Approved February 28, 1985
Date

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions

The meeting was called to order by Representative Harold P. Dyck at
Chairperson

3:30 ~~xxx~~/p.m. on February 26, 1985 in room 527-S of the Capitol.

All members were present except: Representatives Kent Campbell, Mary Jane Johnson, J. C. Long and Bob Ott, each excused.

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Myrta Anderson, Legislative Research Department
Virginia Conard, secretary

Conferees appearing before the committee:

Stanely Lind, Counsel & Secretary of Kansas Association of Finance Companies
Jim Maag, Research Director, Kans s Bankers Association
James Turner, President, League of Savings Institutions
Representative Denise Apt
Judy Hollinger, Department on Aging

Chairman Harold Dyck called the meeting to order and recognized Rep. Roenbaugh, who had been among the delegation to go to Washington D. C.

Chairman Dyck called on Stanley Lind, Counsel & Secretary of the Kansas Association of Finance Companies, who testified in favor of HB2137. Mr. Lind said that the purpose of this bill was to deregulate loans which exceed $25,000. Mr. Lind pointed out that several states have deregulated consumer credit under various circumstances. (See Attachment I)

For further clarification in the bill, Mr. Lind offered an amendment to HB2137. (See Attachment II)

With no further conferees for HB2137, the chairman called on James Maag, Research Director, Kansas Bankers Association, who testified on HB2270. Mr. Maag state that KBA had no objection to the concept set forth in this bill but that the passage could have some adverse competitive impact on nationally-chartered Kansas banks. (See Attachment III) Mr. Maag stated that he was neither a proponent nor an opponent of the bill.

Chairman Dyck distributed copies of a letter to Representative Mike Hayden from Robert J. Lewis, Jr., an Atwood attorney. His letter prompted the introduction of HB2270. (See Attachment IV for details)

There being no further conferees for HB2270, the chairman called on Rep. Denise Apt who testified in favor of HB2323. Rep. Apt explained that the proposed legislation was for the credit protection of certain groups of consumers, particularly for the credit protection of women. Also testifying on behalf of HB2323 was Julie Hollinger of the Department on Aging. (See Attachment V for details of Ms. Hollinger's testimony.)

In testifying on HB2323, James Turner of the League of Savings Institute stated that he was neither an opponent nor a proponent but wanted to offer an amendment to this bill for consideration by the committee. (See Attachment VI for details)

Next conferee, Jim Maag, stated that while KBA had no objection to the intent contained in HB2323 they were concerned as to how the provisions of this bill would interface with the provisions of Title VII of the Federal Consumer Credit Protection Act. (See Attachment VII for further details of Mr. Maag's testimony.)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,

room 527-S, Statehouse, at 3:30 ~~XXX~~/p.m. on February 26, 1985.

There being no further conferees on HB2323, Chairman Dyck asked Dr. Bill Wolff of the Legislative Research Department to give a brief analysis of HB2107, which had been heard last Thursday.

Rep. Homer Jarchow moved that the committee recommend HB2107 favorably. Rep. Dorothy Nichols seconded the motion. Motion carried.

Chairman Dyck announced the appointment of a sub-committee to study HB2181 and to report their findings to the committee by next Tuesday. He appointed Rep. Susan Roenbaugh (chairperson), Rep. Richard Schmidt, Rep. Mary Jane Johnson and Rep. Harold Guldner (ex officio).

The chairman appointed a subcommittee to study HB2136 with Rep. Kenneth Francisco as chairman and Rep. J. C. Long and Rep. Ivan Sand as members.

Rep. Dorothy Nichols moved that the minutes of the February 21 meeting be approved. Rep. Judith Runnels seconded the motion. Motion carried.

Chairman Dyck stated that committee hearings and action on House bills would need to be completed by March 8, 1985. There will be no committee meetings the week of March 11, 1985.

Meeting adjourned by the chairman.

