

**Supporting Statement for Information Collection  
Provisions of Regulation B  
(Equal Credit Opportunity Act)  
12 CFR 202  
(OMB Control Number: 3084-0087)**

**1. Necessity for Collecting and Retaining the Information**

The Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1691 *et seq.*, was enacted to ensure that credit is made available to all creditworthy applicants without discrimination on the basis of sex, marital status, race, color, religion, national origin, or age. The ECOA also prohibits discrimination because an applicant's income is derived from a public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The Federal Reserve Board (“FRB”) promulgated Regulation B to implement the ECOA, as required by the statute. The ECOA applies to anyone who regularly extends or arranges for the extension of credit and to an assignee who participates in the decision to extend credit.<sup>1</sup> The Federal Trade Commission (“FTC” or “Commission”) enforces the ECOA as to all creditors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another federal agency. The ECOA also contains a private right of action with a two-year statute of limitations for aggrieved applicants.

**Recordkeeping**

Section 202.12(b) of Regulation B requires creditors to retain records relating to consumer credit applications for 25 months from the date that the applicant is notified of the action taken on the application or, where notice is not required, for 25 months from the date of the application. When a creditor takes adverse action on an existing account, the creditor must retain records for 25 months after the applicant is notified of the action taken. Records of business credit applications must be retained for comparable 12 month periods, with certain exceptions. Regulation B also requires creditors who have been informed that they are the subject of an investigation by the FTC (or another agency) regarding their compliance with the ECOA to retain such records until the agency or a court informs the creditor that retention is no longer necessary. Moreover, Regulation B requires creditors to retain all written or recorded information about a self-test (including corrective action), as defined in Section 202.15 of Regulation B, for 25 months after a self-test has been completed (and longer under some circumstances). Regulation B also requires creditors to retain certain prescreened solicitation materials for 25 months after the date on which an offer of credit is made to potential customers

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<sup>1</sup> The law applies to a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of credit. See Section 202.2(1) of Regulation B. It includes assignees and others, but not potential assignees who establish underwriting guidelines for their purchases yet do not influence individual credit decisions. *See* 68 FR 13,144 (2003).

(12 months for business credit, with certain exceptions).<sup>2</sup> The recordkeeping requirement ensures that records that might contain evidence of violations of the ECOA remain available to the FTC, other agencies, and private litigants.

### Disclosure<sup>3</sup>

Section 202.9 of Regulation B requires creditors to provide notice (within specified time periods) to applicants for credit against whom adverse action is taken.<sup>4</sup> Generally, the required notice must be in writing and contain: a statement of the action taken; the name and address of the creditor; a statement describing the anti-discrimination provisions of the ECOA; the name and address of the federal agency that administers compliance as to the creditor; and either a statement of specific reasons for the action taken or a notice of the applicant's right to obtain such a statement.

Section 202.10 of Regulation B requires creditors that furnish credit information to consumer reporting agencies to designate accounts to reflect the participation of both spouses, if the applicant's spouse is permitted to use or is contractually liable on the account.

Section 202.13 of Regulation B requires that creditors who receive applications for certain mortgage credit requests, as part of the application process, obtain information about the applicant's race/national origin, sex, marital status, and age. The information may be requested on the application form or on a separate form that refers to the application. The applicant is asked but not required to supply the information. If the applicant chooses not to provide the information or any part of it, the creditor must note that fact on the form and must note, to the extent possible, the race/national origin and sex of the applicant on the basis of visual observation or surname. The creditor is required to inform the applicant that the information is sought by the federal government to help monitor compliance with federal statutes that prohibit creditors from discriminating against applicants based on the above-noted factors. An agency charged with the administrative enforcement of the ECOA, including the FTC, may substitute its own monitoring program for that described in § 202.13 of Regulation B.

