

# Small Business Lending Rule

Small Entity Compliance Guide

# Version Log

The CFPB updates this guide on a periodic basis. Below is a version log noting the history of this document:

Date	Version	Summary of Changes
May 2023	1.0	<b>Original version</b>
August 2023	2.0	<b>Revised to address the court order issued in <i>Texas Bankers Ass'n, et al. v. CFPB, et al.</i>, No. 7:23-cv-00144 (S.D. Tex. July 31, 2023) (Section 9)</b>  <b>Miscellaneous changes to examples in various sections</b>
November 2023	2.1	<b>Revised to address the court order staying the compliance dates for all covered financial institutions. (Introduction to Section 9 only). Note that other parts of this guide have not been updated to reflect this stay.</b>
August 2024	2.2	<b>Revised to address the interim final rule extending the compliance dates (Section 1 and Section 9)</b>  <b>Revised dates in examples to reflect extended compliance dates and miscellaneous changes in various sections</b>

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# 1. Introduction

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, 2004 (2010) (Dodd-Frank Act). Section 1071 of the Dodd-Frank Act (Section 1071) amended the Equal Credit Opportunity Act (ECOA) to require that financial institutions compile and report certain data regarding certain business credit applications to the Consumer Financial Protection Bureau (CFPB) and to meet certain other requirements.

Following notice and comment,<sup>1</sup> the CFPB issued the small business lending rule to implement Section 1071 on March 30, 2023.<sup>2</sup> On June 25, 2024, the CFPB issued an interim final rule<sup>3</sup> extending the compliance dates set forth in the rule issued on March 30, 2023. The small business lending rule, as amended by this interim final rule, is referred to as the “final rule” in this guide.

## 1.1 Scope of this guide

This guide includes a detailed summary of the final rule’s requirements.<sup>4</sup> Except when specifically needed to explain the final rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply. The content of this guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide’s cover page.

Users of this guide should review the final rule as well as this guide. The final rule is available on the CFPB’s website at <http://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/>.

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<sup>1</sup> See the notice of proposed rulemaking published at 86 FR 56356-56606 (Oct 8, 2021).

<sup>2</sup> 88 FR 35150-35571 (May 31, 2023).

<sup>3</sup> 89 FR 55024-55033 (July 3, 2024).

<sup>4</sup> This guide meets the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 with regard to the final rule and is a Compliance Aid issued by the Consumer Financial Protection Bureau. The CFPB published a Policy Statement on Compliance Aids, available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the CFPB’s approach to Compliance Aids.

## 1.2 Use of examples

This guide has examples to illustrate some portions of the final rule. The examples do not include all possible factual situations that could illustrate a particular provision, trigger a particular obligation, or satisfy a particular requirement.

## 1.3 Additional resources

Additional resources to help industry understand and comply with the final rule are available on the CFPB's website at <http://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements>. There is a link on this website to sign up for an email distribution list that the CFPB will use to announce additional resources as they become available.

If you have a specific regulatory question about the final rule after reviewing these resources, you can submit the question to the CFPB on its website at <http://reginquiries.consumerfinance.gov>. CFPB staff provides only informal responses to regulatory inquiries, and the responses are not official interpretations or legal advice. CFPB staff is not able to respond to specific inquiries within a particular requested timeframe. Actual response times will vary based on the number of questions that staff is handling and the amount of research needed to respond to a specific question.

# 2. Coverage

## 2.1 Covered financial institutions

After the applicable compliance date discussed in Section 9, a financial institution must comply with the final rule for each calendar year in which it is a covered financial institution.

An entity that engages in any financial activity is a financial institution pursuant to the final rule, and a financial institution that originated at least 100 covered originations in each of the two preceding calendar years is a covered financial institution pursuant to the final rule. 12 CFR 1002.105.

Generally, a covered origination is a covered credit transaction made to a small business. For more information on covered originations, see Section 2.1.4.

This definition of covered financial institution includes, but is not limited to, banks, savings associations, credit unions, online lenders, platform lenders, community development financial institutions, Farm Credit System lenders, lenders involved in equipment and vehicle financing, commercial finance companies, non-profit organizations, and governments or governmental subdivisions or agencies, provided that they originated at least 100 covered originations in each of the two preceding calendar years. Comment 105(a)-1. It can include partnerships, companies, corporations, associations, trusts, estates, cooperative organizations, and other entities, provided that they originated at least 100 covered originations in each of the two preceding calendar years. 12 CFR 1002.105. However, motor vehicle dealers that are persons defined by Section 1029 of the Dodd-Frank Act are excluded from coverage under the final rule. Comment 105(a)-2 and 12 CFR 1002.101(a).

- ❑ When determining whether it is a covered financial institution for a particular year, a financial institution counts covered originations. It does not count covered applications from small businesses.

Comment 105(b)-2.

**Example 1:** Lender originates 120 covered originations in 2025 and 110 covered originations in 2026. Lender is a covered financial institution for 2027. It must compile data for 2027 and otherwise comply with the final rule with regard to that data.

**Example 2:** Lender originates 98 covered originations in 2025 and 102 covered originations in 2026. Lender is not a covered financial institution for 2027 because it did not originate at least 100 covered originations in 2025.

**Example 3:** In 2025, Lender receives 110 covered applications from small businesses and originates 98 covered originations. In 2026, Lender receives 120 covered applications from small businesses and originates 102 covered originations. Lender is not a covered financial institution for 2027 because it did not originate at least 100 covered originations in 2025.

If multiple financial institutions are involved in the origination of a covered origination, only the last financial institution with authority to set the material terms of the transaction is required to count the origination when determining institutional coverage under the final rule. Comment 105(b)-3.

**Example 1:** Lender 1 receives an application for a covered credit transaction from Company, which is a small business. Lender 1 forwards the application to Lender 2, which reviews and approves the application. Thereafter, Lender 1 modifies the interest rate offered to Company. Lender 1 closes the resulting covered credit transaction to Company in Lender 1's name. Lender 2 purchases the covered origination after closing. Lender 1 and Lender 2 are not acting as each other's agents. Because it is the last financial institution with the authority for setting the material terms of the covered credit transaction, Lender 1 must count the origination to Company when determining whether it is a covered financial institution. Lender 2 does not count the origination because it was not the last financial institution with the authority to set the material terms. If, under the same facts, Lender 1 does not modify the credit terms, Lender 1 would still count the covered origination because it is still the last financial institution with the authority for setting the material terms, even if it chooses not to exercise that authority.

For additional examples of how to determine which financial institution is the last financial institution with authority to set material terms when multiple financial

institutions originate a single covered credit transaction, see Section 7.3. See also comment 109(a)(3)-2.

## 2.1.1 Annual determination of institutional coverage

Whether a financial institution is a covered financial institution is an annual determination that a financial institution makes based on the number of covered originations that the financial institution originated in each of the two immediately preceding calendar years. 12 CFR 1002.105; comment 105(b)-6. It is possible that a financial institution will be a covered financial institution for a particular year even if it was not a covered financial institution in the prior year or that it will be a covered financial institution for a particular year but not for the next year. See comment 105(b)-6.

**Example 1:** Lender originates 120 covered originations in 2025, 110 covered originations in 2026, and 98 covered originations in 2027. Lender is a covered financial institution for 2027, but it is not a covered financial institution for 2028 or 2029 because it did not originate at least 100 covered originations in 2027. Lender must compile data for 2027 and otherwise comply with the final rule with regard to that data, including reporting that data by June 1, 2028. However, Lender is not required to compile data for 2028 or 2029.

**Example 2:** Lender originates 120 covered originations in 2025, 98 covered originations in 2026, and 110 covered originations in 2027. Lender is not a covered financial institution for 2027 or 2028 because it did not originate at least 100 covered originations in 2026. Thus, Lender is not required to compile data for 2027 or 2028. Lender may be a covered financial institution for 2029 depending on whether it originates at least 100 covered originations in 2028.

**Example 3:** Lender originates 115 covered originations in 2025, 105 covered originations in 2026, 95 covered originations in 2027, 110 covered originations in 2028, and 100 covered originations in 2029. Lender is a covered financial institution for 2027 because it originated at least 100 covered originations in both 2025 and 2026. Thus, Lender must compile data for 2027 and otherwise comply with the final rule regarding that data, including reporting that data by June 1, 2028. However, Lender is not a

covered financial institution for 2028 or 2029 because it did not originate at least 100 covered originations in 2027. Thus, it is not required to compile data for 2028 or 2029. Lender will be a covered financial institution again for 2030 because it originated at least 100 covered originations in both 2028 and 2029. Thus, it must compile data for 2030 and otherwise comply with the final rule regarding that data, including reporting that data by June 2, 2031 (because June 1, 2031 is a Sunday, and the covered financial institution would have to report by the immediately following Monday).

A financial institution that is not a covered financial institution is permitted to voluntarily compile data in certain circumstances. 12 CFR 1002.5(a)(4). For additional information on voluntary collection and reporting of data, see Section 2.6.

**Example 1:** Lender originates 115 covered originations in 2025, 105 covered originations in 2026, 95 covered originations in 2027, 110 covered originations in 2028, and 100 covered originations in 2029. Lender is a covered financial institution in 2027 because it originated at least 100 covered originations in both 2025 and 2026. Thus, Lender must compile data for 2027 and otherwise comply with the final rule regarding that data, including reporting that data by June 1, 2028. However, Lender is not a covered financial institution for 2028 or 2029 because it did not originate at least 100 covered originations in 2027. Even though it is not a covered financial institution for 2028 or 2029, Lender could voluntarily compile data for one or both of those years if it otherwise complies with relevant portions of the final rule regarding that data (see Section 2.6). Lender will be a covered financial institution again for 2030 because it originated at least 100 covered originations in both 2028 and 2029. Thus, it must compile data for 2030 and otherwise comply with the final rule regarding that data, including reporting that data by June 2, 2031 (because June 1, 2031 is a Sunday, and the covered financial institution would have to report by the immediately following Monday).

## 2.1.2 Determination of institutional coverage in the event of a merger or acquisition

The final rule details how a financial institution determines if it is a covered financial institution in the event of a merger or acquisition. See comments 105(b)-7 and -8.

After a merger or acquisition, the surviving or newly formed financial institution is a covered financial institution if, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired financial institutions (or acquired branches or locations), it originated at least 100 covered originations in each of the two preceding calendar years. Comment 105(b)-7.

However, if two institutions that are not covered financial institutions for the calendar year of the merger (*i.e.*, the calendar year in which the merger is effective) form a financial institution that meets the requirements to be a covered financial institution for the calendar year of the merger (*i.e.*, the combined originations satisfy the origination threshold for coverage in the two calendar years preceding the year of the merger), the surviving or newly formed institution is not required to compile, maintain, or report data for the calendar year that the merger is effective. Comment 105(b)-8.i.

**Example 1:** Lender 1 originates 60 covered originations in 2026, and 65 covered originations in 2027. Lender 2 originates 45 covered originations in 2026, and 40 covered originations in 2027. Thus, neither Lender 1 nor Lender 2 would, by itself, be a covered financial institution in 2028. Lender 1 and Lender 2 merge effective December 31, 2027. Because, combined, the new entity had 105 covered originations in both 2026 and 2027, the new entity is a covered financial institution for 2028 and must compile data for 2028. It must report that data by June 1, 2029.

**Example 2:** Lender 1 originates 60 covered originations in 2026, and 65 covered originations in 2027. Lender 2 originates 45 covered originations in 2026, and 40 covered originations in 2027. Thus, neither Lender 1 nor Lender 2 would, by itself, be a covered financial institution in 2028. Lender 1 and Lender 2 merge effective July 1, 2028. Based on the combined total of Lender 1's and Lender 2's covered originations for 2026 and 2027, the new financial institution meets the requirements to be a covered financial institution for 2028. However, because neither Lender 1 nor Lender 2 was a covered financial institution for 2028, the new financial institution is not required to compile data for 2028 or otherwise comply with the final rule for 2028. Between

January 1, 2028 and June 30, 2028, Lender 1 originates 40 covered originations, and Lender 2 originates 35 covered originations. Between July 1, 2028 and December 31, 2028, the new financial institution originates 55 covered originations. Because the combined total of Lender 1's and Lender 2's covered originations was 105 in 2027 and the new financial institution had 130 covered originations in 2028, the new financial institution is a covered financial institution for 2029 and thus is required to begin compiling data and otherwise complying with the final rule on January 1, 2029.

If a covered financial institution and an institution that is not a covered financial institution merge and the new or surviving institution is covered financial institution, for the calendar year of the merger, the new or surviving covered financial institution must compile, maintain, and report data for covered applications from the previously covered financial institution. However, compiling, maintaining, and reporting data is optional for covered applications from the financial institution that was previously not covered. Comment 105(b)-8.ii.

If two covered financial institutions merge (or one acquires the other) and the surviving or new entity is a covered financial institution, data are required to be compiled, maintained, and reported for the entire calendar year in which the merger is effective (*i.e.*, if the effective date of the merger is a date in 2027, data must be compiled for the entire calendar year of 2027). The surviving or new covered financial institution submits to the CFPB either a consolidated submission or separate submissions for the calendar year of the merger. Comment 105(b)-8.iv.

### **2.1.3 Determination of institutional coverage after adjustments to the gross annual revenue threshold for small businesses**

As discussed in Section 2.3, the gross annual revenue threshold used to define the term “small business” will be adjusted every five years, if necessary, to account for inflation. 12 CFR 1002.106(b)(2); comment 105(b)-4. The first time such an adjustment could occur is in 2030, with an effective date of January 1, 2031. Comments 105(b)-4 and 106(b)(2)-1.

A change to the gross annual revenue threshold will change whether some businesses are small businesses pursuant to the final rule. For example, if the threshold is increased from \$5 million to \$6 million, a business with gross annual revenue of \$5.5 million in its preceding fiscal year would become a small business after the effective date of the new threshold but would not be a

small business prior to the effective date of the new threshold. As a result, the universe of covered originations (*i.e.*, covered credit transactions made to small businesses) that a financial institution must count when determining if it is a covered financial institution will also change when a new threshold is effective.

When counting covered originations to determine whether it is a covered financial institution, a financial institution applies the gross annual revenue threshold that is in effect for the year it is evaluating. For example, a financial institution seeking to determine whether it is a covered financial institution for 2032 counts its covered originations for calendar years 2030 and 2031. The financial institution applies the initial \$5 million threshold to evaluate whether its originations were to small businesses in 2030. If the threshold increases to \$6 million effective January 1, 2031, the financial institution applies that new \$6 million threshold when counting covered originations for 2031 and for subsequent years (until there is another adjustment).

Comment 105(b)-4.

## 2.1.4 Covered originations

In order to determine whether it is a covered financial institution, a financial institution must count certain covered credit transactions it originated in the preceding two calendar years. Specifically, a financial institution must count the covered credit transactions that it originated to small businesses, except that it is not required to count covered credit transactions that extend, renew, or otherwise amend an existing transaction. For ease of reference in this guide and in other implementation materials, the subset of covered credit transactions that a financial institution must count when determining whether it is a covered financial institution (as well as when determining its compliance date tier) are called “covered originations.”

Thus, as used in this guide, a covered origination is a covered credit transaction that a financial institution makes to a small business, except that a covered credit transaction that extends, renews, or otherwise amends an existing transaction is not a covered origination.<sup>5</sup> A refinancing<sup>6</sup> is a covered origination (and must be counted when determining coverage and compliance date tier) if it is a covered credit transaction made to a small business.

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<sup>5</sup> A transaction that extends, renews, or otherwise amends an existing transaction is not a covered origination, even if the transaction would otherwise satisfy the definition of covered credit transaction, is made to a small business, and increases the credit amount or credit limit of the existing transaction. A small business’s request to change one or more terms of an existing account does not constitute a covered application and is not reportable unless the small business is requesting additional credit amounts on the account. See Section 2.4.1 for additional information.

<sup>6</sup> A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. Comment 103(b)-2.

**Example 1:** Lender originates business lines of credit to small businesses and does not offer any other credit products to small businesses. Lender originates 90 lines of credit to small businesses in 2025 and 2026. Lender also accepts requests to increase existing lines of credit, requests to amend existing transactions without an accompanying line increase, and requests to refinance existing transactions. In response to such requests, Lender increases the credit limit on 30 existing lines of credit held by small businesses in 2025 and 20 in 2026. In 2026, it also amends ten existing lines of credit held by small businesses without increasing the credit limit, and refinances five existing lines of credit held by small businesses. Assume that all of these refinances are covered credit transactions made to small businesses. Even if all 90 lines of credit originated in 2025 and 2026 are covered credit transactions made to small businesses, along with five refinancings, Lender is not a covered financial institution in 2027 because it did not originate at least 100 covered originations in both 2025 and 2026. This is because Lender does not count the line increases or other amendments when determining whether it is a covered financial institution.

## 2.2 Covered credit transactions

A covered credit transaction is an extension of business credit that is not excluded pursuant to the final rule. 12 CFR 1002.104. Section 2.2.1 discusses extensions of business credit, and Section 2.2.2 discusses the exclusions provided in the final rule.

The definition of covered credit transaction is important for two primary reasons. First, in order for an application to be “reportable” pursuant to the final rule, it must (among other things) involve a request for a covered credit transaction. Second, in order for a financial institution to be required to count an origination when determining institutional coverage and compliance date tier, the origination must be (among other things) an origination of a covered credit transaction.

## 2.2.1 Extensions of business credit

Generally, business credit has the same meaning as in Regulation B, 12 CFR 1002.2(g).<sup>7</sup> As a result, covered credit transactions are extensions of credit<sup>8</sup> primarily for business, commercial, or agricultural purposes, unless excluded under the final rule. 12 CFR 1002.104; 1002.102(d). Exclusions are discussed in Section 2.2.2.

Thus, covered credit transactions include loans, lines of credit, credit cards, merchant cash advances, and other credit products used primarily for agricultural, business, or commercial purposes. See comment 104(a)-1. This is not an exhaustive list, and other types of business credit not specifically described in the final rule are covered credit transactions unless specifically excluded (as discussed in Section 2.2.2). However, none of the following is a covered credit transaction because none satisfies the definition of business credit:

- **Factoring.** The term covered credit transaction does not include an accounts receivable purchase transaction between businesses that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment for goods that the recipient has supplied or services that the recipient has rendered but for which payment in full has not yet been made.<sup>9</sup> The

To the extent that a purported factoring arrangement involves multiple revolving transactions such that the transaction between the recipient and the provider of funds is not complete at the time of the sale, that transaction constitutes credit and is reported as an “Other sales-based financing transaction” if it is extended to a small business by a covered financial institution. It would be reported in this manner because it constitutes an extension of business credit that may or may not be incident to a factoring arrangement (depending on whether the first transaction involved the sale of existing and alienable assets). See comment 104(b)-1.

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<sup>7</sup> For the purpose of the final rule, the CFPB is both incorporating existing 12 CFR 1002.2(g)—which already includes partial carveouts for public utilities credit, securities credit, and incidental credit—and also finalizing complete exclusions for these types of credit from the definition of a covered credit transaction in 12 CFR 1002.104(b). The existing definition of business credit in 12 CFR 1002.2(g) also partially excludes government credit (that is, extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities—not extensions of credit made *by* governments), but the final rule does not need to include an exclusion for such credit because governmental entities do not constitute small businesses under the final rule. In other words, credit extended to a governmental entity is not a covered credit transaction.

<sup>8</sup> ECOA broadly defines “credit” to mean “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.”

<sup>9</sup> 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 Regulation B, comment 9(a)(3)-3. See comment 104(b)-1.

name used by the financial institution is not determinative of whether a transaction is a factoring transaction. Comment 104(b)-1.

- **Leases**. The term covered credit transaction does not include a transfer from one business to another of the right to possession and use of goods for a term in return for consideration. 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 is not a lease for this purpose. The name used by the financial institution is not determinative of whether a transaction is a lease. Comment 104(b)-2.

**Example 1:** Lender provides equipment financing to Company. Pursuant to the terms of the transaction, Lender provides the funds to purchase equipment, and Company may use the equipment for a period of seven years. At the end of the seven-year period, Company has the option to purchase or otherwise become the owner of the equipment for \$1. This transaction is not a lease for purposes of the final rule because it results in the creation of a security interest by permitting Company to become the owner of the equipment for nominal additional consideration.

- **Consumer-designated credit**. The term covered credit transaction does not include consumer-designated credit. A transaction qualifies as consumer-designated credit if the financial institution offers or extends the credit primarily for personal, family, or household purposes, regardless of whether the credit is used for business or agricultural purposes. For example, an open-end credit account used for both personal and business or agricultural purposes is not business credit for purposes of the final rule unless the financial institution designated or intended the account's primary purpose to be business or agricultural. Comment 104(b)-3.

## 2.2.2 Excluded transactions

The final rule specifically excludes the following extensions of business credit from the definition of covered credit transaction:

- **Trade credit.** A financing arrangement wherein one business acquires goods or services from another business without making immediate payment in full to the business providing the goods or services is not a covered credit transaction.<sup>10</sup> 12 CFR 1002.104(b)(1). For example, a transaction whereby a supplier finances the sale of equipment, supplies, or inventory to another business is excluded as trade credit. However, a transaction whereby a financial institution other than the supplier finances the sale of such items is not excluded as trade credit and may be a covered credit transaction. Additionally, credit extended by a business providing goods or services to another business is not excluded as trade credit if the business providing the goods or services intends to sell or transfer its rights as a creditor to a third party. Comment 104(b)(1)-1.
- **Home Mortgage Disclosure Act (HMDA)-reportable transactions.** A transaction that is a covered loan for purposes of HMDA (as defined by Regulation C, 12 CFR 1003.2(e)) is not a covered credit transaction. 12 CFR 1002.104(b)(2).
- **Insurance premium financing.** A financing arrangement wherein a business: (i) agrees to pay to a financial institution, in installments, the principal amount advanced by the financial institution to an insurer or insurance producer in payment of premium on the business's insurance contract or contracts plus charges, and (ii) as security for repayment, assigns to the financial institution certain rights, obligations, and/or considerations in its insurance contract or contracts is not a covered credit transaction. This exclusion does not extend to the financing of insurance policy premiums obtained in connection with the financing of goods and services. 12 CFR 1002.104(b)(3).
- **Public utilities credit.** A transaction that satisfies the definition of public utilities credit in 12 CFR 1002.3(a)(1) is not a covered credit transaction. 12 CFR 1002.104(b)(4).
- **Securities credit.** A transaction that satisfies the definition of securities credit in 12 CFR 1002.3(b)(1) is not a covered credit transaction. 12 CFR 1002.104(b)(5).

□ As discussed in the preamble to the final rule, the trade credit exclusion does not extend to affiliates and facilitators of trade creditors that provide financing, even if only for the trade creditor's products.

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<sup>10</sup> This description of trade credit 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 Regulation B, comment 9(a)(3)-2. Comment 104(b)(1)-2.

- ***Incidental credit.*** A transaction that satisfies the definition of incidental credit in 12 CFR 1002.3(c)(1) (but without regard to whether the credit is consumer credit, as defined in 12 CFR 1002.2(h)) is not a covered credit transaction. 12 CFR 1002.104(b)(6). For example, if a lawyer allows a small business client to defer the payment of a bill, this deferral of debt is credit for purposes of Regulation B, even though there is no finance charge and no agreement for payment in installments. However, this credit transaction is not a covered credit transaction for purposes of the final rule because it satisfies the final rule's definition of incidental credit.

Additionally, purchases of covered credit transactions, purchases of an interest in a pool of covered credit transactions, and purchases of a partial interest in a covered credit transaction are not covered credit transactions. For example, the purchase of a partial interest in a covered credit transaction, such as through a loan participation agreement, is not a covered credit transaction. Comment 104(b)-4.

## 2.3 Small businesses

“Small business” has the same meaning as the term “small business concern” in 15 U.S.C. 632(a), as implemented in the Small Business Administration’s regulations at 13 CFR 121.101 through 121.107.<sup>11</sup> Notwithstanding the size standards set forth in 13 CFR 121.201, however, for purposes of the final rule a business is a small business if its gross annual revenue<sup>12</sup> for its preceding fiscal year is \$5 million or less. 12 CFR 1002.106(b)(1).

A covered financial institution is permitted to rely on an applicant’s representations regarding gross annual revenue (which may or may not include any affiliate’s revenue) for purposes of determining small business status. However, if the applicant provides updated gross annual revenue information during the application process or the covered financial institution verifies the gross annual revenue information during the application process, the financial institution must use the updated or verified information in determining small business status. Comment 106(b)(1)-3.

□ Government entities and non-profit organizations are not business concerns pursuant to the Small Business Administration’s regulations. See 13 CFR 121.105. Thus, they are not small businesses pursuant to the final rule.

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<sup>11</sup> The term “business” has the same meaning as the term “business concern or concern” in 13 CFR 121.105.

<sup>12</sup> Gross annual revenue is defined in 12 CFR 1002.107(a)(14) and related commentary. See also Section 3.14 of this guide.

While a covered financial institution may aggregate gross annual revenue for affiliated applicants, it cannot aggregate unaffiliated co-applicants' gross annual revenue for purposes of determining small business status. Comment 106(b)(1)-4.

Every five years after January 1, 2025, the gross annual revenue threshold shall be adjusted, as necessary, based on changes to the Consumer Price Index for All Urban Consumers, as published by the United States Bureau of Labor Statistics. Any adjustment shall be rounded to the nearest multiple of \$500,000 and take effect on the following January 1.<sup>13</sup> 12 CFR 1002.106(b)(2); comment 106(b)(2)-1.

## 2.4 Covered applications from small businesses

Pursuant to the final rule, a covered financial institution has obligations with regard to covered applications from small businesses. Specifically, a covered financial institution must collect and report data and otherwise comply with the final rule with regard to covered applications from small businesses.

Covered applications are discussed below. For information on the definition of small business, see Section 2.3.

