Supporting Statement for the
Recordkeeping and Disclosure Requirements
in Connection with Regulation B (Equal Credit Opportunity Act)
(Reg B; OMB No. 7100-0201) (Docket No. R-1281)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to revise, without extension, the mandatory recordkeeping and disclosure requirements in connection with Regulation B, which implements the Equal Credit Opportunity Act (ECOA).[1] The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies reporting, recordkeeping, or disclosure requirements of a regulation as "required information collections."[2]

On April 30, 2007, a notice of proposed rulemaking was published in the *Federal Register* for public comment (72 FR 21125). The proposed rule would amend Regulation B by withdrawing the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The comment period expired June 29, 2007. The Federal Reserve received 25 comment letters. On November 9, 2007, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2008 (72 FR 63445).

The ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation. There are no mandatory reporting forms, but the Federal Reserve adopted model forms to ease compliance burden.

The Federal Reserve proposes to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Federal Reserve also proposes to amend Regulation B to state that when an application is accessed by an applicant in electronic form, certain disclosures must be provided to the applicant in electronic form on or with the application, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply.

[1] ECOA was enacted in 1974 and is codified at 15 U.S.C. 1691. Regulation B is located at 12 C.F.R. Part 202. The collection of information under Regulation B is assigned OMB No. 7100-0201 for purposes of the PRA.

[2] 44 U.S.C. § 3501 *et seq*.

Regulation B applies to all types of creditors, not just state member banks.[3] However, under the PRA, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for creditors that meet the criteria set forth in Regulation B. Other federal agencies account for the paperwork burden on other creditors. The estimated annual burden for the creditors that meet the criteria is 165,630 hours for the 1,172 creditors that are deemed respondents for purposes of the PRA.

Background and Justification

The ECOA is designed to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 USC 1600 *et seq.*). Some of the recordkeeping and disclosure requirements of Regulation B that implement this prohibition were mandated by Congress in the Act, while others were adopted by the Federal Reserve under its authority to implement the statute by regulation.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective in October 2000, authorizes the use of electronic records to satisfy the legal requirement that documents be in writing.[4] The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions; consumer disclosures may be provided electronically only if the consumer provided affirmative consent after receiving certain information specified in the statute. The E-Sign Act did not require the Federal Reserve to adopt implementing regulations.

In April 2001, the Federal Reserve issued an interim final rule setting forth the general rule that institutions may provide disclosures required under Regulation B electronically if the institution complies with the requirements of the E-Sign Act.[5] The interim rule also provided uniform standards for satisfying the timing and delivery requirements of Regulation B when electronic disclosures are used. Institutions may provide electronic disclosures under their existing policies and practices, or may follow the interim rules.[6] Depository institutions that provide electronic disclosures must do so in accordance with the consent requirements of the E-Sign Act, but they need not follow the additional requirements of the 2001 interim rule.

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[3] Appendix A – Federal Enforcement Agencies – of Regulation B defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

[4] 15 U.S.C. § 7001 et seq.

[5] 66 FR 17779 (April 4, 2001).

[6] 66 FR 41439 (August 8, 2001).

In March 2003, the Federal Reserve issued revisions to Regulation B that included adjusting the limited exceptions for public-utilities credit; creating an exception to the general prohibition against inquiring about, or noting, applicant characteristics for non-mortgage credit transactions for the purpose of conducting a self-test; and requiring record retention for prescreened credit solicitations. Other amendments clarified the definition of "creditor" the rules for evaluating married and unmarried credit applicants, and certain rules about obtaining signatures of nonapplicants.[7]

Description of Information Collection

The following information descriptions pertain to the paperwork requirements of Regulation B.

Notifications (Section 202.9)

No other federal law mandates the following disclosures, although the Fair Credit Reporting Act requires related, but different, disclosures in some of the same circumstances. Moreover, some states may have similar requirements.

Consumer credit Under the ECOA and Regulation B, an applicant is entitled to notice of the action taken on a credit application and, if the creditor's decision results in the denial or termination of credit, a written statement of the specific reasons for the adverse action (or disclosure of the right to request the reasons). The notification provides credit applicants and borrowers an opportunity to correct errors in their credit history, helps them identify problems in their credit standing, and improves their understanding of the credit-granting process. When adverse action is taken against a consumer based on information from a consumer reporting agency, the FCRA requires additional disclosures, which may be provided on the same document.

