



# Compliance Corner

FEDERAL RESERVE BANK OF PHILADELPHIA

Prepared for institutions supervised by the Consumer Compliance & CRA Unit

## A Reminder: April 2003 Amendments to Regulation B Are Now Mandatory

by Carletta M. Longo, Senior Examiner

As part of its policy to periodically review and update its regulations, the Federal Reserve Board (Board) published a final rule amending Regulation B, which implements the *Equal Credit Opportunity Act* (ECOA). The final rule, which took effect on April 15, 2003, became mandatory on April 15, 2004. This article discusses the more substantive revisions to the regulation.<sup>1</sup>

### Overall Purpose of ECOA

When enacted in 1974, ECOA prohibited discrimination on the basis of marital status and sex. Later, in 1976, the Act was amended to designate other prohibited bases of discrimination, including race and national

origin. Since then, ECOA has been amended to:

- Require creditors to provide business applicants notice of the right to a written statement of reasons for a credit denial.
- Impose record retention requirements for certain business credit applications.
- Require creditors to provide applicants with the right to obtain a copy of any appraisal report used in connection with an application for credit to be secured by residential real property.
- Establish referral responsibilities on the part of the federal financial supervisory agencies for referrals to the U.S. Departments of Justice and Housing and Urban Development for certain violations of ECOA.
- Create a privilege against disclosure of information developed by creditors as a result of “self-tests” they conduct.

Currently, ECOA makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of

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<sup>1</sup> The final rule and full text of Regulation B are available on the Board of Governors’ web site at <[www.federalreserve.gov/boarddocs/press/bcreg/2003/20030305/attachment.pdf](http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030305/attachment.pdf)>. The Official Staff Commentary and Official Staff Interpretations to Regulation B also provide additional information and clarification to the amendments, along with specific examples and explanations.

the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the *Consumer Credit Protection Act* (15 U.S.C. 1601 et seq.). In addition to a general prohibition against discrimination, the regulation contains specific rules concerning taking and evaluating credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse actions, and limitations on requiring signatures of persons other than the applicant on credit documents. The regulation also exempts certain types of credit, such as utilities credit and securities credit, from some requirements, and provides model forms for optional use by creditors.

### Summary of Revisions to Regulation B

The April 2003 revisions to the regulation accomplished several purposes. In particular, the revisions:

- Clarified various definitions, including the definition of "adverse action," "application," and "creditor."
- Grouped the regulation's general rules into one section.
- Created an exception to the general prohibition against inquiring about or noting applicant characteristics for non-mortgage credit transactions for the purpose of conducting a self-test.
- Established rules for evaluating married and unmarried credit applicants.
- Required record retention for prescreened credit solicitations.
- Established rules for obtaining signatures of nonapplicants.

- Clarified the requirements for providing a statement of specific reasons in adverse action notifications.
- Revised monitoring information provisions to comply with the U.S. Office of Management and Budget's technical revisions to ethnicity.
- Established requirements for electronic communication.

card program after an evaluation of the individual credit characteristics of the accountholders.

**Application.** The definition of "application" has been expanded to include a request for a preapproved loan under procedures in which a creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a

**A creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action.**

### Clarified Definitions

**Adverse Action.** Prior to the final rule, the definition of "adverse action" included a creditor's termination of or unfavorable change to the terms of an account, unless the action affected "all or a substantial portion of a class of the creditor's accounts." The words "substantial portion" were changed to "substantially all" to clarify that a creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action.

The revision emphasizes that the exception applies only when the creditor's action is not based on the individual credit characteristics of the affected accountholders. For example, the exception would apply where a creditor terminates all secured credit accounts because it no longer offers that type of credit. However, the exception would not apply if the creditor terminated only those secured credit accounts that could not be moved into another

designated period of time, and possibly subject to other conditions. The expanded definition is contained in the Official Staff Commentary (Commentary) to the regulation, rather than the regulation itself. The Commentary clarifies that certain preapprovals are covered by the definition of application and further clarifies the difference between a preapproval and a prequalification.<sup>2</sup>

**Creditor.** To clarify the definition of "creditor," the regulation's old language "regularly participates in the decision of whether or not to extend credit" was changed to "regularly participates in a credit decision, including setting the terms of the credit." Thus, creditor now includes not only those that make the decision to deny or extend credit, but also those that negotiate and set the terms of the credit

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<sup>2</sup> See also "Preapproval or Prequalification: What's the Difference?" in this issue of *Compliance Corner*.

with the consumer. However, the regulation does hold that a potential assignee who establishes underwriting guidelines for its purchases but does not influence individual credit decisions is not a creditor.

