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PART 1000 [RESERVED]

PART 1001—FINANCIAL PRODUCTS OR SERVICES

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AUTHORITY: 12 U.S.C. 5481(15)(A)(xi); and 12 U.S.C. 5512(b)(1).

SOURCE: 80 FR 37526, June 30, 2015, unless otherwise noted.

§ 1001.1 Authority and purpose.

Under 12 U.S.C. 5481(15)(A)(xi), the Bureau is authorized to define certain financial products or services for purposes of title X of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (Title X) in addition to those defined in 12 U.S.C. 5481(15)(A)(i)–(x). The purpose of this part is to implement that authority.

§ 1001.2 Definitions.

Except as otherwise provided in Title X, in addition to the definitions set forth in 12 U.S.C. 5481(15)(A)(i)–(x), the term ''financial product or service'' means, for purposes of Title X:

(a) Extending or brokering leases of an automobile, as automobile is defined by 12 CFR 1090.108(a), where the lease:

(1) Qualifies as a full-payout lease and a net lease, as provided by 12 CFR 23.3(a), and has an initial term of not less than 90 days, as provided by 12 CFR 23.11; and

(2) Is not a financial product or service under 12 U.S.C. 5481(15)(A)(ii).

(b) Providing financial data processing products or services by any technological means, including processing, storing, aggregating, or transmitting financial or banking data, alone or in connection with another product or service, where the financial data processing is not offered or provided by a person who, by operation of 12 U.S.C. 5481(15)(A)(vii)(I) or (II), is not a covered person.

(c) [Reserved]

[80 FR 37526, June 30, 2015, as amended at 89 FR 90989, Nov. 18, 2024]

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AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b. Subpart B is also issued under 15 U.S.C. 1691c–2.

SOURCE: 76 FR 79445, Dec. 21, 2011, unless otherwise noted.

Subpart A—General

§ 1002.1 Authority, scope and purpose.

(a) *Authority and scope.* This part, known as Regulation B, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, this subpart applies to all persons who are creditors, as defined in §1002.2(l), other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0013.

(b) *Purpose.* The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. 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.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 35527, May 31, 2023]

§ 1002.2 Definitions.

For the purposes of this part, unless the context indicates otherwise or as otherwise defined in subpart B, the following definitions apply:

(a) *Account* means an extension of credit. When employed in relation to an account, the word use refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant;

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of §1002.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §1002.3(a)–(d).

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems*—(1) *A credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant,

whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system,* the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term ''unmarried'' includes persons who are single, divorced, or widowed.

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness,* in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good

faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 35527, May 31, 2023]

§ 1002.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit*—(1) *Definition*. Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions*. The following provisions of this part do not apply to public utilities credit:

(i) Section 1002.5(d)(1) concerning information about marital status; and

(ii) Section 1002.12(b) relating to record retention.

(b) *Securities credit* (1) *Definition*. Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions*. The following provisions of this part do not apply to securities credit:

(i) Section 1002.5(b) concerning information about the sex of an applicant;

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

(iii) Section 1002.5(d)(1) concerning information about marital status;

(iv) Section 1002.7(b) relating to designation of name to the extent necessary to comply with rules regarding an account in which a broker or dealer has an interest, or rules regarding the aggregation of accounts of spouses to determine controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 1002.7(c) relating to action concerning open-end accounts, to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 1002.7(d) relating to the signature of a spouse or other person;

(vii) Section 1002.10 relating to furnishing of credit information; and

(viii) Section 1002.12(b) relating to record retention.

(c) *Incidental credit* (1) *Definition*. Incidental credit refers to extensions of consumer credit other than the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 1026.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions*. The following provisions of this part do not apply to incidental credit:

(i) Section 1002.5(b) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(ii) Section 1002.5(c) concerning information about a spouse or former spouse;

(iii) Section 1002.5(d)(1) concerning information about marital status;

(iv) Section 1002.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(v) Section 1002.7(d) relating to the signature of a spouse or other person;

(vi) Section 1002.9 relating to notifications;

(vii) Section 1002.10 relating to furnishing of credit information; and

(viii) Section 1002.12(b) relating to record retention.

(d) *Government credit*—(1) *Definition*. Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation*. Except for §1002.4(a), the general rule against discrimination on a prohibited basis, the requirements of this part do not apply to government credit.

§ 1002.4 General rules.

(a) *Discrimination.* A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 1002.13(a).

(d) *Form of disclosures*—(1) *General rule.* A creditor that provides in writing any disclosures or information required by this part must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 1002.5 and 1002.13, in a form the applicant may retain.

(2) *Disclosures in electronic form.* The disclosures required by this part that are required to be given in writing may be provided to the applicant 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) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§ 1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2) accompany an application accessed by the applicant in electronic form, these disclosures may be provided to the applicant in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

(e) *Foreign-language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

§ 1002.5 Rules concerning requests for information.

(a) *General rules*—(1) *Requests for information.* Except as provided in paragraphs (b) through (d) of this section, a creditor may request any information in connection with a credit transaction. This paragraph does not limit or abrogate any Federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

(2) *Required collection of information.* Notwithstanding paragraphs (b) through (d) of this section, a creditor shall request information for monitoring purposes as required by § 1002.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this part, or other Federal or state statutes or regulations.

(3) *Special-purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in § 1002.8(b), (c), and (d).

(4) *Other permissible collection of information.* Notwithstanding paragraph (b) of this section, a creditor may collect information under the following circumstances provided that the creditor collects the information in compliance with § 1002.107(a)(18) and (19) and accompanying commentary, or appendix B to 12 CFR part 1003, as applicable:

(i) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years;

(ii) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for an open-end line of credit that is an excluded transaction under 12 CFR 1003.3(c)(12) if it submits HMDA data concerning such open-end lines of credit and applications or if it submitted HMDA data concerning open-end lines

of credit for any of the preceding five calendar years;

(iii) A creditor that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if not excluded by 12 CFR 1003.3(c)(11) or (12);

(iv) A creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold period provided in 12 CFR 1003.2(g), 1003.3(c)(11), or 1003.3(c)(12) may, in the second year, collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(11) or (12);

(v) A creditor that is a financial institution under 12 CFR 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g), may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(10).

(vi) A creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant may collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under 12 CFR 1003.2(e) or for a second or additional co-applicant for a loan described in paragraphs (a)(4)(i) through (v) of this section.

(vii) A creditor that was required to report small business lending data pursuant to §1002.109 for any of the preceding five calendar years but is not currently a covered financial institution under §1002.105(b) may collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§1002.103 and 1002.106(b) regarding whether an applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners if it complies with the requirements for covered financial institutions pursuant to §§1002.107(a)(18) and (19), 1002.108, 1002.111, and 1002.112 for that application. Such a creditor is permitted, but not required, to report data to the Bureau collected pursuant to subpart B of this part if it complies with the requirements of subpart B as otherwise required for covered financial institutions pursuant to §§1002.109 and 1002.110.

(viii) A creditor that exceeded the loan-volume threshold in the first year of the two-year threshold period provided in §1002.105(b) may, in the second year, collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§1002.103 and 1002.106(b) regarding whether an applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners if it complies with the requirements for covered financial institutions pursuant to §§1002.107(a)(18) and (19), 1002.108, 1002.111, and 1002.112 for that application. Such a creditor is permitted, but not required, to report data to the Bureau collected pursuant to subpart B of this part if it complies with the requirements of subpart B as otherwise required for covered financial institutions pursuant to §§1002.109 and 1002.110.

(ix) A creditor that is not currently a covered financial institution under §1002.105(b), and is not otherwise a creditor to which §1002.5(a)(4)(vii) or (viii) applies, may collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§1002.103 and 1002.106(b) regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners for a transaction if it complies with the requirements for covered financial institutions pursuant to §§1002.107 through 1002.112 for that application.

(x) A creditor that is collecting information pursuant to subpart B of this part or as described in paragraphs (a)(4)(vii) through (ix) of this section

for covered applications from small businesses as defined in §§1002.103 and 1002.106(b) regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners may also collect that same information for any co-applicants provided that it also complies with the relevant requirements of subpart B of this part or as described in paragraphs (a)(4)(vii) through (ix) of this section with respect to those co-applicants.

(b) *Limitation on information about race, color, religion, national origin, or sex.* A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section.

(1) *Self-test.* A creditor may inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction for the purpose of conducting a self-test that meets the requirements of §1002.15. A creditor that makes such an inquiry shall disclose orally or in writing, at the time the information is requested, that:

(i) The applicant will not be required to provide the information;

(ii) The creditor is requesting the information to monitor its compliance with the Federal Equal Credit Opportunity Act;

(iii) Federal law prohibits the creditor from discriminating on the basis of this information, or on the basis of an applicant's decision not to furnish the information; and

(iv) If applicable, certain information will be collected based on visual observation or surname if not provided by the applicant or other person.

(2) *Sex.* An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(c) *Information about a spouse or former spouse*—(1) *General rule.* Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request that an applicant list any account on which the applicant is contractually liable and to provide the name and address of the person in whose name the account is held. A creditor may also ask an applicant to list the names in which the applicant has previously received credit.

(d) *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married*, *unmarried*, and *separated*. A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need

not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(e) *Permanent residency and immigration status.* A creditor may inquire about the permanent residency and immigration status of an applicant or any other person in connection with a credit transaction.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017; 88 FR 35527, May 31, 2023]

§ 1002.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this part, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis. The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not make assumptions or use aggregate statistics relating to the likelihood that any category of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider the applicant's immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's or other person's decision not to provide the information) in any aspect of a credit transaction.

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this part.

§ 1002.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property

being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the credit requested, a creditor may request a cosigner, guarantor, endorser, or similar party. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 1002.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this part permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization, or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections*—(1) *General applicability.* All the provisions of this part apply to each of the special purpose credit programs described in paragraph (a) of this section except as modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to

share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this part.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose credit program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose credit program if the signature is required by Federal or state law.

§ 1002.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

(i) With regard to a business that had gross revenues of $1 million or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's

right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed in appendix A of this part].

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications*—(1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 16537, Mar. 20, 2023]

§ 1002.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) 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); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry, concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 1002.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this part alters, affects, or preempts only those state laws that are inconsistent with the Act and this part and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the Act and this part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this part;

(iv) Prohibits asking about or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 1002.8.

(2) A creditor, state, or other interested party may request that the Bureau determine whether a state law is inconsistent with the requirements of the Act and this part.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any Federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or Federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions*—(1) *Applications.* A state may

apply to the Bureau for an exemption from the requirements of the Act and this part for any class of credit transactions within the state. The Bureau will grant such an exemption if the Bureau determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to those of the Act and this part or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 of the Act or the administrative enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by Federal law) will constitute the requirements of the Act and this part.

§ 1002.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this part for use in evaluating applications, without violating the Act or this part, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this part or other Federal or state statutes or regulations.

(b) *Preservation of records*— (1) *Applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B of this part) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, any information obtained pursuant to §1002.5(a)(4), and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request.

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(2) *Existing accounts.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B of this part) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(3) *Other applications.* For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B of this part) after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of §1002.9, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or if it has been served with

notice of an action filed pursuant to section 706 of the Act and §1002.16 of this part. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business that had gross revenues in excess of $1 million in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, the creditor shall retain records for at least 60 days, except as otherwise provided for in subpart B, after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in §1002.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it 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. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

(7) *Prescreened solicitations.* For 25 months after the date on which an offer of credit is made to potential customers (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B), the creditor shall retain in original form or a copy thereof:

(i) The text of any prescreened solicitation;

(ii) The list of criteria the creditor used to select potential recipients of the solicitation; and

(iii) Any correspondence related to complaints (formal or informal) about the solicitation.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017; 88 FR 35528, May 31, 2023]

§1002.13 Information for monitoring purposes.

(a) *Information to be requested.* (1) A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(i) Ethnicity and race using either:

(A) For ethnicity, the aggregate categories Hispanic or Latino and not Hispanic or Latino; and, for race, the aggregate categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White; or

(B) The categories and subcategories for the collection of ethnicity and race set forth in appendix B to 12 CFR part 1003.

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) *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.

(b) *Obtaining information.* Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname. When a creditor collects ethnicity and race information pursuant to §1002.13(a)(1)(i)(B), the creditor must comply with any restrictions on the collection of an applicant's ethnicity or race on the basis of visual observation or surname set forth in appendix B

to 12 CFR part 1003. If there is more than one co-applicant, a creditor is permitted, but is not required, to collect the information set forth in paragraph (a) of this section from a second or additional co-applicant.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the ethnicity, race and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, Oct. 2, 2017]

§ 1002.14 Rules on providing appraisals and other valuations.

(a) *Providing appraisals and other valuations*—(1) *In general.* A creditor shall provide an applicant 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. A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement in this paragraph (a)(1) and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

(2) *Disclosure.* For applications subject to paragraph (a)(1) of this section, a creditor shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application. In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling.

(3) *Reimbursement.* A creditor shall not charge an applicant for providing a copy of appraisals and other written valuations as required under this section, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or other written valuation unless otherwise provided by law.

(4) *Withdrawn, denied, or incomplete applications.* The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

(5) *Copies in electronic form.* The copies required by §1002.14(a)(1) may be provided to the applicant 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) (15 U.S.C. 7001 *et seq.*).

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Consummation.* The term ''consummation'' means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

(2) *Dwelling.* 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.

(3) *Valuation.* The term ''valuation'' means any estimate of the value of a dwelling developed in connection with an application for credit.

[78 FR 7248, Jan. 31, 2013]

§ 1002.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of a self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this part; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if the information has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d) *Scope of privilege*—(1) *General rule.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this part; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of §1002.4(b)) in any proceeding or civil action in which a violation of the Act or this part is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under §1002.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of §1002.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this part has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

§1002.16 Enforcement, penalties and liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, National Credit Union Administration, Surface Transportation Board, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, Secretary of Transportation, and Bureau of Consumer Financial Protection.

(2) Except to the extent that administrative enforcement is specifically assigned to some government agency other than the Bureau, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission is authorized to enforce the requirements imposed under the Act and this part.

(b) *Penalties and liabilities.* (1) Sections 702(g) and 706(a) and (b) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 702(g) and 704(b), (c), and (d) of the Act, violations of the Act or this part also constitute violations of other Federal laws. Liability for punitive damages can apply only to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f) of the Act, a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within five years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within five years after the alleged violation.

(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. If the Bureau, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe that one or more creditors have 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. If the agency has reason to believe that one or more creditors violated section 701(a) of the Act, the agency may refer a matter to the Attorney General.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors have engaged in a pattern or practice in violation of the Act or this part, 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 Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, a consumer compliance examination, or some other basis) 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:

(i) Notify the Secretary of Housing and Urban Development; and

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

(c) *Failure of compliance.* A creditor's failure to comply with §1002.6(b)(6), §1002.9, §1002.10, §1002.12 or §1002.13 is not a violation if it results from an inadvertent error. On discovering an error under §§1002.9 and 1002.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the ethnicity, race, and sex of the applicant in a dwelling-related transaction not covered by §1002.13, the creditor may retain information and act on the application without violating the regulation.

Subpart B—Small Business Lending Data Collection

SOURCE: 88 FR 35528, May 31, 2023, unless otherwise noted.

§1002.101 Authority, purpose, and scope.

(a) *Authority and scope.* This subpart to Regulation B is issued by the Bureau pursuant to section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2). Except as otherwise provided herein, this subpart applies to covered financial institutions, as defined in §1002.105(b), other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2004 (2010).

(b) *Purpose.* This subpart implements section 704B of the Equal Credit Opportunity Act, which Congress intended:

(1) To facilitate enforcement of fair lending laws; and

(2) To enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

§1002.102 Definitions.

In this subpart:

(a) *Affiliate* means, with respect to a financial institution, any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). With respect to a business or an applicant, *affiliate* shall have the same meaning as in 13 CFR 121.103.

(b) *Applicant* means any person who requests or who has received an extension of business credit from a financial institution.

(c) *Business* is defined in §1002.106(a).

(d) *Business credit* shall have the same meaning as in §1002.2(g).

(e) *Closed-end credit transaction* means an extension of business credit that is not an open-end credit transaction under paragraph (n) of this section.

(f) *Covered application* is defined in § 1002.103.

(g) *Covered credit transaction* is defined in § 1002.104.

(h) *Covered financial institution* is defined in § 1002.105(b).

(i) *Credit* shall have the same meaning as in § 1002.2(j).

(j) *Financial institution* is defined in § 1002.105(a).

(k) *LGBTQI+ individual* includes an individual who identifies as lesbian, gay, bisexual, transgender, queer, or intersex.

(l) *LGBTQI+-owned business* means a business for which one or more LGBTQI+ individuals hold more than 50 percent of its ownership or control, and for which more than 50 percent of the net profits or losses accrue to one or more such individuals.

(m) *Minority-owned business* means a business for which one or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals hold more than 50 percent of its ownership or control, and for which more than 50 percent of the net profits or losses accrue to one or more such individuals.

(n) *Open-end credit transaction* means an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11).

(o) *Principal owner* means an individual who directly owns 25 percent or more of the equity interests of a business.

(p) *Small business* is defined in § 1002.106(b).

(q) *Small business lending application register* or *register* means the data reported, or required to be reported, annually pursuant to § 1002.109.

(r) *State* shall have the same meaning as in § 1002.2(aa).

(s) *Women-owned business* means a business for which more than 50 percent of its ownership or control is held by one or more women, and more than 50 percent of its net profits or losses accrue to one or more women.

§ 1002.103 Covered applications.

(a) *Covered application*. Except as provided in paragraph (b) of this section, covered application means an oral or written request for a covered credit transaction that is made in accordance with procedures used by a financial institution for the type of credit requested.

(b) *Circumstances that are not covered applications*. A covered application does not include:

(1) Reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts.

(2) Inquiries and prequalification requests.

§ 1002.104 Covered credit transactions and excluded transactions.

(a) *Covered credit transaction* means an extension of business credit that is not an excluded transaction under paragraph (b) of this section.

(b) *Excluded transactions*. The requirements of this subpart do not apply to:

(1) *Trade credit*. A financing arrangement wherein a business acquires goods or services from another business without making immediate payment in full to the business providing the goods or services.

(2) *Home Mortgage* Disclosure *Act (HMDA)-reportable transactions*. A covered loan, or application therefor, as defined by Regulation C, 12 CFR 1003.2(e).

(3) *Insurance premium financing*. A financing arrangement wherein a business agrees to pay to a financial institution, in installments, the principal amount advanced by the financial institution to an insurer or insurance producer in payment of premium on the business's insurance contract or contracts, plus charges, and, as security for repayment, the business assigns to the financial institution certain rights, obligations, and/or considerations (such as the unearned premiums, accrued dividends, or loss payments) in its insurance contract or contracts. Insurance premium financing does not include the financing of insurance policy premiums obtained in connection with the financing of goods and services.

(4) *Public utilities credit.* Public utilities credit as defined in §1002.3(a)(1).

(5) *Securities credit.* Securities credit as defined in §1002.3(b)(1).

(6) *Incidental credit.* Incidental credit as defined in §1002.3(c)(1), but without regard to whether the credit is consumer credit, as defined in §1002.2(h).

§1002.105 Covered financial institutions and exempt institutions.

(a) *Financial institution* means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

(b) *Covered financial institution* means a financial institution that originated at least 100 covered credit transactions for small businesses in each of the two preceding calendar years.

§1002.106 Business and small business.

(a) *Business* has the same meaning as the term ''business concern or concern'' in 13 CFR 121.105.

(b) *Small business definition*—(1) *Small business* has the same meaning as the term ''small business concern'' in 15 U.S.C. 632(a), as implemented in 13 CFR 121.101 through 121.107. Notwithstanding the size standards set forth in 13 CFR 121.201, for purposes of this subpart, a business is a small business if its gross annual revenue, as defined in §1002.107(a)(14), for its preceding fiscal year is $5 million or less.

(2) *Inflation adjustment.* Every 5 years after January 1, 2025, the gross annual revenue threshold set forth in paragraph (b)(1) of this section shall adjust based on changes to the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics. Any adjustment that takes effect under this paragraph shall be rounded to the nearest multiple of $500,000. If an adjustment is to take effect, it will do so on January 1 of the following calendar year.

§1002.107 Compilation of reportable data.

(a) *Data format and itemization.* A covered financial institution shall compile and maintain data regarding covered applications from small businesses. The data shall be compiled in the manner prescribed herein and the Filing Instructions Guide for this subpart for the appropriate year. The data compiled shall include the items described in paragraphs (a)(1) through (20) of this section.

(1) *Unique identifier.* An alphanumeric identifier, starting with the legal entity identifier of the financial institution, unique within the financial institution to the specific covered application, and which can be used to identify and retrieve the specific file or files corresponding to the application for or extension of credit.

(2) *Application date.* The date the covered application was received or the date shown on a paper or electronic application form.

(3) *Application method.* The means by which the applicant submitted the covered application directly or indirectly to the financial institution.

(4) *Application recipient.* Whether the applicant submitted the covered application directly to the financial institution or its affiliate, or whether the applicant submitted the covered application indirectly to the financial institution via a third party.

(5) *Credit type.* The following information regarding the type of credit applied for or originated:

(i) *Credit product.* The credit product.

(ii) *Guarantees.* The type or types of guarantees that were obtained for an extension of credit, or that would have been obtained if the covered credit transaction were originated.

(iii) *Loan term.* The length of the loan term, in months, if applicable.

(6) *Credit purpose.* The purpose or purposes of the credit applied for or originated.

(7) *Amount applied for.* The initial amount of credit or the initial credit limit requested by the applicant.

(8) *Amount approved or originated.* (i) For an application for a closed-end credit transaction that is approved but not accepted, the amount approved by the financial institution; or

(ii) For a closed-end credit transaction that is originated, the amount of credit originated; or

(iii) For an application for an open-end credit transaction that is originated or approved but not accepted, the amount of the credit limit approved.

(9) *Action taken.* The action taken by the financial institution on the covered application, reported as originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete.

(10) *Action taken date.* The date of the action taken by the financial institution.

(11) *Denial reasons.* For denied applications, the principal reason or reasons the financial institution denied the covered application.

(12) *Pricing information.* The following information regarding the pricing of a covered credit transaction that is originated or approved but not accepted, as applicable:

(i) *Interest rate.* (A) If the interest rate is fixed, the interest rate that is or would be applicable to the covered credit transaction; or

(B) If the interest rate is adjustable, the margin, index value, initial rate period expressed in months (if applicable), and index name that is or would be applicable to the covered credit transaction;

(ii) *Total origination charges.* The total amount of all charges payable directly or indirectly by the applicant and imposed directly or indirectly by the financial institution at or before origination as an incident to or a condition of the extension of credit, expressed in dollars;

(iii) *Broker fees.* The total amount of all charges included in paragraph (a)(12)(ii) of this section that are fees paid by the applicant directly to a broker or to the financial institution for delivery to a broker, expressed in dollars;

(iv) *Initial annual charges.* The total amount of all non-interest charges that are scheduled to be imposed over the first annual period of the covered credit transaction, expressed in dollars;

(v) *Additional cost for merchant cash advances or other sales-based financing.* For a merchant cash advance or other sales-based financing transaction, the difference between the amount advanced and the amount to be repaid, expressed in dollars; and

(vi) *Prepayment penalties.* (A) Notwithstanding whether such a provision was in fact included, whether the financial institution could have included a charge to be imposed for paying all or part of the transaction's principal before the date on which the principal is due under the policies and procedures applicable to the covered credit transaction; and

(B) Notwithstanding the response to paragraph (a)(12)(vi)(A) of this section, whether the terms of the covered credit transaction do in fact include a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due.

(13) *Census tract.* The census tract in which is located:

(i) The address or location where the proceeds of the credit applied for or originated will be or would have been principally applied; or

(ii) If the information in paragraph (a)(13)(i) of this section is unknown, the address or location of the main office or headquarters of the applicant; or

(iii) If the information in both paragraphs (a)(13)(i) and (ii) of this section is unknown, another address or location associated with the applicant.

(iv) The financial institution shall also indicate which one of the three types of addresses or locations listed in paragraphs (a)(13)(i), (ii), or (iii) of this section the census tract is based on.

(14) *Gross annual revenue.* The applicant's gross annual revenue for its preceding fiscal year.

(15) *NAICS code.* A 3-digit North American Industry Classification System (NAICS) code for the applicant.

(16) *Number of workers.* The number of non-owners working for the applicant.

(17) *Time in business.* The time the applicant has been in business.

(18) *Minority-owned, women-owned, and LGBTQI+-owned business statuses.* Whether the applicant is a minority-owned, women-owned, and/or LGBTQI+-owned business. When requesting minority-owned, women-owned, and LGBTQI+-owned business statuses from an applicant, the financial institution shall inform the applicant that the financial institution cannot discriminate on the basis of minority-owned, women-owned, or LGBTQI+-

owned business statuses, or on whether the applicant provides this information.

(19) *Ethnicity, race, and sex of principal owners.* The ethnicity, race, and sex of the applicant's principal owners. When requesting ethnicity, race, and sex information from an applicant, the financial institution shall inform the applicant that the financial institution cannot discriminate on the basis of a principal owner's ethnicity, race, or sex, or on whether the applicant provides this information.

(20) *Number of principal owners.* The number of the applicant's principal owners.

(b) *Reliance on and verification of applicant-provided data.* Unless otherwise provided in this subpart, the financial institution may rely on information from the applicant, or appropriate third-party sources, when compiling data. If the financial institution verifies applicant-provided data, however, it shall report the verified data.

(c) *Time and manner of collection*—(1) *In general.* A covered financial institution shall not discourage an applicant from responding to requests for applicant-provided data under paragraph (a) of this section and shall otherwise maintain procedures to collect such data at a time and in a manner that are reasonably designed to obtain a response.

(2) *Applicant-provided data collected directly from the applicant.* For data collected directly from the applicant, procedures that are reasonably designed to obtain a response shall include provisions for the following:

(i) The initial request for applicant-provided data occurs prior to notifying an applicant of final action taken on a covered application;

(ii) The request for applicant-provided data is prominently displayed or presented;

(iii) The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data; and

(iv) Applicants can easily respond to a request for applicant-provided data.

(3) *Procedures to monitor compliance.* A covered financial institution shall maintain procedures to identify and respond to indicia of potential discouragement, including low response rates for applicant-provided data.

(4) *Low response rates.* A low response rate for applicant-provided data may indicate discouragement or other failure by a covered financial institution to maintain procedures to collect applicant-provided data that are reasonably designed to obtain a response.

(d) *Previously collected data.* A covered financial institution is permitted, but not required, to reuse previously collected data to satisfy paragraphs (a)(13) through (20) of this section if:

(1) To satisfy paragraphs (a)(13) and (a)(15) through (20) of this section, the data were collected within the 36 months preceding the current covered application, or to satisfy paragraph (a)(14) of this section, the data were collected within the same calendar year as the current covered application; and

(2) The financial institution has no reason to believe the data are inaccurate.

§ 1002.108 Firewall.

(a) *Definitions.* For purposes of this section, the following terms shall have the following meanings:

(1) *Involved in making any determination concerning a covered application from a small business* means participating in a decision regarding the evaluation of a covered application from a small business or the creditworthiness of a small business applicant for a covered credit transaction.

(2) *Should have access* means that an employee or officer may need to collect, see, consider, refer to, or otherwise use the information to perform that employee's or officer's assigned job duties.

(b) *Prohibition on access to certain information.* Unless the exception under paragraph (c) of this section applies, an employee or officer of a covered financial institution or a covered financial institution's affiliate shall not have access to an applicant's responses to inquiries that the financial institution makes pursuant to this subpart regarding whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the

applicant's principal owners under §1002.107(a)(19), if that employee or officer is involved in making any determination concerning that applicant's covered application.

(c) *Exception to the prohibition on access to certain information*. The prohibition in paragraph (b) of this section shall not apply to an employee or officer if the financial institution determines that it is not feasible to limit that employee's or officer's access to an applicant's responses to the financial institution's inquiries under §1002.107(a)(18) or (19) and the financial institution provides the notice required under paragraph (d) of this section to the applicant. It is not feasible to limit access as required pursuant to paragraph (b) of this section if the financial institution determines that an employee or officer involved in making any determination concerning a covered application from a small business should have access to one or more applicants' responses to the financial institution's inquiries under §1002.107(a)(18) or (19).

