

# **FEDERAL RESERVE SYSTEM**

## **12 CFR Part 202**

**[Regulation B; Docket No. R-0978]**

### **Equal Credit Opportunity**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

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**SUMMARY:** The Board is amending certain model forms in its Regulation B to reflect statutory amendments to the Fair Credit Reporting Act (FCRA) disclosures contained in those forms. Creditors have the option of including the FCRA disclosures with the notice of action taken required under Regulation B. In addition, a technical revision has been made to Appendix A.

**DATE:** The rule is effective April 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Senior Attorney, or Pamela Morris Blumenthal, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Regulation B, which implements the Equal Credit Opportunity Act, requires creditors to provide consumers with a notice of action taken if an application for credit is denied, an account is terminated, or the terms of an account are unfavorably changed. The Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681) requires creditors that take adverse action against a consumer, such as by denying an application for credit, to provide consumers with certain disclosures if the action is based on information provided by a third party or a consumer reporting agency. The required FCRA disclosures include, for example, the name and address of the consumer reporting agency that supplied the information. For information obtained from a third party, the required disclosures include a statement that the consumer has the right to request the reason for the denial within sixty days. Creditors have the option of including the FCRA disclosures with the notice of action taken required under Regulation B; Appendix C to Regulation B provides model forms that combine the FCRA and ECOA disclosures.

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009) made extensive changes to the FCRA. Among other changes, the

amendments require that additional disclosures be given to consumers who are denied credit based on information from an affiliate or from a consumer reporting agency.

In July 1997, the Board published for public comment proposed amendments to several model forms in Regulation B (61 FR 37166). The Board is issuing a final rule amending the FCRA portion of Regulation B's model forms C-1 through C-5 and the general instructions for these forms to reflect the changes to the FCRA, which were effective September 30, 1997. The forms include language that may be used when credit is denied based on information obtained from a consumer reporting agency, from a third party other than a consumer reporting agency, or from an affiliate. To minimize the number of changes to the forms, and thereby ease compliance for creditors, the Board is changing the language only in the forms that is affected by the FCRA amendments.

## II. New model language

**Action based on information from a consumer reporting agency.** When adverse action is taken against a consumer based on information from a consumer reporting agency, section 615(a) of the FCRA now requires the following additional disclosures: a telephone number for the consumer reporting agency (toll-free if the agency compiles and maintains files on consumers nationwide); a statement that the consumer reporting agency did not make the decision to take the adverse action, and cannot state the reason why the adverse action was taken; the consumer's right to a free copy of the credit report from the consumer reporting agency, if the request is made within 60 days of receipt of the adverse action notice; and the consumer's right to dispute with the consumer reporting agency the accuracy or completeness of the credit report. These revisions have been incorporated into the model forms that may be used to comply with the FCRA when credit is denied, an account is terminated, or the terms of an account are unfavorably changed based on information from a consumer reporting agency.

**Action based on information from an affiliate.** The Board specifically solicited comment on which, if any, disclosure should be provided when adverse action is based on a consumer report obtained from an affiliate. The Board proposed that a creditor using information in a consumer report obtained from an affiliate must provide the same disclosures as would be provided if the report had come directly from the consumer reporting agency (disclosures required under 615(a) of the FCRA). Some commenters agreed with the Board's approach. These commenters believed that creditors should provide consumers the same disclosures under FCRA whether a consumer report is obtained from an affiliate or directly from a consumer reporting agency.

A number of commenters disagreed with the Board's approach. They believed that the Board's reading of the statute did not reflect congressional intent. These commenters argued that the amendments to the FCRA specifically require a different adverse action notice when a consumer report is obtained from an affiliate, if the affiliate has provided certain "opt-out" disclosures mentioned in the statute's amended definition of "consumer report."

After reviewing the comment letters and consulting with other federal financial regulatory agencies, the Board has determined that this issue merits further consideration and would more appropriately be addressed in an interpretation of the FCRA. The Board and the FTC anticipate that they will issue jointly for public comment a proposed interpretation of the FCRA that will clarify the disclosures that are to be provided when adverse action is based on a consumer report obtained from an affiliate. In the interim, institutions may provide either the 615(a) notice or the 615(b) notice.

**Third party notice.** In the case of information from an affiliate that is neither a consumer report nor the affiliate's own transactional experience, the Board proposed allowing creditors to use the current third-party notice, as amended. There is a difference, however, between the timing provisions of section 615(b)(1) (third-party notice) and of section 615(b)(2) (affiliate notice). Under the third-party provision, a consumer's request for the reasons for adverse action must be submitted to the creditor within 60 days after the consumer receives the notice. Under the affiliate provision, the request must be submitted within 60 days after the "transmittal of the notice."

