring reapplication. A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) Signature of spouse or other person--

(1) Rule for qualified applicant. Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) Unsecured credit. If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) Unsecured credit--community property states. If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights or assign earnings.

(5) Additional parties. If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) Rights of additional parties. A creditor shall not impose requirements upon an

additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) Insurance. A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

Sec. 202.8 Special purpose credit programs.

(a) Standards for programs. Subject to the provisions of paragraph (b) of this section, the act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) Rules in other sections.

(1) General applicability. All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2) Common characteristics. A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the act or this regulation.

(c) Special rule concerning requests and use of information. If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) Special rule in the case of financial need. If financial need is one of the criteria

under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by Federal or State law.

Sec. 202.9 Notifications.

(a) Notification of action taken, ECOA notice, and statement of specific reasons--

(1) When notification is required. A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) Content of notification when adverse action is taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) Notification to business credit applicants. For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of \$1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a) (1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of \$1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, orally or in writing, within a reasonable time of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

(b) Form of ECOA notice and statement of specific reasons--

(1) ECOA notice. To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A of this regulation).

(2) Statement of specific reasons. The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

(c) Incomplete applications--

(1) Notice alternatives. Within 30 days after receiving application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) Notice of incompleteness. If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) Oral request for information. At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) Oral notifications by small-volume creditors. The requirements of this section

(including statements of specific reasons) are satisfied by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) Withdrawal of approved application. When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) Multiple applicants. When an application involves more than one applicant, notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(g) Applications submitted through a third party. When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identify of each creditor on whose behalf the notice is given.

Sec. 202.10 Furnishing of credit information.

(a) Designation of accounts. A creditor tht furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) Routine reports to consumer reporting agency. If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) Reporting in response to inquiry. If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

Sec. 202.11 Relation to state law.

(a) Inconsistent state laws. Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) Preempted provisions of state law.

(1) A state law is deemed to be inconsistent with the requirements of the Act and

this regulation and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

- (i) Requires or permits a practice or act prohibited by the Act or this regulation;
- (ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;
- (iii) Prohibits inquiries or collection of data required to comply with the act or this regulation;
- (iv) Prohibits asking or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or
- (v) Prohibits inquiries necessary to establish or administer as special purpose credit program as defined by Sec. 202.8.

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is inconsistent with the requirements of the Act and this regulation.

(c) Laws on finance charges, loan ceilings. If married applicants voluntarily apply for and obtained individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) State and Federal laws not affected. This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or Federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) Exemption for state-regulated transactions--

(1) Applications. A state may apply to the Board for an exemption from the requirements of the Act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) Liability and enforcement. (i) No exemption will extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this regulation.

Sec. 202.12 Record retention.

(a) Retention of prohibited information. A creditor may retain in its files information that is prohibited by the Act or this regulation in evaluating applications, without violating the Act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific

request of the creditor; or

(3) As required to monitor compliance with the Act and this regulation or other Federal or state statutes or regulations.

(b) Preservation of records--

(1) Applications. For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(2) Existing accounts. For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(3) Other applications. For 25 months (12 months for business credit) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of Sec. 202.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) Enforcement proceedings and investigations. A creditor shall retain the information specified in this section beyond 25 months (12 months for business credit) if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and Sec. 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) Special rule for certain business credit applications. With regard to a business with gross revenues in excess of \$1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) Self-tests. For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test.

A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Sec. 202.13 Information for monitoring purposes.

(a) Information to be requested. A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

- (1) Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);
- (2) Sex;
- (3) Marital status, using the categories married, unmarried, and separated; and
- (4) Age.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) Obtaining of information. Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) Disclosure to applicant(s). The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the Federal government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) Substitute monitoring program. A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c).

Sec. 202.14 Enforcement, penalties and liabilities.

(a) Administrative enforcement.

(1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of

the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the act and this regulation is enforced by the Federal Trade Commission.

(b) Penalties and liabilities. (1) Sections 706 (a) and (b) and 702(g) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704 (b), (c), and (d) and 702(g) of the Act, violations of the Act or regulations also constitute violations of other Federal laws. Liability for punitive damages is restricted to nongovernmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the act or this part, it may refer the matter to the Attorney General of the United States. In addition, if the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe that one or more creditors engaged in a pattern or practice of discouraging or denying applications in violation of the act or this part, the agency shall refer the matter to the Attorney General. Furthermore, the agency may refer a matter to the Attorney General if the agency has reason to believe that one or more creditors violated section 701(a) of the act.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors engaged in a pattern or practice in violation of the act or this regulation, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, conducting a consumer compliance examination, or otherwise) that a violation of the act or this part has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall notify:

(i) The Secretary of Housing and Urban Development; and

(ii) The applicant that the Secretary of Housing and Urban Development has been notified and that remedies for the violation may be available under the Fair Housing Act.

(c) Failure of compliance. A creditor's failure to comply with Secs. 202.6(b)(6),

202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under Secs. 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not covered by Sec. 202.13, the creditor may act on and retain the application without violating the regulation.

Sec. 202.15 - Incentives for self-testing and self-correction.

(a) General rules-(1) Voluntary self-testing and correction. The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) Corrective action required. The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) Other privileges. The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) Self-test defined-(1) Definition. A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) Types of information privileged. The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) Types of information not privileged. The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) Appropriate corrective action-(1) General requirement. For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) Determining the scope of appropriate corrective action. A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) Types of relief. Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

- (i) A creditor is not required to provide remedial relief to a tester used in a self-test;
- (ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and
- (iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) No admission of violation. Taking corrective action is not an admission that a violation occurred.

(d)(1) Scope of privilege. The report or results of a privileged self-test may not be obtained or used:

- (i) By a government agency in any examination or investigation relating to compliance with the act or this regulation; or
- (ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.5(a)) in any proceeding or civil action in which a violation of the act or this regulation is alleged.

(2) Loss of privilege. The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results):

- (i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;
- (ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the act or regulation; or
- (iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) Limited use of privileged information. Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.