

SUBJECT: Reg. B – Equal Credit Opportunity

Introduction	1	Signature Requirements (§ 1002.7(d))	7
Executive summary	1	Insurance (§ 1002.7(e))	9
General rules (§ 1002.4)	2	Special-purpose credit programs (§ 1002.8)	10
Disparate impact discrimination	2	Notifications (§ 1002.9)	10
Discouragement (§ 1002.4(b))	3	Favorable Decisions	10
Sexual orientation and gender identity	3	Adverse Actions	10
Taking the application (§ 1002.5)	3	Incomplete Applications (§ 1002.9(c))	12
Information Concerning a Spouse or Former Spouse		Applications Submitted Through Third Party (§ 1002.9(g))	14
(§ 1002.5(c))	3	Furnishing credit information (§ 1002.10)	14
Inquiries Concerning Marital Status (§ 1002.5)	3	Relation to state law (§ 1002.11)	14
Child Support, Alimony or Separate Maintenance Income		Wisconsin Lending Discrimination Law	15
(§ 1002.5(d)(2))	4	Retention of records (§ 1002.12)	15
Sex of the Applicant (§ 1002.5(b))	4	Information for monitoring purposes (§ 1002.13)	15
Childbearing Intentions or Capability (§ 1002.5(d)(3))	4	Providing copies of appraisals & evaluations (§ 1002.14)	16
Other Prohibited Inquiries	4	As of Jan. 18, 2014	17
Written Applications (§ 1002.4(c))	4	Self-testing (1002.15)	17
Evaluating the application (§ 1002.6)	5	Electronic disclosures (§ 1002.4(d)(2))	18
Factors Considered (§ 1002.6(b)(2))	5	Consent Not Required for Some Application Disclosures	18
Credit Scoring Systems	6	General Requirements for Electronic Disclosures	19
Extending or denying credit (§ 1002.7)	7	Interim Rules Withdrawn	20
Individual Accounts (§ 1002.7(a))	7	Enforcement penalties and liabilities (§ 1002.16)	20
Name on the Account (§ 1002.7(b))	7	Exhibit A – Information for monitoring purposes, required by	
Change in Name or Marital Status (§ 1002.7(c))	7	Reg. B, § 1002.13.	21

INTRODUCTION

This release applies to all credit unions, state and federal. It describes the federal nondiscrimination law that applies to both consumer and business loans.

EXECUTIVE SUMMARY

Regulation B, implementing the 1974 Equal Credit Opportunity Act, prohibits discrimination in any credit transaction on the basis of race, color, religion, national origin, gender, marital status, age, receipt of income from public assistance programs, and the good-faith exercise of any rights under the Consumer Credit Protection Act. (This list forms the definition of “prohibited basis.”)

ECOA is not strictly a consumer protection law, but also a civil rights law. By requiring that financial institutions and other lenders make credit equally available to all creditworthy customers, Congress intended to insure that there be fairness and impartiality in the extension of credit.

Reg. B includes a number of specific rules regarding credit application procedures, the use and reporting of credit history information, notices and other procedures relating to credit denials and terminations, requirements concerning cosigners and guarantors, copies of appraisals, and notation of race or national origin and other personal characteristics for purposes of monitoring for possible credit discrimination. The Equal Credit Opportunity Act applies to both consumer and business credit, although the regulation allows certain procedural modifications when credit requests from businesses are denied.

Reg. B is enforced by the NCUA for federal credit unions and the Federal Trade Commission for almost all state-chartered credit unions. (The few state-chartered credit unions in the U.S. with more than \$10 billion in assets are subject to enforcement by the Consumer Financial Protection Bureau (CFPB).)

Current copies of Reg. B and the Official Staff Commentary are [available online here](#). They provide the details of compliance as well as model forms.

GENERAL RULES (§ 1002.4)

The Consumer Financial Protection Bureau (CFPB) issued Reg. B to implement the Equal Credit Opportunity Act. The regulation prohibits discrimination in any credit transaction, whether for consumer or business purposes, on the basis of:

- Race;
- Color;
- Religion;
- National origin;
- Sex;
- Marital status;
- Age (except in limited circumstances);
- Receipt of income from public assistance programs; or
- Good faith exercise of any rights under the Consumer Credit Protection Act, which includes:
 - Truth in Lending (Reg. Z)
 - Consumer Leasing (Reg. M)
 - Restrictions on Garnishment
 - Fair Credit Reporting Act
 - Equal Credit Opportunity Act
 - Fair Debt Collection Practices Act
 - Electronic Fund Transfers (Reg. E)

Reg. B has been structured to cover the requirements imposed on a credit union before, during, and after the application and evaluation process of credit granting. Reg. B sets out a basic rule for credit grantors: “A creditor shall not discriminate against an applicant on a prohibited basis with respect to any aspect of a credit transaction” (Reg. B § 1002.4(a)).

In addition, unlawful discrimination occurs if an application is declined because of prohibited considerations concerning the applicant’s business associates or people who will somehow be related to the extension of credit, for example, the race of people residing in the neighborhood where collateral is located

Beyond the general nondiscrimination rule stated above, Reg. B sets forth many specific acts and practices that are either prohibited or permitted. Also see *ii Release No. B021* for discussions of discriminatory practices prohibited by the Fair Housing Act (FHA), because those types of practices may also be substantive violations of Reg. B.

To prevent discrimination, Reg. B imposes a delicate balance on the credit system, in recognition of both the lender's need to know as much as possible about a prospective borrower and the borrower's right not to disclose information that is irrelevant to the transaction. The regulation deals with taking, evaluating, and acting on the application and with furnishing and maintaining credit information. Reg. B does not prevent a lender from determining any pertinent information necessary to evaluate the creditworthiness of an applicant.

The law prohibits a practice that has a disproportionate negative impact on a prohibited basis, unless the practice meets a legitimate business need that cannot be reasonably achieved as well by a less discriminatory practice.

Disparate impact discrimination

"Disparate impact" refers to a practice in which a creditor applies a lending policy or practice uniformly to all credit applicants, without any intent to discriminate; however, that policy or practice disproportionately excludes or burdens certain applicants based on a protected classification – in effect, causing discrimination.

As of July 21, 2026, all disparate impact (effects test) references have been removed from Reg. B and the commentary. Although disparate impact has now been eliminated under Reg. B at the federal level, the theory may still be enforced under state fair lending laws. From a compliance perspective, that will likely mean that creditors’ compliance programs should focus on analysis of state law disparate impact where applicable.

Discouragement (§ 1002.4(b))

Reg. B deals with the application process starting at a point before the application is even taken. Lending officers and employees must be careful to take no action that would, on a prohibited basis, discourage anyone from applying for a loan.

However, encouraging statements by the credit union directed at one group of consumers is not prohibited discouragement as to applicants or prospective applicants who were not the intended recipients of the statements, and statements directed at one group of consumers, encouraging that group of consumers to apply for credit, are generally not prohibited by § 1002.4(b).

Other tactics that tend to discourage potential applicants are also prohibited. For example, instructions to loan officers to use scripts or other means to [applicants or prospective applicants that would discourage a reasonable person from applying for credit](#). The prohibition against discouraging applicants applies to written, oral, or [visual images such as symbols, photographs, or videos](#). Therefore, loan officers must refrain from asking for prohibited information at any time. Questions must be neutral, of a type applicable to and asked of every applicant who wants the same kind and amount of credit.

Sexual orientation and gender identity

In 2021, the CFPB *issued an interpretive rule*, clarifying that the ECOA and Reg. B block discrimination in lending based on sexual orientation and gender identity. This includes “discrimination based on actual or perceived non-conformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations,” the CFPB said. The interpretive rule expands on the CFPB’s stance of what constitutes sex discrimination.

