Summary Of Major Changes To Regulation B And Official Staff Interpretations

The Federal Reserve Board's (Board's) amended Regulation B and revised Official Staff Interpretations to the rule were published in the *Federal Register* on March 18, 2003 (68 FR 13143, Mar. 18, 2003). The amendments were effective as of April 15, 2003, but in order to allow time for necessary operational changes, the mandatory compliance date is April 15, 2004.

1) Adverse Action Notices: Limited Exception for Adverse Action on a Class of Accounts.

The Equal Credit Opportunity Act and Regulation B generally require creditors to give consumers reasons for an adverse credit decision. Section 202.2(c)(1)(ii) previously provided that the definition of "adverse action" included a creditor's 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. The Board has amended section 202.2(c)(1)(ii) to clarify that this exception is intended to cover the limited circumstance in which the creditor's action is not based on the individual credit characteristics of the affected accountholders. (See page 13145.) Section 202.2(c)(1)(ii) replaces the phrase "a substantial portion" with the phrase "substantially all." A corresponding change has been made to section 202.2(c)(2)(iii), which provides for when a refusal or failure to authorize an account transaction at a point of sale or loan is not considered to be an adverse action.

2) Application: Covers Certain Preapproval Requests.

The Board has amended its official staff commentary to the term "application," which is defined in section 202.2(f). It clarifies that certain preapprovals are covered by the definition of "application." (See comment 2(f)-5.) This is consistent with recent changes to the Board's Regulation C, which implements the Home Mortgage Disclosure Act. (See page 13145.)

The Board has clarified its commentary regarding when an inquiry about a preapproval becomes an application. (See comments 2(f)-3 and 9-5.) The commentary to section 202.9(c)(1) has been revised to include an exception to the requirement that a creditor provide a notice of incompleteness for preapprovals that constitute an application. (See comment 9(c)(1)-1.)

3) "Creditor": Definition Expanded.

The Board has amended the definition of "creditor" in section 202.2(l). The definition previously meant "a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit." The Board has replaced the phrase "regularly participates in the decision of whether or not to extend credit" with the phrase "regularly participates in a credit decision, including the setting of the terms of the credit." The Board has clarified that the definition of creditor includes those who

make the decision to deny or extend credit, as well as those who negotiate and set the terms of the credit with the consumer. (See page 13145.) The commentary to this section has been amended to clarify that a potential assignee who establishes underwriting guidelines for its purchases, but does not influence individual credit decisions, is not a creditor.

4) General Rules.

The Board has amended section 202.4 to consolidate general rules that apply under the regulation, some of which were in other sections. (See page 13146.) These general rules include the prohibition against discouragement and the requirement for written applications in certain mortgage transactions. A new section 202.4(d) has been added, which generally requires that written notices and other disclosures be provided in a clear and conspicuous manner and in a form an applicant may retain. This change is consistent with language found in other Board rules on consumer protection.

5) Narrow Exception to General Prohibition on the Collection of Information on Applicant Characteristics in Connection with Nonmortgage Credit.

The Board has amended section 202.5, which contains the general prohibition against inquiring about, or noting, an applicant's sex, race, color, religion or national origin in nonmortgage credit transactions. The revised regulation adopts a narrow exception to this prohibition. This information may now be collected *only for the purpose of conducting a self-test that meets the requirements of section 202.15*. (See page 13148.) A new model form C-10 has been added to Appendix C to the rule to provide the disclosure requirements for creditors that request applicants' race, ethnicity, and other such characteristics in connection with a self-test.

6) Guidance on Self-Testing.

Additional guidance on self-testing for compliance with ECOA and Regulation B has been added to section 202.15 and the accompanying sections of the official staff commentary. Additional explanatory information is provided in the preamble to the final rule. (See pages 13149 through 13150.)

7) Evaluation of Joint Applicants.

A new section 202.6(b)(8) has been added to make it clear that a creditor may not evaluate married and unmarried applicants by different standards, except as otherwise permitted or required by law. (See page 13150.)

8) Evidence of Joint Application.

New language has been added to section 202.7(d)(1) to emphasize that the submission of a joint financial statement or other evidence of jointly held assets may not be deemed

by a creditor as an application for joint credit. (See page 13150.)

Comment 7(d)(1) - 3 of the official staff commentary has been revised to clarify that the creditor must document, at the time of application, the intention of the applicants to apply for joint credit. The comment provides guidance on the development of such documentation. The first four Model Application Forms in Appendix B to the regulation have been revised in accordance with this guidance.

9) Specific Reasons for Adverse Action Notices for Third Parties.

Section 202.9(b)(2) has been amended to clarify that whether the creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. (See page 13151.)

10) Record Retention for Prescreened Credit Applications.

A new section 202.12(b)(7) has been adopted to require the retention of certain information used in prescreened credit solicitations defined as "firm offers of credit" under the Fair Credit Reporting Act. In accordance with this new rule, creditors must retain for 25 months (12 months for business credit) information about the criteria used to select potential customers, the text of any solicitation, and any correspondence related to complaints about the solicitation. (See page 13152.)

11) Racial/Ethnic Categories Changed to Conform to OMB Standards.

Technical amendments have been made to section 202.13 to conform the categories of race and ethnicity to a 1997 directive issued by the U.S. Office of Management and Budget and recent amendments to the Board's Regulation C. (See page 13153.)

The revised regulation and staff interpretations may be accessed at www.fdic.gov/regulations/laws/rules/6500-100.html.