I

CONSUMER CREDIT RATE DEREGULATION AS OF 1-1-85

Alabama	- no limit over $2,000
Alaska	- no limit over $25,000
Arizona	- no limit
California	- no limit over $5,000 for licensed lenders; no limit for banks and other financial institutions
Colorado	- no limit on non-real estate loans over $25,000
Connecticut	- no limit over $5,000 or for real estate loans, but small loan licensees limited to 24% per year
Delaware	- no limit
Georgia	- Not more than 5% per month over $3,000
Idaho	- No limit over UCCC
Illinois	- no limit
Indiana	- no limit over UCCC
Iowa	- no limit over $25,000 on consumer loans or real estate purchases or improvements
Kentucky	- no limit over $15,000
Maine	- no limit, except consumer loans to $57,000
Minnesota	- no limit over $100,000 or on first home mortgage until 8-1-87
Massachusetts	- Banks and other regulated lenders exempt
Montana	- 6% over prime; rate regulation for licensed lenders, with 24% over $8,250
Nebraska	- no limit over $25,000, or on real estate, business or agricultural loans
Nevada	- no limit
New Hampshire	- no limit over $1,500 for loans or for sales, including motor vehicles
New Jersey	- no limit, except 30% criminal usury law
New Mexico	- no limit
New York	- no limit, except (perhaps) 25% criminal usury new consumer rates to $2,500 after 6-30-87
North Carolina	- no limit over $25,000, or over $10,000 on home mortgages
North Dakota	- no limit for consumer finance companies over $1,000
Ohio	- no limit over $100,000
Oregon	- no limit
Pennsylvania	- no limit over $50,000
South Dakota	- no limit
Utah	- no limit for Revolving Sales or for variable rate mortgages
Virginia	- no limit for first mortgage and business loans and for loans over $5,000 by financial institutions
Wisconsin	- no limit till 10-31-87

ATTACHMENT 1 2/26/85

COMPARISON OF THE KANSAS UNIFORM CONSUMER CREDIT CODE
LOAN RATES WITH THE OTHER UCCC STATES
JANUARY 1985

STATE	First Step	Second Step	Third Step	Alternate Rate	Revolving Rate
KANSAS	36% to $570	21% to $1900	14.45% to $25000	18% Temporarily 21% sunset 7-1-85	36-21-14.45% on the same steps shown opposite or 18% Temporarily 21%
COLORADO	36% to $630	21% to $2100	15% to $25000	21%	21%
UTAH	36% to $840	21% to $2800	15% to $70000	19.6%	No Limit
OKLAHOMA	30% to $630	21% to $2100	15% to $45000	21%	30-21-15% on the same steps as shown opposite or 21%
IDAHO	No Limit	No Limit	No Limit	No Limit	No Limit
INDIANA	36% to $720	21% to $2400	15% to $60000	21%	18%
WYOMING	36% to $1000	21% to $25000	N/A	N/A No Limit Over $25000	Same as Columns 1 & 2
SOUTH CAROLINA	No Limit	No Limit	No Limit	No Limit	No Limit

of the loan or the amortization schedule.

(i) The interest rate prescribed in subsection (a) shall not apply to a ~~loan or a credit sale made primarily for personal, family or household purposes~~ where the amount financed exceeds $25,000.

Sec. 2. K.S.A. 1984 Supp. 16-207 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

S

and (b)

a consumer credit transaction as defined by K.S.A. 1984 Supp. 16a-1-301(11)

and not withstanding that any such transaction may be secured by an interest in land

How subsection (i) would appear if the above amendments were adopted:

(i) The interest rate prescribed in subsections (a) and (b) shall not apply to a consumer credit transaction as defined by K.S.A. 1984 Supp. 16a-1-301(11) where the amount financed exceeds $25000, and not withstanding that any such transaction may be secured by an interest in land.

ATTACHMENT 2

Atch. II
2/26/85

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 26, 1985

TO: House Committee on Commercial and Financial Institutions

FROM: James S. Maag, Director of Research
Kansas Bankers Association

RE: HB 2270

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear on the provisions of HB 2270 which would allow state-chartered banks to pledge assets or otherwise secure that portion of a deposit not covered by Federal Deposit Insurance Corporation (FDIC) insurance. Currently FDIC insurance covers all deposits to a maximum $100,000. As Committee members are aware, Kansas law currently restricts the pledging of the bank's assets mainly to the deposits of governmental units. HB 2270 contemplates that banks could pledge assets on the deposits of individuals, partnerships and private corporations.

