

## **BUREAU CONSUMER FINANCIAL PROTECTION**

### **SUPPORTING STATEMENT**

#### **EQUAL CREDIT OPPORTUNITY ACT (REGULATION B) 12 CFR 1002**

**(OMB CONTROL NUMBER: 3170-0013)**

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### **JUSTIFICATION**

#### **1. Circumstances Necessitating the Data Collection**

The Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1691 *et seq.*, implemented by the Bureau of Consumer Financial Protection’s (Bureau or CFPB) Regulation B, 12 CFR Part 1002, makes it unlawful to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of sex, marital status, race, color, religion, national origin, age, or other prohibited bases under 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 their credit applications, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and creditors must provide disclosures within the time periods established by the statute and regulation.

In 2010, Congress passed the Dodd-Frank Act. Section 1071 of that Act amended ECOA to require that financial institutions collect and report to the Bureau certain data regarding applications for credit for women-owned, minority-owned, and small businesses. Section 1071’s statutory purposes are to (1) facilitate enforcement of fair lending laws, and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

Section 1071 specifies a number of data points that financial institutions are required to collect and report, and also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling section 1071’s statutory purposes. Section 1071 also contains a number of other requirements, including those that address restricting the access of underwriters and other persons to certain 1071 data; recordkeeping; and publication of 1071 data. In addition, section 1071 permits the Bureau, at its discretion, to modify or delete data prior to publication if it determines that such a deletion or modification would advance a privacy interest.

The Bureau is proposing to add a new subpart B to Regulation B to implement the requirements of section 1071. The proposed rule would amend 12 CFR Part 1002 (Regulation B), which implements ECOA. The Bureau's OMB control number for Regulation B is 3170-0013. This proposed rule would revise the information collection requirements contained in Regulation B that OMB has approved under that OMB control number.

Under the proposed rule, the Bureau would add four information collection requirements to Regulation B:

1. Compilation of reportable data (proposed § 1002.107), including a notice requirement (in proposed § 1002.107(a)(18) through (20)).
2. Reporting data to the Bureau (proposed § 1002.109).
3. Firewall notice requirement (proposed § 1002.108(d)).
4. Recordkeeping (proposed § 1002.111).

#### Recordkeeping/Collection of Information

Subpart A (existing Regulation B). Section 1002.12(b) of existing Regulation B requires creditors to retain records relating to consumer credit applications for 25 months from the date that the applicant is notified of the action taken on the application or, where notice is not required, for 25 months from the date of the application. When a creditor takes adverse action on an existing account, the creditor must retain records for 25 months after the applicant is notified of the action taken. Records of business credit applications generally must be retained for 12 months, with certain exceptions. Regulation B also requires creditors who have been informed that they are the subject of an investigation regarding their compliance with ECOA to retain such records until the agency or a court informs them 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 § 1002.15 of Regulation B, for 25 months after a self-test has been completed (and longer under some circumstances).

Section 1002.13 of existing 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.

Proposed subpart B. The Bureau is proposing adding new provisions to Regulation B, in a new subpart B, that would result in new recordkeeping requirements and collections of information regarding certain applications for credit for small businesses.

Proposed § 1002.107 of subpart B would address several aspects of collecting data on covered applications from small businesses. Proposed § 1002.107(a) would require covered financial institutions to compile and maintain the data points enumerated in proposed § 1002.107(a)(1) through (21) regarding covered applications from small businesses. These data points would be collected and reported in accordance with the proposed official commentary and the *Filing Instructions Guide* that the Bureau anticipates later providing for the appropriate year. Certain of these data points are or could be collected from the applicant (or otherwise determined based on information provided or authorized by the applicant); other data points are based on information solely within the financial institution's control.

Proposed § 1002.109 would address several aspects of financial institutions' obligations to report section 1071 data to the Bureau. First, proposed § 1002.109(a) would require that 1071 data be collected on a calendar year basis and reported to the Bureau on or before June 1 of the following year. The proposed rule also would address collection and reporting requirements of subsidiaries of financial institutions and collection and reporting requirements of financial institutions where multiple financial institutions are involved in a transaction in proposed § 1002.109(a). Second, proposed § 1002.109(b) would enumerate the information that financial institutions would be required to provide about themselves when reporting 1071 data to the Bureau.

Proposed § 1002.111 would address several aspects of the recordkeeping requirements for 1071 data. First, proposed § 1002.111(a) would require a covered financial institution to retain evidence of compliance with proposed subpart B, which includes a copy of its small business lending application register, for at least three years after the register is required to be submitted to the Bureau pursuant to proposed § 1002.109. Second, proposed § 1002.111(b) would require a financial institution to maintain, separately from the rest of an application for credit and accompanying information, an applicant's responses to a financial institution's inquiries regarding the applicant's protected demographic information. Finally, proposed § 1002.111(c) would require that, in compiling and maintaining its small business lending application register, a financial institution may not include any personally identifiable information concerning any individual who is, or is connected with, an applicant.