TAKING THE APPLICATION (§ 1002.5)

Information Concerning a Spouse or Former Spouse (§ 1002.5(c))

As a general rule, a credit union may not request information about an applicant's spouse or former spouse. Such information may, however, be requested when:

- The nonapplicant spouse will be a user of, or joint obligor on, the account;
- The applicant is relying on the spouse's income, at least in part, as a source of repayment of the debt;
- The applicant either resides in a community property state (such as Wisconsin) or relies on property located in such a state as a basis for repayment of the debt; or
- The applicant is relying on alimony, child support, or separate maintenance income as a basis for repayment of the debt.

COMMUNITY PROPERTY STATES	
The following are community property states:	
Arizona	New Mexico
California	Texas
Idaho	Washington
Louisiana	Wisconsin
Nevada	

Inquiries Concerning Marital Status (§ 1002.5)

A credit union may not ask an applicant's marital status except:

- When the applicant offers property or assets as security for an extension of credit or
- When the applicant resides in a community property state (e.g., Wisconsin), or relies on property located in such a state as a basis for repayment of the debt.

It is permissible for the credit union to inquire about the applicant's marital status when the application is for joint credit (made by two or more individuals who will be primarily liable for the debt). In addition, a credit union may inquire about the applicant's income or assets that will support that credit request, even though the response may reveal marital status. The inquiry, however, must not be structured to encourage the applicant to indicate marital status. For example, questions concerning the applicant's current payment obligations may include whether the applicant is obligated to pay alimony, child

support, or separate maintenance payments. The credit union may also ask about the source of income or ownership of assets supporting the debt, and whether the debt obligations of the applicant have a co-obligor.

Any inquiry about marital status is limited to determining whether the applicant is “married,” “unmarried,” or “separated.” This applies to both oral and written requests for information about marital status. The credit union may explain to the applicant that the category “unmarried” includes single, divorced, and widowed persons, but the explanation must not be structured to encourage the applicant to distinguish among these.

Compliance Tip

If you accept loan applications from residents of states other than Wisconsin, be sure to use a loan application form which is in compliance with this section of Reg. B. For example, use the Credit Union Loan Application (Non-Resident) (#81042) for residents of Illinois, Minnesota, Michigan, Iowa, and other non-community property states. The form requests marital status and spousal information only under the proper circumstances for non-community property states.

Child Support, Alimony or Separate Maintenance Income (§ 1002.5(d)(2))

When a credit union inquires about income, it must ask questions designed to solicit only specific types of income (for example, salary, wages, employment or retirement income) or must clearly and conspicuously disclose that child support, alimony, or separate maintenance payments need not be revealed unless the applicant will rely on any of those sources of income to establish creditworthiness. The League’s loan application forms use the second option.

Compliance Tip

Many improvised loan application forms overlook compliance with this rule, so check your own forms. This includes those developed for credit cards, newsletters, advertisements, and websites.

Sex of the Applicant (§ 1002.5(b))

A credit union may not inquire about the sex of an applicant. An application may provide for the designation of a title, such as Ms., Miss, Mr., or Mrs., if it also contains a disclosure that the title designation is optional. An application must otherwise contain only gender-neutral terms. For example, “wife,” “husband,” or any other terms indicating sex must not be used.

Childbearing Intentions or Capability (§ 1002.5(d)(3))

A credit union may never request or use information about an applicant's birth control practices or childbearing intentions or capability. As a general rule, a credit union may request and consider information concerning the applicant's ability to repay a debt, such as the probability of continuing employment, so long as this inquiry is made of all applicants who are similarly qualified. The number, ages, and expenses of present dependents may also be requested. Making the assumption, however, that childbearing, or the potential for it, always reduces ability to repay is prohibited in an evaluation of creditworthiness.

Other Prohibited Inquiries

The regulation generally prohibits inquiries about race, national origin, color, or religion in connection with a credit transaction, except in limited circumstances as provided in sections 1002.5(a) of the regulation. A credit union may inquire about and note personal characteristics such as race or national origin for the purpose of a self-test under § 1002.15 (described later in this release) to determine compliance with Reg. B. A credit union may inquire about an applicant's permanent residence and immigration status to determine creditworthiness.

Written Applications (§ 1002.4(c))

The regulation requires that a credit union take an application in writing for loans to purchase or refinance a dwelling. A credit union is required to write down the information it normally considers when making those loans. It is also required to ask applicants their race or national origin, sex, marital status, and age. This information is used by enforcement agencies to monitor that the lender is not discriminating on a prohibited basis in making these loans. Written applications are not required by Reg. B for other types of credit.

EVALUATING THE APPLICATION (§ 1002.6)

When evaluating an application, a lender may not use any information to discriminate on a basis prohibited under Reg. B. The regulation is designed, in part, to cause lenders to reflect on the need for certain information and to consider certain types of information when evaluating an application.

Factors Considered (§ 1002.6(b)(2))

Age

An applicant's age may not be considered (provided the applicant is old enough, under state law, to enter into a contract) unless it is used in an appropriate credit scoring system to determine a pertinent element of creditworthiness. The age of an elderly applicant may always be considered when used in the applicant's favor, but the law limits this favorable treatment to those 62 years or older.

In a credit scoring system. Age may be taken directly into account in a credit scoring system that is “demonstrably and statistically sound,” with one limitation: applicants age 62 years or older must be treated at least as favorably as younger applicants. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

In a judgmental system. In a judgmental system, a credit union may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other “pertinent elements of creditworthiness.”

For example, a credit union may not reject an application or terminate an account because the applicant is 60 years old. But a credit union that uses a judgmental system may relate the applicant's age to other information about the applicant that the credit union considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

- A credit union may consider the applicant's occupation and length of time to retirement to see whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- A credit union may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger down payment or a shorter loan maturity.
- A credit union may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

In a combined system. A credit union using a credit scoring system that qualifies as “empirically derived” under Reg. B may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as “demonstrably and statistically sound.” While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a “pertinent element of creditworthiness.”

In a reverse mortgage. A reverse mortgage is a home-secured loan in which the borrower receives payments from the credit union, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date.

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. A reverse mortgage program that requires borrowers to be age 62 or older is permissible Reg. B. In addition, a credit union may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

Source of Income

A credit union may neither refuse to consider nor discount the income of an applicant or spouse on a prohibited basis or because the income is from part-time employment.

A credit union may not consider whether the applicant receives income from a state or federal public assistance program. Unemployment compensation, Social Security, SSI, food stamps and Aid to Families with Dependent Children are

examples of the types of programs covered by this prohibition. But the Reg. B Commentary provides that when considering income derived from a public assistance program, a creditor may take into account, for example:

- i. The length of time an applicant will likely remain eligible to receive such income.
- ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).
- iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

If a spouse's income is used in an application for credit, it must be considered equally with that of the applicant. In addition, income derived from annuity, pension, or retirement benefits must not be discounted. The credit union may, however, consider the amount and probable continuity of any income in evaluating the application. A credit union must consider alimony, child support, or separate maintenance income voluntarily listed by the applicant in support of the debt if such payments are likely to continue.

Factors a credit union may consider when determining the likelihood of the continuity of payments may include, but are not limited to, the following:

- Whether the payments are provided for by oral or written agreement or by court decree;
- The length of time payments have been made;
- Whether the receipt of payments has been recent and regular;
- The ability to compel payment; and
- The creditworthiness and credit history of the payor (when that information is available to the credit union in accordance with the Fair Credit Reporting Act or other applicable law).