The State Affairs Committee of the Kansas Bankers Association has discussed this issue on a number of occasions and has decided not to seek such a change in the law due to the disparity which it would create between state and nationally-chartered banks. As the enclosed sheet "Interpretative Rulings" of the Office of the Comptroller of the Currency (OCC)--which is the regulatory body for all nationally-chartered banks--points out national banks lack the authority to pledge their assets to secure private deposits (77.47410). Thus, if HB 2270 were to pass, and no action was taken by the OCC to change their current rules and regulations on this matter, state-chartered banks would be able to present their customers an attractive alternative which national banks could not. Therefore, it was the decision of the Association not to seek such legislation.

While the KBA has no objection to the concept set forth in HB 2270 we would respectfully ask the Committee to keep in mind that passage of such legislation could have some adverse competitive impact on nearly 200 nationally-chartered Kansas banks.

We appreciate the opportunity to appear on this important issue and are willing to work with the committee to provide any additional information which might be necessary.

ATTACHMENT 3 2/26/85

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solidated for the purpose of applying applicable statutory limitations, such as sections 56, 60, 82, 84, or 371d. Example 1. The combined exposures of the parent bank and all of its operating subsidiaries to a single borrower shall not exceed the bank's loan limit (12 USC 84). Example 2. The combined borrowings of the bank and all of its operating subsidiaries shall not exceed the bank's borrowing limit (12 USC 82).

(3) Examination and supervision. Each operating subsidiary shall be subject to examination and supervision by the Office of the Comptroller of the Currency in the same manner and to the same extent as the parent bank. If, upon examination, the Comptroller of the Currency shall ascertain that the subsidiary is created or operated in violation of law or regulation or that the manner of operation is detrimental to the business of the parent bank and its depositors, he may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper.

(4) Report of disposition of operating subsidiary. Prior to disposition of an operating subsidiary, the parent bank shall inform the Comptroller of the Currency and the Regional Administrator, by letter, of the terms of the transaction.

7.7378. Issuance of credit cards

A national bank may issue credit cards, either directly or through a subsidiary corporation.

7.7379. Servicing of mortgage and other loans as agent

A national bank may act as agent in warehousing and servicing of mortgage and other loans, either directly or through a subsidiary corporation.

7.7380. Loans originating at other than banking offices

(a) A national bank may utilize the services of and compensate persons not employed by the bank for originating loans.

(b) Origination of loans by employees or agents of a national bank or of a subsidiary corporation at locations other than the main office or a branch office of the bank does not violate 12 USC 36 and 81: *Provided,* That the loans are approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

Other Rulings

7.7400. Deposits by national banks in nonmember banks

12 USC 463 forbids member banks to keep on deposit with any nonmember state bank or trust company a sum exceeding 10% of capital and surplus. The bank of North Dakota is not a nonmember state bank within the meaning of this section and national banks, therefore, may maintain deposits with that bank in excess of 10%.

7.7405. National banks as depositaries of public money

12 USC 90 and 12 USC 265 govern the appointments and regulation of national banks as depositaries of public money. Upon request from any national bank asking to be designated a depositary for public moneys the Division of Government Accounts and Reports, Bureau of Government Financial Operations of the Treasury Department will furnish the bank with appropriate instructions, including applicable Treasury regulations.

7.7410. Pledge of bank assets as security for deposits

National banks lack the power to pledge their assets to secure private deposits. However, federal statutes permit national banks to pledge assets as security for public money (12 USC 90): certain Indian moneys (25 USC 156, 162 and 162a); insolvent national bank funds (12 USC 192); Government of Puerto Rico funds (48 USC 780); proceeds of sale of United States obligations (31 USC 771); funds deposited or held in trust awaiting investment (12 USC 92a) and bankruptcy funds deposited under the provisions of 11 USC 101.

7.7415. Surety bond in lieu of pledged assets

If an insurance company's surety bond is acceptable to a public depositor as surety for public deposits, a national bank may obtain such a surety bond and pledge securities or other assets in order to reduce its premium.

7.7420. Acceptances

National banks are not limited in the character of acceptances which they may make in financing credit transactions, and bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 USC 24.

