

Supporting Statement for the Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation B (FR B; OMB No. 7100-0201)

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation B (FR 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 Board supervises.¹ However, the Board 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 Board.² The Board accounts for the paperwork burden associated with Regulation B only for institutions for which the Board has enforcement authority under ECOA.³ For these institutions, the total current annual burden of the FR B is estimated to be 146,974 hours.

Background and Justification

ECOA was enacted in 1974 and is implemented by the CFPB's Regulation B for institutions the Board supervises.⁴ The 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, provision of appraisal reports in connection with mortgages, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures

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 rulemaking authority, which remain subject to the Board's Regulation B located at 12 CFR Part 202. See section 1029(a) of the Dodd-Frank Act. The Federal Trade Commission (FTC) has authority to enforce ECOA for these motor vehicle dealers, although such enforcement authority is shared with the CFPB with respect to dealers engaged in certain practices.

² The Board accounts for the paperwork burden imposed under ECOA, as implemented by the CFPB's Regulation B, for the following institutions (except those entities supervised by the CFPB): state member banks; subsidiaries of state member banks; subsidiaries of bank holding companies; U.S. 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 (12 U.S.C. 601-604a; 611-631). The CFPB supervises, among other institutions, insured depository institutions with over \$10 billion in assets and their affiliates (including affiliates that are themselves depository institutions regardless of asset size and subsidiaries of such affiliates).

³ 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 FTC.

⁴ See 15 U.S.C. 1691. The CFPB's Regulation B is located at 12 CFR Part 1002.

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), Appendix B to Regulation B provides model disclosure forms.

Description of Information Collection

The paperwork requirements of Regulation B are described below.

Recordkeeping Requirements

Section 1002.12 - Record Retention

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.

Disclosure Requirements

Section 1002.9 - Notifications

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.

Section 1002.10 - Furnishing of Credit Information

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.

Section 1002.13 - Information for Monitoring Purposes

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.

Section 1002.14 - Rules on Providing Appraisal Reports

A creditor is required 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.

Self-Testing

Recordkeeping Requirements

Sections 1002.12 and 1002.15 – Incentives for self-testing and self-correction

Disclosure Requirements

Section 1002.5 – Rules Concerning Requests for Information

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.

Time Schedule for Information Collection

The recordkeeping and disclosure requirements associated with Regulation B are triggered by certain events, and disclosures must be provided to applicants within prescribed times (as discussed above), and records must be retained for specified periods (as discussed above).

Legal Status

The CFPB is authorized to issue its Regulation B pursuant to its authority to prescribe regulations to carry out the purposes of ECOA (15 U.S.C. 1691b). The obligation to comply with the recordkeeping and disclosure requirements of CFPB's Regulation B is mandatory. Because the recordkeeping and disclosure requirements of the CFPB's Regulation B require creditors to retain their own records and to make certain disclosures to customers, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners retained a copy of this information as part of an examination a bank. Records obtained as a part of an examination or supervision of a bank are exempt from disclosure under FOIA exemption (b)(8), for examination material (5 U.S.C. 552(b)(8)). In addition, the records may also be exempt under (b)(4) or (b)(6). Records would be exempt under (b)(4) if the records contained "trade secrets and commercial or financial information obtained from a person and privileged or confidential" and the disclosure of the information would cause substantial harm to the competitive position of the respondents (5 U.S.C. 552(b)(4)). Records would be exempt under (b)(6) if the records contained personal information, the disclosure of which would "constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(6)).

Consultation Outside the Agency

On April 13, 2018, the Board published an initial notice in the *Federal Register* (83 FR 16098) requesting public comment for 60 days on the extension, without revision, of the FR B. The comment period for this notice expired on June 12, 2018. The Board received one comment letter that addressed matter outside the scope of this proposal. On July 3, 2018, the Board published a final notice in the *Federal Register* (83 FR 31149).

Estimates of Respondent Burden

The current annual burden for the recordkeeping and disclosure requirements associated with this information collection is estimated to be 146,974 hours. These recordkeeping and disclosure requirements represent approximately 1.4 percent of the total Federal Reserve System annual paperwork burden.

FR B	<i>Number of respondents⁵</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Section 1002.12 Record retention for applications, actions, and prescreened solicitations	958	1	8	7,664
Disclosure				
Section 1002.9 Notifications	958	12	6	68,976
Section 1002.10 Furnishing of credit information	958	12	2.5	28,740
Section 1002.13 Information for monitoring purposes	958	12	0.25	2,874
Section 1002.14 Rules on providing appraisal reports	958	12	3	34,488
Self-testing				
Recordkeeping				
Section 1002.12 Incentives	92	1	2	184
Section 1002.15 Self-correction	23	1	8	184
Disclosure				
Section 1002.5 Rules concerning requests for information, disclosure for optional self-test	92	12	3.5	<u>3,864</u>
<i>Total</i>				146,974

The total current cost to the public is estimated to be \$8,237,893.⁶

⁵ Of these respondents, 649 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/document/support--table-size-standards.

⁶ 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 \$18, 45% Financial Managers at \$69, 15% Lawyers at \$68, and 10% Chief Executives at \$94). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2017*, published March 30, 2018, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Sensitive Questions

Sensitive questions are not contained in any report or survey sponsored by the Board 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 Board does not collect any information in connection with Regulation B, the related cost to the Federal Reserve System is negligible.