### Grouping of General Rules

Section 202.4 has been revised to group the regulation's general rules, some of which were previously in other sections, into one section.

- Section 202.4(a) contains the general rule against discrimination.
- Section 202.4(b) (formerly §202.5(a)) contains the general rule against discouraging applications.
- Section 202.4(c) (formerly §202.5(e)) contains the requirement for written applications in mortgage transactions covered by §202.13(a).
- Section 202.4(d), which is new, generally requires written notices and other disclosures to be provided in a clear and conspicuous manner and in a form an applicant may retain.<sup>3</sup>

### Self-Testing Exception

The final rule retains the general prohibition against a creditor inquiring about or noting an applicant's sex, race, color, religion, or national origin for non-mortgage credit products, subject to certain exceptions, including a new exception discussed below. The Board continues to believe that the general prohibition helps to reduce

or avoid credit discrimination. At the same time, the Board also believes that including a new exception that permits the collection of such data for the purpose of conducting a self-test would provide creditors with an additional tool to measure and improve compliance with ECOA. As such, the Board created an exception to the general regulatory prohibition to permit creditors to inquire about and

This exception to the general prohibition applies to a self-test even if the creditor should subsequently lose or waive the self-test privilege by disclosing any privileged information as provided in §§202.15(d)(2)(i) and (ii). Other laws or regulations, such as the *Gramm-Leach-Bliley Act* privacy regulations, might restrict other disclosure of such data.

**The results of the self-test cannot be obtained by a government agency in an examination or investigation, or by an agency or an applicant in any proceeding or lawsuit alleging a violation of ECOA or Regulation B.**

note information about non-mortgage credit applicants' personal characteristics for the purpose of conducting self-tests.

Accordingly, §202.5(b)(1) permits creditors to inquire about and note personal characteristics such as race or national origin for the purpose of conducting a self-test to determine the creditor's compliance with ECOA or Regulation B. To qualify for this exception, the creditor must satisfy all the elements of a self-test as set forth in the regulation, and must provide credit applicants with the regulation's requisite disclosures at time the information is requested.<sup>4</sup>

Section 202.15 of Regulation B implements the provisions that govern the self-testing exception. The regulation defines a self-test as a program, practice, or study designed and used specifically to determine compliance with the Act and regulation, and that creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. The results of the self-test cannot be obtained by a government agency in an examination or investigation, or by an agency or an applicant in any proceeding or lawsuit alleging a violation of ECOA or Regulation B. The privilege applies only if the creditor takes appropriate corrective action when it determines that it is more likely than not that a violation has occurred.

<sup>3</sup> The final rule exempts disclosures under §202.5, Rules Concerning Requests for Information, and §202.13, Information for Monitoring Purposes, even if provided in writing, from the retention requirement.

<sup>4</sup> A model notice is included in Appendix C to Regulation B to facilitate compliance with the disclosure requirements.

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# Preapproval or Prequalification: What's the Difference?

by Carletta M. Longo, Senior Examiner

Over the past decade, many financial institutions have changed the ways in which they accept and evaluate applications for consumer credit, particularly with respect to requests for residential mortgage loans. The use of preapproval and prequalification programs, which emerged in the early 1990s, has become an integral part of home mortgage lending nationwide. Until recently, a common industry definition of “preapproval” as distinct from “prequalification” did not exist, and bankers and mortgage bankers alike often used the terms preapproval and prequalification interchangeably.

Is there a difference between a preapproval and a prequalification, and is it important? Well, for regulatory purposes, the answer to both questions is “Yes!”

Regulation B, which implements the *Equal Credit Opportunity Act*, was amended by the Federal Reserve Board (Board) through a final rule that took effect on April 15, 2003.<sup>1</sup> The regulation's amended provisions, which became mandatory on April 15, 2004, include provisions that govern preapprovals and prequalifications.<sup>2</sup>

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<sup>1</sup> The final rule and full text of Regulation B are available on the Board of Governors' web site at <[www.federalreserve.gov/boarddocs/press/bcreg/2003/20030305/attachment.pdf](http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030305/attachment.pdf)>.