### Disclosure

Subpart A (existing Regulation B). Section 1002.9 of existing Regulation B requires creditors to notify an applicant of action taken within specified time periods. A notification given to a consumer credit applicant when adverse action is taken must be in writing, whereas a business credit applicant may be notified of the action taken orally or in writing. An adverse action notification must generally contain: a statement of the action taken; the name and address of the creditor; a statement describing the antidiscrimination provisions of ECOA; the name and address of the federal agency that administers compliance with ECOA and Regulation B 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.

In part, § 1002.10 of existing Regulation B requires creditors that furnish credit information to consumer reporting agencies to designate new 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 existing Regulation B 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 he or she has the option of not providing the information, and that if the applicant chooses to not provide it, the creditor is required to note it by visual observation or surname.

In connection with a credit application that is to be secured by a first lien on the dwelling, § 1002.14 of existing Regulation B requires that creditors provide applicants a copy of the appraisal report or other written valuation prepared in connection with an application. The material must be furnished free of charge and promptly upon completion, or 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 §§ 1002.5(b) and 1002.15 of existing Regulation B, creditors that collect applicant characteristics for purposes of conducting a self-test under Regulation B must disclose, orally or in writing:

- (i) The applicant will not be required to provide the information;
- (ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;
- (iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and
- (iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

Proposed subpart B. Proposed subpart B would add new disclosure requirements to Regulation B.

Proposed § 1002.108 would implement the requirement in section 1071 that certain data collected (regarding whether the applicant is a minority-owned or women-owned business, and the ethnicity, race, and sex of the applicant's principal owners) be shielded from underwriters and certain other persons; the Bureau refers to this as the "firewall." Pursuant to proposed § 1002.108(c), this prohibition would not apply to an employee or officer if the financial institution determines that it is not feasible to limit that employee's or officer's access to an applicant's responses to the financial institution's inquiries regarding the applicant's protected demographic information, and the financial institution provides a notice to the applicant

regarding that access. The notice must be provided to each applicant whose information will be accessed or, alternatively, the financial institution could provide the notice to all applicants whose information could be accessed. The Bureau is proposing sample language that a financial institution could use in providing this notice.

## 2. Use of the Information

Subpart A (existing Regulation B). The Bureau 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 ECOA. Voluntarily collected self-test 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 appraises applicants of their rights under 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. The self-testing disclosure explains to applicants why a creditor is collecting information and clarifies that applicants are not required to provide the information.

Proposed subpart B. Users of the data from the information collection requirements of proposed subpart B of Regulation B—including the Bureau, federal agencies charged with enforcing ECOA and other fair lending laws, aggrieved applicants for credit, communities, governmental entities, and creditors—would use the data to advance section 1071's statutory purposes, which are to (1) facilitate enforcement of fair lending laws, and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. The proposed provisions would significantly enhance the ability of these individuals and entities to enforce fair lending laws and identify business and community development needs.

The Bureau, other federal agencies, aggrieved applicants for credit, communities, governmental entities, and creditors would use recordkeeping information to determine whether financial institutions have complied with the data collection provision of subpart B. The proposed recordkeeping requirements would significantly enhance the ability of these individuals and entities to determine compliance with subpart B.

The "firewall" notice requirements of proposed § 1002.108(c) and (d) would apprise applicants that underwriters and certain other persons have access to the applicant's protected demographic information.

### **3. Use of Information Technology**

Subpart A (existing Regulation B). The disclosures required by existing 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 creditors to utilize more efficient electronic media for disclosures and compliance.

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

Proposed subpart B. The proposed rule would require financial institutions to submit 1071 data in electronic form. The Bureau intends to develop a system to receive, process, and publish the data collected pursuant to section 1071 and proposed subpart B. In doing so, the Bureau will benefit from what it learned in its multiyear effort in developing the Home Mortgage Disclosure Act (HMDA) Platform, through which entities file data as required under the HMDA and Regulation C. As it did in developing the HMDA Platform, the Bureau's work in developing the section 1071 data submission system will focus on satisfying all legal requirements, promoting data accuracy, and reducing burden. Also as with HMDA, the Bureau anticipates providing a Filing Instructions Guide and related materials for financial institutions.

