

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

The Federal Trade Commission (“FTC” or “Commission”) requests approval for a three-year extension of an existing clearance relating to the information collection requirements under Regulation B (Equal Credit Opportunity Act), 12 C.F.R. Part 202, 12 C.F.R. Part 1002. In 2023, the CFPB amended Regulation B, to create Subparts A and B, in implementing amendments mandated by Section 1071 of the Dodd Frank Act, 12 U.S.C. 1691c-2, pertaining to small business lending, including for small businesses owned by women or minorities. As a result, Regulation B, Subpart A, now contains the prior Regulation B requirements; Regulation B, Subpart B, contains the new small business lending requirements. There are no other changes in the recordkeeping or disclosure requirements. The annual burden hours and labor costs are shown below.

1. Necessity for Collecting the Information

The Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. 1691 *et seq.*, was enacted to ensure that credit is made available to all creditworthy applicants without discrimination on the basis of sex, marital status, race, color, religion, national origin, or age. The ECOA also prohibits discrimination because an applicant’s income is derived from a public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The ECOA applies to anyone who regularly extends or arranges for the extension of credit and to an assignee who participates in the decision to extend credit, including mortgage lenders, mortgage brokers, finance companies and others.¹ Subject to the discussion below, the Federal Trade Commission (“FTC” or “Commission”) enforces the ECOA as to all creditors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another federal agency. The ECOA also contains a private right of action with a five-year statute of limitations for aggrieved applicants.

The Board of Governors of the Federal Reserve System (“Federal Reserve Board” or “Board”) promulgated the original Regulation B (12 C.F.R. Part 202) to implement the ECOA, as required by the statute. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat. 1376 (2010), however, almost all rulemaking authority for the ECOA transferred from the Board to the Consumer Financial Protection Bureau (“CFPB”) on July 21, 2011 (“transfer date”). Although the Dodd-Frank Act transferred most rulemaking authority under ECOA to the CFPB, the Federal Reserve Board retained rulemaking

¹ The law applies to a person who, in the normal course of business, regularly participates in a credit decision, including setting the terms of credit. *See* 12 C.F.R. 202.2(l); 12 C.F.R. 1002.2(l). It includes all persons participating in the credit decision. It may include an assignee or potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated. Section 202.2(l)-1 of the Federal Reserve Board Official Staff Commentary; Section 1002.2(l)-1 of the CFPB Official Staff Commentary.

authority for certain motor vehicle dealers.² The CFPB’s regulations for entities under its jurisdiction for Regulation B appear in 12 C.F.R. Part 1002.³

As a result of the Dodd-Frank Act, the FTC and the CFPB generally share the authority to enforce Regulation B for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers⁴ and certain state-chartered credit unions.⁵ The FTC generally has sole authority to enforce Regulation B regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁶

In 2010, Congress enacted the Dodd-Frank Act. Section 1071 of that Act amended ECOA to require the financial institution collect and report to the CFPB certain data regarding applications for credit for women-owned, minority-owned, and small businesses. Section 1071’s statutory purposes are to facilitate enforcement of fair lending laws and to enable communities, government entities and creditors to identify business and community development needs and opportunities of women-owned, minority-owned and small businesses. Section 1071 specifies various data points that financial institutions must collect and report, and provides authority for the CFPB to require additional data that it determines would aid in fulfilling those statutory purposes.

In 2023, the CFPB amended Regulation B, to create Subparts A and B, in implementing amendments mandated by Section 1071 of the Dodd Frank Act, 12 U.S.C. 1691c-2, pertaining to small business lending, including for small businesses owned by women or minorities.⁷ As a

² Generally, these are dealers “predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” See Dodd-Frank Act, § 1029(a), (c), 12 U.S.C. 5519(a), (c).

³ Because both the Board and the CFPB have certain rulemaking authority under Regulation B – as discussed further below – citations to both aspects of the regulation are included in this document. Hence, 12 C.F.R. Part 202 refers to the Board-issued Regulation B; 12 C.F.R. Part 1002 refers to the CFPB-issued Regulation B. Generally, these two aspects of Regulation B are virtually identical, other than occasional minor technical differences, and citations. However, as further discussed below in footnotes 7 and 10, the Board has not at present amended its Regulation B to implement amendments made by Section 1071 of the Dodd Frank Act amending ECOA regarding small business lending, and that relate to recent such changes made by the CFPB to its Regulation B.

⁴ See Dodd-Frank Act, § 1029(a), as limited by subsection (b) as to motor vehicle dealers. Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses to consumers, where the contract is not routinely assigned to unaffiliated third parties. .

⁵ The FTC’s enforcement authority includes state-chartered credit unions. In varying ways, other federal agencies also have enforcement authority over state-chartered credit unions. For example, for large credit unions (exceeding \$10 billion in assets), the CFPB has certain authority. The National Credit Union Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines state-chartered credit unions for various purposes. See generally Dodd-Frank Act, §§ 1061, 1025, 1026.

⁶ See Dodd-Frank Act, § 1029(a), (c). 12 U.S.C. 5519(a), (c).

⁷ See CFPB, Final Rule, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) (CFPB Rule), 88 Fed. Reg. 35150 (May 31, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-05-31/pdf/2023-07230.pdf>. The CFPB generally refers to these requirements as those pertaining to “small business

result, Regulation B, Subpart A, now contains the prior Regulation B requirements; Regulation B, Subpart B, contains the new small business lending requirements encompass the changes pursuant to and related to Section 1071 of the Dodd-Frank Act.⁸

Recordkeeping

Subpart A

Sections 202.12(b)/1002.12(b) of Regulation B require creditors to retain records relating to consumer credit applications for 25 months from the date that the applicant is notified of the action taken on the application or, where notice is not required, for 25 months from the date of the application. When a creditor takes adverse action on an existing account, the creditor must retain records for 25 months after the applicant is notified of the action taken. Records of business credit applications must be retained for comparable 12-month periods, with certain exceptions. Regulation B also requires creditors who have been informed that they are the subject of an investigation by the FTC (or another agency) regarding their compliance with the ECOA to retain such records until the agency or a court informs the creditor that retention is no longer necessary. Regulation B also requires creditors to retain certain prescreened solicitation materials for 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, with certain exceptions).⁹ Moreover, Regulation B requires creditors to retain all

lending.” See CFPB Rule, *id.* That term is also used herein.