### 2.4.1 Covered applications

Generally, a covered application is 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.<sup>14</sup> 12 CFR 1002.103(a). Thus, in order to be a covered application, a request must be: (1) for a covered credit transaction; and (2) made in accordance with procedures used by a financial

- A covered application from a small business is reportable for the calendar year in which the covered financial institution takes final action on the covered application. For example, if a covered financial institution receives a covered application from a small business on December 29, 2026 and takes final action on January 15, 2027, it reports the covered application on its 2027 small business lending application register.

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<sup>13</sup> Additional information on the inflation adjustment methodology is available in comments 106(b)(2)-1 and -2.

<sup>14</sup> CFPB interpretations in connection with 12 CFR 1002.2(f) and 1002.9 are generally applicable to the definition of a covered application. However, the definition of a covered application 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. Comment 103(a)-3.

institution for the type of credit requested. Covered credit transactions are discussed in Section 2.2.

A financial institution has latitude to establish its own application procedures, including designating the type and amount of information it will require from applicants. Comment 103(a)-1. However, the term “procedures” includes not only a financial institution’s stated application procedures, but also the financial institution’s actual practices. 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. Comment 103(a)-2.

The following are not covered applications<sup>15</sup> pursuant to the final rule:

- *Reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts.* 12 CFR 1002.103(b)(1). A small business’s request to change one or more terms of an existing account does not constitute a covered application and is not reportable unless the small business is requesting additional credit amounts on the account. For example, a small business’s request to extend the duration of a line of credit or to remove a guarantor would not be a covered application.

□ A small business’s request for additional credit amounts on an existing account is a covered application if the resulting transaction would be a covered credit transaction and the request is made in accordance with a financial institution’s procedures for the type of credit requested.

However, a small business applicant’s request to refinance would be reportable if it otherwise satisfies the definition of covered application. Comment 103(b)-2. For information on refinancings, see Section 2.4.2.

- *Inquiries and prequalification requests.* 12 CFR 1002.103(b)(2). An inquiry is a request by a prospective applicant for information about credit terms offered by a covered 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 covered financial institution’s standards or for a determination on the amount of credit for which the prospective applicant would likely qualify. Inquiries and prequalification requests are not covered applications (and thus are not

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<sup>15</sup> The exclusions in 12 CFR 1002.103(b) do not repeal, abrogate, annul, impair, change, or interfere with the scope of the term application in 12 CFR 1002.2(f) as applicable to subpart A. See Comment 103(b)-1.

reportable) for purposes of the final rule, even though in certain circumstances inquiries and prequalification requests may constitute applications under subpart A of Regulation B. For example, while an inquiry or prequalification request may become an “application” under subpart A of Regulation B if the creditor evaluates information about the business, decides to decline the request, and communicates this to the business, such inquiries or prequalifications are not covered applications (and thus would not be reportable) under the final rule.

Pursuant to the final rule, a review is a covered application if the financial institution requires the small business to pass through a mandatory screening process that considers particular information about the business before that small business may apply for credit and denies or turns away the business if it is ineligible or unlikely to qualify for credit. In contrast, a small business that requests a covered financial institution to identify credit products for which the business might qualify for based on limited or self-described characteristics, and without any commitment from the covered financial institution to extend credit, may not have submitted a covered application for purposes of the final rule.

Whether a particular request is a covered application, or whether instead it is an inquiry or prequalification request that is not reportable, may turn, for instance, on how a covered financial institution structures and processes such requests. However, the name used for such a request is not determinative. Comment 103(b)-5.

**Example 1:** Lender requires small businesses to complete an application form in order to request covered credit transactions. A representative of a small business visits one of Lender’s locations and asks a loan officer about the minimum qualifications for a line of credit that would be a covered credit transaction pursuant to the final rule. The loan officer responds that the minimum qualifications include, among other things, that the business must have been operating for at least two years. The representative says that the small business just started operating this year, and the loan officer responds that a small business would not qualify for a line of credit from Lender if it started operating in that year. The small business has not submitted a covered application, and its inquiry is not reportable.

**Example 2:** Lender requires a small business to complete an application form in order to request a covered credit transaction. A representative of a small business visits one of Lender’s locations and says that the business is interested in a line of credit that would be a covered credit transaction pursuant to the final rule. The loan officer tells

the representative it can submit an application by filling out a form that requests information about the small business and its owners, including time in business. The representative fills out the form, and returns it to the loan officer, who reviews the form. After reviewing the form, the loan officer tells the representative that the business would not qualify for a line of credit because it has not been operating for a sufficient period of time. The small business has submitted a covered application. If Lender is a covered financial institution, it must report the covered application.

- *Reviews or evaluations initiated by the covered financial institution.* Evaluations or reviews of existing accounts that a covered financial institution initiates are not covered applications (and thus are not reportable) because a small business has not made a request for credit. However, if such an evaluation or review of an existing account results in the covered financial institution inviting the small business to apply for additional credit amounts on an existing account, and the small business does so, the small business's request for additional credit constitutes a covered application and, thus, is reportable (assuming the request is for a covered credit transaction and is made in accordance with procedures used by the financial institution for the type of credit requested). Comment 103(b)-4.

**Example 1:** Lender conducts periodic reviews of its existing unsecured business lines of credit, and decides to increase a small business's line of credit by \$10,000. Lender notifies the small business of the change and increases the line of credit on the small business's account. Neither Lender's review nor its increase of the credit limit is reportable. The small business did not request the increase, and there is no covered application in this situation.

**Example 2:** Lender conducts periodic reviews of its existing unsecured business lines of credit. It does not choose to increase any credit limits on existing accounts, but instead contacts two small businesses, informs them of the results of the review, and invites them to apply for line increases. Company 1 responds by submitting an application for a line increase, and Company 2 indicates it is not interested. Although the review did not result in a covered application from Company 2, it did result in a

covered application from Company 1. Assuming Lender is a covered financial institution, it must report the covered application it received from Company 1.

- Solicitations and firm offers of credit. Solicitations, firm offers of credit, and other evaluations that a covered financial institution initiates generally are not covered applications (and thus are not reportable) because a small business has not made a request for credit. However, if the small business requests the covered credit transaction that the covered financial institution offered, the small business's request constitutes a covered application and, thus, is reportable (assuming the request is made in accordance with procedures used by the financial institution for the type of credit requested). Comment 103(a)-4.

**Example 1:** Lender sends a firm offer of credit to a small business for an unsecured business line of credit. The business does not respond. Lender is not required to report the firm offer of credit because it is not a covered application.

**Example 2:** Lender sends a firm offer of credit to a small business for an unsecured business line of credit. The small business contacts Lender to request the unsecured business line of credit, and the request satisfies Lender's application procedures for the type of credit requested. The request is a covered application. Additionally, because the covered application is from a small business, it is reportable.

## 2.4.2 Situations involving refinancings

A small business's request to refinance an existing obligation is a covered application that a covered financial institution must report if the new obligation would be a covered credit transaction and the request is made in accordance with procedures used by the covered financial institution for the type of credit requested. See comment 103(a)-11.

A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. Comment 103(b)-2.

## 2.4.3 Situations involving multiple requests or multiple applicants

### Multiple requests

If a small business makes a request for two or more covered credit transactions at the same time, a covered financial institution reports each request that satisfies the definition of covered application as a separate reportable application. If, on the other hand, the small business is only requesting a single covered credit transaction, but has not decided on a particular product, the financial institution reports the request as a single reportable application. Comment 103(a)-5.

**Example 1:** Lender is a covered financial institution. A small business requests two different covered credit transactions (*e.g.*, an unsecured line of credit to purchase supplies on an ongoing basis and an unsecured term loan to purchase a single piece of equipment) from Lender on the same application form. If the requests qualify as applications under Lender's procedures, Lender reports each request as a separate reportable application (*i.e.*, one for the term loan and one for the line of credit).

**Example 2:** Credit Union is a covered financial institution. A small business owner meets with a loan officer at Credit Union to discuss financing the purchase of equipment. The small business owner says that the small business is interested in either a business purpose term loan or a business purpose line of credit to purchase the equipment. The small business owner provides the documents necessary for an application under Credit Union's procedures. Credit Union reports the small business owner's request as a single reportable application.

If a small business requests multiple lines of credit on a single credit account and the request constitutes a covered application, the request is reported as one or more reportable applications based on the procedures that the covered financial institution uses for the type of credit account requested. Comment 103(a)-7.

**Example 1:** Lender, which is a covered financial institution, offers a business purpose credit card product whereby a business can request separate cards for each of its employees. Each card accesses a single credit account, and the cards are treated as a single credit account, but each card has a separate maximum amount of credit that can be accessed from that single account. If a small business submits a covered application for the credit card product and requests five separate credit cards, Lender reports the request as a single reportable application.

**Example 2:** Lender, which is a covered financial institution, offers a business purpose credit card product whereby a business can request separate cards for each of its employees. Each card accesses a separate line of credit and is treated by Lender as a separate account. If a small business submits a covered application for the credit card product and requests five separate credit cards, Lender reports the request as five separate reportable applications.

If a covered financial institution receives two or more duplicate covered applications from a small business (*i.e.*, from the same applicant, for the same credit product, for the same amount, at or around the same time), the financial institution may treat the request as a single reportable application for purposes of the final rule, so long as for purposes of determining whether to extend credit, the financial institution would also treat one or more of the applications as a duplicate under its procedures. Comment 103(a)-8.

- ❑ If a covered financial institution receives duplicate covered applications from a small business and is permitted to treat them as a single reportable application but the application date, application method, and/or application recipient differ between or among the covered applications, the covered financial institution reports based on the first covered application that it received. See comments 107(a)(2)-1 and 107(a)(3)-1.

## Multiple co-applicants

If a covered financial institution receives an application for a covered credit transaction from multiple applicants that are not affiliates,<sup>16</sup> and at least one of those applicants is a small business, the financial institution must treat the application as a single reportable application from one of the small business applicants. A covered financial institution must establish consistent procedures for designating a single small business as the applicant for data collection and reporting purposes in situations where there are multiple small business applicants for a covered credit transaction, such as reporting data on the first small business listed on an application form. Comments 103(a)-10 and 106(b)(1)-4.

**Example 1:** Lender is a covered financial institution. Three unaffiliated businesses jointly submit a covered application as co-applicants for a business purpose term loan from Lender in order to purchase a piece of equipment, but only one of the businesses is a small business. The application is a covered application from a small business. Lender reports information regarding the small business applicant, but not regarding the other two applicants.

**Example 2:** Lender is a covered financial institution. Three unaffiliated businesses (Company A, Company B, and Company C) jointly submit a covered application as co-applicants for a business purpose term loan from Lender in order to purchase a piece of equipment. Company A and Company B are small businesses, but Company C is not. The application is a covered application from a small business. Lender's procedures state that when two or more small businesses apply for a single loan, Lender will report information regarding the business whose name would appear first in an alphabetical list. Lender must compile, maintain, and report data for Company A (such as its gross annual revenue, number of principal owners, *etc.*) in connection with this reportable application.

If a covered financial institution receives an application for a covered credit transaction from multiple applicants that are affiliates, the covered financial institution has additional flexibility

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<sup>16</sup> For this purpose, “affiliate” is defined to have the same meaning as in 13 CFR 121.103. See 12 CFR 1002.102(a).

under the final rule because the final rule permits the covered financial institution to determine whether an applicant is a small business based on an applicant's representations regarding gross annual revenue, which may or may not include affiliates' revenue. If the covered financial institution would rely on the affiliates' combined gross annual revenue and that gross annual revenue is above the threshold for small businesses under the final rule (initially \$5 million and otherwise as discussed in Section 2.3), the application would not be a reportable application because there would not be a small business applicant. Otherwise, the requirements for multiple applicants that are not affiliates would apply (*i.e.*, if at least one of the applicants is a small business, the covered financial institution treats an application for a covered credit transaction as a single reportable application from one of the small business applicants, and if there are multiple applicants that are small businesses, the covered financial institution must designate a single small business for reporting purposes pursuant to the procedures it has established for this purpose).

#### **2.4.4 Situations involving changes to the requested or offered transaction**

In certain circumstances, a small business may change the type of product requested during the course of the application process. The paragraphs that follow identify different situations in which the type of product requested or offered changes during the course of the application process, and how that affects whether an application is reportable.

If a small business initially requests one covered credit transaction, but over the course of the application process requests multiple covered credit transactions, each request for a covered credit transaction must be reported as a separate reportable application (assuming the requests satisfy the definition of covered application). Comment 103(a)-6.

If a small business initially requests a product that is not a covered credit transaction, but prior to final action taken decides to seek instead a product that is a covered credit transaction, the application is reportable (assuming the other requirements of a covered application are met). In this circumstance, the covered financial institution must endeavor to compile and report data required by the final rule in a manner that is reasonable under the circumstances.

If, on the other hand, a small business initially requests a product that is a covered credit transaction, but prior to final action taken decides instead to seek a product that is not a covered credit transaction, the application is not reportable. See Section 2.5 for a discussion of a safe harbor for collection of demographic information if, at the time of collection, the covered financial institution had a reasonable basis for believing that the application was a request from a small business for a covered credit transaction.

If a small business initially requests a product that is a covered credit transaction, the covered financial institution counteroffers with a product that is not a covered credit transaction, and the small business agrees to proceed with the product that is not a covered credit transaction, the application is not reportable.

However, if a small business requests a product that is a covered credit transaction, the covered financial institution counteroffers with a product that is not a covered credit transaction, and the small business refuses to proceed with the product that is not a covered credit transaction, the application is reportable (assuming the small business requested the covered credit transaction in accordance with the covered financial institution's procedures). Comment 103(a)-9.

**Example 1:** Financial Institution is a covered financial institution. A small business submits a covered application for an agricultural purpose term loan to finance the purchase of equipment. The small business consults with a representative of Financial Institution's equipment finance and leasing department and decides that a lease would better meet its needs. The small business proceeds with the process to obtain the lease product, but not the term loan. Financial Institution processes the small business's initial application as an application for a lease product, which is not a covered credit transaction. The application is not a covered application and is not reportable.

**Example 2:** Financial Institution is a covered financial institution. A small business owner submits a covered application for an unsecured line of credit. Financial Institution counteroffers with a secured term loan. The term loan would be secured by an investment property that the business is purchasing with some of the loan proceeds. The investment property includes a dwelling, and the term loan would be a HMDA-reportable transaction (*i.e.*, an excluded transaction under the final rule). The business owner refuses to be considered for the secured term loan. The application is a covered application and is reported under the final rule as a denial for the unsecured line of credit.

## 2.4.5 Situations involving a change in determination of small business status

If a covered financial institution initially determines that a covered application is from a small business based on available information and collects demographic information pursuant to the final rule (see Sections 3.18 and 3.19), but later concludes that the applicant is not a small business, the financial institution does not violate ECOA or Regulation B if it meets the requirements for the safe harbor discussed in Section 2.5. However, the application is not a reportable application, and the covered financial institution does not report the application. Comment 106(b)(1)-1.

If a covered financial institution initially determines that a covered application is not from a small business, but later concludes the applicant is a small business prior to taking final action on the application, the application is a reportable application. In this situation, the covered financial institution must endeavor to compile, maintain, and report the data required under the final rule in a manner that is reasonable under the circumstances. For example, if an applicant for a covered credit transaction initially provides gross annual revenue that indicates that the applicant is not a small business (*i.e.*, the applicant's reported gross annual revenue is above the small business threshold), but the covered financial institution discovers during underwriting that the applicant is a small business (*i.e.*, the applicant's gross annual revenue is in fact below the threshold), the covered financial institution is required to report the application (assuming it otherwise is a covered application). In this situation, the covered financial institution must take reasonable steps upon discovery of the applicant's small business status to compile, maintain, and report data pursuant to the final rule for that application. Thus, even if the covered financial institution's procedure is typically to request applicant-provided data during the initial phase of the application process (such as with the application form), the financial institution must seek to collect data during the application process so that the financial institution can comply with the final rule in a manner that is reasonable under the circumstances. Comment 106(b)(1)-2.

**Example 1:** Lender asks all applicants for business credit for gross annual revenue information. If an applicant states that its gross annual revenue for its preceding fiscal year was \$5 million or less, Lender asks the applicant to provide information so that Lender can compile, maintain, and report data pursuant to the final rule. If an applicant states that its gross annual revenue for its preceding fiscal year was more than \$5 million, Lender does not collect demographic information or other information that it would need to report data pursuant to the final rule but that it does not consider in its underwriting process (such as NAICS code or number of workers). Company submits a

covered application and states that its gross annual revenue was \$5.1 million during its prior fiscal year. As a result, Lender does not collect demographic information or other information that it does not need to consider Company's application, but that it would need to report data pursuant to the final rule. However, while underwriting the application, Lender discovers the applicant's gross annual revenue was in fact \$4.9 million. Upon making this discovery, Lender speaks with a representative of Company to request the additional information it needs in order to report data pursuant to the final rule, including demographic information. Although a fact-based determination, Lender has likely taken reasonable steps to compile data pursuant to the final rule. Lender must also report and maintain the application pursuant to the final rule.

## 2.4.6 Reportable application

For ease of reference, this guide and other implementation materials sometimes use the term "reportable application" to refer to an application that must be reported pursuant to the final rule. Thus, as used in this guide, a reportable application is a covered application from a small business.

Covered applications are discussed in Sections 2.4.1 through 2.4.5. For information on the definition of small business, see Section 2.3

## 2.5 Safe harbor regarding collection of demographic information

A covered financial institution that initially collects data regarding whether an applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners pursuant to the final rule, but later concludes that it should not have collected such data, does not violate ECOA or Regulation B if the financial institution, at the time it collected this data, had a reasonable basis for believing that the application was a covered application from a small business (*i.e.*, that the application was a reportable application) pursuant to the final rule. A financial institution seeking to avail itself of this safe harbor shall comply with the requirements of the final rule discussed in Sections 3, 4, 5, 6, and 8.2, as otherwise required with respect to the collected data. 12 CFR 1002.112(c)(4). The financial institution does not report the application to the CFPB on its small business lending application register.

To qualify for this safe harbor, a financial institution must have had a reasonable basis at the time it collected the data for believing that the application was a reportable application. For example, a financial institution may have a reasonable basis for its mistaken belief that an applicant is a small business if, when collecting demographic information, it relies on the applicant's statement that its gross annual revenue was \$4.8 million, but sometime after collecting the demographic information the financial institution reviews the applicant's tax return, which indicates the applicant's gross annual revenue was in fact \$5.2 million. 12 CFR 1002.112(c)(4); comment 112(c)-3.

Additional safe harbors are discussed in Sections 3.2, 3.13, and 3.15.

## 2.6 Voluntary collection and reporting

A financial institution may want to voluntarily collect information on covered applications from small businesses pursuant to the final rule in certain circumstances, such as if the financial institution generally satisfies the threshold for coverage but falls below the threshold in a single year. While it is permissible for a financial institution to request most of the data specified in the final rule regardless of whether it is a covered financial institution, the final rule recognizes that a non-covered financial institution might violate provisions of ECOA and Regulation B if it collects the demographic information discussed in Section 3.18 and 3.19 without a legal requirement to do so. Thus, the final rule includes a provision that permits non-covered financial institutions to voluntarily collect this demographic information for covered applications from small businesses (*i.e.*, applications that would be reportable if the institution was a covered financial institution). In some circumstances, the financial institution must report these applications to the CFPB.

A financial institution that is not a covered financial institution is permitted to voluntarily collect the demographic information discussed in Sections 3.18 and 3.19, if:

Situation 1: It was required to report data pursuant to the final rule for any of the preceding five calendar years but is not currently a covered financial institution. The financial institution may only collect demographic information for covered applications from small businesses, and it must comply with the otherwise applicable requirements of the final rule regarding collection of this demographic information (see Sections 3.18 and 3.19), the

- ☐ Persons such as loan brokers and correspondents do not violate ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a covered financial institution. Comment 5(a)(2)-3.

firewall (see Section 5), the final rule's record retention requirements (see Section 6), and 12 CFR 1002.112 as though it were a covered financial institution. In this situation, the financial institution is permitted, but not required, to report these applications to the CFPB. 12 CFR 1002.5(a)(4)(vii).

**Situation 2:** It originated one hundred or more covered originations in one year and wants to begin collecting data in the second year of the two-year threshold period. The financial institution may only collect demographic information for covered applications from small businesses, and it must comply with the otherwise applicable requirements of the final rule regarding collection of this demographic information (see Sections 3.18 and 3.19), the firewall (see Section 5), the final rule's record retention requirements (see Section 6), and 12 CFR 1002.112 as though it were a covered financial institution. In this situation, the financial institution is permitted, but not required, to report these applications to the CFPB. 12 CFR 1002.5(a)(4)(viii).

**Situation 3:** Situations 1 and 2 above do not apply but nonetheless the financial institution wishes to collect demographic information from small businesses that submit covered applications. In this situation, the financial institution must report these applications to the CFPB as though it were a covered financial institution (see Section 7). The financial institution may only collect demographic information for covered applications from small businesses and it must comply with the otherwise applicable requirements of the final rule regarding collection of reportable data (see Sections 3 and 4), the firewall (see Section 5), the final rule's record retention requirements (see Section 6), its publication of data requirements (see Section 8), and 12 CFR 1002.112 for those applications as though it were a covered financial institution. 12 CFR 1002.5(a)(4)(ix).

**Situation 4:** It is collecting demographic information from a small business submitting a covered application (whether for required collections or voluntary collections described in situations 1 through 3 above) and wishes to collect such information from co-applicants as well, even if the co-applicant(s) are not small businesses. In this situation, the financial institution must comply with relevant requirements of the final rule with respect to those co-applicants. 12 CFR 1002.5(a)(4)(x).

# 3. Reportable data points

A covered financial institution is required to compile, report, and maintain the data discussed in this Section 3 for reportable applications. 12 CFR 1002.107(a). Additional information regarding the requirements for collecting, compiling, and reporting data are discussed in Sections 4 and 7 of this guide and in the filing instructions guide. Additional information regarding the requirements for maintaining data are discussed in Sections 5, 6, and 8 of this guide.

## 3.1 Unique identifier

For each reportable application, a covered financial institution must compile and report a unique alphanumeric identifier. 12 CFR 1002.107(a)(1). The unique identifier:

- Must start with the covered financial institution's legal entity identifier.
- Must not exceed 45 characters.
- Must only include standard numerical and/or upper-case alphabetical characters.
- Must not include dashes, special characters, or characters with diacritics.
- Must not include any directly identifying information (such as a whole or partial Social Security number or employer identification number) about the applicant or persons (natural or legal) associated with the applicant. See also 12 CFR 1002.111(c) and related commentary, discussed in Section 6.3.
- Must be useable to identify and retrieve the specific file or files corresponding to the reportable application and related covered credit transaction (if any).

12 CFR 1002.107(a)(1); comments 107(a)(1)-1 and -2.

A covered financial institution is permitted to assign the unique identifier at any time prior to reporting the application. Refinancings or applications for refinancings must be assigned a different identifier than the transaction that is being refinanced. A covered financial institution with multiple branches must ensure that its branches do not use the same identifiers to refer to multiple reportable applications. Comment 107(a)(1)-1.

## 3.2 Application date

For each reportable application, a covered financial institution must compile and report either the date the application was received or the date shown on the paper or electronic application form. 12 CFR 1002.107(a)(2).

For a reportable application submitted directly to the covered financial institution or one of its affiliates,<sup>17</sup> the financial institution reports the date it received the reportable application or the date shown on a paper or electronic application form. For a reportable application that was not submitted directly to the covered financial institution or one of its affiliates (*i.e.*, that was initially submitted to a third party), the covered financial institution reports the date the reportable application was received by the party that initially received the reportable application, the date the reportable application was received by the covered financial institution, or the date shown on the application form. Comments 107(a)(2)-2 and -3.

Although a covered financial institution need not choose the same approach for all of its reportable applications, it should generally be consistent in its approach by, for example, establishing procedures for how to report application date for particular products and divisions and in particular scenarios. Comments 107(a)(2)-1 and -3.

**Example 1:** Lender is a covered financial institution, and has an application form that small businesses must complete to request a covered credit transaction. A small business completes the application form, signing and dating the form May 5. The small business returns the form to an employee of Lender on May 8. Subject to its procedures for reporting application date, Lender may report the application date as May 5 or May 8.

**Example 2:** Lender is a covered financial institution and has an online application form that small businesses must complete to request a covered credit transaction. A small business begins filling out the application on April 30 and provides an electronic signature on May 5 that is recorded on the application form. The small business submits the electronic form on May 8, but Lender receives it on May 9. Subject to its

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<sup>17</sup> With respect to a financial institution, an “affiliate” is 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.). 12 CFR 1002.102(a).

procedures for reporting application date, Lender may report the application date as May 5 or May 9.

**Example 3:** Lender is a covered financial institution and provides covered credit transactions to finance purchases at certain unaffiliated retail stores. Lender requires a small business to complete an application form to request a covered credit transaction. The small business dates the application May 1. It submits the application to an employee of the retail store on May 2. An employee of Lender receives the application on May 3. Depending on its procedures for reporting application date, Lender may report the application date as May 1, May 2, or May 3.

**Example 4:** Lender is a covered financial institution and requires a small business to submit specific documents in order to request a covered credit transaction. Lender receives some of the required documents from a small business on May 1. Lender receives the remainder of the required documents from the small business on May 15. Lender reports the application date as May 15.

**Example 5:** Lender is a covered financial institution and requires a small business to complete an application form in order to request a covered credit transaction. After it receives the application form, Lender typically requires additional documentation to verify information provided on the form. In some cases, Lender obtains the additional documentation from third parties, but in other cases the small business can provide the documents (such as documents verifying ownership of the small business, audited financials, etc.) to Lender. A small business completes an application form and submits it on May 1. The form is also dated May 1. Lender reviews the application form and requests documents to verify information provided on the form. The small business provides those documents on May 15. Lender reports the application date as May 1.

