

# Rules and Regulations

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 271

#### Rules Regarding Availability of Information

**AGENCY:** Federal Open Market Committee, Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Federal Open Market Committee (“Committee”) is finalizing its interim final rule amending the Committee’s regulations under the Freedom of Information Act (“FOIA”). The FOIA Improvement Act of 2016 (“Improvement Act”) amended the FOIA and required each federal agency to review its FOIA regulations and to issue certain revisions by December 27, 2016. Substantive revisions to the Committee’s Rules Regarding Availability of Information (“Rules”) were made to conform to the Improvement Act, and the Committee made other technical changes to the Rules in order to clarify the existing procedures for requesting information and to update contact information. The interim final rule became effective on December 27, 2016. This rulemaking finalizes the interim rule with minor edits for consistency and clarification.

**DATES:** This final rule is effective on November 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Matthew M. Luecke, Deputy Secretary, (202) 452–2576, Federal Open Market Committee, 20th Street and Constitution Avenue NW., Washington, DC 20551; or Amory Goldberg, Counsel, (202) 452–3124, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunications Device for Deaf (TDD) *only*, please call (202) 263–4869.

#### SUPPLEMENTARY INFORMATION:

### I. Overview of Final Rule

On December 27, 2016, the Committee published an interim final rule<sup>1</sup> amending its existing Rules found at 12 CFR part 271, in order to comply with the statutory changes required by the FOIA Improvement Act of 2016 (“Improvement Act”).<sup>2</sup> Substantive amendments to the Committee’s Rules, which were required by the Improvement Act, included revising the Committee’s procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the Committee’s FOIA Public Liaison and the Office of Government Information Services (“OGIS”) within the National Archives and Records Administration. In addition, the Committee made certain technical changes to the Rules to make the FOIA process easier for the public to navigate, such as making certain provisions clearer (removing obsolete language) and informing the public of additional electronic methods for submitting FOIA requests and administrative appeals. The interim final rule became effective on December 27, 2016, and the Committee accepted comments through February 27, 2017. The Committee is finalizing the interim rule with minor changes to paragraph (h)(3) of section 271.6 in response to a public comment.

### II. Summary of Public Comments and Final Rule

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments on the interim final rule during the open comment period. The Committee received one comment on the interim final rule from OGIS. OGIS asked the Committee to revise paragraph (h)(3) of section 271.6 of the Rules to require that a determination letter on an appeal inform appellants of the availability of OGIS’s dispute resolution services. Although not required by the FOIA statute, this change is consistent with guidance issued by the Department of Justice’s Office of Information Policy. Accordingly, the Committee has determined to edit the language in paragraph (h)(3) of section 271.6 to

notify an appealing party of the availability of OGIS’s dispute resolution services as a nonexclusive alternative to litigation.

The Committee has determined not to adopt two other suggestions by OGIS. OGIS’s proposed amendment would add a statement that “[d]ispute resolution is a voluntary process.” This sentence appears to be unnecessary and repetitive given that the Committee is already advising appellants that dispute resolution services are available as a “nonexclusive alternative to litigation.” OGIS also proposed language stating that the Committee will “actively engage as a partner to the process in an attempt to resolve the dispute” if the Committee participates in the OGIS dispute resolution process. Although active engagement in attempting to resolve a FOIA dispute is of course not unreasonable, the proposed sentence could create additional legal obligations not required under the FOIA or by the statutory amendments to the FOIA. Accordingly, aside from adding in language regarding the availability of OGIS’s dispute resolution services as a nonexclusive alternative to litigation, the Committee is adopting section 271.6(h)(3) in the final rule without any further change.

### III. Regulatory Requirements

As the Committee noted in publishing the interim final rule, Congress required that the substantive changes to the Committee’s Rules under the Improvement Act become effective by December 27, 2016, and the other amendments to the Committee’s Rules were technical in nature. Thus, the Committee determined that the prior notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), did not apply to the rule. Because no notice of proposed rulemaking is required, these regulations are not a “rule” as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no initial or final regulatory flexibility analysis is required.

#### List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of information.

#### Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Committee is adopting the interim final

<sup>1</sup> 81 FR 94934 (Dec. 27, 2016).

<sup>2</sup> Public Law 114–185, 130 Stat. 538 (enacted June 30, 2016).

rule published on December 27, 2016, at 81 FR 94934, as final with the following change:

### PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 271 continues to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 263.

■ 2. In § 271.6, paragraph (h)(3) is revised to read as follows:

#### § 271.6 Processing requests.

\* \* \* \* \*

(h) \* \* \*

(3) The Committee, or such member of the Committee as is delegated the authority, shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Secretary. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation.