The adverse action notice must generally be in writing, except that creditors that did not receive more than 150 applications during the preceding year may provide notices of adverse action orally. A notice of adverse action must be given within thirty days after (1) receipt of a completed application; (2) the denial of credit on an incomplete application (unless a notice of incompleteness is provided); or (3) adverse action regarding an existing account. A creditor that makes a counter-offer (to grant credit on terms other than those requested) has ninety days from the counteroffer to give the adverse action notice if the applicant does not accept the counter-offer or use the credit offered.

Business credit Generally, a business applicant's asset size determines a creditor's precise obligations. When a creditor takes adverse action on an application from a business with $1 million or less in annual revenues, the creditor may notify the business applicant orally or in writing. The creditor must also provide the applicant with reasons for an adverse action or a notice telling the applicant of its right to request the reasons. These notices must be provided within the same time periods that apply in the case of consumer applicants. The notice of the business' right to request reasons for adverse action, solely may be provided at the time of application in a retainable form or, if an application is made by telephone, orally. A business with more than $1 million in annual revenues is entitled to oral or written notice of adverse action within a reasonable

[7] 68 FR 13144 (March 18, 2003).

time of the action taken and, if timely requested, a written statement of reasons for an adverse action.

Furnishing of Credit Information (Section 202.10)

Creditors that report credit history must report histories of accounts that spouses are permitted to use or on which they are contractually liable in a fashion that reflects both spouses' participation. This requirement applies to any creditor that reports credit history to credit reporting agencies or to other creditors.

Record Retention (Section 202.12)
(Applications, actions, and prescreened solicitations)

A creditor must retain for twenty-five months any written or recorded material related to a consumer credit application, as well as copies of any notification of action taken and statement of specific reasons for adverse action (or any written notation or memo of an oral notification and statement) and any written statement submitted by the applicant alleging a violation of ECOA or Regulation B. Comparable records of business credit applications must be retained for twelve months, except that records of applications from businesses with gross revenues exceeding $1 million must be kept for sixty days (or twelve months, if the applicant requests in writing the reason for the adverse action or that the records be retained). The record retention requirements also extend to information used in prescreened credit solicitations. The information to be retained includes records related to the text of the solicitation, the criteria used to select potential recipients of the prescreened solicitations, and correspondence related to consumer complaints about the solicitations.

Information for Monitoring Purposes (Section 202.13)

A creditor is required to request that an applicant indicate his or her race, ethnicity, sex, age, and marital status in connection with applications for credit primarily for purchasing or refinancing real property to be occupied by the applicant as a principal residence and secured by a lien on the property. Creditors are otherwise prohibited from collecting such applicant data with some exceptions. The applicant must be informed that the information is being requested by the federal government for the purpose of monitoring the creditor's compliance with federal law and if the applicant declines to provide the information, the bank will note the applicant’s ethnicity, race, and sex based on visual observation or surname.

Rules on Providing Appraisal Reports (Section 202.14)
(Appraisal report upon request and Notice of right to appraisal)

An applicant has a right to a copy of any appraisal report used in connection with an application for a loan to be secured by a dwelling. Creditors may elect either to provide a copy of the appraisal report to all applicants for covered loans or provide the appraisal only upon request. Creditors who choose to provide the appraisal only upon request must notify all applicants for covered loans of their right to request a copy of the appraisal. The notice is not required to be in any particular format, but the regulation contains model language to ease compliance. Creditors

can give the notice at any time during the application process, but not later than when the creditor provides notification to the applicant of the action taken.

Record Retention (Sections 202.12 & 202.15)
(Incentives for self-testing and self-correction)

As defined by Regulation B, a self-test is any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the ECOA or Regulation B, and creates data or factual information that would not otherwise be available and cannot be derived from loan or application files or other records related to credit transactions. The results or report of a self-test, as well as data or factual information created by the self-test and any analysis, opinions, or conclusions, are privileged if the creditor: (1) takes appropriate corrective action to address any likely violations identified by the self-test, (2) refrains from disclosing any part of the report or results, and (3) retains all written or recorded information required to be retained about the self-test and produces it when necessary to determine whether the privilege applies.

A creditor ordinarily must retain all written or recorded information about a self-test for twenty-five months. If a creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action, the creditor must retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Rules concerning requests for information (Section 202.5)
(Disclosure for optional self-test)

When a creditor inquires about, and notes, personal characteristics such as race or national origin for the purpose of conducting a self-test under § 202.15, the creditor must disclose orally or in writing to the consumer at the time of the information request that providing the information is optional, that the information request is to monitor compliance with ECOA, that federal law prohibits discrimination on the basis of this information or on the basis of an applicant's decision not to furnish this information, and that, if applicable, certain information may be noted by visual observation or surname.

