



**WBA Toolkit:**  
**CFPB Proposal**  
**to Collect and**  
**Report Small**  
**Business**  
**Lending Data**  
**Under Reg B**

**CFPB Proposal to Collect and Report Small Business Lending Data Under Equal Credit Opportunity Act, Regulation B**

For use to help senior management, commercial lenders, loan processors, compliance officers, and others involved with small business lending to better understand the impact of the Bureau of Consumer Financial Protection’s (CFPB’s) recently proposed small business rule on the bank. Once finalized, the requirement to collect and report certain data about small business credit applicants will have a dramatic impact on current application and processing operations and on record retention of such information

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## INTRODUCTION

The Wisconsin Bankers Association (WBA) has prepared this toolkit to help senior management, commercial lenders, loan processors, compliance officers, and others involved with small business lending to better understand the impact of the Bureau of Consumer Financial Protection's (CFPB's) recently proposed small business rule on the bank. Once finalized, the requirement to collect and report certain data about small business credit applicants will have a dramatic impact on current application and processing operations and record retention.

A PowerPoint summarizing CFPB's proposed rule has been created for use by staff who seek to present the main components of the proposal to lending and processing staff. The PowerPoint provides a background, proposed compliance dates, information regarding covered financial institutions, definition of small business, minority-owned and women-owned business, definition of covered application and covered credit transaction, what data must be collected, and reporting information.

The PowerPoint also outlines the requirement to keep certain employees and officers of the bank and its affiliates from an applicant's responses to inquiries of whether the applicant is a minority-owned or women-owned business, and regarding ethnicity, race and sex of the applicant's principal owners. Also included is information regarding when the firewall from information is not required. Publication of reported data and enforcement authorities are also included in the PowerPoint information.

In addition to the PowerPoint, the toolkit also includes a complete outline of the proposed rule, including the proposed commentary and several appendices. CFPB's proposed rule summary and a data point chart are also included.

As mentioned above, the toolkit is intended to help bank staff begin discussion regarding CFPB's proposal. Once implemented, the requirement to collect certain data in the context of small business credit applications will change current business application processes and will create a whole new reporting regime of the collected business data.

CFPB is accepting comments regarding its proposal. WBA hopes each bank will take into consideration the information provided in this toolkit, assess the proposal's impact on the bank, and provide comment to CFPB regarding such impact.

WBA Legal will be creating a draft comment letter for use by members to reply to CFPB regarding concerns and impact of the proposal on banks. WBA encourages each bank to consider submitting its own letter reflecting bank-specific information.

Feel free to contact WBA Legal at [wbalegal@wisbank.com](mailto:wbalegal@wisbank.com) regarding CFPB's proposal.

## **Bureau of Consumer Financial Protection’s Proposal to Collect and Report Small Business Lending Data Under Equal Credit Opportunity Act, Regulation B**

- I. Background
  - A. In 2010, Congress passed the Dodd-Frank Act. Section 1071 of the Act amended the Equal Credit Opportunity Act (ECOA), to require that financial institutions collect to CFPB certain data regarding applications for credit for:
    - i. Women-owned businesses
    - ii. Minority-owned businesses
    - iii. Small businesses
  - B. Section 1071’s statutory purposes are to:
    - i. Facilitate enforcement of fair lending laws, and
    - ii. Enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.
  - C. Section 1071 specifies a number of data points that financial institutions are required to collect and report, and also provides authority for CFPB to require any additional data that CFPB determines would aid in fulfilling section 1071’s statutory purposes.
  - D. Section 1071 also contains a number of other requirements, including:
    - i. Restricting the access of underwriters and other persons to certain 1071 data;
    - ii. Recordkeeping;
    - iii. Publication of 1071 data; and
    - iv. Modifications or deletions of data prior to publication in order to advance a privacy interest.
  - E. Proposal published in *Federal Register* on October 08, 2021; Comments due January 06, 2022  
<https://www.govinfo.gov/content/pkg/FR-2021-10-08/pdf/2021-19274.pdf>

## II. Proposed Rule

### A. Definitions – §1002.102

- i. *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.
- ii. *Applicant* means any person who requests or who has received an extension of business credit from a financial institution.
- iii. *Business* is defined in §1002.106(a).
- iv. *Business credit* shall have the same meaning as in §1002.2(g).
- v. *Closed-end credit transaction* means an extension of credit that is not an open-end credit transaction under paragraph (xiv) of this section.
- vi. *Covered application* is defined in §1002.103.
- vii. *Covered credit transaction* is defined in §1002.104.
- viii. *Covered financial institution* is defined in §1002.105(b).
- ix. *Credit* shall have the same meaning as in §1002.2(j).
- x. *Dwelling* shall have the same meaning as in Regulation C, 12 CFR 1003.2(f).
  - a. *Consistency with Regulation C.* CFPB interpretations that appear in supplement I to part 1003 containing official commentary in connection with §1003.2(f) are applicable to the definition of a dwelling in §1002.102(j).
  - b. *Dwelling under subpart A.* The definition of dwelling under §1002.14(b)(2) applies to relevant provisions under subpart A, and §1002.102(j) 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 §1002.14(b)(2).
- xi. *Financial institution* is defined in §1002.105(a).

- xii. *Minority individual* means a natural person who is American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and/or Hispanic or Latino.
  - a. *Purpose of definition.* The definition of minority individual is used only when an applicant determines if it is a minority-owned business pursuant to §§1002.102(m) and 1002.107(a)(18). A financial institution provides an applicant with the definition of minority individual when asking the applicant to determine if its business is a minority-owned business, as defined in §1002.102(m). An applicant determines if the natural persons who own and control and to whom the business's profits or losses accrue are minority individuals when the applicant provides its minority-owned business status pursuant to §1002.107(a)(18). Separately, pursuant to §1002.107(a)(20) and related commentary, a financial institution may be required to report a principal owner's ethnicity and race based on visual observation and/or surname. However, the definition of minority individual in §1002.102(l) is not used when determining the race or ethnicity of a principal owner.
  - b. *Multi-racial and multi-ethnic individuals.* For purposes of subpart B of the rule, a natural person who is multi-racial or multi-ethnic is a minority individual. For example, a natural person who is both Asian and White is a minority individual.
  - c. *Relationship to disaggregated subcategories used to determine ethnicity and race of principal owners.* The term "minority individual" is defined in §1002.102(l) using 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. Separately an applicant may provide a principal owner's ethnicity and race using aggregate categories and/or disaggregated subcategories for purposes of §1002.107(a)(20). However, as discussed in comment 107(a)(20)–11, a financial institution may only use aggregate ethnicity and race categories when required to report a principal owner's ethnicity and race based on visual observation and/or surname.
- xiii. *Minority-owned business* means a business for which more than 50 percent of its ownership or control is held by one or more minority individuals, and more than 50 percent of its net profits or losses accrue to one or more minority individuals.
  - a. *In general.* In order to be a minority-owned business for purposes of subpart B of the rule, a business must satisfy both prongs of the

definition of minority-owned business. First, one or more minority individuals must own or control more than 50 percent of the business. However, it is not necessary that one or more minority individuals both own and control more than 50 percent of the business.

For example, a business that is owned entirely by minority individuals, but is not controlled by any minority individuals satisfies the first prong of the definition. 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 minority individuals. 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.

- b. *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 provides 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.
- c. *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.
- d. *Ownership.* For purposes of determining if a business is a minority-owned business, a natural person owns a business if that natural person 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 a natural person owns 100 percent of company B, the natural person owns 60 percent of applicant company A. Similarly, if a natural person 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 natural person 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.

- e. *Control.* A natural person controls a business if that natural person has significant responsibility to manage or direct the business. A natural person controls a business if the natural person 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 minority 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.
  - f. *Accrual of net profits or losses.* A business's net profits and losses accrue to a natural person if that natural person 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.
- xiv. *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).
  - xv. *Principal owner* means a natural person who directly owns 25 percent or more of the equity interests of a business.

- a. *Natural person.* Only a natural person 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, a natural person 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 and women-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 a natural person owns 25 percent or more of the equity interests. For example, if natural person A directly owns 20 percent of a business, natural person 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 natural person A and natural person B are the only partners in the partnership C. Similarly, if natural person A directly owns 30 percent of a business, natural person B directly owns 20 percent, and trust D owns 50 percent, natural person A is the only principal owner as defined in §1002.102(o), even if natural person B is the sole trustee of trust D.
- b. *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)(21) and the ethnicity, race, and sex of its principal owners pursuant to §1002.107(a)(20). If a financial institution meets in person with a natural person about a covered application, the financial institution may be required to determine if a natural person with whom it meets is a principal owner in order to collect and report the principal owner's ethnicity and race based on visual observation and/or surname. (See comments 107(a)(20)–5 and –9.) Additionally, if an applicant does not provide the number of its principal owners in response to the financial institution's request pursuant to §1002.107(a)(21), the financial institution may need to determine and report the number of the applicant's principal owners based on other documents or information. (See comments 107(a)(21)–1 through –3.)

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

- xvii. *Small business lending application register or register* means the data reported, or required to be reported, annually pursuant to §1002.109.
- xviii. *State* shall have the same meaning as in §1002.2(aa).
- xix. *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.
- a. *In general.* In order to be a women-owned business for purposes of subpart B of the rule, 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. 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.
- b. *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)(19). A financial institution provides 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)(19), but the financial institution is neither permitted nor required to make its own determination regarding the applicant's women-owned business status.
- c. *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.

- d. *Ownership.* For purposes of determining if a business is a women-owned business, a natural person owns a business if that natural person 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)(19). 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 a natural person owns 100 percent of company B, the natural person owns 60 percent of the applicant company A. Similarly, if a natural person 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 natural person 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.
- e. *Control.* A natural person controls a business if that natural person has significant responsibility to manage or direct the business. A natural person controls a business if the natural person 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 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.
- f. *Accrual of net profits or losses.* A business's net profits and losses accrue to a natural person if that natural person 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.

B. Covered Applications – §1002.103

- i. *Covered application.* Except as provided in paragraph (ii) 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.
  - a. *In general.* Subject to the requirements of subpart B of the rule, a financial institution has latitude to establish its own application process or procedures, including designating the type and amount of information it will require from applicants.
  - b. *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.
  - c. *Consistency with subpart A.* CFPB interpretations that appear in supplement I of the rule 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).
  - d. *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 for a covered credit transaction as a separate covered application. For example, if an applicant requests both a term loan and a line of credit on an application form, the financial institution reports each request for a covered credit transaction as a separate covered application. Section 1002.107(c)(2) sets forth the requirements for reusing certain data required under §1002.107(a) across multiple applications.
  - e. *Initial request for a single covered credit transaction that results 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 and obtains multiple covered credit transactions, each covered credit transaction must be reported as a separate covered application.

- f. *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)–4.
  
- g. *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 during the application process decides to seek instead a product that is a covered credit transaction, the application is a covered application and must be reported. If, on the other hand, an applicant initially requests a product that is a covered credit transaction, but then during the application process 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. 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

- ii. Circumstances that are not covered applications. A covered application does not include:
  - a. Reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts.
    - (i) *In general.* The circumstances set forth in §1002.103(b) are not covered applications for purposes of subpart B of the rule, even if considered applications under subpart A of the rule. 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.
    - (ii) *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.
    - (iii) *Reevaluation, extension, or renewal requests that request additional credit amounts.* An applicant's request for additional credit amounts on an existing account that is a covered credit transaction 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.
    - (iv) *Reviews or evaluations initiated by the financial institution.* For purposes of subpart B of the rule, the term covered application does not include evaluations or reviews of existing accounts initiated by the financial institution because the applicant has not made the request. For

example, if a creditor conducts periodic reviews of its existing lines of credit and decides to increase the applicant's line by \$10,000, it is not a covered application because the applicant 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 applicant to apply for additional credit amounts on an existing account that is a covered credit transaction, and the applicant does so, the applicant's request constitutes a covered application for purposes of subpart B of this part. Similarly, the term covered application also does not include solicitations and firm offers of credit.

b. Inquiries and prequalification requests.

- (i) *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. Inquiry and prequalification requests are not covered applications under subpart B of the rule, even though in certain circumstances inquiries and prequalification requests may constitute applications under subpart A.

C. Covered Credit Transactions and Excluded Transactions – §1002.104

- i. *Covered credit transaction* means an extension of business credit that is not an excluded transaction under paragraph (ii) of this section.
- a. *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).
- ii. *Excluded transactions.* The requirements of this subpart do not apply to:
- a. *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 has not yet been made. 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 a “Other sales-based financing transaction” under §1002.107(a)(5).

- b. *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
- c. *Consumer-designated credit.* The term “covered credit transaction” does not include consumer-designated credit used for business 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 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-related.
- d. *Credit secured by certain investment properties.* The term “covered credit transaction” does not include an extension of credit that is secured by 1–4 individual dwelling units that the applicant (or one or more of the applicant’s principal owners) does not, or will not, occupy. A financial institution should determine whether the property to which the covered credit transaction or application relates is or will be used as an investment property. For purposes of this comment, a property is an investment property if the applicant or one or more of the applicant’s principal owners does not or will not occupy the property.

For example, if an applicant purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of this comment. Similarly, if an applicant purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property. A property is an investment property if the applicant does not or will not occupy the property, even if the applicant does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under §1002.102(j), that it does

not occupy, but that is for the long-term residential use of its employees, the property is an investment, even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time. If the property is for transitory use by employees, the property would not be considered a dwelling under §1002.102(j).

e. *Trade credit.* A financing arrangement wherein a business acquires goods or services from another business without making immediate payment to the business providing the goods or services.

(i) *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.

(ii) *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.

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

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

h. *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).

D. Covered Financial Institutions and Exempt Institutions – §1002.105

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

a. *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, 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.

- b. *Motor vehicle dealers.* Pursuant to §1002.101(a), subpart B of the rule excludes from coverage persons defined by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376, 2004 (2010)
- ii. *Covered financial institution* means a financial institution that originated at least 25 covered credit transactions for small businesses in each of the two preceding calendar years. For purposes of this definition, if more than one financial institution was involved in the origination of a covered credit transaction, only the financial institution that made the credit decision approving the application shall count the origination for purposes of this paragraph ii.
    - a. *Preceding calendar year.* The definition of covered financial institution refers to preceding calendar years. For example, in 2026, the two preceding calendar years are 2024 and 2025. Accordingly, in 2026, Financial Institution A does not meet the loan-volume threshold in § 1002.105(b) if did not originate at least 25 covered credit transactions for small businesses both during 2024 and during 2025.
    - b. *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 2024 and 2025, Financial Institution B received 30 covered applications from small businesses and originated 20 covered credit transactions for small businesses, then for 2026, Financial Institution B is not a covered financial institution
    - c. *Annual consideration.* Whether a financial institution is a covered financial institution in 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 the rule. 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 30 covered transactions for small businesses in both 2024 and 2025. In 2026, Financial Institution C is a covered financial institution and therefore is obligated to and maintain applicable 2026 small business lending data under §1002.107(a). During 2026, Financial Institution C originates 10 covered transactions for small businesses. In 2027, Financial Institution C is not a covered financial institution with respect to 2027 small business lending data, and is not obligated to compile and maintain 2027 data under §1002.107(a) (although Financial Institution C may volunteer to collect and maintain 2027 data pursuant to §1002.5(a)(4)(vii) and as explained in comment 105(b)–7). Pursuant to §1002.109(a), Financial Institution C shall submit its small business lending application register for 2026 data in the format prescribed by CFPB by June 1, 2027 because Financial Institution C is a covered financial institution with respect to 2026 data, and the data submission deadline of June 1, 2027 applies to 2026 data.