Additionally, a covered financial institution that compiles and reports an application date that is within three business days of the actual application date does not violate ECOA or the final rule. 12 CFR 1002.112(c)(1). For this purpose, a business day means any day the financial institution is open for business. Comment 107(a)(2)-4.

### 3.3 Application method

For each reportable application, a covered financial institution must compile and report the means by which the applicant submitted the reportable application. A covered financial institution must report one of the following as the application method:

- *In-person*. A financial institution reports the application method as “in-person” if the applicant submitted the application to the financial institution, or another party acting on the financial institution’s behalf, in person. The in-person application method applies, for example, to applications submitted at a covered financial institution’s branch office (including hand delivered applications), at the office of another party acting on the financial institution’s behalf, at the applicant’s place of business, or via electronic media with a video component.
- *Telephone*. A financial institution reports the application method as “telephone” if the applicant submitted the application to the financial institution, or another party acting on the financial institution’s behalf, by telephone call or via audio-based electronic media without a video component.
- *Online*. A financial institution reports the application method as “online” if the applicant submitted the application to the financial institution, or another party acting on the financial institution’s behalf, through a website, mobile application, fax transmission, electronic mail, text message, or some other form of text-based electronic communication.
- *Mail*. A financial institution reports the application method as “mail” if the applicant submitted the application to the financial institution, or another party acting on the financial institution’s behalf, via United States mail, courier or overnight service, or an overnight drop box.

Comment 107(a)(3)-1.

**Example 1:** Lender is a covered financial institution. It does not have an application form, but requires a small business to submit specific documents in order to request a covered credit transaction (*i.e.*, a small business must submit specific documents, and these documents constitute the application). A representative of a small business hand delivers some of these required documents to a loan officer at one of Lender’s locations. The small business owner emails the remainder of the specific required documents to the loan officer. The small business owner has not requested the covered credit

transaction until it submits these additional documents. Lender reports the application method as online.

**Example 2:** Lender is a covered financial institution and requires a small business to complete an application form in order to request a covered credit transaction. Pursuant to the Lender's procedures, a small business has requested a covered credit transaction when it submits a completed application form. However, Lender requires additional documentation to verify information provided in the form. In some cases, Lender obtains the additional documentation from third parties, but in other cases the small business can provide the documents (such as documents verifying ownership of the small business, audited financials, *etc.*) to Lender. A loan officer sends a small business owner a link that the owner can use to download the application form. The owner emails the completed form to the loan officer. Lender reviews the application form and requests documents to verify information provided on the form. The small business owner hand delivers those documents to one of Lender's locations. Because Lender's procedures only require a small business to submit a completed application form in order to request a covered credit transaction (*i.e.*, pursuant to Lender's procedures the small business submitted an application when the owner emailed the completed form), Lender reports the application method as online.

**Example 3:** Lender is a covered financial institution, and provides business and agricultural purpose loans and lines of credit to finance purchases at certain unaffiliated retail stores. Pursuant to the Lender's procedures, a small business has requested a covered credit transaction when the small business submits a completed application form. An employee of the retail store asks the small business applicant questions to complete the form on a computer at the retail store or provides the small business applicant with a mobile device to complete the form at the retail store. Because the small business completed the application at the retail store, Lender reports the application method as in person.

**Example 4:** Lender is a covered financial institution, and accepts applications for business purpose loans online and through a mobile application. Pursuant to the Lender's procedures, a small business has requested a covered credit transaction when it submits a completed application form. A small business owner completes an application form through the mobile application. Lender reviews the application form and emails the small business to request additional information, which the small business provides via email. Lender reports the application method as online.

Moreover, Lender would report the application method as online even if the small business provided the additional information via mail because Lender's procedures only require a small business to submit a completed form in order to request a covered credit transaction (*i.e.*, pursuant to Lender's procedures the small business had submitted an application when it the completed form), and the small business provided the application form via the mobile application.

## 3.4 Application recipient

For each reportable application, a covered financial institution must compile and report whether the applicant submitted the application directly to the covered financial institution or its affiliate, or whether the applicant submitted the application indirectly through a third party. 12 CFR 1002.107(a)(4).

When an applicant submits an application to a covered financial institution's agent, the covered financial institution itself is deemed to have received the application because the agent's actions are attributed to the covered financial institution. Comment 107(a)(4)-1.

**Example 1:** Lender is a covered financial institution and provides lines of credit to finance purchases at certain unaffiliated retail stores. A small business submits a reportable application to an employee at a retail store, which is not acting as Lender's agent. Lender makes the credit decision on the application. Lender reports that the application was submitted indirectly through a third party.

**Example 2:** Lender is a covered financial institution and an affiliate of an equipment company. A small business submits a reportable application to the equipment company, and Lender makes a credit decision on the application. Lender reports that the application was submitted directly to Lender.

**Example 3:** Lender is a covered financial institution. A small business submits a reportable application to a company that is acting as Lender's agent under applicable state law. An employee of that company makes a credit decision on the application on

Lender's behalf. Lender reports the application and reports that the application was submitted directly to Lender.

## 3.5 Credit type

For each reportable application, a covered financial institution must compile and report information on the type of credit product applied for or originated, which consists of information about credit product, guarantees, and loan term. 12 CFR 1002.107(a)(5).

1. *The credit product.* A covered financial institution compiles and reports credit product, using the list set forth in the final rule (and reproduced below). 12 CFR 1002.107(a)(5)(i); comment 107(a)(5)-1. Generally, a covered financial institution compiles and reports the credit product that the applicant requested. However, if a covered financial institution presents a counteroffer for a different credit product, and the applicant agrees to proceed with the counteroffer, the financial institution compiles and reports the credit product based on the counteroffer and does not report based on the original credit product that the applicant originally requested. If the applicant does not agree to proceed with the counteroffer, the covered financial institution reports based on the credit product that the applicant originally requested. Comments 107(a)(5)-1 and -5.

If a small business requests more than one credit product at the same time, each request for a different credit product is a separate reportable application. For example, if a small business requests an operating line of credit and a term loan to purchase an office building, each request is a separate reportable application (assuming each request is otherwise a covered application). However, if an applicant only requests one covered credit transaction, but has not decided on a particular credit product, a covered financial institution reports only one reportable application and the credit product originated (if originated), or the credit product denied (if denied), or the credit product of greater interest to the applicant, if readily determinable. If the credit product of greater interest to the applicant is not readily determinable, a covered financial institution compiles and reports one of the credit products requested as part of the request for a single covered credit transaction, in its discretion. Comment 107(a)(5)-1. See Section 2.4.3 for more information regarding situations involving multiple requests and Section 2.4.4 for more information regarding situations involving changes to the requested or offered transaction.

When compiling and reporting credit product, a covered financial institution selects from the following list:

- (a) *Term loan—unsecured.*
- (b) *Term loan—secured.*
- (c) *Line of credit—unsecured.* If overdraft is an aspect of the covered credit transaction applied for or originated and involves an unsecured line of credit, a covered financial institution reports the credit product as “Line of credit—unsecured.” It also reports “overdraft” as a credit purpose under the credit purpose data point discussed in Section 3.6. However, providing occasional overdraft services as part of a deposit account offering would not be reported pursuant to the final rule. See comment 107(a)(6)-8.
- (d) *Line of credit—secured.*
- (e) *Credit card account, not private-label.* A covered financial institution reports the credit product as a “credit card account, not private-label” when the product is a business-purpose open-end credit account that is not private label and that may be accessed from time to time by a card, plate, or other single credit device to obtain credit, except that accounts or lines of credit secured by real property and overdraft lines of credit accessed by debit cards are not credit card accounts. The term credit card account does not include debit card accounts or closed-end credit that may be accessed by a card, plate, or single credit device. The term credit card account does include charge card accounts that are generally paid in full each billing period and hybrid prepaid-credit cards. Comment 107(a)(5)-2. A financial institution reports multiple “credit card account, not private-label” applications requested at one time as one or more covered applications based on the procedures used by the covered financial institution for the type of credit account. For example, if a covered financial institution treats a request for multiple lines of credit at one time as sub-components of a single account, the covered financial institution reports the request as a single covered application. If, on the other hand, the covered financial institution treats each line of credit as a separate account, then the covered financial institution reports each request for a line of credit as a separate covered application. See comment 103(a)-7.
- (f) *Private-label credit card account.* A covered financial institution reports the credit product as a “private-label credit card account” when the product is a business-purpose open-end private-label credit account that otherwise meets the

description of a credit card account discussed immediately above. A private-label credit card account is a credit card account that can only be used to acquire goods or services provided by one business (for example, a specific merchant, retailer, independent dealer, or manufacturer) or a small group of related businesses. A co-branded or other card that can also be used for purchases at unrelated businesses is not a private-label credit card. Comment 107(a)(5)-3. A financial institution reports multiple “private-label credit card account” applications requested at one time based on the procedures used by the covered financial institution for the type of credit account. For example, if a covered financial institution treats a request for multiple lines of credit at one time as sub-components of a single account, the covered financial institution reports the request as a single covered application. If, on the other hand, the covered financial institution treats each line of credit as a separate account, then the covered financial institution reports each request for a line of credit as a separate covered application. See comment 103(a)-7.

(g) *Merchant cash advance.*

(h) *Other sales-based financing transaction.* For an extension of business credit incident to a factoring arrangement that is otherwise a covered credit transaction, a covered financial institution reports “other sales-based financing transaction” as the credit product. Comment 107(a)(5)-6. See also comment 104(b)-1.

(i) *Other.* If the credit product requested or originated is not included in this list, the financial institution selects “other,” and reports the credit product via a free-form text field. Comment 107(a)(5)-1.

(j) *Not provided by applicant and otherwise undetermined.* As discussed in Section 4.2, a covered financial institution is required to maintain procedures reasonably designed to collect applicant-provided data, which includes credit product. However, if a covered financial institution is nonetheless unable to collect or otherwise determine the credit product 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.” Comment 107(a)(5)-4.

2. *The type or types of guarantees.* A covered financial institution reports 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. 12 CFR

1002.107(a)(5)(ii). The covered financial institution selects the type(s) of guarantees from the following list: (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 government guarantee; (k) Local government guarantee; (l) Other; or (m) No guarantee. Comment 107(a)(5)-7.

A covered financial institution selects, if applicable, up to a maximum of five guarantees for a single reportable application. If the type of guarantee does not appear in (a) – (k) in the above list, the financial institution selects “other” and reports the type of guarantee via a free-form text field. If no guarantee is obtained or would have been obtained if the covered credit transaction was originated, the financial institution selects “no guarantee.” If a reportable application is denied, withdrawn, or closed for incompleteness before any guarantee has been identified, the covered financial institution selects “no guarantee.” A covered financial institution chooses “state government guarantee” or “local government guarantee,” as applicable, based on the entity directly administering the program, not the source of funding. Comment 107(a)(5)-7.

3. *The length of the loan term.* A covered financial institution reports the number of months in the loan term for the covered credit transaction, if applicable. 12 CFR 1002.107(a)(5)(iii). The loan term is the number of months after which the legal obligation will mature or terminate, measured from the date of origination. Comment 107(a)(5)-8.

For transactions involving real property, a covered financial institution may instead measure the loan term from the date of the first payment period and disregard the time that elapses, if any, between the settlement of the transaction and the first payment period.

In addition, a covered 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.

**Example 1:** Lender originates a covered credit transaction to a small business on May 12, 2027. The final payment is due on May 12, 2030. The covered credit transaction does not involve real property. The loan term is 36 months.

**Example 2:** Lender originates a covered credit transaction to a small business on May 12, 2027, and the first monthly payment is due on June 1, 2027. The final monthly payment is due June 1, 2030. The covered credit transaction does not involve real property. Lender does not count partial months when determining loan term. The loan

term is 36 months. However, if Lender counted partial months and rounded to the nearest full month, the loan term would be 37 months.

**Example 3:** Lender originates a covered credit transaction to a small business on May 2, 2027. The covered credit transaction is a line of credit that does not involve real property. The small business is permitted to make draws on the line of credit for three years, and then the full amount drawn becomes due and is payable in twelve monthly payments. The last monthly payment is due on June 1, 2031. The loan term is 49 months.

**Example 4:** Credit Union originates a covered credit transaction secured by real property on April 12, 2027, but the first payment from the small business borrower is not due until June 1, 2027. The first payment includes interest accrued in May, but not the interest for April, which was paid when the transaction was originated. The final payment on the transaction is due on May 1, 2037. Credit Union may choose not to include the month of April in the loan term. If it does not include April in the loan term, the loan term is 120 months.

If a credit product, such as a credit card, does not have a loan term, a covered financial institution reports that the loan term is “not applicable.” The covered financial institution also reports that the loan term is “not applicable” if the credit product is reported as “not provided by applicant and otherwise undetermined.”

For a credit product that generally has a loan term, a covered financial institution reports “not provided by applicant and otherwise undetermined” if the application is denied, withdrawn, or determined to be incomplete before a loan term has been identified.

For merchant cash advances and other sales-based financing transactions, a covered financial institution reports the loan term, if any, that the financial institution estimated or specified in processing, underwriting, or providing disclosures for the application or transaction. If more than one such loan term is estimated or specified, the covered financial institution reports the one it considers to be most accurate, in its discretion. For merchant cash advances and other sales-based financing transactions that do not have a loan term, the financial institution reports “not provided by applicant and otherwise undetermined.” Comment 107(a)(5)-8.

**Example 1:** Lender originates a covered credit transaction to a small business on May 1, 2027. The transaction is a credit card account that does not have a maturity or termination date. Lender reports “not applicable” for the loan term.

**Example 2:** A small business submits a covered application to Financial Institution. On the application form, the small business requests a term loan, but does not list a desired loan term. Prior to underwriting, the small business withdraws its application without a loan term being identified. Financial Institution reports “not provided by applicant and otherwise undetermined” for the loan term.

**Example 3:** Funding Company issues a merchant cash advance to a small business and internally estimates during underwriting that the small business’s sales should result in the credit being fully repaid in 10 months. Funding Company does not produce any other estimate, statement, or disclosure regarding the duration of the merchant cash advance. Funding Company reports a loan term of 10 months (*i.e.*, “10”).

## 3.6 Credit purpose

For each reportable application, a covered financial institution must report the purpose or purposes of the credit applied for or originated. 12 CFR 1002.107(a)(6).

If the applicant indicates, or the covered 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, in any order it chooses. If a reportable application has more than three purposes, the covered financial institution reports any three of those purposes. Comment 107(a)(6)-2.

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided data, including credit purpose. A covered financial institution is permitted, but not required, to present the list of credit purposes provided in the final rule (and reproduced below) to the applicant. A covered financial institution is also permitted to ask about purposes not included on the list, and reports such a purpose as “other.” If an applicant chooses a purpose or purposes that are similar to a purpose or purposes on the list provided in the final rule, but uses different language, a covered financial institution reports the purpose or purposes from the list. Comment 107(a)(6)-6. For example, if an applicant

states that the purpose of the loan is to purchase and maintain a delivery truck, the covered financial institution reports “Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).”

A covered financial institution reports the credit purpose(s) from the list below:

- (a) Purchase, construction/improvement, or refinance of non-owner-occupied real property.
- (b) Purchase, construction/improvement, or refinance of owner-occupied real property. Real property is owner-occupied if any physical portion of the property is used by the owner for any activity, including storage. Comment 107(a)(6)-7.
- (c) Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).
- (d) Purchase, refinance, or rehabilitation/repair of equipment.
- (e) Working capital. This credit purpose includes inventory or floor planning.
- (f) Business start-up.
- (g) Business expansion.
- (h) Business acquisition.
- (i) Refinance existing debt. This credit purpose does not include the refinancings described in (a), (b), (c), or (d) above.
- (j) Line increase.
- (k) Overdraft. When overdraft is provided as an aspect of a covered credit transaction, a covered financial institution reports “overdraft” as a purpose of the credit. Providing occasional overdraft services as part of a deposit account offering would not be reported under the final rule. Comment 107(a)(6)-8.
- (l) Other. If a purpose of an application does not appear on this list, a covered financial institution should only use the credit purpose “line increase” for a reportable application involving an open-end covered credit transaction. If a reportable application involves or would involve an increase to the amount of credit available on an existing closed-end covered credit transaction but does not or would not refinance the transaction, the covered financial institution reports the underlying purpose for the increased amount.

financial institution reports “other” as the credit purpose and reports the credit purpose via a free-form text field. If the reportable application has more than one “other” purpose, the covered financial institution chooses the most significant “other” purpose, in its discretion, and reports that “other” purpose. A covered financial institution reports a maximum of three credit purposes, including any “other” purpose. Comment 107(a)(6)-3.

(m) *Not provided by applicant and otherwise undetermined.* If a covered financial institution is unable to collect or determine credit purpose information, the financial institution reports that the credit purpose is “not provided by applicant and otherwise undetermined.” Comment 107(a)(6)-4. See above and Section 4.2 regarding maintenance of procedures reasonably designed to obtain applicant-provided data, such as credit purpose.

(n) *Not applicable.* If a reportable application is for a credit product that generally has indeterminate or numerous potential purposes, such as a credit card, a covered financial institution may report credit purpose as “not applicable.” Comment 107(a)(6)-5.

**Example 1:** Company is a small business, and has an existing business loan with Lender. Company used the proceeds of the existing business loan to purchase a commercial building, which Company uses as its main office building. Company submits a reportable application to refinance its existing business loan and to obtain additional funds to purchase a motor vehicle. Lender reports that the two purposes of the credit are: 1) Purchase, construction/improvement, or refinance of owner-occupied real property; and 2) Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).

**Example 2:** Lender receives a reportable application from an individual who is starting a new business. The individual requests an operating line of credit to be secured by the individual’s primary residence. The line of credit would be used to provide capital for the new business’s first six months of operation. This is a covered credit transaction that does not qualify for the exclusion for HMDA-reportable transactions because it is a business-purpose loan that does not involve a home

purchase, home improvement, or refinancing. Lender reports that the two purposes of credit are: 1) Business start-up; and 2) Working capital.

**Example 3:** Lender originates a business loan to a small business that owns a gas station. The loan proceeds will be used to purchase an existing convenience store in a small structure next door to the gas station. The small business will operate the convenience store. Lender reports that the three purposes of credit are: 1) Business acquisition; 2) Business expansion; and 3) Purchase, construction/improvement, or refinance of owner-occupied real property.

## 3.7 Amount applied for

For each reportable application, a covered financial institution must compile and report the initial amount of credit or the initial credit limit that the small business requested. 12 CFR 1002.107(a)(7).

A covered financial institution is not required to report credit amounts or limits discussed before an application is made, but must capture the amount that the small business initially requests at the application stage. If the small business requests an amount as a range of numbers, a covered financial institution reports the midpoint of that range. Comment 107(a)(7)-1.

If a small business does not request a specific amount at the application stage, but the covered financial institution underwrites the reportable application for a specific amount, the financial institution reports the amount considered for underwriting as the amount applied for. Comment 107(a)(7)-2. If the particular type of credit product applied for does not involve a specific amount requested, a covered financial institution reports that the requirement is “not applicable.” Comment 107(a)(7)-2.

**Example 1:** A representative of a small business meets with a loan officer at Lender to discuss loan options. During this discussion the representative informs the loan officer that the small business would like to borrow \$20,000. A few days later, the small

business submits an online application for a covered credit transaction and lists the amount applied for as \$18,000. The amount applied for is \$18,000.

**Example 2:** A small business submits a reportable application to Lender. On a required application form, the small business lists the amount applied for as \$20,000 - \$40,000. The amount applied for is \$30,000.

**Example 3:** A representative of a small business meets with a representative of Lending Company to discuss loan options to purchase real property. The small business submits a reportable application, but does not provide a specific requested loan amount. Lending Company underwrites the covered credit transaction based on the cost of purchasing the real property, which is \$125,000. The amount applied for is \$125,000.

If a small business responds to a “firm offer” that specifies an amount or limit, which may occur in conjunction with a pre-approved credit solicitation, a covered financial institution reports the amount of the firm offer as the amount applied for, unless the small business requests a different amount. If the firm offer does not specify an amount or limit and the small business does not request a specific amount, the amount applied for is the amount underwritten by the covered financial institution. If the firm offer specifies an amount or limit as a range and the small business does not request a specific amount, the amount applied for is the amount underwritten by the covered financial institution. Comment 107(a)(7)-3.

For a reportable application that seeks additional credit amounts on an existing account (and the request is not for a refinance), a covered financial institution reports only the additional credit amount sought, and not any previous amounts extended. Comment 107(a)(7)-4. See also comment 103(b)-3.

**Example 1:** Company has a business credit card account with Lender. Company submits a reportable application to increase its credit limit by \$10,000. Company’s current credit limit is \$25,000. The amount applied for is \$10,000.

**Example 2:** Company has a closed-end business loan with Lender with a principal amount of \$25,000. Company submits a reportable application to refinance its existing loan (*i.e.*, to satisfy and replace the existing loan) and to borrow an additional \$10,000. The amount applied for is \$35,000.

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided data, which includes the credit amount initially requested (other than for products that do not involve a specific amount requested). However, if a covered financial institution is nonetheless unable to collect or otherwise determine the amount initially requested, for example when an application is withdrawn before the applicant requests a credit amount and before underwriting occurs, the covered financial institution reports that the amount applied for is “not provided by applicant and otherwise undetermined.” Comment 107(a)(7)-5.

## 3.8 Amount approved or originated

For each reportable application, a covered financial institution must compile and report the amount approved or originated as follows:

- For an application for a closed-end covered credit transaction that is approved but not accepted, the amount approved by the covered financial institution.
- For an application for an open-end covered credit transaction that is approved but not accepted, the amount of the credit limit approved.
- For an application that results in the origination of a closed-end covered credit transaction, the amount of credit originated (i.e., the principal amount to be repaid). This amount will generally be disclosed on the legal obligation. Comment 107(a)(8)-3.
- For an application that results in the origination of an open-end covered credit, the amount of the credit limit approved.
- For applications reported as denied, withdrawn by the applicant, or incomplete, the amount approved or originated is reported as “not applicable.” Comment 107(a)(8)-1.

12 CFR 1002.107(a)(8).

### 3.8.1 Multiple approval amounts

A covered financial institution may sometimes approve an applicant for more than one credit amount, allowing the applicant to choose which amount the applicant prefers.

When multiple approval amounts are offered for a closed-end covered 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 covered financial institution reports the highest amount approved. However, if the applicant accepts an offer and a closed-end covered credit transaction is originated, the covered financial institution reports the amount originated.

When multiple approval amounts are offered for an open-end covered 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 covered financial institution reports the highest amount approved. However, if the applicant accepts an offer and an open-end covered credit transaction is originated, the financial institution reports the actual credit limit established. Comment 107(a)(8)-2.

### 3.8.2 Additional amounts on existing accounts and refinancings

For a refinancing, a covered financial institution reports the amount of credit approved or originated under the terms of the new covered credit transaction. Comment 107(a)(8)-4. For additional credit amounts that are approved or originated on an existing account other than by means of a refinancing, a covered financial institution reports only the additional credit amount approved or originated, and not any amounts that were previously extended. Comment 107(a)(8)-6.

**Example 1:** Lender originates a covered credit transaction to a small business. The covered credit transaction, which is a closed-end transaction with a principal amount of \$10,000, satisfies and replaces an existing loan that the small business owed. The amount originated is \$10,000.

**Example 2:** Lender originates a covered credit transaction to a small business. The covered credit transaction is a closed-end transaction that amends (but does not satisfy and replace) an existing loan owed by the small business and increases the principal amount owed by \$5,000. The total principal amount owed under the amended terms is \$15,000. The amount originated is \$5,000.

### 3.8.3 Counteroffers

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, a covered financial institution reports the amount granted. If an applicant does not agree to proceed with consideration of a counteroffer or fails to respond, the covered financial institution reports the application as denied and reports “not applicable” for the amount approved or originated. Comment 107(a)(8)-5. See also comment 107(a)(9)-2.

## 3.9 Action taken

Based on the final action that it takes on a reportable application, a covered financial institution must compile and report one of the following as the action taken:

- Originated. A covered financial institution reports a reportable application as “originated” if the covered financial institution made a credit decision approving the reportable application and that credit decision results in an extension of credit that is a covered credit transaction.
- Approved but not accepted. A covered financial institution reports a reportable application as “approved but not accepted” if the covered financial institution made a credit decision approving the application, but the applicant or the party that initially received the reportable application failed to respond to the covered financial institution’s approval within the specified time, or the covered credit transaction was not otherwise consummated or otherwise opened.
- Denied. A covered financial institution reports a reportable application as “denied” if it made a credit decision denying the application before an applicant withdrew the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.
- Withdrawn by the applicant. A covered financial institution reports a reportable application as “withdrawn by the applicant” if the application was expressly withdrawn by the applicant before the covered financial institution made a credit decision approving or denying the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.
- Incomplete. A covered financial institution reports a reportable application as “incomplete” if the covered financial institution took adverse action on the basis of incompleteness or provided a written notice of incompleteness under Regulation B, and

the applicant did not respond to the request for additional information within the period of time specified in the notice.

12 CFR 1002.107(a)(9); comment 107(a)(9)-1.

### 3.9.1 Counteroffers

If a covered financial institution makes a counteroffer on terms other than those originally requested by the applicant (*e.g.*, 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 financial 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 covered financial institution’s counteroffer, the financial institution reports the action taken based on the disposition of the counteroffer. Comment 107(a)(9)-2.

**Example 1:** Company submits a reportable application to Lender requesting a line of credit. Lender makes a counteroffer to proceed with consideration of a business term loan. Company indicates that it is not interested in a term loan. Lender reports that Company’s reportable application for a line of credit was “denied.”

