When first passed in 1974, the ECOA barred discrimination based on sex and marital status only. The Board's regulation, issued in 1975, prohibited creditors from noting the sex of an applicant, or inquiring about an applicant's childbearing or childrearing intentions. The regulation also limited when creditors were allowed to inquire about marital status or ask for information about a spouse or former spouse. These provisions were opposed by creditors at the time, but received strong support from women's groups and others who believed that if creditors did not have this information, they could not use it to discriminate.

The ECOA was amended in 1976 to expand its coverage to the present scope. That year, the Board proposed amendments to Regulation B which extended the general prohibition on inquiries into an applicant's sex and marital status to most of the newly covered categories: race, color, religion, and national origin. The response to the proposal was mixed. Most consumer groups and regulatory agencies opposed the prohibition because they believed that it would be extremely difficult to detect discrimination without this information, while creditors generally favored the prohibition. The Board implemented the regulation as proposed, applying the same reasoning that supported the 1975 proposal-if creditors could not collect this information they would not be able to use it to discriminate against applicants.

At the same time, several exceptions to the general prohibition on data collection were added to Regulation B. The broadest exception relates to data notation in home purchase and refinance mortgage loan transactions involving the applicant's principal dwelling. Since 1976, Regulation B has required creditors to collect "monitoring information" (age, sex, marital status, and race or national origin) for mortgage loan applicants. This requirement was added to the regulation because of the concern expressed by consumer groups and regulatory agencies regarding the need for the data to help detect mortgage lending discrimination.

The regulation also allows creditors to collect data if required by another regulation, order, or agreement of a court or enforcement agency to monitor or enforce compliance with the ECOA, Regulation B, or any other federal or state statute or regulation. This exception was included in the regulation so that lenders would not have to choose between competing regulations or statutes. For example, the Small Business Administration (SBA) requires lenders participating in its 7(a), or SBA guaranteed, loan program to collect race and sex information from each applicant. Under the regulatory exception, lenders can comply with the SBA requirements without violating Regulation B.

Similarly, creditors can collect data pursuant to the Home Mortgage Disclosure Act (HMDA) without concerns about violating Regulation B. Since 1990, HMDA has required creditors to collect race or national origin and sex data from applicants for home mortgage loans. HMDA's data collection requirement is broader than Regulation B's because it applies to most applications for home improvement loans, as well as applications for home purchase and refinance, received by lenders subject to HMDA.

For the past several years, various creditors, consumer groups, state and federal agencies, and congressional representatives have requested that the Board amend Regulation B to allow creditors to collect race and sex data, primarily in connection with small business loans but also for consumer credit, such as installment loans. These requests have increased with the current focus on credit discrimination and fair lending.

Creditors have expressed a variety of reasons for wanting to collect these data. Some say they would like to be able to better audit their lending programs to ensure that they are in compliance with fair lending laws. Others want the data so that they can respond more effectively to Community Reinvestment Act (CRA) protests. In addition, some creditors have indicated that they want to collect data so that they can better evaluate their community outreach programs and the effectiveness of their marketing programs.

Some regulatory agencies have expressed an interest in the data because they believe that it may increase their ability to detect discrimination. Community groups have expressed similar reasons for wanting the data, that is, so that they can monitor creditors' compliance with the CRA and fair lending laws. It should be noted, however, that the proposed amendment would not require creditors either to collect data or disclose the data that they collect to the public.

II. Proposed Regulatory Provisions

The proposed amendment to Regulation B would eliminate the general prohibition on collecting data relating to an applicant's race, color, sex, religion, or national origin. The Board is soliciting comment on whether creditors should be allowed to collect data concerning an applicant's religion. The Board has not received any requests to allow creditors to collect data on religion, and, as a general matter, government monitoring forms do not typically request such information. It would be unusual, however, to permit data collection for all protected characteristics except religion.

The Board believes that race, color, sex, or national origin data may be valuable to consumers and creditors alike, regardless of the product. The Board recognizes that for certain credit products the amount and quality of the data collected may be of limited use, for example with credit cards where most applications are taken by mail or telephone. Nonetheless, the Board's proposal would remove the prohibition for all credit products. The Board is concerned that removing the prohibition for only certain credit products would add needless complication to the regulation, and make compliance more burdensome for creditors. The Board is seeking comment on this approach.

The amendment would allow data collection only; consideration of an applicant's race, color, sex, religion, and national origin in a credit decision would still be prohibited. Consumers could not be required to provide this information and creditors would not be required to collect the information through visual observation. The amendment would prohibit creditors from collecting race, color, sex, religion, or national origin information by visual observation, surname, or otherwise, if the consumer chooses not to supply it. The Board is soliciting comment on this approach.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0876, and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBMcompatible DOS-based format.

IV. Regulatory Flexibility Analysis

Compliance with the proposed amendment is voluntary, and therefore the amendment does not of itself impose cost. For those institutions that choose to request the data, there will be some costs associated with redesigning application forms, developing or adapting software programs, training