### **4. Efforts to Identify Duplication**

Subpart A (existing Regulation B). For the most part, the information collections in existing 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 ECOA. Additionally, there is some overlap with HMDA for collection of certain information, although in 2017 the Bureau updated Regulation B to ensure consistency among regulations and facilitate compliance with Regulation B and Regulation C by financial institutions.

The appraisals information collection does duplicate, in part, two other Federal requirements. 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. 1639(h). In addition, the requirement also duplicates in part the National Credit Union Administration's (NCUA) 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 Regulation B and a duplicative requirement apply, a creditor need only provide an applicant one

copy of each appraisal and other written valuation to comply with all Truth in Lending Act, ECOA, and the NCUA requirements in order to minimize burden.

Proposed subpart B. The information collections of proposed subpart B overlap to some extent with several regulations. The primary sources of information on lending by depository institutions are the Federal Financial Institutions Examination Council (FFIEC) and NCUA Consolidated Reports of Condition and Income (Call Reports), as well as reporting under the CRA. Under the FFIEC and CRA reporting regimes, small loans to businesses of any size are used in whole or in part as a proxy for loans to small businesses. The FFIEC Call Report captures banks' outstanding number and amount of small loans to businesses (that is, loans originated under \$1 million to businesses of any size; small loans to farms are those originated under \$500,000). The CRA requires banks and savings associations with assets over a specified threshold to report loans in original amounts of \$1 million or less to businesses; reporters are asked to indicate whether the borrower's gross annual revenue is \$1 million or less, if they have that information. The NCUA Call Report captures data on all loans over \$50,000 to members for commercial purposes, regardless of any indicator about the business's size. There are no similar sources of information about lending to small businesses by nondepository institutions. The Small Business Administration also releases data concerning its loan programs, but these typically do not include demographic information, and this covers only a small portion of the overall small business financing market.

However, the information collections of proposed subpart B to Regulation B differ in important respects from existing regulations. First, proposed subpart B would collect data from new categories of lenders, including smaller banks and non-depositories, not covered by current regulations. Second, proposed subpart B would involve the publication of application-level and loan-level data; FFIEC and NCUA Call Reports and the CRA data are all available at a higher level of aggregation than loan-level, limiting fair lending and detailed geographic analyses since race, sex, and ethnicity as well as business location data are rarely disclosed. Third, unlike proposed subpart B, existing Federal regulations do not require the collection of certain data, such as information regarding applications. Further, existing Federal regulations are over and under inclusive in capturing data pertaining to small business lending. Finally, Federal regulations do not standardize small business lending data across agencies; as such, this data cannot be easily compared. For example, the FFIEC Call Report collects small loans to businesses as a proxy for small business lending, whereas the NCUA Call Report collects loans to members for commercial purposes above \$50,000 but with no upper limit.

Proposed subpart B would require information collections that may overlap with HMDA regulations. By adopting Regulation C's definition of dwelling and its commentary regarding investment properties in proposed subpart B, the Bureau seeks to ensure consistency and minimize compliance burdens for financial institutions that must also report credit transactions covered by HMDA (that is, HMDA-reportable transactions). Based on Bureau calculations using the 2019 HMDA data, the Bureau found that around 530,000 applications indicated a "business or commercial purpose" and around 500,000 applications were used for an "investment" (as defined by the occupancy code) purpose. Of those applications, around 50,000 were for 5+ unit properties. The overall number of applications the Bureau expects to be reported annually under

the proposed rule is around 26 million. Thus, the Bureau anticipates a relatively small but not insignificant overlap regarding real estate investment loans between HMDA and 1071.

The Bureau has considered excluding all transactions that were also reportable under HMDA, but believes such an exclusion would add complexity to data analysis. The Bureau understands that requiring lenders to find and delete from databases that supply their 1071 submission only those transactions that also appear in HMDA may require a separate scrub of the data and create additional compliance burden, as well as compliance risk if HMDA-reportable transactions are not deleted from a 1071 submission.

#### **5. Efforts to Minimize Burdens on Small Entities**

Subpart A (existing Regulation B). ECOA and existing 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, § 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, as well as public utilities credit and securities credit from many requirements including notifications under § 1002.9 of the Regulation and recordkeeping. Additionally, as noted above, the Bureau has taken steps to minimize the situations in which creditors would need to provide copies of multiple versions of the same appraisal or other written valuation.

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

Proposed subpart B. The Bureau believes that several provisions of proposed subpart B would help minimize burden on smaller entities.

Proposed § 1002.105(b) would define the term covered financial institution as a financial institution that originated at least 25 covered credit transactions for small businesses in each of the two preceding calendar years. Only financial institutions that meet this loan-volume threshold would be required to collect and report small business lending data under proposed subpart B, including the specific information collection, recordkeeping, and disclosure requirements discussed above. Generally, the Bureau believes that under this provision, smaller financial institutions are more likely to be exempt from any reporting obligations under a 1071 rule.