**Example 2:** Company submits a reportable application to Lender requesting a term loan. Lender makes a counteroffer to proceed with consideration of a business line of credit. Company indicates that it would like to proceed with the business line of credit, and Lender ultimately originates the line of credit. Lender reports that Company’s reportable application for a line of credit was “originated.”

**Example 3:** Assuming the same facts set forth in Example 2 in which Company applies for a business term loan, but agrees to be considered for a business line of credit. If Lender approves the line of credit, but Company fails to respond to Lender’s approval within the specified time, Lender then reports the application on the line of credit as “approved but not accepted.”

### 3.9.2 Rescinded transactions

If a borrower successfully rescinds a covered credit transaction after closing but before a covered financial institution is required to submit its small business lending application register

containing the information for the reportable application, the financial institution reports the application as “approved but not accepted.” Comment 107(a)(9)-3.

### 3.9.3 Pending applications

A covered financial institution does not report an application if it is pending at the end of the calendar year. Instead, it reports the application in the next calendar year, assuming the covered financial institution takes final action in the next calendar year. Comment 107(a)(9)-4. For example, if a covered financial institution receives a reportable application from a small business in 2026, but takes final action regarding that application in 2027, the financial institution includes the application in its 2027 small business lending application register, but does not include it in its 2026 small business lending application register.

### 3.9.4 Conditional approvals

If a covered financial institution issues an approval that is subject to the applicant meeting certain conditions prior to closing, the covered 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.

- If the approval is conditioned on satisfying underwriting or creditworthiness conditions, those conditions are not met, and the covered financial institution takes adverse action on some basis other than incompleteness, the covered financial institution reports the action taken as “denied.”
  - Customary commitment or closing conditions may include, for example, a clear-title requirement, proof of insurance policies, or a subordination agreement from another lienholder.
  - Underwriting or creditworthiness conditions may include, for example, conditions that constitute a counteroffer (such as a demand for a higher down-payment), satisfactory loan-to-value ratios, or verification or confirmation that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of revenue, income, or assets.
- If the approval is conditioned on satisfying underwriting or creditworthiness conditions that the covered financial institution needs to make the credit decision, and the covered financial institution takes adverse action on the basis of incompleteness or has sent a written notice of incompleteness pursuant to Regulation B and the applicant did not respond within the period of time specified in the notice, the covered financial institution reports the action taken as “incomplete.”

- If the approval is conditioned on satisfying conditions that are solely customary commitment or closing conditions and the conditions are not met, the covered 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 covered financial institution agrees to extend credit, but the covered credit transaction is not originated (*e.g.*, because the applicant withdraws), the covered financial institution reports the action taken as “approved but not accepted.”
- If the applicant expressly withdraws the application before satisfying all underwriting or creditworthiness conditions and before the covered financial institution denies the application or before the covered financial institution closes the file for incompleteness, the covered financial institution reports the action taken as “withdrawn by the applicant.”

Comment 107(a)(9)-5.

## 3.10 Action taken date

For each reportable application, a covered financial institution must compile and report the date of the action taken by it on the reportable application as follows:

- *For applications that are denied*, a covered financial institution reports either the date the application was denied or the date the denial notice was sent to the applicant. Comment 107(a)(10)-1.
- *For applications that are withdrawn by the applicant*, a covered 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. Comment 107(a)(10)-2.
- *For applications that are approved but are not accepted by the applicant*, a covered 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 covered 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. Comment 107(a)(10)-3.
- *For applications that result in an origination*, a covered 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 covered financial institution may, alternatively, use the date of initial disbursement. A covered 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. Comment 107(a)(10)-4.

- For incomplete applications, a covered financial institution reports either the date the action was taken or the date the denial or incompleteness notice was sent to the applicant. Comment 107(a)(10)-5.

12 CFR 1002.107(a)(10).

## 3.11 Denial reasons

For each reportable application that it denies, a covered financial institution must compile and report up to four principal reasons that the financial institution denied the application. 12 CFR 1002.107(a)(11). A covered financial institution reports only the principal reason or reasons it denied the application, and selects its principal reason or reasons for denying the application from the following list:

- Credit characteristics of the business. A covered financial institution reports the denial reason as “credit characteristics of the business” if it denies the application based on an assessment of the small 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. Comment 107(a)(11)-1.i.
- Credit characteristics of the principal owner(s) or guarantor(s). A covered 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)’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. Comment 107(a)(11)-1.ii.
- Use of credit proceeds. A covered financial institution reports the denial reason as “use of credit proceeds” if it denies an application because, as a matter of policy or practice, it places limits on lending to certain kinds of businesses, products, or activities it has identified as high risk. Comment 107(a)(11)-1.iii.
- Cashflow. A covered financial institution reports the denial reason as “cashflow” when it denies an application due to insufficient or inconsistent cashflow. Comment 107(a)(11)-1.iv.

- *Collateral*. A covered financial institution reports the denial reason as “collateral” when it denies an application due to collateral that it deems insufficient or otherwise unacceptable. Comment 107(a)(11)-1.v.
- *Time in business*. A covered 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. Comment 107(a)(11)-1.vi.
- *Government loan program criteria*. Certain loan programs are backed by government agencies that have specific eligibility requirements. When an applicant does not meet those requirements, and a covered financial institution denies the application because the applicant has not met those requirements, the financial institution reports the denial reason as “government loan program criteria.” For example, if an applicant cannot meet a government-guaranteed loan program’s requirement to provide a guarantor or proof of insurance, the covered financial institution reports the reason for the denial as “government loan program criteria.” Comment 107(a)(11)-1.vii.
- *Aggregate exposure*. Aggregate exposure is a measure of the total exposure or level of indebtedness of a business applicant and its principal owners (if any). A covered 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 covered financial institution (including but not limited to debt thresholds that a covered financial institution sets to comply with other applicable law). For example, if an application for unsecured credit exceeds the maximum amount a covered financial institution is permitted to approve per applicant, as stated in its credit guidelines, and the covered financial institution denies the application for this reason, the covered financial institution reports the reason for denial as “aggregate exposure.” Comment 107(a)(11)-1.viii.
  - If a covered financial institution denies a reportable application due to the total exposure or level of indebtedness of a business applicant and an owner who is not a principal owner pursuant to the final rule, the financial institution reports “other.”
- *Unverifiable information*. A covered financial institution reports the denial reason as “unverifiable information” when it is unable to verify information provided as part of an application, and denies the application for that reason. The unverifiable information must be necessary for the covered 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. Comment 107(a)(11)-1.ix.

- Other. A covered financial institution reports the denial reason as “other” where none of the enumerated denial reasons adequately describes the principal reason or reasons it denied the application, and the institution reports the denial reason or reasons via a free-form text field. Comment 107(a)(11)-1.x.

The denial reasons that a covered financial institution compiles and reports must accurately describe the principal reason or reasons the financial institution denied the application. Comment 107(a)(11)-1.

If the action taken on a reportable application is not a denial, a covered financial institution reports that this data point is “not applicable.” For example, if a reportable application results in the origination of a covered credit transaction or if a reportable application is approved but not accepted, a covered financial institution reports that this data point is “not applicable” for the reportable application. Comment 107(a)(11)-2.

## 3.12 Pricing information

For each reportable application that results in a covered credit transaction being originated and for each reportable application that is approved but not accepted, a covered financial institution must compile and report each of the following, as applicable:

### 1. Interest rate.

(a) If the interest rate is fixed, a covered financial institution compiles and reports the interest rate that is or would be applicable to the covered credit transaction. 12 CFR 1002.107(a)(12)(i)(A).

(b) If the interest rate is adjustable, a covered financial institution compiles and reports the margin, index value, initial rate period expressed in months (if applicable), and index name that is or would be applicable to the covered credit transaction. 12 CFR 1002.107(a)(12)(i)(B). A covered financial institution must compile and report the index used from the following list: Wall Street Journal Prime, 6-month CD rate, 1-year T-Bill, 3-year T-

□ A covered financial institution reports the interest rate applicable to the dollar amount that it used when reporting the amount of credit approved or originated as discussed in Section 3.8. For example, if the interest rate may differ depending on the amount of the loan or the amount outstanding on a loan, the covered financial institution reports the interest rate that would apply to the dollar amount that the covered financial institution used when compiling and reporting the amount of credit approved or originated for the reportable application. See comments 107(a)(12)(i)-1 and 107(a)(8)-1.

Bill, 5-year T-Note, 12-month average of 10-year T-Bill, Cost of Funds Index (COFI)-National, Cost of Funds Index (COFI)-11th District, Constant Maturity Treasury (CMT), internal index, or other. If the index used is internal to the covered financial institution, it compiles and reports “internal index.” If the index used does not appear on the list and is not internal to the covered financial institution, the covered financial institution compiles and reports “other” and reports the name of the index via a free-form text field. Comment 107(a)(12)(i)-4. For a covered credit transaction with an adjustable interest rate, a covered financial institution compiles and reports the index value used to set the rate that is or would be applicable to the covered credit transaction. Comment 107(a)(12)(i)-5.

If a covered credit transaction includes an initial period with an introductory interest rate of 12 months or less, after which the interest rate adjusts upwards or shifts from a fixed to variable rate, a covered financial institution compiles and reports information about the interest rate applicable after the initial period. If a covered credit transaction includes an initial period with an interest rate of more than 12 months after which the interest rate resets, the covered financial institution compiles and reports information about the interest rate applicable prior to the reset period. Comment 107(a)(12)(i)-2.

**Example 1:** Lender is a covered financial institution, and originates a covered credit transaction to a small business. The covered credit transaction has a fixed, initial interest rate of three percent for twelve months following origination, after which the interest rate will adjust according to the Wall Street Journal Prime index rate plus a two percent margin. Lender reports the two percent margin (*i.e.*, “2”), “Wall Street Journal Prime” as the index used to adjust the interest rate, twelve months (*i.e.*, the number “12”) for the length of the initial period, and “not applicable” for the index value.

**Example 2:** Lender is a covered financial institution and originates a covered credit transaction to a small business. During the first three years of the repayment period, the transaction has a fixed rate of five percent, and after year three the interest rate will adjust according to the Wall Street Journal Prime index rate plus a two percent margin. Lender reports the fixed rate of five percent (*i.e.*, “5”), 36 months (*i.e.*, the number “36”) for the initial period, and “not applicable” in the fields for the index, margin, and index value.

If a covered credit transaction includes multiple interest rates applicable to different credit features, a covered financial institution compiles and reports the interest rate applicable to the amount of credit used when compiling and reporting the amount of credit approved or originated. See Section 3.8. Comment 107(a)(12)(i)-3.

2. Total origination charges. A covered financial institution compiles and reports the total amount of all charges payable directly or indirectly by the applicant and imposed directly or indirectly by the covered financial institution at or before origination as an incident to or a condition of the extension of credit, expressed in dollars. 12 CFR 1002.107(a)(12)(ii).

A covered financial institution includes fees and amounts charged by someone other than itself in the total charges reported if:

- The covered financial institution 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. Comment 107(a)(12)(ii)-2.i.
- The covered financial institution retains a portion of the third-party charge, to the extent of the portion retained. Comment 107(a)(12)(ii)-2.ii.
- The fee is charged by a broker. This includes fees paid by the applicant directly to the broker or to the covered financial institution for delivery to the broker. Broker fees are included in the total origination charges even if the covered financial institution does not require the applicant to use a broker and even if the covered financial institution does not retain any portion of the charge. Comment 107(a)(12)(ii)-3. Additional information on broker fees is included below.

- ☐ Charges imposed uniformly in cash and credit transactions are not compiled or reported. In determining whether an item is part of the total origination charges, a covered financial institution should compare the covered credit transaction in question with a similar cash transaction. Comment 107(a)(12)(ii)-1.
- ☐ Examples of origination charges may include application fees, credit report fees, points, appraisal fees, and other similar charges. Comment 107(a)(12)(ii)-5.

Total origination charges include all charges imposed directly or indirectly by the covered financial institution at or before origination as an incident to or a condition of the extension of credit. Accordingly, the total origination charges that the covered financial institution compiles and reports include charges for other products or services paid at or before origination if the covered financial institution requires the purchase of such other product or service as a condition of or an incident to the extension of credit. Comment 107(a)(12)(ii)-4.

If a covered financial institution provides a credit to an applicant that is greater than the total origination charges the applicant would have paid, the covered financial institution compiles and reports the net lender credit as a negative amount. For example, if as part of the covered credit transaction, the covered financial institution provides the applicant \$500 at origination to offset closing costs and the covered financial institution does not charge any origination charges, the covered financial institution compiles and reports negative \$500 (*i.e.*, "-\$500") as the total origination charges. Comment 107(a)(12)(ii)-6.

3. *Broker fees*. A covered financial institution compiles and reports the total amount of all charges included in the total origination charges (see above) that are fees paid by the applicant directly to a broker or to the covered financial institution for delivery to a broker, expressed in dollars. 12 CFR 1002.107(a)(12)(iii). For example, if a covered credit transaction has \$3,000 of total origination charges and \$250 are fees paid by the applicant directly to a broker and an additional \$300 are fees paid to the covered financial institution for delivery to the broker, the covered financial institution compiles and reports \$550 (*i.e.*, "\$550") as broker fees. Comment 107(a)(12)(iii)-1. A covered financial institution may rely on the best information readily available to it at the time final action is taken. Information readily available could include, for example, information provided by an applicant or broker that the covered financial institution reasonably believes regarding the amount of fees paid by the applicant directly to the broker. Comment 107(a)(12)(iii)-2.

4. *Initial annual charges*. A covered financial institution compiles and reports 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. 12 CFR

1002.107(a)(12)(iv); see also comment

107(a)(12)(iv)-1. A covered financial institution

only includes scheduled charges and excludes

any charges for events that are avoidable by the

applicant from the initial annual charges reported. For example, charges for late payment, for exceeding a credit limit, for delinquency or default, or for paying items that overdraw an account are avoidable charges that are excluded. Comment 107(a)(12)(iv)-3. Initial annual charges are non-interest charges, so a covered financial institution excludes any interest expense from the initial annual charges reported. Comment 107(a)(12)(iv)-2.

☐ Examples of charges scheduled to be imposed during the initial annual period may include monthly fees, annual fees, and other similar charges. Comment 107(a)(12)(iv)-4.

**Example 1:** Lender originates a covered credit transaction with a \$50 monthly fee and a \$100 annual fee. The terms of the covered credit transaction also permit Lender to charge the small business borrower a \$50 late fee. Additionally, interest accrues on the

outstanding balance of the transaction during the initial annual period. Lender compiles and reports \$700 (*i.e.*, “700”) as the initial annual charges (*i.e.*, \$100 annual fee plus \$50 monthly fee x 12 months).

If a covered credit transaction has scheduled charges with variable amounts, a covered financial institution compiles and reports the highest amount that may be imposed for that scheduled charge. 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 covered financial institution, the covered financial institution compiles and reports \$900 (*i.e.*, “900”) (\$75 monthly fee x 12 months) as the initial annual charges. Comment 107(a)(12)(iv)-5.

For a covered credit transaction with a term of less than one year, a covered financial institution compiles and reports all charges scheduled to be imposed during the term of the transaction. Comment 107(a)(12)(iv)-6.

5. *Additional cost for merchant cash advances or other sales-based financing.* For a covered credit transaction that is a merchant cash advance or other sales-based financing transaction, a covered financial institution compiles and reports the difference between the amount advanced and the amount to be repaid, using the amounts (expressed in dollars) provided in the contract between the covered financial institution and the applicant. 12 CFR 1002.107(a)(12)(v); comment 107(a)(12)(v)-1.

6. *Prepayment penalties.*

(a) *Prepayment penalty could have been included.* A covered financial institution compiles and reports whether the financial institution could have included a charge to be imposed for paying all or part of the covered credit transaction’s principal before the date on which the principal is due under the policies and procedures applicable to the covered credit transaction (*i.e.*, the covered financial institution reports either “yes” or “no” for this data field). 12 CFR 1002.107(a)(12)(vi)(A). The covered financial institution compiles and reports that such a charge could have been imposed if the covered financial institution’s policies and procedures permit the charge regardless of whether the particular covered credit transaction actually does or would have included such a charge.

The policies and procedures applicable to the covered credit transaction include the practices that the covered financial institution follows when evaluating

applications for the specific credit type and credit purpose requested. For example, if a covered financial institution’s written procedures permit it to include prepayment penalties in the loan agreement for its business term loans (but the covered financial institution does not always include prepayment penalties in the loan agreement for business term loans), the covered financial institution reports that a prepayment penalty could have been included (*i.e.*, reports “yes”), regardless of whether the particular term loan actually includes or would have included a prepayment penalty. Comment 107(a)(12)(vi)-1.

- (b) *Prepayment penalty actually included.* The covered financial institution compiles and reports 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 (*i.e.*, the covered financial institution reports either “yes” or “no” for this separate data field). 12 CFR 1002.107(a)(12)(vi)(B).

For purposes of the final rule, a prepayment penalty includes any balloon finance charge that may be imposed for paying all or part of the transaction’s principal before the date on which the principal is due. For example, under the terms of a covered credit transaction, assume the amount of funds advanced is \$12,000, the amount to be repaid is \$24,000 (which includes \$12,000 in principal and \$12,000 in interest and fees), the length of the transaction is 12 months, and the applicant must repay \$2,000 per month. The terms of the transaction state that if the applicant prepays the principal on the 12-month loan before the 12-month period is over, then the applicant is responsible for paying the difference between the total amount that would have been repaid over the 12 months and the amount the applicant has already repaid prior to initiating prepayment. The difference between the \$24,000 to be repaid and what the applicant has already repaid prior to initiating prepayment is a balloon finance charge and is reported as a prepayment penalty. Comment 107(a)(12)(vi)-2.

For reportable applications that a covered financial institution reports as “denied,” “withdrawn by the applicant,” or “incomplete,” the covered financial institution reports that pricing information is “not applicable.” Comment 107(a)(12)-1.

## 3.13 Census tract

For each reportable application, a covered financial institution must compile and report the census tract for one of the following locations, as applicable:

- The address or location where the proceeds of the covered credit transaction will be or would have been principally applied, if known. For example, a covered 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 or would have been used. Comment 107(a)(13)-1.i.
- If the address or location where the proceeds of the covered credit transaction will be or would have been principally applied is not known, the address or location of the applicant's main office or headquarters, if known. For example, the address or location of the applicant's main office or headquarters may be the home address of a sole proprietor or the office address of a sole proprietor or other applicant. Comment 107(a)(13)-1.ii.
- If neither the address or location where the proceeds of the covered credit transaction will be or would have been principally applied nor the address or location of the applicant's main office or headquarters are known, another address or location associated with the applicant. Comment 107(a)(13)-1.iii.

❑ A covered financial institution reports a census tract number as defined by the U.S. Census Bureau, which includes state and county numerical codes. A covered financial institution must use 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. Comment 107(a)(13)-1.

12 CFR 1002.107(a)(13)(i)-(iii).

A covered financial institution must also indicate which one of the three types of addresses or locations it is using when compiling and reporting the census tract. 12 CFR 1002.107(a)(13)(iv).

**Example 1:** Company submits a reportable application to Lender and requests an extension of credit to remodel a building. Company includes the address of its main office on an application form, but does not indicate if that is the address where the loan proceeds will be used for the remodeling. Following its standard procedures, Lender requests and obtains the address where the loan proceeds will be used, and determines it is the address listed on the application form. Lender reports census tract using the

address listed on the application form and also reports that the census tract is based on the “address or location where the proceeds will be principally applied.”

**Example 2:** Company submits a reportable application to Lender and requests an extension of credit to remodel a building. Company includes the address of its main office on the application form, and Lender is aware that Company has provided its main office address. However, Company does not indicate if that is the address where the loan proceeds will be used. Lender requests the address where the remodeling will take place, but Company withdraws its application before Lender determines whether the address where the loan proceeds would have been used for the remodeling is the address listed on the application form. In this case, Lender reports census tract using the address listed on the application form and reports that the census tract is based on the “address or location of the borrower’s main office or headquarters.”

**Example 3:** Company submits a reportable application to Lender and requests a loan to purchase equipment. Company provides an address for its main office on an application form. During the underwriting process, Lender discovers that Company will use the equipment at a third party’s location pursuant to Company’s agreement to provide certain services to the third party. However, Lender does not know the address of that location. Lender reports census tract using the address provided on the application form and reports that the census tract is based on the “address or location of the borrower’s main office or headquarters.”

**Example 4:** Company submits a reportable application to Lender requesting a loan to purchase a truck. Company lists the owner’s home address on the application form, but does not identify it as the main office or headquarters. Lender reports census tract using the address of the owner’s personal residence listed on the application form and reports that the census tract is based on “another address or location associated with the applicant.”

**Example 5:** Company submits a reportable application for a credit card account and indicates that the credit card will be used for various business-related purchases. Company provides the address for its main office on documents it submits as part of its application, and Lender knows that the address is for Company’s main office. Lender reports census tract using the address listed on the application form and reports that the census tract is based on the “address or location of the borrower’s main office or headquarters.” In addition, if Company requests three credit card accounts for each of three employees, and provides the mailing addresses of the three employees, Lender

still reports the census tract using the Company's main office address because the employees' addresses are neither the locations where the funds will be principally applied nor the main office or headquarters of the applicant. The employees' addresses are merely other locations associated with the application, and Company has provided the main office or headquarters location, which takes precedence for census tract reporting.

As discussed in Section 4.2, a covered financial institution must have procedures reasonably designed to collect applicant-provided data, which includes at least one address or location for census tract reporting. If a covered financial institution is nonetheless unable to collect or otherwise determine any address or location for a reportable application, the covered financial institution reports that the census tract information is "not provided by applicant and otherwise undetermined." Comment 107(a)(13)-3. However, if the covered financial institution obtains an address but is unaware of whether it is the address where the proceeds will be applied, the address for the applicant's main office or headquarters, or simply another address associated with the applicant, the covered financial institution reports that the census tract is for another address associated with the applicant. Comment 107(a)(13)-1.iii.

A covered financial institution complies with the final rule 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 covered financial institution. A covered financial institution is not required to make inquiries beyond those set out in its procedures as to the nature of the addresses or locations it collects. Comment 107(a)(13)-2.

Additionally, an incorrect entry for census tract is not a violation of ECOA or the final rule if the covered financial institution obtained the census tract by correctly using a geocoding tool provided by the FFIEC or the CFPB. 12 CFR 1002.112(c)(2); comment 107(a)(13)-4. However, this safe harbor provision does not extend to a financial institution's failure to provide the correct census tract number 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. Comment 112(c)-1.

## 3.14 Gross annual revenue

For each reportable application, a covered financial institution must compile and report the applicant's gross annual revenue for the applicant's preceding fiscal year. 12 CFR 1002.107(a)(14).

A covered financial institution must compile and report the gross annual revenue for the applicant's fiscal year preceding when data is collected, and gross annual revenue must be reported in dollars. Comment 107(a)(14)-1.

**Example 1:** Company submits a reportable application to Lender on October 10, 2027.

Lender approves the application on October 25, 2027. Company's fiscal year starts on October 1 and ends September 30. Lender reports Company's gross annual revenue for the fiscal year starting on October 1, 2026 and ending September 30, 2027.

**Example 2:** Company submits a reportable application to Lender on September 15, 2027, and includes its gross annual revenue information from its preceding fiscal year on the application form. Company's fiscal year starts on October 1 and ends September 30. Lender does not subsequently collect more recent gross annual revenue information and approves the application on October 5, 2027. Lender reports Company's gross annual revenue for the fiscal year starting on October 1, 2025 and ending September 30, 2026.

A covered financial institution may rely on the applicant's statements or on information provided by the applicant in collecting and reporting gross annual revenue, even if the applicant's statement or information is based on estimation or extrapolation. However, if a covered financial institution verifies the gross annual revenue provided by the applicant, the covered financial institution must report the verified information. Also, a covered financial institution reports updated gross annual revenue if it obtains more current information from the applicant during the application process. However, if a covered financial institution verifies gross annual

- ❑ A covered financial institution may use the following language to ask about gross annual revenue and may rely on the applicant's answer: "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." Comment 107(a)(14)-1.

revenue and then receives updated gross annual revenue information from the applicant, the covered financial institution reports the information it believes to be more accurate, in its discretion. Comment 107(a)(14)-1. See also comment 107(c)(1)-5.

As discussed in the preamble to the final rule, “verification” means the intentional act of determining the accuracy of information provided, generally for the purposes of processing and underwriting the application, and potentially changing that information to reflect that determination. Post-origination independent testing and validation of the small business data file does not constitute “verification” for purposes of reporting data pursuant to the final rule.

**Example 1:** Lender asks applicants for covered credit transactions to state their gross annual revenue for the preceding fiscal year on an application form. During its underwriting process, Lender verifies an applicant’s gross revenue for the preceding twelve months using appropriate documents, but does not review gross annual revenue for the applicant’s preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that Company’s gross annual revenue in its preceding fiscal year was \$3 million. Lender also obtains and verifies Company’s gross revenue for the preceding twelve months and determines that Company’s gross revenue for the preceding twelve months was \$2.8 million. Because Lender did not verify Company’s gross annual revenue for Company’s preceding fiscal year, Lender reports that Company’s gross annual revenue was \$3 million in its preceding fiscal year. However, if Lender verifies Company’s gross annual revenue for the preceding fiscal year prior to originating the covered credit transaction, Lender reports the verified gross annual revenue.

**Example 2:** Lender asks applicants for covered credit transactions to state their gross annual revenue for the preceding fiscal year on an application form. During the application process, Lender also requests that small business applicants provide documents in order to verify the applicant’s gross annual revenue for its preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that its gross annual revenue in its preceding fiscal year was \$3 million. Lender asks Company to provide documents to verify gross annual revenue. Based on the documents it receives, Lender determines that Company had \$3.1 million in verifiable gross annual revenue in its preceding fiscal year. Lender reports Company’s gross annual revenue as \$3.1 million.