Section 202.14 of Regulation B requires that creditors notify mortgage credit applicants of their right to receive a copy of the appraisal report prepared in connection with the application. The requirement that the creditor provide a copy of the appraisal report upon the applicant's request is statutorily mandated by Section 1691(e) of the ECOA. The requirement that applicants be notified of this right is not specifically mandated by the ECOA. Regulation B

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<sup>2</sup> The records are generally already retained by creditors in connection with their business operations in part due to the credit extension that will be made to responding applicants.

<sup>3</sup> Regulation B permits many disclosures to be made orally. Any required written disclosures must be made clearly and conspicuously and in a form the applicant can retain.

<sup>4</sup> For incomplete applications, creditors may initially provide the adverse action notice or a notice of incompleteness.

allows creditors to avoid the notice requirement by providing the appraisal report itself to all applicants for whom an appraisal is performed in the first instance. Creditors may also avoid the burden of sending a separate notice by including the notice of the right to an appraisal in an adverse action notice or by placing the notice on the application form or other documents provided to the applicant.

Under Sections 202.5(b) and 202.15 of Regulation B, creditors that collect applicant characteristics for purposes of conducting a self-test under Regulation B must disclose, orally or in writing, that providing the information is optional, that the creditor will not take into account the information in any aspect of the credit transactions, and, if applicable, that the information will be noted by visual observation or surname, if the applicant chooses not to provide it.

The requirement that spousal credit history information on shared accounts be reported under both spouses' names (if it is reported at all) is intended to ensure that each spouse has the benefit of that shared credit history from which to seek and obtain further credit. The requirement that a notice of adverse action be provided assists applicants in detecting unlawful discrimination, correcting errors that may have occurred in the evaluation of their applications, and learning how to become more creditworthy. The requirement that information about the race/national origin, sex, marital status, and age of applicants be collected helps the FTC, other enforcement agencies, and private litigants to determine whether creditors discriminated against applicants on those bases. The collateral requirement that applicants be notified of the purpose for collecting this information helps to ensure that the information is provided. The applicants' right to a copy of the appraisal allows applicants to determine the role that the appraisal played in the credit decision; the collateral requirement that applicants be informed of their right to obtain a copy of the appraisal helps applicants take advantage of this right. The self-testing disclosure helps applicants understand the nature of the information collection process.

The FRB has issued model forms that may be used to comply with the notice requirements of the ECOA and Regulation B. *See* Appendices B and C to Regulation B. Correct use of these model forms insulates creditors from liability for the respective requirements under the ECOA and Regulation B. *Id.*

## **2. Use of the Information**

The FTC, other agencies, and private litigants use recordkeeping information to compare accepted and rejected applicants in order to determine whether applicants are treated less favorably on the basis of race, sex, age, or other prohibited bases under the ECOA. Information derived from these records has been the primary evidence of law violations in most of the ECOA enforcement actions brought by the FTC. Self-testing records (including for corrective action) are used by creditors to identify potential violations and reflect their efforts to correct the problem. Absent the Regulation B requirement that creditors retain monitoring information, the FTC's ability to detect unlawful discrimination and enforce the ECOA would be significantly impaired.

The FTC, other agencies, and private litigants use adverse action notices, appraisal

reports, and other information in the application file to compare accepted and rejected applicants in order to determine whether any applicants are discriminated against on the basis of race/national origin, sex, marital status, age, or other prohibited bases under the ECOA. Information derived from these records has been the primary evidence of law violations in most of the ECOA enforcement actions brought by the FTC. The adverse action notice requirement appraises applicants of their rights under the ECOA and of the basis for a creditor's decision. Applicants use their copy of the appraisal to review (and possibly challenge) the accuracy and/or fairness of the information contained within, and to determine the role that the appraisal played in the credit decision. Applicants use the self-testing disclosure to facilitate understanding of creditors' information collection, including its optionality.

### **3. Consideration of the Use of Improved Information Technology**

The FRB has issued final rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation B, within the context of the Electronic Signatures in Global and National Commerce Act ("ESIGN"), 15 U.S.C. 7001 *et seq.* 72 FR 63,445 (Nov. 9, 2007). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN, which became effective on Oct. 1, 2000. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act ("GPEA"), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504, note. ESIGN and GPEA serve to reduce businesses' compliance burden related to federal requirements, including Regulation B, by enabling creditors to utilize more efficient electronic media for disclosures and compliance.