Proposed § 1002.107(b) would state that unless otherwise provided in subpart B, the financial institution would be able to rely on statements of the applicant when compiling data unless it verifies the information provided, in which case it would be required to collect and report the verified information. Requiring verification of applicant-provided data points would greatly increase the operational burden of the 1071 rule, and the Bureau believes that relying on applicant-provided data would ensure sufficient accuracy to carry out the purposes of section 1071. However, requiring financial institutions to collect and report (for the 1071 rule)



information that they have already verified would not add operational difficulty, and would enhance the accuracy and usefulness of the data, thereby furthering the purposes of section 1071.

Proposed § 1002.107(c)(2) would permit, but not require, a financial institution to reuse previously collected data to satisfy proposed § 1002.107(a)(13) through (21) if the data were collected within the same calendar year as the current covered application and the financial institution has no reason to believe the data are inaccurate. The Bureau believes that, absent a reason to suspect otherwise, recently collected 1071 data are likely to be reliable. Additionally, the Bureau believes that a flexible approach giving financial institutions discretion to reuse these data is consistent with helping facilitate compliance by small entities.

Proposed § 1002.110(c) would require that a covered financial institution make available to the public on its website, or otherwise upon request, a statement that the covered financial institution's small business lending application register, as modified by the Bureau pursuant to proposed § 1002.110(a), is or will be available on the Bureau's website. The Bureau is proposing this approach for the reasons discussed in the proposed rule, including that this approach would reduce potential burdens on financial institutions associated with publishing modified data, would reduce privacy risks resulting from errors by individual financial institutions implementing any modifications or deletions required by the Bureau, and would be more efficient overall.

Proposed subpart B would provide model forms that may be used in compliance with its requirements.

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

Subpart A (existing Regulation B). If the notification of action taken requirement were 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 notification of the applicants' rights under 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 valuation's impact on the creditor's decision and to challenge it in a timely fashion. Eliminating or changing the requirement to collect information about an applicant's protected characteristics would impair the ability of the Bureau and others seeking to enforce compliance with ECOA to take action against creditors that may engage in unlawful discrimination. 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 ECOA, and administrative agencies that enforce 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.

Proposed subpart B. Were the proposed requirement that financial institutions provide notice when underwriters or other employees or officials have access to applicants' protected demographic information eliminated, applicants would be deprived of the right to receive timely notice that their protected demographic information was being accessed, and that the use of such information in making a credit decision is impermissible. Eliminating the requirement that a financial institution must provide the public on its website, or otherwise upon request, a statement that the covered financial institution's small business lending application register, as modified by the Bureau, is or will be available on the Bureau's website would make it more difficult for individuals and entities to use 1071 data to facilitate fair lending enforcement, or better identify business and community development needs.

Were the proposed requirement that financial institutions collect data on the applications for credit by small businesses (including protected demographic information regarding the minority-owned or women-owned status of the applicant, and the ethnicity, race and sex of the principal owners of the applicant) eliminated or changed, the Bureau and others seeking to enforce fair lending laws and to identify business and community development needs would not have that information and would thereby be disadvantaged in taking action against that creditor.

The proposed record retention period of 3 years after the submission of 1071 data to the Bureau supports the need for sufficient time to determine compliance with the requirements of 1071. If the retention period were shortened, applicants who sue for violations under ECOA, and administrative agencies that enforce ECOA, might find that the records needed to prove ECOA violations no longer exist.

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

Subpart A (existing Regulation B). With regard to subpart A, there are no special circumstances. The collection of information requirements in Regulation B are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

Proposed subpart B. Proposed § 1002.107(a) would require respondents to submit potentially confidential information. However, the Bureau is proposing procedures to protect the information's confidentiality to the extent permitted by law, including by proposing to modify or delete certain data fields prior to publication if the Bureau determines that such modification or deletion would advance a privacy interest. The rest of the data would be considered confidential if the information identifies any natural persons who might not be applicants (e.g., owners of a business where a legal entity is the applicant) or implicates the privacy interests of financial institutions).

**8. Consultation Outside the Agency**

Proposed subpart B. The Bureau published this proposed rule in the *Federal Register*<sup>1</sup> allowing the public 90 days to comment<sup>2</sup>. Additionally, and in accordance with 5 CFR 1320.5(a)(1)(iv), the Bureau will publish a notice in the *Federal Register* announcing the final rule.

**9. Payments or Gifts to Respondents**

No payments or gifts are provided to respondents.

