

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

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB's) Regulation B (FR B; OMB No. 7100-0201).¹ The Board accounts for the paperwork burden associated with Regulation B only for institutions for which the Board has enforcement authority under the Equal Credit Opportunity Act (ECOA).²

The Board is not proposing to revise the FR B at this time.³

The estimated total annual burden for the FR B is 81,346 hours.

Background and Justification

The ECOA was enacted in 1974 and is implemented by the CFPB's Regulation B for institutions the Board supervises.⁴ Since 2011, the CFPB has been responsible for issuing the ECOA regulations that apply to institutions the Board supervises.⁵ However, the Board continues to be responsible under the Paperwork Reduction Act (PRA) for renewing every three years the information collections mandated by the regulation for institutions supervised by the Board.

The ECOA prohibits discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. 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 credit applications, provision of appraisal reports in connection with mortgages, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events, and disclosures must be provided within the time periods established by the statute and regulation. There are no reporting requirements associated with this collection, thus, there are no required reporting forms associated with the CFPB's Regulation B. To ease the burden and cost of compliance (particularly for small entities),

¹ There is no formal reporting form for this collection of information (the FR B designation is for internal purposes only).

² Other federal agencies including the CFPB, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Trade Commission (FTC) account for the paperwork burden imposed under the ECOA on the institutions for which they have administrative enforcement authority.

³ The CFPB issued a small business data collection and reporting rule in 2023. *See* 88 FR 35150 (May 31, 2023). The Board will revise FR B to include this rule when it is implemented.

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

⁵ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transferred rulemaking authority for the ECOA to the CFPB, except for certain motor vehicle dealers that are excluded from the CFPB's rulemaking authority, which remain subject to the Board's Regulation B located at 12 CFR Part 202. *See* 12 U.S.C. § 5519(a). The FTC has authority to enforce the ECOA for these motor vehicle dealers, although such enforcement authority is shared with the CFPB with respect to dealers engaged in certain practices.

Appendix B to Regulation B provides model disclosure forms.

The burdens on respondents are the minimum necessary to comply with the regulation and to assist borrowers in obtaining information with respect to application decisions.

Description of Information Collection

The paperwork requirements of Regulation B are described below.

Recordkeeping Requirements

Section 1002.12 - Record Retention

A creditor must retain for 25 months any written or recorded material related to a consumer credit application, as well as copies of any notification of action taken and statement of specific reasons for adverse action (or any written notation or memo of an oral notification and statement), and any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B. Comparable records of business credit applications must be retained for 12 months. The record retention requirements also extend to information used in prescreened credit solicitations, existing accounts, enforcement proceedings and investigations, and self-tests. 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.

Sections 1002.13(a) and (b) - Information for Monitoring Purposes

A creditor is required to request that an applicant indicate his or her race, ethnicity, sex, age, and marital status in connection with applications for credit primarily for purchasing or refinancing a dwelling to be occupied by the applicant as a principal residence and secured by a lien on the dwelling. Creditors are generally otherwise prohibited from collecting such applicant data except for self-testing purposes.

Disclosure Requirements

Section 1002.9 - Notifications

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) (an "adverse action notice"). An adverse action notice must generally be in writing, except that creditors that did not receive more than 150 applications during the preceding year may provide notices of adverse action orally. The statement must include specific reasons for the action taken.

Business credit. Generally, a business applicant's asset size determines a creditor's precise obligations. When a creditor takes adverse action on an application from a business with \$1 million or less in annual revenues, the creditor may notify the business applicant orally or in

writing. The creditor must also provide the applicant with reasons for an adverse action or a notice telling the applicant of its right to request the reasons within the same time periods that apply in the case of consumer applicants. A business with more than \$1 million in annual revenues is entitled to oral or written adverse action notice within a reasonable time of the action taken and, if timely requested, a written adverse action notice.

Section 1002.10 - Furnishing of Credit Information

Creditors that furnish credit information to consumer reporting agencies must designate any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party). Creditors must also designate any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

Section 1002.13(c) - Information for Monitoring Purposes

When a creditor is required under this section to request that an applicant indicate his or her race, ethnicity, sex, age, and marital status, 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 if the applicant declines to provide the information, the bank will note the applicant's ethnicity, race, and sex based on visual observation or surname.

Section 1002.14 - Rules on Providing Appraisals and Other Valuations

A creditor is required to provide to an applicant, as a matter of course, a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling within specified time periods. Applicants are permitted to waive the timing requirements for receipt of the appraisals and other written valuations, but in such cases the creditor must generally provide the copies to the applicant prior to consummation (if closed-end credit) or account opening (if open-end credit) or if the creditor determines that the transaction will not be consummated. Creditors must also notify applicants in writing within three business days of receiving an application that a copy of all appraisals and other written valuations developed in connection with applications for covered mortgage credit transactions will be provided to the applicant promptly. The notice of an applicant's right to receive a copy of appraisals is not required to be in any particular format, but the regulation contains model language to ease compliance.

Self-Testing

Recordkeeping Requirements

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

If the creditor conducts a self-test (as defined under section 1002.15), the creditor ordinarily must retain all written or recorded information about a self-test for 25 months.