Spouses' Credit Histories

If a credit union uses credit history in evaluating creditworthiness, it must consider any credit account reported in the name of both spouses, and, on the applicant's request, any account reported in the name of the applicant's spouse that the applicant can demonstrate reflects the applicant's willingness or ability to repay the debt. If the applicant requests, the credit union must also consider any information tending to indicate that the credit history of a credit account reported in both names does not accurately reflect the applicant's ability or willingness to repay. To facilitate this inquiry, Reg. B allows a credit union to request the name in which a credit account is carried if the applicant discloses the account in applying for credit.

Section 1002.6(b)(8) of Reg. B now makes clear that a creditor may not evaluate married and unmarried applicants by different standards, except as otherwise permitted or required by law. But a creditor that aggregates the incomes of married co-applicants, for example, is required to aggregate the incomes of unmarried coapplicants under this rule.

Also see *ii Release No. B005* regarding the impact of the Marital Property Act.

Immigration Status

A credit union may consider whether an applicant is a permanent resident of the United States as well as the applicant's U.S. immigration status, only if this information is necessary to ascertain the credit union's rights and remedies with respect to repayment. However, it may not arbitrarily deny credit to some aliens and not others, merely on the grounds that the ones denied are not citizens. Although the practice of denying credit to all noncitizens may not be prohibited under Reg. B, it is probably illegal under other Federal laws, particularly the Civil Rights Act of 1870).

Credit Scoring Systems

Reg. B neither requires nor endorses any particular method of credit analysis. Lenders may use traditional methods that rely on a credit officer's subjective evaluation of an applicant's creditworthiness, or they may use more objective, statistically developed techniques such as credit scoring. Section 1002.2(p) of the regulation prescribes the standards that a credit scoring system must meet to qualify as a “demonstrably and statistically sound, empirically derived credit scoring system.” All forms of credit analysis that do not meet these standards are automatically classified as “judgmental” systems.

Demonstrably and Statistically Sound, Empirically Derived Systems. Reg. B defines “empirically derived credit systems” as systems that evaluate creditworthiness by assigning points to various attributes of the applicant (and perhaps also to attributes of the credit requested). The points assigned to the various attributes are derived from a statistical analysis of attributes of recent creditworthy and noncreditworthy applicants of the lender. To qualify as demonstrably and statistically sound, an empirically derived credit scoring system must meet the following standards:

- The data used to develop the system must derive from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable period of time.
- The system must be developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the lender.
- The system must be developed and validated using statistical principles and methodology.
- The lender must periodically reevaluate the predictive ability of the system by the use of statistical principles and methodology and adjust it as necessary.

EXTENDING OR DENYING CREDIT (§ 1002.7)

Individual Accounts (§ 1002.7(a))

No lender may refuse, on the grounds of sex, marital status, or any other prohibited basis, to grant an individual credit account to a creditworthy applicant. If a lender offers individual accounts to unmarried applicants, it must offer individual accounts to creditworthy married applicants, regardless of sex. If spouses apply for separate extensions of credit, the accounts must not be aggregated to determine finance charges or loan ceilings under state or federal law.

Name on the Account (§ 1002.7(b))

No lender may refuse to allow an applicant to open or maintain an account in the applicant's birth-given first name and birth-given surname, the spouse's surname, or a combined surname. However, a credit union may require that the applicant use one name consistently in doing business with the credit union. In addition, to determine the applicant's credit history, the credit union may inquire whether the applicant has obtained credit in another name or is liable for accounts listed in another name.

Change in Name or Marital Status (§ 1002.7(c))

A credit union may not take the following actions on an existing open-end credit account on the basis of the age or retirement, or a change in name or marital status of any person contractually liable for the account:

- Require a reapplication (except in limited circumstances);
- Change the terms of the account; or
- Terminate the account.

If a credit union learns of a change in the marital status of any person contractually liable on an existing account, it may require a reapplication if the previous decision to grant the credit was based in part on the income of that person's spouse, and if the income of that person would not now support the current line of credit. However, the person may not be deprived of the use of the credit line while the reapplication is being evaluated. The credit union may evaluate the application based on its current credit standards but still must meet the requirements of Reg. B for evaluating and notifying the applicant of the action taken.

Signature Requirements (§ 1002.7(d))

Among the key sections of Reg. B relating to sex and marital-status discrimination are the ones regarding the signatures a lender may require when granting a loan. The purpose of these sections is to permit people (and particularly women) who are creditworthy in their own right to obtain credit on their own by removing, to the greatest extent possible, the need to depend on a spouse (or any other person).

Two general rules apply throughout this section of the release on signature requirements:

- First, on a "credit instrument," (typically, the promissory note or loan agreement), a lender may not require a signature other than the applicant's or joint applicant's if, under the lender's standards of creditworthiness, the applicant qualifies for the amount and terms of the credit requested.
Remember, under the Marital Property Act, the credit union must generally consider the income of both spouses in the debt ratio, even if only one is applying. (See *ii Release No. B005*). This does not mean that the non-applicant spouse can be required to sign the credit instrument.
- Second, a lender has more latitude in seeking signatures on the instruments that necessary to reach property used as security, or in support of the customer's creditworthiness.

To understand the second general principle, it is necessary to keep in mind that there is an important distinction between credit instruments (such as the note itself) and instruments that are necessary to secure the credit and to reach and obtain property in the event of default (such as mortgages and chattel security agreements).

- A debt instrument is a legal admission that a debt exists. A person who signs a note accepts a personal obligation to repay the debt in full--even though there may be other signatories or someone else may have received the actual proceeds of the loan.
- A mortgage or security agreement, on the other hand, creates a far more limited obligation--one that only allows the lender to reach the signer's interest in the property described, in the event of default. If, after default and the sale of the pledged collateral, an amount remains due to the lender, someone who has signed only a mortgage or other security agreement is not obligated to pay that amount.

Joint Applicants

A credit union may obtain the signature of all joint applicants on the promissory note or loan agreement. It is irrelevant whether the applicants are married or not, so long as the applicants intend that the application be joint. (For information on whether joint applicants should sign a security agreement, see the subsection "Secured Credit," later in this release.)

If two people come into the credit union and voluntarily make joint application, there is no problem, of course, and the credit union need not try to discourage this.

However, if two people come in together but only one applies and that person is creditworthy, the credit union may not try to persuade the other to join, or require a joint application.

Evidence of intent to apply for joint credit requires more than the submission of joint financial information. 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; other evidence must expressly reflect that intent.

While creditors are required to have documentation evidencing intent to apply for joint credit, creditors have the flexibility to determine the methods used to establish intent. First, the comment clarifies that evidence of intent must be provided at the time of application. Accordingly, a creditor could not use the fact that two parties signed the note, for example, as evidence of intent to be jointly liable at the time of application.

Cosigners

If, using objective, nondiscriminatory standards, a credit union determines that an applicant for individual credit cannot support the credit, the credit union may then request that the applicant obtain a cosigner, a guarantor, or the like for the note or loan agreement. In all such cases, however:

- The credit union must require a cosigner or guarantor for all applicants who are similarly situated; (For example, it cannot require cosigners only for unmarried applicants or married applicants, or only for women, men, or applicants of a particular race.)
- The credit union may not require that the applicant's spouse be the cosigner, although the applicant may so choose; and
- The credit union may not impose requirements on the cosigner or guarantor that it is prohibited from imposing on the applicant.

(For information on whether co-signers or guarantors should sign a security agreement, see the subsection "Secured Credit," later in this release.)

Signature of the Applicant's Spouse

In certain circumstances, a credit union may request the spouse's signature, even where a married applicant applies for individual credit.

