Federal Trade Commission
Supporting Statement for Information Collection
Provisions of Regulation B
(Equal Credit Opportunity Act)
12 C.F.R. 202;12 C.F.R. 1002
(OMB Control Number: 3084-0087)

1. Necessity for Collecting 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 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] Subject to the discussion below, 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 five-year statute of limitations for aggrieved applicants.

The Board of Governors of the Federal Reserve System ("FRB") promulgated the original Regulation B (12 C.F.R. Part 202) to implement the ECOA, as required by the statute. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. 111-203, 124 Stat. 1376 (2010), however, almost all rulemaking authority for the ECOA transferred from the FRB to the Consumer Financial Protection Bureau ("CFPB") on July 21, 2011 ("transfer date"). Although the Dodd-Frank Act transferred most rulemaking authority under ECOA to the CFPB, the FRB retained rulemaking authority for certain motor vehicle dealers.[2] The CFPB's regulations for entities under its jurisdiction for Regulation B appear in 12 C.F.R. Part 1002.[3]

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[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* 12 C.F.R. 202.2(l); 12 C.F.R. 1002.2(l). It includes all persons participating in the credit decision. It may include an assignee or 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. Section 202.2(l)-1 of the FRB Official Staff Commentary; Section 1002.2(l)-1 of the CFPB Official Staff Commentary.

[2] Generally, these are dealers "predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." *See* Dodd-Frank Act, § 1029(a), -(c).

[3] Because both the FRB and the CFPB have certain rulemaking authority under Regulation B – as discussed further below – citations to both aspects of the regulation are included in this document. Hence, 12 C.F.R. 202 refers to the FRB-issued Regulation B; 12 C.F.R. 1002 refers to the CFPB-issued Regulation B. Generally, these two aspects of Regulation B are virtually identical, other than occasional minor technical differences, and citations.

As a result of the Dodd-Frank Act, the FTC and CFPB now share the authority to enforce Regulation B for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers. The FTC generally has sole authority to enforce Regulation B regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[4]

Recordkeeping

Sections 202.12(b)/1002.12(b) of Regulation B require 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. 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).[5] Moreover, Regulation B requires creditors to retain all written or recorded information about a self-test (including corrective action), as defined in Sections 202.15/1002.15 of Regulation B, for 25 months after a self-test has been completed (and longer under some circumstances).

Sections 202.13/1002.13 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 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 the applicant's race/national origin and sex, to the extent that it is possible to determine these characteristics based on a visual observation or a 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.[6]

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[4] *See* Dodd-Frank Act, § 1029(a), -(c).

[5] The records generally are already retained by creditors in connection with their business operations in part due to the credit extension that will be made to responding applicants.

[6] Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to collect and report information concerning credit applications by women- or minority-owned businesses and small businesses, effective on the July 21, 2011 transfer date. Both the FRB and CFPB have exempted affected entities from complying with this requirement until a date set by the prospective final rules these agencies issue to implement the Dodd-Frank Act's requirements. The Commission will address PRA burden for its enforcement of these requirements after the FRB and

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[7]

Sections 202.9/1002.9 of Regulation B requires creditors to provide notice (within specified time periods) to applicants for credit against whom adverse action is taken.[8] 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.

Sections 202.10/1002.10 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.

Sections 202.14/1002.14 of Regulation B requires that creditors provide applicants for a mortgage loan with a first lien on the dwelling a copy of the appraisal report or other written valuation prepared in connection with an application.[9] The material must be furnished promptly but no later than three business days prior to consummation of the transaction (closed-end credit) or account opening (open-end credit), whichever is earlier. The requirement that the creditor provide a copy of the appraisal report or other written valuation, for a loan secured by a first lien on a dwelling, is statutorily mandated by Section 1691(e) of the ECOA.

Under Sections 202.5(b)/1002.5(b) and 202.15/1002.15 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.

CFPB have issued the associated final rules.

[7] 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.

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

[9] While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is now provided by the CFPB, and is thus not a "collection of information" for PRA purposes. *See* 5 CFR 1320.3(c)(2) and CFPB, Final Rule, Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 Fed. Reg. 7216, 7247 (Jan. 31, 2013). Accordingly, it is not included in burden estimates below.

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' copy of the appraisal or other written valuation allows applicants to determine the role that the appraisal played in the credit decision. The self-testing disclosure helps applicants understand the nature of the information collection process.