The Federal Reserve Board has not issued its related rule for these requirements covering certain motor vehicle dealers pursuant to the Dodd Frank Act, Section 1029, 12 U.S.C. 5519. In May 2024, following the U.S. Supreme Court ruling in *Consumer Fin. Protection Bureau v. Community Fin. Servs. Ass’n of Am., Ltd. (CFPB v. CFSA)*, No. 22-448, 2024 WL 2193873 (U.S.S.C. May 16, 2024), available at https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf, the CFPB issued informal guidance extending the compliance dates for the small business lending rule and indicated it would issue an interim final rule; on June 25, 2024, the CFPB issued an interim final rule, extending the compliance dates accordingly. See CFPB, Small Business Lending Rulemaking, available at <https://www.consumerfinance.gov/1071-rule/>; 89 Fed. Reg. 55024 (July 3, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-07-03/pdf/2024-14396.pdf>, corrected, 89 Fed. Reg. 76713 (Sept. 19, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-09-19/pdf/2024-21265.pdf>. The FTC has hereunder included estimates of burden for these requirements, based on currently available information, including the supplementary information with the CFPB Rule, 88 Fed. Reg. 35150, and its related CFPB Supporting Statement.

⁸ In implementing Regulation B, Subpart B, the CFPB noted that merchant cash advances are covered under that part, and are “credit” subject to Regulation B (and ECOA). See, e.g., CFPB Rule, 88 Fed. Reg. 35223. When applicable, these entities (to the extent they are “creditors” under Subpart A) also apparently would be subject to, for example, the requirement to provide notices whenever they take adverse action, such as denial of a credit application. The CFPB estimates about 100 merchant cash advance providers as active in the small business lending market. See CFPB Rule, 88 Fed. Reg. 35164. The FTC estimates below cover those providers as “creditors” for Subpart A and re applicable transactions. As noted above, in view of fluctuations that occurred with COVID-19 and have continued (and with respect to which the Commission did not reduce its prior burden estimates to avoid undercounting, despite varied market contractions and shifts), these entities are included within the burden estimates below.

⁹ The records generally are already retained by creditors in connection with their business operations in part due to the credit extension that will be made to responding applicants.

written or recorded information about a self-test (including corrective action), as defined in Sections 202.15/1002.15 of Regulation B, for 25 months after a self-test has been completed (and longer under some circumstances).

Sections 202.13/1002.13 of Regulation B require 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.¹⁰

The recordkeeping requirement ensures that records that might contain evidence of violations of the ECOA remain available to the FTC and other agencies that enforce the ECOA and private litigants.

Subpart B

Section 1002.107 addresses various requirements pertaining to collection of data on covered applications from small businesses. Section 1002.107(a) specifies that covered financial institutions must compile and maintain enumerated data points, which are detailed there. The data points are to be collected and reported consistent with the rule and with the Filing Instructions Guide, provided by the CFPB for the applicable filing year. Some data points could be collected from the applicant (or determined from information from appropriate third-party sources); other data points are based on information already within the financial institution's control.

Section 1002.109 addresses aspects of covered financial institutions' obligations to report small business lending data to the CFPB. Section 1002.109(a) notes that data must be collected on a calendar year basis, compiled in a small business lending application register using the format supplied by the CFPB and submitted to the CFPB by June 1 of the next year. Section 1002.109(b) lists information that financial institutions must provide regarding themselves in reporting information to the CFPB.

Section 1002.111 addresses several parts of the recordkeeping requirements for small business lending data. This includes, under Section 1002.111(a), that a covered financial institution must retain evidence of compliance with Subpart B – including a copy of its small business lending application register, for at least three years after submission to the CFPB (which

¹⁰ As noted, Section 1071 of the Dodd-Frank Act, 15 U.S.C. 1691c-2, amended the ECOA to require financial institutions to collect and report information concerning credit applications by women- or minority-owned businesses and small businesses, effective on the July 21, 2011 transfer date. Compliance with the CFPB rule for Regulation B, Subpart B is addressed herein. The Commission will address PRA burden for its enforcement of the requirement with respect to the Board's rule after the Board has issued its associated final rule.

is pursuant to Section 1002.109). Also, Section 1002.111(b) requires a covered financial institution to maintain, separately from the rest of an application for credit and related information, an applicant's responses to a financial institution's inquiries regarding the applicant-provided data on the demographics of the applicant's ownership. In addition, Section 1002.111(c) requires that when reporting its small business lending application register and its separately maintained protected demographic information pursuant to Section 1002.111(b), a financial institution may not include any personally identifiable information concerning any individual who is, or is connected with, an applicant.

In addition, the recordkeeping requirements ensure that records that might contain evidence of violations of the ECOA will be available in a comprehensive database useful for enforcement of fair lending laws, and to those interested in fair lending and community development needs and to private litigants.

Disclosure¹¹

Subpart A

Sections 202.9/1002.9 of Regulation B require creditors to provide notice (within specified time periods) to applicants for credit against whom adverse action is taken.¹² Generally, the required notice must be in writing and contain: a statement of the action taken; the name and address of the creditor; a statement describing the anti-discrimination provisions of the ECOA; the name and address of the federal agency that administers compliance as to the creditor; and either a statement of specific reasons for the action taken or a notice of the applicant's right to obtain such a statement.

Sections 202.10/1002.10 of Regulation B require creditors that furnish credit information to consumer reporting agencies to designate accounts to reflect the participation of both spouses, if the applicant's spouse is permitted to use or is contractually liable on the account.