In addition, Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA), now provides clear and distinct definitions of both terms. The definitions are part of several changes made to the regulation's requirements for data collection and reporting that became mandatory on January 1, 2004.<sup>3</sup>

Understanding the differences between preapprovals and prequalifications under both Regulation B and Regulation C is important to avoid inadvertent noncompliance with these regulations.

## Preapprovals

Regulations B and C define “preapproval” slightly differently, reflecting the different purpose and scope of the two regulations. However, the Board believes that the two regulations' coverage of credit applications should be consistent, to the extent possible.

**Regulation B.** As part of the revisions to Regulation B, the definition

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<sup>2</sup> See also “A Reminder: April 2003 Amendments to Regulation B Are Now Mandatory” in this issue of *Compliance Corner*.

<sup>3</sup> The full text of Regulation C is available on the Board of Governors' web site at <[www.federalreserve.gov/boarddocs/press/boardacts/2002/20020207/attachment2.pdf](http://www.federalreserve.gov/boarddocs/press/boardacts/2002/20020207/attachment2.pdf)>. Additional information on the *Home Mortgage Disclosure Act* amendments to Regulation C is also available on the Federal Reserve Bank of St. Louis's web site at <[www.stlouisfed.org/hmdaregamendments](http://www.stlouisfed.org/hmdaregamendments)>.

of “application” has been broadened to include requests for preapproved loans if a creditor reviews the request under certain procedures and practices. Section 202.2(f)(5) of the Official Staff Commentary (Commentary) to the regulation, rather than the regulation itself, discusses preapprovals. In particular, the Commentary specifies that requests for preapprovals are applications when a creditor reviews the request and, subsequent to a comprehensive analysis of the person's creditworthiness, the creditor issues the person a written commitment to extend credit up to a designated amount, for a designated period. Conversely, if a creditor denies a preapproval request following a comprehensive analysis of the person's creditworthiness, then the request for preapproval also constitutes an application and the creditor must issue an adverse action notice to the applicant or person who requested the preapproval.

The Board believes that preapproval requests are applications because they involve requests for extensions of credit made in accordance with creditors' procedures. The fact that a preapproval request is not a completed application is not relevant, because Regulation B also generally governs incomplete applications. However, §202.9(c)(1)-1 of the Commentary to the regulation stipulates that Regulation B's requirement to provide applicants with a notice of incompleteness does not apply to preapprovals that constitute applications under section 202.2(f).

**Regulation C.** Prior to 2004, a financial institution subject to Regulation C was not required to report preapproved mortgage requests or preapprovals as loan applications on its HMDA Loan Application Register (LAR). However, under the 2004 changes to the regulation, a financial institution covered by Regulation C must report preapprovals for home purchases as applications on the LAR.

Regulation C defines a preapproval request as an application if a financial institution reviews the request under a program that entails a comprehensive analysis to determine the creditworthiness of the request. The

changed since the request was approved.

- Other conditions unrelated to creditworthiness that are typically included in traditional loan commitments (such as satisfactory completion of a home inspection or proof of a termite inspection).

The Commentary provides additional guidance on these limited conditions.

### **Prequalifications**

**Regulation B.** Generally, a prequalification request is a request by a prospective loan applicant for a preliminary determination on whether or not

an application, if certain conditions are met. Specifically, only an inquiry occurs if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer would qualify for under various loan programs, but also explains to the consumer that he or she would still need to submit a mortgage application or preapproval request.

On the other hand, a prequalification request becomes a denied application for purposes of Regulation B when a creditor, after evaluating information provided by a consumer, decides that it would not approve the request, and communicates that decision

## Whether a prequalification becomes an application depends on how the creditor responds to the consumer's request or inquiry, and not on what the consumer asks or says.

underwriting parameters of the analysis would be similar to those used by the institution to evaluate traditional mortgage applications. Most importantly, a preapproval request must be evidenced by an institution's issuance of a binding written commitment that grants a purchase money mortgage in a specified amount for a specified period subject to certain conditions. For purposes of Regulation C, preapprovals apply to requests for purchase money mortgages only.