(d) *Notice*. In order to satisfy the exception set forth in paragraph (c) of this section, a financial institution shall provide a notice to each applicant whose responses will be accessed, informing the applicant that one or more employees or officers involved in making determinations concerning the covered application may have access to the applicant's responses to the financial institution's inquiries regarding whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and regarding the ethnicity, race, and sex of the applicant's principal owners. The financial institution shall provide the notice required by this paragraph (d) when making the inquiries required under §1002.107(a)(18) and (19) and together with the notices required pursuant to §1002.107(a)(18) and (19).

§1002.109 Reporting of data to the Bureau.

(a) *Reporting to the Bureau*—(1) *Annual reporting*. (i) On or before June 1 following the calendar year for which data are compiled and maintained as required by §1002.107, a covered financial institution shall submit its small business lending application register in the format prescribed by the Bureau.

(ii) An authorized representative of the covered financial institution with knowledge of the data shall certify to the accuracy and completeness of the data reported pursuant to this paragraph (a).

(iii) When the last day for submission of data prescribed under paragraph (a)(1) of this section falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.

(2) *Reporting by subsidiaries*. A covered financial institution that is a subsidiary of another covered financial institution shall complete a separate small business lending application register. The subsidiary shall submit its small business lending application register, directly or through its parent, to the Bureau.

(3) *Reporting obligations where multiple financial institutions are involved in a covered credit transaction*. Where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction, only the last covered financial institution with authority to set the material terms of the covered credit transaction is required to report the application. Financial institutions report the actions of their agents.

(b) *Financial institution identifying information*. A financial institution shall provide each of the following with its submission:

(1) Its name.

(2) Its headquarters address.

(3) The name and business contact information of a person that the Bureau or other regulators may contact about the financial institution's submission.

(4) Its Federal prudential regulator, if applicable.

(5) Its Federal Taxpayer Identification Number (TIN).

(6) Its Legal Entity Identifier (LEI).

(7) Its Research, Statistics, Supervision, and Discount identification (RSSD ID) number, if applicable.

(8) Parent entity information, if applicable, including:

(i) The name of the immediate parent entity;

(ii) The LEI of the immediate parent entity, if available;

(iii) The RSSD ID number of the immediate parent entity, if available;

(iv) The name of the top-holding parent entity;

(v) The LEI of the top-holding parent entity, if available; and

(vi) The RSSD ID number of the top-holding parent entity, if available.

(9) The type of financial institution that it is, indicated by selecting the appropriate type or types of institution from the list provided.

(10) Whether the financial institution is voluntarily reporting covered applications from small businesses.

(c) *Procedures for the submission of data to the Bureau.* The Bureau shall make available a Filing Instructions Guide, containing technical instructions for the submission of data to the Bureau pursuant to this section, as well as any related materials, at *https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/.*

§ 1002.110 Publication of data and other disclosures.

(a) *Publication of small business lending application registers and associated financial institution information.* The Bureau shall make available to the public generally the data reported to it by financial institutions pursuant to § 1002.109, subject to deletions or modifications made by the Bureau if the Bureau determines that the deletion or modification of the data would advance a privacy interest. The Bureau shall make such data available on an annual basis.

(b) *Publication of aggregate data.* The Bureau may compile and aggregate data submitted by financial institutions pursuant to § 1002.109, and make any compilations or aggregations of such data publicly available as the Bureau deems appropriate.

(c) *Statement of financial institution's small business lending data available on the Bureau's website.* A covered financial institution shall make available to the public on its website, or otherwise upon request, a statement that the covered financial institution's small business lending application register, as modified by the Bureau pursuant to § 1002.110(a), is or will be available from the Bureau. A financial institution shall use language provided by the Bureau, or substantially similar language, to satisfy the requirement to provide a statement pursuant to this paragraph (c).

(d) *Availability of statements.* A covered financial institution shall make the notice required by paragraph (c) of this section available to the public on its website when it submits a small business lending application register to the Bureau pursuant to § 1002.109(a)(1), and shall maintain the notice for as long as it has an obligation to retain its small business lending application registers pursuant to § 1002.111(a).

(e) *Further disclosure prohibited*—(1) *Disclosure by a financial institution.* A financial institution shall not disclose or provide to a third party the information it collects pursuant to § 1002.107(a)(18) and (19) except to further compliance with the Act or this part or as required by law.

(2) *Disclosure by a third party.* A third party that obtains information collected pursuant to § 1002.107(a)(18) and (19) for the purpose of furthering compliance with the Act or this part is prohibited from any further disclosure of such information except to further compliance with the Act or this part or as required by law.

§ 1002.111 Recordkeeping.

(a) *Record retention.* A covered financial institution shall retain evidence of compliance with this subpart, which includes a copy of its small business lending application register, for at least three years after the register is required to be submitted to the Bureau pursuant to § 1002.109.

(b) *Certain information kept separate from the rest of the application.* A financial institution shall maintain, separately from the rest of the application and accompanying information, an applicant's responses to the financial institution's inquiries pursuant to this subpart regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(19).

(c) *Limitation on personally identifiable information in certain records retained under this section.* In reporting a small business lending application register pursuant to §1002.109, maintaining the register pursuant to paragraph (a) of this section, and maintaining a separate record of information pursuant to paragraph (b) of this section, a financial institution shall not include any name, specific address, telephone number, email address, or any other personally identifiable information concerning any individual who is, or is connected with, an applicant, other than as required pursuant to §1002.107 or paragraph (b) of this section.

§1002.112 Enforcement.

(a) *Administrative enforcement and civil liability.* A violation of section 704B of the Act or this subpart is subject to administrative sanctions and civil liability as provided in sections 704 (15 U.S.C. 1691c) and 706 (15 U.S.C. 1691e) of the Act, where applicable.

(b) *Bona fide errors.* A bona fide error in compiling, maintaining, or reporting data with respect to a covered application is one that was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. A bona fide error is not a violation of the Act or this subpart. A financial institution is presumed to maintain procedures reasonably adapted to avoid such errors with respect to a given data field if the number of errors found in a random sample of the financial institution's submission for the data field does not equal or exceed a threshold specified by the Bureau for this purpose in appendix F to this part. However, an error is not a bona fide error if either there is a reasonable basis to believe the error was intentional or there is evidence that the financial institution does not or has not maintained procedures reasonably adapted to avoid such errors.

(c) *Safe harbors*—(1) *Incorrect entry for application date.* A financial institution does not violate the Act or this subpart if it reports on its small business lending application register an application date that is within three business days of the actual application date pursuant to §1002.107(a)(2).

(2) *Incorrect entry for census tract.* An incorrect entry for census tract is not a violation of the Act or this subpart if the financial institution obtained the census tract by correctly using a geocoding tool provided by the FFIEC or the Bureau.

(3) *Incorrect entry for NAICS code.* An incorrect entry for a 3-digit NAICS code is not a violation of the Act or this subpart, provided that the financial institution obtained the 3-digit NAICS code by:

(i) Relying on an applicant's representations or on an appropriate third-party source, in accordance with §1002.107(b), regarding the NAICS code; or

(ii) Identifying the NAICS code itself, provided that the financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.

(4) *Incorrect determination of small business status, covered credit transaction, or covered application.* A financial institution that initially collects data regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners pursuant to §1002.107(a)(18) and (19) but later concludes that it should not have collected such data does not violate the Act or this regulation if the financial institution, at the time it collected this data, had a reasonable basis for believing that the application was a covered application for a covered credit transaction from a small business pursuant to §§1002.103, 1002.104, and 1002.106, respectively. A financial institution seeking to avail itself of this safe harbor shall comply with the requirements of this subpart as otherwise required pursuant to §§1002.107, 1002.108, and 1002.111 with respect to the collected data.

§1002.113 Severability.

If any provision of this subpart, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

§ 1002.114 Effective date, compliance date, and special transitional rules.

(a) *Effective date.* The effective date for this subpart is August 29, 2023.

(b) *Compliance date.* The dates by which covered financial institutions are initially required to comply with the requirements of this subpart are as follows:

(1) A covered financial institution that originated at least 2,500 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning July 1, 2026.

(2) A covered financial institution that is not subject to paragraph (b)(1) of this section and that originated at least 500 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning January 1, 2027.

(3) A covered financial institution that is not subject to paragraphs (b)(1) or (2) of this section and that originated at least 100 covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply with the requirements of this subpart beginning October 1, 2027.

(4) A financial institution that did not originate at least 100 covered credit transactions for small businesses in each of calendar years 2022 and 2023 but subsequently originates at least 100 such transactions in two consecutive calendar years shall comply with the requirements of this subpart in accordance with §1002.105(b), but in any case no earlier than October 1, 2027.

(c) *Special transitional rules*—(1) *Collection of certain information prior to a financial institution's compliance date.* A financial institution as described in paragraphs (b)(1), (2), or (3) of this section is permitted, but not required, to collect information regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+owned business under §1002.107(a)(18), and the ethnicity, race, and sex of the applicant's principal owners under §1002.107(a)(19) beginning 12 months prior to its applicable compliance date as set forth in paragraphs (b)(1), (2), or (3) of this section. A financial institution collecting such information pursuant to this paragraph (c)(1) must do so in accordance with the requirements set out in §§1002.107(a)(18) and (19), 1002.108, and 1002.111(b) and (c).

(2) *Determining which compliance date applies to a financial institution that does not collect information sufficient to determine small business status.* A financial institution that is unable to determine the number of covered credit transactions it originated for small businesses in each of calendar years 2022 and 2023 for purposes of determining its compliance date pursuant to paragraph (b) of this section, because for some or all of this period it does not have readily accessible the information needed to determine whether its covered credit transactions were originated for small businesses as defined in §1002.106(b), is permitted to use any reasonable method to estimate its originations to small businesses for either or both of the calendar years 2022 and 2023.

(3) *Alternative time period for determining compliance dates.* A financial institution is permitted to use its originations of covered credit transactions in each of calendar years 2023 and 2024, or 2024 and 2025, in lieu of calendar years 2022 and 2023 as specified in paragraphs (b) and (c)(2) of this section.

[88 FR 35528, May 31, 2023, as amended at 89 FR 55029, July 3, 2024; 89 FR 76713, Sept. 19, 2024; 90 FR 25880, June 18, 2025; 90 FR 47520, Oct. 2, 2025]

APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to §1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates:* Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau: Federal Trade Commission, Consumer Response

Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

2. To the extent not included in item 1 above:

a. *National Banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks:* Office of the Comptroller of the Currency, Customer Assistance Group, P.O. Box 53570, Houston, TX 77052.

b. *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:* Federal Reserve Consumer Help Center, P.O. Box 1200, Minneapolis, MN 55480.

c. *Nonmember Insured Banks, Insured State Branches of Foreign Banks, and Insured State Savings Associations:* Division of Depositor and Consumer Protection, National Center for Consumer and Depositor Assistance, Federal Deposit Insurance Corporation, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Financial Protection (OCFP), 1775 Duke Street, Alexandria, VA 22314.

3. *Air Carriers:* Assistant General Counsel for Office of Aviation Consumer Protection, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

4. *Creditors Subject to Surface Transportation Board:* Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, 395 E Street SW, Washington, DC 20423.

5. *Creditors Subject to Packers and Stockyards Act:* Nearest Packers and Stockyards Division Regional Office.

6. *Small Business Investment Companies:* Associate Administrator, Office of Capital Access, United States Small Business Association, 409 Third Street SW, Suite 8200, Washington, DC 20416.

7. *Brokers and Dealers:* Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations:* Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

9. *Retailers, Finance Companies, and All Other Creditors Not Listed Above:* Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

[88 FR 58065, Aug. 25, 2023]

APPENDIX B TO PART 1002—MODEL APPLICATION FORMS

1. This appendix contains four model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; and the fourth in transactions involving community property or occurring in community property States. This appendix also contains a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of §1002.13(a)(1)(i)(A) and (ii). Appendix B to 12 CFR part 1003 provides a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of §1002.13(a)(1)(i)(B) and (ii). All forms contained in this appendix are models; their use by creditors is optional.

2. The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by §1002.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

3. If a creditor uses an appropriate appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (b), (c) and (d) of §1002.5 of this part.

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

We intend to apply for joint credit. _____ Applicant _____ Co-Applicant

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

We intend to apply for joint credit. _____ (Applicant) _____ (Co-Applicant)

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

We intend to apply for joint credit. _____ (Applicant) _____ (Co-Applicant)

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

If you intend to apply for joint credit, please initial here. _____ _____
Applicant Co-Applicant

Amount Requested $ _____ Payment Date Desired _____ Proceeds of Credit To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Previous Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /

Relationship to Applicant (if any): _____

Present Street Address: _____ Years there: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ Years there: _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ Years there: _____

Previous Employer's Address: _____

Present net salary or commission: $ _____ per _____ No. Dependents: _____ Ages: _____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

[Community property]

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

DATA COLLECTION MODEL FORM
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. You may select one or more designation for "Race." The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:	CO-APPLICANT:
☐ I do not wish to furnish this information	☐ I do not wish to furnish this information
Ethnicity	Ethnicity
☐ Hispanic or Latino ☐ Not Hispanic or Latino	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race	Race
☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex	Sex
☐ Female ☐ Male	☐ Female ☐ Male

[76 FR 79445, Dec. 21, 2011, as amended at 82 FR 45694, 45695, Oct. 2, 2017]

APPENDIX C TO PART 1002—SAMPLE NOTIFICATION FORMS

1. This Appendix contains ten sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§1002.9(a)(1) and (2)(i) of this part. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§1002.9(a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under §1002.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under §1002.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of appraisals under §1002.14. Form C–10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C–1 through C–5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

3. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample

forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if ''inadequate down payment'' or ''no deposit relationship with us'' are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

4. If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose ''insufficient bank references,'' not ''insufficient credit references.'' Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check ''other'' and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

5. A creditor may design its own notification forms or use all or a portion of the forms contained in this Appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of §1002.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§1002.9(a)(2)(ii) and 1002.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§1002.9(a)(2)(i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of §1002.14 of this part. Proper use of Form C–10 will satisfy the requirements of §1002.5(b)(1).

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____
Description of Action Taken: _____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete
____Insufficient number of credit references provided
____Unacceptable type of credit references provided
____Unable to verify credit references
____Temporary or irregular employment
____Unable to verify employment
____Length of employment
____Income insufficient for amount of credit requested
____Excessive obligations in relation to income
____Unable to verify income
____Length of residence
____Temporary residence
____Unable to verify residence
____No credit file
____Limited credit experience
____Poor credit performance with us
____Delinquent past or present credit obligations with others
____Collection action or judgment
____Garnishment or attachment
____Foreclosure or repossession
____Bankruptcy
____Number of recent inquiries on credit bureau report
____Value or type of collateral not sufficient
____Other, specify: _____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____
Address: _____
[Toll-free] Telephone number: _____

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[[Toll-free] Telephone number: _____]

___Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–2—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

___is below our minimum requirement.

___is insufficient to sustain payments on the amount of credit requested.

___could not be verified.

Your Employment:

___is not of sufficient length to qualify.

___could not be verified.

Your Credit History:

___of making payments on time was not satisfactory.

___could not be verified.

Your Application:

___lacks a sufficient number of credit references.

___lacks acceptable types of credit references.

___reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[[Toll-free] Telephone number: _____]

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in

good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–3—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (CREDIT SCORING)

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[Reasons for Denial of Credit]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[Your Right to Get Your Consumer Report]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [Name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[Information about Your Credit Score]

[Information about Your Credit Score]

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

Telephone: _____

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–4—SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):_____

We can, however, offer you credit on the following terms: _____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to

dispute the matter with the reporting agency.

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[Toll-free] Telephone number:_____]

You should know that the Federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate Federal enforcement agency listed in appendix A].

Sincerely,

FORM C–5—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
[Toll-free] Telephone number

[We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.
Your credit score: _____
Date: _____

Scores range from a low of _____ to a high of _____.

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

[Toll-free] Telephone number: _____]

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

FORM C–6—SAMPLE NOTICE OF INCOMPLETE APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Creditor's name
Address
Telephone number
Date

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: _____

We need to receive this information by _____ (date). If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

FORM C–7—SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (BUSINESS CREDIT)

Creditor's name
Creditor's address
Date

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as: Value or type of collateral not sufficient; Lack of established earnings record; Slow or past due in trade or loan payments)

Sincerely,

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–8—SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL GIVEN AT TIME OF APPLICATION (BUSINESS CREDIT)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

FORM C–9—SAMPLE DISCLOSURE OF RIGHT TO RECEIVE A COPY OF APPRAISALS

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.

You can pay for an additional appraisal for your own use at your own cost.

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

FORM C–10—SAMPLE DISCLOSURE ABOUT VOLUNTARY DATA NOTATION

We are requesting the following information to monitor our compliance with the Federal Equal Credit Opportunity Act, which prohibits unlawful discrimination. You are not required to provide this information. We will not take this information (or your decision not to provide this information) into account in connection with your application or credit transaction. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it. [If you choose not to provide the information, we will note it by visual observation or surname].

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013]

APPENDIX D TO PART 1002—ISSUANCE OF OFFICIAL INTERPRETATIONS

1. *Official Interpretations.* Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

2. *Requests for Issuance of Official Interpretations.* A request for an official interpretation

should be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Monitoring, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20552. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

3. *Scope of Interpretations.* No interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

[76 FR 79445, Dec. 21, 2011, as amended at 88 FR 16538, Mar. 20, 2023]

APPENDIX E TO PART 1002—SAMPLE FORM FOR COLLECTING CERTAIN APPLICANT-PROVIDED DATA UNDER SUBPART B

Sample data collection form

Federal law requires that we request the following information to help ensure that all small businesses applying for loans and other kinds of credit are treated fairly and that communities' small business credit needs are met.

One or more employees or officers involved in making a determination concerning your application may have access to the information provided on this form. However, **FEDERAL LAW PROHIBITS DISCRIMINATION** on the basis of your answers on this form. Additionally, we cannot discriminate on the basis of whether you provide this information.

While you are not required to provide this information, we encourage you to do so. Importantly, our staff are not permitted to discourage you in any way from responding to these questions. **Filling out this form will help to ensure that ALL small business owners are treated fairly.**

Business ownership status

Please indicate the business ownership status of your small business. For the purposes of this form, your business is a minority-owned, women-owned, or LGBTQI+-owned business if one or more minorities,* women, or LGBTQI+ individuals (i) directly or indirectly own or control more than 50 percent of the business AND (ii) receive more than 50 percent of the net profits/losses of the business.

What is your business ownership status?

(Check one or more of the options below)

- ☐ **Minority-owned business**
- ☐ **Women-owned business**
- ☐ **LGBTQI+-owned business**

– or –

- ☐ **None of these apply**

– or –

- ☐ **I do not wish to provide this information**

*Minority means Hispanic or Latino, American Indian or Alaska Native, Asian, Black or African American, or Native Hawaiian or Other Pacific Islander. A multi-racial or multi-ethnic individual is a minority for this purpose.

Number of principal owners

For purposes of this form, a principal owner is any individual who owns 25 percent or more of the equity interest of a business. A business might not have any principal owners if, for example, it is not directly owned by any individuals (i.e., if it is owned by another entity or entities) or if no individual directly owns at least 25 percent of the business.

How many principal owners does your business have? *(Check one)*

- ☐ **0**
- ☐ **1**
- ☐ **2**
- ☐ **3**
- ☐ **4**

Demographic information about principal owners

As a reminder, applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of any person's ethnicity, race, or sex/gender. Additionally, we cannot discriminate on the basis of whether you provide this information.

Please fill out one sheet for each principal owner.

1 Are you Hispanic or Latino?
i.e., What's your ethnicity? (Check one or more)

☐ **Hispanic or Latino**
- ☐ Cuban
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Other Hispanic or Latino *(Please specify your origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on):*

☐ **Not Hispanic or Latino**

– or –

☐ **I do not wish to provide my ethnicity**

2 What is your sex/gender?
(Please specify):

– or –

☐ **I do not wish to provide my sex/gender**

3 What is your race?
(Check one or more)

☐ **American Indian or Alaska Native** *(Please specify the name of your enrolled or principal tribe):*

☐ **Asian**
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian *(Please specify your race, for example, Cambodian, Hmong, Laotian, Pakistani, Thai, and so on):*

☐ **Black or African American**
- ☐ African American
- ☐ Ethiopian
- ☐ Haitian
- ☐ Jamaican
- ☐ Nigerian
- ☐ Somali
- ☐ Other Black or African American *(Please specify your race, for example, Barbadian, Ghanaian, South African, and so on):*

☐ **Native Hawaiian or Other Pacific Islander**
- ☐ Guamanian or Chamorro
- ☐ Native Hawaiian
- ☐ Samoan
- ☐ Other Pacific Islander *(Please specify your race, for example, Fijian, Tongan, and so on):*

☐ **White**

– or –

☐ **I do not wish to provide my race**

[88 FR 35534, May 31, 2023]

APPENDIX F TO PART 1002—TOLERANCES FOR BONA FIDE ERRORS IN DATA REPORTED UNDER SUBPART B

As set out in §1002.112(b) and in comment 112(b)–1, a financial institution is presumed

to maintain procedures reasonably adapted to avoid errors with respect to a given data field if the number of errors found in a random sample of a financial institution's data submission for a given data field do not equal or exceed the threshold in column C of the following table (Table 1, Tolerance Thresholds for Bona Fide Errors):

TABLE 1 TO APPENDIX F—TOLERANCE THRESHOLDS FOR BONA FIDE ERRORS

Small business lending application register count (A)	Random sample size[986] (B)	Threshold (#) (C)	Threshold (%) (D)
100–130	47	3	6.4
131–190	56	3	5.4
191–500	59	3	5.1
501–100,000	79	4	5.1
100,001+	159	4	2.5

The size of the random sample, under column B, shall depend on the size of the financial institution's small business lending application register, as shown in column A of the Threshold Table.

The thresholds in column C of the Threshold Table reflect the number of unintentional errors a financial institution may make within a particular data field (*e.g.*, the credit product data field within the credit type data point or the ethnicity data field for a particular principal owner within the ethnicity, race, and sex of principal owners data point) in a small business lending application register that would be deemed bona fide errors for purposes of §1002.112(b).

For instance, a financial institution that submitted a small business lending application register containing 105 applications would be subject to a threshold of three errors per data field. If the financial institution had made two errors in reporting loan amount and two errors reporting gross annual income, all of these errors would be covered by the bona fide error provision of §1002.112(b) and would not constitute a violation of the Act or this part. If the same financial institution had made four errors in reporting loan amount and two errors reporting gross annual income, the bona fide error provision of §1002.112(b) would not apply to the four loan amount errors but would still apply to the two gross annual income errors.

Even when the number of errors in a particular data field do not equal or exceed the threshold in column C, if either there is a reasonable basis to believe that errors in that field were intentional or there is evidence that the financial institution did not maintain procedures reasonably adapted to avoid such errors, then the errors are not bona fide errors under §1002.112(b).

For purposes of determining bona fide errors under §1002.112(b), the term ''data field'' generally refers to individual fields. Some data fields may allow for more than one response. For example, with respect to information on the ethnicity or race of an applicant's principal owners, a data field may identify more than one race or more than one ethnicity for a given person. If one or more of the ethnicities or races identified in a data field are erroneous, they count as one (and only one) error for that data field.

[88 FR 35534, May 31, 2023]

SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

Following is an official interpretation of Regulation B (12 CFR part 1002) issued by the Bureau of Consumer Financial Protection. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

INTRODUCTION

1.*Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Bureau. This commentary is the means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under appendix D to the regulation, any person may request an official interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this

[986] For a financial institution with fewer than 30 entries in its small business lending application register, the full sample size is the financial institution's total number of entries. The threshold number for such financial institutions remains three. Accordingly, the threshold percentage will be higher for financial institutions with fewer than 30 entries in their registers

commentary following publication for comment in the FEDERAL REGISTER. Except in unusual circumstances, official interpretations will be issued only by means of this commentary.

3. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to §1002.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii–1.

Section 1002.1—Authority, Scope, and Purpose

1(a) Authority and scope.

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor, except for an entity excluded from coverage of this part (but not the Act) by section 1029 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5519). If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) (12 CFR part 1026). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Bureau.* The term *Bureau,* as used in this part, means the Bureau of Consumer Financial Protection.

Section 1002.2—Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i).

1. *Application for credit.* If the applicant applied in accordance with the creditor's procedures, a refusal to refinance or extend the term of a business or other loan is adverse action.

Paragraph 2(c)(1)(ii).

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under §1002.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under §1002.9.

Paragraph 2(c)(2)(ii).

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with §1002.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

Paragraph 2(c)(2)(iii).

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

i. A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

ii. The amount of a transaction exceeds a cash advance or credit limit.

iii. The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.

iv. The authorization facilities are not functioning.

v. Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v).

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the

applicant is entitled to notification under §1002.9.

2(e) Applicant.

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) Application.

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.

3. *When an inquiry or prequalification request becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under §1002.9. Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks. (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.

ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.

iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Examples of an application.* An application for credit includes the following situations:

i. A person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.

ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

6. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)*2(g) Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business

credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) Credit.

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). Under Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) Creditor.

1. *Assignees.* The term creditor includes all persons participating in the credit decision. This may include an assignee or a 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.

2. *Referrals to creditors.* For certain purposes, the term creditor includes persons such as real estate brokers, automobile dealers, home builders, and home-improvement contractors who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made. These persons must comply with §1002.4(a), the general rule prohibiting discrimination, and with §1002.4(b), the general rule against discouraging applications.

2(p) Empirically derived and other credit scoring systems.

1. *Purpose of definition.* The definition under §§1002.2(p)(1)(i) through (iv) sets the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See §1002.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. The credit scoring system must be revalidated frequently enough to ensure that it continues to meet recognized professional statistical standards for statistical soundness. To ensure that predictive ability is being maintained, the creditor must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) Open-end credit.

1. *Open-end real estate mortgages.* The term ''open-end credit'' does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) Prohibited basis.

1. *Persons associated with applicant.* As used in this part, prohibited basis refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in §1002.4(a), a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into

account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ''public assistance'' for purposes of the regulation. The term includes (but is not limited to) Temporary Aid to Needy Families, food stamps, rent and mortgage supplement or assistance programs, social security and supplemental security income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 1002.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* Under this section, procedural requirements of the regulation do not apply to certain types of credit. All classes of transactions remain subject to §1002.4(a), the general rule barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) Public-utilities credit.

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation's bar against discrimination on a prohibited basis.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in §1002.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) Incidental credit.

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer, or merchant) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in §1002.3(c).

3(d) Government credit.

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government is covered by this exception, but credit extended to consumers by a Federal or state housing agency does not qualify for special treatment under this category.

Section 1002.4—General Rules

Paragraph 4(a).

1. *Scope of rule.* The general rule stated in §1002.4(a) covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other provisions of the regulation identify specific practices that the Bureau has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

2. *Examples.*

i. Disparate treatment would exist, for example, in the following situations:

A. A creditor provides information only on ''subprime'' and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. A creditor provides more comprehensive information to men than to similarly situated women.

C. A creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

D. A creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

ii. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

Paragraph 4(b).

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the Act—to promote the availability of credit on a nondiscriminatory basis—§1002.4(b) covers

acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c).

1. *Requirement for written applications.* Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by §1002.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to §1002.13(b), *Applications through electronic media and Applications through video.*)

Paragraph 4(d).

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Form of disclosures.* Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

Section 1002.5—Rules Concerning Requests for Information

5(a) General rules.

Paragraph 5(a)(1).

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section1002.6 governs how information may be used.

5(a)(2) Required Collection of Information

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C, 12 CFR part 1003, generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for certain dwelling-secured loans, including some types of loans not covered by §1002.13.

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to subpart B of this part, the Home Mortgage Disclosure Act, or another Federal or State statute or regulation requiring data collection.

4. *Information required by subpart B.* Subpart B of this part generally requires creditors that are covered financial institutions as defined in §1002.105(b) to collect and report information about the ethnicity, race, and sex of the principal owners of applicants for certain small business credit, as well as whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, as defined in §1002.102(m), (s), and (*l*), respectively.