7.7430. Preparing income tax returns for customers or public

While a national bank may not serve as an expert tax consultant, it may assist its customers in preparing their tax returns, either gratuitously or for reasonable fees.

7.7434. Business hours

Agreements, arrangements, undertakings, or understandings among banks, through clearing houses or otherwise, concerning hours or days when such banks may be open for business are not permissible in any form. Wherever a bank has been involved in any of the practices cited, the board of directors should review its bank-

IV

ROBERT J. LEWIS

ROBERT J. LEWIS, JR.

H. SCOTT BEIMS

LEWIS, LEWIS & BEIMS
ATTORNEYS-AT-LAW
809 MAIN STREET
P.O. BOX 449
ATWOOD, KANSAS 67730

TELEPHONE 626-3221

December 14, 1984

Mike Hayden
c/o E. C. Mellick Agency
406 State Street
Atwood, KS 67730

Re: Proposed Legislation

Dear Mike:

I'm writing this letter to you in your capacity as the representative of the 120th Representative District in the State of Kansas and at the request of Barnabas D. Horton and the Board of Directors of the Farmers Bank & Trust.

The purpose of this letter is to propose that certain legislation be introduced to change the ability of state banks to pledge their assets to cover deposits in excess of the F.D.I.C. insurance coverage.

The current prohibition against this is found in K.S.A. 9-1113 which reads as follows:

> "No bank or trust company shall give any preference to any depositor either by pledging any of its assets as collateral security or in any other manner...."

This appears to be a general prohibition against any state bank pledging assets to cover deposits that are in excess of F.D.I.C. insurance coverage. We have also asked for the opinion of the Kansas Bankers Association on this matter and they have advised us that they believe the statute prohibits that and they further advise that in their opinion not only may a bank not pledge assets it could not purchase insurance from a private vendor to cover the amount of a deposit in excess of F.D.I.C. insurance.

At the present time our bank and I'm sure many state banks have deposits in their banks from depositors which are in excess of the $100,000.00 insurance coverage offered by the F.D.I.C. Given the current economic situation and the number of bank failures which have taken place in Kansas in the recent months we are of the opinion that the bank is going to lose substantial deposits unless given some relief from the provisions of the statute set forth above.

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We would propose that that statute be amended in such a manner as to permit state banks to pledge assets or to purchase insurance from private vendors to cover deposits in the bank in excess of the F.D.I.C. insurance coverage. We think that such legislation would work to the benefit of both the state chartered banks and the depositors.

At the present time national banks lack the power to pledge their assets to secure private deposits also. The proposed change of legislation would therefore give state banks an advantage not presently enjoyed by national banking institutions which would appear to me to be something that the legislature would be interested in doing.

We've given this some thought and there appears to be several reasons why this change in legislation should be seriously considered and among those reasons are the following:

1. Under the law as it is now written our local banks are likely to lose substantial deposits to banks outside of the community. If this were to happen it would result in a decreased ability on the part of local banks to service local loan demands. It would, therefore, appear that the proposed legislation would benefit the banks and the communities they serve by keeping local deposits at home available to service local loan demands.

2. The proposed legislative change would also benefit those large depositors who now have deposits in excess of F.D.I.C. insurance limits by permitting those depositors to continue to bank locally without risk to their deposits.

3. It would give state banks a distinct advantage that national banks do not have at the present time thereby making the state charter more desirable which would appear to be in the broad interests of the State of Kansas. I should point out conversely that should the laws governing national banks be changed to permit the pledging of assets or the purchase of insurance by national banks to cover deposits in excess of F.D.I.C. limits under current Kansas law it would be a distinct disadvantage to operate under a state charter and undoubtedly state banks would have to seriously consider a change in their operations and seek to become national banks which would not be a trend that I could see as being advantageous to the State of Kansas.

There are many other reasons why we believe the laws should be changed but I think the major ones have been covered in this letter.

In summary, we propose that K.S.A. 9-1113 either be repealed or be amended so that it reads in such a manner as to permit state banks to either pledge other assets or to purchase insurance from private insurance vendors to guarantee deposits in the banks over and above the F.D.I.C. insurance coverage. We would ask that you give our request favorable consideration and that legislation such as that proposed in this letter be studied and introduced at the next session of the legislature. If you need further information or would like to visit with us further regarding the merits of this issue we certainly would be very glad to do so. We would appreciate hearing your initial reaction to the proposals in this letter.