**Example 3:** Lender asks applicants for covered credit transactions to state their gross annual revenue for the preceding fiscal year on an application form. During the application process, Lender also requests documents regarding an applicant's gross annual revenue. During its underwriting process, Lender verifies, among other things, gross annual revenue for an applicant's preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that Company's gross annual revenue in its preceding fiscal year was \$3 million. Based on the documents it collects during the application process, Lender verifies that Company had \$3 million in gross annual revenue in its preceding fiscal year. Lender approves Company's application based on this verified gross annual revenue. However, after Lender approves the application but before the covered credit transaction is originated, Company provides updated financial documents showing that Company has \$3.1 million in gross annual revenue in its preceding fiscal year. Based on these documents, Lender determines that the \$3.1 million gross annual revenue is more accurate and reports that number for Company's gross annual revenue. Lender has complied with the final rule.

**Example 4:** Lender asks applicants for covered credit transactions to state their gross annual revenue for the preceding fiscal year on an application form. During the application process, Lender also requests documents regarding an applicant's gross annual revenue. During its underwriting process, Lender verifies, among other things, gross annual revenue for an applicant's preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that Company's gross annual revenue in its preceding fiscal year was \$3 million. Company also submits financial documents with its application form. However, prior to Lender's review of the financial documents and verification of gross annual revenue, Company submits updated financial documents. Lender uses these updated financial documents and determines that Company had \$2.9 million in verifiable gross annual revenue in its preceding fiscal year. Lender reports that Company's gross annual revenue was \$2.9 million.

**Example 5:** Lender asks applicants for covered credit transactions to state their gross annual revenue for their preceding fiscal year on an application form. During the application process, Lender also requests documents regarding an applicant's gross annual revenue. During its underwriting process, Lender uses the documents to verify gross annual revenue for an applicant's preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that Company's gross annual revenue in its preceding fiscal year was \$3 million. During its

underwriting process, Lender verifies that Company had \$3 million in gross annual revenue in its preceding fiscal year. After Lender originates a covered credit transaction to Company, Company submits updated financial document pursuant to a requirement in the loan documentation. Lender uses this documentation to determine that Company actually had \$3.1 million in gross annual revenue for the relevant fiscal year. Lender may report that Company's gross annual revenue was \$3 million or was \$3.1 million.

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided data, including the applicant's gross annual revenue. However, if a covered financial institution is nonetheless unable to collect or determine the applicant's gross annual revenue, the covered financial institution reports that the gross annual revenue is "not provided by applicant and otherwise undetermined." Comment 107(a)(14)-2. This could occur, for example, if a covered financial institution asked an initial screening question to determine if an applicant was a small business (*i.e.*, "Was your gross annual revenue in your preceding fiscal year \$5 million or less?") but is unable to collect or determine the applicant's gross annual revenue for the applicant's preceding fiscal year.

### 3.14.1 Affiliate revenue

A covered financial institution is permitted, but not required, to report gross annual revenue that includes revenue from the applicant's affiliates as well as the applicant's revenue. Comment 107(a)(14)-3.

**Example 1:** Lender asks applicants for covered credit transactions to state their gross annual revenue for the preceding fiscal year on an application form. During the application process, Lender also requests documents regarding an applicant's gross annual revenue. During its underwriting process, Lender verifies, among other things, gross annual revenue for an applicant's preceding fiscal year. Company submits a reportable application to Lender and, on the required application form, states that Company's gross annual revenue in its preceding fiscal year was \$3 million. Company submits consolidated financial statements that document the gross annual revenue of Company and its affiliate. Based on the documents, Lender determines that Company had \$2 million in verified gross annual revenue during its preceding fiscal year and its

affiliate had \$1 million in verified gross annual revenue, for a combined total of \$3 million in verified gross annual revenue during their preceding fiscal year. Lender may report Company's gross annual revenue as \$3 million or as \$2 million.

**Example 2:** Lender asks applicants for covered credit transactions to state their gross annual revenue. Company submits a reportable application to Lender and states that the gross annual revenue for Company and its affiliates in their preceding fiscal year was \$1.9 million. Lender does not verify gross annual revenue. Lender reports Company's gross annual revenue as \$1.9 million.

### 3.14.2 Startup businesses

In a typical situation involving an applicant that is a startup business, the applicant will not have any gross annual revenue for the applicant's fiscal year preceding when data is collected. In that case, a covered financial institution reports that the applicant's gross annual revenue in the preceding fiscal year is zero (*i.e.*, "0"). The covered financial institution must not report projected revenue figures because these figures do not reflect actual gross revenue. Comment 107(a)(14)-4.

## 3.15 NAICS code

For each reportable application, a covered financial institution must compile and report a 3-digit North American Industry Classification System (NAICS) code for the applicant. 12 CFR 1002.107(a)(15).

As discussed in Section 4.2, a covered financial institution must have procedures reasonably designed to collect applicant-provided information, which includes NAICS code. However, if a covered financial institution is nonetheless unable to collect or otherwise determine a NAICS code for an applicant, the covered financial institution reports that the NAICS code is "not provided by applicant and otherwise undetermined." Comment 107(a)(15)-2.

□ The Office of Management and Budget has charged the Economic Classification Policy Committee with the maintenance and review of NAICS. A covered financial institution complies with the final rule if it uses the 3-digit NAICS subsector codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting. Comment 107(a)(15)-1.

An incorrect entry for a 3-digit NAICS code is not a violation of ECOA or the final rule, provided that the covered financial institution obtained the 3-digit NAICS code by:

- Relying on an applicant's representations regarding the NAICS code or on an appropriate third-party source, in accordance with the provisions on applicant-provided data (discussed in Section 4); or
- Identifying the NAICS code itself, provided that the covered financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.

12 CFR 1002.112(c)(3); comment 107(a)(15)-3.

This safe harbor applies to an incorrect entry for the 3-digit NAICS code, provided certain conditions are met. A covered financial institution is permitted to rely on statements made by the applicant, information provided by the applicant, or on other information obtained through its use of appropriate third-party sources, including business information products. See also comments 107(a)(15)-3 and 107(b)-1. Comment 112(c)-2.

## 3.16 Number of workers

For each reportable application, a covered financial institution must compile and report the number of non-owners who work for the applicant. 12 CFR 1002.107(a)(16).

A covered financial institution may ask an applicant for its number of workers using the ranges for reporting specified in the filing instructions guide or as a numerical value. Comment 107(a)(16)-2. However, when compiling and reporting the number of workers, a covered financial institution must use the ranges prescribed in the filing instructions guide. Comment 107(a)(16)-1.

When asking an applicant for its number of workers, a covered financial institution must explain that full-time, part-time, and seasonal employees, as well as contractors who work primarily for the applicant, are counted as workers. An applicant's principal owners are not counted as workers, but owners who directly own less than 25 percent of the applicant's equity interests

□ A covered 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 (unless the covered financial institution verifies the information or receives updated information): "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?" Comment 107(a)(16)-2.

(*i.e.*, owners who are not principal owners as that term is defined in the final rule) are counted as workers. If asked, the covered financial institution must explain that volunteers are not counted as workers, and workers for affiliates of the applicant are counted if the covered financial institution is also collecting the affiliates' gross annual revenue. Comment 107(a)(16)-2.

As discussed in Section 4.2, a covered financial institution must have procedures reasonably designed to collect applicant-provided data, including the applicant's number of workers. However, if a covered financial institution is nonetheless unable to collect or determine the number of workers, the covered financial institution reports that the number of workers is "not provided by applicant and otherwise undetermined." Comment 107(a)(16)-3.

## 3.17 Time in business

For each reportable application, a covered financial institution must compile and report the time that the applicant has been in business. 12 CFR 1002.107(a)(17).

If a covered financial institution collects or otherwise obtains the number of years an applicant has been in business as part of its procedures for evaluating a reportable application, the covered financial institution reports that information (in whole years rounded down to the nearest whole year) as the applicant's time in business. Comment 107(a)(17)-1.i.

A covered financial institution that collects or obtains an applicant's time in business as part of its procedures for evaluating a reportable application is not required to collect or obtain time in business pursuant to any particular definition of time in business. For example, if a covered financial institution collects the number of years the applicant has existed (such as by asking the applicant when its business was started, or by obtaining the applicant's date of incorporation from a Secretary of State or other agency that registers or licenses businesses) as the time in business, the covered financial institution reports that information for time in business (as whole years rounded down to the nearest whole year). Similarly, if the covered financial institution collects the number of years of experience the applicant's owners have in the current line of business, the covered financial institution reports that information (as whole years rounded down to the nearest whole year). If, however, the covered financial institution collects both the number of years the applicant has existed as well as some other measure of time in business (such as the number of years of experience the applicant's owners have in the current line of business), the covered financial institution reports the number of years the applicant has existed as the time in business (as whole years rounded down to the nearest whole year).

Comment 107(a)(17)-2.

**Example 1:** When underwriting a covered credit transaction, Lender considers how long the applicant has been in its current line of business. Company submits a reportable application, and Lender determines that Company has been in its current line of business for eight years and eleven months. Lender reports Company's time in business as eight years.

**Example 2:** When underwriting a covered credit transaction, Lender considers how long the applicant has been in business as well as how long the applicant has been in its current line of business. Company submits a reportable application, and Lender determines that Company has been in business for five years and six months but has only been in its current line of business for four years and two months. Lender reports Company's time in business as five years.

If a covered financial institution does not collect an applicant's time in business as a specific number of years (*e.g.*, that the business was established eight years ago, or that the business was established in 2017) but as part of its procedures for evaluating a reportable application determines whether or not the applicant's time in business is less than two years, the covered financial institution reports the applicant's time in business as either less than two years or two or more years in business. Comment 107(a)(17)-1.ii.

If a covered financial institution does not otherwise collect time in business as part of its procedures for evaluating a reportable application, the covered financial institution must ask the applicant whether it has been in existence for less than two years or two or more years and reports the information provided by the applicant. Comment 107(a)(17)-1.iii.

**Example 1:** When underwriting a covered credit transaction, Lender does not collect or consider how long an applicant has been in business, how long an applicant has been in its current line of business, how long the applicant's owners have been in business, or any other factor related to an applicant's time in business. However, pursuant to the final rule, Lender asks small business applicants for covered credit transactions if they have been in existence for less than two years or for two or more years. Company submits a reportable application, and checks a box on an online application form indicating that it has been in business for two or more years. Lender reports Company's time in business is "two or more years."

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided data, including the applicant’s time in business. However, if a covered financial institution is nonetheless unable to collect or determine the applicant’s time in business, the covered financial institution reports that the time in business is “not provided by applicant and otherwise undetermined.” Comment 107(a)(17)-3.

## **3.18 Minority-owned business status, women-owned business status, and LGBTQI+-owned business status**

For each reportable application, a covered financial institution must compile and report whether the applicant is a minority-owned, women-owned, and/or LGBTQI+-owned business. 12 CFR 1002.107(a)(18). The covered financial institution must collect and report this information in the manner discussed in Sections 3.18.1 through 3.18.3 and provide the required notices discussed in Section 3.18.4. The covered financial institution must also compile and maintain the information in accordance with the specific requirements discussed in Section 3.18.5 (as well as the general requirements discussed in Sections 4, 5, 6, and 8.2).

### **3.18.1 Collecting and reporting business status data**

A covered financial institution must ask a small business applicant whether it is a minority-owned, women-owned, and/or LGBTQI+-owned business (unless it is permitted to report based on previously collected information as discussed in Section 4.4). A covered financial institution must provide the applicant with the final rule’s definitions of the terms “minority-owned business,” “women-owned business,” and “LGBTQI+-owned business.” A covered financial institution satisfies this requirement if it provides the definitions as set forth in the sample data collection form. Comment 107(a)(18)-2. For the definitions of the terms “LGBTQI+-owned business,” “minority-owned business,” and “women-owned business,” see 12 CFR 1002.102(l), (m), and (s).

A covered financial institution must permit an applicant to refuse to answer the institution’s inquiries regarding business status and must inform the applicant that the applicant is not required to provide the information.<sup>18</sup> The covered financial institution must report the applicant’s response(s), that the applicant refused to answer an inquiry (e.g., that the applicant

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<sup>18</sup> The sample data collection form includes sample language for providing this notice to applicants.

selected “I do not wish to provide this information” or provided a similar response), or that the applicant failed to respond to the inquiry, as applicable. Comment 107(a)(18)-1.

**Example 1:** Lender provides a data collection form to small business applicants for covered credit transactions at the same time that it provides an application form. The data collection form asks an applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. The applicant can also check a box for “none of the above” or for “I do not wish to provide this information.” Company submits a reportable application, and returns the data collection form. In response to the questions asking about its business statuses, Company checks the box to indicate that it is a women-owned business. Company does not check any other boxes in response to the questions about business statuses. Lender reports that the applicant is a women-owned business.

**Example 2:** Assume the same facts as in Example 1, except that Company does not check any boxes in response to the question asking if it is a minority-owned business, women-owned business, and/or LGBTQI+-owned business. Additionally, Company does not check the box to indicate that it does not wish to provide the information. Lender reports “not provided by applicant ” for business status.

A covered financial institution must report the applicant’s response to its inquiry about minority-owned, women-owned, and LGBTQI+-owned business status for purposes of the final rule (or the response that the applicant previously provided if the covered financial institution is reporting based on previously provided data as discussed in Section 4.4), that the applicant declined to answer the inquiry, or the applicant’s failure to respond to the inquiry, even if the financial institution verifies or otherwise obtains an applicant’s minority-owned, women-owned, and/or LGBTQI+-owned business status for other purposes. Comment 107(a)(18)-9.

**Example 1:** Lender has an online data collection form. The data collection form asks a small business applicant for a covered credit transaction if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. An applicant can also check a box for “none of the above” or “I do not wish to provide this information.” Company submits a reportable application, and completes the online data collection form. Company checks the box for “none of the above,” indicating that it is not a minority-owned business, not a women-owned business, and not an LGBTQI+-

owned business. However, Company also provides documentation showing that it is a women-owned business and seeks a loan pursuant to a special program offered only to women-owned businesses. Lender reports “none of these apply” for business status.

A covered financial institution may ask the questions regarding minority-owned, women-owned, and LGBTQI+-owned business statuses, the principal owners’ ethnicity, race, and sex (see Section 3.19), and the applicant’s number of principal owners (see Section 3.20) on the same paper or electronic form. See the sample data collection form. Comment 107(a)(18)-3.

See also Section 3.18.5 regarding compiling and maintaining responses to inquiries about minority-owned, women-owned, and LGBTQI+-owned business statuses separate from the application and accompanying materials.

### **3.18.2 Applicant does not provide or refuses to provide information regarding business statuses**

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided information, which includes the applicant’s minority-owned, women-owned, and LGBTQI+-owned business statuses. However, if, despite maintaining procedures reasonably designed to obtain a response, a covered financial institution does not receive a response to its inquiry regarding the applicant’s business statuses pursuant to the final rule, the financial institution reports that the applicant’s business statuses were “not provided by applicant.” Comment 107(a)(18)-6.

**Example 1:** Lender provides a data collection form to small business applicants for covered credit transactions. Under Lender’s procedures, if an applicant has not returned the data collection form prior to being notified of final action taken, Lender will ask the applicant to return the form and, if the applicant needs a new form, Lender will provide a new form at that time. The data collection form asks an applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. An applicant can also check a box for “none of the above” or for “I do not wish to provide this information.” Company submits a reportable application, but does not return the data collection form. On multiple occasions, Lender asks Company to return the form, but Company does not return the form. Lender provides an additional form to

Company after notifying Company of Lender's approval, but Company does not return the data collection form. Lender reports "not provided by applicant" for business status.

However, if an applicant declines (*i.e.*, refuses) to provide information about minority-owned, women-owned, and LGBTQI+-owned business statuses, such as by selecting "I do not wish to provide this information" or a similar option on a paper or electronic form, the covered financial institution reports that the applicant refused to provide the information (*i.e.*, "the applicant responded that they did not wish to provide this information"). A covered financial institution also reports an applicant's refusal to provide such information, if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents. Comment 107(a)(18)-7.

**Example 1:** Lender provides a data collection form to small business applicants for covered credit transactions at the same time that it provides its application form. The data collection form asks a small business applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. The applicant also can check a box for "none of the above" or "I do not wish to provide this information." Company submits a reportable application, and returns the data collection form. Company checks the box indicating that does not wish to provide information about its business statuses. Lender reports that Company declined to provide business status information (*i.e.*, that "the applicant responded that they did not wish to provide this information").

**Example 2:** Assume the same facts as in Example 1, except that the Company does not return the data collection form. Lender asks Company to return the form, but Company does not return the form. Lender reports that applicant failed to provide business status information (*i.e.*, that the information was "not provided by applicant").

**Example 3:** Assume the same facts as in Example 1, except that Company does not return the data collection form. Lender asks Company to return the form, and Company informs Lender that Company does not wish to provide the requested information. Lender reports that applicant declined to provide business status information (*i.e.*, that "the applicant responded that they did not wish to provide this information").

### 3.18.3 Conflicting responses provided by applicants

If the applicant both provides a substantive response to a covered financial institution's inquiry regarding business statuses (that is, indicates that it is a minority-owned, women-owned, and/or LGBTQI+-owned business, checks a box for "none of the above" or "none apply," or provides a similar response indicating it is not a minority-owned, women-owned, and/or LGBTQI+-owned business) and also indicates it does not wish to provide business status information (such as by checking the box for a response that says "I do not wish to provide this information"), the financial institution reports the substantive response provided by the applicant (rather than reporting that the applicant declined to provide the information). Comment 107(a)(18)-8.

**Example 1:** Lender provides a data collection form at the same time that it provides its application form to small business applicants for covered credit transactions. The data collection form asks a small business applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. The applicant can check boxes to indicate "yes" for each business status (as applicable), check a box for "none of the above," or check a box for "I do not wish to provide this information." Company submits a reportable application, and returns the data collection form. Company checks the box indicating that it is a minority-owned business and also checks the box for "I do not wish to provide this information." Lender reports that Company is a minority-owned business.

### 3.18.4 Required notices

When requesting minority-owned, women-owned, and LGBTQI+-owned business statuses from an applicant, a covered financial institution must inform the applicant that it cannot discriminate on the basis of minority-owned, women-owned, or LGBTQI+-owned business status, or on whether the applicant provides this information. 12 CFR 1002.107(a)(18). It must disclose to the applicant that federal law requires it to ask for an applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A covered financial institution may combine these notices regarding minority-owned, women-owned, and LGBTQI+-owned business statuses with the notices that a covered financial institution is required to provide when requesting principal owners' ethnicity, race, and sex if a financial institution requests information about an applicant's business statuses, and principal owners' ethnicity, race, and sex in the same data collection form or at the same time.

See the sample data collection form for sample language that a covered financial institution may use for these notices. Comment 107(a)(18)-4.

### **3.18.5 Compiling and maintaining responses regarding business statuses**

A covered financial institution must maintain a record of an applicant's response to the inquiry regarding business statuses that the financial institution makes to satisfy the final rule's requirements separate from the application and accompanying information. See 12 CFR 1002.111(b) and comment 111(b)-1. For additional information on this requirement, see Section 6.2.

If the covered financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. For example, if the covered 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 covered financial institution uses a web-based data collection form, the form should be on its own page. Comment 107(a)(18)-5.

### **3.19 Principal owners' ethnicity, race, and sex**

For each reportable application, a covered financial institution must compile and report the ethnicity, race, and sex of the applicant's principal owners. 12 CFR 1002.107(a)(19). The covered financial institution must collect and report this information in the manner discussed in Sections 3.19.1 through 3.19.4 and provide the required notices discussed in Section 3.19.5. The covered financial institution must also compile and maintain the information in accordance with the specific requirements discussed in Section 3.19.6 (as well as the general requirements discussed in Sections 4, 5, 6, and 8.2).

### 3.19.1 Collecting and reporting ethnicity, race, and sex information

#### General

A covered financial institution must ask a small business applicant to provide its principal owners' ethnicity, race, and sex using the aggregate categories and disaggregated subcategories, and/or self-describe response options, as discussed below (unless it is permitted to report based on previously collected information as discussed in Section 4.4). The covered financial institution must permit an applicant to refuse (*i.e.*, decline) to answer the financial institution's inquiries and must inform the applicant that it is not required to provide the information. Comment 107(a)(19)-1. Additionally, the covered financial institution must provide the applicant with the definition of the term "principal owner" as set forth in the final rule when requesting a principal owner's ethnicity, race, and sex. See 12 CFR 1002.102(o). The covered financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form. Comment 107(a)(19)-2. The sample data collection form also provides sample language for the required notices and uses the categories and response options set forth in the final rule that must be used when asking about principal owners' ethnicity, race, and sex.

The covered financial institution must report the applicant's substantive responses regarding its principal owners' ethnicity, race, and sex (*i.e.*, the applicant's selections of one or more categories or subcategories, or information it otherwise provides, as to a principal owner's ethnicity, race, and sex), that the applicant declined to answer an inquiry (*i.e.*, that the applicant selected "I do not wish to provide this information" or provided a similar response), or that the applicant failed to respond to an inquiry, as applicable. If an applicant responds to some but not all of a covered financial institution's inquiries about the ethnicity, race, and sex of its principal owners, the financial institution reports the information that was provided by the applicant and reports that the applicant responded that it declined to provide or failed to provide (as applicable) the remainder of the information. Comment 107(a)(19)-1.

- A covered financial institution does not collect, compile, or report a guarantor's ethnicity, race, and sex unless the guarantor is also a principal owner of the applicant, as defined in the final rule. Comment 107(a)(19)-12.
- If a covered financial institution reports one or more principal owners' ethnicity, race, or sex based on previously collected data as permitted under the final rule, the financial institution does not need to collect any additional ethnicity, race, or sex information for other principal owners (if any). Comment 107(a)(19)-11. See also comment 107(d)-9. Additional information on previously collected information is available in Section 4.4.

The covered financial institution must report an applicant's responses about its principal owners' ethnicity, race, and sex, regardless of whether an applicant declines or fails to answer an inquiry about the number of its principal owners. Comment 107(a)(19)-1. For more information on collecting the number of principal owners, see Section 3.20.

**Example 1:** Lender provides a data collection form to small business applicants for covered credit transactions. The data collection form asks a small business applicant for its principal owners' ethnicity, race, and sex. For each question, the applicant can check a box to indicate that it does not wish to provide the information. Company submits a reportable application, and returns the data collection form. Company indicates that it has one principal owner. For that owner, it selects "Not Hispanic or Latino" for ethnicity, and "White" for race. It does not select any other aggregate categories or any disaggregated subcategories. For sex, Company checks the box for "I do not wish to provide this information." Lender reports "Not Hispanic or Latino" for principal owner one's ethnicity, "White" for principal owner one's race, and "the applicant responded that they did not wish to provide this information" for principal owner one's sex. Lender also reports "not applicable" for the ethnicity, race, and sex of principal owners two, three, and four.

**Example 2:** Lender provides a data collection form to small business applicants for covered credit transactions. The data collection form asks a small business applicant for its principal owners' ethnicity, race, and sex. For each question, the applicant can check a box to indicate that it does not wish to provide the information. Company submits a reportable application, and returns the data collection form. Company indicates that it has two principal owners. Company indicates that one principal owner is "Not Hispanic or Latino." Company does not check any other boxes or provide any other information on the form. Lender reports "Not Hispanic or Latino" for the first principal owner's ethnicity, and "not provided by applicant" for the first principal owner's race and sex as well as for the second principal owner's ethnicity, race, and sex. Lender also reports "not applicable" for the ethnicity, race, and sex of principal owners three and four.

A covered financial institution must report the applicant's responses to the ethnicity, race, and sex inquiries that the covered financial institution makes for purposes of the final rule, that the applicant declined to answer one or more of the specific inquiries, or the applicant's failure to respond to a specific inquiry, even if the financial institution verifies or otherwise obtains the

ethnicity, race, or sex of the applicant’s principal owners for other purposes. Comment 107(a)(19)-9.

**Example 1:** Lender has an online data collection form that small business applicants for covered credit transactions must complete. The data collection form asks a small business applicant to provide its principal owners’ ethnicity, race, and sex. For each question, the applicant can check a box to indicate that it does not wish to provide the information. Company submits a reportable application, and completes the online data collection form. Company checks the box for “I do not wish to provide this information” for the first principal owner’s ethnicity, race, and sex. Company also indicates that it has only one principal owner. However, to support its interest in a special purpose loan program, Company provides documentation showing that it is a women-owned business with one owner. Lender reports that Company declined to provide ethnicity, race, and sex information for its first principal owner (*i.e.*, “the applicant responded that they did not wish to provide this information”) and “not applicable” for principal owners two, three, and four.

A covered financial institution may combine on the same paper or electronic data collection form the questions regarding the principal owners’ ethnicity, race, and sex with a question regarding the applicant’s number of principal owners and with questions regarding the applicant’s minority-owned, women-owned, and LGBTQI+-owned business statuses (as required pursuant to the final rule). Comment 107(a)(19)-3.

## Ethnicity

A covered financial institution must permit an applicant to provide each principal owner’s ethnicity using one or more of the aggregate categories and/or disaggregated subcategories set forth in comments 107(a)(19)-13.i and .ii. See also the [sample data collection form](#).

Regardless of whether an applicant selects an aggregate category for a principal owner’s ethnicity, a covered financial institution must permit the applicant to select one or more of the disaggregated subcategories for that principal owner’s ethnicity. Comment 107(a)(19)-13.ii. The covered 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 covered financial institution must permit an applicant to select a disaggregated subcategory even if the applicant does not select the corresponding aggregate category. For example, an applicant must be permitted to select “Mexican” as a disaggregated subcategory for a principal

owner without being required to select “Hispanic or Latino” as an aggregate category. Comment 107(a)(19)-13.iii.

