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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: Proposed rule.

SUMMARY: The Board is proposing to amend certain model forms in its Regulation B on Equal Credit Opportunity to reflect recent 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.

DATES: Comments must be received on or before August 15, 1997.

ADDRESSES: Comments should refer to Docket No. R-0978, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20051. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Senior Attorney, or Sheilah A. Goodman, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; 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 a consumer 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. 1681a), requires creditors that take adverse action against a consumer, such as denying an application for credit, to provide a consumer 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 disclosure includes 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 current 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. The disclosure requirements for information from a third party are not affected.

The Board is proposing changes to the FCRA portion of Regulation B's model forms C-1 through C-5 and to the general instructions for these forms. 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. The Board anticipates adopting final amended model forms prior to the effective date of the FRCA amendments (September 30, 1997) to ease compliance for creditors that choose to use the forms.

II. New Model Language

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.

When the adverse action is based on a consumer report obtained from an affiliate, the Board believes that the creditor must provide the same disclosures as would be required if the report had come directly from the consumer reporting agency. Interpreting the statute otherwise would produce a result that does not appear to be consistent with the purposes of the law, by

allowing creditors who could get consumer reports from affiliates rather than consumer reporting agencies to avoid giving consumers the FCRA disclosures and rights. This interpretation is reflected in the instructions to the model forms in Appendix C to Regulation B. The Board solicits comment on this approach.

Creditors are not required to provide the consumer with any FCRA disclosures when the adverse action is based on a creditor's own experience. The amendments expand that exemption so that a creditor does not have to provide any FCRA disclosures if the adverse action taken against the consumer is based on the transactional experience of the creditor's affiliate. In the case of information obtained from an affiliate (other than a credit report or the affiliate's own transactional experience), the amendments require the creditor to give the consumer a disclosure that is substantially similar to the one currently required for information obtained from third parties. The proposed modifications to the Appendix C instructions, and model forms C-1 through C-5 of Regulation B reflect these changes.

In the case of information from an affiliate that is neither a consumer report nor the affiliate's own transactional experience, the Board is proposing to allow creditors to use the current third party notice, as amended. See model form C-1. There is a difference, however, in the timing provisions of section 615(b)(1) (third-party notice) and section 615(b)(2) (affiliate notice). Under the third-party provision, the request must be submitted to the creditor within 60 days after the consumer learns of the action. Under the affiliate provision, the request must be submitted within 60 days after the "transmittal of the notice."

To ease compliance for creditors and provide a more understandable time frame for consumers, the Board proposes that Regulation B's existing model language for information from

a third party also be used for information from an affiliate. The language, which appears in model form C-1, states that the consumer has 60 days from receipt of the notice to submit a request to the creditor. The Board believes that relatively few transactions will require the affiliate notice; thus, it will be less burdensome for creditors to use the existing third-party notice rather than a separate notice for affiliate transactions. The Board solicits comment on whether the third-party notice is adequate or if model language for adverse action taken by affiliates would be desirable.

III. Section-by-Section Analysis

In Appendix C, the second paragraph would be amended by adding two sentences to the end of the paragraph explaining the FCRA disclosure requirements for information obtained from an affiliate.

Model Form C-1 -- Sample Notice of Action Taken and Statement of Reasons would be 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 (collectively, the dispute disclosure). In addition, the words "toll-free" would be put in brackets before the reporting agency's telephone number. A reference to an affiliate would be added in the second paragraph.

Model Form C-2 -- Sample Notice of Action Taken and Statement of Reasons would be amended by adding to the first sentence in the second paragraph the words "toll-free" in brackets before the reporting agency's telephone number. The dispute disclosure would be inserted before the last sentence.

Model Form C-3 -- Sample Notice of Action Taken and Statement of Reasons (Credit Scoring) would be amended by adding to the third sentence in the fourth paragraph the words

“toll-free” in brackets before the reporting agency’s telephone number. The dispute disclosure would be added at the end of the paragraph.

Model Form C-4 -- Sample Notice of Action Taken and Statement of Reasons, and Counteroffer would be amended by adding to the first sentence in the third paragraph the words “toll-free” in brackets 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 would be added along with the dispute disclosure.

Model Form C-5 -- Sample Disclosure of Right to Request Specific Reasons for Credit Denial would be amended by adding to the first sentence in the fourth paragraph the words “toll-free” in brackets 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, and the consumer has a right under the FCRA to know the information in the credit file, would be added along with the dispute disclosure.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-0978, and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

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 proposed amendments to Regulation B. The amendments, which provide model language to facilitate compliance, are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

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

The revised collection of information requirements in the proposed revised regulation are found in Appendix C to 12 CFR Part 202. The purpose of the disclosures proposed to be revised is to provide consumers whose application for credit has been denied with the reasons for that action and with information about their rights if information from a third party was used in making the decision. The respondents and/or recordkeepers are all for-profit financial institutions, including small businesses, that regularly extend credit or participate in the decision of whether or not to extend credit.

Under the Paperwork Reduction Act the Board accounts for the associated paperwork burden only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies that supervise those lenders. The estimated average frequency of response for Regulation B disclosures is 4,765 per state member bank each year and the current estimated burden ranges from fifteen seconds to five minutes per response. The current combined annual burden for all state member banks under Regulation B is

estimated to be 129,015 hours. The burden per response for any of the five disclosures proposed to be revised is estimated to be two and one-half minutes, on average. As the revisions are minor, this amount is not expected to change. There is estimated to be no annual cost burden over the annual hour burden. 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 1,005 state member banks.

Comments are invited on: a. whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection or disclosure of information associated with this regulation should be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0201), Washington, DC 20503.

The disclosures under Regulation B are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect

or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100-0201.

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.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 202 as set forth below:

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 C would be amended as follows:

- a. By revising the second paragraph;
- b. By revising Form C-1;
- c. By revising Form C-2;
- d. By revising Form C-3;
- e. By revising Form C-4;
- f. By revising Form C-5.

The revisions would read as follows:

APPENDIX C TO 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 section 615(b) disclosure (that a creditor obtained information from an outside source other than a consumer reporting agency that played a part in the credit decision) where appropriate. <In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate, other than a credit report, or other than the affiliate's own experience with the consumer. If a creditor denies an application based on information in a credit report obtained from an affiliate, the creditor must provide the section 615(a) disclosure, including the name, address and telephone number of the consumer reporting agency from which the report was originally obtained.=

* * * * *

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

___Unacceptable type of credit references provided

___Unable to verify residence

___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: _____

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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.

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 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 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).

* * * * *

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE; REGULATION B; DOCKET NO. R-0978; EQUAL CREDIT OPPORTUNITY].

By order of the Board of Governors of the Federal Reserve System, July 7, 1997.

/signed/

William W. Wiles,
Secretary of the Board.
BILLING CODE 6210-01-P