FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10679**
December 31, 1993]

EQUAL CREDIT OPPORTUNITY

Amendments to Regulation B Regarding the Right of Credit Applicants to Receive Copies of Appraisal Reports

*To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:*

The following statement has been issued by the Board of Governors of the Federal Reserve System:

> The Federal Reserve Board has issued amendments to its Regulation B (Equal Credit Opportunity) regarding the right of credit applicants to receive copies of appraisal reports.
>
> The amendments define the coverage of the appraisal requirements to be loans secured by a lien on a residential structure containing one to four units. The regulation provides alternative methods of compliance with the law. Creditors may choose to automatically provide a copy of appraisal reports to all applicants for covered loans. Or, they may choose to provide a copy upon the applicant's request and be subject to other provisions in the regulation. For creditors that do not automatically provide copies of appraisal reports, the regulation includes a requirement that applicants be notified of the right to receive a copy and limits when an applicant must request (and the creditor must provide) it.
>
> The Regulation B amendments implement and clarify the amendments to the Equal Credit Opportunity Act contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 which took effect in December 1991. The amendments to the regulation are effective on December 14, 1993, but compliance with the regulatory requirements is optional until June 14, 1994.

Enclosed — for depository institutions in the Second Federal Reserve District and others who maintain sets of regulations of the Board of Governors — is the text of the amendments to Regulation B, which has been reprinted from the *Federal Register* of December 16; additional, single copies may be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by contacting the Circulars Division (Tel. No. 212-720-5215 or 5216). Questions regarding Regulation B may be directed to our Compliance Examinations Department (Tel. No. 212-720-5914).

WILLIAM J. McDONOUGH,
President.

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Board of Governors of the Federal Reserve System

EQUAL CREDIT OPPORTUNITY

Amendments to Regulation B

(Effective December 14, 1993; compliance optional until June 14, 1994)

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0782]

Equal Credit Opportunity; Appraisals and Enforcement

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule revising Regulation B to implement amendments to the Equal Credit Opportunity Act contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The law provides credit applicants with a right to receive copies of appraisal reports. Regulation B is amended to provide alternative methods of compliance with the law. Creditors may automatically provide a copy of an appraisal report to all applicants for certain dwelling-secured loans, or they may provide a copy upon the applicant's request (subject to other provisions in the final rule). For creditors that do not automatically provide copies of appraisal reports, the regulation includes limits on when an applicant may request (and a creditor must provide) a copy of an appraisal report, and a requirement that applicants be notified of the right to receive a copy. The final rule applies to applications for credit to be secured by a lien on a residential structure containing one-to-four family units.

DATES: *Effective date.* December 14, 1993.

Compliance date. Compliance is optional until June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Bylsma, Senior Attorney, or Jane Ahrens, Jane Gell or Mary Jane Seebach, Staff Attorneys, at (202) 452–3667; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of gender, marital status, race, national origin, color, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* The ECOA also provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The Board is authorized to prescribe rules that in its judgment are necessary or proper to effectuate the purposes of the ECOA, to prevent circumvention or evasion of the act, or to facilitate or substantiate compliance with the act. The act is implemented by the Board's Regulation B, 12 CFR part 202. A staff commentary to the regulation, 12 CFR part 202 Supp. I, applies and interprets the requirements of Regulation B.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was enacted into law in December 1991 (Pub. L. 102–242, 105 Stat. 2236). Section 223 of the FDICIA contains amendments to the ECOA that took effect on the date the law was enacted. The law requires creditors to furnish applicants, upon written request, with a copy of an appraisal report used in connection with an application for a loan secured by residential real property. The law provides that creditors may require the applicant to reimburse the creditor for the cost of the appraisal. The law also expands the enforcement activities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known. The law specifies when the Department of Justice (DOJ) must be contacted regarding suspected violations of the ECOA, and when the Department of Housing and Urban Development (HUD) must be notified of suspected violations of the ECOA that may also be violations of the Fair Housing Act (FHA).

On December 7, 1992, the Board published a proposed rule to implement the FDICIA amendments to the ECOA (57 FR 57697). The Board received nearly 240 comment letters on the proposal, mostly from institutions that would be covered by the regulation. A number of commenters raised concerns about the burden and costs the new requirements would impose. Many commenters raised specific questions about various provisions in the proposal. The Board has responded to many of those concerns by adopting both substantive and technical changes to the proposal.