- d. *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 reported at least 25 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 25 covered transactions for small businesses for the year previous to the merger as well as 25 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)–5 discusses a financial institution’s responsibilities with respect to compiling and maintaining (and subsequently reporting) data during the calendar year of a merger.

- e. *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.

- (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.
- f. *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.
- g. *Voluntary collection and reporting.* Section 1002.5(a)(4)(vii) through (ix) permits a creditor that is not a covered financial institution under §1002.105(b) to voluntarily collect and report information regarding covered applications in certain circumstances. If a creditor is voluntarily collecting information for covered applications regarding whether the applicant is a minority-owned business under §1002.107(a)(18) or a women-owned business under §1002.107(a)(19), and regarding the ethnicity, race, and sex of the applicant’s principal owners under §1002.107(20), it shall do so in compliance with §§1002.107, 1002.108, 1002.111, 1002.112, and 1002.114 as though it were a covered financial institution. See also comment 5(a)(4)–1. If a creditor is voluntarily reporting those covered applications to the CFPB, it shall do so in compliance with §§1002.109 and 1002.110 as though it were a covered financial institution.

E. Business and Small Business – §1002.106

- i. *Business* has the same meaning as the term “business concern or concern” in 13 CFR 121.105.
- ii. *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 and only if its gross annual revenue, as defined in §1002.107(a)(14), for its preceding fiscal year is \$5 million or less.
  - a. *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) through (20) but later concludes that the applicant is not a small business, the financial institution may

process and retain the data without violating the Act or this regulation if it meets the requirements of §1002.112(c)(3). The financial institution shall not report the application on its small business lending application register pursuant to §1002.109

- b. *Change in determination of small business status—business is ultimately a small business.* Consistent with §1002.107(a)(14), 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, but later concludes the applicant is a small business, 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 defined in §1002.106(b)), 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. The financial institution remains subject to §1002.107(c)(1) related to the time and manner of collecting applicant-provided data.

- c. *Affiliate revenue.* As explained in comment 107(a)(14)–3, 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. As explained in comment 107(a)(14)–1, pursuant to §1002.107(b), if the financial institution verifies the gross annual revenue provided by the applicant, it must report the verified information. Likewise, a financial institution is permitted to rely on an applicant's representations regarding gross annual revenue (which may or may not include the affiliate's revenue) for purposes of determining small business status under §1002.106(b).

However, if the applicant provides updated gross annual revenue information (see comment 107(c)(1)–7), or the financial institution verifies the gross annual revenue information, the financial institution must use the updated or verified information in determining small business status.

F. Compilation of Reportable data – §1002.107

- i. *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 below and as explained in associated Official Interpretations 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 (21) of this section.

*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.

A covered financial institution reports these data even if the credit originated pursuant to the reported application was subsequently sold by the institution.

A covered financial institution annually reports data for covered applications for which final action was taken in the previous calendar year.

A 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.

*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 [a designated CFPB website].

- a. *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.
  - (i) *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 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.

- (ii) *Does not include directly identifying information.* The unique identifier must not include any directly identifying information about the applicant or persons (natural or legal) associated with the applicant. See also §1002.111(c) and related commentary.

b. *Application date.* The date the covered application was received by the financial institution or the date shown on a paper or electronic application form.

- (i) *Consistency.* Section 1002.107(a)(2) requires that, in reporting the date of covered application, a 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. 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 application definition provided under §1002.103.
- (ii) *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 institution may 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.

- c. *Application method.* The means by which the applicant submitted the covered application directly or indirectly to the financial institution.
- (i) *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.
  - (ii) *In-person.* A financial institution reports the application method as “in-person” if the financial institution, or another party acting on the financial institution’s behalf, meets with the applicant in person (for example, in a branch office, at the applicant’s place of business, or via electronic media with a video component).
  - (iii) *Telephone.* A financial institution reports the application method as “telephone” if the financial institution, or another party acting on the financial institution’s behalf, did not meet with the applicant in person as described in comment 1002.107(a)(3)–1.i but communicated with the applicant by telephone or via audio-based electronic media without a video component.
  - (iv) *Online.* A financial institution reports the application method as “online” if the financial institution, or another party acting on the financial institution’s behalf, did not meet with the applicant in person and did not communicate with the applicant by telephone as described in comments 1002.107(a)(3)–1.i and ii, but communicated with the applicant through an online application, electronic mail, text message, and/or some other form of online communication.
  - (v) *Mail.* A financial institution reports the application method as “mail” if the financial institution, or another party acting on the financial institution’s behalf, did not meet with the applicant in person and did not communicate with the

applicant by telephone, as described in comments 1002.107(a)(3)–1.i and ii, but communicated with the applicant in writing via United States mail, courier or overnight service, or hand-delivery (including hand-delivery of documents via an overnight drop box or at a teller window).

- (vi) *Reporting for interactions with applicants involving both mail and online.* If a financial institution, or another party acting on the financial institution’s behalf, communicated with the applicant both online as described in comment 1002.107(a)(3)–1.iii and by mail as described in 1002.107(a)(3)–1.iv, the financial institution reports the application method based on the method by which it, or another party acting on its behalf, requested the ethnicity, race, and sex of the applicant’s principal owners pursuant to §1002.107(a)(20).

For example, if a financial institution requests the ethnicity, race, and sex information through an online form, it reports the application method as “online.” If the financial institution requests the ethnicity, race, and sex information via a paper form sent to the applicant by mail, it reports the application method as “mail.” If the financial institution requests the ethnicity, race, and sex information electronically online or via an electronic document that is emailed to the applicant, that the applicant then prints and returns to the financial institution by mail, the financial institution reports the application method as “online” (because that is the method by which the financial institution requested the ethnicity, race, and sex information).

- d. *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.
  - (i) *Agents.* If 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 A, and Financial Institution A made the credit decision acting as Financial Institution B’s agent under State law. Financial Institution B reports the origination and indicates that the

application was submitted directly to Financial Institution B.

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

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

*Reporting credit product—in general.* A financial institution complies with §1002.107(a)(5)(i) by selecting the credit product requested from the list below. If an applicant requests more than one credit product, the financial institution reports each credit product requested as a separate application. If the credit product requested or originated is not included on this list, the financial selects “other,” and reports the credit specific product as freeform text.

- (a) Term loan—unsecured.
- (b) Term loan—secured.
- (c) Line of credit—unsecured.
- (d) Line of credit—secured.
- (e) Credit card.
- (f) Merchant cash advance.
- (g) Other sales-based financing transaction.
- (h) Other.
- (i) Not provided by applicant and otherwise undetermined.

*Credit product not provided by the applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), 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.”

*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.

- (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.

*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 or transaction. If the type of guarantee does not appear on the list, the financial institution selects “other guarantee” and reports the type of guarantee as free-form text. If no guarantee is obtained or would have been obtained if the covered credit transaction was originated, the financial institution selects “no guarantee.”

- (a) Personal guarantee—owner(s).
- (b) Personal guarantee—non-owner(s).
- (c) SBA guarantee—7(a) program.
- (d) SBA guarantee—504 program.
- (e) SBA guarantee—other.
- (f) USDA guarantee.

- (g) FHA insurance.
  - (h) Bureau of Indian Affairs guarantee
  - (i) Other Federal guarantee.
  - (j) State or local government guarantee.
  - (k) Other guarantee.
  - (l) No guarantee.
- (iii) *Loan term.* The length of the loan term, in months, if applicable.

*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. The financial institution does not include in the loan term 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 does not include the month of April in the loan term. 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 “not applicable” if the application is denied, withdrawn, or determined to be incomplete before a loan term has been identified.

*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.

- f. *Credit purpose.* The purpose or purposes of the credit applied for or originated.

*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 owner-occupied dwelling(s).
- (ii) Purchase, construction/improvement, or refinance of non-owner-occupied dwelling(s).
- (iii) Purchase, construction/improvement, or refinance of non-owner-occupied, non-dwelling real estate.
- (iv) Purchase, construction/improvement, or refinance of owner-occupied, non-dwelling real estate.
- (v) Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).
- (vi) Purchase, refinance, or rehabilitation/repair of equipment.
- (vii) Working capital (includes inventory or floor planning).
- (viii) Business start-up.
- (ix) Business expansion.
- (x) Business acquisition.
- (xi) Refinance existing debt (other than refinancings listed above).
- (xii) Line increase.
- (xiii) Other.
- (xiv) Not provided by applicant and otherwise undetermined.
- (xv) Not applicable.

*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 non-dwelling 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, non-dwelling real estate; 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.

*“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 as free-form text. 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 reported.

*Credit purpose not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant provided information, 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.”

*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”

*Excluded dwellings.* As explained in comment 104(b)–4, subpart B of this part does not apply to an extension of credit that is secured by 1–4 individual dwelling units that the applicant or one or more of the applicant’s principal owners does not, or will not, occupy.

*Collecting credit purpose.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, 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.

- g. *Amount applied for.* The initial amount of credit or the initial credit limit requested by the applicant.

*Initial amount requested.* A financial institution complies with §1002.107(a)(7) by reporting the initial amount of credit or the credit limit initially 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 amount initially requested at the application stage or later. If the applicant does not request a specific amount, but the financial institution underwrites the application for a specific amount, the financial institution reports the amount considered for underwriting as the amount applied for. If the applicant requests an amount as a range of numbers, the financial institution reports the midpoint of that range.

*No amount requested.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, which includes the credit amount initially requested by the applicant. 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.” If the particular product applied for does not involve a specific amount requested or underwritten, the financial institution reports that the requirement is “not applicable.”

*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 applied for as the amount of the firm offer, 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.

*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.

- h. *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.

*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.”

*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.

*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.

*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.

*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.

- i. *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.

*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 covered credit transaction was originated if the financial institution made a credit decision approving the application and that credit decision results in an extension of credit.
- (ii) *Approved but not accepted.* A financial institution reports an application as 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 fails 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 withdraws the application, before the file is closed for incompleteness, or before the application is denied for incompleteness.
- (vi) *Withdrawn by the applicant.* A financial institution reports that the application was withdrawn if the application is

expressly withdrawn by the applicant before the financial institution makes a credit decision approving or denying the application, before the file is closed for incompleteness, or before the application is denied for incompleteness

- (v) *Incomplete.* A financial institution reports incomplete if the financial institution took adverse action on the basis of incompleteness under §1002.9(c)(1)(i) or provided a written notice of incompleteness under §1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice.

*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.

*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.

*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.

*Treatment of conditional approvals.* If a financial institution issues an approval that is subject to the applicant meeting certain conditions, 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 include, for example, a clear-title requirement, proof of insurance policies, a subordination agreement from another lienholder, or property titling of associated accounts. Underwriting or creditworthiness conditions 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(c)(1)(i), or has sent a written notice of incompleteness under §1002.9(c)(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 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.
  
- j. *Action taken date.* The date of the action taken by the financial institution.
  - (i) *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.
  
  - (ii) *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.
  
  - (iii) *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.
  
  - (iv) *Reporting action taken date for originated covered credit transactions.* For covered credit transactions that are originated, 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 in different scenarios, products, or divisions.
  
  - (v) *Reporting action taken date for incomplete applications.* For files 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.

- k. *Denial reasons.* For denied applications, the principal reason or reasons the financial institution denied the covered application.

*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, even if there are fewer than four reasons.

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 loan proceeds.* A financial institution reports the denial reason as “use of loan proceeds” if it denies an application because, as a matter of policy or practice, it limits lending to certain kinds of businesses, particular product lines within a business class, or certain industries it

has identified as high risk. For example, if an application for credit to establish a cannabis dispensary is denied by a financial institution because it has classified all cannabis-related business as “high risk,” the financial institution reports the reason for denial as “use of loan proceeds.”

- (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 insufficient, inappropriate, or unacceptable collateral.
- (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. For example, a credit applicant establishes a business and applies for credit five months later. The financial institution may determine that the applicant has insufficient experience in the business under the institution’s underwriting standards and deny the application.
- (vii) *Government 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 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 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 on an 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 as freeform text.

*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.

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

*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.”

- (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
    - (I) *Interest rate—introductory period.* If a covered credit transaction includes an initial period with an introductory interest rate, 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 introductory 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's value, and Prime as the name of the index used to adjust the interest rate

- (II) *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 in §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.
- (III) *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 TNote, 12-month average of 10-year T-Bill, Cost of Funds Index (COFI)-National, Cost of Funds Index (COFI)-11th District. If the index used does not appear on the list of indices provided, the financial institution reports "other" and provides the name of the index via free-form text.

(b) If the interest rate is adjustable, the margin, index value, and index name that is or would be applicable to the covered credit transaction at origination;

- (I) *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 that is applicable at the time the application was approved by the financial institution. For covered credit transactions that include an initial period with an introductory interest rate, 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)(B) by reporting the index value applicable at the time the application was approved by the financial institution of the rate in effect after the introductory interest rate is complete.

- (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;
  - (a) *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.
  - (b) *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.
  - (c) *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).

- (d) *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.
  - (e) *Origination charges—examples.* Examples of origination charges may include application fees, credit report fees, points, appraisal fees, and other similar charges.
- (iii) *Broker fees.* The total amount of all charges included in paragraph (i)(1)(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;
- (a) *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 \$3000 of total origination charges. Of that \$3000, \$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.

- (b) *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.
  
- (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;
  - (a) *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.
  - (b) *Interest excluded.* A financial institution complies with §1002.107(a)(12)(iv) by excluding any interest expense from the initial annual charges reported.
  - (c) *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.
  - (d) *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.

- (e) *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 ( $\$75 \times 12$ ) in the initial annual charges reported
  
- (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
  - (a) *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. For example, in a merchant cash advance, a financial institution reports the difference between the purchase price and the amount to be repaid, using the amounts provided in the contract between the financial institution and the applicant.
  
- (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)(20)(iv)(A) of the rule, 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.