Sections 202.14/1002.14 of Regulation B require 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.¹³ The material must be furnished promptly but no later than three business days prior to consummation of the transaction (closed-end credit) or account opening (open-end credit), whichever is earlier. The requirement that the creditor provide a copy of the appraisal report or other written valuation, for a loan secured by a first lien on a dwelling, is statutorily mandated by Section 1691(e) of the ECOA.

¹¹ Regulation B permits many disclosures to be made orally. Any required written disclosures must be made clearly and conspicuously and in a form the applicant can retain.

¹² For incomplete applications, creditors may initially provide the adverse action notice or a notice of incompleteness.

¹³ While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is now provided by the CFPB, and is thus not a "collection of information" for PRA purposes. *See* 5 C.F.R. 1320.3(c)(2). Accordingly, it is not included in burden estimates below.

Under Sections 202.5(b)/1002.5(b) and 202.15/1002.15 of Regulation B, creditors that collect applicant characteristics for purposes of conducting a self-test under Regulation B must disclose, orally or in writing, that providing the information is optional, that the creditor will not take into account the information in any aspect of the credit transactions, and, if applicable, that the information will be noted by visual observation or surname, if the applicant chooses not to provide it.

The requirement that spousal credit history information on shared accounts be reported under both spouses' names (if it is reported at all) is intended to ensure that each spouse has the benefit of that shared credit history from which to seek and obtain further credit. The requirement that a notice of adverse action be provided assists applicants in detecting unlawful discrimination, correcting errors that may have occurred in the evaluation of their applications, and learning how to become more creditworthy. The requirement that information about the race/national origin, sex, marital status, and age of applicants be collected helps the FTC, other enforcement agencies, and private litigants to determine whether creditors discriminated against applicants on those bases. The collateral requirement that applicants be notified of the purpose for collecting this information helps to ensure that the information is provided. The applicants' copy of the appraisal or other written valuation allows applicants to determine the role that the appraisal played in the credit decision. The self-testing disclosure helps applicants understand the nature of the information collection process.

The Federal Reserve Board and CFPB have issued model forms that may be used to comply with the notice requirements of the ECOA and Regulation B. *See* Appendices B and C to 12 C.F.R. Part 202/1002. Correct use of these model forms insulates creditors from liability for the respective requirements under the ECOA and Regulation B. *Id.*

Subpart B

As noted above, Section 1002.107 identifies data points that must be collected and reported by covered financial institutions for covered applications from small businesses. When requesting an applicant's protected demographic information, a financial institution must inform the applicant that the financial institution cannot discriminate on the bases of the protected information and that Federal law requires it to ask for the information to help ensure that all small business applicants for credit are treated fairly.

Section 1002.108 implements Section 1071 of the Dodd Frank Act's requirement that an applicant's protected demographic information be shielded from employees and officers in making determination about applications for credit if possible; but if the financial institution determines that certain persons should have access accordingly it may do so if it informs the applicant. The notice can be provided to each applicant whose information will be accessed or, alternatively, to all applicants. The CFPB provides the sample disclosure that a financial institution can (but is not required to) use for this purpose.

Section 1002.110(c) requires a covered financial institution to publish on its website a statement that its small business lending data, as modified by the CFPB, is or will be available

from the CFPB – to satisfy the statutory obligation to make the data available to the public if requested. The CFPB provides the information for the financial institution’s use on the website (or the financial institution can use substantially similar information, if it prefers).

2. Use of the Information

As to Subpart A, the FTC, other agencies, and private litigants use recordkeeping information to compare accepted and rejected applicants in order to determine whether applicants are treated less favorably on the basis of race, sex, age, or other prohibited bases under the ECOA. Information derived from these records has been and is the primary evidence of law violations in most of the ECOA enforcement actions brought by the FTC. Self-testing records (including for corrective action) are used by creditors to identify potential violations and reflect their efforts to correct the problem. Absent the Regulation B requirement that creditors retain monitoring information, the FTC’s ability to detect unlawful discrimination and enforce the ECOA would be significantly impaired. As to Subpart B, the recordkeeping and reporting requirements enable compliance with Section 1071’s statutory purposes to facilitate enforcement of fair lending laws and enable identification of business and community development needs and opportunities of women-owned, minority-owned and small businesses. The requirements also enable applicants for credit to determine if covered financial institutions have provided the requisite information on which they can rely, particularly regarding potential discrimination and fair lending compliance.

As to Subpart A, 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. These disclosures are necessary for the FTC and private litigants to enforce the ECOA. As to Subpart B, the notice provisions will apprise applicants that financial institutions cannot discriminate on the basis of protected demographic information and that federal law requires such entities to ask for the information to help ensure small business applicants for credit are treated fairly and community small business needs are met. The website notice requirements also help apprise persons that wish to access the small business lender data of such entities that it is or will be, as modified by the CFPB, available from the CFPB.

3. Consideration of the Use of Improved Information Technology

For Subpart A, the Federal Reserve Board and CFPB have issued rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation B, within the context of the Electronic Signatures in Global and National Commerce Act (“ESIGN”), 15 U.S.C. 7001 *et seq.*, and Sections 202.4(d)/1002.4(d) of Regulation B. These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (“GPEA”), codified at 44 U.S.C. 3504 note. ESIGN and GPEA serve to reduce businesses’ compliance burden related to federal requirements, including Regulation B, by enabling creditors to utilize more efficient electronic media for disclosures and compliance.

Regulation B also permits a creditor to retain records as “carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer.” Section 202.12(b)-1 of the Federal Reserve Board Commentary; Section 1002.12(b)-1 of the CFPB Commentary. In addition, Regulation B permits a creditor to record the information required for monitoring purposes “by recording on paper or by means of computer” Section 202.13(b)-2 of the Federal Reserve Board Commentary; Section 1002.13(b)-2 of the CFPB Commentary.