5(a)(4) Other Permissible Collection of Information

1. *Other permissible collection of information.* Information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C, 12 CFR part 1003, or subpart B of this part, may nevertheless be collected under the circumstances set forth in §1002.5(a)(4) without violating §1002.5(b). The information collected pursuant to 12

CFR part 1003 must be retained pursuant to the requirements of §1002.12. The information collected pursuant to subpart B of this part must be retained pursuant to the requirements set forth in §1002.111.

5(d) Other limitations on information requests.

Paragraph 5(d)(1).

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2).

1. *Disclosure about income.* The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

Section 1002.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by §1002.5 from obtaining or from using for any purpose other than to conduct a self-test under §1002.15.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*,) and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p.5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1. *Prohibited basis*—special purpose credit. In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See §1002.8.)

Paragraph 6(b)(2).

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of §1002.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in §1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in

their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in §1002.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under §1002.6(b)(2)(iv). In addition, under §1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under §1002.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5).

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the

availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.*

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.

Paragraph 6(b)(6).

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7).

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

Paragraph 6(b)(8).

1. *Prohibited basis—marital status.* A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

Section 1002.7—Rules Concerning Extensions of Credit

7(a) Individual accounts.

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) Designation of name.

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (See §1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) Action concerning existing open-end accounts.

Paragraph 7(c)(1).

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence

that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

Paragraph 7(c)(2).

1. *Procedure pending reapplication.* A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) Signature of spouse or other person.

1. *Qualified applicant.* The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party—but cannot require that it be the spouse. (See commentary to §§1002.7(d)(5) and (6).)

Paragraph 7(d)(1).

1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But see comment 7(d)(6)–1 concerning guarantors of closely held corporations.)

2. *Joint applicant.* The term ''joint applicant'' refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. *Evidence of joint application.* A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

Paragraph 7(d)(2).

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the non-applicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (§1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (§1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access

to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3).

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4).

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5).

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a noncommunity property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See §1002.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

Paragraph 7(d)(6).

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in §1002.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature

is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with §1002.7(d)(2).

7(e) Insurance.

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.

Section 1002.8—Special Purpose Credit Programs

8(a) Standards for programs.

1. *Determining qualified programs.* The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by Federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under §1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and state law.

3. *Expressly authorized.* Credit programs authorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under §1002.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) Rules in other sections.

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by §1002.9.

8(c) Special rule concerning requests and use of information.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) Special rule in the case of financial need.

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§1002.5 and 1002.6, and to require signatures that would otherwise be prohibited by §1002.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

i. Subsidized housing programs for low-to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by Federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§1002.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 1002.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by §1002.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under §1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. See §1002.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under §1002.9 may appear on either or both sides of a form or letter.

5. *Prequalification requests.* Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of §1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(1).

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)-6.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under §1002.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or ''incomplete application'' cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with §1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of appendix C to the regulation.

7. *Denial of a telephone application.* When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3).

1. *Coverage.* In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in §1002.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in §1002.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to

an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring*. Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in §1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance*. In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with §1002.9(a)(3)(i).

5. *Timing of notification*. A creditor subject to §1002.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of §1002.9(a)(1) is deemed reasonable in all instances.

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1. *Substantially similar notice*. The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in §1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2).

1. *Number of specific reasons*. A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons*. The specific reasons disclosed under §§1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons*. A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system*. If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons*. The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system*. If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system*. If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. *Automatic denial*. Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of

bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)–1.

9(c) Incomplete applications.

Paragraph 9(c)(1).

1. *Exception for preapprovals.* The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under §1002.2(f).

Paragraph 9(c)(2).

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3).

1. *Oral inquiries for additional information.* If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§1002.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with §1002.9(a).

9(g) Applications submitted through a third party.

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.

2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 1002.10—Furnishing of Credit Information

1. *Scope.* The requirements of §1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of §1002.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by §1002.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) Designation of accounts.

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.

Section 1002.11—Relation to State Law

11(a) Inconsistent state laws.

1. *Preemption determination—New York.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provisions in the state law of New York are preempted by the Federal law, effective November 11, 1988:

i. Article 15, section 296a(1)(b). Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c). Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provision in the state law of Ohio is preempted by the Federal law, effective July 23, 1990:

i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 1002.12—Record Retention

12(a) Retention of prohibited information.

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in §1002.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by §1002.6.

12(b) Preservation of records.

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with §1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to §1002.13 or the creditor is collecting information pursuant to §1002.5(a)(4), however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3).

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) Self-tests.

1. The rule requires all written or recorded information about a self-test to be retained

for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

12(b)(7) Preapplication Marketing Information

1. *Prescreened credit solicitations.* The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with §1002.12(b)(7) if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. *Correspondence.* A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

Section 1002.13—Information for Monitoring Purposes

13(a) Information to be requested.

1. *Natural person.* Section 1002.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of §1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to §1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to §1002.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of §1002.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C.* For applications subject to §1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to 12 CFR part 1003 is acting in compliance with §1002.13 concerning the collection of an applicant's ethnicity, race, and sex information. *See also* comment 5(a)(2)–2.

8. *Application-by-application basis.* For applications subject to §1002.13(a)(1), a creditor may choose on an application-by-application basis whether to collect aggregate information pursuant to §1002.13(a)(1)(i)(A) or disaggregated information pursuant to §1002.13(a)(1)(i)(B) about the ethnicity and race of the applicant.

13(b) Obtaining of Information

1. *Forms for collecting data.* A creditor may collect the information specified in §1002.13(a) either on an application form or on a separate form referring to the application. Appendix B to this part provides for two alternative data collection model forms for use in complying with the requirements of §1002.13(a)(1)(i) and (ii) to collect information concerning an applicant's ethnicity, race, and sex. When a creditor collects ethnicity and race information pursuant to §1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. When a creditor collects ethnicity and race information pursuant to

§1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity designation and more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by §1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

4. *Video and other electronic-application processes.* i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or subpart A of this Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent. Similarly, creditors that are covered financial institutions under subpart B of this Regulation may also be required to collect, report, and maintain certain data, as set forth in subpart B of this Regulation.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by §1002.13, the creditor may process and retain the application without violating the regulation.

13(c) Disclosure to applicants.

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B provides data collection model forms for use in complying with §1002.13 and that comply with §1002.13(c). A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

13(d) Substitute monitoring program.

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

Section 1002.14—Rules on Providing Appraisals and Valuations

14(a) Providing appraisals and other valuations.

1. *Multiple applicants.* If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under §1002.14(a)(1), but it must be the primary applicant where one is readily apparent.

14(a)(1) In general.

1. *Coverage.* Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in §1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).

2. *Renewals.* Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

3. *Written.* For purposes of §1002.14, an ''appraisal or other written valuation'' includes, without limitation, an appraisal or other valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. See §1002.14(a)(5) regarding the provision of copies of appraisals and other written valuations to applicants via electronic means.

4. *Timing.* Section 1002.14(a)(1) requires that the creditor ''provide'' copies of appraisals and other written valuations to the applicant ''promptly upon completion,'' or no later than three business days before consummation (for closed-end credit) or account

opening (for open-end credit), whichever is earlier.

i. For purposes of this timing requirement, ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in §1002.14(a)(5).

ii. The application and meaning of the ''promptly upon completion'' standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.

iii. ''Completion'' occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. *See also* comment 14(a)(1)–7.

iv. In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under §1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided ''promptly upon completion'' as provided for in §1002.14(a)(1), unless the applicant has waived that deadline as provided under §1002.14(a)(1), in which case as provided for in §1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5. *Promptly upon completion–examples.* Examples in which the ''promptly upon completion'' standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the ''promptly upon completion'' standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

i. *Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit).* On day 15 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

ii. *Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit).* An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. A week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation (or account opening). The creditor has provided the appraisal copy promptly upon completion.

iii. *Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit).* The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

iv. *Delay in sending an appraisal.* On day 12 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

v. *Delay in sending an AVM report while waiting for completion of a second valuation.* The creditor receives an AVM report on day 5 after application and completes its review of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and the revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement if

the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant's waiver is effective under §1002.14(a)(1) in either of the following two situations:

i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

ii. If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under §1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7. *Multiple versions of appraisals or valuations.* For purposes of §1002.14(a)(1), the reference to ''all'' appraisals and other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with §1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, then that version must be provided to the applicant to comply with §1002.14(a)(1). *See also* comment 14(a)(1)–4 above.

14(a)(2) Disclosure.

1. *Appraisal independence requirements not affected.* Nothing in the text of the disclosure required by §1002.14(a)(2) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or the use of applicant-ordered appraisals by creditors.

14(a)(3) Reimbursement.

1. *Photocopy, postage, or other costs.* Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).

2. *Reasonable fee for reimbursement.* Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under §1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).

14(b) Definitions.

14(b)(1) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; §1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit vs. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

14(b)(2) Dwelling.

1. *''Motor vehicles'' not covered.* The requirements of §1002.14 do not apply to ''motor vehicles'' as defined by 12 U.S.C. 5519(f)(1).

14(b)(3) Valuation.

1. *Valuations—examples.* Examples of valuations include but are not limited to:

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value or opinion of value.

ii. A document prepared by the creditor's staff that assigns value to the property.

iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

iv. A report generated by use of an automated valuation model to estimate the property's value.

v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

2. *Attachments and exhibits.* The term ''valuation'' includes any attachments and exhibits that are an integrated part of the valuation.

3. *Other documentation.* Not all documents that discuss or restate a valuation of an applicant's property constitute a ''valuation'' for purposes of §1002.14(b)(3). Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not ''valuations'' include but are not limited to:

i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

ii. Governmental agency statements of appraised value that are publically available.

iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

iv. Manufacturers' invoices for manufactured homes.

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

Section 1002.15—Incentives for Self-Testing and Self-Correction

15(a) General rules.

15(a)(1) Voluntary self-testing and correction.

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

15(a)(2) Corrective action required.

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

15(a)(3) Other privileges.

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test defined.

15(b)(1) Definition.

Paragraph 15(b)(1)(i).

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii).

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as

hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of information not privileged.

Paragraph 15(b)(3)(i).

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii).

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate corrective action.

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General requirement.

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the scope of appropriate corrective action.

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of relief.

Paragraph 15(c)(3)(ii).

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii).

1. A creditor is not required to provide remedial relief to an applicant that would not

be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) Scope of privilege.

1. The privilege applies with respect to any examination, investigation or proceeding by Federal, State, or local government agencies relating to compliance with the Act or this part. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a State's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

15(d)(2) Loss of privilege.

Paragraph 15(d)(2)(i).

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii).

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii).

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of privileged information.

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

Section 1002.16—Enforcement, Penalties, and Liabilities

16(c) Failure of compliance.

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§1002.12 and 1002.13, this section requires that they be corrected prospectively.

Section 1002.102—Definitions

102(b) Applicant

1. *General.* In no way are the limitations to the term applicant in §1002.102(b) of subpart B intended to repeal, abrogate, annul, impair, change, or interfere with the scope of the term applicant in §1002.2(e) as applicable to subpart A.

102(l) LGBTQI+-Owned Business

1. *General.* In order to be an LGBTQI+-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of LGBTQI+-owned business. First, one or more LGBTQI+ individuals must own or control more than 50 percent of the business. However, it is not necessary that one or more LGBTQI+ individuals both own and control more than 50 percent of the business. For example, a business that is owned entirely by one or more LGBTQI+ individuals but is not controlled by any one or more such individuals satisfies the first prong of the definition. Similarly, a business that is controlled by an LGBTQI+ individual satisfies this first prong of the definition, even if none of the individuals with ownership in the business are LGBTQI+ individuals. If a business does not satisfy this first prong of the definition, it is not an LGBTQI+-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more LGBTQI+ individuals. If a business does not satisfy this second prong of the definition, it is not an LGBTQI+-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of LGBTQI+-owned business is used only when an applicant determines if it is an LGBTQI+-

owned business for purposes of §1002.107(a)(18). A financial institution shall provide an applicant with the definition of LGBTQI+-owned business when asking the applicant to provide its LGBTQI+-owned business status pursuant to §1002.107(a)(18). A financial institution satisfies this requirement if it provides the definition as set forth in the sample data collection form in appendix E. The financial institution must provide additional clarification by referencing the definition of LGBTQI+ individual as set forth in §1002.102(k) if asked by the applicant. The financial institution is neither permitted nor required to make its own determination regarding the applicant's LGBTQI+-owned business status.

3. *Further clarifications of terms used in the definition of LGBTQI+-owned business.* In order to assist an applicant when determining whether it is an LGBTQI+-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(*l*)–4 through –6. A financial institution may assist an applicant when the applicant is determining its LGBTQI+-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is an LGBTQI+-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of §§1002.102(*l*) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of applicant company A. Similarly, if an individual directly owns 20 percent of applicant company A and is an equal partner in partnership B that owns the remaining 80 percent of applicant company A, the individual owns 60 percent of applicant company A (*i.e.*, 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (*e.g.*, a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more LGBTQI+ individuals if those individuals collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally entitled or required to recognize the net profits or losses for tax purposes.

102(m) Minority-Owned Business

1. *General.* In order to be a minority-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of minority-owned business. First, one or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals must own or control more than 50 percent of the business. However, it is not necessary that one or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals both own and control more than 50 percent of the business. For example, a business that is owned entirely, but is not controlled by, individuals belonging to one of these groups satisfies the first prong of the definition. Similarly, a business that is controlled by an American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individual satisfies this first prong of the definition, even if none of the individuals with ownership in the business are American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino. If a business does not satisfy this first prong of the definition, it is not a minority-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more individuals belonging to these groups. If a business does not satisfy this second prong of the definition, it is not a minority-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of minority-owned business is used only when

an applicant determines if it is a minority-owned business for purposes of §1002.107(a)(18). A financial institution shall provide an applicant with the definition of minority-owned business when asking the applicant to provide its minority-owned business status pursuant to §1002.107(a)(18), but the financial institution is neither permitted nor required to make its own determination regarding the applicant's minority-owned business status.

3. *Further clarifications of terms used in the definition of minority-owned business.* In order to assist an applicant when determining whether it is a minority-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(m)–4 through –6. A financial institution may assist an applicant when the applicant is determining its minority-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is a minority-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of §§1002.102(m) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of applicant company A. Similarly, if an individual directly owns 20 percent of applicant company A and is an equal partner in partnership B that owns the remaining 80 percent of applicant company A, the individual owns 60 percent of applicant company A (*i.e.,* 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (*e.g.,* a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals if those individuals collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally entitled or required to recognize the net profits or losses for tax purposes.

7. *Multi-racial and multi-ethnic individuals.* For purposes of subpart B of this part, an individual who is multi-racial or multi-ethnic constitutes an individual for whom the definition of minority-owned business may apply, depending on whether the individual meets the other requirements of the definition. For example, an individual who is both Asian and White is an individual for whom the definition of minority-owned business shall apply if the individual meets the other requirements of the definition related to ownership or control and accrual of profits or losses.

8. *Relationship to disaggregated subcategories used to determine ethnicity and race of principal owners.* The ethnicity and race categories used in this section are aggregate ethnicity (Hispanic or Latino) and race (American Indian or Alaska Native, Asian, Black or African American, and Native Hawaiian or Other Pacific Islander) categories. Those ethnicity and race categories are the same aggregate categories used (along with Not Hispanic or Latino for ethnicity, and White for race) to collect an applicant's principal owners' ethnicity and race pursuant to §1002.107(a)(19).

102(o) Principal Owner

1. *Individual.* Only an individual can be a principal owner of a business for purposes of subpart B of this part. Entities, such as trusts, partnerships, limited liability companies, and corporations, are not principal owners for this purpose. Additionally, an individual must directly own an equity share of 25 percent or more in the business in order to be a principal owner. Unlike the determination of ownership for purposes of collecting and reporting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, indirect ownership is not considered when determining if someone is a principal owner for

purposes of collecting and reporting principal owners' ethnicity, race, and sex or the number of principal owners. Thus, when determining who is a principal owner, ownership is not traced through multiple corporate structures to determine if an individual owns 25 percent or more of the equity interests. For example, if individual A directly owns 20 percent of a business, individual B directly owns 20 percent, and partnership C owns 60 percent, the business does not have any owners who satisfy the definition of principal owner set forth in §1002.102(o), even if individual A and individual B are the only partners in the partnership C. Similarly, if individual A directly owns 30 percent of a business, individual B directly owns 20 percent, and trust D owns 50 percent, individual A is the only principal owner as defined in §1002.102(o), even if individual B is the sole trustee of trust D.

2. *Trustee.* Although a trust is not considered a principal owner of a business for the purposes of subpart B, if the applicant for a covered credit transaction is a trust, a trustee is considered the owner of the trust. Thus, if a trust is an applicant for a covered credit transaction and the trust has two co-trustees, each co-trustee is considered to own 50 percent of the business and would each be a principal owner as defined in §1002.102(o). In contrast, if the trust has five co-trustees, each co-trustee is considered to own 20 percent of the business and would not meet the definition of principal owner under §1002.102(o).

3. *Purpose of definition.* A financial institution shall provide an applicant with the definition of principal owner when asking the applicant to provide the number of its principal owners pursuant to §1002.107(a)(20) and the ethnicity, race, and sex of its principal owners pursuant to §1002.107(a)(19). See comments 107(a)(19)–2 and 107(a)(20)–1.

102(s) Women-Owned Business

1. *General.* In order to be a women-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of women-owned business. First, one or more women must own or control more than 50 percent of the business. However, it is not necessary that one or more women both own and control more than 50 percent of the business. For example, a business that is owned entirely by women but is not controlled by any women satisfies the first prong of the definition. Similarly, a business that is controlled by a woman satisfies this first prong of the definition, even if none of the individuals with ownership in the business are women. If a business does not satisfy this first prong of the definition, it is not a women-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more women. If a business does not satisfy this second prong of the definition, it is not a women-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of women-owned business is used only when an applicant determines if it is a women-owned business pursuant to §1002.107(a)(18). A financial institution shall provide an applicant with the definition of women-owned business when asking the applicant to provide its women-owned business status pursuant to §1002.107(a)(18), but the financial institution is neither permitted nor required to make its own determination regarding the applicant's women-owned business status.

3. *Further clarifications of terms used in the definition of women-owned business.* In order to assist an applicant when determining whether it is a women-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(s)–4 through –6. A financial institution may assist an applicant when the applicant is determining its women-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is a women-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of §§1002.102(s) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of the applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of the applicant company A. Similarly, if an individual directly owns 20 percent of the applicant company A and is an equal partner in a partnership B that owns the remaining 80 percent of the applicant company A, the individual owns 60 percent of applicant company A (*i.e.,* 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two

co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (*e.g.*, a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more women if those women collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally entitled or required to recognize the net profits or losses for tax purposes.

Section 1002.103—Covered Applications

103(a) Covered Application

1. *General.* Subject to the requirements of subpart B of this part, a financial institution has latitude to establish its own application procedures, including designating the type and amount of information it will require from applicants.

2. *Procedures used.* The term ''procedures'' refers to the actual practices followed by a financial institution as well as its stated application procedures. For example, if a financial institution's stated policy is to require all applications to be in writing on the financial institution's application form, but the financial institution also makes credit decisions based on oral requests, the financial institution's procedures are to accept both oral and written applications.

3. *Consistency with subpart A.* Bureau interpretations that appear in this supplement I in connection with §§1002.2(f) and 1002.9 are generally applicable to the definition of a covered application in §1002.103. However, the definition of a covered application in §1002.103 does not include inquiries and prequalification requests. The definition of a covered application also does not include reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts. See §1002.103(b).

4. *Solicitations and firm offers of credit.* For purposes of subpart B of this part, the term covered application does not include solicitations, firm offers of credit, or other evaluations initiated by the financial institution because in these situations the business has not made a request for credit. For example, if a financial institution sends a firm offer of credit to a business for a $10,000 line of credit, and the business does not respond, it is not a covered application because the business never made a request for credit. However, using the same example, if the business seeks to obtain the credit offered, assuming the requirements of a covered application are otherwise met, the business's request constitutes a covered application for purposes of subpart B of this part. See also comment 103(b)–4.

5. *Requests for multiple covered credit transactions at one time.* Assuming the requirements of a covered application are met, if an applicant makes a request for two or more covered credit transactions at the same time, the financial institution reports each request as a separate covered application. For example, if an applicant is seeking both a term loan and a line of credit and requests them both on the same application form, the financial institution reports the requests as two separate covered applications, one for a term loan and another for a line of credit. See §1002.107(d) for the requirements for reusing data so that a financial institution need only ask once for certain data required under §1002.107(a). If, on the other hand, the applicant is only requesting a single covered credit transaction, but has not decided on which particular product, the financial institution reports the request as a single covered application. For example, if the applicant indicates interest in either a term loan or a line of credit, but not both, the financial institution reports the request as a single covered application. See comment 107(a)(5)–1 for instructions on reporting credit product in this situation.

6. *Initial request for a single covered credit transaction that would result in the origination of multiple covered credit transactions.* Assuming the requirements of a covered application are met, if an applicant initially makes a request for one covered credit transaction, but over the course of the application process requests multiple covered credit transactions, each covered credit transaction must be reported as a separate covered application. See §1002.107(d) for the requirements for reusing data so that a financial institution need only ask once for certain data required under §1002.107(a).

7. *Requests for multiple lines of credit at one time.* Assuming the requirements of a covered application are met, if an applicant requests multiple lines of credit on a single credit account, it is reported as one or more covered applications based on the procedures used by the financial institution for the type of credit account. For example, if a financial institution treats a request for multiple lines of credit at one time as sub-components of a single account, the financial institution reports the request as a single covered application. If, on the other hand, the financial institution treats each line of credit as a separate account, then the financial institution

reports each request for a line of credit as a separate covered application, as set forth in comment 103(a)–5.

8. *Duplicate applications.* If a financial institution receives two or more duplicate covered applications (*i.e.,* from the same applicant, for the same credit product, for the same amount, at or around the same time), the financial institution may treat the request as a single covered application for purposes of subpart B, so long as for purposes of determining whether to extend credit, it would also treat one or more of the applications as a duplicate under its procedures.

9. *Changes in whether there is a covered credit transaction.* In certain circumstances, an applicant may change the type of product requested during the course of the application process. Assuming other requirements of a covered application are met, if an applicant initially requests a product that is not a covered credit transaction, but prior to final action taken decides to seek instead a product that is a covered credit transaction, the application is a covered application and must be reported pursuant to §1002.109. In this circumstance, the financial institution shall endeavor to compile, maintain, and report the data required under §1002.107(a) in a manner that is reasonable under the circumstances. If, on the other hand, an applicant initially requests a product that is a covered credit transaction, but prior to final action taken decides instead to seek a product that is not a covered credit transaction, the application is not a covered application and thus is not reported. See also §1002.112(c)(4), which provides a safe harbor for incorrect collection of certain data if, at the time of collection, the financial institution had a reasonable basis for believing that the application was a covered application. Assuming other requirements of a covered application are met, if an applicant initially requests a product that is a covered credit transaction, the financial institution counteroffers with a product that is not a covered credit transaction, and the applicant declines to proceed or fails to respond, the application is reported as a covered application. For example, if an applicant initially applies for a term loan, but then, after consultation with the financial institution, decides that a lease would better meet its needs and decides to proceed with that product, the application is not a covered application and thus is not reported. However, if an applicant initially applies for a term loan, the financial institution offers to consider the applicant only for a lease, and the applicant refuses, the transaction is a covered application that must be reported.

10. *Multiple unaffiliated co-applicants.* If a covered financial institution receives a covered application from multiple businesses that are not affiliates, as defined by §1002.102(a), it shall compile, maintain, and report data pursuant to §§1002.107 through 1002.109 for only a single applicant that is a small business, as defined in §1002.106(b). A covered financial institution shall establish consistent procedures for designating a single small business for purposes of collecting and reporting data under subpart B in situations where there is more than one small business co-applicant, such as reporting on the first small business listed on an application form. For example, if three businesses jointly apply as co-applicants for a term loan to purchase a piece of equipment, but only one of the businesses is a small business, as defined in §1002.106(b), the financial institution reports on the single small business. If, however, two of the businesses are small businesses, as defined in §1002.106(b), the financial institution must have a procedure for designating which small business among multiple small business co-applicants it will report information on, such as consistently reporting on the first small business listed on an application form. See also §1002.5(a)(4)(x), which permits a creditor to collect certain protected information about co-applicants under certain circumstances.

11. *Refinancings and evaluation, extension, or renewal requests that request additional credit amounts.* As discussed in comments 103(b)–2 and –3, assuming other requirements of a covered application are met, an applicant's request to refinance and an applicant's request for additional credit amounts on an existing account both constitute covered applications.

103(b) Circumstances That Are Not Covered Applications

1. *In general.* The circumstances set forth in §1002.103(b) are not covered applications for purposes of subpart B of this part, even if considered applications under subpart A of this part. However, in no way are the exclusions in §1002.103(b) intended to repeal, abrogate, annul, impair, change, or interfere with the scope of the term application in §1002.2(f) as applicable to subpart A.

2. *Reevaluation, extension, or renewal requests that do not request additional credit amounts.* An applicant's request to change one or more terms of an existing account does not constitute a covered application, unless the applicant is requesting additional credit amounts on the account. For example, an applicant's request to extend the duration on a line of credit or to remove a guarantor would not be a covered application. However, assuming other requirements of a covered application are met, an applicant's request to refinance would be reportable. A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower.

3. *Reevaluation, extension, or renewal requests that request additional credit amounts.* A Assuming other requirements of a covered

application are met, an applicant's request for additional credit amounts on an existing account constitutes a covered application. For example, an applicant's request for a line increase on an existing line of credit, made in accordance with a financial institution's procedures for the type of credit requested, would be a covered application. As discussed in comment 107(a)(7)–4, when reporting a covered application that seeks additional credit amounts on an existing account, the financial institution need only report the additional credit amount sought, and not the entire credit amount. For example, if an applicant currently has a line of credit account for $100,000, and seeks to increase the line to $150,000, the financial institution reports the amount applied for as $50,000.

4. *Reviews or evaluations initiated by the financial institution.* For purposes of subpart B of this part, the term covered application does not include evaluations or reviews of existing accounts initiated by the financial institution because the business has not made a request for credit. For example, if a financial institution conducts periodic reviews of its existing lines of credit and decides to increase the business's line by $10,000, it is not a covered application because the business never made a request for the additional credit amounts. However, if such an evaluation or review of an existing account by a financial institution results in the financial institution inviting the business to apply for additional credit amounts on an existing account and the business does so, the business's request constitutes a covered application for purposes of subpart B of this part, assuming other requirements of a covered application are met. Similarly, as noted in comment 103(a)–4, the term covered application also does not include solicitations and firm offers of credit.

5. *Inquiries and prequalification requests.* An inquiry is a request by a prospective applicant for information about credit terms offered by the financial institution. A prequalification request is a request by a prospective applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under a financial institution's standards or for a determination on the amount of credit for which the prospective applicant would likely qualify. Inquiries and prequalification requests are not covered applications under subpart B of this part, even though in certain circumstances inquiries and prequalification requests may constitute applications under subpart A. For example, while an inquiry or prequalification request may become an ''application'' under subpart A if the creditor evaluates information about the business, decides to decline the request, and communicates this to the business, such inquiries or prequalifications would not be ''covered applications'' under subpart B of this part. Whether a particular request is a covered application, or whether instead it is an inquiry or prequalification request that is not reportable under subpart B, may turn, for instance, on how a financial institution structures and processes such requests: does the financial institution require or encourage a preliminary review in order for a business to be considered for a covered credit transaction, or does the business voluntarily seek preliminary feedback as a tool to explore its options before it decides whether to apply for credit with the financial institution? The name used by the financial institution for such a request is not determinative. For example, under subpart B, a review is a reportable covered application if the financial institution requires the business, before it may apply for credit, to pass through a mandatory screening process that considers particular information about the business and denies or turns away the business if it is ineligible or unlikely to qualify for credit. In contrast, a business that requests a financial institution to identify credit products for which the business might qualify based on limited or self-described characteristics, and without any commitment from the financial institution to extend credit, may not have submitted a covered application for purposes of subpart B.

Section 1002.104—Covered Credit Transactions and Excluded Transactions

104(a) Covered Credit Transaction

1. *General.* The term ''covered credit transaction'' includes all business credit (including loans, lines of credit, credit cards, and merchant cash advances) unless otherwise excluded under §1002.104(b).