- (c) 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(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.

m. *Census tract.* The census tract in which is located:

*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) The address or location where the proceeds of the credit applied for or originated will be or would have been principally applied; or
  - (a) *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) If the information in paragraph (i)(m)(i) of this section is unknown, the address or location of the main office or headquarters of the applicant; or
  - (a) *Main office or headquarters address.* If the address or location where the proceeds of the credit applied for or originated 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) If the information in both paragraphs (i)(m)(i) and (ii) of this section is unknown, another address or location associated with the applicant.
  - (a) *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) The financial institution shall also indicate which one of the three types of addresses or locations listed in paragraphs (i)(m)(i), (ii), or (iii) of this section the census tract is based on.
  - (a) *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.

- (b) *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.
  - (c) *Address or location not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant provided information, 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.”
  - (d) *Safe harbor.* As described in §1002.112(c)(1) and comment 112(c)(1)–1, a financial institution that obtains an incorrect census tract by correctly using a geocoding tool provided by the FFIEC or CFPB does not violate the Act or subpart B of the rule.
- n. *Gross annual revenue.* The gross annual revenue of the applicant for its preceding full fiscal year prior to when the information is collected.
  - (i) *Collecting gross annual revenue.* A financial institution may rely on statements of or information provided by the applicant in collecting and reporting gross annual revenue. 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. The financial institution may use the following language to ask about gross annual revenue, if it does not collect gross annual revenue by another method, and may rely on the applicant’s answer:
    - (a) 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.

- (ii) *Gross annual revenue not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant provided information, 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.”
  - (iii) *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. For example, if the financial institution does not normally collect information on affiliate revenue, the financial institution reports only the applicant’s revenue and does not include the revenue of any affiliates when it has not collected that information. Similarly, 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 the affiliate’s revenue.
- o. *NAICS code.* A 6-digit North American Industry Classification System (NAICS) code appropriate for the applicant.
- (i) *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 NAICS codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting.
  - (ii) *NAICS not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, which includes

NAICS code. However, if a financial institution is nonetheless unable to collect or otherwise determine the applicant's NAICS code, the financial institution reports that the NAICS code is "not provided by applicant and otherwise undetermined."

- (iii) *Reliance on statements by applicant.* Consistent with §1002.107(b), a financial institution may rely on statements of or information provided by the applicant in collecting and reporting the NAICS code. For example, a financial institution may rely on the NAICS code on an applicant's tax return that the applicant has otherwise provided to the financial institution.
  - (iv) *Reliance on other information.* A financial institution may rely on a NAICS code obtained through the financial institution's use of business information products, such as company profiles or business credit reports, which provide the applicant's NAICS code.
  - (iv) *Safe harbor.* A financial institution that identifies an incorrect NAICS code does not violate the Act or subpart B of the rule under the circumstances described in §1002.112(c)(2).
- p. *Number of workers.* The number of non-owners working for the applicant.
- (i) *Collecting number of workers.* In collecting 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 business would not. If asked, the financial institution shall explain that volunteers would not be counted as workers, and workers for affiliates of the applicant would only be counted if the financial institution were also collecting the affiliates' gross annual revenue. The financial institution may rely on statements of or information provided by the applicant in collecting and reporting number of workers. However, pursuant to §1002.107(b), if the financial institution verifies the number of workers provided by the applicant, it must report the verified information. The financial institution may use the following language to ask about the number of workers, if it does not collect the

number of workers by another method, and may rely on the applicant's answer:

- (a) 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?
  - (ii) *Number of workers not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant provided information, 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.”
- q. *Time in business.* The time the applicant has been in business, described in whole years, as relied on or collected by the financial institution.
- (i) *As relied on or collected.* A financial institution complies with §1002.107(a)(17) by reporting the time the applicant has been in business as relied on in making the credit decision or collected by the financial institution. The financial institution must report the time in business in whole years and indicate if a business has not begun operating yet or has been in operation for less than a year. When the financial institution relies on an applicant's time in business as part of a credit decision, it reports the time in business relied on in making the credit decision. (See comments 107(a)(17)–2 and –3 in the rule regarding reporting of the time in business relied on.) However, §1002.107(a)(17) does not require the financial institution to rely on an applicant's time in business in making a credit decision. The financial institution may rely on statements of or information provided by the applicant in collecting and reporting time in business. However, pursuant to §1002.107(b), if the financial institution verifies the time in business provided by the applicant, it must report the verified information
  - (ii) *Time in business relied on.* When a financial institution evaluates an applicant's time in business as part of a credit

decision, it reports the time in business relied on in making the credit decision. For example, if the financial institution relies on the number of years of experience the applicant's owners have in the current line of business, the financial institution reports that number of years as the time in business. Similarly, if the financial institution relies on the number of years that the applicant has existed, the financial institution reports the number of years that the applicant has existed as the time in business. The financial institution reports the length of business existence or experience duration that it relies on in making its credit decision, and is not required to adopt any particular definition of time in business.

- (iii) *Multiple factors considered.* A financial institution relies on an applicant's time in business in making a credit decision if the time in business was a factor in the credit decision, even if it was not a dispositive factor. For example, if the time in business is one of multiple factors in the financial institution's credit decision, the financial institution has relied on the time in business even if the financial institution denies the application because one or more underwriting requirements other than the time in business are not satisfied.
- (iv) *Collecting time in business.* If the financial institution does not rely on time in business in considering an application, pursuant to §1002.107(c)(1) it shall still maintain procedures reasonably designed to collect applicant-provided information, which includes the applicant's time in business. In collecting time in business from an applicant, the financial institution complies with §1002.107(a)(17) by asking for the number of years that the applicant has been operating the business it operates now. When the applicant has multiple owners with different numbers of years operating that business, the financial institution collects and reports the greatest number of years of any owner. (However, the financial institution does not need to comply with this instruction if it collects and relies on the time in business by another method in making the credit decision.)
- (v) *Time in business not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant provided information, which includes the

time in business of the applicant. However, if a financial institution is nonetheless unable to collect or determine the time in business of the applicant, the financial institution reports that the time in business is “not provided by applicant and otherwise undetermined.”

- r. *Minority-owned business status.* Whether the applicant is a minority-owned business and whether minority-owned business status is being reported based on previously collected data pursuant to §1002.107(c)(2). The financial institution shall collect and report minority-owned business status as prescribed in appendix F of the rule. When requesting minority-owned business status from an applicant, the financial institution shall inform the applicant that the financial institution cannot discriminate on the basis of minority-owned business status, or on whether the applicant provides this information.
  - (i) *General.* Unless a financial institution is permitted to report minority-owned business status based on previously collected data pursuant to §1002.107(c)(2), a financial institution must ask an applicant whether it is a minority-owned business for each covered application. The financial institution must permit an applicant to refuse to answer the financial institution’s inquiry and must inform the applicant that the applicant is not required to provide the information. The financial institution must report the applicant’s response, its refusal to answer the inquiry (such as when the applicant indicates that it does not wish to provide the requested information), or its failure to respond to the inquiry (such as when the applicant fails to submit a data collection form). See appendix F for additional instructions on collecting and reporting minority-owned business status.
  - (ii) *Notice of non-discrimination.* When requesting minority-owned business status 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 business status, or on whether the applicant provides its minority-owned business status. A financial institution may combine this nondiscrimination notice regarding minority-owned business status with the similar nondiscrimination notices that a financial institution is required to provide when requesting women-owned business status and a principal owner’s ethnicity, race, and sex if a financial institution requests minority-owned business status, women-owned business status, and/or a

principal owner's ethnicity, race, and sex in the same data collection form or at the same time.

- (iii) *Recording an applicant's response regarding minority-owned business status separate from the application.* A financial institution must record an applicant's response to the financial institution's inquiry pursuant to §1002.107(a)(18) separate from the application and accompanying information. See 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 women-owned business status, minority-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.
- (iv) *Minority-owned business status not provided by applicant.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, which includes the applicant's minority-owned business status. However, if a financial institution does not receive a response to the financial institution's inquiry for purposes of §1002.107(a)(18), the financial institution reports that the applicant's minority-owned business status is “not provided by applicant.”
- (v) *No verification.* Notwithstanding §1002.107(b), a financial institution must report the applicant's response, the applicant's refusal to answer the inquiry, or the applicant's failure to respond to the inquiry pursuant to §1002.107(a)(18), even if the financial institution verifies or otherwise obtains an applicant's minority-owned business status for other purposes.
- (vi) *No reporting based on visual observation or surname.* A financial institution does not report minority-owned business status based on visual observation, surname, or

any basis other than the applicant's response to the inquiry that the financial institution makes to satisfy §1002.107(a)(18) or, if the financial institution is permitted to report based on previously collected data, on the basis of the applicant's response to the inquiry that the financial institution previously made to satisfy §1002.107(a)(18).

- (vii) *Previously collected data.* A financial institution may report minority-owned business status based on previously collected data if the financial institution is permitted to do so pursuant to §1002.107(c)(2) and its commentary.
  
- s. *Women-owned business status.* Whether the applicant is a women-owned business and whether women-owned business status is being reported based on previously collected data pursuant to §1002.107(c)(2). The financial institution shall collect and report women-owned business status as prescribed in appendix F of the rule. When requesting women-owned business status from an applicant, the financial institution shall inform the applicant that the financial institution cannot discriminate on the basis of women-owned business status, or on whether the applicant provides this information.
  - (i) *General.* Unless a financial institution is permitted to report women-owned business status based on previously collected data pursuant to §1002.107(c)(2), a financial institution must ask an applicant whether it is a women-owned business for each covered application. The financial institution must permit an applicant to refuse to answer the financial institution's inquiry and must inform the applicant that the applicant is not required to provide the information. The financial institution must report the applicant's response, its refusal to answer the inquiry (such as when the applicant indicates that it does not wish to provide the requested information), or its failure to respond to the inquiry (such as when the applicant fails to submit a data collection form). See appendix F for additional instructions on collecting and reporting women-owned business status
  
  - (ii) *Notice of non-discrimination.* When requesting women-owned business status from an applicant, a financial institution must inform the applicant that the financial institution cannot discriminate on the basis of the applicant's women-owned business status, or on whether the applicant provides its women-owned business status. A financial institution may combine this nondiscrimination

notice regarding women-owned business status with the similar nondiscrimination notices that a financial institution is required to provide when requesting minority-owned business status and a principal owner's ethnicity, race, and sex if a financial institution requests minority-owned business status, women-owned business status, and/or a principal owner's ethnicity, race, and sex in the same data collection form or at the same time.

- (iii) *Recording an applicant's response regarding women-owned business status separate from the application.* A financial institution must record an applicant's response to the financial institution's inquiry pursuant to §1002.107(a)(19) separate from the application and accompanying information. See 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 women-owned business status, minority-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.
- (iv) *Women-owned business status not provided by applicant.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, which includes the applicant's women-owned business status. However, if a financial institution does not receive a response to the financial institution's inquiry for purposes of §1002.107(a)(19), the financial institution reports that the applicant's women-owned business status is "not provided by applicant."
- (v) *No verification.* Notwithstanding §1002.107(b), a financial institution must report the applicant's response, the applicant's refusal to answer the inquiry, or the applicant's failure to respond to the inquiry pursuant to §1002.107(a)(19), even if the financial institution verifies

or otherwise obtains an applicant's women-owned business status for other purposes.

- (vi) *No reporting based on visual observation or surname.* A financial institution does not report women-owned business status based on visual observation, surname, any basis other than the applicant's response to the inquiry that the financial institution makes to satisfy §1002.107(a)(19) or, if the financial institution is permitted to report based on previously collected data, on the basis of the applicant's response to the inquiry that the financial institution previously made to satisfy §1002.107(a)(19).
  - (vii) *Previously collected data.* A financial institution may report women-owned business status based on previously collected data if the financial institution is permitted to do so pursuant to §1002.107(c)(2) and its commentary.
- t. *Ethnicity, race, and sex of principal owners.* The ethnicity, race, and sex of the applicant's principal owners and whether ethnicity, race, and sex are being reported based on previously collected data pursuant to §1002.107(c)(2). The data compiled for purposes of this paragraph (i)(t) shall also include whether ethnicity and race are being reported based on visual observation or surname. The financial institution shall collect and report principal owners' ethnicity, race, and sex information as prescribed in appendix G to the rule. 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.
- (i) *General.* Unless a financial institution is permitted to report ethnicity, race, and sex information based on previously collected data pursuant to §1002.107(c)(2), a financial institution must ask an applicant to report its principal owners' ethnicity, race, and sex for each covered application. The financial institution must permit an applicant to refuse to answer the financial institution's inquiries and must inform the applicant that it is not required to provide the information. The financial institution must report the applicant's responses, its refusal to answer the inquiries, or its failure to respond to the inquiries. In certain situations, discussed in comments 107(a)(20)–9 and –10 and in appendix G, a financial institution may also be required to report one or more

principal owners' ethnicity and race based on visual observation and/or surname. However, a financial institution shall not report a principal owner's sex based on visual observation, surname, or any basis other than the applicant-provided information (including previously collected data if permitted pursuant to §1002.107(c)(2)). See appendix G for additional instructions on collecting and reporting the ethnicity, race, and sex of principal owners.

- (ii) *Notice of non-discrimination.* 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, or on whether the applicant provides the information. A financial institution may combine this nondiscrimination notice with the similar nondiscrimination notices that a financial institution is required to provide when requesting minority-owned business status and women-owned business status if a financial institution requests minority-owned business status, women-owned business status, and/or a principal owner's ethnicity, race, and sex in the same data collection form or at the same time.
- (iii) *Recording an applicant's responses regarding principal owners' ethnicity, race, and sex separate from the application.* A financial institution must record an applicant's response to the financial institution's inquiries pursuant to §1002.107(a)(20) separate from the application and accompanying information. See 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 women-owned business status, minority-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

- (iv) *Ethnicity, race, or sex of principal owners not provided by applicant.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, which includes the ethnicity, race, and sex of an applicant’s principal owners. However, if a financial institution is nonetheless unable to collect the principal owners’ ethnicity, race, or sex from the applicant, and if the financial institution is not required to report based on visual observation or surname, the financial institution reports that the principal owner’s ethnicity, race, or sex (as applicable) is “not provided by applicant.”
  
- (v) *Determining who is a principal owner.* Generally, an applicant determines its principal owners and decides whether to provide information about those principal owners. However, as discussed in comments 107(a)(20)–9 and –10 and appendix G, a financial institution may be required to report ethnicity and race information based on visual observation and/or surname if the applicant does not provide ethnicity, race, or sex information for at least one principal owner and the financial institution meets in person with one or more principal owners. Thus, a financial institution may need to determine if a natural person that it meets with in person is a principal owner. In that case, the financial institution may either ask the natural person who is acting on behalf of an applicant whether that natural person is a principal owner, or it may independently determine if the natural person is a principal owner. For example, if a financial institution has collected information regarding an applicant’s ownership structure and obtained the name or identity of the natural person for other purposes, it may use this information to independently determine whether the natural person who meets in person with the financial institution is a principal owner. If a financial institution asks if a natural person is a principal owner, the financial institution can rely on an applicant’s or natural person’s response, unless the financial institution has knowledge to the contrary. The financial institution is not required to verify any responses regarding whether a natural person is a principal owner.
  