For Subpart B, financial institutions must submit data to the CFPB in electronic form, which involves more readily available information, and the CFPB continues to address its system to receive, process, and publish the data so collected. The CFPB is incorporating for this collection, prior approaches established for other laws, such as the Home Mortgage Disclosure Act (“HMDA”) and its implementing Regulation C. As noted above, the CFPB has developed a Filing Instruction Guide and related material for financial institutions’ use.¹⁴

4. Efforts to Identify Duplication/Availability of Similar Information

As to Subpart A, the recordkeeping requirement of Regulation B preserves the information considered by the creditor in deciding whether to extend credit or terminate an existing credit account. The creditor is the only source of this information, and no other federal law mandates its retention. State laws do not duplicate these requirements.¹⁵ Similarly, the creditor is the only source of the information provided by appraisal reports, adverse action notices, and self-testing information, and no other federal law mandates provision of the report (in a fully duplicative manner) or the disclosure nor is staff aware of any state law mandating this information.¹⁶

¹⁴ The CFPB has made available guidance for providing data consistent with the new rule, including in electronic form. *See generally* CFPB, Filing Instructions Guides for Small Business Lending Rule, <https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>. *See also* CFPB, Small Business Lending Rule FAQs (last updated June 25, 2024), <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/small-business-lending-rule-faqs/>.

¹⁵ Regarding prescreened solicitations, Section 615(d) of the Fair Credit Reporting Act (“FCRA”) requires retention of some, but not identical, information required by the ECOA. Among other things, the FCRA requires persons who use information in consumer reports to select consumers to receive certain offers of credit to maintain the criteria used to select the consumer, for three years from the date the credit offer is made. The ECOA focuses on creditors, includes certain business applicants, and also addresses the solicitation including the text and any related complaints. The Board and CFPB issued these rules to ensure that creditors would retain all necessary information for enforcement and avoidance of circumvention of the ECOA.

¹⁶ The requirement in ECOA to provide applicants with copies of written appraisals, in part, duplicates a requirement in the Truth in Lending Act (“TILA”) to provide copies of written appraisals for certain higher-priced mortgage loans, 15 U.S.C. 1639h. The Dodd-Frank Act amended both ECOA and TILA to add the appraisal rules that overlap only in part. For example, the ECOA appraisal rule applies to those transactions that meet all of the following conditions: (1) first liens; (2) involving business or consumer transactions; and (3) that are open-end or closed-end mortgages. The TILA appraisal rule applies to those loans that meet all of the following conditions: (1) any lien; (2) involving consumer transactions; and (3) that are higher-priced mortgage loans (HPMLs) (a type of closed-end credit) under TILA and that are not exempt under those rules (such as bridge loans, reverse mortgages, loans for \$25,000 or less as

Regulation C under the HMDA requires mortgage lenders subject to that Act to collect and report information about the race or national origin and sex of applicants. The data collection requirements of HMDA are similar, but not identical to, those of the ECOA. However, the FTC has no enforcement authority for HMDA, and ordinarily has no right to obtain this information except to the extent that it becomes publicly available. Moreover, the HMDA information released publicly does not include identifying information about individual applicants. Thus, the HMDA monitoring information is less useful to FTC staff in its enforcement efforts than is the ECOA monitoring information. The creditor is also the only source of the credit history reporting information regarding the applicant's spouse.

As to Subpart B, some aspects of this information overlap with other regulations (although the FTC does not enforce those regulations). For example, primary sources of information on small business lending by depository institutions – such as banks over which the FTC does not have jurisdiction – are the Federal Financial Institutions Examination Council (FFIEC) and the NCUA's Consolidated Reports of Condition and Income (Call Reports) – however the FTC does not have examination or supervision authority and is not part of the FFIEC, does not have jurisdiction over Federally-chartered credit unions, and does not have enforcement authority as to the Community Reinvestment Act (CRA). All of these reporting mechanisms also focus on entities with certain limited sizes, and no similar sources of information about lending to small business exist by other non-depository entities. Although the Small Business Administration releases certain data concerning its loan programs, it generally does not include demographic information and covers only a small portion of the total small business financing market. In addition, among other things, other existing Federal regulations do not require the collection of data regarding applications, which is the focus of Section 1071 of the Dodd-Frank Act, and data that otherwise exists is not standardized.

5. Efforts to Minimize Burdens on Small Businesses

As to Subpart A, the ECOA and Regulation B accord special treatment to creditors that receive fewer than 150 applications each year. Sections 202.9(d)/1002.9(d) of the Regulation states that such creditors may provide required notices to rejected applicants orally rather than in writing. Where fewer written records are required to be created, the recordkeeping burden is correspondingly reduced. In addition, Sections 202.3(c)/1002.3(c) of the Regulation exempts providers of incidental credit, such as a doctor or lawyer who allows a patient or client to defer payment of a bill, from many requirements including notifications under Sections 202.9/1002.9 of the Regulation and recordkeeping. The requirements to collect monitoring information and to

indexed each year for inflation, and any mortgage that constitutes a qualified mortgage under TILA or that meets rules on qualified mortgages issued by the U.S. Dept. of Housing and Urban Development, U.S. Dept. of Agriculture, or U.S. Dept. of Veterans Affairs). However, where duplicative requirements apply (*e.g.*, for consumer credit that involves first lien, closed-end HPMLs that are also non-exempt under the TILA appraisal rules), creditors can provide one appraisal, based upon the applicable rules. *See* CFPB, Equal Credit Opportunity Act (ECOA) Valuations Rule, Small Entity Compliance Guide (Jan. 13, 2014), and CFPB, TILA Higher-Priced Mortgage Loans (HPML) Appraisal Rule, Small Entity Compliance Guide (Jan. 13, 2014). This approach ensures that applicants will receive a copy of the required appraisal, and it also limits burden to creditors.

provide a copy of the appraisal report apply to all creditors who extend applicable mortgage credit. There is no exception based on creditor size.