Proposed Revisions

Section 202.4(d) prescribes the form of disclosures, and specifically provides that a creditor that provides in writing any disclosures or information required by the regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 202.5 and 202.13, in a form that the applicant may keep. The Federal Reserve proposes to redesignate this provision as the general rule in § 202.4(d)(1).

The Federal Reserve also proposes to add a new § 202.4(d)(2) to clarify that, with regard to disclosures requirements in §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), 202.13, and 202.14, that the regulation requires to be given in writing, creditors may provide such disclosures in electronic form, subject to

compliance with the consumer consent and other applicable sections of the E-Sign Act. Some creditors may provide disclosures to applicants both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the disclosures may be provided to applicants without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 202.4(d)(2) would also provide that certain disclosures, when included on or with an application, must be provided to the applicant in electronic form if the applicant accesses the application electronically. Under those circumstances, these disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

Time Schedule for Information Collection

Regulation B information collection requirements are triggered by certain events, disclosures must be provided to applicants within prescribed times, and records must be retained for specified periods.

Sensitive Questions

Sensitive questions are not contained in any report or survey sponsored by the Federal Reserve in connection with Regulation B. However, applicants for mortgage loans are asked to voluntarily provide information on ethnicity, sex, age, and marital status so that regulators may monitor for compliance with the law. If they do not provide the information, certain information may be noted by visual observation or surname. For all non-mortgage credit, a creditor may not ask or note applicants' sex, race, color, religion, or national origin. There is an exception permitting collection of this information for purposes of conducting a self-test that meets the requirements of § 202.15. It is at the option of the applicant to provide this information.

Consultation Outside the Agency

On April 30, 2007, a notice of proposed rulemaking was published in the *Federal Register* for public comment (72 FR 21125). The comment period expired June 29, 2007. The Federal Reserve received 25 comment letters. On November 9, 2007, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2008 (72 FR 63445).

Legal Status

The Board's Legal Division has determined that 15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a) authorize the Federal Reserve to mandate the information disclosures. The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and

(8) of the Freedom of Information Act (5 USC 522 (b)).

Estimate of Respondent Burden

The estimated annual burden for this information collection is 165,630 hours, as shown in the following table. The table provides the estimated annual burden for the 1,172 creditors to which Regulation B applies. The estimated total annual burden represents about 3.5 percent of total Federal Reserve System burden.

For purposes of the PRA no paperwork burden is associated with the recordkeeping requirement for information about prescreen solicitations (202.12(b)(7)) because the regulation does not specify records to be retained as evidence of compliance. As mentioned in the proposed rule the Federal Reserve requests specific comment on whether the revisions would change the burden on respondents, no comments specifically addressing the burden estimate were received.

	Number of respondents	*Estimated annual frequency*	*Estimated response time*	*Estimated annual burden hours*
Notifications (202.9)	1,172	1,715	2.50 mins	83,816
Furnishing of credit information (202.10)	1,172	850	2.00 mins	33,173
Record retention *(applications, actions, and prescreened solicitations)* (202.12)	1,172	1	8 hours	9,376
Information for monitoring purposes (202.13)	1,172	360	0.50 mins	3,502
Rules on providing appraisal reports (202.14):				
Appraisal report upon request	1,172	190	5.00 mins	18,549
Notice of right to appraisal	1,172	1,650	0.25 mins	8,064
Self-testing				
Record retention:				
Incentives (202.12)	200	1	2 hours	400
Self-correction (202.15)	50	1	8 hours	400
Rules concerning requests for information (202.5) *(Disclosure for optional self-test)*	200	2,500	1 min	8,350
Total				165,630

The total cost to the public is estimated to be $10,211,012.[8]

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information in connection with Regulation B, the related cost to the System is negligible.

[8] Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ $25, 45% - Managerial or Technical @ $55, 15% - Senior Management @ $100, and 10% - Legal Counsel @ $144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

Financial Industry Burden Averages

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[9] They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions including Federal Reserve-regulated institutions, subject to Regulation B would be approximately 2,603,959 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, such as retailers, finance companies, mortgage bankers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

[9] Appendix B – Federal Enforcement Agencies – of Regulation B lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, U.S. Small Business Administration, Securities and Exchange Commission, Farm Credit Administration, and Federal Trade Commission.