Yours truly,

Robert J. Lewis Jr.

sjw

T

TESTIMONY ON H.B. 2323
KANSAS EQUAL CREDIT OPPORTUNITY ACT

BY KANSAS DEPARTMENT ON AGING

FEBRUARY 26, 1985

Bill Brief: Amends Consumer Protection Act to prohibit discrimination in credit.

Bill Provisions:

1. Expands definition section to include applicant, credit, and creditor.

2. Prohibits creditors from engaging in any unconscionable act or practice in connection with a credit transaction.

3. Defines unconscionable act or practice to include discrimination based on:

   a) race, color, religion, national origin, sex, marital status or age;
   b) applicant's source of income deriving from public assistance programs; or
   c) applicant's exercise of his rights under this subsection.

Background:

Current state law does not protect consumers from discrimination when applying for credit. The Kansas Act Against Discrimination only applies to real estate loans under the provisions on discriminatory acts in housing. The Kansas Consumer Credit Code prohibits unconscionable agrements as it relates to contract terms and conduct in inducing individuals to sign contracts but not in denial of an application for credit.

Testimony:

The Kansas Department on Aging supports H.B. 2323. Benefits to older Kansans would be:

1) older women could not be refused credit based on sex or marital status. Many married women have not had the opportunity to establish their own credit rating. Upon divorce or death of their husband they find that creditors are reluctant to extend credit to them. In Kansas 58.4% of the age 60+ population is women. Due to different life expectancies for men and women, the ratio increases with age. These widows face an age, sex or marital status barrier when applying for credit.

2) older Kansans could not be refused credit solely on the basis of their age. While older citizens are much more likely to repay their debts than borrowers in other age groups, some elderly are still denied credit solely because of their age.

ATTACHMENT 5 2/26/85

3) older Kansans would not be refused credit solely because some or all of their income derives from any public assistance program. Many older citizens derive a major portion of their income from Social Security and other public benefit programs. This bill, if enacted, would require creditors to consider these income sources in the same way they consider employment income.

Older Kansans should be given the same opportunity and consideration as younger citizens when applying for credit. H.B. 2323 would insure that such equal opportunity is afforded.

JH
2/26/85

Kansas League of Savings Institutions

JAMES R. TURNER, President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

February 26, 1985

TO: HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS

RE: AMENDMENT TO H.B. 2323

The Kansas League of Savings Institutions appreciates the opportunity to appear before the committee to offer an amendment to H.B. 2323, similar to that included in H.B. 2018 pertaining to handicapped persons, that assures that normal underwriting criteria be utilized in loan transactions.

The amendment would be added as a new subsection (c)(4) by inserting the following language after subsection (c)(3) after line 127.

> (4) Nothing in this section shall be construed to require any person making a real estate loan or granting other financial assistance to modify the usual terms or conditions of the real estate loan or other financial assistance, nor shall it be construed to relieve consumers or applicants of any obligation generally imposed on all persons in the making of a real estate loan or the granting of other financial assistance or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the real estate loan or other financial assistance.

We would appreciate the committee's consideration of adding this amendment to H.B. 2323.

James R. Turner
President

JRT:bw

ATTACHMENT 6 2/26/85

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 26, 1985

TO: House Committee on Commercial and Financial Institutions

FROM: James S. Maag, Director of Research
Kansas Bankers Association

RE: HB 2323

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear on the provisions of HB 2323 which amends the Kansas Consumer Protection Act. While we have no objection to the intent contained in the amendments to that act, we do wish to express concern as to how the provisions of this bill will interface with the provisions of Title VII of the Federal Consumer Credit Protection Act.

Committee members will find enclosed a copy of several sections of Regulation B of the Federal Reserve which contains the rules and regulations concerning Title VII of the federal act. It should be noted in almost every instance, the provisions of the federal act coincide with the amendments proposed in HB 2323. However, we should note that there is a significant difference in the definition of what constitutes an "applicant" and we would respectfully ask the committee to compare these definitions before any further action is taken on this measure.