**10. Assurances of Confidentiality**

Subpart A (existing Regulation B). Some of the existing recordkeeping requirements contain private information about credit applicants. Such information is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq. There is no part of existing Regulation B that mandates information collection by the Bureau, and this information is used exclusively to ensure compliance with ECOA, and that creditors are not discriminating against applicants.

To the extent that information covered by a recordkeeping requirement is “confidential information” pursuant to 12 CFR 1070.2(f), the confidentiality provisions of the Bureau’s rules on Disclosure of Records and Information, 12 CFR Part 1070, would apply.

Proposed subpart B. Some of the proposed information collection and recordkeeping requirements would contain private information about the small business applicants for credit. In addition to the applicable privacy and confidentiality laws and regulations referenced in the discussion of subpart A above, proposed § 1002.111(c) would require that, in compiling and maintaining any records under proposed §§ 1002.107 and 1002.111(b), or reporting data pursuant to proposed § 1002.109, a financial institution shall not include personally identifiable information concerning any individual who is, or is connected with, an applicant, other than as required pursuant to § 1002.107 or § 1002.111(b).

**11. Justification for Sensitive Questions**

Subpart A (existing Regulation B). The sensitive information asked of applicants by creditors is either, for example, mandated for mortgage loan applications or optionally used for self-tests. The information collected is used to ensure compliance with ECOA, and that creditors are not discriminating against applicants.

Proposed subpart B. The sensitive information asked of applicants would be mandated for applications for credit from small businesses. The information collected would be used to (1) facilitate enforcement of fair lending laws and (2) enable communities, governmental entities,

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<sup>1</sup> 86 FR 56356 (10/8/2021).

<sup>2</sup> Comment period ends on 1/6/2022.

and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

The Bureau is proposing that financial institutions, in reporting 1071 data under proposed subpart B, not compile, maintain, or submit any name, specific address, telephone number, email address or any personally identifiable information concerning any individual who is, or is connected with, an applicant, other than as would be required pursuant to proposed § 1002.107. Nonetheless, publication of the data fields proposed in § 1002.107(a) in an unedited, application-level format could potentially affect the privacy interests and lead to the re-identification of, and risk of harm to, small businesses, related natural persons, and financial institutions.

Section 1071 states that the Bureau may, “at its discretion, delete or modify data collected under [section 1071] which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.” 15 U.S.C. 1691c-2(e)(4). The Bureau is proposing to adopt a balancing test as the method by which it would implement its “discretion” to delete or modify data before making the data available to the public.

However, the Bureau does not yet have any data under section 1071 and the Bureau does not believe that there are any comparable datasets that it could use as an adequate proxy for 1071 data to which it could apply the balancing test at this time. The Bureau is thus setting forth in the proposed rule a partial analysis under the balancing test, for public comment. With several exceptions, discussed in the proposed rule, the Bureau is not at this time proposing specific modifications or deletions for the public application-level 1071 data. After the Bureau receives at least one full year of 1071 data from financial institutions following the compliance date of the final rule, the Bureau intends to issue a policy statement (informed by comments received on the partial analysis in the proposed rule), in which the Bureau would set forth its intended modifications and deletions.

12. Estimated Burden of Information Collection

Information Collection Requirement	Number of Respondents	Annual Responses per Respondent	Total Annual Responses	Average Response Time (hours)	Total Annual Burden (Hours)	Hourly Rate (USD)	Labor Costs (USD)
Notice of Action § 1002.9	472,000	179.5	169,465,000	0.0042	706,000	31	21,886,000
Furnishing of Credit Information § 1002.10	136,000	423.6	115,228,000	0.0042	480,000	31	14,880,000
Record Retention § 1002.12	472,000	179.5	169,465,000	0.0042	706,000	31	21,886,000
Information Collected for Monitoring Purposes § 1002.13(a)&(b)	2,100	4,934	20,723,000	0.0167	345,000	31	10,695,000
Disclosure or Intent of Information Collected for Monitoring Purposes § 1002.13(c)	2,100	4,934	20,723,000	0.0167	345,000	31	10,695,000
Copy of Appraisal § 1002.14(a)(1)&(3)	2,100	4,934	20,723,000	0.0167	345,000	31	10,695,000
Disclosure of Self-Test Inquiries § 1002.5(b)(1)	1,900	792.1	1,505,000	0.0042	6,000	31	186,000
Proposed subpart B—Ongoing	5000	1	5000	1532	7,659,691	53	405,964,000
Proposed subpart B—One-time	5000	1	5000	255	1,274,294	56	71,360,000
<b>Total Burden</b>	<b>472,000<sup>3</sup></b>	<b>//////////</b>	<b>517,842,000</b>	<b>//////////</b>	<b>11,867,000</b>	<b>//////////</b>	<b>568,247,000</b>
<b>CFPB Portion of Burden</b>	<b>188,800<sup>1</sup></b>	<b>//////////</b>	<b>82,671,000</b>	<b>//////////</b>	<b>5,688,000</b>	<b>//////////</b>	<b>271,677,742</b>