Disclosure Requirements

Section 1002.5 - Rules Concerning Requests for Information

When a creditor inquires about personal characteristics such as race or national origin for the purpose of conducting a self-test under section 1002.15, the creditor must disclose orally or in writing to the consumer at the time of the information request that providing the information is optional, that the information request is to monitor compliance with the ECOA, that federal law prohibits discrimination on the basis of this information or on the basis of an applicant's decision not to furnish this information, and that, if applicable, certain information may be noted by visual observation or surname.

The Board understands that respondents use information technology to comply with these provisions. The disclosures required by Regulation B may be provided to a 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).⁶ 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. The E-Sign Act and GPEA are intended 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 creditors to retain records by any method that reproduces records accurately, including digitally.

Respondent Panel

The FR B panel comprises, except those entities supervised by the CFPB, state member banks; subsidiaries of state member banks; subsidiaries of bank holding companies; U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks); commercial lending companies owned or controlled by foreign banks; and organizations operating under section 25 or 25A of the Federal Reserve Act.⁷

This collection impacts small entities, but some provisions of the rule minimize this burden. The 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, Section 1002.3(c) of the regulation exempts providers of incidental credit, such as a doctor or lawyer who allows a patient or client to defer payment of a bill, as well as public utilities credit and securities credit from many requirements including notifications under Section 1002.9 of the regulation and recordkeeping. Additionally, to ease the burden and cost of compliance, Appendix B to the regulation provides model disclosure forms.

⁶ See 15 U.S.C. 7001 *et seq.*

⁷ See 12 U.S.C. §§ 601-604a; 611-631. The CFPB supervises, among other institutions, insured depository institutions with over \$10 billion in assets and their affiliates (including affiliates that are themselves depository institutions regardless of asset size and subsidiaries of such affiliates).

Frequency and Time Schedule

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

Public Availability of Data

There are no data related to this information collection available to the public.

Legal Status

ECOA authorizes the CFPB to issue regulations to carry out the statute's purposes.⁸ ECOA also directs the CFPB to promulgate regulations requiring covered entities to maintain records evidencing compliance with the statute for at least one year.⁹ These regulations impose disclosure and recordkeeping requirements on Board-supervised entities.

Compliance with the recordkeeping and disclosure requirements of the CFPB's Regulation B is mandatory. The disclosures, records, policies, and procedures required by Regulation B are not required to be submitted to the Board. This information would generally only be obtained if Federal Reserve examiners retained a copy as part of an examination or supervision of a bank, in which case the information would be treated as confidential under exemption 8 of the Freedom of Information Act (FOIA). In addition, exemptions 4 and 6 of the FOIA may also apply to certain information obtained by Board staff. Exemption 4 would apply to the extent the information is confidential commercial or financial information that is both customarily and actually treated as private by the respondent.¹⁰ Exemption 6 would apply to the extent a respondent submits personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy.¹¹

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On July 1, 2024, the Board published an initial notice in the *Federal Register* (89 FR 54463) requesting public comment for 60 days on the extension, without revision, of the FR B. The comment period for this notice expires on August 30, 2024.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR B is 81,346 hours. The Board estimated the number of respondents using National Information Center (NIC) entity data. Further, the Board relied on the CFPB's burden calculation methodologies in

⁸ 15 U.S.C. § 1691b(a).

⁹ 12 U.S.C. § 1691b(d).

¹⁰ 5 U.S.C. § 552(b)(4).

¹¹ 5 U.S.C. § 552(b)(6).

estimating hours per response. These recordkeeping and disclosure requirements represent approximately 1.26 percent of the Board's total paperwork burden.

FR B	<i>Estimated number of respondents¹²</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Section 1002.12				
Record retention for applications, actions, prescreened solicitations, self-testing, and self-correction	706	8,126	0.004	22,948
Sections 1002.13(a) and (b)				
Information for monitoring purposes	706	1,533	0.017	18,399
Disclosure				
Section 1002.9				
Notifications	706	8,126	0.004	22,948
Section 1002.10				
Furnishing of credit information	706	1,171	0.004	3,307
Section 1002.13(c)				
Information for monitoring purposes	706	1,533	0.004	4,329
Section 1002.14				
Rules on providing appraisals and other valuations	706	1,667	0.008	9,415
Self-testing				
Recordkeeping				
Section 1002.12				
Incentives for self-testing	108	1	0.004	0
Incentives for self-correction	27	1	0.016	0
Disclosure				
Section 1002.5				
Rules concerning requests for information disclosure for optional self-test	108	1	0.004	0
<i>Total</i>				81,346

¹² Of these respondents to this information collection, 461 for the Record retention for applications, actions, prescreened solicitations, self-testing, and self-correction; Information for monitoring purposes; Notifications; Furnishing of credit information; Information for monitoring purposes; and Rules on providing appraisals and other valuations; and none for Incentives for self-testing; Incentives for self-correction; and Rules concerning requests for information disclosure for optional self-test are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets), <https://www.sba.gov/document/support-table-size-standards>.

The estimated total annual cost to the public for this collection of information is \$5,389,173.¹³

Sensitive Questions

These collections of information contain no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.

¹³ Total cost to the responding public is estimated using the following formula: total burden hours, multiplied by the cost of staffing, where the cost of staffing is calculated as a percent of time for each occupational group multiplied by the group's hourly rate and then summed (30% Office & Administrative Support at \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2022, published April 25, 2023 <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.