The FRB and CFPB have 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 12 C.F.R. 202/1002. 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 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. Consideration of the Use of Improved Information Technology

The FRB and CFPB have issued 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.*, and Sections 202.4(d)/1002.4(d) of Regulation B. These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act ("GPEA"), 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 Commentary; Section 1002.12(b)-1 of the CFPB 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 FRB Commentary; Section 1002.13(b)-2 of the CFPB 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.[10] Similarly, the creditor is the only source of the information provided by appraisal reports, adverse action notices, and self-testing information, and no other federal law mandates provision of the report (in a fully duplicative manner) or the disclosure nor is staff aware of any state law mandating this information.[11]

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[10] 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 and CFPB issued these rules to ensure that creditors would retain all necessary information for enforcement and avoidance of circumvention of the ECOA.

[11] The requirement in ECOA to provide applicants with copies of written appraisals, in part, duplicates a requirement in the Truth in Lending Act ("TILA") to provide copies of written appraisals for certain higher-priced mortgage loans, 15 U.S.C. 1639h. The Dodd-Frank Act amended both ECOA and TILA to add the appraisal rules that overlap only in part. For example, the ECOA appraisal rule applies to those transactions that meet all of the following conditions: (1) first liens; (2) involving business or consumer transactions; and (3) that are open-end or closed-end mortgages. The TILA appraisal rule applies to those loans that meet all of the following conditions: (1) any lien; (2) involving consumer transactions; and 3) that are higher-priced mortgage loans (HPMLs) (a type of closed-end credit) under

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 HDMA 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. Sections 202.9(d)/1002.9(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, Sections 202.3(c)/1002.3(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 Sections 202.9/1002.9 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.

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 five-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.

TILA and that are not exempt under those rules (such as bridge loans, reverse mortgages, loans for $25,000 or less as indexed each year for inflation, and any mortgage that constitutes a qualified mortgage under TILA or that meets rules on qualified mortgages issued by the U.S. Dept. of Housing and Urban Development, U.S. Dept. of Agriculture, or U.S. Dept. of Veterans Affairs). However, where duplicative requirements apply (*e.g.*, for consumer credit that involves first lien, closed-end HPMLs that are also non-exempt under the TILA appraisal rules), creditors can provide one appraisal, based upon the applicable rules. *See* CFPB, Equal Credit Opportunity Act (ECOA) Valuations Rule, Small Entity Compliance Guide (Jan. 13, 2014), and CFPB, TILA Higher-Priced Mortgage Loans (HPML) Appraisal Rule, Small Entity Compliance Guide (Jan. 13, 2014). This approach ensures that applicants will receive a copy of the required appraisal, and it also limits burden to creditors.

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 C.F.R. 1320.5(d)(2).

8. Consultation Outside the Agency

Both the recordkeeping and the notice requirements of Regulation B were issued by the FRB and CFPB. Before the regulation was initially issued and prior to each amendment, the amendments were published 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 C.F.R. 1320.8(d). *See* 80 Fed. Reg. 17,749 (April 2, 2015). The Commission received a comment from the National Automobile Dealers Association ("NADA") pertaining to regulatory burden affecting Regulation B. The comment repeats many of the points NADA made in its comments submitted in 2012 when the FTC last sought renewed OMB clearance regarding the FTC's enforcement oversight of the recordkeeping and disclosure provisions of these regulations issued by the FRB and CFPB.[12]

As before, NADA asserts that the FTC's burden estimates greatly underestimate its members'[13] regulatory burdens under these rules, particularly those under Regulation B. Despite

[12] NADA's 2015 comment and related 2012 comment are available at https://www.ftc.gov/policy/public-comments/2015/06/01/comment-00003. The remaining (two) commenters' submissions were not relevant to the statutes and regulations at issue.

[13] NADA states that it represents approximately 16,000 new car and truck dealers, both domestic and import, with over 32,500 separate franchises. *Id.*

the FTC's prior and continuing explanation in its Federal Register Notices regarding the terms "setup," "monitoring," and "transaction-related," NADA has misinterpreted FTC estimates of *disclosure time per transaction* as the estimated time the FTC accords to *monitoring to review compliance*. Rather, FTC estimates of "monitoring" burden address covered entities' time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures *to ensure continued compliance*. "Transaction-related" burden, by contrast, refers to the *disclosure time and cost per individual transaction*, thus, generally, of much lesser magnitude than "monitoring" (or "setup") burden. And, as stated in the FTC's April 27, 2012 Federal Register Notice – and as still applicable here – the population of affected motor vehicle dealers is one component of a much larger universe of such entities.[14] Regulation B covers not only NADA's membership of franchised car and truck dealers, but also independent motor vehicle dealers and non-motor vehicle dealers. Still more significant, NADA's constituency comprises a small proportion of the overall affected population under Regulation B.

NADA additionally asserts in its 2015 comment that "daily compliance burdens at a dealership often must be handled by managerial, not clerical staff."[15] NADA also asserts that "[m]any dealers are small businesses that do not benefit from sophisticated records retention or computer systems, and cannot leverage robust compliance structures. Even larger dealer groups often do not have the economy of scale necessary to justify in-house legal counsel, compliance staff, or other expert or technical resources. As a result, they rely heavily on outside counsel, consultants, and computer and other experts to help them to comply with their regulatory obligations – and pay the concomitant fees associated with those third party services."