The Bureau and Federal Trade Commission (FTC) share enforcement authority for those non-depository institutions subject to the Bureau’s Regulation B, with the Bureau assuming burden for half of all non-depository institutions excluding the burden for motor vehicle dealers, for which the FTC assumes burden. The Bureau estimates that there are about 460,000 non-depository institutions and about 55 percent of burden can be attributed to non-depository institutions. The Bureau estimates about 12,000 depository institutions and assumes the burden of 167 depository institutions with more than \$10 billion in assets. Of the total 472,000 potential respondents, approximately 188,800 are Bureau respondents.

The Bureau assumes labor burden for ongoing recordkeeping and disclosure requirements under Regulation B of 1,220,992 hours. To calculate labor costs, the Bureau applies a market rate of \$31, the rounded hourly mean wage for loan officers in BLS.<sup>4</sup> Staff anticipates that the above requirements necessitate ongoing, regular training so that lenders stay current and have a clear

<sup>3</sup> Unduplicated respondent count.

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.

### **A. New Information Collections under the Proposed Rule**

The proposed rule Information Collections under the PRA falling under three categories: (1) Reporting Requirements, (2) Recordkeeping Requirements, and (3) Third Party Disclosure Requirements. Each of these categories of Information Collections is discussed in turn. The Bureau estimated one-time and ongoing costs associated with section 1071. The Bureau assumes that all one-time costs will be covered by the Reporting Requirements.

#### **Reporting:**

Given that section 1071 is a data collection statute, the Bureau views most tasks that financial institutions undertake to gather and report data as covered by the Reporting Requirements.

##### (i) One-time costs

The Bureau identified eight categories of one-time costs that financial institutions likely incur to develop the infrastructure to collect and report data required by the proposed rule.<sup>5</sup> The Bureau conducted a survey regarding one-time implementation costs and used responses to the survey to estimate the total number of hours junior, mid-level, and senior staff would spend, along with any additional non-salary expenses, for each of the eight categories. To capture the relationships between institutions' complexity and one-time costs, the Bureau estimated these values for four different types of institutions: low-complexity DIs, moderate-complexity DIs, high-complexity DIs, and Non-DIs. In the following discussion, these are referred to as DIs of Types A, B, and C, and Non-DIs. For the PRA burden analysis, the Bureau used the estimates of labor hours spent on each task.

The Bureau estimates that DIs of Types A, B, and C, and Non-DIs will spend 716, 461, 1320, and 664 hours, respectively, on the eight tasks necessary to implement the proposed rule. The Bureau expects that each type of institution will use a different mix of staff hours in order to implement these changes. Tables 9-13 in part VII.F.3 in the proposed rule report the estimated number of junior, mid-level, and senior staff hours and non-salary expenses for each component activity for each type of financial institution. To find the total labor expenses for each financial institution, the Bureau applied a different wage for each level of staff. The Bureau assumed a total hourly compensation of \$92.02 for senior staff, \$52.90 for mid-level staff, and \$23.14 for

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<sup>4</sup> 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>) as of February 2019.

<sup>5</sup> This estimation uses the same methodology described in part VII.E.1 of the proposed rule. These categories are preparation/planning, updating computing systems, testing/validating systems, developing forms/applications, training staff and third parties, developing policies/procedures, legal/compliance review, and post-implementation review of compliance policies and procedures.

junior staff.<sup>6</sup> The estimated total one-time labor expenses are \$39,302 for DIs of Type A, \$28,203 for DIs of Type B, \$66,443 for DIs of Type C, and \$38,272 for Non-DIs. The Bureau estimates the annualized one-time labor costs for PRA purposes using a 7 percent discount rate and a three-year amortization window.<sup>7</sup> The estimated annual one-time labor expenses are \$14,976 for DIs of Type A, \$10,747 for DIs of Type B, \$25,318 for DIs of Type C, and \$14,584 for Non-DIs. The estimated annual labor burden hours are 273 for DIs of Type A, 176 for DIs of Type B, 503 for DIs of Type C, and 253 for Non-DIs.