Security interests: As explained in more details in the subsection the subsection "Secured Credit," later in this release, a credit union may require any person (including the applicant's spouse) who owns an interest in the property to sign any security agreement or instruments the credit union reasonably believes to be necessary under state law to make that property available to satisfy the debt in the event of default. That could include the non-applicant spouse, if he/she is a titled owner of the property being used as collateral.

Integrated instruments: A credit union may not require the spouse to sign an integrated instrument that combines the note, security agreement, and other disclosures if the nonapplicant spouse's signature could not be required on the note. If a spouse's signature is necessary to reach the property relied on and the credit union habitually uses an integrated form, the credit union should have the spouse sign a separate security agreement instead. An alternative found on forms provided by many credit insurance companies, is to have a check box or other indication that the signature applies only to the security agreement, not the note.

Establishment of a credit history: A credit union may permit a nonapplicant spouse to sign a note, and thereby become obligated to repay the loan, if the spouse volunteers to do so. Some spouses may want to use this option to help create a credit history that would operate in their own favor.

Business credit: The signature rules apply to business as well as consumer credit. A spouse's signature may be required for business loans only in the same circumstances that it may be required for other loans.

Secured Credit

The previous material in this section of the release on “Signature Requirements,” has dealt with who can/must sign the credit instrument – in other words, the promissory note or loan agreement. Reg. B has different rules when it comes to signatures on a mortgage, chattel security agreement, or other document that is needed to give the credit union a security interest in property as collateral for the loan.

If an applicant requests secured credit, the credit union can require the signature of any other person (whether a joint borrower, co-signer, or even someone not liable on the promissory note at all) on any instrument that is necessary (or that the credit union reasonably believes is necessary) to make the property being offered as security available to satisfy the debt in the event of default.

For example, suppose two people – Mr. A and Mr. B – are the titled owners of a vehicle. Mr. A applies for a loan, to be secured by the car as collateral. Only Mr. A would sign the promissory note. (The credit union could not require Mr. B to sign the note because he did not apply jointly.) However, the credit union can require that Mr. B sign the security agreement, pledging the car as collateral for Mr. A’s loan, since both are titled owners and state law would require both of them to join in granting an interest in the car (just as they’d both have to sign over the title if they sold the car).

The result is the same if Mr. A is married to Mrs. B, both are titled owners of the vehicle, and Mr. A applies for a loan on his own: Mrs. B would not be required to sign the promissory note, but her signature would be needed to grant the credit union a security interest in the car. (Note that the Wisconsin Marital Property Act gives spouses an interest in marital property, but that does not automatically mean that spouses must sign security instruments to pledge that property as collateral. The title to the property determines whether one spouse can pledge the property, or whether both need to sign to do so.)

All of this presumes that the applicant meets the credit union's standards of creditworthiness. If not, the rule allows the credit union to condition approval of the loan application on the applicant furnishing the signatures of whoever else has an interest in the property being offered as collateral. (Under Reg. B, if someone applies for a loan and does not qualify on his/her own, the credit union can lawfully 1) request additional co-signers, guarantors, etc. on a non-discriminatory basis, 2) request additional collateral or 3) request both additional signatures and additional collateral.)

Alternatively, Reg. B also allows the credit union to require that someone waive their interest in the offered collateral instead of signing the instrument granting a security interest. For example, as explained in *ii Release No. B033*, Wisconsin law says that a mortgage (or other conveyance) of a married person's homestead is not valid unless the document is signed by or on behalf of each spouse. (There is an exception for purchase-money mortgages, however.) This means that the non-applicant spouse may need to sign the mortgage, pledging the property as collateral (but not the loan agreement itself). In some cases, a credit union’s title company may prefer that the non-applicant spouse sign something waiving his/her homestead interest, instead of signing the mortgage, such as an “Alienation of Homestead Interest” affidavit.

Insurance (§ 1002.7(e))

When the credit union offers casualty, credit life, health, accident, disability or other credit-related insurance in connection with an extension of credit, differences in cost, terms, or availability of the insurance will not constitute violations of Reg. B, but may violate the Fair Housing Act if housing is involved. See *ii Release No. B021* for more about the Fair Housing Act. Under Reg. B, the credit union may not deny or terminate credit merely because the insurance is unavailable on account of the applicant's age. When the applicant wants insurance, information regarding the applicant's age, sex, or marital status may be requested.

SPECIAL-PURPOSE CREDIT PROGRAMS (§ 1002.8)

A lender may extend special-purpose credit to applicants who meet certain requirements. The following types of credit programs meet the definition of special-purpose credit programs:

- Any credit assistance program expressly authorized by federal, state, or local law for the benefit of economically disadvantaged applicants;
- Any credit assistance program offered by a nonprofit organization for the benefit of its members or for the benefit of an economically disadvantaged class of people; and
- Any special-purpose credit program that is offered by a for-profit organization to meet special social needs and that meets the following requirements:
 - A written plan designates those classes of applicants who are eligible and the procedures and standards for the extension of credit.
 - The program extends credit to those applicants who **actually would not be able to obtain such credit under the organization's actual credit standards.**
 - **Explain why meeting the special social needs addressed by the program necessitates that its participants share the specific common characteristic that would otherwise be a prohibited basis and cannot be accomplished through a program that does not use otherwise prohibited bases as participant eligibility criteria.**

Applicants in a special-purpose credit program may be required to have one or more common characteristics **that would otherwise be a prohibited basis as eligibility criteria.** A lender may request and consider these characteristics in determining the eligibility of applicants without violating the regulation. If financial need is a criterion in determining eligibility, a lender may request and consider information concerning the applicant's marital status; the applicant's receipt of income from alimony, child support, or separate maintenance payments; or the spouse's financial resources. In addition, it may obtain the signature of a spouse or other person on the application or credit instrument, if required for program eligibility under federal or state law. Any denial of credit to an applicant who does not qualify under a special-purpose credit program is not a violation of the regulation; however, an adverse action notice must be provided.

NOTIFICATIONS (§ 1002.9)

A credit union must notify all applicants of its credit decision on a loan application, whether favorable or adverse. When a credit union informs an applicant of its credit decision, the content, timing, and form of notice may differ, depending on what action is taken and whether the applicant is seeking a consumer or business loan. The League offers an Adverse Action Notice – Credit Related Transactions (#82029) designed to assist compliance with the detailed adverse action, counteroffer, and incomplete application notice requirements described below for loans to consumers as well as requirements of the Fair Credit Reporting Act.

A different form – Deposit Account Adverse Action Notice (#82058) – must be used to notify consumers if the credit union decides to take an adverse action related to deposit accounts and services, but only if the decision was based in whole or in part on information obtained in a credit report (including ChexSystems). This is required by the federal Fair Credit Reporting Act, not Reg. B. For more information on account-related adverse action notices, see *The League's ii Release No. 0126*.

Notifications must be provided in a clear and conspicuous manner, in a form that applicant may retain.

For information on providing these notices electronically, see the “Electronic Disclosures” section of this release.

Favorable Decisions

A favorable decision can be communicated in a letter or conversation, or by issuing a requested credit card or loan proceeds. Thus, a written notification is not necessarily required.

Adverse Actions

An adverse decision (“adverse action”) requires the credit union to provide information that helps the applicant understand why the application was denied (or why existing credit was terminated) and what the applicant's rights are if the applicant believes the denial was based on a prohibited basis. Adverse action includes:

- A refusal to grant credit in substantially the amount or under the terms requested, unless the credit union makes a counteroffer (use the adverse action form) and the applicant expressly accepts or uses the credit offered.