If an applicant selects “Other Hispanic or Latino” for a principal owner, the covered financial institution must permit the applicant to provide additional information regarding the principal owner’s ethnicity, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The covered financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard. If an applicant chooses to provide such additional information regarding a principal owner’s ethnicity, a covered financial institution must report that additional information via free-form text in the appropriate data reporting field. If the applicant provides this additional information regarding a principal owner’s ethnicity but does not also select “Other Hispanic or Latino” for the principal owner (*e.g.*, by selecting “Other Hispanic or Latino” on a paper or electronic form), a covered financial institution is permitted, but not required, to report “Other Hispanic or Latino” as well. Comments 107(a)(19)-13.i. and ii.

If an applicant provides ethnicity information for a principal owner, the covered financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects both aggregate ethnicity categories and four disaggregated subcategories for a principal owner, the covered financial institution reports the two aggregate categories and all four of the disaggregated subcategories that the applicant selected. Additionally, if an applicant selects “Mexican” as the only disaggregated subcategory for a principal owner and selects no aggregate categories, the covered financial institution reports “Mexican” for the ethnicity of the applicant’s principal owner but does not also report “Hispanic or Latino.” Further, if the applicant selects an aggregate category (*e.g.*, “Not Hispanic or Latino”) and a disaggregated subcategory that does not correspond to the aggregate category (*e.g.*, “Puerto Rican”), the covered financial institution reports the information as provided by the applicant (*e.g.*, “Not Hispanic or Latino,” and “Puerto Rican”). Comment 107(a)(19)-13.iii.

## Race

A covered financial institution must permit an applicant to provide each principal owner’s race using one or more of the aggregate categories and/or disaggregated subcategories set forth in comment 107(a)(19)-14.i and .ii. See also the [sample data collection form](#).

The aggregate categories of “Asian,” “Black or African American,” and “Native Hawaiian or Other Pacific Islander” each have several associated disaggregated subcategories. The covered financial institution must permit an applicant to provide a principal owner’s race using one or

more of the disaggregated subcategories regardless of whether the applicant has selected the corresponding aggregate category and regardless of whether the applicant selects any aggregate categories. Comments 107(a)(19)-14.ii. and iii. For example, an applicant must be permitted to select “Chinese” as a disaggregated subcategory for a principal owner without being required to select “Asian” as an aggregate category. A covered financial institution must permit the applicant to select as many aggregate categories and disaggregated subcategories as the applicant chooses. Comment 107(a)(19)-14.iii.

If an applicant provides race information for a principal owner, the covered financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects two aggregate race categories and five disaggregated subcategories for a principal owner, the covered financial institution reports the two aggregate categories that the applicant selected and the five disaggregated subcategories that the applicant selected. Additionally, if an applicant selects only “Chinese” as a disaggregated subcategory for a principal owner and selects no aggregate categories, the covered financial institution reports “Chinese” for the race of the principal owner but does not also report “Asian” as aggregate category for the principal owner. Similarly, if the applicant selects an aggregate category (*e.g.*, “Asian”) and a disaggregated subcategory that does not correspond to the aggregate category (*e.g.*, “Native Hawaiian”), the covered financial institution reports the information as provided by the applicant (*e.g.*, “Asian” and “Native Hawaiian”). Comment 107(a)(19)-14.iii.

One of the disaggregated response options for the aggregate categories of “Asian,” “Black or African American,” and “Native Hawaiian or Other Pacific Islander” is “Other Asian, “Other Black or African American,” and “Other Pacific Islander,” respectively. If an applicant selects “Other Asian,” “Other Black or African American,” or “Other Pacific Islander” for a principal owner, the covered financial institution must permit the applicant to provide additional information about the principal owner’s race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. Comments 107(a)(19)-14.ii.A, .B, and .C.

If an applicant chooses to provide additional information regarding a principal owner’s race, such as indicating that a principal owner is Cambodian, Barbadian, or Fijian orally or in writing on a paper or electronic form, a covered financial institution must report that additional information via free-form text in the appropriate data reporting field. However, if the applicant provides additional information regarding a principal owner’s race but does not select “Other Asian,” “Other Black or African American,” or “Other Pacific Islander,” as applicable for the principal owner (*e.g.*, by selecting “Other Asian” on a paper or electronic form), a financial institution is permitted, but not required, to report the corresponding “Other” race

disaggregated subcategory (*i.e.*, “Other Asian,” “Other Black or African American,” or “Other Pacific Islander”). Comment 107(a)(19)-14.ii.D.

For the aggregate category of “American Indian or Alaska Native” category, a covered financial institution must permit an applicant to provide the name of an enrolled or principal tribe, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. 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 covered financial institution must report that information via free-form text in the appropriate data reporting field. If the applicant provides the name of an enrolled or principal tribe but does not also indicate that the principal owner is American Indian or Alaska Native (*e.g.*, by selecting “American Indian or Alaska Native” on a paper or electronic form), a financial institution is permitted, but not required, to report “American Indian or Alaska Native” as well. Comment 107(a)(19)-14.ii.E.

### Ethnicity and race information requested orally

Generally, when collecting principal owners’ ethnicity and race pursuant to the final rule, a covered financial institution must present the applicant with the aggregate categories and disaggregated subcategories specified in the final rule. However, when collecting race and ethnicity information orally, such as by telephone, a covered financial institution is not required to present all of the aggregate and disaggregated categories as specified in the final rule. Nevertheless, a covered financial institution may not present the applicant with the option to decline to provide the information without also presenting the applicant with the specified aggregate categories and disaggregated subcategories. Comment 107(a)(19)-16.

Specifically, a covered financial institution is not required to read aloud every disaggregated subcategory when collecting race and ethnicity information orally, such as by telephone. Rather, the covered financial institution must orally present the lists of aggregate ethnicity and race categories, followed by the disaggregated subcategories (if any) associated with the aggregate categories selected by the applicant or which the applicant requests to be presented. After the applicant makes any disaggregated category selections associated with the aggregate ethnicity or race category, the covered financial institution must also ask if the applicant wishes to hear the lists of disaggregated subcategories for any aggregate categories not selected by the applicant. The covered financial institution must record any aggregate categories selected by the applicant, as well as any disaggregated subcategories regardless of whether such subcategories were selected based on the disaggregated subcategories read by the financial institution or were otherwise provided by the applicant. Comment 107(a)(19)-16.i.

If an applicant has more than one principal owner, a covered financial institution is permitted to ask about ethnicity and race in a manner that reduces repetition when collecting race and ethnicity information orally, such as by telephone. For example, if an applicant has two principal owners, a covered financial institution may ask for both principal owners' ethnicity at the same time, rather than asking about ethnicity, race, and sex for the first principal owner followed by ethnicity, race, and sex for the second principal owner. Comment 107(a)(19)-16.ii.

## Sex

Generally, a covered financial institution must permit an applicant to provide each principal owner's sex. When requesting information about a principal owner's sex, a financial institution shall use the term "sex/gender." If the covered financial institution uses a paper or electronic data collection form to collect the information, it must allow the applicant to provide each principal owner's sex/gender using free-form text. When a covered financial institution collects the information orally, such as by telephone, it must inform the applicant of the opportunity to provide each principal owner's sex/gender and record the applicant's response. A covered financial institution reports the substantive information provided by the applicant (reported via free-form text in the appropriate data reporting field), or reports that the applicant declined to provide the information. Comment 107(a)(19)-15.

See also Section 3.19.6 regarding compiling and maintaining responses to inquiries about principal owners' ethnicity, race, and sex separate from the application and accompanying materials.

### 3.19.2 Reporting for fewer than four principal owners

If an applicant has fewer than four principal owners, a covered financial institution reports ethnicity, race, and sex information for the number of principal owners that the applicant has and reports the ethnicity, race, and sex fields for additional principal owners as "not applicable." For example, if an applicant has only one principal owner, the financial institution reports ethnicity, race, and sex information for the first principal owner and reports as "not applicable" the ethnicity, race, and sex data fields for principal owners two through four. Comment 107(a)(19)-10.

### 3.19.3 Applicant does not provide or declines to provide ethnicity, race, or sex information

As discussed in Section 4.2, a covered financial institution must maintain procedures reasonably designed to collect applicant-provided data, which includes the ethnicity, race, and sex of an

applicant's principal owners. However, if, despite maintaining procedures reasonably designed to obtain a response, an applicant does not provide the information, such as in response to a request for a principal owner's ethnicity, race, or sex on a paper or electronic data collection form, a covered financial institution reports the ethnicity, race, or sex (as applicable) as "not provided by applicant" for that principal owner. Comment 107(a)(19)-6.

**Example 1:** Lender provides a data collection form to small business applicants for covered credit transactions. Company submits a reportable application. It indicates that it has two principal owners and provides ethnicity, race, and sex for the first principal owner, but does not make any selections for the second principal owner's ethnicity, race, and sex. Lender reports the ethnicity, race, and sex that the applicant provided for the first principal owner and reports that ethnicity, race, and sex for the second principal owner were "not provided by applicant." It reports that ethnicity, race, and sex are "not applicable" for principal owner three and principal owner four.

However, if the applicant declines (*i.e.*, refuses) to provide the information, such as by selecting "I do not wish to provide this information" or a similar option on a paper or electronic form, the covered financial institution reports that "the applicant responded that they did not wish to provide this information" about a principal owner's ethnicity, race, or sex (as applicable). A covered financial institution also reports an applicant's refusal to provide such information in this way if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents. Comment 107(a)(19)-7.

### 3.19.4 Conflicting responses provided by applicant

If the applicant both provides a substantive response to a request for a given principal owner's ethnicity, race, or sex (that is, identifies a principal owner's ethnicity, race, or sex) and also indicates that it does not wish to provide the information (*e.g.*, selects "I do not wish to provide this information" or provides a similar response), the covered financial institution reports the information on ethnicity, race, or sex that was provided by the applicant (rather than reporting that "the applicant responded that they did not wish to provide this information"). Comment 107(a)(19)-8.

For example, if an applicant is completing a paper data collection form and writes in a response that a principal owner's sex is "female" and also indicates on the form that the applicant does

not wish to provide information regarding that principal owner's sex, the covered financial institution reports the principal owner's sex as "female" in the appropriate data reporting field. Comment 107(a)(19)-8.

### **3.19.5 Required notices**

When requesting a principal owner's ethnicity, race, and sex from an applicant, a covered financial institution must inform the applicant that the covered financial institution cannot discriminate on the basis of a principal owner's ethnicity, race, or sex, or on whether the applicant provides the information. 12 CFR 1002.107(a)(19). A covered financial institution must also inform the applicant that federal law requires it to ask for the principal owners' ethnicity, race, and sex to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A covered financial institution may combine these notices with the similar notices that a financial institution is required to provide when requesting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, if the financial institution requests information about an applicant's business statuses and principal owners' ethnicity, race, and sex in the same data collection form or at the same time. See the sample data collection form for sample language that a financial institution may use for these notices. Comment 107(a)(19)-4.

### **3.19.6 Compiling and maintaining responses regarding principal owners' ethnicity, race, and sex**

A covered financial institution must maintain a record of an applicant's responses to the ethnicity, race, and sex inquiries that the institution asks to satisfy the final rule's requirements separate from the application and accompanying information. See 12 CFR 1002.111(b) and comment 111(b)-1. For additional information on this requirement, see Section 6.2.

If the covered financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. For example, if a covered 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 covered financial institution uses a web-based data collection form, the form should be on its own page. Comment 107(a)(19)-5.

## 3.20 Number of principal owners

For each reportable application, a covered financial institution must compile and report the number of the applicant's principal owners. 12 CFR 1002.107(a)(20).

The final rule defines the term "principal owner" to mean an individual who directly owns 25 percent or more of the equity interests of a business. 12 CFR 1002.102(o). If a covered financial institution asks the applicant to provide the number of its principal owners (as opposed to determining that number from other documents or relying on previously collected data if permitted pursuant to the final rule), a covered financial institution must provide the definition of principal owner set forth in the final rule. Comment 107(a)(20)-1; comment 102(o)-3. A financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form in appendix E. Comment 107(a)(20)-1. See Section 4.4 for more information on use of previously collected data.

□ A covered financial institution may include a question about the applicant's number of principal owners and provide a definition of principal owner on a data collection form that is also used to collect demographic information pursuant to the final rule. See the sample data collection for an example of how this question may be included on such a form.

A covered financial institution may rely on statements or information provided by the applicant in collecting and reporting the number of the applicant's principal owners. The final rule does not require a covered financial institution to verify this information. However, if the covered financial institution verifies the number of principal owners provided by the applicant, it must report the verified information. Comment 107(a)(20)-2.

If a covered financial institution elects to determine the number of principal owners from documents or some means other than asking the applicant for its number of principal owners or if the covered financial institution verifies the number of principal owners, it must only count individuals (not entities) that directly own 25 percent or more of the equity interests in the business, and must not trace ownership through other entities. This is because only an individual can be a principal owner of a business for purposes of the final rule. Entities, such as trusts, partnerships, limited liability companies, and corporations, are not principal owners for this purpose. Additionally, an individual must directly own an equity share of 25 percent or more in the business in order to be a principal owner. Unlike the determination of ownership for purposes of collecting and reporting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, indirect ownership is not considered when determining if someone is a principal owner for purposes of collecting and reporting the number of principal owners. Thus, when determining who is a principal owner, ownership is

not traced through multiple corporate structures to determine if an individual owns 25 percent or more of the equity interests. Comment 102(o)-1.

Although a trust is not a principal owner of a business for the purposes of the final rule, if the applicant for a covered credit transaction is a trust, a trustee is considered the owner of the trust. Comment 102(o)-2.

**Example 1:** Company submits a reportable application to Lender, which uses a data collection form to collect Company's number of principal owners. Lender does not verify who is a principal owner during its application or underwriting processes. Company fills out the data collection form and states that it has two principal owners. Lender may rely on the information provided on the form. It reports that Company has two principal owners.

**Example 2:** Company submits a reportable application to Lender, which uses a data collection form to collect Company's number of principal owners. Company fills out the form and states that it has one principal owner. However, during its application process Lender determines who directly owns Company in order to obtain guarantees. During this process Lender determines that Company has two principal owners. Lender cannot rely on the information provided on the form, and reports that Company has two principal owners.

**Example 3:** Lender reviews documents to determine an applicant's number of principal owners. Company submits a reportable application. Individual A directly owns 20 percent of Company, individual B directly owns 20 percent, and Partnership owns 60 percent. Company does not have any owners who satisfy the definition of principal owner, even if individual A and individual B are the only partners in Partnership. Lender reports that Company does not have any principal owners (*i.e.*, "0" principal owners).

**Example 4:** Company submits a reportable application to Lender. Individual D directly owns 30 percent of Company, individual E directly owns 20 percent, and Trust owns 50 percent. Individual D is the only principal owner, regardless of who is the trustee of Trust. Lender reports that Company has one principal owner.

**Example 5:** Trust submits a reportable application to Lender. In this case, Trust is the applicant. Trust has two co-trustees. Pursuant to the final rule, each co-trustee is considered to own 50 percent of the applicant, and each is considered to be a principal owner. Lender reports that Trust has two principal owners. In contrast, if Trust had

five co-trustees, each co-trustee would be considered to own 20 percent, and Lender would report that Trust does not have any principal owners (*i.e.*, “0” principal owners).

As discussed in Section 4.2, a covered financial institution must have procedures reasonably designed to collect applicant-provided data, including the number of the applicant’s principal owners. However, if a covered financial institution is nonetheless unable to collect or otherwise determine the applicant’s number of principal owners, the covered financial institution reports that the number of principal owners is “not provided by applicant and otherwise undetermined.” Comment 107(a)(20)-3.

# 4. Collecting and compiling data

The data compiled pursuant to the final rule must include the items described in Section 3. The data discussed in Section 3 must be compiled in the manner required by the final rule and as prescribed in the filing instructions guide for the appropriate year. 12 CFR 1002.107(a). Generally, the final rule's requirements for compiling data are discussed in this Section 4 as well as in Section 3. The final rule's requirements for maintaining and reporting data are discussed in Sections 5, 6, 7, and 8.

- ❑ The filing instructions guide is available at [www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/](http://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/).
- ❑ Covered financial institutions should review updates to the filing instructions guide for each reporting year. The CFPB may add response options for certain data points via the filing instructions guide. Comment 107(a)-4.

## 4.1 Applicant-provided data

Applicant-provided data are the data that are or could be provided by the applicant. Comment 107(c)(1)-3.

Depending on the circumstances and the covered financial institution's procedures, certain applicant-provided data can be collected from appropriate third-party sources without a specific request from the applicant, and such information may also be relied on. For example, gross annual revenue or NAICS code may be collected from tax return documents. A covered financial institution may also collect an applicant's NAICS code using third-party sources such as business information products. Comment 107(b)-1.

- ❑ Applicant-provided data are credit type, credit purpose, amount applied for, address or location for purposes of determining census tract, gross annual revenue, NAICS code (or information about the business such that the covered financial institution can determine NAICS code), number of workers, time in business, number of principal owners, minority-owned business status, women-owned business status, LGBTQI+-owned business status, and ethnicity, race, and sex of the applicant's principal owners. Comment 107(c)(1)-3.

## 4.2 Time and manner

A covered financial institution must not discourage an applicant from responding to requests for applicant-provided data and must maintain procedures to collect such data at a time and in a manner that are reasonably designed to obtain a response. 12 CFR 1002.107(c)(1).

Whether a covered financial institution's procedures are reasonably designed to collect applicant-provided data is a fact-based determination and may depend on the covered financial institution's particular lending model, product offerings, and other circumstances. Therefore, procedures that are reasonably designed to obtain a response may require additional provisions beyond the minimum criteria set forth in 12 CFR 1002.107(c)(2) and explained in Section 4.2.1. In general, reasonably designed procedures will seek to maximize collection of applicant-provided data and minimize missing or erroneous data. Comment 107(c)(2)-1.

Although a covered financial institution must maintain procedures reasonably designed to obtain a response for all applicant-provided data, in situations where a covered financial institution obtains the data without a direct request to an applicant, the requirements discussed in Section 4.2.1 do not apply. Comment 107(c)(2)-1.

### 4.2.1 Reasonably designed procedures

For data collected directly from an applicant, procedures that are reasonably designed to obtain a response must include provisions for the following:

1. *The initial request for applicant-provided data occurs prior to notifying an applicant of final action taken on a covered application.* While a covered financial institution has some flexibility concerning when applicant-provided data is collected, under no circumstances may the initial request for applicant-provided data occur simultaneous with or after notifying an applicant of final action taken on a reportable application. Generally, the earlier in the application process the covered financial institution initially seeks to collect applicant-provided data, the more likely the timing of collection is reasonably designed to obtain a response. 12 CFR 1002.107(c)(2)(1); comment 107(c)(2)-2.i.

**Example 1:** Lender accepts online applications for covered credit transactions. A small business applicant is directed to a webpage on Lender's website. The webpage includes a link to a data collection form, a link to an application form, and some general information. Both links are equally prominent, and the link to the data collection form

appears directly above the link to the application form. The applicant is informed that it must click on both links in order to complete the application process. The data collection form requests the demographic information required to be collected pursuant to the final rule and the number of principal owners. The application form requests information that will allow Lender to report credit type, credit purpose, amount applied for, census tract, gross annual revenue, NAICS code, number of workers, and time in business. Lender's procedures regarding the timing for collecting applicant-provided data likely comply with the final rule's requirements regarding timing for collecting applicant-provided data.

2. *The request for applicant-provided data is prominently displayed or presented.* A covered financial institution must ensure an applicant actually sees, hears, or is otherwise presented with the request for applicant-provided data. If an applicant is likely to overlook or miss a request for applicant-provided data, the covered financial institution does not have reasonably designed procedures. Similarly, a covered financial institution does not have reasonably designed procedures if it obscures, prevents, or inhibits an applicant from accessing or reviewing a request for applicant-provided data. 12 CFR 1002.107(c)(2)(ii); comment 107(c)(2)-2.ii.
3. *The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data.* A covered financial institution must maintain procedures so that the manner of collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data. A covered financial institution likewise may not discourage or obstruct an applicant from providing a particular response. 12 CFR 1002.107(c)(2)(iii); comment 107(c)(2)-2.iii.

A covered financial institution avoids discouraging a response by, for example, communicating to the applicant that the collection of applicant-provided data is worthy of the applicant's attention or is as important as information collected in connection with the financial institution's creditworthiness determination. In contrast, a covered financial institution that collects applicant-provided data in a manner that directly or indirectly discourages an applicant from responding or obstructs an applicant from providing a particular response violates the final rule. For example, a covered financial institution may not discourage a response to its inquiries regarding demographic information required pursuant to the final rule by

communicating to the applicant that the request is unimportant, encouraging the applicant to bypass the form altogether, or otherwise attempting to influence or alter the applicant's preferred response. Comment 107(c)(2)-2.iii.A.

A covered financial institution also avoids discouraging a response by requiring an applicant to provide a response to one or more requests for applicant-provided data in order to proceed with a covered application, including, as applicable, a response of "I do not wish to provide this information" or a similar response. As discussed in Sections 3.18 and 3.19, a covered financial institution must permit an applicant to decline to provide the demographic information, which can be satisfied by providing a response option of "I do not wish to provide this information" or a similar response. For example, in an electronic application, a covered financial institution may require the applicant to make a substantive selection about a principal owner's ethnicity, race, or sex, select an option indicating that the applicant does not wish to provide this information, or indicate that there are no principal owners (because no individual directly owns at least 25 percent of the small business) before allowing the applicant to proceed to the next page of requested information. Comment 107(c)(2)-2.iii.B.

**Example 1:** The owner of Company, a small business, goes to Lender to apply for a covered credit transaction on behalf of Company. A loan officer hands the owner a series of forms that Company must complete in order to request a covered credit transaction, along with a data collection form that requests the demographic information required by the final rule. The owner starts to fill out documents in the loan officer's office, but does not ask any questions. When the owner of Company reaches the data collection form, the loan officer says, "You can just skip over that form if you want." Lender likely does not have procedures regarding the manner for collecting applicant-provided data that satisfy the final rule.

**Example 2:** The owner of Company, a small business, goes to Lender to apply for a covered credit transaction on behalf of Company. A loan officer hands the owner a series of forms that Company must complete in order to request a covered credit transaction, along with a data collection form that requests the demographic information required by the final rule. The owner of Company returns the data collection form without checking any boxes or filling in any blanks (*i.e.*, the owner does not complete any portion of the form). After the owner of Company leaves, the loan officer fills in the data collection form based on visual observation of the owner of

Company. Lender's procedures regarding the manner for collecting demographic information violate the final rule.

**Example 3:** The owner of Company, a small business, goes to Lender to apply for a covered credit transaction on behalf of Company. In accordance with Lender's procedures, a loan officer hands the owner a series of forms that the owner must complete in order to request a covered credit transaction. The loan officer places a data collection form that requests the demographic information required by the final rule on the top of the stack of documents it hands to the owner. The loan officer explains to the owner that the document on the top of the pile includes questions that federal law requires Lender to ask in order to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. The loan officer also informs the owner that Lender cannot discriminate on the basis of a principal owner's ethnicity, race, or sex/gender, on the basis of whether Company is a minority-owned, women-owned, or LGBTQI+-owned business, or on whether Company provides the information. Another document that the loan officer provides requests all of the other applicant-provide data points as well as other information that Lender requires. The loan officer also explains that the owner will need to complete and return that form. Lender's procedures regarding the manner for collecting applicant-provided data likely comply with the final rule.

**Example 4:** The owner of Company, a small business, visits Lender's website to fill out an electronic application for a covered credit transaction. The owner of Company clicks on a link and is taken to a scroll-down screen that asks for information that Lender requires to make a credit decision (including amount applied for, credit type, credit purpose, gross annual revenue, and time in business), as well as questions about the address of the applicant's main office, its number of workers, NAICS code, and number of principal owners. If the owner does not provide some response to each question, the application will not be submitted to Lender. At the end of the scroll-down screen, the owner must click "next," or the application will not be submitted to Lender. When the owner clicks "next," the owner is taken to a data collection form requesting the demographic information required by the final rule. The owner of Company must click at least one box in response to a question regarding whether Company is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business. The owner could click that Company is "none of these" or "I do not wish to provide this information." Additionally, because the owner has entered that Company has one principal owner on a prior screen, the owner must click a box to select at least one aggregate category or disaggregated subcategory, fill in at least one write-in race or

ethnicity (as applicable) response option, or click a box for “I do not wish to provide this information” for both the first principal owner’s race and the first principal owner’s ethnicity. For the first principal owner’s sex/gender, the owner must fill in the blank or click a box for “I do not wish to provide this information.” If the owner does not do so, the application will not be submitted to Lender. The owner of Company clicks the boxes for “I do not wish to provide this information” in response to all of the requests for demographic information, and is permitted to submit the application to Lender.

Lender’s procedures regarding the manner for collecting applicant-provided data likely comply with the final rule.

4. *Applicants can easily respond to a request for applicant-provided data.* A covered financial institution must structure the request for information in a manner that makes it easy for the applicant to provide a response. For example, a covered financial institution could request applicant-provided data in the same format as other information required for the reportable application, provide applicants multiple methods to provide or return applicant-provided data (for example, on a written form, through a web portal, or through other means), or provide the applicant some other type of straightforward and seamless method to provide a response. Conversely, a covered financial institution must avoid imposing unnecessary burden on an applicant to provide the information requested or requiring the applicant to take steps that are inconsistent with the rest of its application process. For example, a covered financial institution does not have reasonably designed procedures if it collects information related to its own creditworthiness determination in electronic form, but mails a form requesting the demographic information required under the final rule and requires the applicant to mail it back. On the other hand, a covered financial institution complies if, at its discretion, it requests the applicant to provide the demographic information discussed in Sections 3.18 and 3.19 through a reasonable method intended to keep the applicant’s responses discrete and protected from view. 12 CFR 1002.107(c)(2)(iv); comment 107(c)(2)-2.iv.

