

**Supporting Statement for the
Recordkeeping and Disclosure Requirements
Associated with CFPB's Regulation B (Equal Credit Opportunity Act)
(Reg B; OMB No. 7100-0201)**

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 mandatory Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation B (Equal Credit Opportunity Act) (Reg B; OMB No. 7100-0201). Since 2011, the Consumer Financial Protection Bureau (CFPB) has been responsible for issuing Equal Credit Opportunity Act (ECOA) regulations that apply to institutions the Federal Reserve supervises.¹ However, the Federal Reserve continues to be responsible under the Paperwork Reduction Act (PRA) for renewing every three years the information collections mandated by the regulation for institutions supervised by the Federal Reserve. The PRA classifies reporting, recordkeeping, or disclosure requirements of a regulation, including Regulation B, as an information collection.

On December 21, 2011, the CFPB published an interim final rule establishing a new Regulation B, which did not impose any new substantive obligations on regulated persons or entities.² On January 31, 2013, the CFPB published a final rule amending its Regulation B to require creditors to provide applicants with a copy of an appraisal or other written valuation developed in connection with certain mortgage transactions as matter of course, rather than only in response to an applicant's request as previously required under Regulation B.³ The Federal Reserve proposes to modify its information collection to reflect this new requirement, which became effective January 18, 2014, and is discussed more fully below.

The Federal Reserve accounts for the paperwork burden associated with Regulation B only for institutions for which the Board has enforcement authority under ECOA.⁴ The total current annual burden is estimated to be 151,642 hours. With proposed revisions the annual burden is estimated to be 167,587 hours.⁵

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred rulemaking authority for ECOA to the CFPB, except for certain motor vehicle dealers that are excluded from the CFPB's authority, which remain subject to the Federal Reserve's Regulation B located at 12 C.F.R. Part 202. See Section 1029(a) of the Dodd-Frank Act.

² 76 FR 79441 (Dec. 21, 2011).

³ 78 FR 7216 (Jan. 31, 2013).

⁴ Other federal agencies account for the paperwork burden imposed under ECOA on the institutions for which they have administrative enforcement authority. Other federal agencies with administrative enforcement authority include the CFPB, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, and the Federal Trade Commission.

⁵ Pursuant to Section 704 of ECOA (15 U.S.C. § 1691b) and Regulation B, section 202.16 and Appendix A (Federal 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.

Background and Justification

ECOA was enacted in 1974 and is implemented by Regulation B.⁶ ECOA prohibits discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), or other specified bases (receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. § 1600 *et seq.*)). To aid in implementation of this prohibition, the statute and regulation subject creditors to various mandatory disclosure requirements, notification provisions informing applicants of action taken on the credit application, 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 statute and regulation. There are no required reporting forms associated with the CFPB's Regulation B. To ease the burden and cost of compliance (particularly for small entities), Regulation B provides model disclosure forms.

Description of Information Collection

The paperwork requirements of Regulation B are described below.

Notifications (Section 1002.9)

No other federal law mandates the following disclosures, although the Fair Credit Reporting Act (FCRA) 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). 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.

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 within the same time periods that apply in the case of consumer applicants. 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.

⁶ 15 U.S.C. § 1691. The CFPB's Regulation B is located at 12 C.F.R. Part 1002.

Furnishing of Credit Information (Section 1002.10)

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 1002.12)

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. The record retention requirements also extend to information used in prescreened credit solicitations.

If the creditor conducts a self-test (as defined under section 1002.15), the 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.

Information for Monitoring Purposes (Section 1002.13)

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 Concerning Requests for Information (Section 1002.5)

When a creditor inquires about, and notes, personal characteristics such as race or national origin for the purpose of conducting a self-test under section 1002.15, the creditor must disclose orally or in writing to the consumer at the time of the information request that providing the information is optional, that the information request is to monitor compliance with ECOA, that federal law prohibits discrimination on the basis of this information or on the basis of an applicant's decision not to furnish this information, and that, if applicable, certain information may be noted by visual observation or surname.

Proposed Revisions Associated with Rules on Providing Appraisal Reports (Section 1002.14)

The Federal Reserve proposes to modify its information collection to reflect the CFPB's recent amendments to Regulation B, which became effective January 18, 2014. Previously, an applicant had a right to a copy of any appraisal report used in connection with an application for credit to be secured by a dwelling. Creditors could 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 had to notify all applicants for covered loans of their right to request a copy of the appraisal. The notice was not required to be in any particular format, but the regulation contained model language to ease compliance.