It should again be emphasized that we have no objection to the intent of the measure, but must raise the issue as to whether it (1) accomplishes any purpose which the federal act does not already accomplish, and (2) whether it should be included as part of the Kansas Consumer Protection Act or set off as a separate section in the statutes.

We appreciate the opportunity to appear on this important matter and stand ready to assist the committee in answering any questions concerning the provisions of HB 2323.

ATTACHMENT 7 2/26/85

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Regulation B
Equal Credit Opportunity

12 CFR 202; effective March 23, 1977; amended to May 21, 1979

Section

6–001

SECTION 202.1—Authority, Scope, Enforcement, Penalties and Liabilities, Interpretations

(a) *Authority and scope.* This part[1] comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in section 202.2(*l*).

[1] As used herein, the words "this part" mean Regulation B (Code of Federal Regulations, title 12, chapter II, part 202).

6–002

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the act, administrative enforcement of the act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, board of directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, secretary of agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the act and this part will be enforced by the Federal Trade Commission.

6–003

(c) *Penalties and liabilities.* (1) Sections 706(a) and (b) of the act provide that any creditor who fails to comply with any requirement imposed under the act or, pursuant to section 702(g), this part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the act, violations of the act or, pursuant to section 702(g), this part constitute violations of other federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

6–008

SECTION 202.2—Definitions and Rules of Construction

For the purposes of this part, unless the context indicates otherwise, the following definitions and rules of construction shall apply:[2]

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

6–009

(c) *Adverse action.* (1) For the purpose of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

6–010

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of the creditor's accounts or when the refusal is a denial of an application to increase the amount of credit available under the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both subsections (c)(1) and (c)(2) shall be governed by the provisions of subsection (c)(2).

6–011

(d) *Age* refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

6–012

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. *A completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and

[2] Note that some of the definitions in this part are not identical to those in 12 CFR 226 (Regulation Z).

considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

6–013

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

6–014

(*l*) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of sections 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

6–015

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means an age of 62 or older.

6–016

(p) *Empirically derived credit system.* (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants of a creditor who applied

the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

6–021

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness* means, in relation to a judgmental system of evaluating applicants, any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act[3] or any state law upon which an exemption has been granted by the Board.

6–022

(aa) *Public assistance program* means any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(bb) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

6–023

SECTION 202.3—Special Treatment for Certain Classes of Transactions

(a) *Classes of transactions afforded special treatment.* Pursuant to section 703(a) of the act, the following classes of transactions are afforded specialized treatment:

(1) extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for

[3] The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in section 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable state law.

6–027

(e) *Business credit.* The following provisions of this part shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 202.10 relating to furnishing of credit information; and

(4) section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

6–028

(f) *Governmental credit.* Except for section 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretations, section 202.2 relating to definitions and rules of construction, this section, section 202.4 relating to the general rule prohibiting discrimination, section 202.6(a) relating to the use of information, section 202.11 relating to state laws, and section 202.12(a) relating to the retention of prohibited information, the provisions of this part shall not apply to extensions of credit of the type described in subsection (a)(5).

6–029

SECTION 202.4—General Rule Prohibiting Discrimination

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 202.5—Rules Concerning Applications

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

6–030

(b) *General rules concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the attorney general or a similar state official) to monitor or enforce compliance with the act, this part, or other federal or state statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 202.7(e) regarding insurance and sections 202.8(c) and (d) regarding special-purpose credit programs.

6–031

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or

[4] This subsection is not intended to limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 202.6 (rules concerning evaluation of applications).

en; a statement of the provisions of section 701(a) of the act; the name and address of the federal agency that administers compliance concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

6–050

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) *Multiple creditors.* If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

6–051

(b) *Form of ECOA notice and statement of specific reasons.*

(1) *ECOA notice.* A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the provisions of section 701(a) of the act and the name and address of the appropriate federal enforcement agency if it provides the following notice, or one that is substantially similar:

> The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

The sample notice printed above may be modified immediately following the required references to the federal act and enforcement agency to include references to any similar state statute or regulation and to a state enforcement agency.

6–052

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in check list or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant