

**BUREAU OF CONSUMER FINANCIAL PROTECTION
PAPERWORK REDUCTION ACT SUBMISSION
INFORMATION COLLECTION REQUEST**

**SUPPORTING STATEMENT PART A
EQUAL CREDIT OPPORTUNITY ACT
(REGULATION B) 12 CFR 1002
(OMB CONTROL NUMBER: 3170-0013)**

OMB TERMS OF CLEARANCE:

Not applicable. The Office of Management and Budget (OMB) did not provide Terms of Clearance when approved this information collection on April 10, 2013.

ABSTRACT:

The Equal Credit Opportunity Act (“ECOA”) 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, age, or other prohibited bases under the ECOA. The ECOA allows for creditors to collect information for self-testing against these criteria, while not allowing creditors to use this information in making credit decisions of applicants. For certain mortgage applications, the ECOA requires creditors to ask for some of the prohibited information for monitoring purposes. In addition, for certain mortgage applications, creditors are required to send a copy of any appraisal or written valuation used in the application process to the applicant in a timely fashion.

The ECOA also prescribes creditors to inform applicants of decisions made on credit applications. In particular, where creditors make adverse actions on credit applications or existing accounts, creditors must inform consumers as to why the adverse action was taken, such that credit applicants can challenge errors on their accounts or learn how to become more creditworthy. Creditors must retain all application information for 25 months, including notices sent and any information related to adverse actions.

Finally, the ECOA requires creditors who furnish applicant information to a consumer credit bureau to reflect participation of the applicant’s spouse, if the spouse is permitted to use or contractually liable on the account.

1. Circumstances Necessitating the Data Collection

The Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1691 et seq., implemented by the Consumer Financial Protection Bureau’s Regulation B, 12 CFR Part 1002, 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, age, or other prohibited bases under the ECOA. 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. ECOA was recently amended to include a provision of appraisal notices to be provided to applicants of certain mortgage credit.

Recordkeeping/Collection of information

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

Section 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.

Disclosure

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. 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(c) of Regulation B also requires the creditor to inform the applicant that ethnicity, race, sex, marital status, and age are being requested by the Federal Government for the purpose of monitoring compliance. The creditor shall also inform the applicant that the information

is optionally reported by the applicant, and that if the applicant chooses to not provide the information, the creditor is required to note it by visual observation or surname.

Section 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. The material must be furnished promptly, free of charge, 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.

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 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.

2. Use of the Information

The CFPB and other agencies 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. 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 agencies' ability to detect unlawful discrimination and enforce the ECOA would be significantly impaired.

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

The disclosures required by Regulation B may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 et seq. Use of such electronic communications is consistent with the Government Paperwork Elimination Act (GPEA), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504 note. The E-Sign Act and GPEA serve to reduce businesses' compliance burden related to federal requirements, including Regulation B, by enabling lessors to utilize more efficient electronic media for disclosures and compliance.

Regulation B also permits lessors to retain records on any method that reproduces records accurately, including digitally. Lessors need only retain enough information to reconstruct the required disclosure or other records. Most lessors use computer support to calculate the required information and generate the mandated disclosures, thereby limiting the burden on these entities.

. Efforts to Identify Duplication

For the most part, the information collections in Regulation B do not duplicate other regulations. There is some overlap with the Fair Credit Reporting Act (“FCRA”) for disclosure and retention of certain information, but they focus on populations which are not necessarily the same, and Regulation B is necessary to avoid circumvention by creditors of the ECOA.

The appraisals information collection does duplicate, in part, two other Federal efforts. Specifically, the information collection requirement duplicates in part the Truth in Lending Act requirement to provide free copies of written appraisals for higher-risk mortgages. See 15 U.S.C. 1639h. In addition, the requirement also duplicates in part the National Credit Union Administration’s regulation requiring national credit unions to provide copies of appraisal reports to loan applicants upon request. See 12 CFR 701.31(c)(5). However, where duplicative requirements apply, a creditor need only provide an applicant one copy of each appraisal and other written valuation to comply with all three requirements, in order to minimize burden.

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 the Regulation states that such creditors may provide required notices to rejected applicants orally rather than in writing. Where fewer written records are required to be created, the recordkeeping burden is correspondingly reduced. In addition, Section 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 Section 1002.9 of the Regulation and recordkeeping. Additionally, as noted above, the Bureau has taken steps in the final rule to minimize the situations in which creditors would need to provide copies of multiple versions of the same appraisal or other written valuation.

Regulation B provides model forms that may be used in compliance with its requirements.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

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 Bureau and others seeking to enforce compliance with the ECOA would not have that information and would thereby be disadvantaged in taking action against that creditor. 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.

The current record retention period of 25 months supports the 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.

This information is not collected by the federal government. The burdens on respondents are the minimum necessary to comply with the statute, and to assist borrowers in obtaining information with respect to application decisions.

7. Circumstances Requiring Special Information Collection

Information is not reported to the Bureau. There are no special circumstances. The collection of information requirements in the changes to Regulation B are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

In accordance with 5 CFR §1320.8(d)(1), the Bureau has published a notice at Federal Register allowing the public 60 days to comment on this proposed the extension (renewal) of this currently approved collection of information. No Comments were received. Further and in accordance with 5 CFR §1320.5(a)(1)(iv), the Bureau has also published a notice in the Federal Register allowing the public 30 days to comment on the submission of this information collection request to the Office of Management and Budget.

9. Payments or Gifts to Respondents

No payments or gifts are provided to respondents.

10. Assurances of Confidentiality

Some of the recordkeeping requirements contain private information about consumers who apply for and/or obtain financial credit. Such information is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq. There is no part of the rule that mandates information collection by the CFPB, and this information is used exclusively to ensure compliance with the ECOA, and that creditors aren't discriminating against applicants.

To the extent that information covered by a recordkeeping requirement is collected by the CFPB for law enforcement purposes, the confidentiality provisions of CFPB's rules on Disclosure of Records and Information, 12 CFR Part 1070, would apply.

The information that may be collected for law enforcement purposes would be covered by

the following Systems of Records Notices (SORNs): CFPB.004 Enforcement Database, 76 FR 45757, that can be found at <https://www.federalregister.gov/articles/2011/08/01/2011-19424/privacy-act-of-1974-as-amended>; and the CFPB.018 CFPB Litigation Files SORN, 77 FR 27446, that can be found at <https://www.federalregister.gov/articles/2012/05/10/2012-11233/privacy-act-of-1974-as-amended>.

11. Justification for Sensitive Questions

The sensitive information asked of applicants by creditors is either mandated for mortgage loan applications, or optionally used for self-tests. The information collected are used to ensure compliance with the ECOA, and that creditors aren't discriminating against applicants.

12. Estimated Burden of Information Collection

Total Labor Hours: 1,450,250

Information collection requirement	Type	No. of Respondents	Annual responses per respondent	Total Annual Responses	Average Response Time (minutes)	Annual Burden Hours	Hourly Rate	Labor Costs
1002.9	Notice of Action	514,000	206	105,927,000	0.25	441,363	\$29	\$ 12,799,513
1002.10	Furnishing of Credit Information	135,000	499	67,371,000	0.25	280,713	\$29	\$ 8,140,663
1002.12	Record Retention	514,000	206	105,927,000	0.25	441,363	\$29	\$ 12,799,513
1002.13(a)&(b)	Information Collected for Monitoring Purposes	2,300	4,223	9,713,000	1	161,883	\$29	\$ 4,694,617
1002.13(c)	Disclosure or Intent of Information Collected for Monitoring Purposes	2,300	4,223	9,713,000	0.25	40,471	\$29	\$ 1,173,654
1002.14(a)(1)&(3)	Copy of Appraisal	2,300	4,223	9,713,000	0.5	80,942	\$29	\$ 2,347,308
1002.5(b)(1)	Disclosure of Self-Test Inquiries	1,900	444	844,000	0.25	3,517	\$29	\$ 101,983
Totals		514,000		183,855,000		1,450,250		\$ 42,057,250

The CFPB and Federal Trade Commission (FTC) share enforcement authority for those non-depository institutions subject to the CFPB's regulation B, with the CFPB assuming burden for half of all non-depository institutions. Our estimate excludes burden for motor vehicle dealers, which the FTC assumes burden for.

The CFPB assumes labor burden for ongoing recordkeeping and disclosure requirements under Regulation B of 1,450,250 hours for those creditors under CFPB enforcement authority. To calculate labor costs, the CFPB applies a market rate of \$29, the rounded hourly mean wage for

loan officers in BLS¹. 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.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

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, as many disclosures can be sent electronically.

14. Estimated Cost to the Federal Government

As the Bureau does not collect any information, there are no costs to the Bureau associated with this information collection.

15. Program Changes or Adjustments

	Total Respondents	Annual Responses	Burden Hours	Cost Burden (O & M)
Total Annual Burden Requested	514,000	183,855,000	1,450,250	\$0
Current OMB Inventory	14,000	511,652	1,811,058	\$40,278,254
Difference (+/-)	500,000	183,343,348	-360,808	-\$40,278,254
Program Change	0	0	0	\$0
Discretionary	0	0	0	\$0
New Statute	0	0	0	\$0
Violation	0	0	0	\$0
Adjustment	500,000	183,343,348	-360,808	-\$40,278,254

The new estimates calculated by the CFPB reflect improved calculations done on the market. In particular, the previous estimates appear to have been mislabeled and therefore erroneous. The current entry of annual responses appear to be the previous estimated number of respondents in the market, while the current respondents are only those respondents that fall under the appraisals sections of Regulation B and do not reflect the entire market of respondents under the ECOA. The current Cost Burden was misattributed to those labor costs associated with the burden hours arising from the ECOA, and did not represent any extra operations and maintenance costs. The labor costs are now properly positioned in section 12 of this Supporting Statement.

¹ Hourly rate labor costs are the median hourly wages from the Bureau of Labor and Statistics (BLS) for affected occupational groups. Occupational groups for the PRA burden of regulation G are defined as loan officers (<http://www.bls.gov/ooh/business-and-financial/loan-officers.htm#tab-5>).

16. Plans for Tabulation, Statistical Analysis, and Publication

The results of the information collection will not be published.

17. Display of Expiration Date

The only forms associated with the collection are non-mandatory model forms, therefore display of the OMB control Number and expiration date on them would not be appropriate. The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov, as well as in the Federal Register Notice of the submission.

18. Exceptions to the Certification Requirement

The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.