104(b) Excluded Transactions

1. *Factoring.* The term ''covered credit transaction'' does not cover factoring as described herein. For the purpose of this subpart, factoring is an accounts receivable purchase transaction between businesses that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment for goods that the recipient has supplied or services that the recipient has rendered but for which payment in full has not yet been made. The name used by the financial institution for a product is not determinative of whether or not it is a ''covered credit transaction.'' This description of factoring is not intended to repeal, abrogate, annul, impair, or interfere with any existing interpretations, orders, agreements, ordinances, rules, or regulations adopted or issued pursuant to comment 9(a)(3)–3. A financial institution shall report an extension of business credit incident to a factoring arrangement that is otherwise a covered credit

transaction as ''Other sales-based financing transaction'' under §1002.107(a)(5).

2. *Leases.* The term ''covered credit transaction'' does not cover leases as described herein. A lease, for the purpose of this subpart, is a transfer from one business to another of the right to possession and use of goods for a term, and for primarily business or commercial (including agricultural) purposes, in return for consideration. A lease does not include a sale, including a sale on approval or a sale or return, or a transaction resulting in the retention or creation of a security interest. The name used by the financial institution for a product is not determinative of whether or not it is a ''covered credit transaction.''

3. *Consumer-designated credit.* The term ''covered credit transaction'' does not include consumer-designated credit that is used for business or agricultural purposes. A transaction qualifies as consumer-designated credit if the financial institution offers or extends the credit primarily for personal, family, or household purposes. For example, an open-end credit account used for both personal and business/agricultural purposes is not business credit for the purpose of subpart B of this part unless the financial institution designated or intended for the primary purpose of the account to be business/agricultural-related.

4. *Credit transaction purchases, purchases of an interest in a pool of credit transactions, and purchases of a partial interest in a credit transaction.* The term ''covered credit transaction'' does not cover the purchase of an originated credit transaction, the purchase of an interest in a pool of credit transactions, or the purchase of a partial interest in a credit transaction such as through a loan participation agreement. Such purchases do not, in themselves, constitute an application for credit. See also comment 109(a)(3)–2.i.

104(b)(1) Trade Credit

1. *General.* Trade credit, as defined in §1002.104(b)(1), is excluded from the definition of a covered credit transaction. An example of trade credit involves a supplier that finances the sale of equipment, supplies, or inventory. However, an extension of business credit by a financial institution other than the supplier for the financing of such items is not trade credit. Also, credit extended by a business providing goods or services to another business is not trade credit for the purposes of this subpart where the supplying business intends to sell or transfer its rights as a creditor to a third party.

2. *Trade credit under subpart A.* The definition of trade credit under comment 9(a)(3)–2 applies to relevant provisions under subpart A, and §1002.104(b)(1) is not intended to repeal, abrogate, annul, impair, or interfere with any existing interpretations, orders, agreements, ordinances, rules, or regulations adopted or issued pursuant to comment 9(a)(3)–2.

Section 1002.105—Covered Financial Institutions and Exempt Institutions

105(a) Financial Institution

1. *Examples.* Section 1002.105(a) defines a financial institution as any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity. This definition includes, but is not limited to, banks, savings associations, credit unions, online lenders, platform lenders, community development financial institutions, Farm Credit System lenders, lenders involved in equipment and vehicle financing (captive financing companies and independent financing companies), commercial finance companies, organizations exempt from taxation pursuant to 26 U.S.C. 501(c), and governments or governmental subdivisions or agencies.

2. *Motor vehicle dealers.* Pursuant to §1002.101(a), subpart B of this part excludes from coverage persons defined by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2004 (2010).

105(b) Covered Financial Institution

1. *Preceding calendar year.* The definition of covered financial institution refers to preceding calendar years. For example, in 2029, the two preceding calendar years are 2027 and 2028. Accordingly, in 2029, Financial Institution A does not meet the loan-volume threshold in §1002.105(b) if did not originate at least 100 covered credit transactions for small businesses both during 2027 and during 2028.

2. *Origination threshold.* A financial institution qualifies as a covered financial institution based on total covered credit transactions originated for small businesses, rather than covered applications received from small businesses. For example, if in both 2026 and 2027, Financial Institution B received 105 covered applications from small businesses and originated 95 covered credit transactions for small businesses, then for 2028, Financial Institution B is not a covered financial institution.

3. *Counting originations when multiple financial institutions are involved in originating a covered credit transaction.* For the purpose of counting originations to determine whether a financial institution is a covered financial institution under §1002.105(b), in a situation where multiple financial institutions are involved in originating a single covered credit transaction, only the last financial institution with authority to set the material

terms of the covered credit transaction is required to count the origination.

4. *Counting originations after adjustments to the gross annual revenue threshold due to inflation.* Pursuant to §1002.106(b)(2), every five years, the gross annual revenue threshold used to define a small business in §1002.106(b)(1) shall be adjusted, if necessary, to account for inflation. The first time such an adjustment could occur is in 2030, with an effective date of January 1, 2031. A financial institution seeking to determine whether it is a covered financial institution applies the gross annual revenue threshold that is in effect for each year it is evaluating. For example, a financial institution seeking to determine whether it is a covered financial institution in 2032 counts its originations of covered credit transactions for small businesses in calendar years 2030 and 2031. The financial institution applies the initial $5 million threshold to evaluate whether its originations were to small businesses in 2030. In this example, if the small business threshold were increased to $5.5 million effective January 1, 2031, the financial institution applies the $5.5 million threshold to count its originations for small businesses in 2031.

5. *Reevaluation, extension, or renewal requests, as well as credit line increases and other requests for additional credit amounts.* While requests for additional credit amounts on an existing account can constitute a ''covered application'' pursuant to §1002.103(b)(1), such requests are not counted as originations for the purpose of determining whether a financial institution is a covered financial institution pursuant to §1002.105(b). In addition, transactions that extend, renew, or otherwise amend a transaction are not counted as originations. For example, if a financial institution originates 50 term loans and 30 lines of credit for small businesses in each of the preceding two calendar years, along with 25 line increases for small businesses in each of those years, the financial institution is not a covered financial institution because it has not originated at least 100 covered credit transactions in each of the two preceding calendar years.

6. *Annual consideration.* Whether a financial institution is a covered financial institution for a particular year depends on its small business lending activity in the preceding two calendar years. Therefore, whether a financial institution is a covered financial institution is an annual consideration for each year that data may be compiled and maintained for purposes of subpart B of this part. A financial institution may be a covered financial institution for a given year of data collection (and the obligations arising from qualifying as a covered financial institution shall continue into subsequent years, pursuant to §§1002.110 and 1002.111), but the same financial institution may not be a covered financial institution for the following year of data collection. For example, Financial Institution C originated 105 covered transactions for small businesses in both 2027 and 2028. In 2029, Financial Institution C is a covered financial institution and therefore is obligated to compile and maintain applicable 2029 small business lending data under §1002.107(a). During 2029, Financial Institution C originates 95 covered transactions for small businesses. In 2030, Financial Institution C is not a covered financial institution with respect to 2030 small business lending data, and is not obligated to compile and maintain 2030 data under §1002.107(a) (although Financial Institution C may volunteer to collect and maintain 2030 data pursuant to §1002.5(a)(4)(vii) and as explained in comment 105(b)–10). Pursuant to §1002.109(a), Financial Institution C shall submit its small business lending application register for 2029 data in the format prescribed by the Bureau by June 1, 2030 because Financial Institution C is a covered financial institution with respect to 2029 data, and the data submission deadline of June 1, 2030 applies to 2029 data.

7. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed financial institution is a covered financial institution under §1002.105(b) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired financial institutions (or acquired branches or locations), satisfies the criteria included in §1002.105(b). For example, Financial Institutions A and B merge. The surviving or newly formed financial institution meets the threshold in §1002.105(b) if the combined previous components of the surviving or newly formed financial institution (A plus B) would have originated at least 100 covered credit transactions for small businesses for each of the two preceding calendar years. Similarly, if the combined previous components and the surviving or newly formed financial institution would have reported at least 100 covered transactions for small businesses for the year previous to the merger as well as 100 covered transactions for small businesses for the year of the merger, the threshold described in §1002.105(b) would be met and the surviving or newly formed financial institution would be a covered institution under §1002.105(b) for the year following the merger. Comment 105(b)–8 discusses a financial institution's responsibilities with respect to compiling and maintaining (and subsequently reporting) data during the calendar year of a merger.

8. *Merger or acquisition—coverage specific to the calendar year of the merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities specifically for data from the calendar year of a merger or acquisition. For purposes of these

illustrations, an ''institution that is not covered'' means either an institution that is not a financial institution, as defined in §1002.105(a), or a financial institution that is not a covered financial institution, as defined in §1002.105(b).

i. Two institutions that are not covered financial institutions merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered financial institution. No data are required to be compiled, maintained, or reported for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered financial institution).

ii. A covered financial institution and an institution that is not covered merge. The covered financial institution is the surviving institution, or a new covered financial institution is formed. For the calendar year of the merger, data are required to be compiled, maintained, and reported for covered applications from the covered financial institution and is optional for covered applications from the financial institution that was previously not covered.

iii. A covered financial institution and an institution that is not covered merge. The institution that is not covered is the surviving institution and remains not covered after the merger, or a new institution that is not covered is formed. For the calendar year of the merger, data are required to be compiled and maintained (and subsequently reported) for covered applications from the previously covered financial institution that took place prior to the merger. After the merger date, compiling, maintaining, and reporting data is optional for applications from the institution that was previously covered for the remainder of the calendar year of the merger.

iv. Two covered financial institutions merge. The surviving or newly formed financial institution is a covered financial institution. Data are required to be compiled and maintained (and subsequently reported) for the entire calendar year of the merger. The surviving or newly formed financial institution files either a consolidated submission or separate submissions for that calendar year.

9. *Foreign applicability*. As discussed in comment 1(a)–2, Regulation B (including subpart B) generally does not apply to lending activities that occur outside the United States.

10. *Voluntary collection and reporting*. Section 1002.5(a)(4)(vii) through (x) permits a creditor that is not a covered financial institution under §1002.105(b) to voluntarily collect and report information regarding covered applications from small businesses in certain circumstances. If a creditor is voluntarily collecting information for covered applications regarding whether the applicant is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business under §1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under §1002.107(a)(19), it shall do so in compliance with §§1002.107, 1002.108, 1002.111, 1002.112 as though it were a covered financial institution. If a creditor is reporting those covered applications from small businesses to the Bureau, it shall do so in compliance with §§1002.109 and 1002.110 as though it were a covered financial institution.

Section 1002.106—Business and Small Business

106(b) Small Business Definition

106(b)(1) Small Business

1. *Change in determination of small business status—business is ultimately not a small business*. If a financial institution initially determines an applicant is a small business as defined in §1002.106 based on available information and collects data required by §1002.107(a)(18) and (19) but later concludes that the applicant is not a small business, the financial institution does not violate the Act or this regulation if it meets the requirements of §1002.112(c)(4). The financial institution shall not report the application on its small business lending application register pursuant to §1002.109.

2. *Change in determination of small business status—business is ultimately a small business*. Consistent with comment 107(a)(14)–1, a financial institution need not independently verify gross annual revenue. If a financial institution initially determines that the applicant is not a small business as defined in §1002.106(b), but later concludes the applicant is a small business prior to taking final action on the application, the financial institution must report the covered application pursuant to §1002.109. In this situation, the financial institution shall endeavor to compile, maintain, and report the data required under §1002.107(a) in a manner that is reasonable under the circumstances. For example, if the applicant initially provides a gross annual revenue of $5.5 million (that is, above the threshold for a small business as initially defined in §1002.106(b)(1)), but during the course of underwriting the financial institution discovers the applicant's gross annual revenue was in fact $4.75 million (meaning that the applicant is within the definition of a small business under §1002.106(b)), the financial institution is required to report the covered application pursuant to §1002.109. In this situation, the financial institution shall take reasonable steps upon discovery to compile, maintain, and report the data necessary under §1002.107(a) to comply with subpart B of this part for that covered application. Thus, in this example, even if the financial institution's procedure is typically to request applicant-provided data

together with the application form, in this circumstance, the financial institution shall seek to collect the data during the application process necessary to comply with subpart B in a manner that is reasonable under the circumstances.

3. *Applicant's representations regarding gross annual revenue; inclusion of affiliate revenue; updated or verified information.* A financial institution is permitted to rely on an applicant's representations regarding gross annual revenue (which may or may not include any affiliate's revenue) for purposes of determining small business status under §1002.106(b). However, if the applicant provides updated gross annual revenue information or the financial institution verifies the gross annual revenue information (see comment 107(b)–1), the financial institution must use the updated or verified information in determining small business status.

4. *Multiple unaffiliated co-applicants—size determination.* The financial institution shall not aggregate unaffiliated co-applicants' gross annual revenues for purposes of determining small business status under §1002.106(b). If a covered financial institution receives a covered application from multiple businesses who are not affiliates, as defined by §1002.102(a), where at least one business is a small business under §1002.106(b), the financial institution shall compile, maintain, and report data pursuant to §§1002.107 through 1002.109 regarding the covered application for only a single applicant that is a small business. See comment 103(a)–10 for additional details.

106(b)(2) Inflation Adjustment

1. *Inflation adjustment methodology.* The small business gross annual revenue threshold set forth in §1002.106(b)(1) will be adjusted upward or downward to reflect changes, if any, in the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics (''CPI–U''). The base for computing each adjustment is the January 2025 CPI–U; this base value shall be compared to the CPI–U value in January 2030 and every five years thereafter. For example, after the January 2030 CPI–U is made available, the adjustment is calculated by determining the percentage change in the CPI–U between January 2025 and January 2030, applying this change to the $5 million gross annual revenue threshold, and rounding to the nearest $500,000. If, as a result of this rounding, there is no change in the gross annual revenue threshold, there will be no adjustment. For example, if in January 2030 the adjusted value were $4.9 million (reflecting a $100,000 decrease from January 2025 CPI–U), then the threshold would not adjust because $4.9 million would be rounded up to $5 million. If on the other hand, the adjusted value were $5.7 million, then the threshold would adjust to $5.5 million. Where the adjusted value is a multiple of $250,000 (*e.g.*, $5,250,000), then the threshold adjusts upward (in this example, to $5,500,000).

2. *Substitute for CPI–U.* If publication of the CPI–U ceases, or if the CPI–U otherwise becomes unavailable or is altered in such a way as to be unusable, then the Bureau shall substitute another reliable cost of living indicator from the United States Government for the purpose of calculating adjustments pursuant to §1002.106(b)(2).

Section 1002.107—Compilation of Reportable Data

107(a) Data Format and Itemization

1. *General.* Section 1002.107(a) describes a covered financial institution's obligation to compile and maintain data regarding the covered applications it receives from small businesses.

i. A covered financial institution reports these data even if the credit originated pursuant to the reported application was subsequently sold by the institution.

ii. A covered financial institution annually reports data for covered applications for which final action was taken in the previous calendar year.

iii. A covered financial institution reports data for a covered application on its small business lending application register for the calendar year during which final action was taken on the application, even if the institution received the application in a previous calendar year.

2. *Free-form text fields.* A covered financial institution may use technology such as autocorrect and predictive text when requesting applicant-provided data under subpart B of this part that the financial institution reports via free-form text fields, provided that such technology does not restrict the applicant's ability to write in its own response instead of using text suggested by the technology.

3. *Filing Instructions Guide.* Additional details and procedures for compiling data pursuant to §1002.107 are included in the Filing Instructions Guide, which is available at *https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/.*

4. *Additional data point response options.* The Bureau may add additional response options to the lists of responses contained in the commentary that follows for certain of the data points set forth in §1002.107(a), via the Filing Instructions Guide. Refer to the Filing Instructions Guide for any updates for each reporting year.

107(a)(1) Unique Identifier

1. *Unique within the financial institution.* A financial institution complies with

§1002.107(a)(1) by compiling and reporting an alphanumeric application or loan identifier unique within the financial institution to the specific application. The identifier must not exceed 45 characters, and must begin with the financial institution's Legal Entity Identifier (LEI), as defined in comment 109(b)(6)–1. Separate applications for the same applicant must have separate identifiers. The identifier may only include standard numerical and/or upper-case alphabetical characters and cannot include dashes, other special characters, or characters with diacritics. The financial institution may assign the unique identifier at any time prior to reporting the application. Refinancings or applications for refinancing must be assigned a different identifier than the transaction that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same identifiers to refer to multiple applications.

2. *Does not include directly identifying information.* The unique identifier must not include any directly identifying information, such as a whole or partial Social Security number or employer identification number, about the applicant or persons (natural or legal) associated with the applicant. See also §1002.111(c) and related commentary.

107(a)(2) Application Date

1. *Consistency.* Section 1002.107(a)(2) requires that, in reporting the date of covered application, a financial institution shall report the date the covered application was received or the date shown on a paper or electronic application form. Although a financial institution need not choose the same approach for its entire small business lending application register, it should generally be consistent in its approach by, for example, establishing procedures for how to report this date within particular scenarios, products, or divisions. If the financial institution chooses to report the date shown on an application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the definition of covered application pursuant to §1002.103.

2. *Application received.* For an application submitted directly to the financial institution or its affiliate (as described in §1002.107(a)(4)), the financial institution shall report the date it received the covered application, as defined under §1002.103, or the date shown on a paper or electronic application form. For an application initially submitted to a third party, see comment 107(a)(2)–3.

3. *Indirect applications.* For an application that was not submitted directly to the financial institution or its affiliate (as described in §1002.107(a)(4)), the financial institution shall report the date the application was received by the party that initially received the application, the date the application was received by the financial institution, or the date shown on the application form. Although a financial institution need not choose the same approach for its entire small business lending application register, it should generally be consistent in its approach by, for example, establishing procedures for how to report this date within particular scenarios, products, or divisions.

4. *Safe harbor.* Pursuant to §1002.112(c)(1), a financial institution that reports on its small business lending application register an application date that is within three business days of the actual application date pursuant to §1002.107(a)(2) does not violate the Act or subpart B of this part. For purposes of this paragraph, a business day means any day the financial institution is open for business.

107(a)(3) Application Method

1. *General.* A financial institution complies with §1002.107(a)(3) by reporting the means by which the applicant submitted the application from one of the following options: in-person, telephone, online, or mail. If the financial institution retains multiple versions of the application form, the institution reports the means by which the first application form satisfying the definition of covered application pursuant to §1002.103 was submitted.

i. *In-person.* A financial institution reports the application method as ''in-person'' if the applicant submitted the application to the financial institution, or to another party acting on the financial institution's behalf, in person. The in-person application method applies, for example, to applications submitted at a branch office (including applications hand delivered by the applicant), at the applicant's place of business, or via electronic media with a video component).

ii. *Telephone.* A financial institution reports the application method as ''telephone'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, by telephone call or via audio-based electronic media without a video component.

iii. *Online.* A financial institution reports the application method as ''online'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, through a website, mobile application (app), fax transmission, electronic mail, text message, or some other form of text-based electronic communication.

iv. *Mail.* A financial institution reports the application method as ''mail'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, via United States mail, courier or overnight service, or an overnight drop box.

107(a)(4) Application Recipient

1. *Agents.* When a financial institution is reporting actions taken by its agent consistent with comment 109(a)(3)–3, the agent is considered the financial institution for the purposes of §1002.107(a)(4). For example, assume that an applicant submitted an application to Financial Institution B, and Financial Institution B made the credit decision acting as Financial Institution A's agent under State law. Financial Institution A reports the application and indicates that the application was submitted directly to Financial Institution A.

107(a)(5) Credit Type

1. *Reporting credit product—in general.* A financial institution complies with §1002.107(a)(5)(i) by selecting the credit product applied for or originated, from the list below. If the credit product applied for or originated is not included on this list, the financial institution selects ''other,'' and reports the credit product via free-form text field. If an applicant requested more than one credit product at the same time, the financial institution reports each credit product requested as a separate application. However, if the applicant only requested a single covered credit transaction, but had not decided on which particular product, the financial institution complies with §1002.107(a)(5)(i) by reporting the credit product originated (if originated), or the credit product denied (if denied), or the credit product of greater interest to the applicant, if readily determinable. If the credit product of greater interest to the applicant is not readily determinable, the financial institution complies with §1002.107(a)(5)(i) by reporting one of the credit products requested as part of the request for a single covered credit transaction, in its discretion. See comment 103(a)–5 for instructions on reporting requests for multiple covered credit transactions at one time.

i. Term loan—unsecured.
ii. Term loan—secured.
iii. Line of credit—unsecured.
iv. Line of credit—secured.
v. Credit card account, not private-label.
vi. Private-label credit card account.
vii. Merchant cash advance.
viii. Other sales-based financing transaction.
ix. Other.
x. Not provided by applicant and otherwise undetermined.

2. *Credit card account, not private-label.* A financial institution complies with §1002.107(a)(5)(i) by reporting the credit product as a ''credit card account, not private-label'' when the product is a business-purpose open-end credit account that is not private label and that may be accessed from time to time by a card, plate, or other single credit device to obtain credit, except that accounts or lines of credit secured by real property and overdraft lines of credit accessed by debit cards are not credit card accounts. The term credit card account does not include debit card accounts or closed-end credit that may be accessed by a card, plate, or single credit device. The term credit card account does include charge card accounts that are generally paid in full each billing period, as well as hybrid prepaid-credit cards. A financial institution reports multiple credit card account, not private-label applications requested at one time using the guidance in comment 103(a)–7.

3. *Private-label credit card account.* A financial institution complies with §1002.107(a)(5)(i) by reporting the credit product as a ''private-label credit card account'' when the product is a business-purpose open-end private-label credit account that otherwise meets the description of a credit card account in comment 107(a)(5)–2. A private-label credit card account is a credit card account that can only be used to acquire goods or services provided by one business (for example, a specific merchant, retailer, independent dealer, or manufacturer) or a small group of related businesses. A co-branded or other card that can also be used for purchases at unrelated businesses is not a private-label credit card. A financial institution reports multiple private-label credit card account applications requested at one time in the same manner as credit card account, not private-label applications, using the guidance in comment 103(a)–7.

4. *Credit product not provided by the applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution is required to maintain procedures reasonably designed to collect applicant-provided data, which includes credit product. However, if a financial institution is nonetheless unable to collect or otherwise determine credit product information because the applicant does not indicate what credit product it seeks and the application is denied, withdrawn, or closed for incompleteness before a credit product is identified, the financial institution reports that the credit product is ''not provided by applicant and otherwise undetermined.''

5. *Reporting credit product involving counteroffers.* If a financial institution presents a counteroffer for a different credit product than the product the applicant had initially requested, and the applicant does not agree to proceed with the counteroffer, the financial institution reports the application for the original credit product as denied pursuant to §1002.107(a)(9). If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the disposition of the application based on the credit product that was offered and does not report the original

credit product applied for. See comment 107(a)(9)–2.

6. *Other sales-based financing transaction.* For an extension of business credit incident to a factoring arrangement that is otherwise a covered credit transaction, a financial institution selects ''other sales-based financing transaction'' as the credit product. See comment 104(b)–1.

7. *Guarantees.* A financial institution complies with §1002.107(a)(5)(ii) by selecting the type or types of guarantees that were obtained for an originated covered credit transaction, or that would have been obtained if the covered credit transaction was originated, from the list below. The financial institution selects, if applicable, up to a maximum of five guarantees for a single application. If the type of guarantee does not appear on the list, the financial institution selects ''other'' and reports the type of guarantee via free-form text field. If no guarantee is obtained or would have been obtained if the covered credit transaction was originated, the financial institution selects ''no guarantee.'' If an application is denied, withdrawn, or closed for incompleteness before any guarantee has been identified, the financial institution selects ''no guarantee.'' The financial institution chooses State government guarantee or local government guarantee, as applicable, based on the entity directly administering the program, not the source of funding.

i. Personal guarantee—owner(s).
ii. Personal guarantee—non-owner(s).
iii. SBA guarantee—7(a) program.
iv. SBA guarantee—504 program.
v. SBA guarantee—other.
vi. USDA guarantee.
vii. FHA insurance.
viii. Bureau of Indian Affairs guarantee.
ix. Other Federal guarantee.
x. State government guarantee.
xi. Local government guarantee.
xii. Other.
xiii. No guarantee.

8. *Loan term.* A financial institution complies with §1002.107(a)(5)(iii) by reporting the number of months in the loan term for the covered credit transaction. The loan term is the number of months after which the legal obligation will mature or terminate, measured from the date of origination. For transactions involving real property, the financial institution may instead measure the loan term from the date of the first payment period and disregard the time that elapses, if any, between the settlement of the transaction and the first payment period. For example, if a loan closes on April 12, but the first payment is not due until June 1 and includes the interest accrued in May (but not April), the financial institution may choose not to include the month of April in the loan term. In addition, the financial institution may round the loan term to the nearest full month or may count only full months and ignore partial months, as it so chooses. If a credit product, such as a credit card, does not have a loan term, the financial institution reports that the loan term is ''not applicable.'' The financial institution also reports that the loan term is ''not applicable'' if the credit product is reported as ''not provided by applicant and otherwise undetermined.'' For a credit product that generally has a loan term, the financial institution reports ''not provided by applicant and otherwise undetermined'' if the application is denied, withdrawn, or determined to be incomplete before a loan term has been identified. For merchant cash advances and other sales-based financing transactions, the financial institution complies with §1002.107(a)(5)(iii) by reporting the loan term, if any, that the financial institution estimated or specified in processing, underwriting or providing disclosures for the application or transaction. If more than one such loan term is estimated or specified, the financial institution reports the one it considers to be most accurate, in its discretion. For merchant cash advances and other sales-based financing transactions that do not have a loan term, the financial institution reports ''not provided by applicant and otherwise undetermined.''

107(a)(6) Credit Purpose

1. *General.* A financial institution complies with §1002.107(a)(6) by selecting the purpose or purposes of the covered credit transaction applied for or originated from the list below.

i. Purchase, construction/improvement, or refinance of non-owner-occupied real property.
ii. Purchase, construction/improvement, or refinance of owner-occupied real property.
iii. Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).
iv. Purchase, refinance, or rehabilitation/repair of equipment.
v. Working capital (includes inventory or floor planning).
vi. Business start-up.
vii. Business expansion.
viii. Business acquisition.
ix. Refinance existing debt (other than refinancings listed above).
x. Line increase.
xi. Overdraft.
xii. Other.
xiii. Not provided by applicant and otherwise undetermined.
xiv. Not applicable.

2. *More than one purpose.* If the applicant indicates or the financial institution is otherwise aware of more than one purpose for the credit applied for or originated, the financial institution reports those purposes, up to a maximum of three, using the list provided, in any order it chooses. For example, if an applicant refinances a commercial

building it owns and uses the funds to purchase a motor vehicle and expand the business it runs in a part of that building, the financial institution reports that the three purposes of the credit are purchase, construction/improvement, or refinance of owner-occupied real property; purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks); and business expansion. If an application has more than three purposes, the financial institution reports any three of those purposes. In the example above, if the funds were also used to purchase equipment, the financial institution would select only three of the relevant purposes to report.

3. *''Other'' credit purpose.* If a purpose of an application does not appear on the list of purposes provided, the financial institution reports ''other'' as the credit purpose and reports the credit purpose via free-form text field. If the application has more than one ''other'' purpose, the financial institution chooses the most significant ''other'' purpose, in its discretion, and reports that ''other'' purpose. The financial institution reports a maximum of three credit purposes, including any ''other'' purpose.

4. *Credit purpose not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes credit purpose. However, if a financial institution is nonetheless unable to collect or determine credit purpose information, the financial institution reports that the credit purpose is ''not provided by applicant and otherwise undetermined.''

5. *Not applicable.* If the application is for a credit product that generally has indeterminate or numerous potential purposes, such as a credit card, the financial institution may report credit purpose as ''not applicable.''

6. *Collecting credit purpose.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, including credit purpose. The financial institution is permitted, but not required, to present the list of credit purposes provided in comment 107(a)(6)–1 to the applicant. The financial institution is also permitted to ask about purposes not included on the list provided in comment 107(a)(6)–1. If the applicant chooses a purpose or purposes not included on the provided list, the financial institution follows the instructions in comment 107(a)(6)–3 regarding reporting of ''other'' as the credit purpose. If an applicant chooses a purpose or purposes that are similar to purposes on the list provided, but uses different language, the financial institution reports the purpose or purposes from the list provided.

