

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

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*Section 202.2 Definitions*

\* \* \* \* \*

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

\* \* \* \* \*

2. \* \* \* ¶ 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