Regulation B also permits a creditor to retain records as "carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer." Section 202.12(b)-1 of the FRB Official Staff Commentary on Regulation B ("Commentary"). In addition, Regulation B permits a creditor to record the information required for monitoring purposes "by recording on paper or by means of computer . . . ." Section 202.13(b)-2 of the Commentary.

### **4. Efforts to Identify Duplication/Availability of Similar Information**

The recordkeeping requirement of Regulation B preserves the information considered by the creditor in deciding whether to extend credit or terminate an existing credit account. The creditor is the only source of this information, and no other federal law mandates its retention. State laws do not duplicate these requirements.<sup>5</sup> Similarly, the creditor is the only source of the

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<sup>5</sup> Regarding prescreened solicitations, Section 615(d) of the Fair Credit Reporting Act ("FCRA") requires retention of some, but not identical, information required by the ECOA. Among other things, the FCRA requires persons who use information in consumer reports to select consumers to receive certain offers of credit to maintain the criteria used to select the consumer, for three years from the date the credit offer is made. The ECOA focuses on creditors, includes certain business applicants, and also addresses the solicitation including the text and any related complaints. The FRB enacted these rules to ensure that creditors would retain all necessary information for enforcement and avoidance of circumvention of the ECOA.

information provided by appraisal reports, adverse action notices, and self-testing information, and no other federal law mandates their disclosure nor is staff aware of any state law mandating their disclosure.

Regulation C under the Home Mortgage Disclosure Act (“HMDA”) requires mortgage lenders subject to that Act to collect and report information about the race or national origin and sex of applicants. The data collection requirements of HMDA are similar, but not identical to, those of the ECOA. However, the FTC has no enforcement authority for HMDA, and ordinarily has no right to obtain this information except to the extent that it becomes publicly available. Moreover, the HMDA information released publicly does not include identifying information about individual applicants. Thus, the ECOA monitoring information is less useful to FTC staff in its enforcement efforts than is the ECOA monitoring information. The creditor is also the only source of the credit history reporting information regarding the applicant’s spouse.

## **5. Efforts to Minimize Burdens on Small Businesses**

The ECOA and Regulation B accord special treatment to creditors that receive fewer than 150 applications each year. Section 202.9(d) of the Regulation states that such creditors may provide required notices to rejected applicants orally rather than in writing. Where fewer written records are required to be created, the recordkeeping burden is correspondingly reduced. In addition, Section 202.3(c) of the Regulation exempts providers of incidental credit, such as a doctor or lawyer who allows a patient or client to defer payment of a bill, from many requirements including notifications under Section 202.9 of the Regulation and recordkeeping. The requirements to collect monitoring information and to provide a copy of the appraisal report apply to all creditors who extend applicable mortgage credit. There is no exception based on creditor size.

Most creditors today utilize some degree of computerization in their business, which further assists in facilitating compliance with the Regulation. Additionally, as noted above, Regulation B provides model forms that may be used in compliance with its requirements. Correct use of these forms insulates creditors from liability from the respective requirements.

## **6. Consequences of Conducting Collection Less Frequently**

The current record retention period of 25 months supports the two-year statute of limitations for private actions, and the FTC’s (and other administrative agencies’) need for sufficient time to bring enforcement actions regarding ECOA issues. If the retention period were shortened, applicants who sue under the ECOA, and administrative agencies that enforce the ECOA, might find that the records needed to prove ECOA violations no longer exist.