A creditor's duty to provide appraisals upon request began on December 19, 1991. Creditors must begin complying with the regulation's requirements on June 6, 1994, which allows institutions to familiarize themselves with the rule, prepare disclosures, and train personnel.

[Enc. Cir. No. 10679]

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(2) Regulatory Provisions

Right to Appraisal Report

Section 701(e) of the ECOA requires a creditor promptly to furnish an applicant, upon a written request made within a reasonable period of time of the application, a copy of the appraisal report used in connection with a loan that is or would have been secured by a lien on residential real property. The Board proposed to implement the appraisal provision by defining the scope of residential real property; imposing time limitations for applicants to request copies of appraisals and for creditors to provide copies; and requiring creditors to provide a written notice to credit applicants of their right to obtain copies of appraisal reports upon written request. These rules were proposed to minimize the potential for civil liability (due to the uncertainty of the scope of the law) and to aid uniform and objective assessments of creditors' compliance with the ECOA in an examination by federal enforcement agencies.

In addition to soliciting comment on the specific provisions of the proposal, the Board solicited comment on two alternative approaches to implementing the ECOA appraisal provision: (1) Incorporating the text of section 701(e) into Regulation B without elaboration, or (2) interpreting and defining only a few key terms found in section 701(e) (such as the scope of the law) in the regulation.

Of the 240 commenters, approximately a dozen favored adopting only the statutory text or not incorporating the statutory provision into the regulation at all, suggesting that self-regulation would be adequate to ensure compliance. Most commenters favored defining and interpreting terms in the regulation. Most commenters also made specific suggestions and raised questions about the proposed regulation.

The commenters favoring precise rules (including financial institutions and community representatives) argued that it would help creditors by clarifying how to comply with the amendments, and help credit applicants by ensuring that they are treated consistently, regardless of the creditor from whom they seek credit.

The Board believes, in light of the volume and variety of issues raised in comments regarding the scope of coverage, timing, and other statutory terms, that merely incorporating the text of section 701(e) could produce widely inconsistent approaches by creditors (and even regulators) to compliance with the law. For example, some industry commenters suggested that "residential real property" could be interpreted to include only one- to four-unit dwellings, while others thought the term could be interpreted to include all dwellings.

Based on the comments received and upon further analysis, the Board is adopting a rule that defines and interprets the key terms and text of section 701(e) of the ECOA. The Board believes a consistent understanding among creditors and consumers alike about the law, including which loans trigger the duty to provide appraisal reports and what information comprises an appraisal report, will ease compliance, avoid conflict and potential liability, and effectuate the purposes of the ECOA.

Section 202.5a—Rules on Providing Appraisal Reports

Scope of coverage. Section 701(e) of the ECOA provides that the right to obtain a copy of an appraisal report applies to an application for credit that is or would have been secured by a lien on residential real property. The term "residential real property" is not defined in the statute. In the proposed rule, the Board defined the scope of coverage to be credit applications, regardless of their purpose (whether business or consumer purpose), that are to be secured by a dwelling. A "dwelling" was defined as a one- to four-unit residential structure. The proposed coverage included loans to be secured by mobile homes and individual cooperative units, whether or not such dwellings are considered real property under state law, and excluded loans to be secured by land only. Coverage would not have been limited to first-lien transactions.

In response to the comments received and upon further analysis, the Board is adopting the scope of coverage as proposed. The definition of dwelling that was included in the proposal has been adopted. The definition includes mobile homes and individual cooperative units, whether or not they are considered real property under state law, to ensure that the coverage of residential appraisals is not limited by property classification. The Board notes that this definition is consistent with the definition of dwelling contained in § 202.13(a).

In general, most commenters supported the proposed rule's coverage of dwellings containing one to four units and opposed any broadening beyond that. Several commenters supported expanding the coverage of the regulation to include all dwellings, no matter how many units a dwelling comprises. They stated that discriminatory practices in residential appraisals can include "underappraising" a multifamily building based on the characteristics of the residents of the building or of the neighborhood in which it is located.[1]

The Board believes that extending the coverage of the appraisal requirements to include multifamily dwellings could impose a significant burden on institutions which could outweigh the benefits to consumers. Such coverage, for example, would extend the right to receive a copy of an appraisal report to developers of multifamily properties, who generally were not identified by the Congress as experiencing lending discrimination through the appraisal process or as having difficulty in receiving copies of appraisals.