The Board proposed that Regulation B's existing language for model form C-1 (used for information from a third party) also be used for information from an affiliate, and solicited comment on this approach. Commenters generally agreed with the Board that the proposed language--60 days from receipt of the notice--would ease compliance for creditors and provide a more understandable time frame for consumers. Accordingly, the Board has adopted this language in the final rule.

**Technical revisions.** Commenters suggested several technical modifications to the forms. Several commenters believed that the Board was requiring the use of certain terms, such as "toll-free." The Board did not intend this result. The use of the words "toll-free" before "telephone" in model forms C-1 through C-5 is not required. Although a form need not state "toll-free," a creditor must provide a toll-free number established by the consumer reporting agency if the agency compiles and maintains files on consumers on a nationwide basis.

In addition, to be consistent with the language in the FCRA, the phrase "affiliate's own experience" in the second paragraph in Appendix C is modified to read "affiliates's own transactions or experiences." Finally, the proposed statement concerning consumers' right under the FCRA to know the information in their credit files in Model Form C-5 (included in brackets) need not be provided. Commenters noted that the revised FCRA does not require this notice, and that the notice of the right to receive a free copy of a credit report adequately informs consumers that they may obtain the information in their credit report.

### III. Section-by-Section Analysis

In Appendix C, the second paragraph is amended by adding two sentences at the end of the paragraph explaining the FCRA disclosure requirements for information obtained from an affiliate. For model forms C-1 through C-5, the words “toll-free” are included in brackets to reflect that the telephone number for the consumer reporting agency must be toll-free if it compiles and maintains files on consumers on a nationwide basis. Creditors have the option of using the words “toll-free” before the reporting agency’s telephone number when a toll-free number is provided.

Model Form C-1 -- *Sample Notice of Action Taken and Statement of Reasons* is amended in Part II by adding at the end of the first paragraph the FCRA disclosures notifying the consumer of the right to request a copy of the consumer report, and the right to dispute the accuracy of the report with the reporting agency. In addition, in cases where a toll-free number is provided, creditors have the option of adding the words “toll-free” before the reporting agency’s telephone number. A reference to an affiliate is added in the second paragraph.

Model Form C-2 -- *Sample Notice of Action Taken and Statement of Reasons* is amended by adding to the first sentence in the second paragraph the words “toll-free” before the reporting agency’s telephone number. The dispute disclosure is inserted before the last sentence.

Model Form C-3 -- *Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)* is amended by adding to the fourth sentence in the fourth paragraph the words “toll-free” before the reporting agency’s telephone number. The dispute disclosure is added at the end of the paragraph.

Model Form C-4 -- *Sample Notice of Action Taken, Statement of Reasons and Counteroffer* is amended by adding to the first sentence in the third paragraph the words “toll-free” before the reporting agency’s telephone number. At the end of the paragraph the disclosure stating that the reporting agency played no part in the decision is added along with the dispute disclosure.

Model Form C-5 -- *Sample Disclosure of Right to Request Specific Reasons for Credit Denial* is amended by adding to the first sentence in the fourth paragraph the words “toll-free” before the reporting agency’s telephone number. At the end of the paragraph the disclosure that the reporting agency played no part in the decision has been added, along with the dispute disclosure. In addition, the disclosure that the consumer has a right under the FCRA to know the information in the credit file may be provided, but is not required.

#### **IV. Technical Change to Appendix A**

Appendix A--Federal Enforcement Agencies has been revised to reflect a new address for the Office of the Comptroller of the Currency (OCC). Under section 202.9(b) of Regulation B, a creditor's notice of adverse action is required to include the name and address of the federal agency that has enforcement responsibility for that creditor. The OCC is the appropriate agency for national banks and federal branches and federal agencies of foreign banks. This is a technical revision and is not related to the FCRA amendments.

## **V. Regulatory Flexibility Analysis**

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation B. The amendments, which provide model language to facilitate compliance, are not likely to have a significant impact on institutions' costs, including the costs to small institutions.

## **VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (5 CFR 1320 Appendix A.1).

The current estimated total annual burden for this information collection is 125,177 hours. This amount reflects the burden estimate of the Federal Reserve System for the 996 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

The revised collection of information requirements are found in Appendix C to 12 CFR Part 202. The burden per response for any of the five revised disclosures is estimated to be two and one-half minutes, on average. As the revisions are minor, this amount is not expected to change. The Board estimates that there is no annual cost burden over the annual hour burden associated with the revisions. The start-up cost for modifying state member banks' current templates to conform to the revised models is estimated to be approximately \$100,000 across all 996 state member banks. No comments specifically addressing the burden estimate were received.