12 CFR 1002.107(c)(2).

A covered financial institution is permitted, but not required, to make more than one attempt to obtain applicant-provided data if the applicant does not respond to an initial request. For example, if an applicant initially does not respond when asked early in the application process (before notifying the applicant of final action taken on the application) for specific information

needed to report applicant-provided data, a covered financial institution may request this information again, for example, during a subsequent in-person meeting with the applicant or after notifying the applicant of final action taken on the covered application. Comment 107(c)(2)-2.v.

#### 4.2.2 Procedures to monitor compliance

In addition to maintaining procedures reasonably designed to obtain a response to requests for applicant-provided data, the final rule requires a covered financial institution to maintain procedures to identify and respond to indicia of potential discouragement, including low response rates for applicant-provided data. 12 CFR 1002.107(c)(3). In general, these procedures include:

- Monitoring for low response rates (*i.e.*, the percentage of reportable applications for which the covered financial institution has obtained some type of response to requests for applicant-provided data, including, as applicable, an applicant response of “I do not wish to provide this information” or a similar response);
- Monitoring for significant irregularities in any particular response that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants’ preferred responses;
- Monitoring response rates and responses by division, location, loan officer, or other factors to ensure that no discouragement or improper conduct is occurring in some parts of a covered financial institution, even if the covered financial institution maintains adequate response rates and responses overall;
- Providing adequate training to loan officers and other persons involved in collecting applicant-provided data;
- Promptly investigating any indicia of potential discouragement; and
- Taking prompt remedial action if discouragement or other improper conduct is identified.

Comment 107(c)(3)-1.

### **4.2.3 Low response rates**

A low response rate for applicant-provided data may indicate discouragement or a failure by a covered financial institution to maintain procedures reasonably designed to obtain a response to a request for applicant-provided data. 12 CFR 1002.107(c)(4).

Response rate generally refers to whether the covered financial institution has obtained some type of response to requests for applicant-provided data (including, as applicable, a response from an applicant of “I do not wish to provide this information” or a similar response). A response rate may be measured, as appropriate, as compared to financial institutions of a similar size, type, and/or geographic reach, or other factors, as appropriate. Comment 107(c)(4)-1.

Similarly, significant irregularities in a particular response (for example, very high rates of an applicant response of “I do not wish to provide this information” or a similar response) may also indicate that a covered financial institution does not have reasonably designed procedures, for example, because of steering, improper interference, or other potential discouragement or obstruction of applicants’ preferred responses. Comment 107(c)(4)-1.

Response rates may be relevant across all applicant-provided data, although they are particularly relevant for the collection of demographic information required pursuant to the final rule given the heightened sensitivity of these inquiries and the importance of those data to the purposes of the final rule. Comment 107(c)(4)-1.

## **4.3 Reporting updated data and verified data**

### **4.3.1 Reporting verified data**

Unless otherwise provided in the final rule, when compiling and reporting applicant-provided data, a covered financial institution may rely on information from the applicant or appropriate third-party sources. 12 CFR 1002.107(b).

A covered financial institution is not required to verify information provided by an applicant or an appropriate third-party source when compiling and reporting data. However, if the covered financial institution does verify applicant statements or other applicant-provided data for its own business purposes, such as statements relating to gross annual revenue or time in business, the covered financial institution reports the verified information. Comment 107(b)-1.

In contrast, when compiling and reporting minority-owned, women-owned, and LGBTQI+-owned business statuses, and principal owners' ethnicity, race, and sex, a covered financial institution must report the data based on an applicant's responses to the inquiries the covered financial institution makes pursuant to the final rule. A covered financial institution does not report these data points based on verified or any other information. Comments 107(a)(18)-9 and 107(a)(19)-9. Additional information on these data points is available in Sections 3.18 and 3.19.

### 4.3.2 Reporting updated data

A covered financial institution must report updated data if it obtains more current data from the applicant during the application process. For example, if an applicant states its gross annual revenue for the preceding fiscal year was \$3 million, but then the applicant notifies the covered financial institution that its revenue in the preceding fiscal year was actually \$3.2 million, the covered financial institution must report the gross annual revenue as \$3.2 million. If a covered financial institution receives updates from a small business after the application process has closed (for example, after closing or account opening), the financial institution may, at its discretion, update the data at any time prior to reporting the covered application to the CFPB. Comment 107(c)(1)-5.

However, if a covered financial institution has already verified data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. Comment 107(c)(1)-5. For information reporting verified applicant-provided data, see Section 4.3.1.

## 4.4 Reporting using previously collected data

A covered financial institution is permitted, but not required, to reuse previously collected data when reporting certain data points if the covered financial institution has no reason to believe that the data are inaccurate and the data were collected within the applicable time period set forth in the final rule. 12 CFR 1002.107(d). For example, if an applicant applies for and is granted a term loan, and then subsequently applies for a credit card account within the time period specified in the final rule, the covered financial institution need not re-request certain data for the credit card application. Similarly, if an applicant applies for more than one covered credit transaction at one time, a covered financial institution need only ask once for certain data.

Comment 107(d)-1. The applicable time periods for reuse of data and additional limitations on the reuse of data are discussed below in Sections 4.4.1 through 4.4.4.

A covered financial institution may only use previously collected data when reporting the following data points: census tract, gross annual revenue, NAICS code, number of workers, time in business, minority-owned business status, women-owned business status, LGBTQI+-owned business status, ethnicity, race, and sex of applicant's principal owners, and number of principal owners. 12 CFR 1002.107(d); comment 107(d)-2.

Data have not been "previously collected" within the meaning of this provision if the applicant did not respond to the covered financial institution's request for that data, and the covered financial institution was not otherwise able to obtain the requested data (for example, from the applicant's credit report or tax returns). Comment 107(d)-3.

Whether a covered financial institution has reason to believe previously collected data are now inaccurate depends on the particular facts and circumstances. For example, a covered financial institution may have reason to believe previously collected data on the applicant's minority-owned business status, women-owned business status, and LGBTQI+-owned business status may now be inaccurate if it knows that the applicant has had a change in ownership or a change in an owner's percentage of ownership since the information was last collected. Comment 107(d)-6.

Additionally, if a covered financial institution obtains updated information relevant to the data that was previously collected, and the applicant subsequently submits a new covered application, the covered financial institution must use the updated information in connection with the new covered application if it wants to rely on previously collected data (if otherwise permitted to do so pursuant to the final rule) or it must attempt to collect the data again. For example, if a small business notifies a covered financial institution of a change of address for its sole business location, and subsequently submits a covered application within the time period permitted pursuant to the final rule for reusing previously collected data, the covered financial institution must report census tract based on the updated information. Comment 107(d)-4.

#### **4.4.1 Using previously collected data for gross annual revenue**

Previously collected gross annual revenue information can be reused pursuant to the final rule only if it was collected in the same calendar year as the current reportable application, as measured from the application date. Comment 107(d)-7.

**Example 1:** Company submits a reportable application for a credit card in December 2027. Lender collects Company's gross annual revenue in December 2027. Lender approves Company's application and opens a credit card account for Company in January 2028. In March 2028, Company submits a reportable application for a term loan. Lender may not reuse the gross annual revenue information it collected in 2027 for the reportable application it receives in 2028 because it was not collected in the same calendar year, as measured from the application date.

**Example 2:** Company submits a reportable application for a credit card in March 2027. Lender collects Company's gross annual revenue, approves Company's application, and opens a credit card account for Company in March 2027. In December 2027, Company submits a reportable application for a term loan. Lender approves the application for the term loan in January 2028. Unless Lender has reason to believe the previously collected gross annual revenue information is inaccurate, it may reuse the gross annual revenue information it collected for the credit card application when reporting the term loan application because it was collected in the same calendar year, as measured from the application date of the term loan.

#### 4.4.2 Using previously collected data for census tract, NAICS code, number of workers, and number of principal owners

Previously collected data can be used for compiling and reporting census tract, NAICS code, number of workers, and number of principal owners pursuant to the final rule if it was collected within the preceding 36 months. For information reused from a prior application, a covered financial institution may measure the 36-month period from the date of final action taken on the prior application to the application date on the current reportable application.

**Example 1:** Company submits a reportable application for a credit card in December 2027. In December 2027, Lender collects information from Company indicating that it has two principal owners. Lender takes final action on the credit card application on December 28, 2027. On December 16, 2030, Company submits a reportable application for a term loan. Lender takes final action on that application in January 2031. Unless

Lender has reason to believe that the previously collected information is inaccurate, Lender may reuse the number of principal owners it collected in December 2027 when it reports the current application for the term loan.

#### 4.4.3 Using previously collected data for time in business

Similar to the data points discussed in Section 4.4.2, previously collected time in business information can be reused pursuant to the final rule only if it was collected within the preceding 36 months. For time in business reused from a prior application, a covered financial institution may measure the 36-month period from the date of final action taken on the prior application to the application date on the current reportable application.

However, a covered financial institution that decides to reuse previously collected data to report time in business must update the data to reflect the passage of time since the data were collected. If a covered financial institution only knows that the applicant had been in business less than two years at the time the data was initially collected, it updates the data based on the assumption that the applicant had been in business for 12 months at the time of the prior collection. Comment 107(d)-8.

**Example 1:** Company submits a reportable application for a credit card in December 2027. In December 2027, Lender collects information from Company indicating that it has been in business for 4 years. Lender approves the application on January 8, 2028. In May 2030, Company submits a reportable application for a term loan. Unless Lender has reason to believe that the previously collected information is inaccurate, Lender may reuse the time in business it collected in 2027 for the credit card application when it reports the term loan, but it must update the information due to the passage of time between the receipt of the two reportable applications. Because time in business is reported in whole years and rounded down to the nearest whole year, Lender reports that Company has been in business for 6 years when it reports the current application for the term loan.

**Example 2:** Company submits a reportable application for a credit card in March 2027. In March 2027, Lender collects information that Company has been in business for less than two years. In January 2030, Company submits a reportable application for

a term loan. Unless Lender has reason to believe the previously collected time in business information is inaccurate, it may reuse the time in business information, but must update it for the passage of time between receipt of the two reportable applications. Lender reports that Company has been in business “two or more years” when it reports the current application for the term loan.

#### 4.4.4 Using previously collected data for demographic data points

Similar to the data points discussed in Sections 4.4.2 and 4.4.3, previously collected information can be reused when compiling and reporting the final rule’s demographic data points only if the information was collected within the preceding 36 months. A covered financial institution may measure the 36-month period from the date of final action taken on the prior reportable application to the application date on the current reportable application.

Additionally, a covered financial institution may reuse data for minority-owned business status, women-owned business status, and LGBTQI+-owned business status or for ethnicity, race, and sex only if the data were collected in connection with a prior reportable application in compliance with the final rule. If the covered financial institution previously asked the applicant to provide its minority-owned business status, women-owned business status, and LGBTQI+-owned business status, and principal owners’ ethnicity, race, and sex for purposes of the final rule, 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 covered financial institution may use that response when reporting data for a subsequent application if the timing and other requirements are met. However, if the applicant failed to respond (such as by leaving the response to the question(s) blank or by failing to return a data collection form), the financial institution must inquire about the applicant’s minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners’ ethnicity, race, or sex, as applicable, in connection with a subsequent application because the data were not previously obtained. Comment 107(d)-9.

With regard to ethnicity, race, and sex information, if a covered financial institution reports one or more principal owners’ ethnicity, race, or sex information based on previously collected data, the financial institution does not need to collect any additional ethnicity, race, or sex information for other principal owners (if any). Comment 107(a)(19)-11.

# 5. Firewall

Generally, the final rule prohibits certain employees and officers of a covered financial institution or its affiliates from accessing certain demographic information obtained from small business applicants pursuant to the final rule. Sometimes, this prohibition on accessing demographic information is referred to as the “firewall.” However, if a covered financial institution determines that an employee or officer should have access to such information, that employee or officer may have access to the information if the covered financial institution provides a required notice to, at least, the small business applicants whose demographic information will be accessed.

Section 5.1 discusses the scope of the firewall’s prohibition on allowing certain employees and officers to access certain demographic information. Section 5.2 discusses the exception to the firewall’s prohibition and how a financial institution may determine that an employee or officer should have access to the demographic information subject to the firewall, and Section 5.3 discusses the notice that a covered financial institution must provide if it wants to rely on the exception.

## 5.1 Scope of the firewall

### 5.1.1 Employees and officers subject to the firewall

Unless a covered financial institution satisfies the exception discussed in Section 5.2 and provides the notice discussed in Section 5.3, the final rule prohibits certain employees and officers of the financial institution or its affiliates from accessing certain demographic information obtained from small business applicants pursuant to the final rule. 12 CFR 1002.108(b).

This prohibition (*i.e.*, the firewall prohibition) applies to an employee or officer of a covered financial institution or one or more of its affiliates if the employee or officer is “involved in making any determination” concerning a reportable application. For example, if a covered financial institution is affiliated with another company and an employee of that company is involved in making a determination concerning a reportable application on behalf of the covered financial institution, then the firewall applies with regard to that affiliated company’s employee. However, a covered financial institution is not required to limit the access of employees and officers of third parties who are not affiliates of the covered financial institution. Comment 108(b)-1.

An employee or officer is “involved in making a determination” concerning a reportable application if the employee or officer makes or otherwise participates in a decision regarding the evaluation of a reportable application, or the creditworthiness of a small business applicant for a covered credit transaction. 12 CFR 1002.108(a)(1); comment 108(a)-1. Employees and officers serving as underwriters are involved in making determinations concerning reportable applications. Comment 108(a)-1.

The decision that an employee or officer makes or participates in must be about a specific reportable application or about the creditworthiness of a specific applicant. An employee or officer is not involved in making a determination concerning a reportable application if the employee or officer is only involved in making a decision that affects reportable applications generally, or if the employee or officer only interacts with small businesses prior to them becoming applicants or submitting a reportable application. Comment 108(a)-1.

An employee or officer may be participating in a determination concerning a reportable application even if the employee or officer is not the ultimate decision maker or the sole decision maker. For example, an employee participates in a determination concerning a reportable application if the employee recommends that another employee or officer approve or deny the application. Similarly, an employee or officer participates in a determination concerning a reportable application if the employee or officer is part of a larger group, such as a committee, that makes a determination concerning a reportable application. For example, an employee participates in a decision if the employee is a member of a committee that approves the terms offered to an applicant for a reportable application. This is true even if the employee does not support the committee’s ultimate decision regarding the terms offered. Conversely, an employee or officer does not participate in a determination concerning a reportable application if the employee or officer only performs ministerial functions for the committee, such as recording the minutes, or if the committee does not make a determination concerning a specific covered application. Comment 108(a)-1.

### **Activities that *do not* constitute being involved in making a determination**

The final rule provides the following examples of activities that do not constitute being involved in making a determination concerning a reportable application:

- Developing policies and procedures, designing or programming computer or other systems, or conducting marketing.
- Discussing credit products, loan terms, or loan requirements with a small business before it submits a reportable application.

- Making or participating in a decision after the covered financial institution has taken final action on the reportable application, such as a decision about servicing or collecting a covered credit transaction.
- Using a check box form to confirm whether an applicant has submitted all necessary documents or handling a minor or clerical matter during the application process, such as suggesting or selecting a time for an appointment with an applicant.
- Gathering information (including demographic information collected pursuant to the final rule) and forwarding the information or a reportable application to other individuals or entities.
- Reviewing previously collected data to determine if it can be reused for a later reportable application pursuant to the final rule.

Comment 108(a)-1.ii.

**Example 1:** An employee of Lender assists loan officers with the distribution, receipt, and processing of applications and related documents. The employee distributes and accepts application forms and data collection forms from small businesses that have applied for covered credit transactions. The employee explains to small businesses the documents that they will need to submit in order to request a covered credit transaction, and answers questions about the application process prior to the small business submitting an application. The employee also accepts and gathers financial and other documents related to the application. The employee reviews the application form to ensure it is completed and signed, and reviews the other documents that the applicant has submitted to ensure that Lender has received the documents necessary for a loan officer or underwriter to evaluate the application. If Lender has not received one or more documents that Lender's policies and procedures designate as necessary to evaluate the application, the employee contacts the small business and asks them to provide the document(s). The employee forwards the completed application form and other documents to the loan officer when Lender has received all necessary documents. The employee also occasionally contacts small businesses to schedule appointments with the loan officer. Based on these tasks, the employee is not involved in making determinations concerning reportable applications because the employee does not make

or participate in decisions regarding the evaluation of a reportable application or the creditworthiness of a small business.

**Example 2:** An employee of Lender prepares policies and procedures related to small business lending. These policies and procedures include, among other things, descriptions of what documents a small business must submit before an application for a covered credit transaction will be evaluated, what documents must be used to verify certain information in an application, and the criteria that must be met in order for a covered credit transaction to be approved. Based on these tasks, the employee is not involved in making determinations concerning reportable applications because the employee does not make or participate in decisions regarding specific reportable applications.

**Example 3:** An employee of Lender prepares and distributes meeting agendas and information packets for credit committee meetings, attends credit committee meetings, and prepares and distributes minutes for credit committee meetings. The employee does not decide which reportable applications are discussed at credit committee meetings, participate in discussions regarding the creditworthiness of any particular small business or evaluation of any particular reportable application, make recommendations regarding any reportable application, or vote on any issues raised in the meetings. Based on these tasks, the employee is not involved in making determinations concerning reportable applications because the employee does not make or participate in decisions regarding the evaluation of a reportable application or the creditworthiness of a small business.

### Activities that *do constitute* being involved in making a determination

The final rule provides the following examples of activities (done individually or as part of a group) that constitute being involved in making a determination concerning a reportable application:

- Making or participating in a decision to approve or deny a specific reportable application. This includes, but is not limited to, making or participating in a decision that an applicant does not satisfy one or more of the requirements for the covered credit transaction for which it has applied.

- Making or participating in a decision regarding the reason(s) for denial of a reportable application.
- Making or participating in a decision that a guarantor or collateral is required in order to approve a specific reportable application.
- Making or participating in a decision regarding the credit amount or credit limit that will be approved for a specific reportable application.
- Making or participating in a decision to set one or more of the other terms that will be offered for a specific covered credit transaction. This includes, but is not limited to, making or participating in a decision regarding the interest rate, the loan term, or the payment schedule that will be offered for a specific covered credit transaction.
- Making or participating in a decision regarding a counteroffer made to a specific applicant, including a decision regarding the terms of such a counteroffer.
- Recommending that another decision maker approve or deny a specific reportable application, provide a specific reason for denying a reportable application, require a guarantor or collateral in order to approve a reportable application, approve a credit amount or credit limit for a covered credit transaction, set one or more other terms for a covered credit transaction, make a counteroffer regarding a reportable application, or set a specific term for such a counteroffer.

Comment 108(a)-1.iii.

**Example 1:** An employee of Lender distributes application forms and data collection forms to small businesses that apply for covered credit transactions. The employee also accepts application forms, data collection forms, and related documents from small businesses. The employee explains to small businesses the credit products that Lender offers and the documents that they will need to submit in order to request a covered credit transaction. The employee also answers questions about Lender's application process and credit products. The employee reviews the application form submitted by a small business to ensure it is completed and signed, and reviews the other documents that the applicant has submitted to ensure that Lender has received the documents necessary for a loan officer or underwriter to evaluate the application. If has not received one or more documents that Lender's policies and procedures designate as necessary to evaluate the application, the employee contacts the small business and asks

them to provide the document(s). Once Lender has received all necessary documents, the employee reviews them to determine whether the small business satisfies Lender's criteria for the covered credit transaction that the small business has requested. If the employee determines that the small business satisfies the criteria, it recommends to an officer of Lender that Lender approve the reportable application. If the employee determines that the small business does not satisfy the criteria, it recommends to an officer of Lender that Lender either deny the reportable application or make a counteroffer. The officer makes a final determination regarding the approval, denial, or counteroffer. Based on these tasks, the employee is involved in making determinations concerning reportable applications because the employee makes or participates in decisions regarding the evaluation of a reportable application or the creditworthiness of a small business. Even if another officer or employee has final authority to approve or deny the reportable application, the employee has participated in the decision.

**Example 2:** An employee of Lender prepares policies and procedures related to small business lending. These policies and procedures include, among other things, descriptions of what documents a small business must submit before an application for a covered credit transaction will be evaluated, what documents must be used to verify certain information in an application, and the criteria that must be met in order for a covered credit transaction to be approved. Occasionally, the employee is contacted by other employees at Lender and asked whether a particular reportable application satisfies the criteria stated in Lender's policies and procedures. In these cases, the employee evaluates the reportable application and related documents to determine if they satisfy the criteria and responds to the other employee. Based on these tasks, the employee is involved in making determinations concerning reportable applications because the employee makes or participates in decisions regarding the evaluation of these specific reportable applications.

**Example 3:** An employee of Lender attends meetings of Lender's credit committee. The employee reviews reportable applications and adds certain reportable applications to meeting agendas. The employee presents information on some reportable applications during the meeting and makes recommendations. If members of the committee have questions regarding the presentations and recommendations, the employee provides responses. Based on these tasks, the employee is involved in making determinations concerning these reportable applications because the employee makes or participates in decisions regarding the evaluation of the reportable applications and/or the creditworthiness of the small business applicants.

**Example 4:** An officer of Lender is a member of Lender’s credit committee. The officer considers the information and recommendations presented by employees of Lender and then votes on whether reportable applications should be approved or denied. The officer is one of five voting members of the credit committee. After listening to an employee’s presentation regarding Company’s reportable application and the employee’s recommendation to approve the application, the officer asks some questions about the application and votes to deny the application. However, the other four committee members vote to approve the application, and it is ultimately approved. Based on these tasks, the officer was involved in making a determination concerning Company’s application because the officer participated in the decision regarding the evaluation of Company’s application.

### 5.1.2 Demographic information subject to the firewall

The firewall prohibition requires a covered financial institution to limit access to certain demographic information collected from small business applicants pursuant to the final rule. Specifically, this prohibition applies only to an applicant’s responses to the inquiries that the covered financial institution makes to satisfy the final rule’s requirements to collect minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners’ ethnicity, race, and sex. 12 CFR 1002.108(b). See Sections 3.18 and 3.19 for a discussion of the demographic information that a covered financial institution must collect pursuant to the final rule.

If a particular employee or officer is involved in making a determination concerning a reportable application, the prohibition only limits that employee’s or officer’s access to the applicant’s responses to the inquiries that the covered financial institution makes to satisfy the final rule’s requirements to collect demographic information. For example, if a covered financial institution uses a paper data collection form to request demographic information pursuant to the final rule, an employee or officer that is subject to the prohibition is not permitted access to the paper data collection form that contains the applicant’s responses, or to any other record that identifies how the applicant responded to those inquiries. Similarly, if a covered financial institution asks an applicant for demographic information required pursuant to the final rule during a telephone call, the prohibition applies to records that identify how the particular applicant responded to those inquiries. Comment 108(b)-2.i.

Conversely, even if a particular employee or officer is involved in making a determination concerning a reportable application, the prohibition does not limit that employee’s or officer’s

access to an applicant's responses to inquiries regarding demographic information made for purposes other than compliance with the final rule. Thus, for example, an employee or officer who is subject to the prohibition may have access to information to determine whether an applicant is eligible for a Small Business Administration program for women-owned businesses without regard to whether the exception to the firewall requirement under the final rule (discussed in Section 5.2) is satisfied. Comment 108(b)-2.ii.

Additionally, an employee or officer who knows that an applicant is a minority-owned business, women-owned business, or LGBTQI+-owned business, or who knows the ethnicity, race, or sex of any of the applicant's principal owners due to activities unrelated to the inquiries made pursuant to the final rule is not prohibited from making a determination concerning the applicant's reportable application. Thus, an employee or officer who knows, for example, that an applicant is a minority-owned business due to a social relationship or another professional relationship with the applicant or any of its principal owners may make determinations concerning the applicant's reportable application. Furthermore, the firewall does not impose any limit on access to other information (*i.e.*, not the demographic information) collected pursuant to the final rule (*e.g.*, gross annual revenue, number of workers, and time in business). Comment 108(b)-2.ii.

## 5.2 Exception to the firewall requirement

### 5.2.1 General

A covered financial institution is not required to limit the access of a particular employee or officer who is involved in making determinations concerning reportable applications if the covered financial institution determines that the particular employee or officer should have access to demographic information collected pursuant to the final rule, and the covered financial institution provides the notice required pursuant to the final rule as discussed in Section 5.3. 12 CFR 1002.108(c); comment 108(c)-1.

A covered financial institution is permitted to choose what lawful factors it will consider when determining whether an employee or officer should have access to an applicant's demographic

❑ A covered financial institution is not required to perform separate analyses of the feasibility of maintaining a firewall and whether an employee or officer should have access to information subject to the firewall. A determination that an employee or officer should have access means that it is not feasible to maintain a firewall as to that particular employee or officer, and the exception applies to that employee or officer if the financial institution provides the notice required by the final rule. Comment 108(c)-1.

information. A covered financial institution's determination that an employee or officer should have access may take into account relevant operational factors and lawful business practices. For example, a covered financial institution may consider its size, the number of employees and officers within the relevant line of business or at a particular branch or office location, and/or the number of reportable applications the covered financial institution has received or expects to receive. Additionally, a covered financial institution may consider its current or its reasonably anticipated staffing levels, operations, systems, processes, policies, and procedures. A covered financial institution is not required to hire additional staff, upgrade its systems, change its lending or operational processes, or revise its policies or procedures for the sole purpose of limiting who should have access. Comment 108(a)-2.iii.