Nevertheless, while the final rule does not cover multifamily dwellings, creditors are reminded that the rules prohibiting discrimination under Regulation B are applicable to transactions involving multifamily dwellings (as are the provisions of the Fair Housing Act). For example, the regulation prohibits a creditor from denying an application for credit to be secured by an apartment building based on the race or national origin of the applicant, or of the tenants in the building (or the neighborhood in which it is located). Furthermore, the Board will monitor complaints and information obtained through the examination process about loan denials in connection with multifamily properties. If the Board has reason to believe that applicants for multifamily loans are not receiving copies of appraisal reports upon request (or are experiencing discrimination), it may consider broadening the coverage of § 202.5a.

Some commenters opposed the coverage of transactions secured by a consumer's dwelling that are for a business purpose, such as loans to start a small business. These commenters discussed the potential difficulty in training commercial loan staff to comply with the new requirements, particularly

[1] Some commenters referred to a recent settlement of litigation (*Green* v. *Avenue Bank of Oak Park*), approved by a federal district court in Illinois, as an indication that credit on multifamily properties could be denied based on redlining and underappraisals. This lawsuit involved allegations that a loan officer's assessment of the value of a multifamily property—based on his perceptions about conditions in the low-income neighborhood where it was located—was used to deny a mortgage application, although no formal appraisal was made.

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if a notice is required to be given to all applicants. The statute does not exempt applications for business loans secured by residential real property from the right to obtain a copy of an appraisal report, and nothing in the legislative history suggests that coverage should be so limited. Further, business-purpose loans presently are subject to Regulation B and its requirements to provide notices about the action taken on an application. Therefore, the Board believes that the requirements of § 202.5a can be readily incorporated into existing procedures—particularly since, as described below, the notice requirement for appraisal reports may be incorporated into other commonly used documents or required notices. The burden on institutions by extending the right to receive a copy of an appraisal report to both consumer- and business-purpose loans secured by a dwelling will be minimized in the final rule, because multifamily dwellings are not covered.

Definition of appraisal report. The statute does not define an appraisal report; however, the legislative history suggests that it is the complete appraisal report signed by the appraiser, including all information submitted to the lender by the appraiser for the purpose of determining the value of residential property. The proposed definition was based on the legislative history, and stated that an appraisal report referred to the documents relied upon by a creditor in evaluating the market value of residential property containing one-to-four family units on which a lien will be taken as collateral for an extension of credit, including reports prepared by the creditor. The proposal stated that an appraisal report would not be limited to reports prepared by third parties.

The final rule provides the same meaning for an appraisal report as was proposed, but the definition has been shortened for clarity. A consumer who requests a copy of the appraisal report will be entitled to receive a copy of any third party appraisal that has been performed. For consistency with the rules implementing the prohibitions of the Fair Housing Act on discrimination in appraising residential real property, an appraisal report includes all written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value. (See 24 CFR 100.135(b).)

The "appraisal report" does not include copies of "review appraisals," agency-issued statements of appraised value, or any internal documents if a third party appraisal report was used to establish the value of the security. Even when a third party appraisal has been performed, however, a consumer requesting a copy of the report also must receive a copy of documents that reflect the creditor's valuation of the dwelling when that valuation is different from that stated in the third party appraisal report. Such documents would include staff appraisals or other notes indicating why the value assigned by the third party appraiser is not the appropriate valuation.

The right to receive a copy of an appraisal report provided under Regulation B includes, but is not limited to, transactions in which appraisals by a licensed or certified appraiser are required by federal law. If the value of the dwelling has been determined by the creditor and a third party appraiser has not been used, the appraisal report would be the report of the creditor's staff appraiser, where applicable, or the other documents of the creditor which assign value to the dwelling.

Alternative Means of Compliance

1. Paragraph (a)(1)—Routine Delivery

The proposal provided that creditors routinely giving copies of appraisal reports to all applicants, whether credit is granted or denied, would not be subject to the proposed timing requirements for providing an applicant with a notice of the right to receive a copy of an appraisal report. However, the proposal also provided that such creditors would remain subject to the proposed timing rules for responding to a written request for a report, if the request was made prior to the time the creditor routinely provided it.

In response to comments received and upon further analysis, the Board is adopting a final rule that differs from the proposal. Paragraph (a)(1) of the final rule provides that a creditor may comply with the law by routinely giving each applicant a copy of the appraisal report (whether credit is granted or denied or the application is withdrawn). Creditors that routinely provide copies when the appraisal is completed, or later in the application process (for example, when notice is given of action taken on the application), will be in compliance with the regulation. A creditor complying with the law pursuant to paragraph (a)(1) is exempt from the requirements of paragraph (a)(2), the notice and timing rules. The Board believes this approach will provide consumer benefits, simplify the regulation, and substantially ease the compliance burden for creditors.