Additionally, as noted above, Regulation B provides model forms that may be used in compliance with its requirements. Correct use of these forms insulates creditors from liability from the respective requirements.

As to Subpart B, Section 1002.105(b) defines a covered financial institution as having originated at least 100 covered credit transactions for small business in each of the two preceding calendar years. This requirement limits the entities subject to the reporting threshold for information collection/reporting, recordkeeping, and any notices. In addition, Section 1002.107(b) states that unless otherwise provided, financial institutions may rely on statements provided by applicants when compiling data – clarifying that independent verification of such data is not required. Also Section 1002.107(d) permits financial institutions to reuse previously collected data for some reporting purposes if collected within the applicable time frame and the financial institution has no reason to believe the data to be inaccurate – thus facilitating the multiple-usages of such data and limiting collection or recollection. Section 1002.110(c) requires a covered financial institution to make available to the public on its website or on request a statement that its small business lending application register, as modified by the CFPB, is or will be available from the CFPB; to assist in compliance, the CFPB via Subpart B provides compliance guidance on the rule’s requirements, including among other things a sample form for data collection that may be used for this purpose.¹⁷

6. Consequences of Conducting Collection Less Frequently

As to Subpart A, the current record retention period of 25 months supports the five-year statute of limitations for private actions, and the FTC’s (and other administrative agencies’) need for sufficient time to bring enforcement actions regarding ECOA issues. If the retention period were shortened, applicants who sue under the ECOA, and administrative agencies that enforce the ECOA, might find that the records needed to prove ECOA violations no longer exist.

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

¹⁷ See CFPB, Small Business Lending Rule, Small Entity Compliance Guide (Aug. 2024), https://files.consumerfinance.gov/f/documents/cfpb_small-business-lending-rule_small-entity-compliance-guide.pdf; Small Business Lending Rule FAQs (last updated June 25, 2024), <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/small-business-lending-rule-faqs/>; Small Business Lending Sample Data Collection Form (CFPB Final Rule, Appendix E), <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/small-business-lending-sample-form/>.

applicant's race or national origin eliminated or changed, the creditor would still have access to this information when obtained through a face-to-face interview with the applicant and could use the information to discriminate. However, the FTC and others seeking to enforce compliance with the ECOA would not have that information and would thereby be disadvantaged. Eliminating the self-test disclosure 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.

As to Subpart B, if the data collection and reporting requirements were eliminated or changed, the FTC and other agencies seeking to enforce fair lending laws would not have the necessary information, which could adversely impact enforcement. If the notice requirements were eliminated – even though compliance is facilitated and supported by the CFPB’s sample information provided - the public would not have this information, making it difficult for individuals and entities to use small business lending data to address fair lending enforcement. The three-year record retention period after submission of small business lending data to the CFPB is necessary to support a sufficient period to ascertain compliance with the rule and Section 1071 of the Dodd-Frank Act, by the FTC and other federal agencies, and these enforcers and private litigants might not have necessary information to support accurate assessment of and legal action regarding law violations otherwise.

7. Circumstances Requiring Collection Inconsistent with Guidelines

As to Subpart A, Regulation B’s recordkeeping and disclosure requirements are consistent with the guidelines contained in 5 C.F.R. 1320.5(d)(2). As to Subpart B, Section 1002.107(a) requires financial institutions to submit information that might include confidential information. The CFPB has discretion to modify public disclosure to advance privacy interests under ECOA Section 704B(e)(4), and it has indicated it continues to review and consider this area. Some data is considered confidential if it identifies applicants or persons who might not be applicants or it implicates relevant privacy interests of applicants, related natural persons or financial institutions.¹⁸

8. Consultation Outside the Agency

Both the recordkeeping and the notice requirements of Regulation B, Subpart A were issued by the Federal Reserve Board and CFPB. Before the regulation was initially issued and prior to each amendment, the amendments were published for public comment in the Federal Register. The recordkeeping, reporting and notice requirements of Regulation B, Subpart B issued by the CFPB were also published for public comment in the Federal Register.

More recently, the Commission sought public comment in connection with its latest Paperwork Reduction Act (“PRA”) clearance request for these regulations, in accordance with 5 C.F.R. 1320.8(d). *See* 89 Fed. Reg. 62,736 (Aug. 1, 2024). Eight comments were received. One

¹⁸ *See generally*, CFPB Rule, 88 Fed. Reg. 35150.

comment supported the proposal and stated that extension of clearance for these requirements and documentation of compliance is essential for the protection of consumers. Seven comments were unrelated to the proposal (and pertained to other issues such as antitrust topics). Consistent with 5 C.F.R. 1320.12(c), the FTC is again seeking public comment contemporaneously with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

As to Subpart A, the required recordkeeping and written disclosures contain private financial information about applicants for consumer credit. This information is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the FTC would be covered by the protections of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f) and 57b-2, by Section 4.10 of the Commission's Rules of Practice, 16 C.F.R. 4.10, and by the applicable exemptions of the Freedom of Information Act, 5 U.S.C. 552(b). As to Subpart B, some of the recordkeeping and reporting requirements contain private information about small business applicants for credit. Section 1002.111(c) requires that in reporting small business data to the CFPB, a financial institution cannot include any name, address, telephone number, email address, or other personally identifiable information concerning any individual who is or is connected with an applicant, with limited exceptions. Section 1002.111(e) also prohibits financial institutions and third parties from sharing protected demographic information collected under Subpart B with third parties unless to further compliance with ECOA or Regulation B or as required by law.

12. Estimated Hours and Labor Cost Burden

Estimated Hours Burden: 3,877,492 (1,296,378 recordkeeping hours + 2,581,114 disclosure and reporting hours)

Given their generally shared enforcement jurisdiction for Regulation B,¹⁹ the CFPB and the FTC have divided the FTC's previously cleared PRA burden estimates between them, except that the FTC has assumed all of the burden estimates associated with motor vehicle dealers and also, when appropriate, regarding estimated burden for state-chartered credit unions.²⁰ The

¹⁹ See *supra* notes 4 and 5 and accompanying text.