The Bureau estimates that there are 2,100 DIs of Type A, 1,550 DIs of Type B, 250 DIs of Type C, and 1,000 Non-DIs that will be required to report under the proposed rule. Applying the estimates above to these estimates of numbers of FIs, the Bureau estimates that the total annualized number of labor burden associated with one-time costs is 1,274,294 hours. Similarly, the Bureau estimates that the total annualized labor cost associated with one-time costs is \$71,552,577. The Bureau estimates one implied wage by dividing the total cost by the total number of labor hours, \$56.15.

**Total Burden, One-time Reporting Requirements - All Regulated Entities**

	Number of Respondents	Annualized Burden per Respondent	Total Annualized Burden
DI of Type A	2,100	273	572,949
DI of Type B	1,550	176	272,280
DI of Type C	350	503	176,046
Non-DI	1,000	253	253,018

**Total One-time Reporting Requirement Burden for all Regulated Entities** 1,274,294  
**hours**

(ii) Ongoing costs

The Bureau identified 15 tasks that financial institutions conduct when gathering and reporting data under HMDA.<sup>8</sup> These outreach efforts also determined that the time and monetary cost of conducting these 15 tasks differed by financial institutions’ level of complexity. To capture the relationships between institutions’ complexity and reporting costs for each of these 15 tasks, the

<sup>6</sup> For junior staff, the Bureau used \$16.18, the 10th percentile hourly wage estimate for “loan officers” according to the 2020 Occupational Employment Statistics compiled by the Bureau of Labor Statistics. For mid-level staff, the Bureau used \$36.99, the mean hourly wage estimate for “loan officers.” For senior staff, the Bureau used \$64.35, the 90th percentile hourly wage estimate for “loan officers.” To account for non-monetary compensation, the Bureau also scaled these hourly wages up by 43 percent.

<sup>7</sup> The Bureau uses a three-year amortization window for PRA purposes to assume that the entire costs is incurred by the PRA renewal in three years.

<sup>8</sup> This estimation uses the same methodology described in part VII.E.2 of the proposed rule. These tasks are transcribing data, resolving reportability questions, transferring data to 1071 Data Management software, geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, using vendor 1071 data management software, training, internal audits, external audits, exam preparation, and exam assistance.

Bureau developed three representative financial institutions reflecting low-, moderate- and high-complexity. In the following discussion, these are referred to as Types A, B, and C financial institutions, respectively. For the PRA burden analysis, the Bureau estimated the time that each of the three representative lenders spend on each of the 15 tasks. The Bureau then took these institution-level estimates and aggregated up to the market level.<sup>9</sup>

The Reporting Requirement covers 14 of the 15 operational tasks.<sup>10</sup> The Bureau estimates that Types A, B, and C financial institutions spend, on average, approximately 85, 571, and 7,557 hours per year, respectively, on these 14 tasks.

**Total Burden, Ongoing Reporting Requirements - All Regulated Entities**

	Number of Respondents	Average Burden per Respondent	Total Burden (Rounded to Thousands)
Type A	2,100	85	179,336
Type B	2,400	571	1,370,143
Type C	500	7,557	3,778,311

**Total Ongoing Reporting Requirement Burden for all Regulated Entities** 5,327,789 hours

**Recordkeeping:**

The Recordkeeping Requirement covers the requirements that financial institutions maintain data collected under the proposed rule for three years. To maintain data, the primary time burden is the time needed to copy this information to electronic data storage devices, such as a hard drive or disk. Given the prevalence and low cost of modern computer technology, the Bureau believes that this time burden is negligible. The Bureau regards the task of transcribing data as the key operational task that is directly related to recordkeeping. The Bureau calculates the burden hours for the Recordkeeping Requirement based on the estimated cost of transcribing the data. The Bureau estimates that Type A, Type B, and Type C financial institutions would spend approximately 25, 57, and 4,284 hours per year transcribing data, respectively.

<sup>9</sup> The Bureau aggregated to the market-level using the same methodology as part VII.E.3 of the proposed rule.

<sup>10</sup> These are resolving reportability questions, transferring data to 1071 Data Management software, geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, using vendor 1071 software, training, internal audits, external audits, exam preparation, and exam assistance. As discussed below, transcribing data falls under the record keeping requirement, and there will be minimal burden created by the Third Party Disclosure Requirement as, under the proposed rule, this function will be performed by the CFPB with no need for financial institutions to create their own public records.