The CFPB recently amended Regulation B to now require creditors to provide to an applicant, as a matter of course, a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling within specified time periods. Applicants are permitted to waive the timing requirements for receipt of the appraisals and other written valuations, but in such cases the creditor must generally provide the copies to the applicant prior to consummation (if closed-end credit) or account opening (if open-end credit). Creditors must also notify applicants in writing within three business days of receiving an application that a copy of all appraisals and other written valuations developed in connection with applications for covered mortgage credit transactions will be provided to the applicant promptly. The notice of an applicant's right to receive a copy of appraisals is not required to be in any particular format, but the regulation contains model language to ease compliance.

Time Schedule for Information Collection

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

Legal Status

The Federal Reserve Board's Legal Division has determined that 15 U.S.C. § 1691b authorizes the CFPB to prescribe regulations to carry out the purposes of ECOA. An institution's recordkeeping and disclosure obligations under Regulation B are mandatory. The Federal Reserve does not collect any information; therefore, no issue of confidentiality normally arises. However, records obtained as a part of an examination or supervision on an institution may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 522 (b)(4), (6), and (8)).

Consultation Outside the Agency

On January 28, 2015, the Federal Reserve published a notice in the *Federal Register* (80 FR 4571) requesting public comment for 60 days on the extension, with revision, of this information collection. The comment period for this notice expired on March 30, 2015. The

Federal Reserve did not receive any comments. On April 21, 2015, the Federal Reserve published a final notice in the *Federal Register* (80 FR 22186).

Estimates of Respondent Burden

The current annual burden for this information collection is estimated to be 151,642 hours, and with the proposed revisions is estimated to be 167,587 hours, a net increase of 15,945 hours. The Federal Reserve estimates that 1,063 institutions would take, on average, 3 hours per month to comply with disclosure requirements in accordance with section 1002.14. The net increase is offset by adjustments to current disclosures, optional requests, and required notices. These recordkeeping and disclosure requirements represent 1.06 percent of the total Federal Reserve System annual paperwork burden.

Current	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Notifications (Section 202.9)	1,063	12	6 hours	76,536
Furnishing of credit information (Section 202.10)	1,063	12	2.50 hours	31,890
Record retention (Section 202.12) <i>Applications, actions, and prescreened solicitations</i> ⁷	1,063	1	8 hours	8,504
Information for monitoring purposes (Section 202.13)	1,063	12	15 minutes	3,189
Rules on providing appraisal reports (Section 202.14): <i>Appraisal report upon request</i>	1,063	12	1.25 hours	15,945
<i>Notice of right to appraisal</i>	1,063	12	30 minutes	6,378
<u>Self-testing</u>				
Record retention:				
<i>Incentives</i> (Section 202.12)	200	1	2 hours	400
<i>Self-correction</i> (Section 202.15)	50	1	8 hours	400
Rules concerning requests for information (Section 202.5)				
<i>Disclosure for optional self-test</i>	200	12	3.5 hours	<u>8,400</u>
<i>Current Total</i>				151,642

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

Proposed⁸	<i>Number of respondents⁹</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Notifications (Section 1002.9)	1,063	12	6 hours	76,536
Furnishing of credit information (Section 1002.10)	1,063	12	2.50 hours	31,890
Record retention (Section 1002.12) <i>Applications, actions, and prescreened solicitations¹⁰</i>	1,063	1	8 hours	8,504
Information for monitoring purposes (Section 1002.13)	1,063	12	15 minutes	3,189
Rules on providing appraisal reports (Section 1002.14) <i>Providing appraisal report</i>	1,063	12	3.0 hours	38,268
<u>Self-testing</u>				
Record retention:				
<i>Incentives</i> (Section 1002.12)	200	1	2 hours	400
<i>Self-correction</i> (Section 1002.15)	50	1	8 hours	400
Rules concerning requests for information (Section 1002.5) <i>Disclosure for optional self-test</i>	200	12	3.5 hours	<u>8,400</u>
<i>Proposed Total</i>				167,587
<i>Change</i>				15,945

⁸ Section citations were renumbered to reflect the CFPB's Regulation B.

⁹ Of these respondents required to comply with this information collection, 738 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/content/small-business-size-standards.

¹⁰ For purposes of the PRA, no paperwork burden is associated with the recordkeeping requirement for information about prescreened solicitations (section 1002.12(b)(7)) because the regulation does not specify records to be retained as evidence of compliance.

The total current cost to the public is estimated to be \$7,847,474, and with the proposed revisions would increase to \$8,672,627.¹¹

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 section 1002.15. It is at the option of the applicant to provide this information.

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 Federal Reserve System is negligible.

¹¹ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$17, 45% Financial Managers at \$63, 15% Lawyers at \$64, and 10% Chief Executives at \$87). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages 2014*, published March 25, 2015, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.