²⁰ As of the fourth quarter of 2023, there were approximately 1,936 state-chartered credit unions with federal insurance; there also have been an estimated 112 or more which were privately insured, and an estimated 100 or more in Puerto Rico which were insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of agencies' overlapping enforcement authority (*see supra* note 5 and accompanying text), the FTC's estimates include PRA burden for all state-chartered credit unions, unless otherwise noted. However, in view of fluctuations that began due to COVID-19 and have continued and to avoid undercounting, we have retained the prior estimate of 2,300 state-chartered credit unions, unless otherwise stated. Similarly, because it is not

division of PRA burden hours not attributable to motor vehicle dealers and, when appropriate, to state-chartered credit unions, is reflected in the CFPB's PRA clearance requests to OMB,²¹ as well as in the FTC's burden estimates below.

The following discussion and ensuing tables present the FTC's estimates of PRA recordkeeping and disclosure burden (average time and labor costs) for this very broad spectrum of covered entities. These estimates exclude time and labor costs that the FTC believes those entities incur customarily in the normal course of business²² as well as information compiled and produced in response to FTC law enforcement investigations or prosecutions.²³

Recordkeeping

FTC staff estimates that Regulation B, Subpart A general recordkeeping requirements affect 530,762 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm for a total of 663,453 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each (of skilled technical time) for approximately 2.6 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 43,333 hours.²⁴ Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,500 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,500 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, i.e., 150 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 600 hours.²⁵ This is a total of 708,886 hours for Subpart A.

Regulation B, Subpart B, also requires recordkeeping for its data requirements. Staff estimates that these requirements affect 681 covered financial institutions subject to the Commission's jurisdiction, at an average annual burden of 32 hours per firm for 24 Type A

practicable for PRA purposes to estimate the portion of motor vehicle dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight), the FTC staff's PRA burden analysis reflects a general estimated volume of motor vehicle dealers. These attributions of burden estimation for motor vehicle dealers and state-chartered credit unions do not bear on actual enforcement authority.

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

²² PRA "burden" does not include "time, effort, and financial resources" expended in the normal course of business, regardless of any regulatory requirements. *See* 5 C.F.R. 1320.3(b)(2).

²³ *See* 5 C.F.R. 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or "during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities").

²⁴ Regulation B contains model forms that creditors may use to gather and retain the required information.

²⁵ In contrast to banks, for example, entities under the FTC's jurisdiction are not subject to audits by the FTC for compliance with Regulation B; rather they may be subject to FTC investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

entities (state-chartered credit unions), 68 hours per firm for 553 Type B entities (520 non-depositories plus 33 state-chartered credit unions) and 5,280 hours per firm for 104 entities (100 non-depositories plus 4 state-chartered credit unions), for a total of 587,492 recordkeeping hours for Subpart B.²⁶

This yields a total annual recordkeeping burden of 1,296,378 hours for Regulation B, Subparts A and B.

Disclosures and Reporting

Regulation B, Subpart A, requires that creditors (i.e., entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action, such as denial of a credit application. It requires entities that extend mortgage credit with first liens to provide a copy of the appraisal report or other written valuation to applicants.²⁷ Regulation B, Subpart A, also requires that for accounts that spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that: (1) providing the information is optional; (2) the creditor will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.²⁸

Regulation B, Subpart B requires covered financial institutions to collect and report annually to the CFPB various data on covered applications for covered credit transactions from small businesses, including those owned by women or minorities – which, among other things, generally involves entities with a gross annual revenue for the preceding fiscal year of \$5 million or less. It covers credit such as loans, lines of credit, credit cards, merchant cash advances, and various other credit products. Collection and reporting to the CFPB follows procedures established under the regulation and certain data points.²⁹ The burden hours below are based on

²⁶ A financial institution is covered by Regulation B, Subpart B, if it originates at least 100 covered credit transactions for small businesses in each of the two preceding calendar years (once the compliance date takes effect). A “covered credit transaction” is one that meets the definition of business credit under Regulation B (as it existed before the small business lending amendments), with some exceptions, and includes, for example, loans, lines of credit, merchant cash advances and others. *See generally* 12 CFR 1002.104 and 1002.105; CFPB Rule, 88 Fed. Reg. 35150. Burden hours for entities vary depending on the level of complexity of their transactions and procedures.

²⁷ While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure language is provided by the CFPB, and is thus not a “collection of information” for PRA purposes. Accordingly, it is not included in burden estimates below.

²⁸ The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

²⁹ In addition to certain information related to the financial institution, such as a unique identifier and its name and address, these data points include, for example, the application date, application method, application recipient, credit type and credit purpose, amount applied for and amount approved or originated, action taken and date, denial reasons,

those for DIs (state chartered credit unions, which are considered depository institutions, under the rule) and non-DIs (all other entities), and whether the applicable respondents are Type A, B, or C entities under the rule.³⁰ Staff estimates that the reporting requirements (which under the rule include that for collection of data) for Regulation B, Subpart B, involve both one-time and ongoing burden. Burden estimates relating to the disclosures required under Regulation B, Subpart A, and reporting required under Regulation B, Subpart B, and labor cost estimates for Subparts A and B are provided in the tables below.

pricing information, census tract, and other items, as well as certain demographics of applicants' ownership (including whether the applicant is a minority-owned business or women-owned business, whether the applicant is an LGBTQ+-owned business, and the ethnicity, race, and sex of the applicant's principal owners). *See generally* 12 CFR 1002.107 and 1002.109; CFPB Rule, 88 Fed. Reg. 35150. The CFPB has provided a sample data collection form, which is voluntary, that financial institutions may use for data collection and reporting; in the alternative, they could use their own form that complies with the requirements. *See* 12 CFR Part 1002, Appendix E. Although financial institutions must request the various information specified in the rule, small business entities need not provide it.

