the states or metropolitan areas in which the bank maintains its main office or branches; or

(3) The OCC determines, in published guidance, that the investment is inappropriate for self-certification.

§ 24.7 Examination, records, and remedial action.

(a) *Examination.* National bank investments under this part are subject to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a federal deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: December 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–31021 Filed 12–27–95; 8:45 am]

BILLING CODE 4810–33–P

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: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to 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 proposed revisions to the commentary provide guidance on issues that the Board has been asked to clarify, including credit scoring and spousal signature rules.

DATES: Comments must be received on or before February 28, 1996.

ADDRESSES: Comments should refer to Docket No. R–0910, 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, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

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. Explanation of Proposed Commentary

Section 202.2—Definitions

2(p) Empirically Derived and Other Credit Scoring Systems

Comment 2(p)–2 would be revised to provide guidance on revalidation requirements for credit scoring systems.

Section 202.5—Rules Concerning Taking of Applications

5(e) Written Applications

Comment 5(e)–3 would be revised to cross-reference the proposed comments to section 202.13(b), which address applications submitted through an electronic medium.

Section 202.6—Rules Concerning Evaluation of Applications

6(b) Specific Rules Concerning Use of Information

6(b)(2)

Comment 6(b)(2)–2 would be revised to address the use of age in credit scoring systems that use scorecards for different age groups based on characteristics that are predictive for each group. Each scorecard considers the correlation among the predictive variables (representing characteristics such as income, length of residence, and credit history) for the age group. Each predictive variable is assigned the appropriate weight given the impact of the other predictive variables in that age group, so that comparable scores for each group reflect the same level of risk.

Under the ECOA and Regulation B, if a creditor considers age—whether by directly assigning a value to age or by some other means such as establishing scorecards for different age groups—the age of an elderly applicant must not be assigned a negative value. The Board believes that, to ensure that the treatment accorded applicants age 62 or older complies with the law, elderly applicants who do not qualify for credit under the factors assigned to the scorecard for their age group must be rescored under the factors assigned to the scorecards for all other age groups in the system. Comment 6(b)(2)–2 would be revised to incorporate this concept.

Proposed comment 6(b)(2)–4 addresses the use of age in a reverse mortgage transaction. A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and the repayment of these amounts does not become due until the borrower dies, moves permanently from the home, or transfers title to the home. The proposed comment clarifies that using age, as a proxy for life expectancy, in a reverse mortgage transaction to determine the line of credit or monthly payment amount that a borrower will receive does not violate the regulation.

6(b)(6)

Comment 6(b)(6)–1 would be revised to clarify 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 the type the creditor normally considers on a credit report. The comment also clarifies 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 name of both spouses is not reflective of the applicant's individual creditworthiness.

Section 202.7—Rules Concerning Extensions of Credit

7(d) Signature of Spouse or Other Person

7(d)(2)

Proposed comment 7(d)(2)–1 clarifies that in determining the value of an applicant's interest in property, a creditor must look to the actual form of ownership of the property prior to or at consummation.

Regulation B requires that if an applicant is not individually creditworthy and the creditor seeks the signature of a co-owner of property relied upon to establish creditworthiness, the signature may be required only on the documents that are reasonably necessary, under state law, to make the property available in the event of death or default of the applicant. In some states, a signature on the debt instrument itself may be necessary. In other states, a creditor may be able to protect its interest with a signature on an instrument that creates a limited obligation—a document allowing the creditor to reach the nonapplicant signatory's interest only in the property at issue in the event of default. Examples of such instruments include a security agreement, mortgage, deed of trust, or limited guarantee. The creditor could also consider requesting a signature on a document sometimes referred to as a status statement. This document ascertains the character of property that will be used in the credit decision; affirms the purpose of the loan (if a business purpose, affirms or disclaims any interest or participation in the business); and attests to or disclaims the non-applicant's desire to be an applicant or guarantor of the requested credit.

The Board proposes to revise comment 7(d)(2)–1 to clarify that where an individual applicant jointly owns property in a form and amount sufficient to establish creditworthiness, a creditor may not require the nonapplicant joint owner of the property to execute any instrument that forfeits or conveys that person's interest in the property to the applicant or other owners as a condition of credit. For example, a creditor could not require a non-applicant spouse to quitclaim their interest in jointly owned property relied upon to establish creditworthiness if the applicant spouse's interest in the property, and other resources, are sufficient to support the credit requested.

7(d)(6)

Proposed comment 7(d)(6)–1 clarifies that a creditor may require that the partners, officers or directors of a creditworthy business personally guarantee an extension of credit to the business, as long as a guarantee is not required on a prohibited basis—e.g., only those businesses owned by women or minorities.

Comment 7(d)(6)–2 would be revised to clarify that when the circumstances of a business loan require the guarantee of a spouse with no interest in the business, the creditor could ask the disinterested spouse to sign a limited guarantee.