Regulation C also provides that a covered preapproval may be subject only to a limited set of conditions. These conditions are:

- Identification of a property.
- Verification that the applicant's financial situation has not

the applicant would qualify for credit under the creditor's standards.

As with preapprovals, prequalifications are discussed in the Commentary, rather than the regulation itself. Section 202.2(f)(3) of the Commentary discusses when an inquiry or prequalification becomes an application, while §202.9-5 discusses when a prequalification becomes a denied application and thereby requires an adverse action notice. Both sections to the Commentary clearly indicate that whether a prequalification becomes an application depends on how the creditor responds to the consumer's request or inquiry, and not on what the consumer asks or says.

A creditor may treat a prequalification request merely as an inquiry, and not

orally or otherwise to the consumer. For example, if a consumer makes a prequalification request for a residential mortgage loan and informs the creditor of a previous bankruptcy and the creditor, in turn, informs the consumer that he or she would not qualify because of the bankruptcy, then the creditor has denied an application for credit. Further, §202.9-5 of the Commentary stipulates that, in such an instance, the consumer must be treated as a denied applicant and be provided with a written adverse action notice.

Section 202.9(a)(7) of the Commentary indicates that when adverse ac-

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# “Amendments to Regulation B” *continued from page CC3*

## Evaluating Married and Unmarried Credit Applicants

Sections 202.6(b)(8) and (9) make clear that a creditor may not evaluate married and unmarried applicants by different standards. The final rule provides that the requirement applies except as otherwise permitted or required by law. Thus, a creditor may consider the rules in §§202.5, 202.6, and 202.7 in evaluating applications. But, a creditor that aggregates the incomes of married co-applicants, for example, is required to aggregate the incomes of unmarried co-applicants under this rule.

## Prescreened Solicitations Record Retention

The final rule has expanded the record retention requirements of Regulation B to require retention of information used in prescreened credit solicitations. Section 202.12(b)(7) was added to the regulation so that enforcement agencies can review and analyze creditors' possible use of prohibited bases in connection with such solicitations.

As already noted, ECOA prohibits discrimination by a creditor against an applicant—a person who has requested or received credit—on a prohibited basis regarding any aspect of a credit transaction. “Credit transaction,” as defined in Regulation B, covers every aspect of an applicant's dealings with a creditor, beginning with requests for information. Thus, ECOA's coverage encompasses a person who has, at a minimum, sought credit. But because a person could be discouraged from seeking credit or credit information, the regulation expressly prohibits a creditor from

engaging in any practice (including advertising) that would discourage on a prohibited basis a reasonable person from applying for credit.

In some circumstances, consumers do not have to initiate a request for credit, but rather respond to a solicitation from the creditor. Creditors use a number of techniques to identify potential customers. For example, creditors often specify criteria to consumer reporting agencies, which then draw on information from credit files to compile lists of persons who meet those criteria. This marketing technique—involving prescreened

sumers most likely to use a particular credit product, or to target segments of the population that are most likely to respond to a certain product. Conversely, prescreened solicitations can be used to exclude certain consumers from receiving offers of credit. They can also be used to target consumers in low-income neighborhoods (which are often predominantly minority) for less favorable credit products or credit terms on the supposition that such consumers are less creditworthy. Occasionally, some creditors, primarily credit card issuers, have used age to identify potential recipients of preapproved credit.

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**The use of prescreened solicitations has become more commonplace and more sophisticated with advances in technology.**

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solicitations—is typically carried out through both mailed solicitations and telemarketing. In marketing credit products through prescreened solicitations, creditors frequently offer discounted introductory rates, attractive credit terms, and enhancements (such as purchase discounts, in the case of credit cards) that may not be available through other application channels.

Although prescreened solicitations, particularly for credit cards, are not new, the use of prescreened solicitations has become more commonplace and more sophisticated with advances in technology that enable the building of elaborate databases. Prescreened solicitations can be used to target con-

The expanded retention provisions of the regulation require creditors to retain records related to the text of the solicitations, the criteria used to select potential customers for prescreened solicitations, and correspondence related to consumer complaints. The Board believes that the expanded provisions will provide useful information without imposing excessive burden. Nothing in the final rule requires creditors to establish a separate database or set of files for correspondence relating to complaints about prescreened solicitations, and creditors will not be required to match consumer complaints with specific solicitation programs. Creditors will have the flexibility to retain correspondence in any manner that

would make it reasonably accessible and understandable to examiners.

