

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST - SUPPORTING STATEMENT
EQUAL CREDIT OPPORTUNITY ACT (REGULATION B) 12 CFR 1002
(OMB CONTROL NUMBER: 3170-0013)**

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

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 Bureau of Consumer Financial Protection (CFPB) is promulgating 12 CFR 1002 (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.¹ The CFPB enforces the ECOA as to certain creditors. The ECOA also contains a private right of action for aggrieved applicants; the Dodd-Frank Act increased the statute of limitations on such actions from two years to five.

Recordkeeping

Section 1002.12(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 CFPB (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 1002.15 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 (12 months for business credit, with certain exceptions).² The recordkeeping requirement

¹ 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 1002.2(l) of Regulation B. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated. See comment 2(l)-1.

² 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.

ensures that records that might contain evidence of violations of the ECOA remain available to the CFPB, other agencies, and private litigants.

Disclosure³

Section 1002.9 of Regulation B requires creditors to provide notice (within specified time periods) to applicants for credit against whom adverse action is taken.⁴ 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 1002.10 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 1002.13 of Regulation B requires that creditors who receive applications for certain mortgage credit request, as part of the application process, 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 CFPB, may substitute its own monitoring program for that described in § 1002.13 of Regulation B.

Section 1002.14 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 15 U.S.C. 1691(e). The requirement that applicants be notified of this right is not specifically mandated by the ECOA. Regulation B 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 1002.5(b) and 1002.15 of Regulation B, creditors that collect applicant characteristics for purposes of conducting a self-test under Regulation B must disclose, orally or

³ 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.

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

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 federal 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.

Regulation B includes 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

Federal and state enforcement agencies and private litigants use recordkeeping information to, for example, compare accepted and rejected applicants or the terms and conditions of accepted 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 provides an important piece of evidence of law violations in ECOA enforcement actions brought by federal agencies. 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 CFPB's and other agencies' ability to detect unlawful discrimination and enforce the ECOA would be significantly impaired.

The CFPB, other agencies, and private litigants use adverse action notices, appraisal reports, and other information in the application file to compare 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. The adverse action notice requirement apprises 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. Use of Information Technology

Regulation B provides 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.*, 12 CFR 1002.4(d)(2). 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." Comment 12(b)-1. In addition, Regulation B permits a creditor to record the information required for monitoring purposes "by recording on paper or by means of computer..." Comment 13(b)-2.

4. Efforts to Identify Duplication

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.⁵ Similarly, the creditor is the only source of the information provided by appraisal reports, adverse action notices, and self-testing information. No other federal law mandates their disclosure, nor is the CFPB aware of any state law mandating their disclosure.

5. Efforts to Minimize Burdens on Small Entities

The ECOA and Regulation B accord special treatment to creditors that receive fewer than 150 applications each year. Section 1002.9(d) of Regulation B 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 1002.3(c) of Regulation B 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 1002.9 of Regulation B and recordkeeping. The requirements to collect monitoring information and to provide a copy of the appraisal report

⁵ 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. These rules were promulgated to ensure that creditors would retain all necessary information for enforcement and avoidance of circumvention of the ECOA.

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 Regulation B. 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 Less Frequent Collection and Obstacles to Burden Reduction

If the current retention period of 25 months 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 CFPB 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 Special Information Collection

The collections of information in Regulation B are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

This notice of final rule was published in the Federal Register (76 FR 79442), on December 21, 2011.

In response to the Federal Register notice (77 FR 2685), dated January 19, 2012, we received no comments during the comment period regarding this interim final rule.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Justification for Sensitive Questions

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 CFPB would be covered by the protections of 12 CFR 1070.40 *et seq.*, Section 1022(c) of the Dodd-Frank Act, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Burden of Information Collection

Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether to extend credit) 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). 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 transaction, and, if applicable, that the information will be noted by visual observation or surname if the applicant chooses not to provide it.⁶

Hours: 1,502,000

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation B is based on the assumption that the total ongoing burden for this regulation, across all agencies, remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, the ongoing recordkeeping and disclosure burdens for Regulation B allocated to the prudential regulators and the FTC were approximately 5,812,000 hours. In light of the changes made by the Dodd-Frank Act, roughly 1,501,000 hours of that burden is being reallocated to the CFPB. Specifically, CFPB is being allocated burden for 180 depository institutions (comprising depository institutions with total assets of more than \$10 billion and their depository affiliates) which is the approximate number of such depository entities that the CFPB now has primary enforcement authority for with respect to Regulation B.⁷ The CFPB is also being allocated half of the Federal Trade Commission (FTC) burden amount after subtracting the burden which the FTC has attributed to itself for motor vehicle dealers.⁸

⁶ The disclosure may be provided orally or in writing. Regulation B provides a model form to assist creditors in providing the written disclosure.

⁷ These include 27 from the Board, 70 from the OCC, 24 from the OTS, 3 from the NCUA, and 56 from the FDIC.

⁸ The Dodd-Frank Act exempts certain motor vehicle dealers from CFPB's enforcement authority. However, due to the difficulty of making a reliable estimate of those dealers, the FTC has attributed to itself the PRA burden for all

In addition to the ongoing burden, the recodified Regulation B will impose a one-time burden on creditors that need to change forms concerning adverse actions to identify a different agency in light of certain transfers of authority mandated by Dodd-Frank, as specified in Appendix A of Regulation B. For the purposes of calculating the burden hours allocated to the CFPB in light of the CFPB's enforcement authority, the CFPB estimates that the approximate total burden to make these one-time changes is 1,000 hours. This estimate assumes it should take four hours per form, per firm, to make the necessary, yet simple, form changes. Since the CFPB and the FTC are roughly splitting the burden associated with firms under the enforcement authority of both agencies, the CFPB is only being allocated two of the four hours estimated for each of the non-depository creditors. This burden may be overstated to the extent that multiple firms use the same software vendors, who are able to spread any required burden over all of their affected clients. These estimates may also be overstated because the Bureau is giving creditors one year to effect the changes, thus allowing creditors to include the changes in routine, scheduled systems updates during the next year.

Associated Labor Costs: \$ 40,309,300

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours assumed from the other regulatory agencies, which differ by agency.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation B are \$40,278,000. This estimate was calculated by summing the CFPB's share of costs from the supporting statements of the other agencies, following each agency's own cost analysis. For a detailed breakdown of the cost analysis, please reference the other agencies' supporting statements for Regulation B.

For the purposes of calculating the costs allocated to the CFPB in light of the CFPB's enforcement authority, for the one-time revisions to the forms described above, the CFPB estimates that the total one-time cost for these changes is \$31,300. These estimates may be overstated to the extent that multiple firms use the same software vendors, who are able to spread any required burden over all of their affected clients. These estimates may also be overstated because the CFPB is giving creditors one year to effect the changes, thus allowing creditors to include the changes in routine, scheduled systems updates during the next year.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

As suggested by OMB, our Federal Register notice dated January 19, 2012, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from individuals on this subject. As a result, estimates of these cost burdens are not available at this time.

motor vehicle dealers. This attribution does not change actual enforcement authority.

14. Estimated Cost to the Federal Government

As the CFPB does not collect any information, the cost to the agency is negligible.

15. Program Changes or Adjustments

There were no changes made to the document that resulted in any change to the burden previously reported to OMB.

We are making this submission to renew the OMB approval.

16. Plans for Tabulation, Statistical Analysis, and Publication

Not applicable.

17. Display of Expiration Date

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading consumers to believe that the regulation sunsets as of the expiration date. Consumers are not likely to be aware that the Bureau intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions to the Certification Requirement

None.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.