- (vi) *Ethnicity. Aggregate categories.* A financial institution must permit an applicant to provide a principal owner’s ethnicity for purposes §1002.107(a)(20) using one or more of the following aggregate categories:

- (a) Hispanic or Latino.
- (b) Not Hispanic or Latino.

*Disaggregated subcategories.* A financial institution must permit an applicant to provide a principal owner's ethnicity for purposes of §1002.107(a)(20) using one or more 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, such as indicating, for example, that the principal owner is Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard. If an applicant chooses to provide additional information regarding a principal owner's ethnicity, such as indicating that a principal owner is Argentinean, a financial institution must report that additional information as free-form text in the appropriate data reporting field.

*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. A financial institution must also permit the applicant to refuse to provide ethnicity information for one or more principal owners. 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.

*Information not provided by applicant.* Unless a financial institution is required to report based on visual observation and/or surname (see comments 107(a)(20)–9 and –10 and appendix G), if an applicant refuses or fails to provide ethnicity information for a principal owner, the financial institution reports that the applicant declined to provide the information or failed to respond, as applicable. Because there are data reporting fields for four principal owners, when submitting data to CFPB, a financial

institution will need to report that the requirement to report ethnicity is not applicable for some principal owners if the applicant has fewer than four principal owners. For example, if an applicant has only one principal owner, the financial institution reports that the requirement to report ethnicity is not applicable in the data fields for principal owners two through four.

(vii) *Race. Aggregate categories.* A financial institution must permit an applicant to provide a principal owner's race for purposes of §1002.107(a)(20) 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.

*Disaggregated subcategories.* The financial institution must permit an applicant to provide a principal owner's race for purposes of §1002.107(a)(20) using one or more of the disaggregated subcategories as listed in this comment 107(a)(20)–7.ii and set forth in the sample data collection form in appendix E, 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, such as providing information, for example, that the principal owner is Cambodian, Hmong, Laotian, Pakistani, or Thai.

- (b) The Black or African American 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, such as providing information, for example, that the principal owner is Barbadian, Ghanaian, or South African.
- (c) The Native Hawaiian or Other Pacific Islander 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, such as providing information, for example, that the principal owner is Fijian or Tongan.
- (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, a financial institution must report that additional information as free-form text in the appropriate data reporting field.
- (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. An applicant must be permitted to provide the name of an enrolled or principal tribe regardless of whether the applicant indicates that the principal owner is American Indian or Alaska Native. If an applicant chooses to provide the name of an enrolled or principal tribe, a financial institution must report that information as free-form text in the appropriate data reporting field.

*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. A financial institution must also permit the applicant to refuse to provide this information for one or more principal owners. 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.

*Information not provided by applicant.* Unless the financial institution is required to report based on visual observation and/or surname (see comments 107(a)(20)–9 and –10 and appendix G), if an applicant refuses or fails to provide race information for a principal owner, the financial institution reports that the applicant declined to provide the information or failed to respond, as applicable. Because there are data reporting fields for four principal owners, when submitting data to CFPB, a financial institution must report that the requirement to report race is not applicable for some principal owners if the applicant has fewer than four principal owners. For example, if an applicant has only one principal owner (i.e., only one natural person directly owns 25 percent or more of the applicant’s equity interests), the financial institution reports that the requirement to report race is not applicable in the data reporting fields for principal owners two through four.

- (viii) *Sex.* A financial institution must permit an applicant to provide a principal owner's sex for purposes of § 1002.107(a)(20) using one or more of the following categories: Male, Female, and/or that the principal owner prefers to self-describe their sex. Additionally, if an applicant indicates that a principal owner prefers to self-describe their sex, the financial institution must permit the applicant to provide additional information about the principal owner's sex. A financial institution must permit an applicant to select as many categories as the applicant chooses. A financial institution reports the category or categories selected by the applicant, any additional information provided by the applicant (reported as free-form text in the appropriate data reporting field), or reports that the applicant refused to provide the information or failed to respond. A financial institution is not permitted to report sex based on visual observation, surname, or any basis other than the applicant-provided information. Because there are data reporting fields for four principal owners, when submitting data to CFPB a financial institution must report that the requirement to report sex is not applicable for some principal owners if the applicant has fewer than four principal owners. For example, if an applicant has only one principal owner, the financial institution reports that the requirement to report sex is not applicable in the data fields for principal owners two through four. See appendix G for additional information on collecting and reporting a principal owner's sex.

*Reporting based on visual observation and/or surname.* If a financial institution meets in person with one or more of an applicant's principal owners and the applicant does not provide ethnicity, race, or sex information for at least one principal owner, the financial institution must report at least one principal owner's ethnicity and race (but not sex) based on visual observation, surname, or a combination of both visual observation and surname. (See comment 107(a)(20)-10 for additional information regarding what constitutes an in-person meeting with an applicant's principal owners.) However, a financial institution is not required to report based on visual observation and/or surname if the principal owner only meets in person with a third party through whom it is submitting an application to the financial institution. For example, a financial institution is not required to report based on visual observation and/or surname when an employee or officer of an equipment dealer or retailer that is not an affiliate of the financial institution meets in person with a principal owner.

*Meeting in person with a principal owner.* In-person meetings. A financial institution meets in person with a principal owner if an

employee or officer of the financial institution or one of its affiliates has a meeting or discussion with the applicant's principal owner about an application and can visually observe the principal owner. The following provides a non-exhaustive list of examples to illustrate when a financial institution meets in person with a principal owner for purposes of the requirement to collect principal owners' race and ethnicity information based on visual observation and/ or surname if not provided by the applicant:

- (a) A principal owner comes to a financial institution's branch or office and meets with the financial institution's loan officer to discuss the status of a pending application.
- (b) A principal owner comes to a financial institution's branch or office and meets in person with one or more employees or officers of a financial institution in order to complete an application and related paperwork.
- (c) A principal owner contacts a financial institution's loan officer using an electronic communication method with a video component and, using the video component, meets with the loan officer to discuss outstanding documentation needed for a pending application.

*Not in-person meetings.* The following provides a non-exhaustive list of examples to illustrate when a financial institution does not meet in person with a principal owner for purposes of the requirement to collect principal owners' race and ethnicity information via visual observation and/or surname if not provided by the applicant:

- (a) A principal owner drops off documents at a financial institution's branch or office or provides the applicant's name and drops off documents without engaging in any discussion regarding a covered application.
- (b) A principal owner meets in person with an employee or officer of the financial institution to discuss something other than a covered application, such as another financial product.
- (c) The financial institution meets with a principal owner after the application process is complete, such as at account opening or loan closing.
- (d) A financial institution meets with a principal owner before the applicant submits an application.

*Use of aggregate categories when reporting based on visual observation or surname.* When reporting ethnicity and race based on visual observation and/or surname, the financial institution uses only the aggregate ethnicity and race categories. See appendix G for additional information on collecting and reporting based on visual observation and/or surname.

*No verification of ethnicity, race, and sex of principal owner.* Notwithstanding §1002.107(b), a financial institution is neither required nor permitted to verify the ethnicity, race, or sex information that the applicant provides for purposes of §1002.107(a)(20), even if the financial institution verifies or otherwise obtains the ethnicity, race, or sex of the applicant's principal owners for other purposes. Additionally, if an applicant refuses to respond to the inquiry pursuant to §1002.107(a)(20) or fails to respond to this inquiry, the financial institution reports that the applicant declined to provide the information or did not respond to the request to provide the information (as applicable), unless the financial institution is required to report ethnicity and race based on visual observation and/or surname. The financial institution does not report ethnicity, race, or sex based on information that the financial institution collects for other purposes.

- u. *Number of principal owners.* The number of the applicant's principal owners.
  - (i) *General.* A financial institution may request an applicant's number of principal owners from the applicant or may determine the number of principal owners from information provided by the applicant or that the financial institution otherwise obtains. If the financial institution asks the applicant to provide the number of its principal owners pursuant to §1002.107(a)(21), a financial institution must provide the definition of principal owner set forth in §1002.102(o). If permitted pursuant to §1002.107(c)(2), a financial institution may also report an applicant's number of principal owners based on previously collected data.
  - (ii) *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. The financial institution is not required to verify the number of principal owners, but if the financial institution verifies the number of principal owners in making the credit decision, then the financial institution reports the verified number of principal owners.

(iii) *Number of principal owners not provided by applicant and otherwise undetermined.* Pursuant to §1002.107(c)(1), a financial institution shall maintain procedures reasonably designed to collect applicant-provided information, 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."

ii. *Verification of applicant-provided information.* Unless otherwise provided in this subpart, the financial institution may rely on statements of the applicant when compiling data unless it verifies the information provided, in which case it shall use the verified information.

a. *Reliance on statements or information provided by an applicant.* 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 the rule for applicant-provided data; the financial institution is not required to verify those statements. However, if the financial institution does verify applicant statements 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 without a specific request from the applicant. For example, gross annual revenue may be collected from tax return documents. Applicant-provided data are the data required that are or could be provided by the applicant, including §1002.107(a)(5) through (7) and (13) through (21). See comment 107(c)(2)–3.

iii. *Time and manner of collection—*

a. *In general.* A covered financial institution shall maintain procedures to collect applicant-provided data under paragraph i. of this section at a time and in a manner that is reasonably designed to obtain a response.

- (i) *Procedures.* The term “procedures” refers to the actual practices followed by a financial institution as well as its stated policies or procedures. For example, if a financial institution’s stated policy is to collect applicant-provided data on or with a paper application form, but the financial institution’s employees encourage applicants to skip the page that asks whether the applicant is a minority-owned business or a women-owned business under §1002.107(a)(18) and (19), the financial institution’s procedures are not reasonably designed to obtain a response.
- (ii) *Latitude to design procedures.* A financial institution has flexibility to establish procedures concerning the timing and manner that it collects applicant provided data that work best for its particular lending model and product offerings, provided that those procedures are reasonably designed to collect the applicant provided data in §1002.107(a).
- (iii) *Applicant-provided data.* Applicant provided data are the data required 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), §1002.107(a)(19) (women-owned business status), §1002.107(a)(20) (ethnicity, race, and sex of the applicant’s principal owners), and §1002.107(a)(21) (number of principal owners). Applicant-provided data does 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 data), and §1002.107(a)(13) (census tract, based on address or location provided by the applicant). Depending on the circumstances and the financial institution’s procedures,

certain applicant-provided data can be collected without a specific request from the applicant. For example, credit type may be collected based on the type of product chosen by the applicant or NAICS code may be collected from an applicant's tax return that the applicant has otherwise provided to the financial institution.

- (iv) *Reasonably designed—generally.* Whether a financial institution's procedures are reasonably designed to collect applicant provided data depends on the financial institution's particular lending model and product offerings. A financial institution shall reassess on a periodic basis, based on available data, whether its procedures are reasonably designed to obtain a response. For example, a financial institution may be able to assess whether its procedures are reasonably designed by comparing its response rate with similarly situated financial institutions (for instance, those that offer similar products, use a similar lending model, or are of a similar size). A financial institution is permitted, but not required, to develop different procedures for different applicant-provided data, so long as the procedures used are reasonably designed to obtain a response. 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.
  
- (v) *Examples of procedures that are generally reasonably designed to obtain a response.* Although a fact-based determination, the following procedures reflect practices concerning the time or manner of collection that are generally reasonably designed to obtain a response:
  - (a) *Timing of collection.* A financial institution requests applicant-provided data early in the application process; for example, at the time of a covered application, as defined in §1002.103. The earlier in the application process, the more likely the timing of collection is reasonably designed to obtain a response.
  
  - (b) *Manner of collection.* A financial institution requests applicant-provided data on the same form or in connection with other required information. For example, a financial institution requests applicant provided data as part of a written

application form or on a separate data collection form provided with the written application form. See also comments 107(a)(18)–3, 107(a)(19)–3, and 107(a)(20)–3, which discuss the use of a separate data collection form for collecting minority-owned business status, women-owned business status, and the ethnicity, race, and sex of an applicant’s principal owners.

- (vi) *Updated applicant-provided data.* A financial institution reports updated applicant-provided data if it obtains more current data during the application process. For example, if an applicant states it has 100 non-owners working for the business, but then the applicant notifies the financial institution that the number is actually 75, the financial institution reports 75 non-owners working for the business. For reporting of verified applicant-provided information, see §1002.107(b) and comment 107(b)–1.
  - (vii) *Change in determination of small business status.* If a financial institution changes its determination regarding an applicant’s status as a small business under §1002.106(b), it must follow the procedures described in comments 106(b)–1 and –2.
- b. *Previously collected data.* A covered financial institution is permitted, but not required, to reuse previously collected data to satisfy paragraphs (i)(m) through (u) of this section if:
- (i) The data were collected within the same calendar year as the current covered application; and
  - (ii) The financial institution has no reason to believe the data are inaccurate.
  - (iii) *In general.* A financial institution may reuse certain previously collected data if the requirements of §1002.107(c)(2) are met. In that circumstance, a financial institution need not seek to collect the data anew in connection with a subsequent covered application. 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 set forth in §1002.107(c)(2). 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 set forth in §1002.107(c)(2).

- (iv) *Data that can be reused.* Subject to the requirements of §1002.107(c)(2) and comment 107(c)(2)–3, a financial institution may reuse the following data: §1002.107(a)(13) (census tract), §1002.107(a)(14) (gross annual revenue), §1002.107(a)(15) (NAICS code), §1002.107(a)(16) (number of workers), §1002.107(a)(17) (time in business), §1002.107(a)(18) (minority-owned business status), §1002.107(a)(19) (women-owned business status), §1002.107(a)(20) (ethnicity, race, and sex of principal owners), and §1002.107(a)(21) (number of principal owners). A financial institution is not, however, permitted to reuse other data, such as §1002.107(a)(6) (credit purpose).
- (v) *Previously reported data without a substantive response.* Section 1002.107(c)(2) permits a financial institution to reuse certain previously collected data to satisfy §1002.107(a)(13) through (21), if certain conditions are met. Data have not been “previously collected” within the meaning of this provision 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, tax returns, or through visual observation or surname collection for race and ethnicity information).
- (vi) *Collection in the same calendar year.* Pursuant to §1002.107(c)(2)(i), data can be reused if they are collected in the same calendar year. For applications that span more than one calendar year, the following applies:
  - (a) If the data are 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 financial institution may consider the data as collected in the year that final action was taken on the application.
  - (b) If data are collected in connection with a covered application in one calendar year, a financial institution may reuse that data pursuant to §1002.107(c)(2) 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.