**Total Burden, Recordkeeping Requirements - All Regulated Entities**

	<b>Number of Respondents</b>	<b>Total Burden per Respondent</b>	<b>Total Burden (Rounded to Thousands)</b>
Type A	2,100	25	52,202
Type B	2,400	57	137,700
Type C	500	4,284	2,142,000

**Total Estimated Burden for all Regulated Entities** 2,331,902 hours

**Third Party Disclosure:**

Under the proposed rule, covered institutions would report data to the Bureau on an annual basis. The Bureau will make loan application registers of reportable applications available to the public on behalf of the institutions. Therefore, the Bureau expects covered institutions to have minimal burden related to third party disclosure.

**Total Burden:**

The Bureau assumes that all one-time burden will be covered by reporting requirements. The Bureau estimates that the total annualized one-time burden will be 1,274,294 burden hours per year.

Combining the three Information Collections, the Bureau estimates that the total reporting, ongoing recordkeeping, and third party disclosure requirement costs allocated to the CFPB under the proposed rule are 231,538; 1,507,843, and 5,920,311 hours per year, for Types A, B, and C, respectively, for a total estimate of 7,659,691 burden hours per year.

**Total Burden, Total Ongoing Burden-All Regulated Entities**

	<b>Number of Respondents</b>	<b>Total Burden per Respondent</b>	<b>Total Burden (Rounded to Thousands)</b>
Type A	2,100	110	231,538
Type B	2,400	628	1,507,843
Type C	500	11,841	5,920,311

**Total Estimated Burden for all Regulated Entities** 7,659,691 hours

**13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers**

Many lenders generally have some necessary equipment for other business purposes. The additional one-time costs associated with coming into compliance with the proposed rule are detailed below. The Bureau believes that the cost of printing and copying needed to comply with Regulation B is minimal, as many disclosures can be sent electronically. Additional ongoing costs are detailed below.

**Proposed Rule Estimated Total Annual Cost Burden to All CFPB Respondents or Recordkeepers**

**Annualized One-time**

Description of Costs (O&M)	Per Unit Costs	Number of Reporters	Total Costs
Non-salary one-time expenses			
DI of Type A	\$7,200	2,100	\$15,120,000
DI of Type B	\$6,250	1,550	\$9,687,500
DI of Type C	\$2,470	350	\$864,500
Non-DI	\$21,680	1,000	\$21,680,000

**Total One-Time Costs (O&M) \$47,350,000**

**Ongoing**

Description of Costs (O&M)	Per Unit Costs	Number of Reporters	Total Costs
Non-salary ongoing expenses:			
• Data Management software			
• External audit costs			
Type A Institution	\$3,500	2,100	\$7,350,000
Type B Institution	\$13,000	2,400	\$31,200,000
Type C Institution	\$13,770	500	\$6,885,000
LEI	\$200	145	\$29,000

**Total Ongoing Costs (O&M) \$45,464,000**

**Total Costs (O&M) - \$92,814,000**

**14. Estimated Cost to the Federal Government**

Subpart A (existing Regulation B). As the Bureau does not collect any information under existing Regulation B, there are no costs to the Bureau associated with this information collection.

Proposed subpart B. The estimated one-time cost to the Federal Government to develop software for data submission, edit checks, communication with reporters and geocoding is \$13.5 million.

**15. Program Changes or Adjustments**

	<b>Total Respondents</b>	<b>Annual Responses</b>	<b>Burden Hours</b>	<b>Cost Burden (O &amp; M) (USD)</b>
Total Annual Burden Requested	188,800	82,671,000	5,688,000	92,814,000
Current OMB Inventory	188,800	82,666,000	1,220,992	0
Difference (+/-)				
Program Change	0	0	0	0
Discretionary	0	0	0	0
New Statute	0	0	0	0
Violation	0	0	0	0
Adjustment	0	5,000	4,467,008	92,814,000

The addition of one-time and ongoing burdens for the proposed rule significantly increase the burden hours and cost burden of Regulation B. Approximately one sixth of the increased burden hours and one half of the increase in cost burden are due to one-time adjustments respondents will need to make to comply with the proposed changes.

**16. Plans for Tabulation, Statistical Analysis, and Publication**

Subpart A (existing Regulation B). The results of the information collection will not be published.

Proposed subpart B. The information would be collected for use by the Bureau’s examination program and for disclosure to the public after deletion of certain sensitive data elements.

**17. Display of Expiration Date**

The information collections contained in subpart A (existing Regulation B) are recordkeeping and disclosure requirements. The collections of information that would be contained in proposed subpart B are recordkeeping, reporting and disclosure requirements. The OMB control number and expiration date associated with the information collection requirements contained in existing Regulation B are displayed on the Federal government’s electronic PRA docket at [www.reginfo.gov](http://www.reginfo.gov), as well as in the *Federal Register* Notice of the submission. The same OMB control number would be displayed in the PRA section of the notice of a final rulemaking for subpart B.

**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.