2. Paragraph (a)(2)—Upon Request

The requirements are more detailed for creditors who provide a copy of an appraisal report only upon the written request of the applicant:

Time when requests must be made. The law provides that an applicant must make a request "within a reasonable period of time of the application." The legislative history states that a reasonable period of time depends on a balancing of factors, such as how long lenders routinely maintain loan files and how long a loan applicant might need to identify and act upon suspected discrimination.

The Board proposed that applicants must make written requests for an appraisal report no later than 90 days after receiving the notice from the creditor. The Board's proposal noted that the 90-day period for requesting an appraisal report could be viewed as too short, given the regulation's requirements for keeping records and the statute of limitations for filing an ECOA lawsuit.[2] The Board stated the belief that the proposed 90-day time limit would reasonably tie the period in which an appraisal report must be requested close to the period in which the applicant would be likely to request it, and in which the creditor likely would still have the files "on site."

Most commenters supported the proposed 90-day period, stating that it was a reasonable interpretation of the statute, which did not specify any period. Some commenters recommended that requests be required to be made in a shorter period of time, such as within 30 to 60 days of the date the consumer receives the notice of action taken on the application. The commenters argued that files may not be maintained in the creditor's office for 90 days, for example, if the loan is to be sold or if the files are transferred to another location. Some of the commenters questioned whether the valuation contained in the appraisal would have a similarly short "useful life" when market conditions cause property values to change frequently.

Other commenters opposed the proposal and urged the adoption of a time period for appraisal requests that is uniform with the 25-month record retention requirements in § 202.12 (12

[2] An aggrieved applicant may file suit for an alleged ECOA violation up to two years from the date of the alleged violation. Furthermore, under § 202.12 of Regulation B, creditors are required to maintain loan files for up to 25 months (12 months for business credit) from the time they provide the applicant with a notice of the action taken on the application or a notice of incompleteness, as provided in § 202.9.

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months for business loans). These commenters believed that such a requirement would not impose a much greater burden than already exists since the appraisal must be maintained with the other records used in evaluating the application. Additionally, some commenters noted that a shorter time period for requesting appraisal reports than for retaining records could mean that appraisal reports could only be obtained through litigation, unless the institution voluntarily provided the report after that time.

Based on the comments and its analysis, the Board is adopting the 90-day time period that was proposed. The statutory language indicates an expectation that the period for requests should be reasonably close in time to the application. The 90-day rule should provide applicants the right to request a copy of the appraisal report during the time they are most likely to be interested in receiving it—around the time the application has been made and the appraisal has been conducted and paid for. A 90-day period also should not present significant compliance difficulties, especially since the final rule provides greater flexibility in how soon the report must be provided following a request.

Time when appraisal reports must be provided. The law also states that a creditor must "promptly" furnish a copy of the appraisal report. The Board proposed requiring the creditor to provide a copy of the report within 15 days of receiving a written request or within 15 days of obtaining an appraisal report, whichever occurs later. While many commenters on this provision thought that the 15-day period was a reasonable interpretation of the statute, many other commenters recommended a longer period (with most suggesting a 30-day period). These commenters believed a longer time was necessary for lenders who do not maintain loan files in their office. After consideration of the public comments, the Board has revised the proposal to provide greater flexibility in the final rule. The regulation does not set a specific time by which an appraisal report must be provided. Instead, the regulation requires creditors to provide copies of appraisal reports "promptly," which it states will be 30 days, but which may be longer in exceptional circumstances.

Some commenters requested that the Board clarify that the timing rule apply only after the latest of three events: the request, receipt of the appraisal by the lender, and the applicant's reimbursement of the creditor for the cost of the appraisal. The Board agrees that this is the appropriate way to measure the time after which the creditor must "promptly" provide a copy of the report, and the final rule clarifies this.

Notice of Right to Copy of Appraisal

The amendments to ECOA do not specify that creditors shall notify applicants of their right to receive a copy of the appraisal report. The Board proposed that applicants for credit to be secured by a dwelling should be provided a written notice of their right to receive a copy of the appraisal report. This notice generally was to be given no later than 15 days after the creditor received the application. In proposing the notice requirement, the Board noted the Congress's belief that access to appraisal reports might help in detecting credit discrimination associated with the appraisal of property. The Board also noted that the notice would be particularly important to applicants if there has been a lender practice of not making appraisals available to applicants.