A credit union that gives the applicant a combined counteroffer and adverse action notice that complies with Reg. B need not send a second adverse action notice if the applicant does not accept the counteroffer.

- The termination of an account or an unfavorable change in terms, if the same action is not taken on substantially all similar accounts; and
- A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

Adverse action does *not* include:

- Any change in the terms of an account that is *expressly* agreed to by the applicant;
- Any action (or inaction) taken because of inactivity, or a *current* delinquency or default on that particular loan or line of credit account;
- A denial of credit at the point of sale or loan (for example, when a customer unsuccessfully attempts to use a credit card), unless the denial is (1) a termination or unfavorable change in terms that does not affect substantially all of a class of the credit union's accounts or (2) a refusal to increase the amount of credit available on the account;
- A denial of credit of a type which is prohibited by laws affecting the credit union; or
- A denial of a *type* of credit the credit union does not offer. If the credit union denies an application because it does not offer the particular *terms* requested, it is still an adverse action, requiring a denial notice.

Consumer Credit

If the applicant is applying for consumer credit, a credit union must convey its credit decision within 30 days after receiving a completed written or oral application. There are two exceptions to the 30-day rule:

- If a credit union makes a *counteroffer*, for example, by offering less credit or less favorable terms than the applicant applied for, and the applicant doesn't use the credit within 90 days after the credit union makes the counteroffer, the credit union must send an adverse action at that time.

A credit union that gives the applicant a combined counteroffer and adverse action notice that complies with Reg. B need not send a second adverse action notice if the applicant does not accept the counteroffer.

- If the applicant and the credit union agree that the applicant will inquire about the credit decision, when credit is approved and the applicant doesn't contact the credit union within 30 days after application, the credit union may consider the application withdrawn.

If a credit union takes adverse action on an existing account, it must provide an adverse action notice within 30 days after taking the action.

Whenever a credit union takes adverse action involving consumer credit, the credit union must supply the applicant with the following, in writing:

- The credit decision;
- The ECOA notice found in § 1002.9(b)(1) of the regulation; and
- The specific reasons for the adverse credit decision. (An alternative is to disclose that the specific reasons will be provided upon the applicant's request if made within 60 days of when the notice is provided, and that the credit union must respond within 30 days of receiving the request. See § 1002.9(a)(2)(ii) for details on this option.)

Whether a 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. For example, a general statement that "the guarantor did not meet the creditor's standards of creditworthiness" is insufficient. Some may be concerned about the co-applicant's or guarantor's privacy when the specific reasons for adverse action pertaining to creditworthiness are given to the primary applicant. However, the Federal Reserve Board feels that when a person agrees to be a co-applicant, guarantor, or similar party, however, there is (or should be) a general understanding that information will be shared.

The Fair Credit Reporting Act (FCRA) requires disclosure of the use of information obtained from an outside source (such as credit bureaus or other credit unions) if the information was a factor in denying or raising the cost of credit. The League's Adverse Action Notice – Credit Related Transactions (#82029) includes a section to address this requirement. (See ii Release No. 0126 for details of the FCRA requirements.)

Including the credit score for consumer notices

If an adverse action is based in whole or in part on a credit score, the notice must include special credit score disclosure language. (The special disclosure is not needed if a score is not used.)

The League's two adverse action notice forms (#82058 for deposit accounts and #82029 for credit transactions) both include the credit score disclosure. The disclosure is preceded by a check box. If the disclosure is necessary because a credit score was used in making the adverse decision, then the credit union must check the box and insert the credit score information.

On both adverse action notice forms, the credit union must also insert the key factors (no more than four) that adversely affected the credit score, such as late payments or high credit utilization. Up to five key factors may be disclosed if one of the key factors was the number of inquiries made to the credit bureau. Check the box to include the latter reason if it applies.

As explained earlier, on form WCUL #82029, for credit-related transactions only, the credit union must also disclose the specific reasons for its adverse decision. Disclosing the "key factors" does not satisfy that requirement.

For joint applicants, Reg. B would let the credit union provide an adverse action notice to only one applicant (the primary applicant, if one is readily apparent). However, the FCRA requires that the notice be provided to "any consumer" – including any joint applicant – against whom adverse action is taken. Because The League's form is designed to meet both the Reg. B and the FCRA compliance requirements, it should be sent to each joint applicant. To protect confidential information, provide separate adverse action notices to each joint applicant with only that individual's credit score on each notice.

Guarantors and co-signers are not entitled to adverse action notices (since they are not loan "applicants"). The credit applicant would, however, receive an adverse action notice, even if the adverse action is because of information in the guarantor's or co-signer's credit report. Federal regulators say that a guarantor or co-signer's credit score should not be disclosed to an applicant in an adverse action notice, however.

Compliance Tip

Whether a mere credit inquiry becomes an "application" subject to the adverse action notice requirement depends on how the credit union responds to the applicant. If the credit union evaluates information about the inquiring consumer and communicates to the consumer that he or she would not qualify, it has treated the inquiry as a loan application and must provide a loan applicant with the denial notice.

Avoid compliance problems with loan inquiries by either:

1. Training staff not to tell consumers whether they would qualify unless the consumer has completed an application, or
2. Getting the name and address of consumers before responding to their individualized inquiries (thus enabling the credit union to send out a denial notice if required). Instead of telling a person whether they qualify, the credit union may describe its standards for creditworthiness and let the member draw their own conclusion.

Including mortgage loan modification denial information

The League's *ii Release No. B075* explains a set of Reg. Z and Reg. X rules that affect how credit unions must service mortgage loans. Among them, the release explains that Reg. X has "loss mitigation" rules that apply to most real estate transactions involving 1- to 4-family residential structures. (See Reg. X §1024.41(c) & (d) and Comment 41(d).) Those rules says that if a consumer applies for loss mitigation – an alternative to foreclosure that the servicer might offer – and if the servicer denies the consumer for any trial or permanent loan modification option, it must send the consumer a notice, then the servicer must notify the consumer about that denial. The notice must include certain information. Reg. X says that the credit union may combine this notice with other notices legally required notices, such as a Reg. B adverse action notice or a Fair Credit Reporting Act notice, unless otherwise prohibited by applicable law. (Comment 41(d)(1)-3.)

Incomplete Applications (§ 1002.9(c))

When a credit union receives an incomplete application, it may send the applicant either a notice of action that complies with the section above *or* a notice of incompleteness.

- For the first option, when an application is incomplete regarding information that the applicant can provide and the credit union lacks sufficient data for a credit decision, the credit union may deny the application giving as the reason for denial that the application is incomplete.
- For the second option, the notice of incompleteness must be in writing and must specify the information the credit union needs to consider the application. It must also provide a reasonable period of time for the applicant to furnish the missing information. Finally, the notice must advise the applicant that if the credit union does not receive the information within the designated time period no further consideration will be given to the application. If the applicant fails to respond, the credit union does not have to send a notice of action taken.

The credit union may make an oral request for missing information. However, if the applicant does not provide the missing information, the credit union must provide a notice of action taken.

Adverse actions using a credit scoring system.

If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. No factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, “age of automobile”) even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

Combined credit scoring and judgmental system.

If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. Disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

Please refer to Regulation B, Form C-3 Sample Notice of Action Taken and Statement of Reasons (Credit Scoring) for sample language for a denial notice for credit unions using credit scoring.

Prequalification Requests

Whether a credit union must provide a notice of action taken for a prequalification request depends on the credit union's response to the request, as discussed above. For instance, a credit union may treat the request as an inquiry if the credit union evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the credit union will analyze in reaching a credit decision.