- (vii) *Reason to believe data are inaccurate.* Whether a financial institution has reason to believe data are inaccurate pursuant to §1002.107(c)(2)(ii) depends on the particular facts and circumstances. For example, a financial institution may have reason to believe data on the applicant's women-owned business status, minority-owned business status, and ethnicity, race, and sex of principal owners may be inaccurate if it knows that the applicant has had a change in ownership.
- (viii) *Minority-owned business status and women-owned business status.* If the financial institution asked the applicant to provide its minority-owned business status or women-owned business status for purposes of §1002.107(a)(18) and (19) and the applicant refused to provide the information (such as by selecting "I do not wish to provide this information" 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(c)(2). 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 or women-owned business status, as applicable, because the data were not previously obtained.
- (ix) *Principal owners' ethnicity, race, and sex.* If the financial institution asked the applicant to provide its principal owners' ethnicity, race, or sex for purposes §1002.107(a)(20) and the applicant refused to provide the information (such as by selecting "I do not wish to provide this information" on a data collection form or by telling the financial institution that it did not wish to provide the information) or if the financial institution reported ethnicity and race based on visual observation and/or surname, the financial institution may use these data when reporting information for a subsequent application under §1002.107(c)(2). 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) and the

financial institution did not report ethnicity and race based on visual observation and/or surname, the financial institution must inquire about the ethnicity, race, and sex of the applicant's principal owners, as applicable, because the data were not previously obtained.

G. Firewall – §1002.108

- i. *Definitions.* For purposes of this section, the following terms shall have the following meanings:
  - a. *Involved in making any determination concerning a covered application* means participating in a decision regarding the evaluation of a covered application, including the creditworthiness of an applicant for a covered credit transaction.
    - (i) *Involved in making any determination concerning a covered application.* An employee or officer is involved in making a determination concerning a covered application if the employee or officer makes, or otherwise participates in, a decision regarding the evaluation of a covered application or the creditworthiness of an 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. An employee or officer is not involved in making a determination concerning a covered application if the employee or officer is involved in making a decision that affects covered applications generally, or interacts with small businesses prior to them becoming applicants or submitting a covered application. This group might include officers and employees who develop policies and procedures, program systems, or conduct marketing. Additionally, an employee or officer is not involved in making a determination concerning a covered application if the employee or officer makes or participates in a decision after the financial institution has taken final action on the application, such as a decision about servicing or collecting a covered credit transaction. Furthermore, an officer or employee is not involved in making a determination concerning a covered application for purposes of §1002.108 if the officer or employee simply uses a check box form to confirm whether an applicant has submitted all necessary documents or handles a minor or clerical matter during the application process, such as

suggesting or selecting a time for an appointment with an applicant.

b. *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.

(i) *Should have access. General.* A financial institution may determine that an employee or officer should have access for purposes of §1002.108 if that employee or officer is assigned one or more job duties that may require the employee or officer to collect (based on visual observation, surname, or otherwise), see, consider, refer to, or use information otherwise subject to the prohibition in §1002.108(b). The employee or officer does not have to be required to collect, see, consider, refer to or use such information or to actually collect, see, consider, refer to or use such information. It is sufficient if the employee or officer might need to do so to perform the employee's or officer's assigned job duties. For example, if a loan officer's job description states that the loan officer may need to collect ethnicity and race information based on visual observation and/or surname or if the loan officer is assigned the task of assisting applicants with the completion of data collection forms, the financial institution may determine that the loan officer should have access. If a financial institution determines that an employee or officer who is involved in making any determination concerning a covered application should have access for purposes of §1002.108, the financial institution is responsible for ensuring that the employee or officer only accesses and uses the protected information for lawful purposes.

(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. If a job description assigns one or more tasks that may require access to one or more applicants' responses to the financial institution's inquiries under §1002.107(a)(18) through (20), the financial institution may determine that all employees and officers who share that job description should have access for purposes of §1002.108. For example, if the job description for the position of loan officer states that a loan

officer may have to distribute, collect, and help applicants complete a data collection form that asks about the applicant's minority-owned business status, women-owned business status, and its principal owners' ethnicity, race, and sex, 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.

- ii. *Prohibition on access to certain information.* Unless the exception under paragraph iii 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 under §1002.107(a)(18) or a women-owned business under §1002.107 (a)(19), and regarding the ethnicity, race, and sex of the applicant's principal owners under §1002.107(a)(20), if that employee or officer is involved in making any determination concerning that applicant's covered application.
  - a. *Scope of information subject to the prohibition.*
    - (i) *When the prohibition applies.* The prohibition in §1002.108(b) applies only to an applicant's responses to the inquiries that the covered financial institution makes to satisfy §1002.107(a)(18) through (20). For example, if a financial institution satisfies §1002.107(a)(18) through (20) by using a paper data collection form to ask an applicant if it is a minority-owned business, if it is a women-owned business, and for the ethnicity, race, and sex of its principal owners, the prohibition applies to the responses that the applicant provides on the paper data collection form and any other paper or electronic records that the financial institution creates based on the applicant's responses provided on the paper data collection form. Similarly, if a financial institution satisfies §1002.107(a)(18) through (20) by asking an applicant about its minority-owned business status, its women-owned business status, and the ethnicity, race, and sex of its principal owners during a telephone call, the prohibition applies to the responses to those inquiries provided during that telephone call and to any records created on the basis of those responses.
    - (ii) *When the prohibition does not apply.* Because the prohibition in §1002.108(b) only applies to the applicant's responses to the inquiries that the financial institution makes to satisfy §1002.107(a)(18) through (20), the prohibition does not apply to ethnicity or race information about principal owners that the financial institution collects via visual observation or surname.

Additionally, the prohibition in §1002.108(b) does not apply to an applicant's responses to inquiries regarding minority-owned or women-owned business status, or principal owners' ethnicity, race, or sex, made for other purposes. Thus, an employee or officer who obtains information to determine if an applicant is eligible for a Small Business Administration program for women-owned businesses may make determinations concerning the applicant's covered application without regard to whether the exception in §1002.108(c) is satisfied. Additionally, §1002.108(b) does not prohibit an employee or officer from making a determination regarding a covered application if the employee or officer generally knows that an applicant is a minority-owned business or women-owned business or 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 subpart B of this part. Thus, an employee or officer who knows, for example, that an applicant is a minority-owned business due to social relationships or other professional relationships with the applicant or any of its principal owners may make determinations concerning the applicant's covered application.

- (iii) *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. For example, if a financial institution is affiliated with company B and an employee of company B is involved in making a determination regarding 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. Section 1002.108 does not require a financial institution to limit the access of third parties (who are not employees or officers of the financial institution or its affiliates) through whom the financial institution receives covered applications.

- iii. *Exception to the prohibition on access to certain information.* The prohibition in paragraph (ii) 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) through (20) and the financial institution provides the notice required under paragraph (iv) of this section to the applicant.

It is not feasible to limit access as required pursuant to paragraph (ii) of this section if the financial institution determines that an employee or officer involved in making any determination concerning a covered application should have access to one or more applicants' responses to the financial institution's inquiries under §1002.107(a)(18) through (20).

- a. *General.* A financial institution is not required to limit the access of a particular employee or officer who is involved in making determinations concerning covered applications if the financial institution determines that the particular employee or officer should have access to the information collected pursuant to §1002.107(a)(18) through (20) 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 or that all of a group of similarly situated employees or officers should have access. See comment 108(a)–2. However, the financial institution cannot permit all employees and officers to have access simply because it has determined that one or more employees or officers should have access. For example, a financial institution may determine that a single compliance officer or all of its compliance officers should have access and then permit one or all of its compliance officers, respectively, to have access. However, the financial institution cannot permit other employees or officers to have access unless it independently determines that they should have access.
- iv. *Notice.* In order to satisfy the exception set forth in paragraph (iii) 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 or a women-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 (iv) when making the inquiries required under §1002.107(a)(18) through (20) and together with the notices required pursuant to §1002.107(a)(18) through (20).
  - a. *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 regarding the applicant's or applicants' covered applications. Alternatively, the financial institution may also provide the required notice to larger group of applicants, including all applicants, if it determines that one or more officers or employees should have access.

- b. *Content of the required notice.* The notice must inform the applicant that one or more employees and officers involved in making determinations regarding 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, and its principal owners' ethnicity, race, and sex. The financial institution may, but is not required to, provide the notice on its data collection form. If the financial institution provides the notice on an electronic or paper data collection form, the notice must use language substantially similar to the following: "Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the information provided on this form." If the financial institution provides the notice orally, it must use language substantially similar to the following: "Employees and officers making determinations concerning your application, such as loan officers and underwriters, may have access to your responses regarding your minority-owned business status, your women-owned business status, and your principal owners' ethnicity, race, or sex."
- c. *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 or women-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, and the principal owners' ethnicity, race, or sex, the notice must appear at the top of the form. 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 data collection form. Additionally, the notice must be provided with the nondiscrimination notices required pursuant to §1002.107(a)(18) through (20). See appendix E.

H. Reporting of Data to CFPB – §1002.109

i. *Reporting to CFPB*

a. *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 CFPB.
- (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 (i).
- (iii) When the last day for submission of data prescribed under paragraph (i)(a) falls on a date that is not a business day, a submission shall be considered timely if it is submitted no later than the next business day.

b. *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 CFPB.

- (i) *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.

c. *Reporting obligations where multiple financial institutions are involved in a covered credit transaction.* If a covered application results in an origination, only one covered financial institution shall report the covered credit transaction. If more than one financial institution is involved in the origination of a covered credit transaction, the financial institution that makes the final credit decision approving the application shall report the loan as an origination (if that financial institution is a covered financial institution). If there was no origination, then any covered financial institution that made a credit decision shall report the application.

- (i) *General.* The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are covered financial institutions. However, the same principles apply if any of the parties is not a covered financial institution. See also comment 109(a)(3)–2 (providing examples of transactions involving more than one financial institution) and comment 109(a)(3)–3 (discussing how to report actions taken by agents).
- (a) Only one financial institution reports each originated covered credit transaction as an origination. If more than one financial institution was involved in the origination of a covered credit transaction, the financial institution that made the final credit decision approving the application reports the covered credit transaction as an origination. It is not relevant whether the covered credit transaction closed or, in the case of an application, would have closed in the financial institution’s name. If more than one financial institution approved an application prior to closing or account opening and one of those financial institutions purchased the covered credit transaction after closing, the financial institution that purchased the covered credit transaction after closing reports the covered credit transaction as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered credit transaction was not initially payable to the financial institution that is reporting the covered credit transaction as an origination.
- (b) In the case of an application for a covered credit transaction that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application directly from the applicant or indirectly through another party, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

- (ii) *Examples.* The following scenarios illustrate how a financial institution reports a particular application or originated covered credit transaction. The illustrations assume that all of the parties are covered financial institutions. However, the same principles apply if any of the parties is not a covered financial institution.
- (a) 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 approved the covered credit transaction 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 final credit decision prior to closing, Financial Institution B reports the application as an origination. Financial Institution A does not report the application.
- (b) Financial Institution A received a covered application from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the covered credit transaction would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report 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.
- (c) Financial Institution A received a covered application from an applicant and approved the application before closing the loan 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 B did not review the application before closing. Financial Institution A reports the application as an origination. Financial Institution B has no reporting obligation for this transaction

- (d) 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 made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.
- (e) Financial Institution A reviewed a covered application and made the credit decision to approve a covered credit transaction using the underwriting criteria provided by a third party (e.g., another financial institution or party). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application. The third party has no reporting obligation for this application. Assume the same facts, except that Financial Institution A made a credit decision to approve the application, and the applicant chose not to accept the covered credit transaction from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party does not report the application.
- (f) 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.

(g) 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 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. The applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C reports the application as denied.

(iii) *Agents.* If a covered financial institution made a credit decision on a covered application through the actions of an 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 product was originated. Financial Institution A reports the covered credit product as an origination. State law determines whether one party is the agent of another.

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

- a. Its name.
- b. Its headquarters address.
- c. The name and business contact information of a person who may be contacted with questions about the financial institution's submission.
- d. Its Federal prudential regulator, if applicable.

(i) *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.

- (ii) *Change in Federal prudential regulator.* If the Federal prudential regulator for a financial institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must identify its new Federal prudential regulator in its data submission under §1002.109 for the calendar year of the change. For example, if a financial institution's Federal prudential regulator changes in February 2026, it must identify its new Federal prudential regulator in the annual submission for its 2026 data (which is due by June 1, 2027) pursuant to §1002.109(b)(4)
- e. Its Federal Taxpayer Identification Number (TIN).
  - (i) If a financial institution obtains a new Federal Taxpayer Identification Number (TIN), it should provide the new number in its subsequent data submission. For example, if 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, then the surviving institution should report the new TIN with its data submission. For example, if a financial institution's TIN changes in February 2026, it must identify its new TIN in the annual submission for its 2026 data (which is due by June 1, 2027) pursuant to §1002.109(b)(5).
- f. Its Legal Entity Identifier (LEI).
  - (i) 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.

- g. Its Research, Statistics, Supervision, and Discount identification (RSSD ID) number, if applicable.
  - (i) 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.
- h. Parent entity information, if applicable, including:
  - (i) The name of the immediate parent entity;
    - (a) *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.
  - (ii) The LEI of the immediate parent entity, if available;
    - (a) *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.
  - (iii) The RSSD ID number of the immediate parent entity, if available;
    - (a) *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.

- (iv) The name of the top-holding parent entity;
  - (a) *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 (vii) are not applicable.
- (v) The LEI of the top-holding parent entity, if available; and
  - (a) 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.
- (vi) The RSSD ID number of the top-holding parent entity, if available.
  - (a) *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.
- i. The type of financial institution that it is, indicated by selecting the appropriate type or types of institution from the list provided.
  - (i) 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.
    - (a) Bank or savings association.
    - (b) Minority depository institution.

- (c) Credit union.
- (d) Non-depository institution.
- (e) Community development financial institution (CDFI).
- (f) Other nonprofit financial institution.
- (g) Farm Credit System institution.
- (h) Government lender.
- (i) Commercial finance company.
- (j) Equipment finance company.
- (k) Industrial loan company.
- (l) Fintech.
- (m) Other.

(I) *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 as free-form text. 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.

- j. Whether the financial institution is voluntarily reporting covered applications for covered credit transactions.
  - (i) 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 1002.105(b)–6) complies with §1002.109(b)(10) by selecting “voluntary reporter.”