Were the requirement that creditors provide notice of adverse action eliminated, applicants could be deprived of the right to receive timely notice of the creditor's decision, the reasons for any adverse action by the creditor, and the applicants' rights under the ECOA. Eliminating the requirement that creditors provide a copy of the appraisal report or notice of its availability would greatly impair applicants’ ability to assess the report’s impact on the

creditor's decision and to challenge it in timely fashion. Were the requirement that creditors collect information about an applicant's race or national origin eliminated or changed, the creditor would still have access to this information when obtained through a face-to-face interview with the applicant and could use the information to discriminate. However, the FTC and others seeking to enforce compliance with the ECOA would not have that information and would thereby be disadvantaged. Eliminating the self-test disclosure (which can be made orally or in writing) could disadvantage consumers who may then not understand the purpose of the information being collected, or their option not to provide it. Finally, eliminating the credit history reporting requirement regarding spouses with shared accounts would undermine the goal of affording both spouses the benefit of that shared credit history in seeking further credit.

**7. Circumstances Requiring Collection Inconsistent with Guidelines**

Regulation B's recordkeeping and disclosure requirements are consistent with the guidelines contained in 5 CFR 1320.5(d)(2).

**8. Consultation Outside the Agency**

Both the recordkeeping and the notice requirements of Regulation B were promulgated by the FRB. Before the regulation was initially adopted and prior to each amendment, the FRB published the regulation for public comment in the Federal Register.

More recently, the Commission sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 CFR 1320.8(d). *See* 73 FR 70,347 (Nov. 20, 2008). No comments were received. Consistent with 5 CFR 1320.12(c), the FTC is again seeking public comment contemporaneously with this submission.

**9. Payments or Gifts to Respondents**

Not applicable.

**10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature**

The required recordkeeping and written disclosures contain private financial information about applicants for consumer credit. Such information is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the FTC would be covered by the protections of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f) and 57b-2, by Section 4.10 of the Commission's Rules of Practice, 16 CFR 4.10, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

**12. Estimated Hours Burden:** 3,129,437 (1,153,500 recordkeeping hours + 1,975,937 disclosure hours).

Recordkeeping

FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1 hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each for approximately 9 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 150,000 hours.<sup>6</sup> Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 2,500 firms, with an average annual burden of one hour per firm, for a total of 2,500 hours, and that recordkeeping of any corrective action for self-testing would affect 250 firms in a given year, with an average annual burden of four hours per firm, for a total of 1,000 hours.<sup>7</sup> The total estimated recordkeeping burden is 1,153,500 hours.

Disclosure

Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action. It requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants or to notify them of their right to a copy of the report (and thereafter provide a copy of the report, upon the applicant's request). Finally, Regulation B also requires that for accounts which spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that providing the information is optional, that the creditor will not take the information into account in any aspect of the credit transactions, and, if applicable, that the information will be noted by visual observation or surname if the applicant chooses not to provide it.<sup>8</sup>

Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and others. Below is staff's best estimate of burden applicable to this very broad spectrum of covered entities.

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<sup>6</sup> Regulation B contains model forms that creditors may use to gather and retain the required information.

<sup>7</sup> In contrast to banks, for example, entities under FTC jurisdiction are not subject to regular audits for financial regulatory compliance with Regulation B; rather they may be subject to investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

<sup>8</sup> The disclosure may be provided orally or in writing. Regulation B provides a model form to assist creditors in providing the written disclosure.

Regulation B: Disclosures – Burden Hours

Disclosures	----- Setup/Monitoring <sup>1</sup> -----			----- Transaction-related <sup>2</sup> -----			
	Respondents	Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (hours)	Number of Transactions	Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Credit history reporting	250,000	.25	62,500	125,000,000	.25	520,833	583,333
Adverse action notices	1,000,000	.5	500,000	200,000,000	.25	833,333	1,333,333
Appraisal notices	20,000	.5	10,000	4,500,000	.25	18,750	28,750
Appraisal reports	20,000	.5	10,000	4,500,000	.25	18,750	28,750
Self-test disclosures	2,500	.5	1,250	125,000	.25	521	1,771
Total							1,975,937

<sup>1</sup> With respect to appraisal notices and appraisal reports, the above figures reflect a decrease in applicable mortgage entities. The figures assume that approximately half of those entities (.5 x 40,000, or 20,000 businesses) would not otherwise provide this information and thus would be affected. The figures also assume that all applicable entities would provide notices first and thereafter provide the reports upon request.