In a few instances, Subpart B includes certain notices for financial institutions to provide to consumers in conjunction with the data collection and reporting. These notices are provided by the CFPB for the financial institution and are included within the reporting estimates (and are not separate collections of information). The first two notices pertain to information being requested by the financial institution. *See* 12 CFR 1002.107(a)(18) & (19) (that the financial institution cannot discriminate on the basis of minority-owned, women-owned, or LGBTQI+-owned business status, on the basis of a principal owner's ethnicity, race, or sex, or on whether the applicant provides any of this information, when the financial institution requests that information); and 1002.108(c) & (d) (a financial institution could establish a "firewall" so that employees and certain other persons cannot access certain protected financial information of the applicants but if it doesn't, the financial institution would instead notify small business entities when collecting information that certain employees or persons can access the demographic information provided). The above notices are included on the CFPB's data collection form. Additionally, these notices can be combined together (if the financial institution chooses to use its own form), and/or can be oral depending on the circumstances (including for in-person, oral, or telephone applications). The CFPB also has provided the third notice referenced above. *See* 12 CFR 1002.110(c) & (d), and 1002.110(c)-1, Supp. 1, Regulation B Official Staff Commentary (a notice for the financial institution's website or otherwise upon request, that the financial institution's data is available from the CFPB). These notices are encompassed within the reporting requirements of the rule.

³⁰ Under the CFPB rule: Type A entities have the lowest level of complexity, and are estimated to originate less than 150 covered applications annually; Type B entities have a mid-level of complexity, and are estimated to originate 150-999 covered applications annually; and Type C entities have the highest level of complexity, and are estimated to originate 1000 or more covered applications annually. *See* CFPB Rule, 88 Fed. Reg. 35496-97.

Regulation B, Subpart A: Disclosures – Burden Hours

Disclosures	Respondents	----- Setup/Monitoring ¹ -----		Number of Transactions	----- Transaction-related -----		
		Average Burden per Respondent (hours)	Total Setup/Monitoring Burden (hours)		Average Burden per Transaction (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Credit history reporting	133,553	.25	33,388	60,098,850	.25	250,412	283,800
Adverse action notices	530,762	.75	398,072	92,883,350	.25	387,014	785,086
Appraisal reports/written valuations	4,650	1	4,650	1,725,150	.50	14,376	19,026
Self-test disclosures	1,500	.5	750	60,000	.25	250	1,000
Total							1,088,912

¹ The estimates assume that all applicable entities would be affected, with respect to appraisal reports and other written valuations.

Regulation B, Subpart B: Reporting (Setup/One-time) – Burden Hours

Reporting	Respondents	----- Setup/One-time for Reporting ¹ -----	
		Average Burden per Respondent (hours)	Total Setup for Reporting Burden (hours)
Type A DIs	24	273	6,552
Type B DIs	33	176	5,808
Type C DIs	4	503	2,012
All Non DIs	620	253	156,860
Total			171,232

¹ The estimates assume that all applicable entities would be affected.

Regulation B, Subpart B: Reporting (Ongoing) – Burden Hours

Reporting	Respondents	----- Ongoing for Reporting ¹ -----	
		Average Burden per Respondent (hours)	Total Reporting Burden (hours)
Type A DIs	24	112	2,688
Type B DIs	33	658	21,714
Type C DIs	4	9,177	36,708
Type B Non DIs	520	658	342,160
Type C Non-DIs	100	9,177	917,700
Total			1,320,970

¹ The estimates assume that all applicable entities would be affected.

Associated labor cost: \$159,000,057 (\$32,783,491 recordkeeping costs + \$126,216,566 disclosure and reporting costs)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$66 for managerial or professional time, \$47 for skilled technical time, and \$22 for clerical time) are averages.³¹

Recordkeeping

For Subpart A, staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Keeping records of the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time. For Subpart B, staff estimates that the general recordkeeping responsibility applies as shown below, and would involve approximately 90 percent clerical time and 10 percent skilled technical time. As shown below, the total recordkeeping cost is \$32,783,491.

Disclosures and Reporting

As noted, staff estimates that the burden hours consist of 10 percent managerial or professional time and 90 percent skilled technical time. The total disclosures and reporting cost is \$126,216,566. As shown below, the total recordkeeping, disclosures and reporting cost is \$159,000,057.

Regulation B, Subpart A: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		----Skilled Technical----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$66/hr.)	Time (hours)	Cost (\$47/hr.)	Time (hours)	Cost (\$22/hr.)	
General recordkeeping	0	\$0	66,345	\$3,118,215	597,108	\$13,136,376	\$16,254,591
Other recordkeeping	0	\$0	43,333	\$2,036,651	0	\$0	\$2,036,651
Recordkeeping of self-test	0	\$0	1,500	\$70,500	0	\$0	\$70,500
Recordkeeping of corrective action	0	\$0	600	\$28,200	0	\$0	\$28,200
Total Recordkeeping							\$18,389,942
Disclosures:							
Credit history reporting	28,380	\$1,873,080	255,420	\$12,004,740	0	\$0	\$13,877,820
Adverse action notices	78,509	\$5,181,594	706,577	\$33,209,199	0	\$0	\$38,390,793
Appraisal reports	1,903	\$125,598	17,123	\$804,781	0	\$0	\$930,379
Self-test disclosure	100	\$6,600	900	\$42,300	0	\$0	\$48,900
Total Disclosures							\$53,247,892
Total Recordkeeping and Disclosures							\$71,637,834

³¹ These inputs are based broadly on mean hourly data found within the “Bureau of Labor Statistics, Economic News Release,” April 3, 2024, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2023.” <http://www.bls.gov/news.release/ocwage.t01.htm>.