On the other hand, a credit union has treated a request as an application, and is subject to the adverse action notice requirements if, after evaluating information, the credit union decides that it will not approve the request and communicates that decision to the consumer. For example, if the credit union tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the credit union has denied an application for credit.

Business Credit

If an applicant is applying for business credit, a lender must either use the notification rules stated above for consumer credit, or follow rules specially designed for business credit. Those special rules for notifying business applicants are found in Reg. B at § 1002.9(a)(3).

Applications Submitted Through Third Party (§ 1002.9(g))

If an applicant in an indirect credit transaction accepts an offer from the credit union within 30 days of application, no other notification is required from either the credit union or the dealer. If the credit union does not extend credit or the applicant does not accept the credit union's offer of alternate terms, each lender taking adverse action must notify the applicant. For example, if a dealer attempts to obtain financing at several financial institutions and none agree to extend credit or the applicant does not accept any alternate terms offered, all the financial institutions and any dealer acting as a lender in the transaction must give the required notices of adverse action. Credit unions may enter into contractual arrangements with dealers to provide all appropriate notices. When the dealer provides a joint notification, the credit union will not be liable for actions or omissions resulting in violations, if the credit union provided the dealer with the information necessary to comply with the notification requirements and the credit union was maintaining procedures to avoid any such violation. Any notification by a third party must identify each lender on whose behalf the notice is given. This notice may be provided electronically if the member consents. See the section on "Electronic Disclosures" later in this release.

When a credit union purchases indirect paper from a dealer in the regular course of business, it must maintain procedures to determine whether the dealer is complying with the ECOA in all aspects of the credit transaction.

FURNISHING CREDIT INFORMATION (§ 1002.10)

One of the primary ways lenders determine creditworthiness is to examine the customer's credit history as compiled and maintained by credit reporting agencies. Before the enactment of the ECOA, many women found it difficult to obtain credit because of the way in which these credit histories were developed and maintained. Frequently, credit accounts were reported only in the husband's name, even when the wife was jointly liable or was the person primarily responsible for seeing to it that the debt was repaid. Also, women were sometimes denied credit because of their husbands' bad credit histories, even when they were not responsible. In other words, women did not benefit from the good credit histories they participated in developing and were penalized for bad ones that were not of their doing. Reg. B took steps to rectify this situation.

Credit histories are compiled by credit reporting agencies, primarily from information supplied by lenders themselves. Reg. B sets forth requirements for financial institutions' maintenance and reporting of information. These requirements are designed to enable consumers, primarily women, to:

- Develop their own credit histories;
- Have their joint credit accounts reflected in such a way that either joint or individual retrieval of information is possible; and
- Be assured that only the information pertinent to their own credit histories is reported and considered when they apply for individual credit.

It should be emphasized that credit unions are not required by law to report credit information. The regulation requires only that, if they do, they do so in accordance with the regulation's requirements.

A credit union that furnishes credit information must designate any account to reflect participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. If a credit union furnishes credit information to a consumer reporting agency (e.g., credit bureau), the credit union must furnish the information in the name of the spouse about whom the information was requested.

A credit union that furnishes credit information has the option to designate on all joint credit accounts the participation of both parties, whether or not the accounts are held by persons married to each other. A credit union need not distinguish between accounts on which the spouse is an authorized user and a contractually liable party. A credit union is not required to create or maintain separate files in the name of each participant on a joint account, but it must be able to report information in the name of each spouse on the account.

RELATION TO STATE LAW (§ 1002.11)

Reg. B alters, affects, or preempts only those state laws that are inconsistent with the ECOA or Reg. B, and then only to the extent of the inconsistency. To determine whether a state law is inconsistent, any person may apply for a formal CFPB interpretation. No formal preemptions have been issued as to Wisconsin law. The regulation does not alter any provision of

state property laws, laws relating to the disposition of a decedent's property, or federal or state regulations aimed at ensuring the solvency of financial institutions.

Wisconsin Lending Discrimination Law

State law (Wis. Stats. §138.20) makes it illegal to discriminate in any form of lending based on the applicant's physical condition, developmental disability, sex or marital status. (This does not apply if the credit union has "evidence demonstrating the applicant's lack of legal capacity to contract" for the loan or security interest in collateral.)

Violators can be fined up to \$1,000. Each individual who is discriminated against constitutes a separate violation.

RETENTION OF RECORDS (§ 1002.12)

In general, the credit union must preserve all written or recorded information connected with an application for 25 months (12 months for business credit) after the date that the credit union informs the applicant of action taken on an application or of incompleteness. The credit union shall retain all written or recorded information in its possession concerning the applicant for 25 months (12 months for business credit) after the date that it receives any application for which it is not required to comply with the notification requirements of § 1002.9.

The credit union must preserve any written or recorded information concerning adverse action on an existing account as well as any written statement submitted by the applicant alleging a violation of the ECOA or Reg. B. This evidence must be kept for 25 months (12 months for business credit).

If the credit union has received notice that it is under investigation for violation of the regulation, it must retain all information relating to the account or application under investigation until final disposition of the matter.

Reg. B requires credit unions to retain for 25 months certain records related to prescreened solicitations, such as the list of criteria used to select potential customers. The retention of these records is intended to allow the systematic review and analysis of creditors' possible use of race, age, national origin, and other prohibited bases of credit discrimination in connection with prescreened solicitations.

See the Fair Credit Reporting Act for more about the requirements for prescreened solicitations by credit unions when using a credit reporting agency (credit bureau).

For information on retaining records electronically, see The League's *ii Release No. 0175 "Electronic Signatures and Records."*

INFORMATION FOR MONITORING PURPOSES (§ 1002.13)

A credit union that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must request as part of the application the following information regarding the applicants (whether one or more):

- Ethnicity, using the categories Hispanic or Latino, and not Hispanic or Latino; and race, using the categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White;
- Sex;
- Marital status, using the categories married, unmarried, and separated; and
- Age.

Exhibit A of this Release illustrates the requirement. Reg. C compliance requires use of a more extensive data collection form for demographic information of applicant and co-applicant, for certain loans. *See ii Release No. B017 - Home Mortgage Disclosure Act* for more on that topic.

A "dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. Beyond conventional houses, common examples include, an individual condominium or cooperative unit and a mobile or other manufactured home. But remember, this requirement only applies if the dwelling is the principal residence.

This information-collection requirement applies only to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence.

- Applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information collection requirements.
- An application for an open-end home equity line of credit is not subject to this requirement unless it is readily apparent to the credit union when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

Note however, that Regulation C generally requires those credit unions covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about applicants for home-improvement loans and home-purchase loans, including some types of loans not covered here by the Reg. B requirement. Consult Reg. C for guidance on compliance with that regulation's requirements.

For Regulation B compliance, questions regarding ethnicity, race, sex, marital status, and age may be listed, at the credit union's option, on the application form or on a separate form that refers to the application. The applicants must be asked but not required to supply the requested information. If an applicant chooses not to provide the information or any part of it, that fact must be noted on the form. The credit union must then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant on the basis of visual observation or surname. This notice may be provided electronically in certain situations. See the section on "Electronic Disclosures" later in this release.

The credit union must inform the applicants that the information regarding ethnicity, race, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit credit unions from discriminating against applicants on those bases. The credit union must also inform applicants that if an applicant chooses not to provide the information, the credit union is required to note the ethnicity, race and sex on the basis of visual observation or surname.

Telephone, mail applications:

- A credit union that accepts an application by telephone or mail must request the monitoring information.
- A credit union that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the credit union.
- If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the credit union should indicate on the form or other application record how the application was received.