Most commenters opposed the proposed notice requirement because of the additional paperwork burden that it would impose and the fact that the Congress did not require it. Some commenters opposed the notice requirement on the general grounds that the cumulative effect of disclosure rules is to overburden the industry. At the other end of the spectrum, a few commenters including a state consumer protection agency recommended that the final regulations require notification to all applicants and a second notice to applicants whose loans are denied.

While the notice would impose some burden, the Board believes that it is outweighed by the consumer benefit from receiving the notice. If the notification were to be included on notices of action taken on a consumer's loan application (required by Regulation B), Truth in Lending disclosures, or on application or other forms (instead of creating a separate disclosure), the compliance costs would be limited to the one-time incremental cost of revising documents to add the notice.

After review of the public comments, the Board believes greater effect to the ECOA appraisal amendments is achieved by requiring that applicants be notified of their right to a copy of the appraisal report, as proposed. In the Board's view, it is important that this minimal notice be given to applicants in light of the Congress's concern about potential discrimination in the appraisal process. It is also important to notify all consumers of their statutory right to a copy of their appraisal, given the anecdotal evidence (confirmed by the commenters) that appraisals previously were not made available to applicants upon request.[3] Therefore, pursuant to the Board's authority in section 703 of the ECOA, creditors will be required to provide all applicants with written notice of the right to receive a copy of the appraisal report. As stated above, the notice need not be given by creditors who automatically provide copies to all applicants. To reduce the potential paperwork burden of the notice requirement, the Board will not require that the notice be provided in a form the consumer can keep, as was proposed. Furthermore, in response to commenters' suggestions for flexibility on timing, the rule would permit creditors to provide this notice as early as the time of application. They may also provide the notice later, but not later than at the time they notify an applicant of the action they have taken on the application. (Under § 202.9 of the regulation, creditors must notify applicants of their approval of, counteroffer to, or adverse action on an application within 30 days of receipt of a completed application.) The notice may be included on or with the adverse action notice, the application, or other documents.

Reimbursement. The statute permits a creditor to require reimbursement from the applicant for the cost of the appraisal before a copy is provided. Many commenters responded to the Board's request for information about the fees that may be charged for a copy of an appraisal. Most commenters that addressed the issue stated that all or part of the cost of having the appraisal conducted is imposed on the applicant. According to several commenters, no other fees are imposed for providing a copy of the appraisal report. Many commenters who charge consumers for having the appraisal performed asked the Board to clarify whether fees for providing a copy of the appraisal (for example, copying fees and postage) could be imposed following the adoption of the final rule.

The statute permits the creditor to be reimbursed for the cost of the appraisal and the final rule reflects that. This provision permits a creditor to require the consumer to pay for the cost of the appraisal prior to providing a copy. "Reimbursement" would not be allowed

[3] In the proposal, the Board asked creditors whether they currently provided appraisal reports automatically. Nearly 30 commenters addressed the issue. About ten of those stated they routinely provide appraisal reports to consumers.

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as a condition for providing a copy of the appraisal if the fee has already been paid by the consumer—for example, as part of the application fee.

The final rule also permits the creditor to require reimbursement of photocopy and postage costs that are incurred in providing the copy of the report, unless prohibited by state or other law.

Paragraph (b)—Credit Unions

The proposal excepted from the requirements creditors that provide appraisal reports pursuant to NCUA regulations, in keeping with the legislative history to the ECOA amendments. (See S. Rep. No. 167 at 90.) The final rule exempts credit unions from the provisions of § 202.5a if they are subject to, and comply with, the provisions of the NCUA regulations relating to making appraisals available upon request. 12 CFR 701.31(c)(5).

Section 202.14—Enforcement, Penalties, and Liabilities

Paragraph (b)—Penalties and Liabilities

The Board proposed that changes made to section 706 of the ECOA by FDICIA be incorporated into Regulation B. The language of the final rule differs slightly from the proposed text for clarity, but the meaning is unchanged; federal financial supervisory agencies must refer suspected pattern and practice discrimination cases to the DOJ. In addition, the agencies must notify HUD when they have reason to believe violations of the ECOA have occurred that may also constitute violations of the FHA, unless the matter has been referred to the DOJ.