It is not practicable to make projections about and provide estimates regarding the additional or alternative use of such outside sources to maintain regulatory compliance (neither has NADA attempted to do so in its comment). Moreover, in FTC staff's view, to make adjustments to its burden estimates for Regulation B, tied to a subpopulation that is small in relation to the overall affected population, would unduly skew the estimates for Regulation B. This regulation applies to a wide variety of entities and transactions. Some entities provide disclosures in the ordinary course of business – which is not included in PRA burden;[16] others have minimal setup burden and few transactions covered by the requirements, while other entities may have more setup and transaction-related burden. The FTC's estimates reflect these complex considerations. Moreover, based on the FTC's administrative experience in this enforcement area, some dealers use the same or similar advertisements for many of their franchises or locations– an approach that can facilitate compliance by limiting the number of applicable advertisements for which disclosures are

[14] *See* 77 Fed. Reg. 25,170, 25,174.

[15] However, the only apportioning in the FTC's estimates to clerical staff was for recordkeeping. The remaining attributions, for disclosure, are to managerial and skilled technical staff.

[16] PRA "burden" does not include "time, effort, and financial resources" expended in the ordinary course of business, regardless of any regulatory requirement. *See* 5 CFR 1320.3(b)(2).

provided, and hence, costs.

NADA's comment additionally refers to dealer burden related to credit reports and the provision of credit score disclosures, which fall under the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., and the Risk-Based Pricing Rule, 16 CFR Part 640. They are not the subject of this PRA submission.

Finally, we note that the report developed for NADA and attached to NADA's comment by the Center for Automotive Research ("CAR Report") addresses the impact on franchised automobile dealerships related to many federal statutes, regulations, and requirements. NADA stated these requirements cover diverse issues but that certain regulations, including Regulation B, still "represent a material portion of dealers' regulatory obligations." *See, e.g.*, NADA comment, CAR Report at 2, 3, 19-34. However, NADA's specific points refer to a generalized concern about regulatory burden for automobile dealers. Because franchised automobile dealers are a component of a broad, highly diverse population of credit entities and transactions, we believe that the estimates for Regulation B remains reasonable, bearing in mind the complexity of this assessment for such a wide-ranging group.

For the above-noted reasons, the FTC has retained its prior analysis and estimates regarding this regulation. Consistent with 5 C.F.R. 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. This 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 C.F.R. 4.10, and by the applicable exemptions of the Freedom of Information Act, 5 U.S.C. 552(b).

12. Estimated Hours and Labor Cost Burden

Estimated Hours Burden: 1,879,423 (712,860 recordkeeping hours: 637,310 + 75,550 carve-out for motor vehicles + 1,166,563 disclosure hours: 1,036,040 + 130,523 carve-out for motor vehicles)

The following discussion and tables present FTC estimates under the PRA of recordkeeping and disclosure average time and labor costs, excluding that which the FTC believes

entities incur customarily in the ordinary course of business[17] and information compiled and produced in response to FTC law enforcement investigations or prosecutions.[18]

Because of their shared enforcement jurisdiction for Regulation B, the CFPB and the FTC have divided the FTC's previously-cleared PRA burden between them,[19] except that the FTC wholly assumed the part of that burden associated with motor vehicle dealers (for brevity, referred to in the burden summaries below as a "carve-out").[20] The division of PRA burden hours not attributable to motor vehicle dealers is reflected in the CFPB's PRA clearance requests to OMB.[21] The FTC's burden estimates below reflect both the shared enforcement jurisdiction and the FTC's separate accounting under the PRA for its jurisdiction to enforce Regulation B for motor vehicle dealers.

Recordkeeping

FTC staff estimates that Regulation B's general recordkeeping requirements affect 530,080 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm for a total of 662,600 hours.[22] 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 (of skilled technical time) for approximately 2.9 million credit applications (based on industry data regarding the approximate number of mortgage

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[17] *See supra* note 16 and accompanying text.

[18] *See* 5 CFR 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or "during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities") pertinent to this PRA submission.

[19] The CFPB also factored into its burden estimates respondents over which it has jurisdiction but the FTC does not.

[20] This includes dealers specified by the Dodd-Frank Act under § 1029 (a), but as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offer is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

[21] OMB Control Number 3170-0013 (Regulation B).