Video and other electronic-application processes:

- If a credit union takes an application through an electronic medium that allows the credit union to see the applicant, the credit union must treat the application as taken in person. The credit union must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.
- If an applicant applies through an electronic medium without video capability, the credit union treats the application as if it were received by mail.

Applications through loan-shopping services:

- If a credit union receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Credit unions subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 203), which generally requires credit unions to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

PROVIDING COPIES OF APPRAISALS & EVALUATIONS (§ 1002.14)

Various state and federal regulations (including Reg. B) require credit unions to give mortgage loan applicants copies of appraisals or valuations (and in some cases, notify them that they have the right to obtain copies).

The following material only briefly summarizes the Reg. B requirements. For details on these and other state and federal rules about providing appraisals, see The League's *ii Release No. B077*. Credit unions may have to comply with more than one set of rules in this area.

Prior to Jan. 18, 2014

Reg. B requires credit unions to provide a copy of the appraisal report used in connection with a loan secured by a dwelling. Credit unions may comply by choosing one of two methods:

- Automatically providing a copy of the appraisal report to any applicant for a dwelling-secured loan (regardless whether the credit is approved or denied or the application is withdrawn), or
- Providing a copy on the applicant's written request. Under this option, the credit union must notify applicants in writing of their right to receive a copy of their appraisal report. This notice may be given any time during the application process but no later than the deadline for a Reg. B action notice (usually 30 days after application).

As of Jan. 18, 2014

Reg. B requires a credit union to share copies of all written valuations (not just appraisals) that it develops in connection with an application for a closed-end loan or open-end line of credit (i.e., HELOC) secured by a first lien on a dwelling.

A credit union has three days after it gets an application for a first-lien dwelling-secured loan to notify the applicant of the right to copies of appraisals and other written valuations developed in connection with the application.

The credit union must share copies of appraisals and other written valuations with the applicant promptly upon completion, or at least three business days before loan closing (for closed-end credit) or account opening (for open-end credit), whichever is earlier. This requirement applies whether credit is extended or denied or the application is incomplete or withdrawn.

SELF-TESTING (1002.15)

Reg. B permits credit unions to inquire about, and note, personal characteristics such as race or national origin for the purpose of conducting a self-test under § 1002.15 to determine the credit union's compliance with the ECOA or Regulation B. To qualify for this exception, the credit union must satisfy all the elements of a self-test as set forth in § 1002.15, and must provide the disclosures required by § 1002.5(b)(1) at the time the information is requested. (A model notice is included in Appendix C of Reg. B.) For information on providing this notice electronically, see the "Electronic Disclosures" section of this release.

This exception to the general prohibition applies to a self-test even if the credit union should subsequently lose or waive the self-test privilege by disclosing any privileged information as provided in § 1002.15(d)(2)(i) and (ii). Other laws or regulations, such as the Gramm-Leach-Bliley Act privacy regulations, may restrict other disclosure of such data.

A "self-test" is defined as any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a credit union's compliance with the Act or Regulation B and creates new 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 constraints imposed by the regulation's self-test provision will help ensure that the information is not used to discriminate on a prohibited basis and is only collected and used for the purpose of monitoring compliance with the ECOA and Regulation B and for taking appropriate corrective action. Any information about applicant personal characteristics collected as part of a self-test would have to be kept separate from the loan or application files and from other business records related to credit transactions, in order for the privilege to apply. Thus, credit unions may not place such data with non-privileged business records, such as the credit application, loan documents, or minutes of loan committee meetings, and the data may not be considered in extending credit.

Information about applicants' personal characteristics that is collected pursuant to this exception should be analyzed in a timely fashion as part of a program, practice, or study under the self-test provision. Timely analysis of data is essential to ensure that a self-test was conducted to determine compliance with the ECOA and Regulation B. Credit unions retain the flexibility to establish the time, place, scope, and methodology of any self-test. In preparing to conduct a self-test that involves the collection of applicants' personal characteristics, credit unions would be expected to develop a written plan that describes, among other things, the specific purpose of the self-test, the methodology to be used, the geographic area covered by the test, the types of credit transactions involved, the identity of the entity that will conduct the test and analyze the data (such as the credit union's audit department), and the timing of the test, including the expected start date and end date or the expected duration of the test. The credit union is generally required to retain records regarding a self-test, including personal-characteristics data and all other written or recorded information about the self-test for 25 months after a test has been completed (and longer in the case of an investigation or enforcement proceeding or civil action of which the credit union has received notice.)

Previously, credit unions could use "mystery shoppers" or fictitious applicant "testers" to determine compliance with the ECOA at the pre-application stage. With the revision to the regulation, credit unions have the flexibility to utilize and develop a variety

of self-testing techniques (internally or using independent third-parties) to ensure ECOA compliance at various stages of a credit transaction using information collected about applicant characteristics combined with other information. For example, a self-test using information about actual applicants' personal characteristics might better determine whether, at the application stage, persons seeking credit are being treated differently from other applicants on the basis of race, age, sex, religion, or national origin; or, for loan originations, whether disparities based on race or other prohibited bases of discrimination may exist in the terms and conditions of loan agreements entered into by similarly situated applicants. A self-test might also be conducted to test account review or collection procedures, or other aspects of the credit transaction where unlawful discrimination might occur. A credit union may not use the data collected under the new exception for other purposes, such as marketing, unless necessary to take corrective action, without losing the self-test privilege.

The data about applicant characteristics collected as part of a self-test may only be used and evaluated by persons conducting the self-test. The data may not be used or evaluated by persons involved in a credit transaction, except in the context of taking corrective action when it is more likely than not that a violation has occurred. The data may not be used in a credit decision. In collecting information about personal characteristics as part of a self-test, credit unions must disclose to applicants that providing the information is optional, that the information is being collected to monitor for compliance with the ECOA and will not be used in making a credit decision, and where applicable, that certain information will be noted based on visual observation or surname.

The self-test provision requires that credit unions take appropriate and timely corrective action when the self-test shows that it is "more likely than not" that a violation of the ECOA or Regulation B has occurred, even though no violation has been formally adjudicated. Credit unions should ensure that corrective action is taken on a timely basis and is "reasonably likely to remedy the cause and effect of a likely violation." The commentary to Reg. B suggests various forms of corrective action that may be appropriate, such as correcting institutional policies or procedures that may have contributed to the likely violation and adopting new policies as appropriate, or improving audit and oversight systems to avoid a recurrence of the likely violation. The appropriateness of a particular form of corrective action is determined on a case-by-case basis and the scope of the corrective action that is required depends upon the scope of the self-test. No corrective action is required if a self-test does not identify any likely violation of the ECOA or Regulation B.

ELECTRONIC DISCLOSURES (§ 1002.4(D)(2))

Reg. B generally requires the credit union to provide required disclosures in writing and (with exceptions for some disclosures on applications) in a form that the consumer may keep. But Reg. B also allows them to be provided electronically.

Reg. B says that credit union can provide disclosures electronically, subject to the requirements of the federal Electronic Signatures in Global and National Commerce Act (or E-SIGN). E-SIGN has special rules for giving consumers electronic disclosures. Under E-SIGN, consumer disclosures required by other laws or regulations can be made electronically if the consumer voluntarily consents. Two conditions must be met for a valid consent under E-SIGN:

- The consumer must be given a notice regarding his/her rights (such as the right to withdraw consent) and describing the hardware and software requirements needed to access and retain electronic records.
- The consumer must provide his/her consent electronically in a way that "reasonably demonstrates" he/she can access the information in the electronic form that the parties will use.

E-SIGN does not affect the content or timing of any disclosures or records required to be provided to consumers.