- k. Procedures for the submission of data to CFPB. CFPB shall make available a Filing Instructions Guide, containing technical instructions for the submission of data to CFPB pursuant to this section, as well as any related materials, available at [a designated CFPB website].
  - (i) Filing Instructions Guide. CFPB includes in the Filing Instructions Guide additional details and procedures for the submission of data to CFPB pursuant to §1002.109, as well as any related materials, which are available at [a designated CFPB website].

I. Publication of Data – §1002.10

- i. *Publication of small business lending application registers and associated financial institution information.* CFPB 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 CFPB, at its discretion, if CFPB determines that the deletion or modification of the data would advance a privacy interest. CFPB shall make such data available on an annual basis, by publishing it on CFPB’s website at [a designated CFPB website].
- ii. *Publication of aggregate data.* may, at its discretion, compile and aggregate data submitted by financial institutions pursuant to §1002.109, and make any compilations or aggregations of such data publicly available as CFPB deems appropriate.
- iii. *Statement of financial institution’s small business lending data available on CFPB’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 CFPB pursuant to §1002.110(a), is or will be available on CFPB’s website at [a designated CFPB website]. A financial institution shall use language provided by CFPB, or substantially similar language, to satisfy the requirement to provide a statement pursuant to this paragraph iii.
  - a. *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 website at [a designated Bureau website]. 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 Bureau may delete or modify portions of our data prior to posting it if the Bureau determines that doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

- b. *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.
- iv. *Availability of statements.* A covered financial institution shall make the notice required by paragraph iii of this section available to the public on its website when it submits a small business lending application register to CFPB 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).

J. Recordkeeping – §1002.111

- i. *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 CFPB pursuant to §1002.109.
  - a. *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 CFPB 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.
  - b. *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.

- ii. *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 under §1002.107(18) or a women-owned business under §1002.107(19), and regarding the ethnicity, race, and sex of the applicant's principal owners under §1002.107(20).
  - a. *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) through (20) 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) through (20) need not be maintained in a separate electronic system, nor need they be removed from the physical files containing the application. However, the financial institution may nonetheless need to keep this information in a different electronic or physical file in order to satisfy the requirements of §1002.108.
  
- iii. *Limitation on personally identifiable information in records retained under this section.* In compiling and maintaining any records under §1002.107 or paragraph ii of this section, or reporting data pursuant to §1002.109, a financial institution shall not include any name, specific address, telephone number, email address, or any personally identifiable information concerning any individual who is, or is connected with, an applicant, other than as required pursuant to §1002.107 or paragraph ii of this section.
  - a. *Small business lending application register.* The prohibition in §1002.111(c) applies to data compiled and maintained pursuant to §1002.107, data in the small business lending application register submitted by the financial institution to CFPB 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).
  
  - b. *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 in the data it compiles and maintains pursuant to

§1002.107, in its records under §1002.111(b), or in data reported to CFPB under §1002.109. It likewise prohibits a financial institution from including any 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.

- c. *Other records.* The prohibition in §1002.111(c) does not extend to the application or any other records that the financial institution maintains.
- d. *Name and business contact information for submission.* The prohibition in §1002.111(c) does not bar financial institutions from providing to CFPB, pursuant to §1002.109(b)(3), the name and business contact information of the person who may be contacted with questions about the financial institution's submission under §1002.109.

K. Enforcement – §1002.112

- i. *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.
- ii. *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 CFPB for this purpose in appendix H 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 other evidence that the financial institution does not or has not maintained procedures reasonably adapted to avoid such errors.

- a. *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 CFPB for this purpose. CFPB's thresholds appear in column C of the table in appendix H. 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 H. 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 other evidence that the financial institution has not maintained procedures reasonably adapted to avoid errors. To illustrate, assume that a financial institution has incorrectly coded withdrawn applications as denials to such an extent that it likely prevents reliable fair lending analysis of underwriting disparities. If so, the errors would not be deemed bona fide errors under §1002.112(b) and would violate the Act and this Regulation.
  
- b. *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. However, with respect to information on the ethnicity and race of an applicant's principal owner, a data field group consists of more than one field. If one or more of the fields within an ethnicity or race field group have errors, they count as one (and only one) error for that data field group. For instance, in the ethnicity data field group, 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 errors in two fields within the ethnicity data field group for that principal owner. For purposes of the error threshold table in appendix H, the financial institution is deemed to have made one error. However, a financial institution that makes, for example, one error in the race data field group and one error in the ethnicity field group regarding a particular principal owner has made two errors for purposes of the error threshold table in appendix H.
  
- c. *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 H for a given data field.

iii. *Safe harbors.*

a. *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 CFPB.

(i) *Information from a Federal agency— census tract.* Section 1002.112(c)(1) 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 CFPB. 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 CFPB 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 CFPB geocoding tool.

b. *Incorrect entry for NAICS code.* If a financial institution identifies the NAICS code for an applicant itself, without the applicant or another source providing the NAICS code, and the identified NAICS code is incorrect, the incorrect entry for the NAICS code is not a violation of the Act or this subpart provided that the first two digits of the NAICS code are correct and the financial institution maintains procedures reasonably adapted to correctly identify the subsequent four digits.

(i) *Applicability of NAICS code safe harbor.* A financial institution is permitted to rely on an applicant's representations or on other information regarding the NAICS code as described in comments 107(a)(15)–3 and –4. The safe harbor in §1002.112(c)(2) applies when a financial institution does not rely on such information, but instead the financial institution identifies the NAICS code for an applicant and the NAICS code is incorrect. Where the incorrect NAICS code entry is due to an unintentional error, the safe harbor in §1002.112(c)(2) may apply in addition to the bona fide error provision in §1002.112(b), provided its requirements are met.

- c. *Incorrect determination of small business status.* A financial institution that initially determines that an applicant for a covered credit transaction is a small business, as defined in §1002.106(b), but later concludes the applicant is not a small business, does not violate the Act or this regulation if the financial institution collected information pursuant to this subpart regarding whether an applicant for a covered credit transaction is a minority-owned business or a women-owned business, and the ethnicity, race, and sex of the applicant's principal owners. 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 information.
- d. *Incorrect 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 calendar days of the actual application date pursuant to §1002.107(a)(2).

L. Severability – §1002.113

- i. The provisions of this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

M. Effective Date, Compliance Date, and Special Transitional Rules – §1002.114

- i. *Effective date.* The effective date for this subpart is [90 days after the date of publication of the final rule in the *Federal Register*].
- ii. *Compliance date.* The compliance date for this subpart is [approximately 18 months after the date of publication of the final rule in the *Federal Register*].
- iii. Special transitional rules
  - a. *Collection of information prior to the compliance date.* A financial institution that will be a covered financial institution as of the compliance date in paragraph ii. 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 under §1002.107(a)(18), a women-owned business under §1002.107(a)(19), and the ethnicity, race, and sex of the applicant's principal owners under §1002.107(a)(20) beginning [12 months prior to the compliance date]. A financial institution collecting such information pursuant to this paragraph (iii)(a) must

do so in accordance with the requirements set out in §§1002.107(18) through (20) and 1002.108.

- b. Determining whether a financial institution is a covered financial institution for purposes of this subpart. For purposes of determining whether a financial institution is a covered financial institution under §1002.105(b) as of the compliance date specified in paragraph ii. of this section, a financial institution is permitted, but not required, to use its origination of covered credit transactions for small businesses in the second and third preceding calendar years (rather than its originations in the two immediately preceding calendar years).

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 H 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 other evidence that the financial institution does not or has not maintained procedures reasonably adapted to avoid such errors.

(a) *Safe harbors.* (1) *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.

(2) *Incorrect entry for NAICS code.* If a financial institution identifies the NAICS code for an applicant itself, without the applicant or another source providing the NAICS code, and the identified NAICS code is incorrect, the incorrect entry for the NAICS code is not a violation of the Act or this subpart provided that the first two digits of the NAICS code are correct and the financial institution maintains procedures reasonably adapted to correctly identify the subsequent four digits.

(3) *Incorrect determination of small business status.* A financial institution that initially determines that an applicant for a covered credit transaction is a small business, as defined in § 1002.106(b), but later concludes the applicant is not a small business, does not violate the Act or this regulation if the financial institution collected information pursuant to this

subpart regarding whether an applicant for a covered credit transaction is a minority-owned business or a women-owned business, and the ethnicity, race, and sex of the applicant's principal owners. 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 information.

(4) *Incorrect 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 calendar days of the actual application date pursuant to § 1002.107(a)(2).

**§ 1002.113 Severability.**

The provisions of this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

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

(a) *Effective date.* The effective date for this subpart is [90 days after the date of publication of the final rule in the **Federal Register**].

(b) *Compliance date.* The compliance date for this subpart is [approximately 18 months after the date of publication of the final rule in the **Federal Register**].

(c) *Special transitional rules—(1) Collection of information prior to the compliance date.* A financial institution that will be a covered financial

institution as of the compliance date in paragraph (b) 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 under § 1002.107(a)(18), a women-owned business under § 1002.107(a)(19), and the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(20) beginning [12 months prior to the compliance date]. 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(18) through (20) and 1002.108.

(2) *Determining whether a financial institution is a covered financial institution for purposes of this subpart.* For purposes of determining whether a financial institution is a covered financial institution under § 1002.105(b) as of the compliance date specified in paragraph (b) of this section, a financial institution is permitted, but not required, to use its to use its originations of covered credit transactions for small businesses in the second and third preceding calendar years (rather than its originations in the two immediately preceding calendar years).

■ 5. Appendices E through H are added to read as follows:

**Appendix E to Part 1002—Sample Form for Collecting Certain Applicant-Provided Data under Subpart B**

BILLING CODE 4810-25-P

## Sample data collection form

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Federal law requires that we ask if a small business applicant is a minority-owned business or a women-owned business. Federal law also requires us to ask small business applicants for their principal owners' ethnicity, race, and sex.

Applicants are not required to provide this information, but are encouraged to do so. We collect this information to help ensure that all small business applicants are treated fairly and that communities' small business credit needs are being fulfilled.

Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the information provided on this form. However, we cannot discriminate on the basis of minority-owned business status, women-owned business status, or a principal owner's ethnicity, race, or sex. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

### Minority-owned business status

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For purposes of this form, an applicant is a minority-owned business if one or more minority 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 of the business.

A minority individual is a natural person who is 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 individual for this purpose.

**Is the applicant a minority-owned business?**

- Yes
- No
- I do not wish to provide this information

### Women-owned business status

---

For purposes of this form, an applicant is a women-owned business if one or more women (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 of the business.

**Is the applicant a women-owned business?**

- Yes
- No
- I do not wish to provide this information

### Number of principal owners

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

**How many principal owners does the applicant have?**

## Demographic information about principal owners

Applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of a principal owner's ethnicity, race, or sex. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

If a small business applicant does not provide ethnicity, race, or sex information for at least one of its principal owners and we meet with a principal owner in person or via electronic media with an enabled video component, Federal law requires us to report at least one principal owner's ethnicity and race based on visual observation and/or surname.

Please fill out one sheet for each principal owner.

### Ethnicity (Check one or more)

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

\_\_\_\_\_

- Not Hispanic or Latino
- I do not wish to provide this information

### Sex (Check one or more)

- Female
- Male
- I prefer to self-identify as:

\_\_\_\_\_

- I do not wish to provide this information

### Race (Check one or more)

- American Indian or Alaska Native (Print name of enrolled or principal tribe):

\_\_\_\_\_

- Asian
- Asian Indian
  - Chinese
  - Filipino
  - Japanese
  - Korean
  - Vietnamese
  - Other Asian (Print 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 (Print 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 (Print race, for example, Fijian, Tongan, and so on):

\_\_\_\_\_

- White
- I do not wish to provide this information

reports that it is reporting ethnicity and race based on previously collected data and based on visual observation and/or surname. Additionally, the financial institution reports that the applicant declined to provide information about the principal owner's sex or that the applicant did not provide the principal owner's sex, as applicable, and reports that the financial institution is

reporting sex based on previously collected data.

**Appendix H 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 H—Tolerance Thresholds for Bona Fide Errors**

Small Business Lending Application Register Count (A)	Random Sample Size <sup>959</sup> (B)	Threshold (#) (C)	Threshold (%) (D)
25 – 50	30	3	10.0
51 – 100	30	3	10.0
101 – 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

Further comments regarding Table 1 to Appendix H carry on to the next page.

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.<sup>959</sup>

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., loan amount or gross annual revenue) 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 45 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

<sup>959</sup> 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 institution's remains three. Accordingly, the threshold percentage will be higher for financial institutions with fewer than 30 in their registers.

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 other 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). To illustrate, assume that a financial institution has incorrectly coded withdrawn applications as denials to such an extent that it likely prevents reliable fair lending analysis of underwriting disparities. If so, the errors would not be deemed bona fide errors under § 1002.112(b) and would violate the Act and this part.

For purposes of determining bona fide errors under § 1002.112(b), the term "data field" generally refers to individual fields. However, with respect to information on the ethnicity or race of an applicant or borrower, or co-applicant or co-borrower, a data field group may consist of more than one field. If one or more of the fields within an ethnicity or race field group have errors, they count as one (and only one) error for that data field group.

■ 6. In Supplement I to part 1002:

■ a. Under Section 1005.5 – Rules Concerning Requests for Information, revise Paragraph 5(a)(2) by revising the heading and adding comment -4, and

revise Paragraph 5(a)(4) including the heading.

■ b. Add Section 1002.102—Definitions; Section 1002.103—Covered Applications; Section 1002.104—Covered Credit Transactions and Excluded Transactions; Section 1002.105—Covered Financial Institutions and Exempt Institutions; Section 1002.106—Business and Small Business; Section 1002.107—Compilation of Reportable Data; Section 1002.108 – Firewall; Section 1002.109—Reporting of Data to the Bureau; Section 1002.110—Publication of Data; Section 1002.111—Recordkeeping; and Section 1002.112—Enforcement.

The revisions and additions read as follows:

**Supplement I to Part 1002—Official Interpretations**

*Section 1002.5 – Rules Concerning Requests for Information*

*5(a) General rules.*

\* \* \* \* \*

*5(a)(2) Required collection of information.*

\* \* \* \* \*

4. *Information required by subpart B.* Subpart B of this part generally requires creditors that are covered financial institutions as defined in § 1002.105(a) to collect and report information about the

September 1, 2021

# Summary of Proposed Rulemaking: September 2021 Proposal Regarding Small Business Lending Data Collection

On September 1, 2021, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) inviting the public to comment on its proposal to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act (Section 1071). The Bureau is proposing to add a new subpart B to Regulation B to implement Section 1071's requirements. Some background information and a summary of key aspects of the Bureau's NPRM are provided below.

The NPRM, which includes information on submitting comments, is available at <https://www.consumerfinance.gov/1071-rule>. The NPRM has a comment period of 90 days following publication in the *Federal Register*.