Section 202.13—Information for Monitoring Purposes

13(a) Information To Be Requested

Comment 13(a)–6 would be revised to clarify that a refinancing involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. The proposed clarification is consistent with the definition of ''refinancing'' in other Board regulations, such as Regulation C (Home Mortgage Disclosure), 12 CFR 203, and Regulation Z (Truth in Lending), 12 CFR 226.

13(b) Obtaining of Information

Proposed comment 13(b)–4 addresses the collection of monitoring information for applications submitted through an electronic medium that does not permit the creditor to view the applicant. In these instances, the creditor should treat the application as if it were accepted by mail or telephone.

Proposed comment 13(b)–5 addresses the collection of monitoring information for applications submitted through an interactive video process. Regulation B requires a creditor to ask home mortgage loan applicants for monitoring information and, if the applicant chooses not to provide the information, requires the creditor to note the information on the application on the basis of visual observation or surname. There is an exception for telephone or mail applications. Where the creditor has the capability to view the applicant during the process, however, such as with an interactive video, the Board believes the application is like an in-person application. Thus, a creditor must ask the applicant for monitoring information and enter the information provided on the application form. If the applicant does not provide the information, the creditor must note the information to the extent the video display makes it possible to do so.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0910. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5'' or 5.25'' size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

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.

Certain conventions have been used to highlight the proposed changes to the staff commentary. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

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. In Supplement I to Part 202, under *Section 202.2 Definitions,* under *2(p) Empirically derived and other credit scoring systems.,* three new sentences would be added at the end of paragraph 2 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

* * * * *

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

* * * * *

2. * * * fl To ensure that predictive ability is being maintained, the performance of the system should be monitored. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval. If these data indicate that the system is no longer identifying risk as predicted, the system must

be revalidated and the variables for each score interval adjusted accordingly. fi

* * * * *

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

* * * * *

Section 202.5 Rules Concerning Taking of Applications

* * * * *

5(e) Written applications.

* * * * *

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) fl , *Applications through electronic media and Applications through interactive video* fi .)

* * * * *

4. In Supplement I to Part 202, *Section 202.6 Rules Concerning Evaluation of Applications* would be amended as follows:

a. Under Paragraph 6(b)(2), paragraph 2. would be revised; paragraphs 4. and 5. would be redesignated as paragraphs 5. and 6., respectively; and new paragraph 4. would be added; and

b. Paragraph 6(b)(6) would be revised.

The additions and revisions would read as follows:

* * * * *

Section 202.6—Rules Concerning Evaluation of Applications

* * * * *

Paragraph 6(b)(2)

* * * * *

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 § 202.2(p), with one limitation: an applicant who is 62 years or older must be treated at least as favorably as anyone who is under 62. fl For example, an applicant who is 62 years or older may not be denied credit if an applicant under age 62 with the same characteristics would be approved for credit under the scoring system. Thus, a creditor using an age-based credit scoring system must ensure that elderly applicants who do not qualify under the factors assigned to elderly age groups are rescored using the factors or weights assigned to all other age groups in the system. fi

* * * * *

fl 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 until the expiration of a term or when the borrower dies, moves permanently from the home, or transfers title to the home. 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. Age may be directly taken into account in setting the terms of a reverse mortgage without violating the regulation B. fi

* * * * *

Paragraph 6(b)(6)

1. [*Types of credit references.*]

fl *Evaluating credit history.* fi A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

fl i. At the applicant's request, a creditor must consider credit information of the same type that the creditor would consider if reported through a credit bureau. For example, if a creditor normally considers car loan payments, and the consumer presents credible information (such as cancelled checks or money-order receipts) about payment history on a car loan from a finance company that did not report to a credit bureau, the creditor must consider this information in its evaluation of credit history.

ii. At the applicant's request, a creditor must consider information that a credit history reported in both spouses' names does not accurately reflect the applicant's ability or willingness to repay. For example, assume an applicant applies for individual credit and the credit bureau report shows late payments on a mortgage obligation held jointly with a former spouse. If the applicant can demonstrate that the former spouse alone was responsible for the late payments (such as by a transfer of title to the former spouse and a document from the mortgage creditor that released the applicant from liability for the debt) the creditor must disregard both the mortgage debt and the late payments in determining the applicant's creditworthiness. fi

* * * * *

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

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

b. Paragraph 7(d)(6) would be revised.

The revisions would read as follows:

* * * * *

Section 202.7—Rules Concerning Extensions of Credit

* * * * *

Paragraph 7(d)(2)

1. *Jointly owned property.* fl a. *Valuation of applicant's interest.* fi In determining the value of [the] fl an fi 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 and the cost of such action. fl This determination must be based on the actual form of ownership of the property prior to or at consummation, and not on the possibility of a subsequent change in the form of ownership. For example, in determining whether a married applicant's interest in property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not obtain the signature of the nonapplicant spouse based on the possibility that the applicant's separately-held property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not routinely require a nonapplicant joint owner to execute any document (such as a quitclaim deed) that would change the nonapplicant joint owner's interest in property offered by the applicant to support the extension of credit.