### Signatures of Nonapplicants

Section 202.7(d)(1) has been revised and provides that a creditor may not require the signature of a person other than an individual applicant on any credit instrument if the applicant is individually creditworthy. Over the years, the Board has received questions about how creditors can establish that applicants intend to apply jointly. Although the issue arises in consumer credit, it is more prevalent in the context of business or commercial credit.

The final rule prohibits a creditor from presuming that the submission of joint financial information (for

3. Also, Appendix B to Regulation B includes various model application forms that contain an optional clause that an applicant may choose to evidence an applicant's affirmative attestation to be a joint applicant.<sup>5</sup>

### Adverse Action Notifications

The legislative history of the requirement to provide specific reasons for adverse action indicates that the purposes of the disclosure are to help achieve the anti-discrimination goals of ECOA and to educate and inform consumers. In this regard, §202.9(b)(2) of Regulation B has been revised to address the dual purposes of the statement of specific reasons.

In particular, §202.9(b)(2) clarifies that, whether a creditor's denial of

standards of creditworthiness (e.g., the guarantor's history of delinquent credit obligations).

This clarification will likely discourage a creditor from discriminating based on a co-applicant or guarantor's race, sex, age, or other prohibited basis. Also, the disclosure may help educate and inform applicants, co-applicants, or guarantors as to reasons for denial that are not apparent from a review of their credit reports.

The Board did consider concerns raised regarding a co-applicant or guarantor's privacy when the reasons for adverse action pertaining to creditworthiness are given to the primary applicant. However, the Board reasoned that when a person agrees

## Evidence of intent to apply for joint credit requires more than the submission of joint financial information and must expressly reflect the intent of both owners.

example, a joint personal financial statement) constitutes an application for joint credit. The fact that a credit applicant owns property with another and submits information concerning the property and the joint owner in order to establish creditworthiness does not mean that both owners intend to be obligated for the extension of credit. Evidence of intent to apply for joint credit requires more than the submission of joint financial information and must expressly reflect the intent of both owners.

Additional guidance concerning how to evidence intent to apply for joint credit is provided in the Commentary to §202.7(d)(1) in comment 7(d)(1)-

credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that, "the guarantor did not meet the creditor's standards of creditworthiness," is not sufficient. Instead, the reason or reasons provided should be specific enough to inform the denied applicant(s) of why the guarantor did not meet the

to be a co-applicant, guarantor, or similar party, there is (or should be) a general understanding that such information will be shared.

### Revised Monitoring Provisions

Technical revisions have been made to §202.13 of the regulation to conform to a 1997 U.S. Office of Management and Budget (OMB) directive related to ethnicity and race. For ethnicity, the standards provide for requesting data on whether or not individuals are Hispanic or Latino. The standards also prescribe five racial designations—American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The standards eliminate the option of

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<sup>5</sup> See also "Considering Ordering New Credit Applications? Read This Article First!" by Supervising Examiner Eddie L. Valentine in the Fourth Quarter 2003 issue of *Compliance Corner* at <[www.phil.frb.org/src/srcinsights/srcinsights/q4\\_03\\_cc2.html](http://www.phil.frb.org/src/srcinsights/srcinsights/q4_03_cc2.html)>.

designating "Other," which Regulation B previously allowed.

The standards also require that respondents be offered the option of selecting more than one racial designation. The regulation's Appendix B now contains a model application form that bankers may use to comply with §202.13 that includes the OMB's race and ethnicity designations.

### Electronic Communication

The passage of the *Electronic Signatures in Global and National Commerce Act* (otherwise known as the *E-Sign Act*), signed into law by President Clinton on June 30, 2000, allows a creditor to provide disclosures in an electronic format provided that certain specifications are met. Section 202.16 of Regulation B now incorporates the requirements of the *E-Sign Act*.<sup>6</sup>

### Conclusion

To ensure ongoing compliance with Regulation B, financial institution management should be aware of the regulation's changes and their potential impact on the institution and its operations. The institution's policies and procedures should be modified and enhanced as necessary to address the changes, and employee training should be conducted as appropriate. Compliance oversight, including com-

pliance audits and reviews, should be intensified during the initial stages of procedures modification and enhancement to ensure that ongoing procedures are effective.

