

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

***Credit Score Disclosure
(Docket No. R-1408) (RIN 7100-AD67)***

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the recordkeeping and disclosure requirements in connection with Regulation B, which implements the Equal Credit Opportunity Act (ECOA).¹ The Paperwork Reduction Act (PRA) classifies these requirements as an information collection.

On March 15, 2011, a notice of proposed rulemaking (NPRM) was published in the *Federal Register* (76 FR 13896) requesting public comment on proposed amendments to Regulation B. The Federal Reserve proposed to amend the model notices in Regulation B to include the disclosure of credit scores and information relating to credit scores if a credit score is used in taking adverse action. These proposed amendments reflect the new content requirements in section 615(a) of the Fair Credit Reporting Act (FCRA) that were added by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The comment period expired on May 16, 2011. The Federal Reserve received five comments from industry groups that specifically addressed paperwork burden. On July 15, 2011, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by August 15, 2011 (76 FR 41590).

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 required reporting forms associated with Regulation B. To ease the burden and cost of complying with Regulation B (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.²

Regulation B applies to all types of creditors, not just state member banks. The Federal Reserve accounts for the paperwork burden associated with Regulation B only for the categories of creditors for which it enforces compliance with Regulation B.³ Other federal agencies account for

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.

² Appendix B to Part 202--Model Application Forms and Appendix C to Part 202--Sample Notification Forms.

³ Pursuant to Section 704 of ECOA (15 U.S.C. 1691c) and Regulation B, § 202.16 and Appendix A (Federal

the paperwork burden imposed on the creditors for which they have regulatory enforcement authority. The current annual burden for the 1,107 creditors⁴ that are Federal Reserve-supervised and deemed “respondents” for purposes of the PRA is estimated to be 157,538 hours.

The Federal Reserve estimates the proposed rule would impose a one-time increase of 35,424 hours in the annual burden under Regulation B for all respondents regulated by the Federal Reserve. The total annual burden for the Regulation B information collection would increase from 157,538 to 192,962 hours. The Federal Reserve estimates that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden.

Background and Justification

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.

Since the 2005 renewal of the recordkeeping and disclosure requirements in connection with Regulation B, the Board has amended Regulation B to 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). In November 2007, the Board published a final rule that provides that certain disclosures may be provided to a consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act and that, when an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement.⁵

Enforcement Agencies), the Federal Reserve enforces compliance with ECOA for the following institutions: 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 The number of Federal Reserve-supervised respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System 96th Annual Report 2009: 845 State member banks, 204 Branches & agencies of foreign banks, 3 Commercial lending companies, and 55 Edge Act or agreement corporations.

⁵ 72 FR 63445 (Nov. 9, 2007).

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 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 30 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 90 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 may be provided at the time of application in a retainable form or, if an application is made solely 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 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 25 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 12 months, except that records of applications from businesses with gross revenues exceeding \$1 million must be kept for 60 days (or 12 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 (formal or informal) 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 a dwelling to be occupied by the applicant as a principal residence and secured by a lien on the dwelling. 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 credit 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 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 25 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.

Credit Score Disclosure Amendments

Appendix C to Part 202 – Sample Notification Forms.

Under the proposal, Forms C-1 through C-5 would be revised to include, as applicable, a statement that the creditor obtained the consumer's credit score from a consumer reporting agency named in the notice and used the score in making the credit decision. The notice would also state that a credit score is a number that reflects the information in the consumer's credit report and that the consumer's credit score can change depending on how the information in the consumer's credit report changes. The model notices would also provide space for the creditor to include the content required under section 1100F of the Dodd-Frank Act that is specific to the consumer. This content includes: the consumer's credit score, the date the credit score was created, the range of possible credit scores under the model used, and up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of enquiries made with respect to that consumer report is one of the factors).

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 and Discussion of Public Comment

On March 15, 2011, a NPRM was published in the *Federal Register* (76 FR 13896) requesting public comment on the proposed amendments to Regulation B. The comment period expired on May 16, 2011. The Federal Reserve received five comments from industry groups that specifically addressed paperwork burden. In the proposal, the Federal Reserve estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Federal Reserve recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate. Several industry commenters believed that the Federal Reserve underestimated the compliance burden of the proposed rule. These commenters asserted that compliance would require between two weeks (80 hours) and 8,000 hours.