Regulation B, Subpart B: Recordkeeping and Reporting – Cost

Required Task	-----Managerial-----		----Skilled Technical----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$66/hr.)	Time (hours)	Cost (\$47/hr.)	Time (hours)	Cost (\$22/hr.)	
Recordkeeping	0	\$0	58,749	\$2,761,203	528,743	\$11,632,346	\$14,393,549
Total Recordkeeping							\$14,393,549
Reporting:							
One-time	17,123	\$1,130,118	154,109	\$7,243,123	0	\$0	\$8,373,241
Ongoing	132,097	\$8,718,402	1,188,873	\$55,877,031	0	\$0	\$64,595,433
Total Reporting							\$72,968,674
Total Recordkeeping and Reporting							\$87,362,223

Regulation B, Subparts A and B: Recordkeeping, Disclosures and Reporting – Cost

Required Task	-----Managerial-----		----Skilled Technical----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$66/hr.)	Time (hours)	Cost (\$47/hr.)	Time (hours)	Cost (\$22/hr.)	
Total Recordkeeping, Disclosures and Reporting							\$159,000,057

13. Estimated Capital and Other Non-Labor Costs

Estimated Annual Non-Labor Costs: Subpart A - \$0; Subpart B - A range up to \$6 million.

Generally, as to Subpart A, the applicable requirements impose minimal start-up costs, as lenders generally have or obtain necessary equipment for other business purposes. For the same reason, staff believes that the cost of printing and copying needed to comply with Regulation B is minimal. Staff anticipates that the above requirements necessitate ongoing, regular training so that lenders stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the normal training that employees receive apart from that associated with collecting information to comply with Regulation B.

For the small business lending requirements in Subpart B pertaining to reporting of information to the CFPB, and as to training of applicable entities' staff, the CFPB has issued compliance guidance for this purpose.³² Some entities will utilize and adapt existing systems in connection with Subpart B reporting; others may need to further expand or implement new systems or components. The FTC does not have supervision or examination authority, and does not oversee or directly regulate compliance activities, but rather uses enforcement actions and other initiatives in connection with requirements. The FTC also does not have jurisdiction over banks or Federal credit unions. The FTC has jurisdiction over state-chartered credit unions and various nonbank entities, which are highly diverse in their characteristics, types, and current capabilities. To that end, the CFPB has extended compliance effective dates and filing deadlines providing additional time for addressing requirements (and related systems), with the earliest compliance start date as July 18, 2025 and its related first filing deadline as June 1, 2026. *See* 89 Fed. Reg. 55024 (July 3, 2024), corrected 89 Fed. Reg. 76713 (Sept. 19, 2024). Notably, such data systems also could be used or adapted for multiple uses and diverse business purposes (including as to use for its potential expansion of offers and extensions of such credit to applicable entities or to expanded communities - one of the primary goals of the statutory requirements as well). Accordingly, staff's best estimate of capital and other non-labor costs that may apply for entities under its jurisdiction – and considering the wide range of types of entities that can be covered and under the FTC's jurisdiction – could potentially range up to a total of \$6 million overall - to implement data systems consistent with the statutory requirements. This estimate is based on its enforcement experience and the fact that the entities can have various degrees of capability to address necessary data as required, if they are engaged in such activity and covered by the requirements, and can consider use of technology upgrades and adaptations of their current compliance, and resulting use of such systems for multiple business purposes.³³

14. Estimated Cost to the Federal Government

The Federal Reserve Board and CFPB issued the recordkeeping requirement of Regulation B for Subpart A, and the CFPB issued such requirement for Subpart B, so there is no cost to the

³² *See* CFPB, Small Business Lending Rule, Small Entity Compliance Guide, https://files.consumerfinance.gov/f/documents/cfpb_small-business-lending-rule_small-entity-compliance-guide.pdf.

³³ *See also* CFPB Rule, 88 Fed. Reg.35150 and related Supporting Statement.

FTC for that purpose. Enforcement of the recordkeeping requirements of Regulation B is incidental to overall enforcement of the ECOA. In the course of compliance investigations, staff routinely requests records of credit applications. If the records requested are not available, it indicates that records are not being retained as required. Staff estimates that enforcing this requirement will cost the FTC Bureau of Consumer Protection no more than \$211,191, which is a representative year's cost of enforcing Regulation B's requirements during the three-year clearance period sought. This estimate is based on the assumption that one attorney work year will be expended. Clerical and other support services are included in this estimate.

The Board and CFPB issued the Regulation B disclosure requirements and the CFPB issued the reporting requirements, so there is no cost to the FTC for that purpose. As noted above, the FTC does not have supervision or examination authority, and the reporting of information under Subpart B is provided to the CFPB and addressed through its data system. Regarding enforcement, staff estimates that the cost to the FTC Bureau of Consumer Protection for Regulation B requirements will approximate \$633,572. This estimate is based on the assumption that 3 attorney work years will be expended to enforce various aspects of these rules. Clerical and other support services are also included in this estimate.

15. Program Changes or Adjustments

For Subpart A, the labor costs are adjusted upward to reflect updated BLS wage data. Subpart B information collections are the result of a program change required by the Dodd-Frank Act, Section 1071, and the CFPB's implementation of amended Regulation B, which derives from those statutory changes, as addressed in our responses to #1-2 and #12-13 above.

16. Publishing Results of the Collection of Information

Not applicable as to Subpart A. As to Subpart B, the CFPB expects to make data that is required to be reported to them available to the public in the future, subject to protection of appropriate or confidential data aspects and their determination of appropriate format and related considerations. *See generally* 88 Fed. Reg. 35150. The FTC has no plans to publish any information for statistical use.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for PRA Submissions

The FTC certifies that this collection of information is consistent with the requirements of 5 C.F.R. 1320.9, and the related provisions of 5 C.F.R. 1320.8(b)(3), and is not seeking an exception to these certification requirements.