By order of the Federal Open Market Committee, September 19, 2017.

**Brian F. Madigan,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 2017-21071 Filed 9-29-17; 8:45 am]

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1002

[Docket No. CFPB-2017-0009]

RIN 3170-AA65

### Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule that amends Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, adds certain model forms and removes others from Regulation B, and makes various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.

**DATES:** The rule is effective on January 1, 2018, except that the amendment to Appendix B to Part 1002 revising paragraph 1 and removing the existing “Uniform Residential Loan Application” form in amendatory instruction 6 is effective January 1, 2022.

#### FOR FURTHER INFORMATION CONTACT:

Shaakira Gold-Ramirez, Paralegal Specialist, Kathryn Lazarev, Counsel, or James Wylie, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://www.consumerfinance.gov/policy-compliance/guidance/>.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the Final Rule

Regulation B implements the Equal Credit Opportunity Act (ECOA)<sup>1</sup> and, in part, prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of a credit applicant except under certain circumstances.<sup>2</sup> Two of these circumstances are a requirement for creditors to collect and retain certain information about applicants for certain dwelling-secured loans under Regulation B § 1002.13 and the similar applicant information that financial institutions are required to collect and report under Regulation C, 12 CFR part 1003, which implements the Home Mortgage Disclosure Act (HMDA).<sup>3</sup> Regulation B also includes certain optional model forms for use in complying with certain Regulation B requirements, including a model form for complying with § 1002.13 that is a 2004 version of the Uniform Residential Loan Application (URLA) issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).<sup>4</sup>

The HMDA requirement to collect and report applicant information was recently updated through a final rule amending Regulation C, published in October of 2015 (2015 HMDA Final Rule).<sup>5</sup> In 2016, the Enterprises issued a new version of the URLA that complies with the 2015 HMDA Final Rule (2016 URLA).<sup>6</sup> These changes to Regulation C and the URLA require updates to Regulation B to ensure consistency

among regulations and facilitate compliance with Regulation B and Regulation C by financial institutions. To address these issues, the Bureau issued a proposal on March 24, 2017, which was published in the **Federal Register** on April 4, 2017 (the 2017 ECOA Proposal).<sup>7</sup>

The Bureau is now publishing final amendments to Regulation B. The final rule will provide creditors flexibility in complying with Regulation B in order to facilitate compliance with Regulation C and transition to the 2016 URLA. The changes to Regulation B in this rule are summarized briefly in this section and discussed in detail below.

##### A. Scope

The final rule amends parts of Regulation B, its commentary, and its appendices, and affects when and how a creditor may collect information regarding the applicant’s ethnicity, race, and sex. The Regulation B creditors affected by this rule are primarily those creditors making mortgage loans subject to § 1002.13, which applies to purchase and refinance transactions involving an applicant’s primary residence. Financial institutions that report under Regulation C, have reported in the prior five years, or may report in the near future may also be affected by this rule. Creditors that utilize model forms from appendix B to Regulation B (the Regulation B appendix) for mortgage loans are also affected by the rule.

##### B. Changes to Applicant Information Collection for Regulation B Creditors

For Regulation B creditors making mortgage loans subject to § 1002.13, the rule will allow creditors to collect the applicant’s information using either the aggregate ethnicity and race categories or disaggregated ethnicity and race categories and subcategories, as set forth in appendix B to Regulation C (the Regulation C appendix) as amended by the 2015 HMDA Final Rule. The rule change therefore will not require Regulation B creditors that are not HMDA reporters (Regulation B-only creditors) to change their § 1002.13 compliance practices, but would allow them to adopt voluntarily new practices for collecting applicant information, including practices that would permit such creditors to transition to the 2016 URLA. Regulation B creditors will also be able to collect voluntarily certain information about applicants for certain mortgage loan scenarios as provided for in § 1002.5(a)(4). These scenarios

<sup>1</sup> 15 U.S.C. 1691 *et seq.*, 12 CFR part 1002.

<sup>2</sup> 12 CFR 1002.5(b).

<sup>3</sup> 12 CFR 1002.5(a)(2).

<sup>4</sup> Appendix B to 12 CFR part 1003.

<sup>5</sup> Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

<sup>6</sup> See Fannie Mae, Guide Forms, available at <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (last visited Sept. 6, 2017) (listing all selling and servicing guide forms); Freddie Mac, “Forms and Documents,” available at <http://www.freddie.com/singlefamily/guide/> (last visited Sept. 6, 2017) (same).

<sup>7</sup> Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, 82 FR 16307 (Apr. 4, 2017).