## Background

Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require that financial institutions collect and report to the Bureau certain data regarding certain business credit applications. Section 1071's purposes are to facilitate enforcement of fair lending laws and to enable the identification of business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

Section 1071 specifies several data points that financial institutions are required to collect and provides authority for the Bureau to require collection of additional data that the Bureau determines would aid in fulfilling Section 1071's purposes. Section 1071 also contains a number of other requirements regarding information collected pursuant to Section 1071, including a requirement that financial institutions restrict certain persons' access to certain information, requirements regarding maintaining certain information, and requirements regarding publication of data.

Section 1071 also directs the Bureau to prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to Section 1071. It permits the Bureau to adopt exceptions and exemptions to Section 1071's requirements as the Bureau deems necessary or appropriate to carry out Section 1071's purposes.

## Covered Financial Institutions

The Bureau is proposing to apply the Section 1071 requirements to "covered financial institutions." A "covered financial institution" would be a "financial institution" that satisfies an origination threshold. For this purpose, a "financial institution" would be any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity. A financial institution would satisfy the origination threshold, and thus be a covered financial institution, if it originated<sup>1</sup> at least 25 credit transactions that would be "covered credit transactions" to "small businesses" in each of the two preceding calendar years. The proposed definitions for the terms "covered credit transaction" and "small business" are discussed below.

Under this definition, the requirements would apply to a variety of entities that engage in small business lending as long as they satisfy the origination threshold, including depository institutions (*i.e.*, banks, savings associations, and credit unions), online lenders, platform lenders, community development financial institutions, lenders involved in equipment and vehicle financing, commercial finance companies, governmental lending entities, and nonprofit lenders.

The Bureau is also proposing to permit creditors that are not covered financial institutions to voluntarily collect and report data under Section 1071 in certain circumstances.

## Covered Applications, Covered Credit Transactions, and Small Businesses

The Bureau is proposing that covered financial institutions collect and report data regarding covered applications from small businesses. Covered financial institutions would also need to meet other requirements regarding covered applications from small businesses.

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<sup>1</sup> If more than one financial institution was involved in the origination of a credit transaction, only the financial institution that made the final credit decision approving the application before closing or account opening would count the transaction for purposes of meeting the origination threshold for coverage.

The Bureau is proposing to define “small business” by reference to the definitions of “business concern” and “small business concern” as set out in the Small Business Act and Small Business Administration (SBA) regulations. However, in lieu of using the SBA’s size standards for defining a small business concern, the Bureau’s proposed definition would look to whether the business had \$5 million or less in gross annual revenue for its preceding fiscal year. The Bureau is seeking SBA approval for this alternate small business size standard pursuant to the Small Business Act.

A covered financial institution would be required to collect and report data and satisfy other requirements pursuant to the NPRM for applications that are “covered applications” from small businesses. The Bureau is proposing to define a “covered application” as 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. While this proposed definition of covered application is largely consistent with the existing Regulation B definition of “application,” the Bureau is also proposing that certain circumstances would not be covered applications, even if they are considered applications under existing Regulation B. Specifically, the Bureau is proposing that a covered application would not include:

- Reevaluation requests, extension requests, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts;<sup>2</sup> or
- Inquiries and prequalification requests.

The Bureau is proposing to define a “covered credit transaction” as a transaction that meets the definition of business credit under existing Regulation B. Covered credit transactions would include, among other things, loans, lines of credit, credit cards, and merchant cash advances (including such credit transactions for agricultural purposes and those that are also covered by the Home Mortgage Disclosure Act of 1975 (HMDA)<sup>3</sup>). However, the following would not be covered credit transactions even if they satisfy the definition of business credit:

- Financing arrangements wherein a business acquires goods or services from another business without making immediate payment to the business providing the goods or services (*i.e.*, trade credit);
- Public utilities credit as defined in Regulation B, 12 CFR 1002.3(a)(1);

<sup>2</sup> A request for additional funds or to increase a credit limit on an existing line of credit could be a covered application.

<sup>3</sup> 12 U.S.C. 2801 *et seq.*

- Securities credit as defined in Regulation B, 12 CFR 1002.3(b)(1); and
- Incidental credit as defined in Regulation B, 12 CFR 1002.3(c)(1), but without regard to whether the credit is consumer credit, is extended by a creditor, or is extended to a consumer.

In addition to the transactions listed above, factoring, leases, consumer-designated credit used for business purposes, and credit secured by certain investment properties would not be covered credit transactions.

## Proposed Requirements to Collect and Report Data

Pursuant to the NPRM, a covered financial institution would be required to collect and report certain data regarding covered applications from small businesses.

First, the NPRM includes data points that financial institutions would generate or provide. These data points include a unique identifier for each covered application or covered credit transaction, an application date, the application method (*i.e.*, the means by which the applicant submitted its application), the application recipient (indicating whether the application was received directly or indirectly via an unaffiliated third party), the action taken by the financial institution on the application, and the action taken date. For denied applications only, there would be a data point for denial reasons. For applications that are originated or approved but not accepted, there would be data points for the amount originated or approved and for pricing information. The pricing information would include, as applicable, information regarding interest rate, total origination charges, broker fees, initial annual charges, additional cost for merchant cash advances or other sales-based financing, and prepayment penalties.

Second, the NPRM includes data points that could be provided by the applicant or that a financial institution could determine by reviewing information provided by the applicant or a third party. These data points include information specifically related to the credit being applied for (*i.e.*, credit type; credit purpose; and the amount applied for), and information related to the applicant's business (*i.e.*, a census tract based on an address or location provided by the applicant; gross annual revenue for the applicant's preceding fiscal year; the six-digit North American Industry Classification System (NAICS) code appropriate for the applicant; the number of the applicant's

non-owner workers; the applicant's time in business; and the number of the applicant's principal owners<sup>4</sup>).

Third, there are data points that address the demographics of the applicant's principal owners or ownership status. Generally, a financial institution would be required to ask an applicant to provide this information. These data points would include minority-owned business status, women-owned business status, and the ethnicity, race, and sex of the applicant's principal owners. If an applicant does not provide any ethnicity, race, or sex information for at least one principal owner, the Bureau is proposing that the financial institution must collect at least one principal owner's race and ethnicity (but not sex) via visual observation and/or surname if the financial institution meets in person with any principal owners (including meeting via electronic media with an enabled video component). Minority-owned business status and women-owned business status would only be reported on the basis of information the applicant provides specifically for Section 1071 purposes, and financial institutions would not be permitted or required to report these data points based on visual observation, surname, or any other basis.

The Bureau is proposing detailed instructions for financial institutions regarding how to collect and report minority-owned business status, women-owned business status, and principal owners' ethnicity, race, and sex pursuant to Section 1071. The NPRM also includes a sample data collection form, which includes a notice to applicants that the financial institution is not permitted to discriminate on the basis of an applicant's minority-owned business status, women-owned business status, or on any principal owner's ethnicity, race, or sex. Covered financial institutions would be required to provide this non-discrimination notice to applicants. The sample data collection form also includes a notice informing an applicant it is not required to provide a response to the financial institution's inquiries regarding minority-owned business status, women-owned business status, and the principal owners' ethnicity, race, and sex.

As illustrated in the proposed sample data collection form, the Bureau is proposing that principal owners' ethnicity and race be collected from applicants using aggregate categories and disaggregated subcategories. The Bureau is proposing to permit principal owners to self-describe their sex (instead of or in addition to choosing male or female) and is seeking comment on

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<sup>4</sup> The NPRM proposes to define "principal owner" as a natural person who directly owns 25 percent or more of the equity interests of a business. Thus, under the proposed definition, an applicant would have no more than four principal owners and may not have any principal owners if no natural person directly owns 25 percent or more of the equity interests of the business.

whether and how the collection of principal owners' sex should incorporate sexual orientation and gender identity.

The Bureau is proposing that covered financial institutions maintain procedures to collect applicant-provided data at a time and in a manner that is reasonably designed to obtain a response. The NPRM also addresses how financial institutions should report certain data if, despite having such procedures in place, they are unable to obtain that data from an applicant. In addition, financial institutions would be permitted to rely on statements made by an applicant (whether in writing or orally) or information provided by an applicant when collecting and reporting data, but a financial institution may be required to report verified information if the financial institution chooses to verify information. However, financial institutions would not be required or permitted to verify an applicant's responses to the Section 1071 inquiries regarding the applicant's minority-owned business status or women-owned business status, or regarding a principal owner's ethnicity, race, or sex.

The NPRM would also permit the reuse of certain previously collected data in certain circumstances. A covered financial institution would be permitted, but not required, to reuse previously collected data to satisfy the requirement to collect and report certain data points if:

- (1) 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.

## Proposed Requirements to Report Data to the Bureau and Provisions Regarding Availability and Publication of Data

The Bureau is proposing that covered financial institutions be required to collect data on a calendar-year basis and report their data to the Bureau by June 1 of the following year. Financial institutions submitting data to the Bureau would be required to provide certain identifying information about themselves as part of their submission. The Bureau is proposing to provide technical instructions for the submission of data in a *Filing Instructions Guide* and related materials.

The Bureau is proposing to make the data submitted by financial institutions (subject to certain modifications or deletions the Bureau determines would advance a privacy interest) available to the public on an annual basis. To determine whether and how the Bureau might use its discretion to modify or delete data prior to publication, the Bureau is proposing a "balancing test" that would assess the risks and benefits of public disclosure. After the Bureau receives at least one full year of 1071 data following the compliance date of the final rule, the Bureau plans to issue a policy statement in which it would set forth its intended modifications and deletions. The Bureau is also

proposing that the Bureau's publication of data will satisfy financial institutions' statutory obligation to make data available to the public upon request. More specifically, a covered financial institution would be required to 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, is or will be available on the Bureau's website. The NPRM includes language that a financial institution could use for this statement.

## Proposed Requirement to Limit Certain Persons' Access to Certain Data

The NPRM proposes to implement the requirement in Section 1071 that financial institutions limit certain employees' and officers' access to certain data. The Bureau refers to this as the "firewall." Pursuant to the proposed firewall provisions, an employee or officer of a covered financial institution or a covered financial institution's affiliate would be prohibited from accessing an applicant's responses to inquiries that the covered financial institution makes pursuant to Section 1071 regarding whether the applicant is a minority-owned business or a women-owned business and regarding the ethnicity, race, and sex of the applicant's principal owners, if that employee or officer is involved in making any determination concerning the applicant's covered application.

This prohibition would not apply to an employee or officer if the covered financial institution determines that it is not feasible to limit that employee's or officer's access to an applicant's response to the covered financial institution's Section 1071 inquiries regarding whether the applicant is a minority-owned business or a women-owned business or regarding the ethnicity, race, or sex of the applicant's principal owners, and the covered financial institution provides a notice to the applicant regarding that access. It would not be feasible to limit access if the covered financial institution determines that an employee or officer involved in making any determination concerning a covered application should have access to one or more applicants' responses to these inquiries. The Bureau is proposing sample language that a covered financial institution could use to satisfy the proposed notice requirement. The notice would need to be provided to each applicant whose information will be accessed or, alternatively, the covered financial institution would be permitted to provide the notice to a broader group of applicants, up to and including all applicants.

## Proposed Recordkeeping Requirements, Proposed Effective and Compliance Dates, and Other Provisions

The NPRM addresses issues related to recordkeeping, including a proposed requirement to retain evidence of compliance, including a copy of small business lending application registers, for at

least three years. It also includes a proposed requirement to maintain an applicant's responses to the Section 1071 inquiries regarding whether an applicant is a minority-owned business or a women-owned business, and regarding the ethnicity, race, and sex of the applicant's principal owners, separate from the rest of the application and accompanying information.

The NPRM also includes proposed provisions regarding enforcement of violations, bona fide errors, and safe harbors. It proposes safe harbors for certain incorrect entries of census tracts, NAICS codes, and application dates. It also proposes a safe harbor regarding incorrect determinations of small business status. Specifically, it proposes that if a financial institution initially determines that an applicant for a covered credit transaction is a small business, but then later concludes the applicant is not a small business, the financial institution would not be in violation of ECOA or a final rule implementing Section 1071 if the financial institution collected information regarding whether the applicant is a minority-owned business or a women-owned business, and the ethnicity, race, and sex of the applicant's principal owners. The financial institution would need to comply with certain provisions of the final rule in order to rely on this safe harbor.

Finally, the Bureau is proposing that its final rule to implement Section 1071 would become effective 90 days after that final rule's publication in the *Federal Register*. However, compliance with the final rule would not be required until approximately 18 months after publication in the *Federal Register*. The Bureau is also proposing a transitional provision that would permit financial institutions to begin collecting minority-owned business status, women-owned business status, and principal owners' ethnicity, race, and sex information prior to the compliance date and a transitional provision that would permit financial institutions to use either the two calendar years immediately preceding the effective date or the second and third years preceding the compliance date to determine coverage (*i.e.*, if the compliance date is in 2025, a financial institution could use either 2023 and 2024 to determine if it meets the origination threshold for covered financial institutions or it could use 2022 and 2023 to make that determination).

## Additional Resources

The Bureau has released a chart of proposed data points and an unofficial table of contents for the NPRM. They are available at <https://www.consumerfinance.gov/1071-rule>.



# Proposed data points for small business lending data collection

On September 1, 2021, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. This chart summarizes the data points that covered financial institutions (FIs) would be required to collect and report with respect to small business applications for covered credit transactions pursuant to proposed § 1002.107 in the NPRM. For more information on the NPRM, visit <https://www.consumerfinance.gov/1071-rule>.