7. *Owner-occupied real property.* Real property is owner-occupied if any physical portion of the property is used by the owner for any activity, including storage.

8. *Overdraft.* When overdraft is provided as an aspect of the covered credit transaction applied for or originated, the financial institution reports ''Overdraft'' as a purpose of the credit. The financial institution reports credit type pursuant to §1002.107(a)(5)(i) as appropriate for the underlying covered credit transaction, such as ''Line of credit—unsecured.'' Providing occasional overdraft services as part of a deposit account offering would not be reported for the purpose of subpart B.

107(a)(7) Amount Applied For

1. *Initial amount requested.* A financial institution complies with §1002.107(a)(7) by reporting the initial amount of credit or the initial credit limit requested by the applicant. The financial institution is not required to report credit amounts or limits discussed before an application is made, but must capture the initial amount requested at the application stage. If the applicant requests an amount as a range of numbers, the financial institution reports the midpoint of that range.

2. *No amount requested.* If the applicant does not request a specific amount at the application stage, but the financial institution underwrites the application for a specific amount, the financial institution complies with §1002.107(a)(7) by reporting the amount considered for underwriting as the amount applied for. If the particular type of credit product applied for does not involve a specific amount requested, the financial institution reports that the requirement is ''not applicable.''

3. *Firm offers.* When an applicant responds to a ''firm offer'' that specifies an amount or limit, which may occur in conjunction with a pre-approved credit solicitation, the financial institution reports the amount of the firm offer as the amount applied for, unless the applicant requests a different amount. If the firm offer does not specify an amount or limit and the applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution. If the firm offer specifies an amount or limit as a range and the applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution.

4. *Additional amounts on an existing account.* When reporting a covered application that seeks additional credit amounts on an existing account, the financial institution reports only the additional credit amount sought, and not any previous amounts extended. See comment 103(b)–3.

5. *Initial amount otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data,

which includes the credit amount initially requested by the applicant (other than for products that do not involve a specific amount requested). However, if a financial institution is nonetheless unable to collect or otherwise determine the amount initially requested, the financial institution reports that the amount applied for is ''not provided by applicant and otherwise undetermined.'' But see comment 107(a)(7)–2 for how to report the credit amount initially requested by the applicant for particular types of credit products that do not involve a specific amount requested.

107(a)(8) Amount Approved or Originated

1. *General.* A financial institution complies with §1002.107(a)(8) by reporting the amount approved or originated for credit that is originated or approved but not accepted. For applications that the financial institution, pursuant to §1002.107(a)(9), reports as denied, withdrawn by the applicant, or incomplete, the financial institution reports that the amount approved or originated is ''not applicable.''

2. *Multiple approval amounts.* A financial institution may sometimes approve an applicant for more than one credit amount, allowing the applicant to choose which amount the applicant prefers for the extension or line of credit. When multiple approval amounts are offered for a closed-end credit transaction for which the action taken is approved but not accepted, and the applicant does not accept the approved offer of credit in any amount, the financial institution reports the highest amount approved. If the applicant accepts the offer of closed-end credit, the financial institution reports the amount originated. When multiple approval amounts are offered for an open-end credit transaction for which the action taken is approved but not accepted, and the applicant does not accept the approved offer of credit in any amount, the financial institution reports the highest amount approved. If the applicant accepts the offer of open-end credit, the financial institution reports the actual credit limit established.

3. *Amount approved or originated—closed-end credit transaction.* For an originated closed-end credit transaction, the financial institution reports the principal amount to be repaid. This amount will generally be disclosed on the legal obligation.

4. *Amount approved or originated—refinancing.* For a refinancing, the financial institution reports the amount of credit approved or originated under the terms of the new debt obligation.

5. *Amount approved or originated—counteroffer.* If an applicant agrees to proceed with consideration of a counteroffer for an amount or limit different from the amount for which the applicant applied, and the covered credit transaction is approved and originated, the financial institution reports the amount granted. If an applicant does not agree to proceed with consideration of a counteroffer or fails to respond, the institution reports the application as denied and reports ''not applicable'' for the amount approved or originated. See comment 107(a)(9)–2.

6. *Amount approved or originated—existing accounts.* For additional credit amounts that were approved for or originated on an existing account, the financial institution reports only the additional credit amount approved or originated, and not any previous amounts extended.

107(a)(9) Action Taken

1. *General.* A financial institution complies with §1002.107(a)(9) by selecting the action taken by the financial institution on the application from the following list: originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete. A financial institution identifies the applicable action taken code based on final action taken on the covered application.

i. *Originated.* A financial institution reports that the application was originated if the financial institution made a credit decision approving the application and that credit decision resulted in an extension of credit.

ii. *Approved but not accepted.* A financial institution reports that the application was approved but not accepted if the financial institution made a credit decision approving the application, but the applicant or the party that initially received the application failed to respond to the financial institution's approval within the specified time, or the covered credit transaction was not otherwise consummated or the account was not otherwise opened.

iii. *Denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdrew the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.

iv. *Withdrawn by the applicant.* A financial institution reports that the application was withdrawn if the application was expressly withdrawn by the applicant before the financial institution made a credit decision approving or denying the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.

v. *Incomplete.* A financial institution reports that the application was incomplete if the financial institution took adverse action on the basis of incompleteness under §1002.9(a)(1)(ii) and (c)(1)(i) or provided a written notice of incompleteness under §1002.9(c)(1)(ii) and (2), and the applicant did

not respond to the request for additional information within the period of time specified in the notice.

2. *Treatment of counteroffers.* If a financial institution makes a counteroffer to grant credit on terms other than those originally requested by the applicant (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant declines the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume an applicant applies for a term loan and the financial institution makes a counteroffer to proceed with consideration of a line of credit. If the applicant declines to be considered for a line of credit, the financial institution reports the application as a denied request for a term loan. If, on the other hand, the applicant agrees to be considered for a line of credit, then the financial institution reports the action taken as the disposition of the application for the line of credit. For instance, using the same example, if the financial institution makes a credit decision approving the line of credit, but the applicant fails to respond to the financial institution's approval within the specified time by accepting the credit offer, the financial institution reports the application on the line of credit as approved but not accepted.

3. *Treatment of rescinded transactions.* If a borrower successfully rescinds a transaction after closing but before a financial institution is required to submit its small business lending application register containing the information for the application under §1002.109, the institution reports the application as approved but not accepted.

4. *Treatment of pending applications.* A financial institution does not report any application still pending at the end of the calendar year; it reports such applications on its small business lending application register for the year in which final action is taken.

5. *Treatment of conditional approvals.* If a financial institution issues an approval that is subject to the applicant meeting certain conditions prior to closing, the financial institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions. Customary commitment or closing conditions may include, for example, a clear-title requirement, proof of insurance policies, or a subordination agreement from another lienholder. Underwriting or creditworthiness conditions may include, for example, conditions that constitute a counteroffer (such as a demand for a higher down-payment), satisfactory loan-to-value ratios, or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of revenue, income or assets.

i. *Conditional approval—denial.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions, those conditions are not met, and the financial institution takes adverse action on some basis other than incompleteness, the financial institution reports the action taken as denied.

ii. *Conditional approval—incompleteness.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions that the financial institution needs to make the credit decision, and the financial institution takes adverse action on the basis of incompleteness under §1002.9(a)(1)(ii) and (c)(1)(i), or has sent a written notice of incompleteness under §1002.9(c)(1)(ii) and (2), and the applicant did not respond within the period of time specified in the notice, the financial institution reports the action taken as incomplete.

iii. *Conditional approval—approved but not accepted.* If the approval is conditioned on satisfying conditions that are solely customary commitment or closing conditions and the conditions are not met, the financial institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the financial institution agrees to extend credit but the covered credit transaction is not originated (for example, because the applicant withdraws), the financial institution reports the action taken as approved but not accepted.

iv. *Conditional approval—withdrawn by the applicant.* If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or before the institution closes the file for incompleteness, the financial institution reports the action taken as withdrawn.

107(a)(10) Action Taken Date

1. *Reporting action taken date for denied applications.* For applications that are denied, a financial institution reports either the date the application was denied or the date the denial notice was sent to the applicant.

2. *Reporting action taken date for applications withdrawn by applicant.* For applications that are withdrawn by the applicant, the financial institution reports the date the express withdrawal was received, or the date shown on the notification form in the case of a written withdrawal.

3. *Reporting action taken date for applications that are approved but not accepted.* For applications approved by a financial institution but not accepted by the applicant, the financial institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. A financial institution should generally be consistent in its approach to reporting by, for example, establishing procedures for how to report this date for particular scenarios, products, or divisions.

4. *Reporting action taken date for originated applications.* For applications that result in an extension of credit, a financial institution generally reports the closing or account opening date. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may, alternatively, use the date of initial disbursement. A financial institution should generally be consistent in its approach to reporting by, for example, establishing procedures for how to report this date for particular scenarios, products, or divisions.

5. *Reporting action taken date for incomplete applications.* For applications closed for incompleteness or denied for incompleteness, the financial institution reports either the date the action was taken or the date the denial or incompleteness notice was sent to the applicant.

107(a)(11) Denial Reasons

1. *Reason for denial—in general.* A financial institution complies with §1002.107(a)(11) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution reports only the principal reason or reasons it denied the application. For example, if a financial institution denies an application due to insufficient cashflow, unacceptable collateral, and unverifiable business information, the financial institution is required to report these three reasons. The reasons reported must accurately describe the principal reason or reasons the financial institution denied the application. A financial institution reports denial reasons by selecting its principal reason or reasons for denying the application from the following list:

i. *Credit characteristics of the business.* A financial institution reports the denial reason as ''credit characteristics of the business'' if it denies the application based on an assessment of the business's ability to meet its current or future credit obligations. Examples include business credit score, history of business bankruptcy or delinquency, and/or a high number of recent business credit inquiries.

ii. *Credit characteristics of the principal owner(s) or guarantor(s).* A financial institution reports the denial reason as ''credit characteristics of the principal owner(s) or guarantor(s)'' if it denies the application based on an assessment of the principal owner(s) or guarantor(s)'s ability to meet its current or future credit obligations. Examples include principal owner(s) or guarantor(s)'s credit score, history of charge offs, bankruptcy or delinquency, low net worth, limited or insufficient credit history, or history of excessive overdraft.

iii. *Use of credit proceeds.* A financial institution reports the denial reason as ''use of credit proceeds'' if it denies an application because, as a matter of policy or practice, it places limits on lending to certain kinds of businesses, products, or activities it has identified as high risk.

iv. *Cashflow.* A financial institution reports the denial reason as ''cashflow'' when it denies an application due to insufficient or inconsistent cashflow.

v. *Collateral.* A financial institution reports the denial reason as ''collateral'' when it denies an application due to collateral that it deems insufficient or otherwise unacceptable.

vi. *Time in business.* A financial institution reports the denial reason as ''time in business'' when it denies an application due to insufficient time or experience in a line of business.

vii. *Government loan program criteria.* Certain loan programs are backed by government agencies that have specific eligibility requirements. When those requirements are not met by an applicant, and the financial institution denies the application, the financial institution reports the denial reason as ''government loan program criteria.'' For example, if an applicant cannot meet a government-guaranteed loan program's requirement to provide a guarantor or proof of insurance, the financial institution reports the reason for the denial as ''government loan program criteria.''

viii. *Aggregate exposure.* Aggregate exposure is a measure of the total exposure or level of indebtedness of the business and its principal owner(s) associated with an application. A financial institution reports the denial reason as ''aggregate exposure'' where the total debt associated with the application is deemed high or exceeds certain debt thresholds set by the financial institution. For example, if an application for unsecured credit exceeds the maximum amount a financial institution is permitted to approve per applicant, as stated in its credit guidelines, and the financial institution denies the application for this reason, the financial institution reports the reason for denial as ''aggregate exposure.''

ix. *Unverifiable information.* A financial institution reports the denial reason as ''unverifiable information'' when it is unable to verify information provided as part of the application, and denies the application for that reason. The unverifiable information

must be necessary for the financial institution to make a credit decision based on its procedures for the type of credit requested. Examples include unverifiable assets or collateral, unavailable business credit report, and unverifiable business ownership composition.

x. *Other.* A financial institution reports the denial reason as ''other'' where none of the enumerated denial reasons adequately describe the principal reason or reasons it denied the application, and the institution reports the denial reason or reasons via free-form text field.

2. *Reason for denial—not applicable.* A financial institution complies with §1002.107(a)(11) by reporting that the requirement is not applicable if the action taken on the application, pursuant to §1002.107(a)(9), is not a denial. For example, if the application resulted in an originated covered credit transaction, or the application was approved but not accepted, the financial institution complies with §1002.107(a)(11) by reporting not applicable.

107(a)(12) Pricing Information

1. *General.* For applications that a financial institution, pursuant to §1002.107(a)(9), reports as denied, withdrawn by the applicant, or incomplete, the financial institution reports that pricing information is ''not applicable.''

107(a)(12)(i) Interest Rate

1. *General.* A financial institution complies with §1002.107(a)(12)(i) by reporting the interest rate applicable to the amount of credit approved or originated as reported pursuant to §1002.107(a)(8).

2. *Interest rate—initial period.* If a covered credit transaction includes an initial period with an introductory interest rate of 12 months or less, after which the interest rate adjusts upwards or shifts from a fixed to variable rate, a financial institution complies with §1002.107(a)(12)(i) by reporting information about the interest rate applicable after the initial period. If a covered transaction includes an initial period with an interest rate of more than 12 months after which the interest rate resets, a financial institution complies with §1002.107(a)(12)(i) by reporting information about the interest rate applicable prior to the reset period. For example, if a financial institution originates a covered credit transaction with a fixed, initial interest rate of 0 percent for six months following origination, after which the interest rate will adjust according to a Prime index rate plus a 3 percent margin, the financial institution reports the 3 percent margin, Prime as the name of the index used to adjust the interest rate, the number 6 for the length of the initial period, and ''not applicable'' for the index value. As another example, in a 10/1 adjustable-rate mortgage transaction, where the first 10 years of the repayment period has a fixed rate of 3 percent and after year 10 the interest rate will adjust according to a Prime index rate plus a 3 percent margin, a financial institution complies with §1002.107(a)(12)(i) by reporting the fixed rate of 3 percent, the number 120 for the initial period, and ''not applicable'' in the fields for the index, margin, and index value.

3. *Multiple interest rates.* If a covered credit transaction includes multiple interest rates applicable to different credit features, a financial institution complies with §1002.107(a)(12)(i) by reporting the interest rate applicable to the amount of credit approved or originated reported pursuant to §1002.107(a)(8). For example, if a financial institution originates a credit card with different interest rates for purchases, balance transfers, cash advances, and overdraft advances, the financial institution reports the interest rate applicable for purchases.

4. *Index names.* A financial institution complies with §1002.107(a)(12)(i) by selecting the index used from the following list: Wall Street Journal Prime, 6-month CD rate, 1-year T-Bill, 3-year T-Bill, 5-year T-Note, 12-month average of 10-year T-Bill, Cost of Funds Index (COFI)-National, Cost of Funds Index (COFI)-11th District, Constant Maturity Treasury (CMT). If the index used is internal to the financial institution, the financial institution reports ''internal index'' via the list of indices provided. If the index used does not appear on the list of indices provided (and is not internal to the financial institution), the financial institution reports ''other'' and reports the name of the index via free-form text field.

5. *Index value.* For covered transactions with an adjustable interest rate, a financial institution complies with §1002.107(a)(12)(i)(B) by reporting the index value used to set the rate that is or would be applicable to the covered transaction.

107(a)(12)(ii) Total Origination Charges

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not reportable under §1002.107(a)(12)(ii). In determining whether an item is part of the total origination charges, a financial institution should compare the covered credit transaction in question with a similar cash transaction. A financial institution financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

2. *Charges by third parties.* A financial institution includes fees and amounts charged by someone other than the financial institution in the total charges reported if the financial institution:

i. Requires the use of a third party as a condition of or an incident to the extension of credit, even if the applicant can choose the third party; or

ii. Retains a portion of the third-party charge, to the extent of the portion retained.

3. *Special rule; broker fees.* A financial institution complies with §1002.107(a)(12)(ii) by including fees charged by a broker (including fees paid by the applicant directly to the broker or to the financial institution for delivery to the broker) in the total origination charges reported even if the financial institution does not require the applicant to use a broker and even if the financial institution does not retain any portion of the charge. For more information on broker fees, see commentary for §1002.107(a)(12)(iii).

4. *Bundled services.* Total origination charges include all charges imposed directly or indirectly by the financial institution at or before origination as an incident to or a condition of the extension of credit. Accordingly, a financial institution complies with §1002.107(a)(12)(ii) by including charges for other products or services paid at or before origination in the total origination charges reported if the financial institution requires the purchase of such other product or service as a condition of or an incident to the extension of credit.

5. *Origination charges—examples.* Examples of origination charges may include application fees, credit report fees, points, appraisal fees, and other similar charges.

6. *Net lender credit.* If a financial institution provides a credit to an applicant that is greater than the total origination charges the applicant would have paid, the financial institution complies with §1002.107(a)(12)(ii) by reporting the net lender credit as a negative amount. For example, if a covered transaction has $500 provided to the applicant at origination to offset closing costs, and the financial institution does not charge any origination charges, the financial institution complies with §1002.107(a)(12)(ii) by reporting negative $500 as the total origination charges.

107(a)(12)(iii) Broker Fees

1. *Amount.* A financial institution complies with §1002.107(a)(12)(iii) by including the fees reported in §1002.107(a)(12)(ii) that are fees paid by the applicant directly to the broker or to the financial institution for delivery to the broker. For example, a covered transaction has $3,000 of total origination charges. Of that $3,000, $250 are fees paid by the applicant directly to a broker and an additional $300 are fees paid to the financial institution for delivery to the broker. The financial institution complies with §1002.107(a)(12)(iii) by reporting $550 in the broker fees reported.

2. *Fees paid directly to a broker by an applicant.* A financial institution complies with §1002.107(a)(12)(iii) by relying on the best information readily available to the financial institution at the time final action is taken. Information readily available could include, for example, information provided by an applicant or broker that the financial institution reasonably believes regarding the amount of fees paid by the applicant directly to the broker.

107(a)(12)(iv) Initial Annual Charges

1. *Charges during the initial annual period.* The total initial annual charges include all charges scheduled to be imposed during the initial annual period following origination. For example, if a financial institution originates a covered credit transaction with a $50 monthly fee and a $100 annual fee, the financial institution complies with §1002.107(a)(12)(iv) by reporting $700 in the initial annual charges reported. If there will be a charge in the initial annual period following origination but the amount of that charge is uncertain at the time of origination, a financial institution complies with §1002.107(a)(12)(iv) by not reporting that charge as scheduled to be imposed during the initial annual period following origination.

2. *Interest excluded.* A financial institution complies with §1002.107(a)(12)(iv) by excluding any interest expense from the initial annual charges reported.

3. *Avoidable charges.* A financial institution complies with §1002.107(a)(12)(iv) by only including scheduled charges and excluding any charges for events that are avoidable by the applicant from the initial annual charges reported. Examples of avoidable charges include charges for late payment, for exceeding a credit limit, for delinquency or default, or for paying items that overdraw an account.

4. *Initial annual charges—examples.* Examples of charges scheduled to be imposed during the initial annual period may include monthly fees, annual fees, and other similar charges.

5. *Scheduled charges with variable amounts.* A financial institution complies with §1002.107(a)(12)(iv) by reporting as the default the highest amount for a charge scheduled to be imposed. For example, if a covered credit transaction has a $75 monthly fee, but the fee is reduced to $0 if the applicant maintains an account at the financial institution originating the covered credit transaction, the financial institution complies with §1002.107(a)(12)(iv) by reporting $900 ($75 × 12) in the initial annual charges reported.

6. *Transactions with a term of less than one year.* For a transaction with a term of less than one year, a financial institution complies with §1002.107(a)(12)(iv) by reporting all charges scheduled to be imposed during the term of the transaction.

107(a)(12)(v) Additional Cost for Merchant Cash Advances or Other Sales-Based Financing

1. *Merchant cash advances.* Section 1002.107(a)(12)(v) requires a financial institution to report the difference between the amount advanced and the amount to be repaid for a merchant cash advance or other sales-based financing transaction. Thus, in a merchant cash advance, a financial institution reports the difference between the amount advanced and the amount to be repaid, using the amounts (expressed in dollars) provided in the contract between the financial institution and the applicant.

107(a)(12)(vi) Prepayment Penalties

1. *Policies and procedures applicable to the covered credit transaction.* The policies and procedures applicable to the covered credit transaction include the practices that the financial institution follows when evaluating applications for the specific credit type and credit purpose requested. For example, assume that a financial institution's written procedures permit it to include prepayment penalties in the loan agreement for its term loans secured by non-owner occupied commercial real estate. For such transactions, the financial institution includes prepayment penalties in some loan agreements but not others. For an application for, or origination of, a term loan secured by non-owner occupied commercial real estate, the financial institution reports under §1002.107(a)(12)(vi)(A) that a prepayment penalty could have been included under the policies and procedures applicable to the transaction, regardless of whether the term loan secured by non-owner occupied commercial real estate actually includes a prepayment penalty.

2. *Balloon finance charges.* A financial institution complies with §1002.107(a)(12)(vi) by reporting as a prepayment penalty any balloon finance charge that may be imposed for paying all or part of the transaction's principal before the date on which the principal is due. For example, under the terms of a transaction, the amount of funds advanced is $12,000, the amount to be repaid is $24,000 (which includes $12,000 in principal and $12,000 in interest and fees), the length of the transaction is 12 months, and the applicant must repay $2,000 per month. The terms of the transaction state that if the applicant prepays the principal before the 12-month period is over, the applicant is responsible for paying the difference between $24,000 and the amount the applicant has already repaid prior to initiating prepayment. The difference between the $24,000 to be repaid and what the applicant has already repaid prior to initiating prepayment is a balloon finance charge and should be reported as a prepayment penalty.

107(a)(13) Census Tract

1. *General.* A financial institution complies with §1002.107(a)(13) by reporting a census tract number as defined by the U.S. Census Bureau, which includes State and county numerical codes. A financial institution complies with §1002.107(a)(13) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting. The financial institution reports census tract based on the following:

i. *Proceeds address.* A financial institution complies with §1002.107(a)(13) by reporting a census tract based on the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied, if known. For example, a financial institution would report a census tract based on the address or location of the site where the proceeds of a construction loan will be applied.

ii. *Main office or headquarters address.* If the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied is unknown, a financial institution complies with §1002.107(a)(13) by reporting a census tract number based on the address or location of the main office or headquarters of the applicant, if known. For example, the address or location of the main office or headquarters of the applicant may be the home address of a sole proprietor or the office address of a sole proprietor or other applicant.

iii. *Another address or location.* If neither the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied nor the address or location of the main office or headquarters of the applicant are known, a financial institution complies with §1002.107(a)(13) by reporting a census tract number based on another address or location associated with the applicant.

iv. *Type of address used.* In addition to reporting the census tract, pursuant to §1002.107(a)(13)(iv) a financial institution must report which one of the three types of addresses or locations listed in §1002.107(a)(13)(i) through (iii) and described in comments 107(a)(13)–1.i through iii that the census tract is determined from.

2. *Financial institution discretion.* A financial institution complies with §1002.107(a)(13) by identifying the appropriate address or location and the type of that address or location in good faith, using appropriate information from the applicant's credit file or otherwise known by the financial institution. A financial institution is not required to make inquiries beyond its standard procedures as to the nature of the addresses or locations it collects.

3. *Address or location not provided by applicant and otherwise undetermined.* Pursuant to

§1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes at least one address or location for an applicant for census tract reporting. However, if a financial institution is nonetheless unable to collect or otherwise determine any address or location for an application, the financial institution reports that the census tract information is ''not provided by applicant and otherwise undetermined.''

4. *Safe harbor.* As described in §1002.112(c)(2) and comment 112(c)–1, a financial institution that obtains an incorrect census tract by correctly using a geocoding tool provided by the FFIEC or the Bureau does not violate the Act or subpart B of this part.

107(a)(14) Gross Annual Revenue

1. *Collecting gross annual revenue.* A financial institution reports the applicant's gross annual revenue, expressed in dollars, for its fiscal year preceding when the information was collected. A financial institution may rely on the applicant's statements or on information provided by the applicant in collecting and reporting gross annual revenue, even if the applicant's statement or information is based on estimation or extrapolation. However, pursuant to §1002.107(b), if the financial institution verifies the gross annual revenue provided by the applicant, it must report the verified information. Also, pursuant to comment 107(c)(1)–5, a financial institution reports updated gross annual revenue data if it obtains more current data from the applicant during the application process. If a financial institution has already verified gross annual revenue data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. The financial institution may use the following language to ask about gross annual revenue and may rely on the applicant's answer (unless subsequently verified or updated):

What was the gross annual revenue of the business applying for credit in its last full fiscal year? Gross annual revenue is the amount of money the business earned before subtracting taxes and other expenses. You may provide gross annual revenue calculated using any reasonable method.

2. *Gross annual revenue not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the gross annual revenue of the applicant. However, if a financial institution is nonetheless unable to collect or determine the gross annual revenue of the applicant, the financial institution reports that the gross annual revenue is ''not provided by applicant and otherwise undetermined.''

3. *Affiliate revenue.* A financial institution is permitted, but not required, to report the gross annual revenue for the applicant that includes the revenue of affiliates as well. Likewise, as explained in comment 106(b)(1)–3, in determining whether the applicant is a small business under §1002.106(b), a financial institution may rely on an applicant's representations regarding gross annual revenue, which may or may not include affiliates' revenue.

4. *Gross annual revenue for a startup business.* In a typical startup business situation where the applicant has no gross annual revenue for its fiscal year preceding when the information is collected, the financial institution reports that the applicant's gross annual revenue in the preceding fiscal year is ''zero.'' The financial institution shall not report pro forma projected revenue figures because these figures do not reflect actual gross revenue.

107(a)(15) NAICS Code

1. *General.* NAICS stands for North American Industry Classification System. The Office of Management and Budget has charged the Economic Classification Policy Committee with the maintenance and review of NAICS. A financial institution complies with §1002.107(a)(15) if it uses the 3-digit NAICS subsector codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting.

2. *NAICS not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes NAICS code. However, if a financial institution is nonetheless unable to collect or otherwise determine a NAICS code for the applicant, the financial institution reports that the NAICS code is ''not provided by applicant and otherwise undetermined.''

3. *Safe harbor.* As described in §1002.112(c)(3) and comment 112(c)–2, a financial institution that obtains an incorrect NAICS code does not violate the Act or subpart B of this part if it either relies on an applicant's representations or on an appropriate third-party source, in accordance with §1002.107(b), regarding the NAICS code, or identifies the NAICS code itself, provided that the financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.

107(a)(16) Number of Workers

1. *General.* A financial institution complies with §1002.107(a)(16) by reporting the number of people who work for the applicant, using the ranges prescribed in the Filing Instructions Guide.

2. *Collecting number of workers.* A financial institution may collect number of workers

from an applicant using the ranges for reporting as specified by the Bureau (see comment 107(a)(16)–1) or as a numerical value. When asking for the number of workers from an applicant, a financial institution shall explain that full-time, part-time and seasonal employees, as well as contractors who work primarily for the applicant, would be counted as workers, but principal owners of the applicant would not. If asked, the financial institution shall explain that volunteers are not counted as workers, and workers for affiliates of the applicant are counted if the financial institution were also collecting the affiliates' gross annual revenue. The financial institution may use the following language to ask about the number of workers and may rely on the applicant's answer (unless subsequently verified or updated):

Counting full-time, part-time and seasonal workers, as well as contractors who work primarily for the business applying for credit, but not counting principal owners of the business, how many people work for the business applying for credit?

3. *Number of workers not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the number of workers of the applicant. However, if a financial institution is nonetheless unable to collect or determine the number of workers of the applicant, the financial institution reports that the number of workers is ''not provided by applicant and otherwise undetermined.''

