

**Supporting Statement for the
Recordkeeping and Disclosure Requirements in Connection with Regulation B
(Equal Credit Opportunity) (OMB No. 7100-0201)**

Summary

The Board of Governors of the Federal Reserve System proposes to extend for three years, without revision, the recordkeeping and disclosure requirements of Regulation B, which implements the Equal Credit Opportunity Act (ECOA).¹ The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies regulations such as Regulation B as “required information collections.”² A notice of the renewal was published, on August 9, 2002, in the *Federal Register* for public comment.³

The ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation. There are no mandatory reporting forms, but the Board adopted model forms to ease compliance burden.

Regulation B applies to all types of creditors, not just state member banks (SMBs)⁴. However, under PRA, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for creditors that meet the criteria set forth in Regulation B, of which there are 1,350. Other federal agencies account for the paperwork burden on other creditors. The estimated annual burden for the creditors that meet the criteria is 169,603 hours for the 1,350 creditors that are deemed “respondents” for purposes of the PRA. This burden represents about 3 percent of total Federal Reserve System burden.

Background and Justification

The ECOA is designed to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the

¹ ECOA was enacted in 1974 and is codified at 15 U.S.C. 1691. Regulation B is located at 12 C.F.R. Part 202.

² 44 U.S.C. § 3501 *et seq.* The collection of information under Regulation B is assigned OMB No. 7100-0201 for purposes of the PRA.

³ In August 1999, the Board published a proposed rule that would, among other things, allow for voluntary collection of certain applicant characteristic data, require retention of certain prescreened solicitation materials, and exempt additional transactions from the regulation’s notification and record retention requirements. At the time of this memo, the Board has not acted on the proposed rule.

⁴ Appendix A – Federal Enforcement Agencies – of Regulation B defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 USC 1600 *et seq.*). Some of the recordkeeping and disclosure requirements of Regulation B that implement this prohibition were mandated by Congress in the Act, while others were adopted by the Board under its authority to implement the statute by regulation.

Compliance burden has also been eased by laws permitting institutions under certain circumstances to use electronic means, rather than paper, to deliver certain disclosures. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) was enacted to encourage the continued expansion of electronic commerce. 15 U.S.C. 7001 *et seq.* The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and written signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions; consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute. The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require the Board to adopt implementing regulations.

In April 2001, the Board published an interim final rule setting forth the general rule that institutions may provide disclosures required under Regulation B electronically if the institution complies with the requirements of the E-Sign Act.⁵ The 2001 interim final rule also provides uniform standards for satisfying the timing and delivery requirements of Regulation B when electronic disclosures are used, to ensure that consumers have adequate opportunity to access and retain the information.

Description of Information Collection

Notification Requirements (Sections 202.9)

No other federal law mandates the following disclosures, although the Fair Credit Reporting Act requires related, but different, disclosures in some of the same circumstances. Moreover, some states may have similar requirements.

Consumer credit. Under the ECOA and Regulation B, an applicant is entitled to notice of the action taken on a credit application and, if the creditor's decision results in the denial or termination of credit, a written statement of the specific reasons for the adverse action (or disclosure of the right to request the reasons). The notification provides credit applicants and borrowers an opportunity to correct errors in their credit history, helps them identify problems in their credit standing, and improves their understanding of the credit-granting process. When adverse action is taken against a consumer based on information from a consumer reporting agency, the FCRA requires additional disclosures, which may be provided on the same document.

The adverse action notice must generally be in writing, except that creditors that do not receive more than 150 applications per year may provide notices of adverse action orally. A notice of adverse action must be given within 30 days after (1) receipt of a completed application; (2) the denial of credit on an incomplete application; or (3) adverse action regarding an existing account. A creditor that makes a counter-offer (to grant credit on terms other than those requested) has 90

⁵ 66 FR 17779 (April 4, 2001).

days from the counteroffer to give the adverse action notice if the applicant does not accept the counter-offer or use the credit offered.

Business credit. Generally, a business applicant's asset size determines a creditor's precise obligations. When a creditor takes adverse action on an application from a business with \$1 million or less in annual revenues, the creditor must notify the business applicant orally or in writing and provide it reasons for an adverse action or a notice telling the applicant of its right to request the reasons. These notices must be provided within the same time periods that apply in the case of consumer applicants. The notice of the business' right to request reasons for adverse action, in particular, may be provided at the time of application in a retainable form or, if an application is received by telephone, orally. A business with more than \$1 million in annual revenues is entitled to oral or written notice within a reasonable time of the action taken and, if timely requested, a written statement of reasons for an adverse action.