This information collection is mandatory (15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a)) to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 USC 1600 *et. seq.*). The respondents/recordkeepers are for-profit financial institutions, including

small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 USC 522 (b)). The adverse action disclosure is confidential between the institution and the consumer involved. An agency may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation B is 7100-0201.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0201), Washington, DC 20503.

### **List of Subjects in 12 CFR Part 202**

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, 12 CFR part 202 is amended to read as follows:

### **PART 202 -- EQUAL CREDIT OPPORTUNITY (REGULATION B)**

1. The authority citation for part 202 continues to read as follows:

**Authority:** 15 U.S.C. 1691-1691f.

2. Appendix A is amended by revising the second paragraph as follows:

### **APPENDIX A TO PART 202--FEDERAL ENFORCEMENT AGENCIES**

\* \* \* \* \*

#### National banks, and federal branches and federal agencies of foreign banks

Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Avenue, Suite 3710, Houston, Texas 77010.

3. Appendix C is amended as follows:

a. By revising the second paragraph;

- b. By revising the first and second paragraphs in part II of Form C-1;
- c. By revising the second paragraph of Form C-2;
- d. By revising the fourth paragraph of Form C-3;
- e. By revising the third paragraph of Form C-4;
- f. By revising the fourth paragraph of Form C-5.

The revisions read as follows:

## **APPENDIX C TO PART 202--SAMPLE NOTIFICATION FORMS**

\* \* \* \* \*

Form C-1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C-2 through C-5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the 615(a) or 615(b) disclosure.

\* \* \* \* \*

**FORM C-1 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS**

Statement of Credit Denial, Termination, or Change

Date: \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_

Description of Account, Transaction, or Requested Credit:

\_\_\_\_\_

Description of Action Taken:

\_\_\_\_\_

\_\_\_\_\_

**PART I - PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.**

This section must be completed in all instances.

\_\_\_Credit application incomplete

\_\_\_Length of residence

\_\_\_Insufficient number of credit references provided

\_\_\_Temporary residence

\_\_\_Unable to verify residence

\_\_\_Unacceptable type of credit references provided

\_\_\_No credit file

\_\_\_Unable to verify credit references

Limited credit experience

\_\_\_Temporary or irregular employment

\_\_\_Poor credit performance with us

\_\_\_Unable to verify employment

\_\_\_Delinquent past or present credit obligations with others

\_\_\_Length of employment

\_\_\_Garnishment, attachment, foreclosure, repossession, collection action, or judgment

\_\_\_Income insufficient for amount of credit requested

\_\_\_Excessive obligations in relation to income

Bankruptcy

\_\_\_Unable to verify income

\_\_\_Value or type of collateral not sufficient

\_\_\_Other, specify: \_\_\_\_\_



**FORM C-1, page 2**

**PART II -DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE.**

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

— Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

[Toll-free] Telephone number: \_\_\_\_\_

— Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

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If you have any questions regarding this notice, you should contact:

Creditor's name: \_\_\_\_\_

Creditor's address: \_\_\_\_\_

Creditor's telephone number: \_\_\_\_\_

**NOTICE**

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).

FORM C-2-SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

- is below our minimum requirement.
- is insufficient to sustain payments on the amount of credit requested.
- could not be verified.

Your Employment:

- is not of sufficient length to qualify.
- could not be verified.

Your Credit History:

- of making payments on time was not satisfactory.
- could not be verified.

Your Application:

- lacks a sufficient number of credit references.
- lacks acceptable types of credit references.
- reveals that current obligations are excessive in relation to income.

Other: \_\_\_\_\_

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

NOTICE: 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).

FORM C-3 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS  
(CREDIT SCORING)

Date

Dear Applicant:

Thank you for your recent application for \_\_\_\_\_  
We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons why you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this letter, you should contact us at

Creditor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Sincerely,

NOTICE: 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 (with certain limited exceptions); 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).

FORM C-4 -- SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date

Dear Applicant:

Thank you for your application for \_\_\_\_\_. We are unable to offer you credit on the terms that you requested for the following reason(s):

\_\_\_\_\_

We can, however, offer you credit on the following terms: \_\_\_\_\_

\_\_\_\_\_

If this offer is acceptable to you, please notify us within [amount of time] at the following address: \_\_\_\_\_

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in Appendix A.]

Sincerely,

FORM C-5 -- SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant:

Thank you for applying to us for \_\_\_\_\_.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time.

If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name  
Address  
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name  
Address  
[Toll-free] Telephone number

Sincerely,

NOTICE

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).

\* \* \* \*

By order of the Board of Governors of the Federal Reserve System, March 30, 1998.

(Signed)  
William W. Wiles,  
Secretary of the Board

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