107(a)(17) Time in Business

1. *Collecting time in business.* A financial institution complies with §1002.107(a)(17) by reporting the time the applicant has been in business.

i. If a financial institution collects or otherwise obtains the number of years an applicant has been in business as part of its procedures for evaluating an application for credit, it reports the time in business in whole years, rounded down to the nearest whole year.

ii. If a financial institution does not collect time in business as described in comment 107(a)(17)–1.i, but as part of its procedures determines whether or not the applicant's time in business is less than two years, it reports the applicant's time in business as either less than two years or two or more years in business.

iii. If a financial institution does not collect time in business as part of its procedures for evaluating an application for credit as described in comments 107(a)(17)–1.i or .ii, the financial institution complies with §1002.107(a)(17) by asking the applicant whether it has been in existence for less than two years or two or more years and reporting the information provided by the applicant accordingly.

2. *Time in business collected as part of the financial institution's procedures for evaluating an application for credit.* A financial institution that collects or obtains an applicant's time in business as part of its procedures for evaluating an application for credit is not required to collect or obtain time in business pursuant to any particular definition of time in business for this purpose. For example, if the financial institution collects the number of years the applicant has existed (such as by asking the applicant when its business was started, or by obtaining the applicant's date of incorporation from a Secretary of State or other State or Federal agency that registers or licenses businesses) as the time in business, the financial institution reports that information accordingly pursuant to comment 107(a)(17)–1.i. Similarly, if the financial institution collects the number of years of experience the applicant's owners have in the current line of business, the financial institution reports that information accordingly pursuant to comment 107(a)(17)–1.i. If, however, the financial institution collects both the number of years the applicant has existed as well as some other measure of time in business (such as the number of years of experience the applicant's owners have in the current line of business), the financial institution reports the number of years the applicant has existed as the time in business pursuant to comment 107(a)(17)–1.i.

3. *Time in business not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the applicant's time in business. However, if a financial institution is nonetheless unable to collect or determine the applicant's time in business, the financial institution reports that the time in business is ''not provided by applicant and otherwise undetermined.''

107(a)(18) Minority-Owned, Women-Owned, and LGBTQI+-Owned Business Statuses

1. *General.* A financial institution must ask an applicant whether it is a minority-owned, women-owned, and/or LGBTQI+-owned business. The financial institution must permit an applicant to refuse (*i.e.*, decline) to answer the financial institution's inquiry regarding business status and must inform the applicant that the applicant is not required to provide the information. See the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. The financial institution must report the applicant's substantive response regarding each business status, that the applicant declined to answer the inquiry

(that is, selected an answer option of ''I do not wish to provide this information'' or similar), or its failure to respond to the inquiry (that is, ''not provided by applicant''), as applicable.

2. *Definitions.* When inquiring about minority-owned, women-owned, and LGBTQI+-owned business statuses (regardless of whether the request is made on a paper form, electronically, or orally), the financial institution also must provide the applicant with definitions of the terms ''minority-owned business,'' ''women-owned business,'' and ''LGBTQI+-owned business'' as set forth in §1002.102 (m), (s) and (*l*), respectively. The financial institution satisfies this requirement if it provides the definitions as set forth in the sample data collection form in appendix E.

3. *Combining questions.* A financial institution may combine on the same paper or electronic data collection form the questions regarding minority-owned, women-owned, and LGBTQI+-owned business status pursuant to §1002.107(a)(18) with principal owners' ethnicity, race, and sex pursuant to §1002.107(a)(19) and the applicant's number of principal owners pursuant to §1002.107(a)(20). See the sample data collection form in appendix E.

4. *Notices.* When requesting minority-owned, women-owned, and LGBTQI+-owned business statuses from an applicant, a financial institution must inform the applicant that the financial institution cannot discriminate on the basis of the applicant's minority-owned, women-owned, or LGBTQI+-owned business statuses, or on whether the applicant provides its minority-owned, women-owned, or LGBTQI+-owned business statuses. A financial institution must also inform the applicant that Federal law requires it to ask for an applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A financial institution may combine these notices regarding minority-owned, women-owned, and LGBTQI+-owned business statuses with the notices that a financial institution is required to provide when requesting principal owners' ethnicity, race, and sex if a financial institution requests information pursuant to §1002.107(a)(18) and (19) in the same data collection form or at the same time. See the sample data collection form in appendix E for sample language that a financial institution may use for these notices.

5. *Maintaining the record of an applicant's response regarding minority-owned, women-owned, and LGBTQI+-owned business statuses separate from the application.* A financial institution must maintain the record of an applicant's responses to the financial institution's inquiry pursuant to §1002.107(a)(18) separate from the application and accompanying information. See §1002.111(b) and comment 111(b)–1. If the financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. See the sample data collection form in appendix E. For example, if the financial institution sends the data collection form via email, the data collection form should be a separate attachment to the email or accessed through a separate link in the email. If the financial institution uses a web-based data collection form, the form should be on its own page.

6. *Minority-owned, women-owned, and/or LGBTQI+-owned business statuses not provided by applicant.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses. However, if a financial institution does not receive a response to the financial institution's inquiry pursuant to §1002.107(a)(18), the financial institution reports that the applicant's business statuses were ''not provided by applicant.''

7. *Applicant declines to provide information about minority-owned, women-owned, and/or LGBTQI+-owned business statuses.* A financial institution reports that the applicant responded that it did not wish to provide the information about an applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses, if the applicant declines to provide the information by selecting such a response option on a paper or electronic form (*e.g.,* by selecting an answer option of ''I do not wish to provide this information'' or similar). The financial institution also reports an applicant's refusal to provide such information in this way, if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents.

8. *Conflicting responses provided by applicants.* If the applicant both provides a substantive response to the financial institution's inquiry regarding business status (that is, indicates that it is a minority-owned, women-owned, and/or LGBTQI+-owned business, or checks ''none apply'' or similar) and also checks the box indicating ''I do not wish to provide this information'' or similar, the financial institution reports the substantive response(s) provided by the

applicant (rather than reporting that the applicant declined to provide the information).

9. *No verification of business statuses.* Notwithstanding §1002.107(b), a financial institution must report the applicant's substantive response(s), that the applicant declined to answer the inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or the applicant's failure to respond to the inquiry (that is, that the information was ''not provided by applicant'') pursuant to §1002.107(a)(18), even if the financial institution verifies or otherwise obtains an applicant's minority-owned, women-owned, and/or LGBTQI+-owned business statuses for other purposes. For example, if a financial institution uses a paper data collection form to ask an applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business and the applicant does not indicate that it is a minority-owned business, the financial institution must not report that the applicant is a minority-owned business, even if the applicant indicates that it is a minority-owned business for other purposes, such as for a special purpose credit program or a Small Business Administration program.

107(a)(19) Ethnicity, Race, and Sex of Principal Owners

1. *General.* A financial institution must ask an applicant to provide its principal owners' ethnicity, race, and sex. The financial institution must permit an applicant to refuse (*i.e.*, decline) to answer the financial institution's inquiry and must inform the applicant that it is not required to provide the information. See the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. The financial institution must report the applicant's substantive responses regarding principal owners' ethnicity, race, and sex, that the applicant declined to answer an inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or its failure to respond to an inquiry (that is, ''not provided by applicant''), as applicable. The financial institution must report an applicant's responses about its principal owners' ethnicity, race, and sex, regardless of whether an applicant declines or fails to answer an inquiry about the number of its principal owners under §1002.107(a)(20). If an applicant provides some, but not all, of the requested information about the ethnicity, race, and sex of a principal owner, the financial institution reports the information that was provided by the applicant and reports that the applicant declined to provide or did not provide (as applicable) the remainder of the information. See comments 107(a)(19)–6 and –7.

2. *Definition of principal owner.* When requesting a principal owner's ethnicity, race, and sex, the financial institution must also provide the applicant with the definition of the term ''principal owner'' as set forth in §1002.102(o). The financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form in appendix E.

3. *Combining questions.* A financial institution may combine on the same paper or electronic data collection form the questions regarding the principal owners' ethnicity, race, and sex pursuant to §1002.107(a)(19) with the applicant's number of principal owners pursuant to §1002.107(a)(20) and the applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses pursuant to §1002.107(a)(18). See the sample data collection form in appendix E.

4. *Notices.* When requesting a principal owner's ethnicity, race, and sex from an applicant, a financial institution must inform the applicant that the financial institution cannot discriminate on the basis of a principal owner's ethnicity, race, or sex/gender, or on whether the applicant provides the information. A financial institution must also inform the applicant that Federal law requires it to ask for the principal owners' ethnicity, race, and sex/gender to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A financial institution may combine these notices with the similar notices that a financial institution is required to provide when requesting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, if a financial institution requests information pursuant to §1002.107(a)(18) and (19) in the same data collection form or at the same time. See the sample data collection form in appendix E for sample language that a financial institution may use for these notices.

5. *Maintaining the record of an applicant's responses regarding principal owners' ethnicity, race, and sex separate from the application.* A financial institution must maintain the record of an applicant's response to the financial institution's inquiries pursuant to §1002.107(a)(19) separate from the application and accompanying information. *See* §1002.111(b) and comment 111(b)–1. If the financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. See the sample data collection form in appendix E for sample language. For example, if the financial institution sends the data

collection form via email, the data collection form should be a separate attachment to the email or accessed through a separate link in the email. If the financial institution uses a web-based data collection form, the form should be on its own page.

6. *Ethnicity, race, or sex of principal owners not provided by applicant.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the ethnicity, race, and sex of an applicant's principal owners. However, if an applicant does not provide the information, such as in response to a request for a principal owner's ethnicity, race, or sex on a paper or electronic data collection form, the financial institution reports the ethnicity, race, or sex (as applicable) as ''not provided by applicant'' for that principal owner. For example, if the financial institution provides a paper data collection form to an applicant with two principal owners, and asks the applicant to complete and return the form but the applicant does not do so, the financial institution reports that the two principal owners' ethnicity, race, and sex were ''not provided by applicant.'' Similarly, if the financial institution provides an electronic data collection form, the applicant indicates that it has two principal owners, the applicant provides ethnicity, race, and sex for the first principal owner, and the applicant does not make any selections for the second principal owner's ethnicity, race, and sex, the financial institution reports the ethnicity, race, and sex that the applicant provided for the first principal owner and reports that each of the ethnicity, race, and sex for the second principal owner was ''not provided by applicant.'' Additionally, if the financial institution provides an electronic or paper data collection form, the applicant indicates that it has one principal owner, provides the principal owner's ethnicity and sex information, but does not provide information about the principal owner's race and also does not select a response of ''I do not wish to provide this information'' with regard to race, the financial institution reports the ethnicity and sex provided by the applicant and reports that the race of the principal owner was ''not provided by applicant.''

7. *Applicant declines to provide information about a principal owner's ethnicity, race, or sex.* A financial institution reports that the applicant responded that it did not wish to provide the information about a principal owner's ethnicity, race, or sex (as applicable), if the applicant declines to provide the information by selecting such a response option on a paper or electronic form (*e.g.*, by selecting an answer option of ''I do not wish to provide this information'' or similar). The financial institution also reports an applicant's refusal to provide such information in this way, if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents.

8. *Conflicting responses provided by applicant.* If the applicant both provides a substantive response to a request for a principal owner's ethnicity, race, or sex (that is, identifies a principal owner's race, ethnicity, or sex) and also checks the box indicating ''I do not wish to provide this information'' or similar, the financial institution reports the information on ethnicity, race, or sex that was provided by the applicant (rather than reporting that the applicant declined provide the information). For example, if an applicant is completing a paper data collection form and writes in a response that a principal owner's sex is female and also indicates on the form that the applicant does not wish to provide information regarding that principal owner's sex, the financial institution reports the principal owner's sex as female.

9. *No verification of ethnicity, race, and sex of principal owners.* Notwithstanding §1002.107(b), a financial institution must report the applicant's substantive responses as to its principal owners' ethnicity, race, and sex (that is, the applicant's identification of its principal owners' race, ethnicity, and sex), that the applicant declined to answer the inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or the applicant's failure to respond to the inquiry (that is, the information was ''not provided by applicant'') pursuant to §1002.107(a)(19), even if the financial institution verifies or otherwise obtains the ethnicity, race, or sex of the applicant's principal owners for other purposes.

10. *Reporting for fewer than four principal owners.* If an applicant has fewer than four principal owners, the financial institution reports ethnicity, race, and sex information for the number of principal owners that the applicant has and reports the ethnicity, race, and sex fields for additional principal owners as ''not applicable.'' For example, if an applicant has only one principal owner, the financial institution reports ethnicity, race, and sex information for the first principal owner and reports as ''not applicable'' the ethnicity, race, and sex data fields for principal owners two through four.

11. *Previously collected ethnicity, race, and sex information.* If a financial institution reports one or more principal owners' ethnicity, race, or sex information based on previously collected data under §1002.107(d), the financial institution does not need to collect any additional ethnicity, race, or sex information for other principal owners (if any). See also comment 107(d)–9.

12. *Guarantors.* A financial institution does not collect or report a guarantor's ethnicity, race, and sex unless the guarantor is also a

principal owner of the applicant, as defined in §1002.102(o).

13. *Ethnicity*. i. *Aggregate categories*. A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of §1002.107(a)(19) using one or more of the following aggregate categories:

A. Hispanic or Latino.

B. Not Hispanic or Latino.

ii. *Disaggregated subcategories*. A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of §1002.107(a)(19) using one or more of the following disaggregated subcategories, regardless of whether the applicant has indicated that the relevant principal owner is Hispanic or Latino and regardless of whether the applicant selects any aggregate categories: Cuban; Mexican; Puerto Rican; or Other Hispanic or Latino. If an applicant indicates that a principal owner is Other Hispanic or Latino, the financial institution must permit the applicant to provide additional information regarding the principal owner's ethnicity, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard. See the sample data collection form in appendix E for sample language. If an applicant chooses to provide additional information regarding a principal owner's ethnicity, such as by indicating that a principal owner is Argentinean orally or in writing on a paper or electronic form, a financial institution must report that additional information via free-form text. If the applicant provides such additional information but does not also indicate that the principal owner is Other Hispanic or Latino (*e.g.*, by selecting Other Hispanic or Latino on a paper or electronic form), a financial institution is permitted, but not required, to report Other Hispanic or Latino as well.

iii. *Selecting multiple categories*. The financial institution must permit the applicant to select one, both, or none of the aggregate categories and as many disaggregated subcategories as the applicant chooses. A financial institution must permit an applicant to select a disaggregated subcategory even if the applicant does not select the corresponding aggregate category. For example, an applicant must be permitted to select the Mexican disaggregated subcategory for a principal owner without being required to select the Hispanic or Latino aggregate category. If an applicant provides ethnicity information for a principal owner, the financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects both aggregate categories and four disaggregated subcategories for a principal owner, the financial institution reports the two aggregate categories that the applicant selected and all four of the disaggregated subcategories that the applicant selected. Additionally, if an applicant selects only the Mexican disaggregated subcategory for a principal owner and no aggregate categories, the financial institution reports Mexican for the ethnicity of the applicant's principal owner but does not also report Hispanic or Latino. Further, if the applicant selects an aggregate category (*e.g.*, Not Hispanic or Latino) and a disaggregated subcategory that does not correspond to the aggregate category (*e.g.*, Puerto Rican), the financial institution reports the information as provided by the applicant (*e.g.*, Not Hispanic or Latino, and Puerto Rican).

14. *Race*. i. *Aggregate categories*. A financial institution must permit an applicant to provide each principal owner's race for purposes of §1002.107(a)(19) using one or more of the following aggregate categories:

A. American Indian or Alaska Native.

B. Asian.

C. Black or African American.

D. Native Hawaiian or Other Pacific Islander.

E. White.

ii. *Disaggregated subcategories*. The financial institution must permit an applicant to provide a principal owner's race for purposes of §1002.107(a)(19) using one or more of the disaggregated subcategories as listed in this comment 107(a)(19)–14.ii, regardless of whether the applicant has selected the corresponding aggregate category.

A. The Asian aggregate category includes the following disaggregated subcategories: Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Asian and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Asian, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Cambodian, Hmong, Laotian, Pakistani, or

Thai. See the sample data collection form in appendix E for sample language.

B. The Black or African American aggregate category includes the following disaggregated subcategories: African American; Ethiopian; Haitian; Jamaican; Nigerian; Somali; or Other Black or African American. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Black or African American and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Black or African American, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Barbadian, Ghanaian, or South African. See the sample data collection form in appendix E for sample language.

C. The Native Hawaiian or Other Pacific Islander aggregate category includes the following disaggregated subcategories: Guamanian or Chamorro; Native Hawaiian; Samoan; and Other Pacific Islander. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Native Hawaiian or Other Pacific Islander and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Pacific Islander, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Fijian or Tongan. See the sample data collection form in appendix E for sample language.

D. If an applicant chooses to provide additional information regarding a principal owner's race, such as indicating that a principal owner is Cambodian, Barbadian, or Fijian orally or in writing on a paper or electronic form, a financial institution must report that additional information via free-form text in the appropriate data reporting field. If the applicant provides such additional information but does not also indicate that the principal owner is Other Asian, Other Black or African American, or Other Pacific Islander, as applicable (*e.g.*, by selecting Other Asian on a paper or electronic form), a financial institution is permitted, but not required, to report the corresponding ''Other'' race disaggregated subcategory (*i.e.*, Other Asian, Other Black or African American, or Other Pacific Islander).

E. In addition to permitting an applicant to indicate that a principal owner is American Indian or Alaska Native, a financial institution must permit an applicant to provide the name of an enrolled or principal tribe, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. If an applicant chooses to provide the name of an enrolled or principal tribe, a financial institution must report that information via free-form text in the appropriate data reporting field. If the applicant provides the name of an enrolled or principal tribe but does not also indicate that the principal owner is American Indian or Alaska Native (*e.g.*, by selecting American Indian or Alaska Native on a paper or electronic form), a financial institution is permitted, but not required, to report American Indian or Alaska Native as well.

iii. *Selecting multiple categories.* The financial institution must permit the applicant to select as many aggregate categories and disaggregated subcategories as the applicant chooses. A financial institution must permit an applicant to select one or more disaggregated subcategories even if the applicant does not select an aggregate category. For example, an applicant must be permitted to select the Chinese disaggregated subcategory for a principal owner without being required to select the Asian aggregate category. If an applicant provides race information for a principal owner, the financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects two aggregate categories and five disaggregated subcategories for a principal owner, the financial institution reports the two aggregate categories that the applicant selected and the five disaggregated subcategories that the applicant selected. Additionally, if an applicant selects only the Chinese disaggregated subcategory for a principal owner, the financial institution reports Chinese for the race of the principal owner but does not also report that the principal owner is Asian. Similarly, if the applicant selects an aggregate

category (*e.g.*, Asian) and a disaggregated subcategory that does not correspond to the aggregate category (*e.g.*, Native Hawaiian), the financial institution reports the information as provided by the applicant (*e.g.*, Asian and Native Hawaiian).

15. *Sex.* Generally, a financial institution must permit an applicant to provide each principal owner's sex for purposes of §1002.107(a)(19). When requesting information about a principal owner's sex, a financial institution shall use the term ''sex/gender.'' If the financial institution uses a paper or electronic data collection form to collect the information, the financial institution must allow the applicant to provide each principal owner's sex/gender using free-form text. When a financial institution collects the information orally, such as by telephone, the financial institution must inform the applicant of the opportunity to provide each principal owner's sex/gender and record the applicant's response. A financial institution reports the substantive information provided by the applicant (reported via free-form text in the appropriate data reporting field), or reports that the applicant declined to provide the information.

16. *Ethnicity and race information requested orally.* As described in comments 107(a)(19)–13 and –14, when collecting principal owners' ethnicity and race pursuant to §1002.107(a)(19), a financial institution must present the applicant with the specified aggregate categories and disaggregated subcategories. When collecting ethnicity and race information orally, such as by telephone, a financial institution may not present the applicant with the option to decline to provide the information without also presenting the applicant with the specified aggregate categories and disaggregated subcategories.

i. *Ethnicity and race categories.* Notwithstanding comments 107(a)(19)–13 and –14, a financial institution is not required to read aloud every disaggregated subcategory when collecting ethnicity and race information orally, such as by telephone. Rather, the financial institution must orally present the lists of aggregate ethnicity and race categories, followed by the disaggregated subcategories (if any) associated with the aggregate categories selected by the applicant or which the applicant requests to be presented. After the applicant makes any disaggregated category selections associated with the aggregate ethnicity or race category, the financial institution must also ask if the applicant wishes to hear the lists of disaggregated subcategories for any aggregate categories not selected by the applicant. The financial institution must record any aggregate categories selected by the applicant, as well as any disaggregated subcategories regardless of whether such subcategories were selected based on the disaggregated subcategories read by the financial institution or were otherwise provided by the applicant.

ii. *More than one principal owner.* If an applicant has more than one principal owner, the financial institution is permitted to ask about ethnicity and race in a manner that reduces repetition when collecting ethnicity and race information orally, such as by telephone. For example, if an applicant has two principal owners, the financial institution may ask for both principal owners' ethnicity at the same time, rather than asking about ethnicity, race, and sex for the first principal owner followed by ethnicity, race, and sex for the second principal owner.

107(a)(20) Number of Principal Owners

1. *General.* If the financial institution asks the applicant to provide the number of its principal owners pursuant to §1002.107(a)(20), a financial institution must provide the definition of principal owner set forth in §1002.102(o). The financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form in appendix E.

2. *Number of principal owners provided by applicant; verification of number of principal owners.* The financial institution may rely on statements or information provided by the applicant in collecting and reporting the number of the applicant's principal owners. However, pursuant to §1002.107(b), if the financial institution verifies the number of principal owners provided by the applicant, it must report the verified information.

3. *Number of principal owners not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the number of principal owners of the applicant. However, if a financial institution is nonetheless unable to collect or otherwise determine the applicant's number of principal owners, the financial institution reports that the number of principal owners is ''not provided by applicant and otherwise undetermined.''

107(b) Reliance on and Verification of Applicant-Provided Data

1. *Reliance on information provided by an applicant or appropriate third-party sources.* A financial institution may rely on statements made by an applicant (whether made in writing or orally) or information provided by an applicant when compiling and reporting data pursuant to subpart B of this part for applicant-provided data; the financial institution is not required to verify those statements or that information. However, if the financial institution does verify applicant statements or information for its own business purposes, such as statements relating to gross annual

revenue or time in business, the financial institution reports the verified information. Depending on the circumstances and the financial institution's procedures, certain applicant-provided data can be collected from appropriate third-party sources without a specific request from the applicant, and such information may also be relied on. For example, gross annual revenue or NAICS code may be collected from tax return documents; a financial institution may also collect an applicant's NAICS code using third-party sources such as business information products. Applicant-provided data are the data that are or could be provided by the applicant, including §1002.107(a)(5) through (7) and (13) through (20). See comment 107(c)(1)–3. In regard to restrictions on verification of minority-owned, women-owned, and LGBTQI+-owned business statuses, and principal owners' ethnicity, race, and sex, see comments 107(a)(18)–9 and 107(a)(19)–9.

107(c) Time and Manner of Collection

107(c)(1) In General

1. *Procedures.* The term ''procedures'' refers to the actual practices followed by a financial institution as well as its stated procedures. For example, if a financial institution's stated procedure is to collect applicant-provided data on or with a paper application form, but employees encourage applicants to skip the page that asks whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business under §1002.107(a)(18), the financial institution's procedures are not reasonably designed to obtain a response.

2. *Latitude to design procedures.* A financial institution has flexibility to establish procedures concerning the timing and manner in which it collects applicant-provided data that work best for its particular lending model and product offerings, provided those procedures are reasonably designed to collect the applicant-provided data in §1002.107(a), as required pursuant to §1002.107(c)(1), and where applicable comply with the minimum requirements set forth in §1002.107(c)(2).

3. *Applicant-provided data.* Applicant-provided data are the data that are or could be provided by the applicant, including §1002.107(a)(5) (credit type), §1002.107(a)(6) (credit purpose), §1002.107(a)(7) (amount applied for), §1002.107(a)(13) (address or location for purposes of determining census tract), §1002.107(a)(14) (gross annual revenue), §1002.107(a)(15) (NAICS code, or information about the business such that the financial institution can determine the applicant's NAICS code), §1002.107(a)(16) (number of workers), §1002.107(a)(17) (time in business), §1002.107(a)(18) (minority-owned business status, women-owned business status, and LGBTQI+-owned business status), §1002.107(a)(19) (ethnicity, race, and sex of the applicant's principal owners), and §1002.107(a)(20) (number of principal owners). Applicant-provided data do not include data that are generated or supplied only by the financial institution, including §1002.107(a)(1) (unique identifier), §1002.107(a)(2) (application date), §1002.107(a)(3) (application method), §1002.107(a)(4) (application recipient), §1002.107(a)(8) (amount approved or originated), §1002.107(a)(9) (action taken), §1002.107(a)(10) (action taken date), §1002.107(a)(11) (denial reasons), §1002.107(a)(12) (pricing information), and §1002.107(a)(13) (census tract, based on address or location provided by the applicant).

4. *Collecting applicant-provided data without a direct request to the applicant.* Depending on the circumstances and the financial institution's procedures, certain applicant-provided data can be collected without a direct request to the applicant. For example, credit type may be collected based on the type of product chosen by the applicant. Similarly, a financial institution may rely on appropriate third-party sources to collect certain applicant-provided data. See §1002.107(b) concerning the use of third-party sources.

5. *Data updated by the applicant.* A financial institution reports updated data if it obtains more current data from the applicant during the application process. For example, if an applicant states its gross annual revenue for the preceding fiscal year was $3 million, but then the applicant notifies the financial institution that its revenue in the preceding fiscal year was actually $3.2 million, the financial institution reports gross annual revenue of $3.2 million. For reporting verified applicant-provided data, see §1002.107(b) and comment 107(b)–1. If a financial institution has already verified data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. If a financial institution receives updates from the applicant after the application process has closed (for example, after closing or account opening), the financial institution may, at its discretion, update the data at any time prior to reporting the covered application to the Bureau.

107(c)(2) Applicant-Provided Data Collected Directly From the Applicant

1. *In general.* Whether a financial institution's procedures are reasonably designed to collect applicant-provided data is a fact-based determination and may depend on the financial institution's particular lending model, product offerings, and other circumstances; procedures that are reasonably designed to obtain a response may therefore require additional provisions beyond the minimum criteria set forth in §1002.107(c)(2). In general, reasonably designed procedures

will seek to maximize collection of applicant-provided data and minimize missing or erroneous data. While the requirements of §1002.107(c)(2) do not apply to applicant-provided data that a financial institution obtains without a direct request to the applicant, as explained in comment 107(c)(1)–4, in such instances, a covered financial institution must still comply with §1002.107(c)(1).

2. *Specific components.* i. *Timing of initial collection attempt.* While a financial institution has some flexibility concerning when applicant-provided data is are collected, under no circumstances may the initial request for applicant-provided data occur simultaneous with or after notifying an applicant of final action taken on a covered application. Generally, the earlier in the application process the financial institution initially seeks to collect applicant-provided data, the more likely the timing of collection is reasonably designed to obtain a response.

ii. *The request for applicant-provided data is prominently displayed or presented.* Pursuant to §1002.107(c)(2)(ii), a financial institution must ensure an applicant actually sees, hears, or is otherwise presented with the request for applicant-provided data. If an applicant is likely to overlook or miss a request for applicant-provided data, the financial institution does not have reasonably designed procedures. Similarly, a financial institution also does not have reasonably designed procedures if it obscures, prevents, or inhibits an applicant from accessing or reviewing a request for applicant-provided data.

iii. *The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data.* A. A covered financial institution avoids discouraging a response by, for example, communicating to the applicant that the collection of applicant-provided data is worthy of the applicant's attention or is as important as information collected in connection with the financial institution's creditworthiness determination. In contrast, a covered financial institution that collects applicant-provided data in a time or manner that directly or indirectly discourages or obstructs an applicant from responding or providing a particular response violates §1002.107(c)(2)(iii). For example, a financial institution may not discourage a response to inquiries regarding the demographic data pursuant to §1002.107(a)(18) and (19) by communicating to the applicant that the request is unimportant, encouraging the applicant to bypass the form altogether, or attempting to influence or alter the applicant's preferred response.