<sup>2</sup> The above figures reflect a decrease in mortgage transactions compared to prior FTC estimates. They assume that half of applicable mortgage transactions (.5 x 9,000,000, or 4,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

**Associated labor cost: \$ 83,456,633**

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$41 for managerial or professional time, \$30 for skilled technical time, and \$16 for clerical time) are averages.

**Recordkeeping**

Staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Keeping records of the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time. As shown below, the total recordkeeping cost is \$22,005,000.

**Disclosure**

For each notice or information item listed, staff estimates that the burden hours consist of 10 percent managerial or professional time and 90 percent skilled technical time. As shown below, the total disclosure cost is \$61,451,633.



Regulation B: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$41/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
General recordkeeping	0	\$0	100,000	\$3,000,000	900,000	\$14,400,000	\$17,400,000
Other recordkeeping	0	\$0	150,000	\$4,500,000	0	\$0	\$4,500,000
Recordkeeping of test	0	\$0	2,500	\$75,000	0	\$0	\$75,000
Recordkeeping of corrective action	0	\$0	1,000	\$30,000	0	\$0	\$30,000
Total Recordkeeping							\$22,005,000
Credit history reporting	58,333	\$2,391,653	525,000	\$15,750,000	0	\$0	\$18,141,653
Adverse action notices	133,333	\$5,466,653	1,200,000	\$36,000,000	0	\$0	\$41,466,653
Appraisal notices	2,875	\$117,875	25,875	\$776,250	0	\$0	\$894,125
Appraisal reports	2,875	\$117,875	25,875	\$776,250	0	\$0	\$894,125
Self-test disclosure	177	\$7,257	1,594	\$47,820	0	\$0	\$55,077
Total Disclosures							\$61,451,633
Total Recordkeeping and Disclosures							\$83,456,633

### 13. Estimated Capital and Other Non-Labor Costs

The applicable requirements impose minimal start-up costs, as lenders generally have or obtain necessary equipment for other business purposes. For the same reason, staff believes that the cost of printing and copying needed to comply with Regulation B is minimal. Staff anticipates that the above requirements necessitate ongoing, regular training so that lenders stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with collecting information to comply with Regulation B.

### 14. Estimated Cost to the Federal Government

The FRB promulgated the recordkeeping requirement of Regulation B, so there is no cost to the FTC for that purpose. Enforcement of the recordkeeping requirements of Regulation B is incidental to overall enforcement of the ECOA. In the course of compliance investigations, staff routinely requests records of credit applications. If the records requested are not available, it indicates that records are not being retained as required. Staff estimates that enforcing this requirement will cost the FTC Bureau of Consumer Protection no more than \$78,593, which is a representative years' cost of enforcing Regulation B's requirements during the three-year clearance period sought. This estimate is based on the assumption that one-half of one attorney work year will be expended. Clerical and other support services are included in this estimate.

The FRB promulgated the Regulation B disclosure requirements, so there is no cost to the FTC for that purpose. Regarding enforcement, staff estimates that the cost to the FTC Bureau of Consumer Protection for this requirement will approximate \$628,736. This estimate is based on the assumption that three attorney work years and one other professional work year will be expended to enforce various aspects of these rules. Clerical and other support services are also included in this estimate.

**15. Program Changes or Adjustments**

Staff has decreased the prior annual burden estimate by 559,563 hours (from 3,689,000 to 3,129,437). This is attributable to a decrease in the number of mortgage entities and mortgage transactions, relative to prior FTC estimates.

**16. Publishing Results of the Collection of Information**

Not applicable.

**17. Display of Expiration Date for OMB Approval**

Not applicable.

**18. Exceptions to the Certification for PRA Submissions**

Not applicable.