For details on E-SIGN's consent and notice requirements, see The League's *ii Release No. 0175, "Electronic Signatures and Records."*

The result is that credit unions generally can choose to give Reg. B's required disclosures electronically *if* they have obtained the consumer's consent *after* giving the consumer certain notices that E-SIGN requires. Otherwise, the disclosures must be provided in writing. There are, however, some exceptions where consent is not required for disclosures provided on or with an application that the consumer accesses electronically. For all other disclosures and notices that Reg. B requires, though (such as adverse action notices and copies of appraisal reports) consent is needed under E-SIGN before these can be given electronically.

Consent Not Required for Some Application Disclosures

Certain disclosures that must be provided on or with an application can be given in electronic form without obtaining the consumer's consent as required by the E-SIGN, but only if the consumer accesses the application in electronic form.

When Can/Must These Disclosures be Given Electronically?

Since the application disclosures must be “on or with” the application, special rules help determine when these must be provided electronically or when the credit union could instead opt to give them in paper form. The Official Staff Commentary to the regulation explains:

- If an applicant accesses a credit application electronically (other than as described under the next bullet point), such as online at a home computer, the credit union *must* provide the disclosures in electronic form (such as with the application form on its website) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the credit union instead mailed paper disclosures to the applicant, this requirement would not be met.
- In contrast, if an applicant is physically present in the credit union’s office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the credit union to provide applications to consumers), then the credit union may provide disclosures in *either* electronic or paper form, provided that it complies with the timing, delivery, and retainability requirements of the regulation.

The application disclosures that may be provided electronically without a consumer’s E-SIGN consent are listed below, and they are described in more detail elsewhere in this release:

- Self-Test Disclosure (§ 1002.5(b)(1)): If a credit union inquires about an applicant’s race, color, religion, national origin or sex for the purpose of conducting a self-test, it must disclose that providing the information is optional for the applicant, that the information is requested to monitor compliance with the ECOA, and that the creditor may not discriminate either on the basis of the information or whether the applicant chooses to furnish it.
- Title Disclosure (§ 1002.5(b) (2)): When the credit union requests the use of a title (Mr., Mrs., Ms. Miss, etc.) on an application, the form must disclose that the use of the title is optional.
- Marital Status Disclosure § 1002.5(d)(1)): If an application is for other than individual unsecured credit, the credit union may inquire about the applicant’s marital status, but may only use the terms “married, unmarried, and separated.” The credit union can explain that the unmarried category includes single, divorced and widowed individuals.
- Alimony/Child Support/Separate Maintenance Disclosure (§ 1002.5(d)(2)): The credit union is prohibited from inquiring whether income stated in an application is derived from alimony, child support or separate maintenance payments, unless it discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant’s creditworthiness.
- Government Monitoring Information Disclosures (§ 1002.13(a) - (c)): Reg. B requires the collection of government monitoring information for dwelling-secured credit. The credit union must disclose that the information is being requested by the federal government to monitor compliance with federal statutes prohibiting discrimination against credit applicants.

General Requirements for Electronic Disclosures

As previously explained, sometimes application disclosures must be provided electronically. But otherwise, the credit union can provide any of the Reg. B disclosures to consumers both in paper and electronic form and rely on the paper form to satisfy its compliance obligations. If so, the duplicate electronic form of the disclosures may be provided without regard to the consumer’s consent or other provisions of E-SIGN.

Even if provided electronically, Reg. B still requires that its disclosures (with certain exceptions for disclosures on applications) must be in a form the consumer can retain. That requires the credit union to provide disclosures in a standard electronic format that can be downloaded and saved or printed on a typical home personal computer. If disclosures are provided through equipment under the credit union’s control – such as a terminal or kiosk in the credit union’s offices – the credit union could provide a printer that automatically prints the disclosures.

Credit unions may be reluctant to provide disclosures by email, since members could confuse them with fraudulent “phishing” emails, but Reg. B does not require the use of any particular means of electronic delivery of disclosures (such as email or by posting them online). Instead, it allows flexibility for the credit union to use whatever method may be best suited to particular types of disclosure (for example, account opening, periodic statement or change in terms).

If the credit union provides any Reg. B disclosures by positing them on its website, Federal regulators expect the credit union to maintain them on the site for a reasonable period of time (no specific time period is required) so that consumers have an opportunity to access, view, and retain the disclosures.

Reg. B's disclosures generally need to be "clear and conspicuous." When disclosures are made electronically, they satisfy this requirement they are provided in a way makes them clear and readily understandable when viewed on a typical home personal computer monitor (even though consumers may choose to view them instead on smaller hand-held devices).

Interim Rules Withdrawn

Previously issued interim rules, which used to be described in this release, have been withdrawn. They would have required that:

- Disclosures could be sent to an email address designated by the consumer, or could be made available at another location, such as an Internet website.
- If the disclosures were not sent by email, the credit union would have to provide a notice to consumers (typically by email) alerting them to the availability of the disclosures.
- Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information.
- Credit unions would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files.

So long as the credit union complies with E-SIGN in providing the disclosures (with the exceptions described earlier for certain application disclosures), its compliance obligations have been fulfilled.

ENFORCEMENT PENALTIES AND LIABILITIES (§ 1002.16)

Reg. B covers all individuals and institutions that regularly participate in decisions to extend credit. It prohibits discrimination in credit granting on any of the bases specified by the Equal Credit Opportunity Act (ECOA). The ECOA gives the CFPB responsibility for writing and implementing Reg. B and the official staff commentary.

The National Credit Union Administration is responsible for enforcing compliance by federally chartered credit unions. For almost all state chartered credit unions, enforcement is the responsibility of the Federal Trade Commission. The CFPB handles enforcement for state-chartered credit unions with more than \$10 billion in assets.

In addition to actual damages, the ECOA provides for punitive damages of up to \$10,000 in individual lawsuits and up to the lesser of \$500,000 or 1 percent of the credit union's net worth in class action suits. Successful complainants are also entitled to an award of court costs and attorney's fees. A credit union is not liable for a failure to comply with Reg. B if the failure was caused by an inadvertent error and, after discovering the error, the credit union (1) corrects the error as soon as possible and (2) begins to comply with the regulation. "Inadvertent errors," as defined by the regulation, are mechanical, electronic, or clerical errors that the credit union demonstrates were not intentional and occurred despite the fact that it maintained procedures to avoid such errors.

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local; or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

KH/jb

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EXHIBITS

Exhibit A - Information for monitoring purposes, required by Reg. B, § 1002.13.

EXHIBIT A – INFORMATION FOR MONITORING PURPOSES, REQUIRED BY REG. B, § 1002.13.

See “Information For Monitoring Purposes (§ 1002.13),” earlier in this ii Release, for guidance on when this tool must be used.

VOLUNTARY INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. You may select one or more designations for "Race." The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations we are required to note ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check and initial the appropriate box below.

APPLICANT: ☐ I do not wish to furnish this information.		CO-APPLICANT: ☐ I do not wish to furnish this information.	
_____ Initials		_____ Initials	
Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino	Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex:	☐ Female ☐ Male	Sex:	☐ Female ☐ Male
Marital Status:	☐ Married ☐ Unmarried (single, divorced, widowed) ☐ Separated	Marital Status:	☐ Married ☐ Unmarried (single, divorced, widowed) ☐ Separated
Age:	_____	Age:	_____

If the applicant or co-applicant chose not to provide it, the information on ethnicity, race, and sex has been noted by a credit union employee based on visual observation or surname in compliance with § 202.13(b) of Regulation B. Employee's initials: _____