**Section 800.40 Permissible Inquiries of Credit Applicants.**

a) Generally. Except as expressly authorized in this Section, or in Section 800.50 or 800.60 of this Part, or under any law of the United States or the State of Illinois, a financial institution or credit card offeror may not inquire of any applicant for a loan or credit card regarding any characteristic the consideration of which would constitute unlawful discrimination under the Act. This shall not mean, however, that a mortgage lender is prohibited from inquiring of applicants regarding their race, national origin, age, sex and marital status, to the extent required for federal monitoring purposes under Section 202.13 of Regulation B of the Board of Governors of the Federal Reserve System, (12 CFR 202.13), as long as the inquiry is made in conformity with the requirements of that regulation.

b) Pertinent Elements of Credit-Worthiness.

Section 4-104(B)(1) of the Act provides that financial institutions and credit card offerors are not precluded from: *making an inquiry of the applicant's age, permanent residence,immigration status, or any additional information if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Department*. Under this exemption, the following inquiries are permissible for the purposes and under the circumstances indicated:

1) Age. A creditor may inquire into an applicant's age to ensure that the applicant has the legal capacity to enter into a binding contract; to assess, from the applicant's occupation and probable length of time to retirement, whether the applicant's income (including retirement income) will support the extension of credit to its maturity; to weigh the adequacy of any collateral offered to secure the transaction against the life expectancy of the applicant; or to evaluate the significance of the applicant's length of employment or residence. A creditor may also inquire of an applicant's age in connection with an application for credit insurance, to determine the conditions on which insurance may be available to the applicant.

2) Permanent Residence and Immigration Status. A creditor may inquire into an applicant's permanent residence and immigration status to determine its rights and remedies regarding repayment, provided the inquiry is made uniformly of all applicants without regard to race, national origin or other prohibited characteristic.

3) Sex and Marital Status. A creditor may not request the sex of an applicant, but may request the designation of a title from among "Ms.", "Miss", "Mr." or "Mrs.", if the designation is clearly denominated as optional with the applicant. If the application is for individual unsecured credit and the applicant does not reside in a community property state, the creditor may not request the applicant's marital status; otherwise, the applicant may be required to disclose marital status from among "Married", "Unmarried" and "Separated", and the creditor may explain that "Unmarried" applies to single, divorced and widowed persons. A creditor may not request information regarding an applicant's childbearing capacity or intentions, or birth control practices. A creditor may, however, inquire about the number and ages of an applicant's dependents, about dependent-related financial obligations (e.g., medical and educational expenses attributable to the applicant's responsibility for a dependent) and about the applicant's liability to pay alimony or child support, if the information is requested uniformly of all applicants without regard to sex or marital status or any other prohibited characteristic. A creditor may request the sex and marital status of an applicant in connection with an application for credit insurance, for purposes of determining the conditions on which insurance may be available to the applicant. A creditor may also request the marital status of an applicant for the limited purpose of ascertaining its rights and remedies regarding repayment.

4) Spousal Information.

A) A creditor may not request information concerning an applicant's spouse or former spouse unless:

i) the spouse will be permitted to use the account or will be contractually liable upon it;

ii) the applicant relies on the spouse's income or on alimony or kindred payments (e.g., separate maintenance, child support) from the spouse to repay the indebtedness; or

iii) the applicant resides in, or property securing the indebtedness is located in, a community property state.

B) When any of the criteria contained in subsection (b)(4)(A) of this Section is satisfied, the creditor may request information regarding the applicant's spouse only to the extent that the information may be requested about an applicant under this Section.

5) Source of Income. A creditor shall advise applicants, before inquiring generally into their available income, that they need not disclose income derived from alimony, child support or separate maintenance payments if they do not desire that income considered in evaluating their creditworthiness. This advice is not required, however, if the terms of the inquiry are sufficiently specific (e.g., focused exclusively on employment income) as to reasonably preclude disclosure of alimony, child support or separate maintenance. A creditor may inquire whether any of an applicant's listed income is derived from a public assistance program to evaluate the likely continuation and future reliability of those payments, and to ascertain its rights and remedies regarding repayment, if the inquiry is made uniformly of all applicants without regard to a prohibited characteristic.

6) Disability. A creditor may not inquire whether an applicant has a disability. If any income listed by the applicant is derived from disability or public assistance benefits occasioned by a disability, however, the creditor may request information regarding the nature and duration of the condition for purposes of evaluating the probable continuation and future reliability of that income. A creditor may also inquire into an applicant's physical condition in connection with an application for credit insurance to determine the conditions on which insurance may be available to the applicant.

(Source: Amended at 32 Ill. Reg. 13475, effective August 1, 2008)