Data point	NPRM section	Description	Data elements to be reported	Notes
<b>Unique identifier</b>	107(a)(1)	FI would report an alphanumeric application or loan identifier unique within the FI to the specific application.	Unique alphanumeric application or loan number not to exceed 45 characters. Must begin with the FI's Legal Entity Identifier (LEI).	FIs would be permitted to use numbers generated solely for 1071 data reporting or other purposes as unique identifiers.
<b>Application date</b>	107(a)(2)	FI would report application date using either: (i) the date the application was received by the FI; or (ii) the date shown on a paper or electronic application form.	A complete calendar date (i.e., month, day, and year).	For an application that was not submitted directly to the FI or its affiliate, the FI would be permitted to report the application date as the date the application was received by the party that initially received the application, the date the application was received by the FI, or the date shown on the application form.  The NPRM includes a proposed safe harbor so that an FI would not violate 1071 if it reports an application date that is within

Data point	NPRM section	Description	Data elements to be reported	Notes
				three calendar days of the actual application date.
<b>Application method</b>	107(a)(3)	FI would report the means by which the applicant submitted the application from the specified list.	One of the following: (1) In-person; (2) Telephone; (3) Mail; or (4) Online.	The proposed commentary provides additional information on how the FI would select the application method if the applicant communicated or provided information via multiple methods or channels.
<b>Application recipient</b>	107(a)(4)	FI would report whether the applicant submitted the application directly to the FI or its affiliate, or whether the applicant submitted the application indirectly to the FI via a third party.	One of the following: (1) the applicant submitted the application directly to the FI or its affiliate; or (2) the applicant submitted the application indirectly to the FI via a third party.	
<b>Credit type</b>	107(a)(5)	FI would report credit type in three parts: (1) credit product (from specified list); (2) guarantee(s) (from specified list); (3) loan term.	One of the <b>credit products</b> from the following list: (1) Term loan—unsecured; (2) Term loan—secured; (3) Line of credit—unsecured; (4) Line of credit—secured; (5) Credit card; (6) Merchant cash advance; (7) Other sales-based financing transaction; (8) Other (with additional information provided via free form text); (9) Not provided by	

Data point	NPRM section	Description	Data elements to be reported	Notes
			applicant and otherwise undetermined.	
			One or more <b>types of guarantees</b> from the following list: (1) Personal guarantee—owner(s); (2) Personal guarantee—non-owner(s); (3) SBA guarantee—7(a) program; (4) SBA guarantee—504 program; (5) SBA guarantee—other; (6) USDA guarantee; (7) FHA guarantee; (8) Bureau of Indian Affairs guarantee; (9) Other Federal guarantee; (10) State or local government guarantee; (11) Other guarantee (with additional information provided via free-form text); (12) No guarantee.	
			The number of months in the <b>loan term</b> for products that have a loan term or “not applicable” for products that do not have a loan term and for applications that did not specify a loan term.	
<b>Credit purpose</b>	107(a)(6)	FI would report credit purpose(s) from a specified list.	Up to three credit purposes from the following list: (1) Purchase, construction/improvement, or refinance of owner-occupied dwelling(s); (2) Purchase,	

Data point	NPRM section	Description	Data elements to be reported	Notes
			<p>construction/improvement, or refinance of non-owner-occupied dwelling(s); (3) Purchase, construction/improvement, or refinance of non-owner occupied, non-dwelling real estate; (4) Purchase, construction/ improvement, or refinance of owner-occupied, non-dwelling real estate; (5) Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks); (6) Purchase, refinance, or rehabilitation/repair of equipment; (7) Working capital (includes inventory or floor planning); (8) Business start-up; (9) Business expansion; (10) Business acquisition; (11) Refinance existing debt (other than refinancings listed above); (12) Line increase; (13) Other (with additional information provided via free-form text); (14) Not provided by applicant and otherwise undetermined; (15) Not applicable.</p>	
<b>Amount applied for</b>	107(a)(7)	FI would report the initial amount of credit or the credit limit initially requested by the applicant at the application stage or later.	One of the following: (1) Dollar amount for initial amount of credit/credit limit requested by applicant; (2) Dollar amount of a	FI would not be required to report amounts discussed before an application is made but would be required to report

Data point	NPRM section	Description	Data elements to be reported	Notes
			<p>“firm offer,” if application is in response to a firm offer that specifies an amount; (3) Dollar amount underwritten (if applicant does not request a particular amount but FI underwrites for a specific amount); (4) Not provided by applicant and otherwise undetermined; (5) Not applicable (if the product applied for does not involve a specific amount).</p>	<p>the initial amount requested at the application stage or later.</p>
<p><b>Amount approved or originated</b></p>	<p>107(a)(8)</p>	<p>FI would report the credit amount or credit limit approved or originated, using: (1) the amount of the originated loan for a closed-end origination; (2) the amount approved for a closed-end loan application that is approved but not accepted; or (3) the amount of the credit limit approved for open-end credit.</p>	<p>Only report amounts for originated credit or applications that are approved but not accepted.</p> <p>For applications that are denied, closed for incompleteness, or withdrawn by the applicant, the FI would report “not applicable.”</p>	
<p><b>Action taken</b></p>	<p>107(a)(9)</p>	<p>FI would report one of five specified actions taken on the application.</p>	<p>One of the following: (1) Originated; (2) Approved but not accepted; (3) Denied; (4) Withdrawn by applicant; (5) Incomplete.</p>	<p>Incomplete applications would include (1) instances where an FI took adverse action on the basis of incompleteness, and (2) instances where the FI provided a written notice of incompleteness and the</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
				<p>applicant did not respond in the time specified in the notice.</p> <p>If an FI makes a counteroffer and the applicant declines the counteroffer or fails to respond, the FI would report the action taken as a denial. If the applicant agrees to proceed with the counteroffer, the FI would report the action taken based on the eventual disposition of the counteroffer considered.</p>
<b>Action taken date</b>	107(a)(10)	FI would report the date the action was taken.	A complete calendar date (i.e., month, day, and year).	
<b>Denial reasons</b>	107(a)(11)	For denied applications only, FI would report the principal reason(s) the application was denied from a specified list.	Up to four principal denial reasons from the following list (as applicable): (1) Credit characteristics of the business; (2) Credit characteristics of the principal owner(s) or guarantor(s); (3) Use of loan proceeds; (4) Cashflow; (5) Collateral; (6) Time in business; (7) Government criteria; (8) Aggregate exposure; (9) Unverifiable information; (10) Other (with additional	

Data point	NPRM section	Description	Data elements to be reported	Notes
				information provided via free form text).
<b>Pricing information</b>	107(a)(12)	FI would report pricing information for originated credit and credit that is approved but not accepted.	<p><b>If a fixed rate transaction:</b> the interest rate.</p> <p><b>If a variable-rate transaction:</b> the margin, index value, and index name. Index name is reported using one of the following: (1) Wall Street Journal Prime; (2) 6-month CD rate; (3) 1-year T-Bill; (4) 3-year T-Bill; (5) 5-year T-Note; (6) 12-month average of 10-year T-Bill; (7) Cost of Funds Index-National; (8) Cost of Funds Index-11th District; (9) Other (with additional information provided via free-form text).</p> <p><b>For a merchant cash advance or other sales-based financing transaction:</b> the difference between the amount advanced and the amount to be repaid.</p> <p>The amount of the total origination charges.</p> <p>The amount of the total broker fees and whether the applicant paid the</p>	

Data point	NPRM section	Description	Data elements to be reported	Notes
			<p>broker fees directly to broker or to FI for delivery to broker.</p> <p>The amount of the total non-interest charges scheduled to be imposed over the first annual period.</p> <p>Whether the FI could have included a prepayment penalty under its policies and procedures, and whether the terms of the transaction actually include a prepayment penalty.</p>	
<b>Census tract (principal place of business)</b>	107(a)(13)	FI would report a census tract based on an address collected in the application, or during review or origination of the credit. FI also reports the type of address used to determine the census tract.	<p>Census tract based on one of the following: (1) Address where the loan proceeds will principally be applied, if known; (2) If (1) is not known, location of borrower’s main office or headquarters; (3) If neither (1) or (2) are known, another address or location associated with the applicant.</p> <p>FI also reports which of the three address types was used to determine the census tract.</p> <p>If no address or location is known, FI would report “not provided by</p>	The NPRM includes a proposed safe harbor for errors when using an FFIEC or Bureau geocoding tool correctly.

Data point	NPRM section	Description	Data elements to be reported	Notes
			applicant and otherwise undetermined.”	
<b>Gross annual revenue (GAR)</b>	107(a)(14)	FI would report the GAR of the applicant during the last fiscal year.	<p>The dollar amount of the applicant's GAR during its last fiscal year prior to when the information is collected.</p> <p>If specific GAR cannot be collected from an applicant, FI would report “not provided by applicant and otherwise undetermined.”</p>	<p>If the FI verifies the GAR, it would report the dollar amount of verified GAR. If the FI does not verify the GAR, it would report the dollar amount of GAR as reported by applicant or the GAR dollar amount that the FI otherwise obtained.</p> <p>The proposed commentary provides a model question that an FI could use to obtain the GAR from the applicant.</p> <p>Affiliate revenue may or may not be collected, depending on FI practice.</p>
<b>North American Industry Classification System (NAICS) code</b>	107(a)(15)	FI would report the NAICS code appropriate for the applicant.	<p>Six-digit NAICS code.</p> <p>If the NAICS code cannot be collected, FI would report “not provided by applicant and otherwise undetermined.”</p>	<p>FI would use NAICS codes in effect as of Jan. 1 of the collection year.</p> <p>FI would be permitted to rely on statements of or information provided by the applicant in collecting and reporting the NAICS code (such as using the</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
				<p>NAICS code on an applicant's tax return), or on a code obtained through the FI's use of business information products (such as company profiles or business credit reports that provide a NAICS code).</p> <p>If the FI does not rely on such information, but instead identifies the NAICS code for an applicant itself, the NPRM includes a proposed safe harbor for an incorrect NAICS code entry, so long as the first two digits are correct and the FI maintains procedures reasonably adapted to correctly identify the subsequent four digits.</p>
<b>Number of workers</b>	107(a)(16)	FI would report the number of workers of the applicant.	<p>Number of workers. Includes full-time, part-time, and seasonal workers as well as contractors working primarily for the applicant, but does not include principal owners.</p> <p>If number of workers cannot be collected, FI would report "not</p>	<p>If the FI verifies the number of workers, it would report the verified number. If the FI does not verify the number of workers, it would report the number reported by applicant or that the FI otherwise obtained.</p> <p>The proposed commentary provides a model question that</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
			provided by applicant and otherwise undetermined.”	an FI could use to obtain the number of workers from the applicant.
<b>Time in business (TIB)</b>	107(a)(17)	FI would report the applicant’s time in business, expressed in years.	<p>Number of years that the applicant has been in business.</p> <p>If the FI relied on the applicant’s TIB in making the credit decision, the FI would report the TIB it relied on in making the credit decision. If the FI did not rely on the applicant’s TIB in making the credit decision, the FI would collect and report TIB. FI would be required to indicate (1) if applicant hasn’t started its business yet or (2) if applicant has been in business less than a year.</p>	If the FI verifies TIB, it would report the verified TIB. If the FI does not verify TIB, it would report the TIB provided by applicant or that the FI otherwise obtained.
<b>Minority-owned business status</b>	107(a)(18)	FI would report applicant’s response to the FI’s § 1002.107(a)(18) inquiry regarding whether the applicant is a minority-owned business.	<p>FI would report applicant’s response (yes, no, or “I do not wish to provide this information”) or that the applicant did not respond.</p> <p>FI would also report whether it is reporting this information based on previously collected data.</p>	<p>FI would report solely based on applicant-provided information; no verification or visual observation and/or surname analysis would be required or permitted.</p> <p>FI would be required to inform applicant that it is not required to provide this information.</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
<b>Women-owned business status</b>	107(a)(19)	FI would report applicant's response to the FI's § 1002.107(a)(19) inquiry regarding whether the applicant is a women-owned business.	<p>FI would report applicant's response (yes, no, or "I do not wish to provide this information") or that the applicant did not respond.</p> <p>FI would also report whether it is reporting this information based on previously collected data.</p>	<p>FI would report solely based on applicant-provided information; no verification or visual observation and/or surname analysis would be required or permitted.</p> <p>FI would be required to inform applicant that it is not required to provide this information.</p>
<b>Ethnicity of principal owner(s)</b>	107(a)(20)	Generally, FI would report applicant's response to the FI's § 1002.107(a)(20) inquiry regarding the ethnicity of the applicant's principal owner(s). However, in some circumstances, the FI would report the ethnicity of one or more principal owners based on visual observation and/or surname.	<p><b>If the FI is reporting applicant-provided information:</b> For each principal owner, the FI would report the aggregate categories and disaggregated subcategories selected by the applicant, that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).</p> <p><b>If the FI is reporting based on visual observation and/or surname:</b> For at least one principal owner, the FI would report using the aggregate categories only. For other principal owners, the FI would report that the applicant did not wish to provide the information or that the</p>	<p>FI would be required to inform applicant that it is not required to provide this information.</p> <p>The proposed commentary and proposed sample data collection form include the aggregate categories and disaggregated subcategories that would be used when collecting and reporting ethnicity.</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
			<p>applicant did not respond (as applicable).</p> <p><b>If the applicant has fewer than four principal owners:</b> As appropriate, the FI would report that this requirement is not applicable.</p> <p>FI would also report whether or not the FI is reporting the principal owner's ethnicity based on visual observation and/or surname and whether the FI is reporting based on previously collected data.</p>	
<b>Race of principal owner(s)</b>	107(a)(20)	<p>Generally, FI would report applicant's response to the FI's § 1002.107(a)(20) inquiry regarding the race of the applicant's principal owner(s). However, in some circumstances, the FI would report the race of one or more principal owners based on visual observation and/or surname.</p>	<p><b>If the FI is reporting applicant-provided information:</b> For each principal owner, the FI would report the aggregate categories and disaggregated subcategories selected by the applicant, that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).</p> <p><b>If the FI is reporting based on visual observation and/or surname:</b> For at least one principal owner, the FI would report using the aggregate categories only. For other principal owners, the FI would</p>	<p>FI would be required to inform applicant that it is not required to provide this information.</p> <p>The proposed commentary and proposed sample data collection form include the aggregate categories and disaggregated subcategories that would be used when collecting and reporting race.</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
			<p>report that the applicant did not wish to provide the information or that the applicant did not respond (as applicable).</p> <p><b>If the applicant has fewer than four principal owners:</b> As appropriate, the FI would report that this requirement is not applicable.</p> <p>FI would also report whether or not the FI is reporting the principal owner's race based on visual observation and/or surname and whether the FI is reporting based on previously collected data.</p>	
<b>Sex of principal owner(s)</b>	107(a)(20)	<p>FI would report applicant's response to the FI's § 1002.107(a)(20) inquiry regarding the sex of applicant's principal owner(s).</p>	<p>For each principal owner, the FI would report the category or categories selected by the applicant (male, female, and/or that the principal owner prefers to self-describe with additional information provided via free form text), that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).</p> <p>If the applicant has fewer than four principal owners, as appropriate, the</p>	<p>FI would report solely based on applicant-provided information; no verification or visual observation and/or surname analysis would be required or permitted.</p> <p>FI would be required to inform applicant that it is not required to provide this information.</p>

Data point	NPRM section	Description	Data elements to be reported	Notes
			FI would report that this requirement is not applicable.	
<b>Number of principal owners</b>	107(a)(21)	FI would report the number of the applicant's principal owners.	<p>Number of principal owners (i.e., a number from zero to four).</p> <p>If number of principal owners cannot be collected, FI would report "not provided by applicant and otherwise undetermined."</p>	Generally, the FI would report the information provided by the applicant. However, if the FI verifies the number of principal owners, the FI would report the verified information.