NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

June 4, 1990

Eldon Wulbrecht, President
Temple Area Federal Credit Union
P.O. Box 98
Temple, Texas 76503-0983

Re: Open-End Credit (Regulation B, Section 202.7(c)(2)) (Your April 25, 1990, Letter)

Dear Mr. Wulbrecht:

You asked for our opinion as to how frequently a creditor can require reapplication and/or submission of credit information by a borrower with an open-end account under Federal Reserve System Regulation B (12 C.F.R. §202). The answer to your question is not readily apparent on the face of the regulation, and we therefore defer to the Federal Reserve Board for interpretation.

Actions concerning existing open-end accounts are governed by 12 C.F.R. §202.7(c). That section provides, in pertinent part:

> (1) Limitations. In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:
>
> (i) Require a reapplication, except as provided in paragraph (c)(2) of this section; . . .
>
> (2) Requiring reapplication. A creditor may require a reapplication for an open-end account on the basis of a change

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> in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

On its face, the regulation applies only in cases where a creditor's action is based on an applicant's age, retirement, or change of name or marital status. Should the regulation apply, it does not permit a creditor to require reapplication on an open-end credit account except under the limited circumstances described in section 202.7(c)(2) or in Supplement I to Regulation B, which provides for reapplication where the credit was based on the qualifications of a person who is no longer available to support the credit and the creditor has information indicating that the accountholder's income by itself may be insufficient to support the credit. (See Supp. I, §7(c)(2)1, enclosed.) Your letter does not indicate whether the situation you contemplate is factually within the ambit of §§202.7(c)(1) and (2). You also do not indicate the debtor's inability or unwillingness to repay, which is excepted out from the requirements of Section 202.7(c). Therefore, we are unable to offer any opinion as to whether a creditor in the situation you describe would be subject to the regulation at all, or whether he would have the right to require any reapplication. Supplement I does permit a creditor to request updated information from an applicant, but such an update may not be triggered by an applicant's retirement, age, or change in name or marital status. (See Supp. I, §7(c)(1)2, enclosed.) The facts you provide are insufficient to permit a determination whether the creditor in question could require updated information.

Moreover, the regulation makes no mention of any numerical limitations on creditors attempting to require reapplication, and we therefore have no basis upon which to give an opinion as to the frequency with which creditors may take such action.

Regulation B, while applicable to credit unions, was promulgated by the Federal Reserve Board rather than by the National Credit Union Administration. While the NCUA has ad-

ministrative enforcement authority over federal credit unions, we believe that the Federal Reserve Board is best able to interpret its own regulations, and we defer to its judgment on the issue you raise. We suggest that you contact the Federal Reserve Board to obtain its interpretation of section 202.7(c)(2). The Federal Reserve Board maintains a consumer information line which can be reached at (202) 452-3667.

I hope that we have been of assistance.

Sincerely,

for Hattie M. Ulan
Associate General Counsel

Enclosure
CG/MRS:sg
SSIC 3228
90-0504

Section 202.7– Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rule governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

- Repudiate responsibility for future charges on the joint account.
- Request separate accounts in their own names.
- Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules assure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

1. *Joint applicant.* The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

Paragraph 7(d)(2)

1. *Jointly owned property.* In determining the value of the applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition and the cost of such action. If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit. For example:

- Requiring an additional party under § 202.7(d)(5).
- Offering to grant the applicant's request on a secured credit basis.
- Asking for the signature of the co-owner of the property on an instrument that assures access to the property but does not impose personal liability unless necessary under state law.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to assure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

Qualifications of additional parties. In establishing guidelines for eligibility of guarantors, cosigners, or similar additional par-