AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Dated at Washington, D.C. this 10th day of September, 1996.

Jerry L. Langley,

Executive Secretary.

Concurred in this 23d day of September, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–25009 Filed 9–27–96; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0910]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is revising its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and substitutes for individual staff interpretations. The revisions to the commentary provide guidance on issues that the Board has been asked to clarify, including credit scoring and spousal signature rules.

DATES: *Effective date.* September 30, 1996.

Compliance date. Compliance is optional until October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Sheilah A. Goodman, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of the Telecommunications Device for the Deaf, contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202). The Board also has an official staff commentary (12 CFR Part 202 (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in applying Regulation B to various credit transactions, and is updated periodically to address significant questions that arise.

II. Summary of Revisions to the Commentary

In December 1995 (60 FR 67097, December 28, 1995), the Board proposed amendments to the staff commentary to Regulation B. The Board received approximately 70 comments on the proposal. The majority of the comments were from financial institutions and their attorneys. Overall, commenters generally favored the proposed amendments, although they raised a number of technical issues. Opposition to the proposal mostly addressed the comment pertaining to the use of age scorecards. After reviewing the comment letters, and upon further analysis, the Board has modified its interpretation regarding scorecards and some other portions of the update, as discussed below.

Section 202.2—Definitions

2(p) Empirically Derived and Other Credit Scoring Systems

Comment 2(p)–2, as proposed, clarified that the performance of a credit scoring system should be monitored to ensure its predictive ability. Commenters were concerned that, by use of the term ''monitor,'' the proposal required a continuous analysis, which would be costly and disruptive to their operations. The comment, as adopted, provides that creditors must periodically review their systems to ensure predictive ability, but are not required to review their systems on a continuous basis. The Board believes the required frequency depends upon a variety of factors such as changes in the local economy, and shifts in the lender's customer base. However, creditors must review their systems when evidence suggests that the systems are no longer predicting risk as intended.

Commenters also asked the Board to clarify the responsibility for revalidation if the creditor did not develop the system. A creditor is responsible for any system that it uses, including its revalidation, but may use a third party to perform the revalidation. In accordance with section 202.2(p)(2), if the system is developed using borrowed credit experience, the initial validation and any subsequent revalidation must be based on the creditor's own data when it becomes available.

Section 202.5—Rules Concerning Taking of Applications

5(e) Written Applications

Comment 5(e)–3 is adopted as proposed.

Section 202.6—Rules Concerning Evaluation of Applications

6(b) Specific Rules Concerning Use of Information

6(b)(2)

Comment 6(b)(2)–2 is revised to address the use of age in a credit scoring system. Under the ECOA and Regulation B, if a creditor chooses to consider age by assigning a value to an applicant's age, the age of elderly applicants must not be assigned a negative value. Thus, a credit scoring system must ensure that the age of applicants 62 or older is assigned a factor, value, or weight that is at least as favorable as the factor, value, or weight assigned to the age of any other class of applicants.

Proposed Commentary

In December 1995, the Board proposed adding a comment which specified that, in an age-based scorecard system, creditors could satisfy the requirement of not assigning a negative factor or value by scoring an elderly applicant under the applicable scorecard and, if the applicant did not qualify, by rescoring the applicant under scorecards for other age-based groups. The proposal was consistent with informal opinions given by the Board's staff regarding the need for creditors using age scorecards to comply with the ''negative factor or value'' limitation established by the ECOA.

Commenters raised numerous questions about the Board's proposal. For example, some commenters noted that the regulation addresses the treatment of the elderly as a class in a credit scoring system, rather than the treatment of a single elderly applicant who is declined under the applicable scorecard but might be approved when rescored under a card developed for another age class. Other commenters expressed concern that rescoring an elderly applicant on models that were not developed using data for elderly persons would invalidate an otherwise ''empirically derived, demonstrably and statistically sound'' credit scoring system. Some commenters noted that implementing the proposed requirement would be costly because of the systems and procedural changes that would be required, and that increased costs would not be balanced by commensurate benefits to the elderly. Numerous commenters believed the proposed revisions would discourage the use of age-based systems, because creditors would have to choose between taking additional risk on elderly applicants or qualifying fewer younger applicants. In addition, commenters stated that the proposed rescoring would likely result in few additional elderly applicants receiving credit. Upon further analysis, the Board has modified the final interpretation. The modification reflects the Board's interpretation that the ECOA and Regulation B require creditors that score age in a credit scoring system to treat elderly applicants as a class as favorably as all other classes of applicants on the basis of age.

Direct Scoring of Age

If a creditor directly scores age by assigning points to an applicant's age category, elderly applicants must receive at least the same number of points as the most favored class of nonelderly applicants. For example, if a system assigns 10 points for ages 18–20, 20 points for ages 21–27, 15 points for ages 28–39, 18 points for ages 40 to 51, and 22 points for ages 52 to 61, then applicants who are 62 and older must receive at least 22 points.