Recordkeeping Requirements Relating to Applications and Actions (Section 202.12)

A creditor must retain for twenty-five months any written or recorded material related to a consumer credit application, as well as copies of any notification of action taken and statement of specific reasons for adverse action (or any written notation or memo of an oral notification and statement). Comparable records of business credit applications must be retained for 12 months, except that records of applications from businesses with gross revenues exceeding \$1,000,000 must be kept for 60 days (or 12 months, if the applicant requests the reason for the adverse action or that the records be retained).

Credit History Reporting (Section 202.10)

Creditors that report credit history must report histories of accounts that spouses are permitted to use or on which they are contractually liable in a fashion that reflects both spouses' participation. This requirement applies to any creditor that reports credit history to credit reporting agencies or to other creditors.

Monitoring (Data Notation) Provisions (Section 202.13)

A creditor is required to request that an applicant indicate his or her race or national origin, age, marital status, and sex in connection with applications for mortgage loans for purchasing or refinancing real property to be occupied by the applicant as a principal residence and secured by a lien on the property. Creditors are otherwise prohibited from collecting data on sex, race, or national origin. The applicant must be informed that the information is being requested by the federal government for the purpose of monitoring the creditor's compliance with federal law, and that the applicant is not required to give the information. If the applicant declines to provide sex or race or ethnicity information, the bank must record it based on visual observation or the surname of the applicant.

Applicant's Right to Copy of Appraisal (Section 202.5a)

An applicant has a right to a copy of any appraisal report used in connection with an application for a loan to be secured by a dwelling. Creditors may elect either to provide a copy of

the appraisal report to all applicants for covered loans or provide the appraisal only upon request. Creditors who choose to provide the appraisal only upon request must notify all applicants for covered loans of their right to request a copy of the appraisal. The notice is not required to be in any particular format, but the regulation contains model language to ease compliance. Creditors can give the notice at any time during the application process, but not later than notification of the applicant of the action taken.

Recordkeeping Requirements on Which Legal Privilege for Self-test is Conditioned (Sections 202.12 & 202.15)

The ECOA grants a legal privilege to self-tests to create an incentive for institutions to monitor their compliance. As defined by Regulation B, a self-test is any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the ECOA or Regulation B, and creates data or factual information that would not otherwise be available and cannot be derived from loan or application files or other records related to credit transactions. The results or report of a self-test, as well as data or factual information created by the self-test and any analysis, opinions, or conclusions, are privileged if the creditor: (1) takes appropriate corrective action to address any likely violations identified by the self-test, (2) refrains from disclosing any part of the report or results, and (3) retains all written or recorded information about the self-test and produces it when necessary to determine whether the privilege applies.

A creditor ordinarily must retain all written or recorded information about a self-test for twenty-five months. If a creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action, the creditor must retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Time Schedule for Information Collection

As explained above, Regulation B information collection requirements are triggered by certain events, disclosures must be provided to applicants within prescribed times, and records must be retained for specified periods.

Legal Status

The Board's Legal Division has determined that 15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a) authorize the Board to mandate the information disclosures. The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 USC 522 (b)).

Sensitive Questions

Sensitive questions are not contained in any report or survey sponsored by the Federal Reserve in connection with Regulation B. However, applicants for mortgage loans are asked to

voluntarily provide information on sex and race or national origin so that regulators may monitor for compliance with the law.

Estimate of Respondent Burden

The estimated total annual burden for this information collection is 169,603 hours, as shown in the table below. The table provides the estimated total annual burden for the 1,350 creditors to which Regulation B applies. This burden represents about 3 percent of total Federal Reserve paperwork burden.

Under the E-Sign Act (described above), a financial institution and a consumer may agree to send by electronic communication any disclosure that this regulation requires be provided in writing. This may help to reduce the burden on a financial institution; however, at this time there is not enough information available to know how much the Act has reduced burden.

The figures below are only estimates of averages. The frequencies of different kinds of disclosures can vary according to the number of applications denied or accounts terminated by a creditor; the number of accounts maintained by a creditor; the level of a creditor's credit reporting; and the level of a creditor's mortgage lending activity.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Notice of action	1,350	1,715	2.50 mins	96,469
Credit history reporting	1,350	850	2.00 mins	38,250
Monitoring data	1,350	360	0.50 min	4,050
<i>Appraisal:</i>				
Appraisal report upon request	1,350	190	5.00 mins	21,375
Notice of right to appraisal	1,350	1,650	0.25 min	9,281
<i>Self-testing:</i>				
Recordkeeping of test	45	1	2 hours	90
Recordkeeping of corrective action	11	1	8 hours	<u>88</u>
<i>Total</i>				169,603

Based on an hourly cost of \$20, the annual cost to the public is estimated to be \$3,392,060.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information in connection with Regulation B, the related cost to the System is negligible.