[22] Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to collect and report information concerning credit applications by women- or minority-owned businesses and small businesses, effective on the July 21, 2011 transfer date. Both the CFPB and the Board have exempted affected entities from complying with this requirement until a date set by the prospective final rules these agencies issue to implement the Dodd-Frank Act's requirements. The Commission will address PRA burden for its enforcement of these requirements after the CFPB and the Board have issued the associated final rules.

purchase and refinance originations), for a total of 48,333 hours.[23] Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,375 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,375 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, i.e., 138 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 552 hours.[24] Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Recordkeeping for the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time. The total estimated recordkeeping burden is 712,860 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, such as denial of a credit application. It requires entities that extend mortgage credit with first liens to provide a copy of the appraisal report or other written valuation to applicants.[25] 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: (1) providing the information is optional; (2) the creditor will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.[26]

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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[23] Regulation B contains model forms that creditors may use to gather and retain the required information.

[24] In contrast to banks, for example, entities under FTC jurisdiction are not subject to audits for compliance with Regulation B; rather they may be subject to FTC 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.

[25] While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is now provided by the CFPB, and is thus not a "collection of information" for PRA purposes. *See supra* note 9.

[26] The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

Regulation B: Disclosures – Burden Hours

Disclosures	Respondents	Setup/Monitoring[1] Average Burden per Respondent (hours)	Setup/Monitoring[1] Total Setup/ Monitoring Burden (hours)	Transaction-related[2] Number of Transactions	Transaction-related[2] Average Burden per Transaction (minutes)	Transaction-related[2] Total Transaction Burden (hours)	Total Burden (hours)
Credit history reporting	132,520	.25	33,130	66,260,000	.25	276,083	309,213
Adverse action notices	530,080	.75	397,560	106,016,000	.25	441,733	839,293
Appraisal reports/written valuations	5,000	1	5,000	1,450,000	.50	12,083	17,083
Self-test disclosures	1,375	.5	688	68,750	.25	286	974
Total							1,166,563

[1] The estimates assume that all applicable entities would be affected, with respect to appraisal reports and other written valuations (with the FTC having approximately one-half of that amount). An increase in burden is noted due to changed rules requiring provision of appraisals reports as well as other written valuations, for first lien mortgages. The former "Appraisal disclosure" item was deleted; the information is now supplied by the rule.

[2] The transaction-related figures reflect a decrease in mortgage transactions, compared to prior FTC estimates. The figures assume that approximately three-quarters of applicable mortgage transactions (.75 x 2,900,000, or 2,175,000) would not otherwise provide this information, and that another 725,000 transactions (not closed, etc.) would be affected; the FTC would have one-half of the total, or 1,450,000.

Associated labor cost: $65,660,436 ($15,031,620 recordkeeping costs: $13,550,520 + $1,481,100 carve-out for motor vehicles + $50,628,816 disclosure costs: ($44,964,122 + $5,664,694 carve-out for motor vehicles)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($56 for managerial or professional time, $42 for skilled technical time, and $17 for clerical time) are averages.[27]

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 $15,031,620.

[27] These inputs are based broadly on mean hourly data found within the "Bureau of Labor Statistics, Economic News Release," March 25, 2015, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014." http://www.bls.gov/news.release/ocwage.t01.htm.

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 $50,628,816.

Regulation B: Recordkeeping and Disclosures – Cost

Required Task	------Managerial------ Time (hours)	Cost ($56/hr.)	-----Skilled Technical----- Time (hours)	Cost ($42/hr.)	--------Clerical-------- Time (hours)	Cost ($17/hr.)	Total Cost ($)
General recordkeeping	0	$0	66,260	$2,782,920	596,340	$10,137,780	$12,920,700
Other recordkeeping	0	$0	48,333	$2,029,986	0	$0	$2,029,986
Recordkeeping of self-test	0	$0	1,375	$57,750	0	$0	$57,750
Recordkeeping of corrective action	0	$0	552	$23,184	0	$0	$23,184
Total Recordkeeping							$15,031,620
Disclosures:							
Credit history reporting	30,921	$1,731,576	278,292	$11,688,264	0	$0	$13,419,840
Adverse action notices	83,929	$4,700,024	755,364	$31,725,288	0	$0	$36,425,312
Appraisal reports	1708	$95,648	15,375	$645,750	0	$0	$741,398
Self-test disclosure	97	$5,432	877	$36,834	0	$0	$42,266
Total Disclosures							$50,628,816
Total Recordkeeping and Disclosures							$65,660,436

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 and CFPB issued 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 $81,303, which is a representative year's 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 and CFPB issued 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 $243,906. This estimate is based on the assumption that 1.5 attorney work years 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 modestly increased the prior annual burden estimate by 12,439 hours (from 1,866,984 to 1,879,423). This reflects the continued burden splitting noted above regarding shared enforcement authority with the CFPB, paired with minor increased estimates for amendments to Regulation B and various rounding differences. In turn, associated labor costs have risen as applied to the increased estimate of burden hours, paired with updated mean hourly wages.

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.