The Board believes that similarly, if a system assigns points to some other variable based on the applicant's age, applicants who are 62 and older must receive at least the same number of points as the most favored class of nonelderly applicants. For example, a system could score an applicant's type of residence based on the age of the applicant and assign points to applicants who rent their dwellings (such as 20 points for ages 18–28, 10 points for ages 29–45, and 8 points for ages 46–61). In such a system, elderly applicants who rent their dwellings must receive at least the same number of points as the most favored age class; in this example, applicants 62 and older who rent their dwellings must receive at least 20 points. This rule applies whether a creditor uses a single scorecard or more than one scorecard.

Use of Age-split Scorecards

Commenters raised questions about, and the Board has considered, the applicability of Regulation B to two different types of age-split scorecard systems. Specifically, the Board has considered whether a creditor could segment the applicant population and develop one card for a narrow range of applicants under a certain age (sometimes called a ''youth'' card) and a second card for the general population. Applicants on the youth card—typically in their late twenties or younger—would be evaluated using attributes that are predictive for that age class, while applicants on the second card would be evaluated using attributes predictive for the general population. The Board believes that when a system uses a standard card for the general population with a wide age range that includes the elderly, the system does not score age. Accordingly, in this type of system, there is no issue of assigning a negative factor or value to the age of elderly applicants.

On the other hand, the Board has considered whether a creditor could segment the applicant population using scorecards with narrower age ranges. Such scorecards assign value based on characteristics predictive for that narrow age class. Unlike the use of a standard card for the general population with a wide range that includes the elderly, the Board believes that inclusion of the elderly in scorecards with narrower age ranges does score age. Since the elderly would not be evaluated using attributes for the general population, creditors may not assign a negative factor or value to the age of elderly applicants.

Negative Factor or Value

Commenters suggested alternative ways that a creditor could satisfy the ECOA's requirement that a negative factor or value not be assigned to the age of elderly applicants. For example, it was suggested that creditors could be required to establish, at the time scorecards are developed, that elderly applicants as a class would not have been treated more favorably if scored using cards developed for other age categories. While the final comment does not address this issue, the Board believes one approach would be to demonstrate that no more than one-half of elderly applicants rejected under the scorecard including their age group would have been approved if scored under another card in the system.

Comment 6(b)(2)–4 addresses the use of age in a reverse mortgage transaction. The comment is adopted generally as proposed. The comment now includes a reference to default, to parallel the definition of a reverse mortgage in Regulation Z (Truth in Lending), 12 CFR 226. The comment also clarifies that a reverse mortgage program that requires applicants to be at least 62 years of age is permissible under § 202.6(b)(2)(iv), which allows creditors to favor the elderly by offering products to applicants 62 and older that are not available to other customers.

The comment also clarifies that using age in a reverse mortgage transaction to determine factors such as the amount of the credit, the monthly payment that the borrower will receive, or the estimated repayment date is permissible under § 202.6(b)(2)(iii) as long as the determination is made on a case-by-case basis.

6(b)(6)

Proposed comment 6(b)(6)–1 is withdrawn. The comment would have specified that if a creditor considers credit history, it must consider information presented by the applicant that is not included in the credit report, if it is of the type the creditor normally considers on a credit report. Also, the comment would have specified that when one spouse is applying for individual credit, the creditor must consider information presented by the applicant that would tend to show that a credit history appearing in the names of both spouses is not reflective of the applicant's individual creditworthiness.

Some commenters welcomed the additional guidance; others believed that the existing comment was sufficiently clear, and that the proposal raised a number of issues without resolving them. Specifically, many commenters voiced concern about how the comment would apply to creditors that rely exclusively on credit scoring to make credit decisions. The Board is withdrawing the comment because it believes the issues raised by the commenters warrant further study, and that section 202.6(b)(6) and the existing commentary provide adequate guidance at this time.

Section 202.7—Rules Concerning Extensions of Credit

7(d) Signature of Spouse or Other Person

7(d)(2)

Comment 7(d)(2)–1 addresses unsecured credit and the treatment of joint property. The comment clarifies that when determining the value of an applicant's interest in jointly owned property, a creditor must look to the actual form of ownership of the property prior to or at consummation. Several commenters asked whether in making such determinations, creditors may consider the possibility of subsequent changes to property ownership. The comment makes clear that the possibility of a subsequent change in the form of ownership may not be considered. For example, when a married applicant applies for individual credit, and qualifies based on separate property, a creditor may not consider the possibility that the separate property may later be transferred into joint ownership. Similarly, in valuing a married applicant's interest in property, a creditor may not consider the possibility that the couple may one day divorce. Therefore, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

The proposed revisions to comment 7(d)(2)–1(ii) included examples of instruments that creditors might ask a joint owner of property to sign to support the applicant's request for unsecured credit—mentioning, among other things, a security agreement, mortgage, and deed of trust. Because these examples are appropriate only for secured credit, they have been deleted. The comment retains the limitation that where, under state law, the creditor may use other instruments to reach joint property, a creditor may not routinely ask nonapplicants to sign any instrument requiring that they forfeit their interest in jointly owned property as a condition of the credit extension. Some commenters expressed concern that creditors will be prevented from reaching joint property in the event of an applicant's death or default. The comment is not intended to prevent access to jointly owned property in these circumstances, but to clarify that if state law gives a creditor access to the property by some other means—for example, through a limited guarantee—requiring nonapplicants to forfeit their interest in jointly owned property is prohibited by the regulation.