Based on these comments, the Federal Reserve agreed that some additional time beyond 16 hours may be needed. The Federal Reserve, therefore, revised upward its prior burden estimate to 32 hours (4 business days). Entities affected by the final rule are already familiar with the existing adverse action provisions, thus to add additional information to their notice should not be overly burdensome. In addition, the Federal Reserve has provided model notices that should significantly reduce the cost of compliance with the final rule. On July 15, 2011, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by August 15, 2011 (76 FR 41590).

Legal Status

The Board's Legal Division has determined that 15 USC 1691 authorize the Federal Reserve to mandate the information disclosures. 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 total annual burden for this information collection is estimated to increase from 157,538 hours to 192,962 hours, as shown in the following table. The Federal Reserve estimates that the 1,107 respondents regulated by the Federal Reserve would take, on average, 32 hours (four business days) to update their systems and modify model notices to comply with proposed requirements. This one-time requirement would increase the burden by 35,424 hours. The Federal Reserve estimates that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden. The recordkeeping and disclosure requirements represent less than 2 percent of total Federal Reserve System paperwork burden.

This total estimated burden increase represents averages for all respondents supervised by the Federal Reserve. The Board expects that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

Current	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Notifications (202.9)	1,107	12	6 hours	79,704
Furnishing of credit information (202.10)	1,107	12	2.50 hours	33,210
Record retention (202.12) : <i>Applications, actions, and prescreened solicitations⁶</i>	1,107	1	8 hours	8,856
Information for monitoring purposes (202.13)	1,107	12	15 mins	3,321
Rules on providing appraisal reports (202.14) : <i>Appraisal report upon request</i>	1,107	12	1.25 hours	16,605
<i>Notice of right to appraisal</i>	1,107	12	30 mins	6,642
Self-testing				
Record retention:				
<i>Incentives (202.12)</i>	200	1	2 hours	400
<i>Self-correction (202.15)</i>	50	1	8 hours	400
Rules concerning requests for information (202.5)				
<i>Disclosure for optional self-test</i>	200	12	3.5 hours	<u>8,400</u>
<i>Total</i>				157,538

⁶ For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement for information about prescreened solicitations (§ 202.12(b)(7)) because the regulation does not specify records to be retained as evidence of compliance.

Proposed	<i>Number of respondent s⁷</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Notifications (202.9)	1,107	12	6 hours	79,704
One-time change (R-1408)	1,107	1	32 hours	35,424
Furnishing of credit information (202.10)	1,107	12	2.50 hours	33,210
Record retention (202.12): <i>Applications, actions, and prescreened solicitations⁸</i>	1,107	1	8 hours	8,856
Information for monitoring purposes (202.13)	1,107	12	15 mins	3,321
Rules on providing appraisal reports (202.14): <i>Appraisal report upon request</i>	1,107	12	1.25 hours	16,605
<i>Notice of right to appraisal</i>	1,107	12	30 mins	6,642
Self-testing				
Record retention:				
<i>Incentives (202.12)</i>	200	1	2 hours	400
<i>Self-correction (202.15)</i>	50	1	8 hours	400
Rules concerning requests for information (202.5) <i>Disclosure for optional self-test</i>	200	12	3.5 hours	<u>8,400</u>
Total				192,962
One-time change				35,424

With the new requirements, the total estimated annual cost to respondents would increase by \$1,537,402 from \$6,837,149 to \$8,374,551.⁹

⁷ Of the 1,107 respondents, 400 are small entities as defined by the Small Business Administration (i.e., entities with less than \$175 million in total assets) www.sba.gov/contractingopportunities/officials/size/table/index.html.

⁸ For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement for information about prescreened solicitations (§ 202.12(b)(7)) because the regulation does not specify records to be retained as evidence of compliance.

⁹ 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% Office & Administrative Support @ \$16, 45% Financial Managers @ \$49, 15% Legal Counsel @ \$54, and 10% Chief Executives @ \$77). Hourly rate for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2009, www.bls.gov/news.release/ocwage.nr0.htm Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/

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.

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.¹⁰ They may, but are not required to, use the Federal Reserve's burden estimates. There are approximately 16,200 depository institutions potentially affected by this collection of information and are considered respondents for purposes of the PRA. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation B, including Federal Reserve supervised institutions, would be approximately 3,013,200 hours. The new requirements would impose a one-time increase in the estimated annual burden for such institutions by 518,400 hours to 3,531,600 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

¹⁰ Appendix A (Federal Enforcement Agencies) to Regulation B lists those federal agencies that enforce the regulation for particular classes of business pursuant to Section 704 of ECOA (15 U.S.C. 1691c) and Regulation B, § 226.16. 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.