B. A covered financial institution also avoids discouraging a response by requiring an applicant to provide a response to one or more requests for applicant-provided data in order to proceed with a covered application, including, as applicable, a response of ''I do not wish to provide this information'' or similar. (As described in comments 107(a)(18)–1 and 107(a)(19)–1, a financial institution must permit an applicant to decline to provide the demographic data required by §1002.107(a)(18) and (19), which can be satisfied by providing a response option of ''I do not wish to provide this information'' or similar.) For example, in an electronic application, a financial institution may require the applicant to either make a substantive selection about a principal owner's ethnicity, race, or sex, select an option of ''I do not wish to provide this information'' or similar, or indicate there are no principal owners before allowing the applicant to proceed to the next page of requested information.

iv. *The applicant can easily provide a response.* Pursuant to §1002.107(c)(2)(iv), a financial institution must structure the request for information in a manner that makes it easy for the applicant to provide a response. For example, a financial institution requests applicant-provided data in the same format as other information required for the covered application, provides applicants multiple methods to provide or return applicant-provided data (for example, on a written form, through a web portal, or through other means), or provides the applicant some other type of straightforward and seamless method to provide a response. Conversely, a financial institution must avoid imposing unnecessary burden on an applicant to provide the information requested or requiring the applicant to take steps that are inconsistent with the rest of its application process. For example, a financial institution does not have reasonably designed procedures if it collects application information related to its own creditworthiness determination in electronic form, but mails a paper form to the applicant initially seeking the data required under §1002.107(a) that the financial institution does not otherwise need for its creditworthiness determination and requiring the applicant to mail it back. On the other hand, a financial institution complies with §1002.107(c)(2)(iv) if, at its discretion, it requests the applicant to respond to inquiries made pursuant to §1002.107(a)(18) and (19) through a reasonable method intended to keep the applicant's responses discrete and protected from view.

v. *Multiple requests for applicant-provided data.* A financial institution is permitted, but not required, to make more than one attempt to obtain applicant-provided data if the applicant does not respond to an initial request. For example, if an applicant initially does not respond when asked early in the application process (before notifying the applicant of final action taken on the application, pursuant to §1002.107(c)(2)(i)) to inquiries made pursuant to §1002.107(a)(18) and

(19), a financial institution may request this information again, for example, during a subsequent in-person meeting with the applicant or after notifying the applicant of final action taken on the covered application.

107(c)(3) Procedures To Monitor Compliance

1. *Procedures to identify and respond to indicia of potential discouragement, including low response rates.* Section 1002.107(c)(3) requires a covered financial institution to maintain procedures designed to identify and respond to indicia of potential discouragement, including low response rates for applicant-provided data. In general, these include monitoring for low response rates (*i.e.*, the percentage of covered applications for which the financial institution has obtained some type of response to requests for applicant-provided data, including, as applicable, an applicant response of ''I do not wish to provide this information'' or similar); monitoring for significant irregularities in any particular response that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses; monitoring response rates and responses by division, location, loan officer, or other factors to ensure that no discouragement or improper conduct is occurring in some parts of a financial institution, even if the financial institution maintains adequate response rates and responses overall; providing adequate training to loan officers and other persons involved in collecting applicant-provided data; promptly investigating any indicia of potential discouragement; and taking prompt remedial action if discouragement or other improper conduct is identified.

107(c)(4) Low Response Rates

1. *In general.* A low response rate for applicant-provided data may indicate that the financial institution has engaged in discouragement or otherwise failed to maintain reasonably designed procedures. Response rate generally refers to whether the financial institution has obtained some type of response to requests for applicant-provided data (including, as applicable, an applicant response of ''I do not wish to provide this information'' or similar). A response rate may be measured, as appropriate, as compared to financial institutions of a similar size, type, and/or geographic reach, or other factors, as appropriate. Similarly, significant irregularities in a particular response (for example, very high rates of an applicant response of ''I do not wish to provide this information'' or similar) may also indicate that a financial institution does not have reasonably designed procedures, for example, because of steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses. Response rates may be relevant across all applicant-provided data, though are particularly relevant for the collection of the demographic data pursuant to §1002.107(a)(18) and (19) given the heightened sensitivity of these inquiries and the importance of those data to the purposes of subpart B.

107(d) Previously Collected Data

1. *In general.* A financial institution may, for the purpose of reporting such data pursuant to §1002.109, reuse certain previously collected data if the requirements of §1002.107(d) are met. In that circumstance, a financial institution need not seek to collect the data anew in connection with a subsequent covered application to satisfy the requirements of this subpart. For example, if an applicant applies for and is granted a term loan, and then subsequently applies for a credit card in the same calendar year, the financial institution need not request again the data specified in §1002.107(d). Similarly, if an applicant applies for more than one covered credit transaction at one time, a financial institution need only ask once for the data specified in §1002.107(d).

2. *Data that can be reused.* Subject to the requirements of §1002.107(d), a financial institution may reuse the following data: §1002.107(a)(13) (address or location for purposes of determining census tract), §1002.107(a)(14) (gross annual revenue) (subject to comment 107(d)–7), §1002.107(a)(15) (NAICS code), §1002.107(a)(16) (number of workers), §1002.107(a)(17) (time in business) (subject to comment 107(d)–8), §1002.107(a)(18) (minority-owned business status, women-owned business status, and LGBTQI+-owned business status) (subject to comment 107(d)–9), §1002.107(a)(19) (ethnicity, race, and sex of applicant's principal owners) (subject to comment 107(d)–9), and §1002.107(a)(20) (number of principal owners). A financial institution is not, however, permitted to reuse other data, such as §1002.107(a)(6) (credit purpose).

3. *Previously reported data without a substantive response.* Data have not been ''previously collected'' within the meaning of §1002.107(d) if the applicant did not provide a substantive response to the financial institution's request for that data and the financial institution was not otherwise able to obtain the requested data (for example, from the applicant's credit report, or tax returns).

4. *Updated data.* If, after the application process has closed on a prior covered application, a financial institution obtains updated information relevant to the data required to be collected and reported pursuant to §1002.107(a)(13) through (20), and the applicant subsequently submits a new covered application, the financial institution must use the updated information in connection with the new covered application (if the requirements of §1002.107(d) are otherwise met) or

seek to collect the data again. For example, if a business notifies a financial institution of a change of address of its sole business location, and subsequently submits a covered application within the time period specified in §1002.107(d)(1) for reusing previously collected data, the financial institution must report census tract based on the updated information. In that circumstance, the financial institution may still reuse other previously collected data to satisfy §1002.107(a)(14) through (20) if the requirements of §1002.107(d) are met.

5. *Collection within the preceding 36 months.* Pursuant to §1002.107(d)(1), data can be reused to satisfy §1002.107(a)(13) and (15) through (20) if they are collected within the preceding 36 months. A financial institution may measure the 36-month period from the date of final action taken (§1002.107(a)(9)) on a prior application to the application date (§1002.107(a)(2)) on a subsequent application. For example, if a financial institution takes final action on an application on February 1, 2025, it may reuse certain previously collected data pursuant to §1002.107(d)(1) for subsequent covered applications dated or received by the financial institution through January 31, 2028.

6. *Reason to believe data are inaccurate.* Whether a financial institution has reason to believe data are inaccurate pursuant to §1002.107(d)(2) depends on the particular facts and circumstances. For example, a financial institution may have reason to believe data on the applicant's minority-owned business status, women-owned business status, and LGBTQI+-owned business status may be inaccurate if it knows that the applicant has had a change in ownership or a change in an owner's percentage of ownership.

7. *Collection of gross annual revenue in the same calendar year.* Pursuant to §1002.107(d)(1), gross annual revenue information can be reused to satisfy §1002.107(a)(14) provided it is collected in the same calendar year as the current covered application, as measured from the application date. For example, if an application is received and gross annual revenue is collected in connection with a covered application in one calendar year, but then final action was taken on the application in the following calendar year, the data may only be reused for the calendar year in which it was collected and not the calendar year in which final action was taken on the application. However, if an application is received and gross annual revenue is collected in connection with a covered application in one calendar year, a financial institution may reuse that data pursuant to §1002.107(d) in a subsequent application initiated in the same calendar year, even if final action was taken on the subsequent application in the following calendar year.

8. *Time in business.* A financial institution that decides to reuse previously collected data to satisfy §1002.107(a)(17) (time in business) must update the data to reflect the passage of time since the data were collected. If a financial institution only knows that the applicant had been in business less than two years at the time the data was initially collected, as described in comment 107(a)(17)–1.ii or iii, it updates the data based on the assumption that the applicant had been in business for 12 months at the time of the prior collection. For example:

i. If a financial institution previously collected data on a prior covered application that the applicant has been in business for four years, and then seeks to reuse that data for a subsequent covered application submitted one year later, it must update the data to reflect that the applicant has been in business for five years.

ii. If a financial institution previously collected data on a prior covered application that the applicant had been in business less than two years (and was not aware of the business's actual length of time in business at the time), and then seeks to reuse that data for a subsequent covered application submitted 18 months later, the financial institution reports time in business on the subsequent covered application as over two years in business.

9. *Minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex.* A financial institution may not reuse data to satisfy §1002.107(a)(18) and (19) unless the data were collected in connection with a prior covered application pursuant to this subpart B. If the financial institution previously asked the applicant to provide its minority-owned business status, women-owned business status, and LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex for purposes of §1002.107(a)(18) and (19), and the applicant declined to provide the information (such as by selecting ''I do not wish to provide this information'' or similar on a data collection form or by telling the financial institution that it did not wish to provide the information), the financial institution may use that response when reporting data for a subsequent application pursuant to §1002.107(d). However, if the applicant failed to respond (such as by leaving the response to the question blank or by failing to return a data collection form), the financial institution must inquire about the applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, or sex, as applicable, in connection with a subsequent application because the data were not previously obtained. See also comment 107(a)(19)–11 concerning previously collected ethnicity, race, and sex information.

Section 1002.108—Firewall

108(a) Definitions

1. *Involved in making any determination concerning a covered application from a small business.* i. *General.* An employee or officer is involved in making a determination concerning a covered application from a small business for purposes of §1002.108 if the employee or officer makes, or otherwise participates in, a decision regarding the evaluation of a covered application from a small business or the creditworthiness of a small business applicant for a covered credit transaction. This includes, but is not limited to, employees and officers serving as underwriters. The decision that an employee or officer makes or participates in must be about a specific covered application or about the creditworthiness of a specific applicant. An employee or officer is not involved in making a determination concerning a covered application if the employee or officer is only involved in making a decision that affects covered applications generally, or if the employee or officer only interacts with small businesses prior to them becoming applicants or submitting an application. An employee or officer may be participating in a determination concerning a covered application even if the employee or officer is not the ultimate decision maker or the sole decision maker. For example, an employee participates in a determination concerning a covered application if the employee recommends that another employee or officer approve or deny the application. Similarly, an employee or officer participates in a determination concerning a covered application if the employee or officer is part of a larger group, such as a committee, that makes a determination concerning a covered application. For example, an employee participates in a decision if the employee is a member of a committee that approves the terms offered to an applicant for a covered application. This is true even if the employee does not support the committee's ultimate decision regarding the terms offered. Conversely, an employee or officer does not participate in a determination concerning a covered application if the employee or officer only performs ministerial functions for the committee, such as recording the minutes, or if the committee does not make a determination concerning a specific covered application.

ii. *Examples of activities that do not constitute being involved in making a determination concerning a covered application from a small business.* The following are examples of activities that do not constitute being involved in making a determination concerning a covered application:

A. Developing policies and procedures, designing or programming computer or other systems, or conducting marketing.

B. Discussing credit products, loan terms, or loan requirements with a small business before it submits a covered application.

C. Making or participating in a decision after the financial institution has taken final action on the covered application, such as a decision about servicing or collecting a covered credit transaction.

D. Using a check box form to confirm whether an applicant has submitted all necessary documents or handling a minor or clerical matter during the application process, such as suggesting or selecting a time for an appointment with an applicant.

E. Gathering information (including information collected pursuant to §1002.107(a)(18) or (19)) and forwarding the information or a covered application to other individuals or entities.

F. Reviewing previously collected data to determine if it can be reused for a later covered application pursuant to §1002.107(d).

iii. *Examples of activities that constitute being involved in making a determination concerning a covered application from a small business.* The following are examples of activities (done individually or as part of a group) that constitute being involved in making a determination concerning a covered application:

A. Making or participating in a decision to approve or deny a specific covered application. This includes, but is not limited to, making or participating in a decision that an applicant does not satisfy one or more of the requirements for the covered credit transaction for which it has applied.

B. Making or participating in a decision regarding the reason(s) for denial of a covered application.

C. Making or participating in a decision that a guarantor or collateral is required in order to approve a specific covered application.

D. Making or participating in a decision regarding the credit amount or credit limit that will be approved for a specific covered application.

E. Making or participating in a decision to set one or more of the other terms that will be offered for a specific covered credit transaction. This includes, but is not limited to, making or participating in a decision regarding the interest rate, the loan term, or the payment schedule that will be offered for a specific covered credit transaction.

F. Making or participating in a decision regarding a counteroffer made to a specific applicant, including a decision regarding the terms of such a counteroffer.

G. Recommending that another decision maker approve or deny a specific covered application, provide a specific reason for denying a covered application, require a guarantor or collateral in order to approve a covered application, approve a credit amount or credit limit for a covered credit transaction, set one or more other terms for a covered

credit transaction, make a counteroffer regarding a covered application, or set a specific term for such a counteroffer.

2. *Should have access.* i. *General.* A financial institution may determine that an employee or officer who is involved in making a determination concerning a covered application from a small business should have access to information otherwise subject to the prohibition in §1002.108(b) if that employee or officer is assigned one or more job duties that may require the employee or officer to collect, see, consider, refer to, or otherwise use information subject to the prohibition in §1002.108(b). If the employee or officer might need to collect, see, consider, refer to, or use such information to perform the employee's or officer's assigned job duties, the financial institution may determine that the employee or officer should have access. For example, if a loan officer is involved in making a determination concerning a covered application and that loan officer's job description or the financial institution's policies and procedures state that the loan officer may need to collect information pursuant to §1002.107(a)(18) or (19), the financial institution may determine that the loan officer should have access.

ii. *When a group of employees or officers should have access.* A financial institution may determine that all employees or officers with the same job description or assigned duties should have access for purposes of §1002.108. For example, if a job description, a policy, a procedure, or another document states that a loan officer may have to collect or explain any part of a data collection form that includes the inquiries described in §1002.107(a)(18) and (19), the financial institution may determine that all employees and officers who have been assigned the position of loan officer should have access for purposes of §1002.108.

iii. *Making a determination regarding who should have access.* A financial institution is permitted to choose what lawful factors it will consider when determining whether an employee or officer should have access. A financial institution's determination that an employee or officer should have access may take into account relevant operational factors and lawful business practices. For example, a financial institution may consider its size, the number of employees and officers within the relevant line of business or at a particular branch or office location, and/or the number of covered applications the financial institution has received or expects to receive. Additionally, a financial institution may consider its current or its reasonably anticipated staffing levels, operations, systems, processes, policies, and procedures. A financial institution is not required to hire additional staff, upgrade its systems, change its lending or operational processes, or revise its policies or procedures for the sole purpose of limiting who should have access.

108(b) Prohibition on Access to Certain Information

1. *Scope of persons subject to the prohibition.* The prohibition in §1002.108(b) applies to an employee or officer of a covered financial institution or its affiliate if the employee or officer is involved in making any determination concerning a covered application from a small business. For example, if a financial institution is affiliated with company B and an employee of company B is involved in making a determination concerning a covered application on behalf of the financial institution, then the financial institution must comply with §1002.108 with regard to company B's employee. Section 1002.108 does not require a financial institution to limit the access of employees and officers of third parties who are not affiliates of the financial institution.

2. *Scope of information that cannot be accessed when the prohibition applies to an employee or officer.* i. *Information that cannot be accessed when the prohibition applies.* If a particular employee or officer is involved in making a determination concerning a covered application from a small business, the prohibition in §1002.108(b) only limits that employee's or officer's access to that small business applicant's responses to the inquiries that the covered financial institution makes to satisfy §1002.107(a)(18) and (19). For example, if a financial institution uses a paper data collection form to request information pursuant to §1002.107(a)(18) and (19), an employee or officer that is subject to the prohibition is not permitted access to the paper data collection form that contains the applicant's responses to the inquiries made pursuant to pursuant to §1002.107(a)(18) and (19), or to any other record that identifies how the particular applicant responded to those inquires. Similarly, if a financial institution makes the inquiries required pursuant to §1002.107(a)(18) and (19) during a telephone call, the prohibition applies to the applicant's responses to those inquiries provided during that telephone call and to any record that identifies how the particular applicant responded to those inquiries.

ii. *Information that can be accessed when the prohibition applies.* If a particular employee or officer is involved in making a determination concerning a covered application, the prohibition in §1002.108(b) does not limit that employee's or officer's access to an applicant's responses to inquiries regarding whether the applicant is a minority-owned, women-owned, or LGBTQI+-owned business, or principal owners' ethnicity, race, or sex, made for purposes other than compliance with §1002.107(a)(18) or (19). Thus, for example, an employee or officer who is subject to

the prohibition in §1002.108(b) may have access to information regarding whether an applicant is eligible for a Small Business Administration program for women-owned businesses without regard to whether the exception in §1002.108(c) is satisfied. Additionally, an employee or officer who knows that an applicant is a minority-owned business, women-owned business, or LGBTQI+-owned business, or who knows the ethnicity, race, or sex of any of the applicant's principal owners due to activities unrelated to the inquiries made to satisfy the financial institution's obligations under §1002.107(a)(18) and (19) is not prohibited from making a determination concerning the applicant's covered application. Thus, an employee or officer who knows, for example, that an applicant is a minority-owned business due to a social relationship or another professional relationship with the applicant or any of its principal owners may make determinations concerning the applicant's covered application. Furthermore, an employee or officer that is involved in making a determination concerning a covered application may see, consider, refer to, or use data collected to satisfy aspects of §1002.107 other than §1002.107(a)(18) or (19), such as gross annual revenue, number of workers, and time in business.

108(c) Exception to the Prohibition on Access to Certain Information

1. *General.* A financial institution is not required to limit the access of an employee or officer who is involved in making determinations concerning a covered application from a small business if the financial institution determines that the particular employee or officer should have access to the information collected pursuant to §1002.107(a)(18) or (19), and the financial institution provides the notice required by §1002.108(d). A financial institution is not required to perform a separate analysis of the feasibility of maintaining a firewall. A determination that an employee or officer should have access means that it is not feasible to maintain a firewall as to that particular employee or officer, and the exception applies to that employee or officer if the financial institution provides the notice required by §1002.108(d). However, the fact that a financial institution has made a determination that an employee or officer should have access does not mean that the financial institution can permit other employees and officers who are involved in making determinations concerning a covered application to have access to the information collected pursuant to §1002.107(a)(18) and (19). A financial institution may only permit an employee or officer who is involved in making a determination concerning a covered application to have access to information collected pursuant to §1002.107(a)(18) and (19) if it has determined that employee or officer or a group of which the employee or officer is a member should have access to the information.

2. *Applying the exception to a specific employee or officer or group of similarly situated employees or officers.* The exception applies to an employee or officer if the financial institution determines that the employee or officer should have access to the information collected pursuant to §1002.107(a)(18) or (19), and the financial institution provides the notice required by §1002.108(d). A financial institution can also determine that several employees and officers should have access, that all of a group of similarly situated employees or officers should have access, and that multiple groups of similarly situated employees or officers should have access to information collected pursuant to §1002.107(a)(18) or (19). See also comment 108(a)–2. For example, a financial institution could determine that all its small business loan officers, small business loan processors, compliance officers, and legal officers should have access. If the financial institution provides the notice required in §1002.108(d), the financial institution may permit all of its small business loan officers, small business loan processors, compliance officers, and legal officers to have access. However, the financial institution cannot permit other employees and officers to have access simply because it has determined that the small business loan officers, loan processors, compliance officers, and legal officers should have access. For example, in this case, the financial institution may not permit its underwriters or chief executive officer to have access to the information collected from the applicant pursuant to §1002.107(a)(18) or (19) if they are involved in making any determination concerning a covered application, unless the financial institution also determines that they should have access. This would be true even if the chief executive officer or underwriter had some of the same assigned duties as a loan officer, such as being a member of a credit committee, but has not been assigned the task(s) that may require access to one or more applicants' responses to the financial institution's inquiries under §1002.107(a)(18) or (19). If the financial institution separately determines that underwriters and the chief executive officer should have access, then the underwriters and chief executive officer may also have access.

108(d) Notice

1. *General.* If a financial institution determines that one or more employees or officers should have access pursuant to §1002.108(c), the financial institution must provide the required notice to, at a minimum, the applicant or applicants whose responses will be accessed by an employee or officer involved

in making determinations concerning the applicant's or applicants' covered applications. Alternatively, a financial institution may also provide the required notice to applicants whose responses will not or might not be accessed. For example, a financial institution could provide the notice to all applicants for covered credit transactions or all applicants for a specific type of product.

2. *Content of the required notice.* The notice must inform the applicant that one or more employees and officers involved in making determinations concerning the applicant's covered application may have access to the applicant's responses regarding the applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and its principal owners' ethnicity, race, and sex. See the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. If a financial institution establishes and maintains a firewall and chooses to use the sample data collection form, the financial institution can delete this sample language from the form.

3. *Timing for providing the notice.* If the financial institution is providing the notice orally, it must provide the notice required by §1002.108(d) prior to asking the applicant if it is a minority-owned business, women-owned business, or LGBTQI+-owned business and prior to asking for a principal owner's ethnicity, race, or sex. If the notice is provided on the same paper or electronic data collection form as the inquiries about minority-owned business status, women-owned business status, LGBTQI+-owned business status and the principal owners' ethnicity, race, or sex, the notice must appear before the inquiries. If the notice is provided in an electronic or paper document that is separate from the data collection form, the notice must be provided at the same time as the data collection form or prior to providing the data collection form. Additionally, the notice must be provided with the non-discrimination notices required pursuant to §1002.107(a)(18) and (19). See appendix E for sample language.

Section 1002.109—Reporting of Data to the Bureau

109(a) Reporting to the Bureau

109(a)(2) Reporting by Subsidiaries

1. *Subsidiaries.* A covered financial institution is considered a subsidiary of another covered financial institution for purposes of reporting data pursuant to §1002.109 if more than 50 percent of the ownership or control of the first covered financial institution is held by the second covered financial institution.

109(a)(3) Reporting Obligations Where Multiple Financial Institutions Are Involved in a Covered Credit Transaction

1. *General.* The following clarifies how to report applications involving more than one financial institution. The discussion below assumes that all parties involved with the covered credit transaction are covered financial institutions. However, the same principles apply if any party is not a covered financial institution.

i. A financial institution shall report the action that it takes on a covered application, whether or not the covered credit transaction closed in the financial institution's name and even if the financial institution used underwriting criteria supplied by another financial institution. However, where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to report. Setting the material terms of the covered credit transaction include, for example, selecting among competing offers, or modifying pricing information, amount approved or originated, or repayment duration. In this situation, the determinative factor is not which financial institution actually made the last credit decision prior to closing, but rather which financial institution last had the authority for setting the material terms of the covered credit transaction prior to closing. Whether a financial institution has taken action for purposes of §1002.109(a)(3) and comment 109(a)(3)–1 is not relevant to, and is not intended to repeal, abrogate, annul, impair, or interfere with, section 701(d) (15 U.S.C. 1691(d)) of the Act, §1002.9, or any other provision within subpart A of this Regulation.

ii. A financial institution takes action on a covered application for purposes of §1002.109(a)(3) if it denies the application, originates the application, approves the application but the applicant did not accept the transaction, or closes the file or denies for incompleteness. The financial institution must also report the application if it was withdrawn. For reporting purposes, it is not relevant whether the financial institution receives the application directly from the applicant or indirectly through another party, such as a broker, or (except as otherwise provided in comment 109(a)(3)–1.i) whether another financial institution also reviews and reports an action taken on a covered application involving the same credit transaction.

iii. Where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction and where more than one financial institution denies the application

or otherwise does not approve the application, the reporting financial institution (the last financial institution with authority to set the material terms of the covered credit transaction) shall have a consistent procedure for determining how it reports inconsistent or differing data points for purposes of subpart B. For example, Financial Institution A is the reporting entity because it has the last authority to set the material credit terms. Financial Institution A sends the application to Financial Institution B and Financial Institution C for review, but both Financial Institution B and Financial Institution C deny the application, with different denial reasons. Based on these denials, Financial Institution A follows suit and denies the application. Financial Institution A must have a consistent procedure for what denial reason(s) to report, such as reporting the denial reason(s) from the first financial institution that denied the covered application.

2. *Examples.* The following scenarios illustrate how a financial institution reports a particular covered application. The illustrations assume that all parties involved with the covered credit transaction are covered financial institutions. However, the same principles apply if any party is not a covered financial institution. Examples i through iv involve a single financial institution with responsibility for making a credit decision without the involvement of an intermediary. Example v describes a financial institution intermediary with only passive involvement in the covered credit transaction. Example vi describes a transaction where multiple financial institutions independently decision and take action on a covered application. Examples vii and viii describe situations where more than one financial institution must make a credit decision in order to approve the covered credit transaction. Examples ix and x describe situations involving pooled and participation interests.

i. Financial Institution A received a covered application from an applicant and approved the application before closing the covered credit transaction in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B later purchased the covered credit transaction from Financial Institution A. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this transaction.

ii. Financial Institution A received a covered application from an applicant. If approved, the covered credit transaction would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A took action on the application, Financial Institution A reports the application as denied. Financial Institution B does not report the application.

iii. Financial Institution A reviewed a covered application and made a credit decision to approve it using the underwriting criteria provided by a Financial Institution B. Financial Institution B did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this application.

iv. Financial Institution A reviewed and made the credit decision on a covered application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

v. Financial Institution A received a covered application from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. The covered credit transaction closed in Financial Institution A's name. Financial Institution B purchased the covered credit transaction from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, and Financial Institution A's approval was not necessary for the credit transaction, Financial Institution B reports the origination. Financial Institution A does not report the application. Assume the same facts, except that Financial Institution B reviewed the application before the covered credit transaction would have closed, but Financial Institution B denied the application. Financial Institution B reports the application as denied. Financial Institution A does not report the application because it did not take an action on the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application for the same reason.

vi. Financial Institution A received a covered application and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. Financial Institutions B and C are not working together with Financial Institutions A or D, or with each other, and are solely responsible for setting the terms of their own credit transactions. Financial

Institution B made a credit decision approving the application, and Financial Institution C made a credit decision denying the application. The applicant did not accept the covered credit transaction from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application, because it was acting as Financial Institution D's agent. The applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the application as originated. Financial Institution C reports the application as denied.

vii. Financial Institution A received a covered application and made a credit decision to approve it using the underwriting criteria provided by Financial Institution B. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A forwarded the application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. Financial Institution A makes a credit decision on the application and modifies the credit terms (the interest rate and repayment term) offered by Financial Institution B. The covered credit transaction reflecting the modified terms closes in Financial Institution A's name. Financial Institution B purchases the covered credit transaction from Financial Institution A after closing. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as originated. Financial Institution B does not report the origination because it was not the last financial institution with the authority to set the material terms on the application. If, under the same facts, Financial Institution A did not modify the credit terms offered by Financial Institution B, Financial Institution A still reports the application as originated because it was still the last financial institution with the authority for setting the material terms, even if it chose not to so do in a particular instance. Financial Institution B does not report the origination.

viii. Financial Institution A received a covered application and forwarded it to Financial Institutions B, C, and D. Financial Institution A was not acting as anyone's agent. Financial Institution B and C reviewed the application and made a credit decision approving the application and Financial Institution D reviewed the application and made a credit decision denying the application. Prior to closing, Financial Institution A makes a credit decision on the application by deciding to offer to the applicant the credit terms offered by Financial Institution B and does not convey to the applicant the credit terms offered by Financial Institution C. The applicant does not accept the covered credit transaction. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as approved but not accepted. Financial Institutions B, C, and D do not report the application because they were not the last financial institution with the authority for setting the material terms of the covered credit transaction. Assume the same facts, except the applicant accepts the terms of the covered credit transaction from Financial Institution B as offered by Financial Institution A. The covered credit transaction closes in Financial Institution A's name. Financial Institution B purchases the transaction after closing. Here, Financial Institution A reports the application as originated. Financial Institutions B, C, and D do not report the application because they were not the last financial institution responsible for setting the material terms of the covered credit transaction.

ix. Financial Institution A receives a covered application and approves it, and then Financial Institution A elects to organize a loan participation agreement where Financial Institutions B and C agree to purchase a partial interest in the covered credit transaction. Financial Institution A reports the application. Financial Institutions B and C have no reporting obligation for this application.

x. Financial Institution A purchases an interest in a pool of covered credit transactions, such as credit-backed securities or real estate investment conduits. Financial Institution A does not report this purchase.