Appendix C—Sample Disclosure Forms

A sample disclosure notice, Form C–9, has been added to Appendix C. Proper use of this form satisfies compliance with § 202.5a of Regulation B. Creditors may design their own form, or add to or modify the model form, to reflect their individual policies and procedures. For example, if a creditor wants to give applicants the option to call and leave their name and the address to which an appraisal report should be sent, the creditor may modify the notice accordingly. The reference in the proposed model form to telephone requests for a copy of the appraisal report has been deleted, however, to respond to comments expressing concern that it could be viewed as requiring telephone requests to be honored. In addition, for brevity, the model form has been revised to eliminate the reference to reimbursing creditors for the cost of the appraisal and copies of the report (although such a reference may be included with the notice).

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation B. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

(4) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed information collection was reviewed by the Board under the authority delegated to it by the Office of Management and Budget after considering comments received during the public comment period.

A number of commenters believed that complying with the proposal would place significant paperwork burdens on institutions, particularly small institutions. Some expressed concern about the volume and variety of disclosures provided to consumers for credit transactions secured by residential real property, and the potential for consumer confusion.

A few commenters reacted to the specific burden estimates that appeared in the proposal. They believed that the estimates underreported the burden, particularly the time associated with responding to requests for copies of appraisal reports. The commenters questioned whether institutions typically could retrieve and review files, then copy and send appraisal reports in 5 minutes, as proposed.

In response to these comments, the Board has adjusted the burden estimates that were made in the proposal by increasing the estimated time needed to respond to requests for appraisal reports.

The requirements will apply to both large and small mortgage lenders. The impact on small creditors will depend upon whether lenders provide appraisals as a matter of course. The model disclosure form in the regulation will somewhat ease compliance burdens on the lenders. In addition, lenders that regularly provide appraisal reports to applicants (whether the loan is approved or denied) need not comply with the notice requirement of the regulation.

The following information about paperwork burden relates only to the effect of the proposal on state member banks of the Federal Reserve System. Lenders that are subject to Regulation B other than state member banks are supervised by other Federal agencies. For purposes of the Paperwork Reduction Act, these agencies will report their own estimates of the paperwork burden imposed by the new ECOA requirement.

The Board estimates that the disclosure requirement will result in an annual reporting burden of about 23,000 hours for state member banks.

Proposed Information Collection

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)

Report number: Not applicable

OMB docket number: 7100–0201

Frequency: As needed

Reporters: State member banks

	Number of records subject to requirement	×	Estimated time per response (minutes)	=	Estimated total number of hours of annual reporting burden
Appraisal report upon request	125,000		10		20,800
Notice of right to appraisal	625,000		.25		2,600

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Credit, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, and pursuant to authority granted in 15 U.S.C. 1691b of the ECOA, the Board amends 12 CFR part 202 as follows:

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PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.1 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 202.1 Authority, scope, and purpose.

* * * * *

(b) * * * The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

3. Section 202.5a is added to read as follows:

§ 202.5a Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of the appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 202.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 202.9 of this part or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisals available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term *dwelling* means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

4. Section 202.14 is amended by revising paragraph (b)(3) and by adding paragraphs (b)(4) and (b)(5) to read as follows:

§ 202.14 Enforcement, penalties and liabilities.

* * * * *

(b) *Penalties and liabilities.* * * *

* * * * *

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the act or this part, it may refer the matter to the Attorney General of the United States. In addition, if the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe that one or more creditors engaged in a pattern or practice of discouraging or denying applications in violation of the act or this part, the agency shall refer the matter to the Attorney General. Furthermore, the agency may refer a matter to the Attorney General if the agency has reason to believe that one or more creditors violated section 701(a) of the act.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors engaged in a pattern or practice in violation of the act or this regulation, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, conducting a consumer compliance examination, or otherwise) that a violation of the act or this part has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall notify:

(i) The Secretary of Housing and Urban Development; and

(ii) The applicant that the Secretary of Housing and Urban Development has been notified and that remedies for the violation may be available under the Fair Housing Act.

* * * * *

5. Appendix C to Part 202 is amended in the first paragraph of the introduction by revising the first sentence and adding a sentence at the end; in the last paragraph of the introduction by adding a sentence at the end; and by adding sample Form C–9 to read as follows:

Appendix C to Part 202—Sample Notification Forms

This appendix contains nine sample notification forms. * * * Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 202.5a.

* * * * *

* * * Proper use of Form C–9 will satisfy the requirements of § 202.5a of this part.

* * * * *

Form C–9—Sample Disclosure of Right to Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

By order of the Board of Governors of the Federal Reserve System, December 9, 1993.

William W. Wiles,

Secretary of the Board.

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