7(d)(6)

Comment 7(d)(6)–1 clarifies that a creditor may require that partners, officers or directors personally guarantee an extension of credit to a business, even if the business is creditworthy, as long as a guarantee is not required on a prohibited basis.

Commenters asked the Board to clarify that shareholders may be required to guarantee an extension of credit to a closely held corporation, even if creditworthy, given that in most instances these shareholders have interests that are analogous to the interests of partners, officers, or directors of other businesses. The comment has been revised accordingly.

Comment 7(d)(6)–2 is generally adopted as proposed. A cross-reference to section 202.7(d)(2) is added.

Section 202.13—Information for Monitoring Purposes

13(a) Information to be Requested

Comment 13(a)–6 clarifies that, except as provided, monitoring information must be collected by any creditor that satisfies and replaces the existing obligation.

13(b) Obtaining of Information

Comments 13(b)–4 and 13(b)–5 are generally adopted as proposed, including adding two new paragraphs and redesignating original paragraphs 4 and 5.

List of Subjects in 12 CFR Part 202

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

For the reasons set forth in the preamble, the Board amends 12 CFR part 202 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. In Supplement I to Part 202, under *Section 202.2 Definitions*, under *2(p) Empirically derived and other credit scoring systems.*, four new sentences are added at the end of paragraph 2 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

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Section 202.2 Definitions

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2(p) Empirically derived and other credit scoring systems.

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2. * * * To ensure that predictive ability is being maintained, creditors must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

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3. In Supplement I to Part 202, under *Section 202.5 Rules Concerning Taking of Applications,* under 5(e) *Written applications.*, paragraph 3. is revised to read as follows:

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Section 202.5 Rules Concerning Taking of Applications

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5(e) Written applications.

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3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to section 202.13(b), *Applications through electronic media* and *Applications through video.*)

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4. In Supplement I to Part 202, under *Section 202.6 Rules Concerning Evaluation of Applications*, under paragraph 6(b)(2), paragraph 2. is revised; paragraphs 4. and 5. are redesignated as paragraphs 5. and 6., respectively; and new paragraph 4. is added to read as follows:

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Section 202.6—Rules Concerning Evaluation of Applications

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Paragraph 6(b)(2)

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2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in section 202.2(p), with one limitation: applicants 62 years or older must be treated at least as favorably as applicants who are under 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* A creditor may segment the population into scorecards based on the age of an applicant. In such a system, one card covers a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card covers all other applicants who are evaluated under the attributes predictive for that broad class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

* * * * *

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is

permissible under section 202.6(b)(2)(iv). In addition, under section 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

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5. In Supplement I to Part 202, *Section 202.7—Rules Concerning Extensions of Credit,* is amended as follows:

a. Under Paragraph 7(d)(2), paragraph 1. is revised; and

b. Paragraph 7(d)(6) is revised.

The revisions read as follows:

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Section 202.7 Rules Concerning Extensions of Credit

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Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the form of ownership prior to or at consummation, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to provide additional support for the extension of credit. For example—

A. Requesting an additional party (see § 202.7(d)(5));

B. Offering to grant the applicant's request on a secured basis (see § 202.7(d)(4)); or

C. Asking for the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (e.g., a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

* * * * *

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring a signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of a spouse in appropriate circumstances in accordance with § 202.7(d)(2).

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6. In Supplement I to Part 202, *Section 202.13—Information for Monitoring purposes,* is amended as follows:

a. Under *13(a) Information to be requested.,* paragraph 6. is revised; and

b. Under *13(b) Obtaining of information.,* paragraphs 4. and 5. are redesignated as paragraphs 6. and 7., respectively, and new paragraphs 4. and 5. are added.

The revisions and additions are to read as follows:

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Section 202.13 Information for Monitoring purposes

13(a) Information to be requested.

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6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

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13(b) Obtaining of information.

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4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, the Internet or a facsimile) without video capability that allows the creditor to see the applicant, the creditor may treat the application as if it were received by mail or telephone.

5. *Applications through video.* If a creditor takes an application through a medium that allows the creditor to see the applicant, the creditor treats the application as taken in person and must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

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By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–24917 Filed 9–27–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 566, 571, 590

[No. 96–87]

RIN 1550–AA94

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today issuing a final rule updating, reorganizing, and substantially streamlining its lending and investment regulations and policy statements. These amendments are being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires OTS and the other federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded, and duplicative requirements.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: For general information contact: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133; or Deborah Dakin, Assistant Chief Counsel, (202)