3. *Agents.* If a covered financial institution takes action on a covered application through its agent, the financial institution reports the application. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered credit transaction was originated. Financial Institution A reports the covered credit transaction as an origination. State law determines whether one party is the agent of another.

109(b) Financial Institution Identifying Information

1. *Changes to financial institution identifying information.* If a financial institution's information required pursuant to §1002.109(b) changes, the financial institution shall provide the new information with the data submission for the collection year of the change. For example, assume two financial institutions that previously reported data under subpart B of this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new TIN in February 2028. The surviving institution must report the new TIN with its data submission for its 2028 data (which is due by June 1, 2029)

pursuant to §1002.109(b)(5). Likewise, if that financial institution's Federal prudential regulator changes in February 2028 as a result of the merger, it must identify its new Federal prudential regulator in its annual submission for its 2028 data.

Paragraph 109(b)(4)

1. *Federal prudential regulator.* For purposes of §1002.109(b)(4), *Federal prudential regulator* means, if applicable, the Federal prudential regulator for a financial institution that is a depository institution as determined pursuant to section 3q of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System; or the National Credit Union Administration Board for financial institutions that are Federal credit unions.

Paragraph 109(b)(6)

1. *Legal Entity Identifier (LEI).* A Legal Entity Identifier is a utility endorsed by the LEI Regulatory oversight committee, or a utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system. A financial institution complies with §1002.109(b)(6) by reporting its current LEI number. A financial institution that does not currently possess an LEI number must obtain an LEI number, and has an ongoing obligation to maintain the LEI number. The GLEIF website provides a list of LEI issuing organizations. A financial institution may obtain an LEI, for purposes of complying with §1002.109(b)(6), from any one of the issuing organizations listed on the GLEIF website.

Paragraph 109(b)(7)

1. *RSSD ID number.* The RSSD ID is a unique identifying number assigned to institutions, including main offices and branches, by the Board of Governors of the Federal Reserve System. A financial institution's RSSD ID may be found on the website of the National Information Center, which provides comprehensive financial and structure information on banks and other institutions for which the Federal Reserve Board has a supervisory, regulatory, or research interest including both domestic and foreign banking organizations that operate in the United States. If a financial institution does not have an RSSD ID, it reports that this information is not applicable.

Paragraph 109(b)(8)

1. *Immediate parent entity.* An entity is the immediate parent of a financial institution for purposes of §1002.109(b)(8)(i) through (iii) if it is a separate entity that directly owns more than 50 percent of the financial institution.

2. *Top-holding parent entity.* An entity is the top-holding parent of a financial institution for purposes of §1002.109(b)(8)(iv) through (vi) if it ultimately owns more than 50 percent of the financial institution, and the entity itself is not controlled by any other entity. If the immediate parent entity and the top-holding parent entity are the same, the financial institution reports that §1002.109(b)(8)(iv) through (vi) are not applicable.

3. *LEI.* For purposes of §1002.109(b)(8)(ii) and (v), a financial institution shall report the LEI of a parent entity if the parent entity has an LEI number. If a financial institution's parent entity does not have an LEI, the financial institution reports that this information is not applicable.

4. *RSSD ID numbers.* For purposes of §1002.109(b)(8)(iii) and §1002.109(b)(8)(vi), a financial institution shall report the RSSD ID number of a parent entity if the entity has an RSSD ID number. If a financial institution's parent entity does not have an RSSD ID, the financial institution reports that this information is not applicable.

Paragraph 109(b)(9)

1. *Type of financial institution.* A financial institution complies with §1002.109(b)(9) by selecting the applicable type or types of financial institution from the list below. A financial institution shall select all applicable types.

i. Bank or savings association.

ii. Minority depository institution.

iii. Credit union.

iv. Nondepository institution.

v. Community development financial institution (CDFI).

vi. Other nonprofit financial institution.

vii. Farm Credit System institution.

viii. Government lender.

ix. Commercial finance company.

x. Equipment finance company.

xi. Industrial loan company.

xii. Online lender.

xiii. Other.

2. *Use of ''other'' for type of financial institution.* A financial institution reports type of financial institution as ''other'' where none of the enumerated types of financial institution appropriately describe the applicable type of financial institution, and the institution reports the type of financial institution via free-form text field. A financial institution that selects at least one type from the list is permitted, but not required, to also report ''other'' (with appropriate free-form text) if there is an additional aspect of its business that is not one of the enumerated types set out in comment 109(b)(9)–1.

3. *Additional types of financial institution.* The Bureau may add additional types of financial institutions via the Filing Instructions Guide and related materials. Refer to the Filing Instructions Guide for any updates for each reporting year.

Paragraph 109(b)(10)

1. *Financial institutions that voluntarily report covered applications under subpart B of this part.* A financial institution that is not a covered financial institution pursuant to §1002.105(b) but that elects to voluntarily compile, maintain, and report data under §§1002.107 through 1002.109 (see comment 105(b)–10) complies with §1002.109(b)(10) by selecting ''voluntary reporter.''

Section 1002.110—Publication of Data and Other Disclosures

110(c) Statement of Financial Institution's Small Business Lending Data Available on the Bureau's Website

1. *Statement.* A financial institution shall provide the statement required by §1002.110(c) using the following, or substantially similar, language:

Small Business Lending Data Notice

Data about our small business lending are available online for review at the Consumer Financial Protection Bureau's (CFPB's) website at https://www.consumerfinance.gov/data-research/small-business-lending/. The data show the geographic distribution of our small business lending applications; information about our loan approvals and denials; and demographic information about the principal owners of our small business applicants. The CFPB may delete or modify portions of our data prior to posting it if doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

2. *Website.* A financial institution without a website complies with §1002.110(c) by making a written statement using the language in comment 110(c)–1, or substantially similar language, available upon request.

3. *Revised location for publicly available data.* The Bureau may modify the location specified in comment 110(c)–1 at which small business lending data are available via the Filing Instructions Guide and related materials. Refer to the Filing Instructions Guide for any updates for each reporting year.

Section 1002.111—Recordkeeping

111(a) Record Retention

1. *Evidence of compliance.* Section 1002.111(a) requires a financial institution to retain evidence of compliance with subpart B of this part for at least three years after its small business lending application register is required to be submitted to the Bureau pursuant to §1002.109. In addition to the financial institution's small business lending application register, such evidence of compliance is likely to include, but is not limited to, the applications for credit from which information in the register is drawn, as well as the files or documents that, under §1002.111(b), are kept separate from the applications for credit. This three-year record retention requirement applies to any records covered by §1002.111(a), notwithstanding the more general 12-month retention period for records related to business credit specified in §1002.12(b).

2. *Record retention for creditors under §1002.5(a)(4)(vii) and (viii).* A creditor that is voluntarily, under §1002.5(a)(4)(vii) and (viii), collecting information pursuant to subpart B of this part complies with §1002.111(a) by retaining evidence of compliance with subpart B for at least three years after June 1 of the year following the year that data was collected.

111(b) Certain Information Kept Separate From the Rest of the Application

1. *Separate from the application.* A financial institution may satisfy the requirement in §1002.111(b) by keeping an applicant's responses to the financial institution's request pursuant to §1002.107(a)(18) and (19) in a file or document that is discrete or distinct from the application and its accompanying information. For example, such information could be collected on a piece of paper that is separate from the rest of the application form. In order to satisfy the requirement in §1002.111(b), an applicant's responses to the financial institution's request pursuant to §1002.107(a)(18) and (19) need not be maintained in a separate electronic system, nor need they be removed from the physical files containing the application so long as there is some separation between the demographic information and the rest of the application and its accompanying information. However, the financial institution may nonetheless need to keep this information in a different electronic or physical file in order to satisfy the prohibition in §1002.108(b).

2. *Number of principal owners.* A financial institution is permitted to maintain information regarding the applicant's number of principal owners pursuant to §1002.107(a)(20) with an applicant's responses to the financial institution's request pursuant to §1002.107(a)(18) and (19).

111(c) Limitation on Personally Identifiable Information in Certain Records Retained Under This Section

1. *Small business lending application register.* The prohibition in §1002.111(c) applies to data in the small business lending application

register submitted by the financial institution to the Bureau under §1002.109, the version of the register that the financial institution maintains under §1002.111(a), and the separate record of certain information created pursuant to §1002.111(b).

2. *Examples.* Section 1002.111(c) prohibits a financial institution from including any name, specific address (other than the census tract required under §1002.107(a)(13)), telephone number, or email address of any individual who is, or is connected with, an applicant in the small business lending application register it reports pursuant to §1002.109, in the copy of the register the financial institution retains under §1002.111(a), and in the records of certain information it must retain separately from the application pursuant to §1002.111(b). It likewise prohibits a financial institution from including any other personally identifiable information concerning any individual who is, or is connected with, an applicant, except as required pursuant to §1002.107 or §1002.111(b). Examples of such personally identifiable information that a financial institution may not include in its small business lending application register include, but are not limited to, the following: date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

3. *Other records.* The prohibition in §1002.111(c) does not extend to an application for credit, or any other records that the financial institution maintains that are not specifically enumerated in §1002.111(c).

4. *Name and business contact information for submission.* The prohibition in §1002.111(c) does not bar financial institutions from providing to the Bureau, pursuant to §1002.109(b)(3), the name and business contact information of the person who may be contacted by the Bureau or other regulators with questions about the financial institution's submission under §1002.109.

Section 1002.112—Enforcement

112(b) Bona Fide Errors

1. *Tolerances for bona fide errors.* Section 1002.112(b) provides that a financial institution is presumed to maintain procedures reasonably adapted to avoid errors with respect to a given data field if the number of errors found in a random sample of the financial institution's data submission for the data field does not equal or exceed a threshold specified by the Bureau for this purpose. The Bureau's thresholds appear in column C of the table in appendix F. The size of the random sample, set out in column B, shall depend on the size of the financial institution's small business lending application register, as shown in column A of the table in appendix F. A financial institution has not maintained procedures reasonably adapted to avoid errors if either there is a reasonable basis to believe the error was intentional or there is evidence that the financial institution has not maintained procedures reasonably adapted to avoid errors.

2. *Tolerances and data fields.* For purposes of determining whether an error is bona fide under §1002.112(b), the term ''data field'' generally refers to individual fields. All required data fields, and valid response options for those fields, are set forth in the Bureau's Filing Instructions Guide, available at *https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/*. Some data fields may allow for more than one response. For example, with respect to information on the ethnicity and race of an applicant's principal owner, a data field may identify more than one race or ethnicity. If there are one or more errors within an ethnicity data field, or within a race data field, for a particular principal owner, they would count as one (and only one) error for that data field. For instance, in the ethnicity data field, if an applicant indicates that one of its principal owners is Cuban, but the financial institution reports that the principal owner is Mexican and Puerto Rican, the financial institution has made one error in the ethnicity data field for that principal owner. For purposes of the error threshold table in appendix F, the financial institution is deemed to have made one error, not two.

3. *Tolerances and safe harbors.* An error that meets the criteria for one of the four safe harbor provisions in §1002.112(c) is not counted as an error for purposes of determining whether a financial institution has exceeded the relevant error threshold in appendix F for a given data field.

112(c) Safe Harbors

1. *Information from a Federal agency—census tract.* Section 1002.112(c)(2) provides that an incorrect entry for census tract is not a violation of the Act or subpart B of this part, if the financial institution obtained the census tract using a geocoding tool provided by the FFIEC or the Bureau. However, this safe harbor provision does not extend to a financial institution's failure to provide the correct census tract number for a covered application on its small business lending application register, as required by §1002.107(a)(13), because the FFIEC or Bureau geocoding tool did not return a census tract for the address provided by the financial institution. In addition, this safe harbor provision does not extend to a census tract error that results from a financial institution entering an inaccurate address into the FFIEC or Bureau geocoding tool.

2. *Applicability of NAICS code safe harbor.* The safe harbor in §1002.112(c)(3) applies to an incorrect entry for the 3-digit NAICS code

that financial institutions must collect and report pursuant to §1002.107(a)(15), provided certain conditions are met. For purposes of §1002.112(c)(3)(i), a financial institution is permitted to rely on statements made by the applicant, information provided by the applicant, or on other information obtained through its use of appropriate third-party sources, including business information products. See also comments 107(a)(15)–4 and 107(b)–1.

3. *Incorrect determination of small business status, covered credit transaction, or covered application—examples.* Section 1002.112(c)(4) provides a safe harbor from violations of the Act or this regulation for a financial institution that initially collects data under §1002.107(a)(18) and (19) regarding whether an applicant for a covered credit transaction is a minority-owned, a women-owned, or LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners, but later concludes that it should not have collected this data, if certain conditions are met. Specifically, to qualify for this safe harbor, §1002.112(c)(4) requires that the financial institution have had a reasonable basis at the time it collected data under §1002.107(a)(18) and (19) for believing that the application was a covered application for a covered credit transaction from a small business pursuant to §§1002.103, 1002.104, and 1002.106, respectively. For example, Financial Institution A collected data under §1002.107(a)(18) and (19) from an applicant for a covered credit transaction that had self-reported its gross annual revenue as $4.8 million. Sometime after Financial Institution A had collected this data from the applicant, the financial institution reviewed the applicant's tax returns, which indicated the applicant's gross annual revenue was in fact $5.2 million. Financial Institution A is permitted to rely on representations made by the applicant regarding gross annual revenue in determining whether an applicant is a small business (see §1002.107(b) and comments 106(b)(1)–3 and 107(a)(14)–1). Thus, Financial Institution A may have had a reasonable basis to believe, at the time it collected data under §1002.107(a)(18) and (19), that the applicant was a small business pursuant to §1002.106, in which case Financial Institution A's collection of such data would not violate the Act or this regulation.

Section 1002.114—Effective Date, Compliance Date, and Special Transition Rules

114(b) Compliance Date

114(b) Compliance Date 1. *Application of compliance date.* The applicable compliance date in §1002.114(b) is the date by which the covered financial institution must begin to compile data as specified in §1002.107, comply with the firewall requirements of §1002.108, and begin to maintain records as specified in §1002.111. In addition, the covered financial institution must comply with §1002.110(c) and (d) no later than June 1 of the year after the applicable compliance date. For instance, if §1002.114(b)(2) applies to a financial institution, it must comply with §§1002.107 and 1002.108, and portions of §1002.111, beginning January 1, 2027, and it must comply with §1002.110(c) and (d), and portions of §1002.111, no later than June 1, 2028.

2. *Initial collections pursuant to §1002.114(b).*

i. When the compliance date of July 1, 2026 specified in §1002.114(b)(1) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from July 1, 2026 to December 31, 2026. The financial institution must compile data for this period pursuant to §1002.107, comply with the firewall requirements of §1002.108, and maintain records as specified in §1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§1002.109 and 1002.110(c) and (d) by June 1, 2027.

ii. When the compliance date of January 1, 2027 specified in §1002.114(b)(2) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from January 1, 2027 to December 31, 2027. The financial institution must compile data for this period pursuant to §1002.107, comply with the firewall requirements of §1002.108, and maintain records as specified in §1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§1002.109 and 1002.110(c) and (d) by June 1, 2028.

iii. When the compliance date of October 1, 2027 specified in §1002.114(b)(3) or (4) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from October 1, 2027 to December 31, 2027. The financial institution must compile data for this period pursuant to §1002.107, comply with the firewall requirements of §1002.108, and maintain records as specified in §1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§1002.109 and 1002.110(c) and (d) by June 1, 2028.

3. *Informal names for compliance date provisions.* To facilitate discussion of the compliance dates specified in §1002.114(b)(1), (2), and (3), in the official commentary and any other documents referring to these compliance dates, the Bureau adopts the following informal simplified names. Tier 1 refers to the cohort of covered financial institutions that have a compliance date of July 1, 2026 pursuant to §1002.114(b)(1). Tier 2 refers to the cohort of covered financial institutions that have a compliance date of January 1, 2027 pursuant to §1002.114(b)(2). Tier 3 refers to the cohort of covered financial institutions

that have a compliance date of October 1, 2027 pursuant to §1002.114(b)(3).

4. *Examples.* The following scenarios illustrate how to determine whether a financial institution is a covered financial institution and which compliance date specified in §1002.114(b) applies. Unless otherwise indicated, in each example the financial institution has chosen to use its originations in 2022 and 2023 (rather than 2023 and 2024, or 2024 and 2025, as permitted by §1002.114(c)(3)) to determine its initial compliance tier.

i. Financial Institution A originated 3,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Financial Institution A is in Tier 1 and has a compliance date of July 1, 2026.

ii. Financial Institution B originated 2,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Because Financial Institution B did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1. Because Financial Institution B did originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 2 and has a compliance date of January 1, 2027.

iii. Financial Institution C originated 400 covered credit transactions to small businesses in calendar year 2022, and 1,000 in calendar year 2023. Because Financial Institution C did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, and because it did not originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 2. Because Financial Institution C did originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 1, 2027.

iv. Financial Institution D originated 90 covered credit transactions to small businesses in calendar year 2022, 120 in calendar year 2023, and 90 in calendar years 2024, 2025, 2026, and 2027. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in subsequent consecutive calendar years, it is not a covered financial institution under §1002.105(b) and is not required to comply with the rule in 2026, 2027, or 2028.

v. Financial Institution E originated 120 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, and 90 in 2026. Because Financial Institution E did not originate at least 2,500 or 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1 or Tier 2. Because Financial Institution E originated at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 1, 2027. However, because Financial Institution E did not originate at least 100 covered credit transactions for small businesses in both 2025 and 2026, it no longer satisfies the definition of a covered financial institution in §1002.105(b) at the time of the compliance date for Tier 3 institutions and thus is not required to comply with the rule in 2027.

vi. Financial Institution F originated 90 covered credit transactions for small businesses in calendar year 2022, and 120 in 2023, 2024, 2025, and 2026. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in subsequent calendar years, §1002.114(b)(4), which cross-references §1002.105(b), applies to Financial Institution F. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in each of 2025 and 2026, it is a covered financial institution under §1002.105(b) and is required to comply with the rule beginning October 1, 2027. Alternatively, if Financial Institution F chooses to use its originations in calendar years 2023 and 2024 (or 2024 and 2025) to determine its compliance tier pursuant to §1002.114(c)(3), it would be in Tier 3 and likewise required to comply with the rule beginning October 1, 2027.

vii. Financial Institution G originated 90 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, 2026, and 2027, and 120 in each of 2028 and 2029. Because Financial Institution G did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in subsequent calendar years, §1002.114(b)(4), which cross-references §1002.105(b), applies to Financial Institution G. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in each of 2028 and 2029, it is a covered financial institution under §1002.105(b) and is required to comply with the rule beginning January 1, 2030.

viii. Financial Institution H originated 550 covered credit transactions for small businesses in each of calendar years 2022 and 2023, 450 in 2024, and 550 in 2025 and 2026. Because Financial Institution H originated at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it would be in Tier 2 and have a compliance date of

January 1, 2027. However, §1002.114(c)(3) permits financial institutions to use their originations in 2023 and 2024 (or 2024 and 2025), rather than in 2022 and 2023, to determine compliance tier. If Financial Institution H elects to use its originations in 2023 and 2024, it would be in Tier 3 and required to comply with the rule beginning October 1, 2027.

114(c) Special Transition Rules

1. *Collection of certain information prior to a financial institution's compliance date.* Notwithstanding §1002.5(a)(4)(ix), a financial institution that chooses to collect information on covered applications as permitted by §1002.114(c)(1) in the 12 months prior to its initial compliance date as specified in §1002.114(b)(1), (2) or (3) need comply only with the requirements set out in §§1002.107(a)(18) and (19), 1002.108, and 1002.111(b) and (c) with respect to the information collected. During this 12-month period, a covered financial institution need not comply with the provisions of §1002.107 (other than §§1002.107(a)(18) and (19)), 1002.109, 1002.110, 1002.111(a), or 1002.114.

2. *Transition rule for applications received prior to a compliance date but final action is taken after a compliance date.* If a covered financial institution receives a covered application from a small business prior to its initial compliance date specified in §1002.114(b), but takes final action on or after that date, the financial institution is not required to collect data regarding that application pursuant to §1002.107 nor to report the application pursuant to §1002.109. For example, if a financial institution is subject to a compliance date of July 1, 2026, and it receives an application on June 27, 2026 but does not take final action on the application until July 25, 2026, the financial institution is not required to collect data pursuant to §1002.107 nor to report data to the Bureau pursuant to §1002.109 regarding that application.

3. *Has readily accessible the information needed to determine small business status.* A financial institution has readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in §1002.106 if, for instance, it in the ordinary course of business collects data on the precise gross annual revenue of the businesses for which it originates loans, it obtains information sufficient to determine whether an applicant for business credit had gross annual revenues of $5 million or less, or if it collects and reports similar data to Federal or State government agencies pursuant to other laws or regulations.

4. *Does not have readily accessible the information needed to determine small business status.* A financial institution does not have readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in §1002.106 if it did not in the ordinary course of business collect either precise or approximate information on whether the businesses to which it originated covered credit transactions had gross annual revenue of $5 million or less. In addition, even if precise or approximate information on gross annual revenue was initially collected, a financial institution does not have readily accessible this information if, to retrieve this information, for example, it must review paper loan files, recall such information from either archived paper records or scanned records in digital archives, or obtain such information from third parties that initially obtained this information but did not transmit such information to the financial institution.

5. *Reasonable method to estimate the number of originations.* The reasonable methods that financial institutions may use to estimate originations for 2022 and 2023 (or for 2023 and 2024, or 2024 and 2025, pursuant to §1002.114(c)(3)) include, but are not limited to, the following:

i. A financial institution may comply with §1002.114(c)(2) by determining the small business status of covered credit transactions by asking every applicant, prior to the closing of approved transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of $5 million or less, during the period October 1 through December 31, 2023. The financial institution may annualize the number of covered credit transactions it originates to small businesses from October 1 through December 31, 2023 by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years 2022 and 2023. Pursuant to §1002.114(c)(3), a financial institution is permitted to use its originations in 2023 and 2024 (or 2024 and 2025), rather than 2022 and 2023, to determine its compliance tier. Thus, for example, a financial institution may ask applicants to self-report revenue information during the period of October 1 through December 31, 2024, and then may annualize the number of covered credit transactions it originated to small businesses during that period and apply the annualized number of originations to both calendar years 2023 and 2024.

ii. A financial institution may comply with §1002.114(c)(2) by assuming that every covered credit transaction it originates for business customers in calendar years 2022 and 2023 (or in 2023 and 2024, or 2024 and 2025) is to a small business.

iii. A financial institution may comply with §1002.114(c)(2) by using another methodology provided that such methodology is reasonable and documented in writing.

6. *Examples.* The following scenarios illustrate the potential application of §1002.114(c)(2) to a financial institution's compliance date under §1002.114(b). Unless

otherwise indicated, in each example the financial institution has chosen to estimate its originations for 2022 and 2023 (rather than 2023 and 2024 or 2024 or 2025 as permitted by §1002.114(c)(3)) to determine its initial compliance tier.

i. Prior to October 1, 2023, Financial Institution A did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution A chose to use the methodology set out in comment 114(c)–5.i and as of October 1, 2023 began to collect information on gross annual revenue as defined in §1002.107(a)(14) for its covered credit transactions originated for businesses. Using this information, Financial Institution A determined that it had originated 750 covered credit transactions for businesses that were small as defined in §1002.106. On an annualized basis, Financial Institution A originated 3,000 covered credit transactions for small businesses (750 originations * 4 = 3,000 originations per year). Applying this annualized figure of 3,000 originations to both calendar years 2022 and 2023, Financial Institution A is in Tier 1 and has a compliance date of July 1, 2026.

ii. Prior to July 1, 2023, Financial Institution B collected gross annual revenue information for some applicants for business credit, but such information was only noted in its paper loan files. Financial Institution B thus does not have reasonable access to information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions for calendar years 2022 and 2023. Financial Institution B chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2023, Financial Institution B began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenues in the preceding fiscal year of $5 million or less. Using this information, Financial Institution B determined that it had originated 350 covered credit transactions for businesses that were small as defined in §1002.106. On an annualized basis, Financial Institution B originated 1,400 covered credit transactions for small businesses (350 originations * 4 = 1,400 originations per year). Applying this estimated figure of 1,400 originations to both calendar years 2022 and 2023, Financial Institution B is in Tier 2 and has a compliance date of January 1, 2027.

iii. Prior to April 1, 2023, Financial Institution C did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution C chose its own methodology pursuant to comment 114(c)–5.iii, basing it in part on the methodology specified in comment 114(c)–5.i. Starting on April 1, 2023, Financial Institution C began to ask all business applicants for covered credit transactions if they had gross annual revenue in their preceding fiscal year of $5 million or less. Using this information, Financial Institution C determined that it had originated 100 covered credit transactions for businesses that were small as defined in §1002.106. On an annualized basis, Financial Institution C originated approximately 133 covered credit transactions for small businesses ((100 originations * 365 days)/275 days = 132.73 originations per year). Applying this estimate of 133 originations to both calendar years 2022 and 2023, Financial Institution C is in Tier 3 and has a compliance date of October 1, 2027.

iv. Financial Institution D did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution D determined that it had originated 3,000 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution D assumed that all 3,000 covered credit transactions originated in each of 2022 and 2023 were to small businesses. On that basis, Financial Institution D is in Tier 1 and has a compliance date of July 1, 2026.

v. Financial Institution E did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution E determined that it had originated 700 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution E assumed that all such transactions in each of 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is in Tier 2 and has a compliance date of January 1, 2027.

vi. Financial Institution F does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution F determined that it had originated 80 total covered credit transactions for businesses in 2022 and 150 total covered credit transactions for businesses in 2023. Applying the methodology set out in comment 114(c)–5.ii, Financial Institution F assumed that all such transactions originated in 2022 and 2023 were originated for small businesses. On that basis, Financial Institution F is not in Tier 1, Tier 2 or Tier

3, and is subject to the compliance date provision specified in §1002.114(b)(4).

vii. Financial Institution G does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022, 2023, 2024, or 2025. Financial Institution G chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2025, Financial Institution G began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenue in the preceding fiscal year of $5 million or less. Using this information, Financial Institution G determined that it had originated 700 covered credit transactions during that period for businesses that were small as defined in §1002.106. On an annualized basis, Financial Institution G originated 2,800 covered credit transactions for small businesses (700 originations * 4 = 2,800 originations per year). Applying this estimated figure of 2,800 originations to both calendar years 2024 and 2025, Financial Institution G is in Tier 1 and has a compliance date of July 1, 2026.

APPENDIX C—SAMPLE NOTIFICATION FORMS

1. *Form C–9.* If not otherwise provided under other applicable disclosure requirements, creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.

[76 FR 79445, Dec. 21, 2011, as amended at 78 FR 7248, Jan. 31, 2013; 82 FR 45695, Oct. 2, 2017; 88 FR 35536, May 31, 2023; 89 FR 55029, July 3, 2024; 90 FR 25880, June 18, 2025; 90 FR 47520, Oct. 2, 2025]

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

Sec.

1003.1 Authority, purpose, and scope.
1003.2 Definitions.
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APPENDIX A TO PART 1003 [RESERVED]
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SUPPLEMENT I TO PART 1003—OFFICIAL INTERPRETATIONS

AUTHORITY: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

SOURCE: 76 FR 78468, Dec. 19, 2011, unless otherwise noted.

§1003.1 Authority, purpose, and scope.

(a) *Authority.* This part, known as Regulation C, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*,) as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and have been assigned OMB numbers for institutions reporting data to the Office of the Comptroller of the Currency (1557–0159), the Federal Deposit Insurance Corporation (3064–0046), the Federal Reserve System (7100–0247), the Department of Housing and Urban Development (HUD) (2502–0529), the National Credit Union Administration (3133–0166), and the Bureau of Consumer Financial Protection (3170–0008).

(b) *Purpose.* (1) This part implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this part is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This part applies to financial institutions as defined in §1003.2(g). This part requires a financial institution to submit data to the appropriate Federal agency for the financial institution as defined in §1003.5(a)(4), and to disclose certain data to the public, about covered loans