If you have any questions regarding the changes to Regulation B, please contact Senior Examiner Carletta M. Longo (carletta.longo@phil.frb.org) or Robin P. Myers, Consumer Compliance/CRA Examinations Unit Manager (robin.p.myers@phil.frb.org) through the Regulations Assistance Line at (215) 574-6568. ■

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<sup>6</sup> See also "E-Sign Act Permits Electronic Delivery of Contracts, Signatures, Disclosures, and Records" by Supervising Examiner Eddie L. Valentine in the Second Quarter 2001 issue of *Compliance Corner* at <[www.phil.frb.org/src/srcinsights/srcinsights/ccq2.pdf](http://www.phil.frb.org/src/srcinsights/srcinsights/ccq2.pdf)>.

## News You Can Use: Resource Tool Available to Review Key Changes to Regulation C (HMDA)

In the fourth quarter 2003, the Federal Reserve Bank of Philadelphia hosted two workshops to help Third District financial institutions understand the changes to Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA). As a follow-up to the workshops, the Reserve Bank produced a CD-ROM<sup>1</sup> that reviews key concepts with which financial institutions subject to HMDA should be familiar before preparing the 2004 HMDA Loan Application Register (LAR).

The program, which is based on a 2003 presentation by the Federal Financial Institutions Examination Council (FFIEC), includes a video presentation by two examiners from the Reserve Bank. The interactive program also contains appropriate links to reference

and resource materials, including links to the Internet.

The Federal Reserve Bank of Philadelphia recently distributed the CD-ROM to all Third District state member banks. If you are interested in obtaining the CD-ROM, please contact either Elizabeth Rozsa (elizabeth.rozsa@phil.frb.org) or Robert Snarr (robert.snarr@phil.frb.org) through the Regulations Assistance Line at (215) 574-6568. ■

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<sup>1</sup> The CD-ROM program is compatible with Windows Media Player and RealOne.

# “Preapproval or Prequalification” *continued from page CC5*

tion is taken by telephone, the creditor must request the applicant’s name and address in order to provide the written notification of adverse action. If the applicant refuses to provide that information, then the creditor has no further obligation to provide the notification. Thus, if a financial institution routinely fields prequalification requests by telephone and evaluates information offered by consumers during such requests that may result in denied mortgage applications, then the institution should have adequate procedures in place to provide written adverse actions to consumers who have been denied. Moreover, bankers should keep in mind that Regulation B’s adverse action notification requirements apply even though a bank does not report denied prequalifications or other prequalifications on its HMDA LAR, consistent with the provisions of Regulation C.

**Regulation C.** Section 203.3(b) of the Commentary to Regulation C, rather than the regulation itself, defines a prequalification request as “a request by a prospective loan applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution’s standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify.” In contrast to a preapproval, a prequalification is not evidenced by the issuance of a binding written agreement.

Some institutions evaluate prequalification requests through a procedure that is separate from the institution’s normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on its LAR, even though prequalification requests *may* constitute applications under Regulation B for purposes of the issuance of

management should ensure that the institution’s policies and procedures, including procedures for training staff, adequately comply with the regulations’ requirements. In this regard, applicable policies and procedures should be updated as appropriate and compliance oversight, including audits and reviews, should be intensified during the initial stages of the procedures enhancement period to

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## Regulation B’s adverse action notification requirements apply even though a bank does not report denied prequalifications or other prequalifications on its HMDA LAR, consistent with the provisions of Regulation C.

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adverse action notices. For purposes of Regulation C, the Board has indicated that a preapproval request that has been approved without a written commitment would be treated as a *prequalification*.

### Conclusion

To ensure ongoing compliance with Regulations B and C, management should be aware of each regulation’s provisions regarding preapprovals and prequalifications and the responsibilities that such provisions place upon the institution. In addition,

ensure that the new procedures and related training are effective.

If you have any questions regarding the definitions of “preapprovals” or “prequalifications,” please contact Senior Examiner Carletta M. Longo (carletta.longo@phil.frb.org) or Robin P. Myers, Consumer Compliance/CRA Examinations Unit Manager (robin.p.myers@phil.frb.org) through the Regulations Assistance Line at (215) 574-6568. ■



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Editor.....Cynthia L. Course

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