b. *Other options to support credit.* fi If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit[, f] fl . F fi or example[—] fl :

i. fi [r] fl R fi equiring an additional party under § 202.7(d)(5) fl ;

ii. fi [o] fl O fi ffering to grant the applicant's request on a secured credit basis fl ; or

iii. fi [a] fl A fi sking for the signature of the co-owner of the property on an instrument that ensures access to the property but does not impose personal liability unless necessary under state law fl (which could include, for example, a security agreement, deed of trust, mortgage, limited guarantee, quitclaim deed, or status statement from the nonapplicant owner). fi

* * * * *

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. fl A creditor may require the personal guarantee of the partners, directors, or officers of a business even if the business itself is creditworthy. The guarantee must be based on the guarantor's relationship with the business, however, and not on a prohibited basis.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring the 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—for example, if the property relied upon to meet the creditor's standards is held jointly. In such a case, the creditor could ask the spouse to sign an instrument that provides for liability to the extent of the spouse's interest in the property relied upon to support the credit (such as a limited guarantee). fi

* * * * *

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

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

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

The revisions and additions would read as follows:

* * * * *

Section 202.13 Information for Monitoring purposes

13(a) Information to be requested.

* * * * *

6. *Refinancings.* fl A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. fi A creditor that receives an application to [change the terms and conditions of] fl refinance fi 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.

* * * * *

13(b) Obtaining of information.

* * * * *

fl 4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, via the Internet or by facsimile) without any face-to-face interactive video capability, the creditor should treat the application as if it were accepted by mail or telephone. fi

fl 5. *Applications through interactive video.* If a creditor takes an application through an interactive application process with video capabilities, and the creditor can see the applicant, the creditor should treat these applications as taken in person and collect the monitoring information. fi

* * * * *

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31363 Filed 12–27–95; 8:45 am]

BILLING CODE 6210–01–P

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12 CFR Part 211

[Regulation K; Docket No. R–0911]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to amend its Regulation K regarding interstate banking operations of foreign banking organizations. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) removed geographic restrictions on interstate banking by foreign banks effective September 29, 1995, and requires certain foreign banks without U.S. deposit-taking offices to select a home state for the first time. The proposed amendments to Regulation K would require these foreign banks to select a home state by March 31, 1996, and would immediately remove outdated restrictions on certain mergers by U.S. bank subsidiaries of foreign banks outside the home state of the foreign bank. Obsolete and superseded provisions of Regulation K concerning home state selection would be deleted. The Board is also requesting comment on other aspects of the Interstate Act as it applies to foreign banks.

DATES: Comments must be received by February 5, 1996.

ADDRESSES: Comments should refer to Docket No. R–0911 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 D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's rules regarding availability of information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Ann E. Misback, Managing Senior Counsel (202/452–3788), Douglas M. Ely, Senior Attorney (202/452–5289), Legal Division; Michael G. Martinson, Assistant Director (202/452–3640), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of Telecommunication Device for the Deaf [TDD] *only,* please contact Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Interstate Act amended section 5 of the International Banking Act of 1978 (IBA), which governs interstate banking and branching operations of foreign banks. The Interstate Act also amended the Bank Holding Company Act of 1956 (BHC Act), the Federal Deposit Insurance Act and several other statutes regarding interstate banking operations of bank holding companies, national banks and state banks. In light of these amendments, the Board proposes to amend the provisions of its Regulation K regarding interstate banking operations of foreign banking organizations (12 CFR 211.22) as discussed below.

Determination of Home State

Section 104(d) of the Interstate Act modifies the existing definition of a foreign bank's home state under section 5(c) of the IBA. Section 104(d) retains the provision of the IBA stating that the home state of a foreign bank that has any combination of branches, agencies, subsidiary commercial lending companies and subsidiary banks (U.S. banking operations) in more than one state is whichever of these states is selected by the foreign bank, or by the Board if the foreign bank fails to choose. Section 104(d) also provides, for the first time, that if a foreign bank has U.S. banking operations, including agencies or subsidiary commercial lending companies, in one state only, that state is the foreign bank's home state for purposes of interstate branching. The Board proposes the following amendments to 12 CFR 211.22(a) in order to reflect and implement these changes to the definition of a foreign bank's home state.

Abolition of Distinction Between Deposit-Taking Offices and Nondeposit-Taking Offices

Prior to the Interstate Act, the Board interpreted the IBA to require a foreign bank to have a home state only if the foreign bank had deposit-taking offices, *i.e.,* branches or subsidiary banks. 44 FR 62903 (November 1, 1979). This interpretation is set forth in § 211.22(a)(2) of Regulation K. Section 104(d) of the Interstate Act superseded this interpretation by providing for the first time that foreign banks with only agencies or subsidiary commercial lending companies have a home state. Accordingly, the Board proposes that § 211.22(a)(2) be deleted.

The Board also proposes that § 211.22(a)(5) be deleted. This provision follows the Board's interpretation of the IBA in § 211.22(a)(2) by requiring foreign banks to select as their home state the state where their first U.S. deposit-taking office is located. Since the Interstate Act has superseded that interpretation, § 211.22(a)(5) is proposed to be removed.