However, the fact that a covered financial institution has made a determination that one employee or officer should have access does not mean that the financial institution can permit all employees and officers who are involved in making determinations concerning reportable applications to have access to demographic information collected pursuant to the final rule. A covered financial institution may only permit an employee or officer who is involved in making a determination concerning a reportable application to have access to the demographic information collected pursuant to the final rule if the covered financial institution has determined that the particular employee or officer or a group of which the employee or officer is a member should have access to the information. Comment 108(c)-1. For additional information on when a covered financial institution may determine that a group of similarly situated officers or employees should have access, see the discussion in Section 5.2.2.

## 5.2.2 Should have access

A covered financial institution may determine that an employee or officer who is involved in making a determination concerning a reportable application should have access to information otherwise subject to the firewall prohibition if that employee or officer is assigned one or more job duties that may require the employee or officer to collect, see, consider, refer to, or otherwise use information subject to the firewall prohibition. 12 CFR 1002.108(a)(2); comment 108(a)-2.i. The employee or officer does not actually 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 in order for the covered financial institution to determine that the employee or officer should have access. 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 is involved in making a determination concerning a reportable application and that loan officer's job description or the financial institution's policies and procedures state that the loan officer may need to collect demographic information pursuant to the final rule (or to review demographic information previously collected pursuant to the final rule in order to reuse such information), the covered

financial institution may determine that the loan officer should have access. Comment 108(a)-2.i.

Rather than making a determination of who should have access on an individual by individual basis, a covered financial institution can determine that all members of a group of similarly situated employees or officers should have access, and that multiple groups of similarly situated employees or officers should have access to demographic information collected pursuant to the final rule. For example, a covered financial institution could determine that all of its small business loan officers, small business loan processors, compliance officers, and legal officers should have access. If the covered financial institution provides the notice required pursuant to the final rule (see Section 5.3), the covered financial institution may permit all of its small business loan officers, small business loan processors, compliance officers, and legal officers to have access to applicants' demographic information. Comment 108(c)-2.

However, the covered financial institution cannot permit other employees and officers to have access simply because it has determined that the small business loan officers, loan processors, compliance officers, and legal officers should have access. For example, in this case, the covered financial institution may not permit its underwriters or chief executive officer to have access to demographic information collected from an applicant pursuant to the final rule if they are involved in making any determination concerning the applicant's reportable application, unless the covered financial institution also determines that they should have access to that information. This would be true even if the chief executive officer or underwriter has some of the same assigned duties as a loan officer, but has not been assigned the task(s) that might require the loan officer to collect, see, consider, refer to, or otherwise use information subject to the firewall prohibition. If the covered financial institution separately determines that underwriters and the chief executive officer should have access, then the underwriters and chief executive officer may also have access. Comment 108(c)-2.

A covered financial institution may determine that all employees or officers with the same job description or assigned duties should have access for purposes of the final rule. If a covered financial institution assigns one or more tasks that may require access to one or more applicants' demographic information collected pursuant to the final rule to everyone with a particular job title, the covered financial institution may determine that all employees and officers who have that job title should have access. For example, if a job description, a policy, a procedure, or another document states that all employees and officers who are loan officers may have to collect or explain any part of a data collection form that includes the inquiries for demographic information required under the final rule, the covered financial institution may determine that all employees and officers who have been assigned the position of loan officer should have access to that information. Comment 108(a)-2.ii.

**Example 1:** Lender has a lending model whereby one small business loan officer is assigned to each small business customer. The assigned loan officer processes and makes determinations concerning all of the small business customer's reportable applications. Although a small business customer may occasionally speak with or leave documents with a customer service representative or assistant when the assigned loan officer is unavailable, the assigned loan officer generally is the small business customer's sole point of contact regarding covered credit transactions. The loan officer distributes forms and other information to the small business, and collects documents from the small business. Lender employs 20 small business loan officers. Lender determines that it does not want to change its lending model or application process and wants the assigned loan officer to continue to distribute and collect documents, including forms used to collect demographic information pursuant to the final rule, from small business customers. Lender amends the job descriptions for its small business loan officers to clarify that they will distribute and collect data collection forms and make determinations concerning reportable applications. Lender thus determines that all of its small business loan officers should have access to the demographic information collected pursuant to the final rule, and provides the required firewall notice. Lender has satisfied the exception to the firewall requirement with regard to its small business loan officers. This is true even if Lender could have changed its process to instead require an employee who is not involved in making determinations concerning reportable applications to collect the demographic information from small business applicants.

**Example 2:** Assume the same facts as in Example 1, above, but Lender's compliance officer is sometimes involved in making determinations concerning reportable applications. The compliance officer reviews a reportable application from Company and determines that Lender can extend a covered credit transaction to Company without violating Lender's policies. If the compliance officer had determined otherwise, Lender would have denied Company's application. Thus, the compliance officer participated in a decision regarding Company's application. Also, to ensure that Lender is properly collecting information about Company's application pursuant to the final rule, the compliance officer also sees Company's completed data collection form, which Lender used to collect demographic information pursuant to the final rule. Unless

Lender determined (separately from the determination that the small business loan officers should have access) that its compliance officer should have access to the demographic information (and provided a firewall notice that covers the compliance officer's access to Company's demographic information) prior to allowing the compliance officer to review that information, it has violated the firewall requirement.

**Example 3:** Lender employs two compliance officers. Each compliance officer prepares credit and other policies and procedures for small business lending. Each compliance officer also is responsible for ensuring data is properly reported to the CFPB pursuant to the final rule. As part of each compliance officer's assigned job duties, the compliance officer may need to review Lender's small business lending application register, small business loan files, and demographic information collected pursuant to the final rule. Additionally, as part of the assigned job duties, each compliance officer may need to determine whether certain loan officer recommendations regarding covered credit transactions comply with Lender's policies and procedures and whether a particular transaction can be made pursuant to Lender's policies and procedures. If a compliance officer determines that they do not, then the terms of the covered credit transaction may change or a reportable application may be denied. Lender determines that, based on their assigned job duties, both of its compliance officers might be involved in making determinations concerning reportable applications and might need to see or use demographic information to perform their assigned job duties. Lender determines that both compliance officers should have access to demographic information collected pursuant to the final rule, and provides the required notice to all small business applicants. Lender has satisfied the exception to the firewall requirement with regard to its compliance officers. This is true even if Lender could have assigned one compliance officer to handle all matters that may require use of the demographic information collected pursuant to the final rule and assigned the other compliance officer to handle all matters that may require being involved in making determinations concerning reportable applications.

## 5.3 Firewall notice

If a covered financial institution determines that one or more employees or officers should have access to demographic information collected pursuant to the final rule, the covered financial institution must provide a notice pursuant to the final rule 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' reportable application. Alternatively, the covered financial institution may also provide the required notice to a larger group of applicants. For example, a covered financial institution could provide the notice to all small business applicants for covered credit transactions or all small business applicants for a specific type of product. 12 CFR 1002.108(d); comment 108(d)-1.

The notice that the covered financial institution provides must inform an applicant that one or more employees and officers involved in making determinations concerning the applicant's reportable application may have access to the applicant's responses regarding the applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and its principal owners' ethnicity, race, and sex. See the sample data collection form for sample language for providing this notice to applicants.

Comment 108(d)-2.

If the covered financial institution is providing the notice orally, it must provide the notice prior to asking the applicant if it is a minority-owned business, women-owned business, or LGBTQI+-owned business and prior to asking for a principal owner's ethnicity, race, or sex. If the notice is provided on the same paper or electronic data collection form as the inquiries about minority-owned business status, women-owned business status, LGBTQI+-owned business status, and the principal owners' ethnicity, race, or sex, the notice must appear before the inquiries. If the notice is provided in an electronic or paper document that is separate from the data collection form, the notice must be provided at the same time as the data collection form or prior to providing the data collection form. Additionally, the notice must be provided with the non-discrimination notices required pursuant to 12 CFR 1002.107(a)(18) and (19). See the sample data collection form for sample language. Comment 108(d)-3.

- ❑ If a covered financial institution establishes and maintains a firewall and chooses to use the sample data collection form, the covered financial institution can delete the sample language for the firewall notice from the form. Comment 108(d)-2. This sample language states: "One or more employees or officers involved in making a determination concerning your application may have access to the information provided on this form."
- ❑ If a covered financial institution relies on the exception to the firewall requirement and chooses to use the sample data collection form, the covered financial institution can replace the sample language for the firewall notice with other language that satisfies the final rule's firewall notice requirement.

# 6. Record retention

## 6.1 Retaining evidence of compliance

A covered financial institution must retain evidence of compliance with the final rule, including a copy of its small business lending application register, for at least three years after the register is required to be submitted to the CFPB. 12 CFR 1002.111(a).

In addition to the covered financial institution's small business lending application register, such evidence of compliance is likely to include, but is not limited to, the applications from which information in the register is drawn, as well as the files or documents that are required to be kept separate from the applications. See Section 6.2 for a discussion of the requirement to keep certain information separate from the application. Comment 111(a)-1.

The final rule's three-year record retention requirement applies to the small business lending application register and any other records that are evidence of compliance with the final rule, notwithstanding the more general 12-month retention period for records related to business credit specified in Regulation B at 12 CFR 1002.12(b). Comment 111(a)-1.

A financial institution that is voluntarily collecting (but not reporting) information as permitted by 12 CFR 1002.5(a)(4)(vii) or (viii) complies with this record retention requirement by retaining evidence of compliance with the final rule for at least three years after June 1 of the year following the year that data was collected. Comment 111(a)-2.

## 6.2 Certain information kept separately from the rest of the application

A covered financial institution must maintain demographic information collected pursuant to the final rule separate from the rest of the application and accompanying information. The demographic information that must be maintained separately from the rest of the application and its accompanying information consists of (1) an applicant's response to the covered financial institution's inquiry regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business, and (2) an applicant's responses to the covered financial institutions inquiries regarding the ethnicity, race, and sex of the applicant's principal owners. 12 CFR 1002.111(b).

A covered financial institution may satisfy this requirement to maintain demographic information separately by keeping an applicant's responses to the covered financial institution's inquiries 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. To satisfy the requirement, an applicant's responses to the covered financial institution's requests for demographic information do not need to be maintained in a separate electronic system or be removed from the physical files containing the application so long as there is some separation between the demographic information and the rest of the application and its accompanying information. However, the covered financial institution may nonetheless need to keep this information in a different electronic or physical file in order to satisfy the final rule's firewall requirement. Comment 111(b)-1.

A covered financial institution is permitted to maintain information regarding the applicant's number of principal owners with an applicant's responses to the financial institution's requests for demographic information collected pursuant to the final rule. Comment 111(b)-2.

## 6.3 Limitation on personally identifiable information in certain records

A covered financial institution's small business lending application register and any records required to be maintained separately from the application pursuant to the final rule (see Section 6.2) must not include any name, specific address, telephone number, email address, or any other personally identifiable information concerning any individual who is, or is connected with, an applicant, other than as required pursuant to 12 CFR 1002.107 or 12 CFR 1002.111(b).  
12 CFR 1002.111(c).

This prohibition on including personally identifiable information applies to data in the small business lending application register submitted by the covered financial institution to the CFPB, the version of the register that the covered financial institution maintains as evidence of compliance, and the separate record of demographic information. Comment 111(c)-1. This means that a covered financial institution cannot include any name, specific address (other than the census tract required to be compiled and maintained pursuant to the final rule), telephone number, or email address of any individual who is, or is connected with, an applicant in the small business lending application register it reports to the CFPB, in the copy of the register it retains as evidence of compliance, or in the records of demographic information it must retain separately from the application. Comment 111(c)-2. It also prohibits a covered financial institution from including any other personally identifiable information concerning any

individual who is, or is connected with, an applicant, except as required pursuant to the final rule, in these documents. Examples of such personally identifiable information 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. Comment 111(c)-2.

However, the prohibition does not extend to an application for credit, or any other records that the covered financial institution maintains that are not specifically enumerated above or in the final rule. Comment 111(c)-3. Furthermore, the prohibition does not bar covered financial institutions from providing the CFPB with the name and business contact information of the person who may be contacted by the CFPB or other regulators with questions about the covered financial institution's submission pursuant to the final rule. Comment 111(c)-4.

# 7. Reporting data to the CFPB

## 7.1 Annual reporting

On or before June 1 following the calendar year for which data are compiled, a covered financial institution must submit its small business lending application register to the CFPB. When June 1 falls on a Saturday or Sunday, a submission is timely if it is submitted no later than the immediately following Monday. 12 CFR 1002.109(a)(1)(i) and (iii).

- A covered financial institution reports data for a reportable 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. Comments 107(a)-1.ii and .iii.

**Example 1:** Lender is a covered financial institution and compiles data for 2027. Lender must report its 2027 data on or before June 1, 2028.

**Example 2:** Lender is a covered financial institution and compiles data for 2029. Normally, Lender would be required to report its 2029 data on or before June 1, 2030. However, that day is a Saturday. Lender must report its 2029 data by Monday, June 3, 2030.

A covered financial institution must submit data in the format that the CFPB requires and must provide each of the following with its submission:

1. Its name.
2. Its headquarters address.
3. The name and business contact information of a person that the CFPB or other regulators may contact about the covered financial institution's submission.

- The CFPB has provided a filing instructions guide, containing technical instructions for the submission of data to the CFPB pursuant to this section, as well as any related materials. It is available at [www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/](http://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/).

4. *Its federal prudential regulator, if applicable.* For this purpose, “federal prudential regulator” means, if applicable, the federal prudential regulator for a covered 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 federal credit unions. Comment 109(b)(4)-1. If the federal prudential regulator for a covered financial institution changes, the institution must identify its new federal prudential regulator in its data submission for the calendar year of the change. For example, if a covered financial institution’s federal prudential regulator changes in February 2028, it must identify its new federal prudential regulator in the annual submission for its 2028 data (which is due by June 1, 2029). Comment 109(b)-1.
5. *Its Federal Taxpayer Identification Number (TIN).* If a covered financial institution obtains a new TIN, it must provide the new number in its subsequent data submission. For example, if a covered financial institution’s TIN changes in February 2028, it must identify its new TIN in the annual submission for its 2028 data (which is due by June 1, 2029). Additionally, if two financial institutions that previously reported data merge and the surviving institution obtained a new TIN, then the surviving institution should report the new TIN with its data submission for the year of the merger. Comment 109(b)-1.
6. *Its Legal Entity Identifier (LEI).* An LEI 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 covered financial institution must report its current LEI number. A covered 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 and the associated data. For example, as discussed in the final rule’s preamble, as part of maintaining an LEI number, a financial institution must make sure the LEI number and associated information are current, including any relationship data such as parent entity information is correctly connected to the LEI. The GLEIF
- ☐ The information about the covered financial institution may be captured by the CFPB’s reporting system when the covered financial institution registers with the CFPB for the reporting system. Financial institution information collected in the reporting system will be submitted with the institution’s annual data submission. However, given the final rule’s requirement to certify the accuracy of this information, covered financial institutions will need to ensure that the information is up-to-date and otherwise correct prior to submission.

website provides a list of LEI issuing organizations. A covered financial institution may obtain an LEI, for purposes of complying with the final rule, from any one of the issuing organizations listed on the GLEIF website. Comment 109(b)(6)-1.

7. *Its Research, Statistics, Supervision, and Discount identification (RSSD ID) number, if applicable.* 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." Comment 109(b)(7)-1.
8. *Parent entity and top-parent entity information, if applicable.* This includes:
  - (a) *The name of the immediate parent entity, if applicable.* An entity is the immediate parent of a covered financial institution for this purpose if it is a separate entity that directly owns more than 50 percent of the covered financial institution. Comment 109(b)(8)-1.
  - (b) *The LEI of the immediate parent entity, if applicable and available.* A covered financial institution must report the LEI of a parent entity if the parent entity has an LEI number. If a covered financial institution's parent entity does not have an LEI, the financial institution reports that this information is "not applicable." Comment 109(b)(8)-3.
  - (c) *The RSSD ID number of the immediate parent entity, if applicable and available.* A covered financial institution must report the RSSD ID number of a parent entity if the entity has an RSSD ID number. If a covered financial institution's parent entity does not have an RSSD ID, the covered financial institution reports that this information is "not applicable." Comment 109(b)(8)-4.
  - (d) *The name of the top-holding parent entity, if applicable.* An entity is the top-holding parent of a covered financial institution for this purpose if it ultimately owns more than 50 percent of the covered 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 covered financial institution reports that the name, LEI, and RSSD ID number of the top-holding parent are "not applicable." Comment 109(b)(8)-2.

- (e) *The LEI of the top-holding parent entity, if applicable and available.* A covered financial institution must report the LEI of a top-holding parent entity if the top-holding parent entity has an LEI number and is not the same entity as the parent entity. If a covered financial institution’s top-holding parent entity does not have an LEI or if the top-holding parent is the same as the parent entity, the covered financial institution reports that this information is “not applicable.” Comment 109(b)(8)-3.
- (f) *The RSSD ID number of the top-holding parent entity, if applicable and available.* A covered financial institution must report the RSSD ID number of a top-holding parent entity if the entity has an RSSD ID number and is not the same entity as the parent entity. If a covered financial institution’s top-holding parent entity does not have an RSSD ID or is the same entity as the parent entity, the covered financial institution reports that this information is “not applicable.” Comment 109(b)(8)-4.
9. *Its type of financial institution.* A covered financial institution selects the appropriate type or types of institution from the following list: bank or savings association, minority depository institution, credit union, nondepository institution, community development financial institution (CDFI), other nonprofit financial institution, Farm Credit System institution, government lender, commercial finance company, equipment finance company, industrial loan company, online lender, and other. A covered financial institution must select all applicable types. Comment 109(b)(9)-1. A covered financial institution reports its type of financial institution as “other” where none of the enumerated types of financial institution appropriately describe the covered financial institution. A covered financial institution that selects “other” must also report the type of financial institution via free-form text field. A financial institution that selects at least one type from the list is permitted, but not required, to also report “other” (with appropriate free-form text) if there is an additional aspect of its business that is not one of the enumerated types. Comment 109(b)(9)-2.
- The CFPB may add types of financial institutions via the filing instructions guide and related materials. Refer to the filing instructions guide for any updates for each reporting year. Comment 109(b)(9)-3.
10. *Whether it is voluntarily reporting.* A financial institution that is not a covered financial institution but that elects to voluntarily compile, maintain, and report data as discussed in Section 2.6 must select “voluntary reporter.” Comment 109(b)(10)-1.

12 CFR 1002.109(b).

When submitting data to the CFPB, an authorized representative of the covered financial institution with knowledge of the data must certify to the accuracy and completeness of the data. 12 CFR 1002.109(a)(1)(ii).

## 7.2 Reporting by subsidiaries

A covered financial institution that is a subsidiary of another covered financial institution must complete a separate small business lending application register. The subsidiary must submit its small business lending application register, directly or through its parent, to the CFPB. 12 CFR 1002.109(a)(2). A covered financial institution is considered a subsidiary of another covered financial institution for this purpose if more than 50 percent of the ownership or control of the first covered financial institution is held by the second covered financial institution. Comment 109(a)(2)-1.

## 7.3 Reporting obligations where multiple financial institutions are involved in a covered credit transaction

Generally, a covered financial institution reports the action that it takes on a reportable application, whether or not the covered credit transaction was closed in that financial institution's name and even if that financial institution used underwriting criteria supplied by another financial institution. Comment 109(a)(3)-1.i. A covered financial institution takes action on a reportable application for this purpose if it denies the application, originates the application, approves the application but the applicant does not accept the covered credit transaction, or if the covered financial institution closes the file or denies the application for incompleteness. Additionally, a covered financial institution must also report a covered application from a small business if that application is withdrawn. Comment 109(a)(3)-1.ii.

For reporting purposes, it is not relevant whether the covered financial institution receives the application directly from the applicant or indirectly through another party, such as a broker. Similarly, it is not relevant (except as otherwise provided in comment 109(a)(3)-1.i) whether another financial institution also reviews and reports an action taken on a reportable application involving the same covered credit transaction. Comment 109(a)(3)-1.ii.

Additionally, covered financial institutions report the actions of their agents. 12 CFR 1002.109(a)(3). Thus, if a covered financial institution takes action on a reportable application

through its agent, the covered financial institution reports the application. State law determines whether one party is the agent of another. Comment 109(a)(3)-3.

However, where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction to a small business, only the last financial institution with authority to set the material terms of the covered credit transaction is responsible for reporting the application. 12 CFR 1002.109(a)(3); comment 109(a)(3)-1.i. If the last financial institution with authority to set material terms is not a covered financial institution, no one is required to report the application. The last covered financial institution with authority to set the material terms must report the application even if it does not exercise its authority. See comment 109(a)(3)-1.i.

Setting the material terms of the covered credit transaction includes, for example, selecting among competing offers, or modifying pricing information, the amount approved or originated, or the repayment duration. In this situation, the determinative factor is not which financial institution actually made the last credit decision prior to closing, but rather which financial institution last had the authority for setting the material terms of the covered credit transaction prior to closing.<sup>19</sup> Comment 109(a)(3)-1.i.

Additionally, where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction and where more than one financial institution denies the application or otherwise does not approve the application, the covered financial institution responsible for reporting (*i.e.*, the last financial institution with authority to set the material terms of the covered credit transaction) must have a consistent procedure for determining how it reports inconsistent or differing data points. Comment 109(a)(3)-1.iii.

**Example 1:** Lender 1 receives a reportable application from Company. Lender 1 sends Company's application to Lender 2 and Lender 3 for review, but both Lender 2 and Lender 3 deny the application. It is necessary for Lender 1 and either Lender 2 or 3 to make a credit decision in order to approve Company's application for a covered credit transaction. However, Lender 1 has the last authority to set the material terms of the covered credit transaction. Thus, Lender 1 is required to report Company's application.

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<sup>19</sup> Whether a financial institution has taken action for purposes of 12 CFR 1002.109(a)(3) and comment 109(a)(3)-1 is not relevant to, and is not intended to repeal, abrogate, annul, impair, or interfere with, section 701(d) (15 U.S.C. 1691(d)) of ECOA, 12 CFR 1002.9, or any other provision within subpart A of Regulation B. Comment 109(a)(3)-1.i.

Assuming Lender 1 is a covered financial institution, it is required to have a consistent procedure for what denial reason(s) to report, such as reporting the denial reason(s) from the first financial institution that denied the application.

**Example 2:** Company submits a reportable application to Lender 1. Lender 1 approves the application and then closes the resulting covered credit transaction in its name. Lender 2 later purchases the covered credit transaction from Lender 1, but Lender 1 was not acting as Lender 2's agent when Lender 1 closed the covered credit transaction. Assuming Lender 1 is a covered financial institution, it is required to report Company's application. Lender 2 does not report the application.

**Example 3:** Company submits a reportable application to Lender 1, which is a covered financial institution. If the application is approved, the covered credit transaction will be closed in Lender 2's name. However, Lender 1 denies Company's application without sending it to Lender 2. Lender 1 is not acting as Lender 2's agent when Lender 1 denies the application. Because Lender 1 takes action on the application, Lender 1 is required to report Company's application, and it reports the application as "denied." Lender 2 does not report the application.

**Example 4:** Company submits a reportable application to Lender 1, which is a covered financial institution. Lender 1 reviews the application and approves it using underwriting criteria provided by Lender 2, but Lender 2 does not review the application or make any credit decisions regarding it prior to the closing of the resulting covered credit transaction. Lender 1 is not acting as Lender 2's agent when it approves the application or closes the covered credit transaction. Lender 1 is required to report Company's application. Lender 2 does not report Company's application.

**Example 5:** Company submits a reportable application to Lender 1, which forwards it to Lender 2. Lender 2 approves the application. Lender 1's approval is not necessary. The resulting covered credit transaction is closed in Lender 1's name. Lender 2 purchases the covered credit transaction after closing. Lender 1 and Lender 2 are not acting as each other's agents. Assuming it is a covered financial institution, Lender 2 is required to report Company's application. Lender 1 does not report Company's application.

**Example 6:** Company submits a reportable application to Lender 1, which approves the application using the underwriting criteria provided by Lender 2. Lender 1 forwards the application to Lender 2, which also approves the application but modifies certain

credit terms (the interest rate and repayment term). Lender 1 has no further authority to modify the material terms of the transaction. It is necessary for both Lender 1 and Lender 2 to make a credit decision in order to approve the application. Lender 1 offers Company a covered credit transaction with the modified terms set by Lender 2. The resulting covered credit transaction reflects Lender 2's terms and closes in Lender 1's name. Lender 2 purchases the covered credit transaction from Lender 1 after closing. Lender 1 and Lender 2 are both covered financial institutions and are not acting as each other's agents. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Lender 2 (which is a covered financial institution) reports the application as "originated." Lender 1 does not report the application because it was not the last financial institution with the authority to set the material terms. If, under the same facts, Lender 2 did not modify the credit terms offered by Lender 1, Lender 2 would still be responsible for reporting the application, and Lender 1 would not report Company's application. This is because Lender 2 would be the last financial institution with the authority for setting the material terms, even if chose not to so do in this particular instance.

**Example 7:** Lender 1 receives a reportable application and approves it, and then elects to organize a loan participation agreement where Lender 2 and Lender 3 also agree to purchase a partial interest in the resulting covered credit transaction. Assuming Lender 1 is a covered financial institution, Lender 1 reports the application. Lender 2 and Lender 3 do not report the application.

# 8. Availability and disclosure of data

## 8.1 Statement of availability of financial institution's data

A covered financial institution must make available to the public on its website (or upon request if it does not have a website) a statement that the covered financial institution's small business lending application register, as modified by the CFPB, is or will be available from the CFPB. 12 CFR 1002.110(c); comments 110(c)-1 and -2.

A covered financial institution must make this notice available to the public on its website when it submits a small business lending application register to the CFPB, and shall maintain the notice for as long as it has an obligation to retain its small business lending application registers pursuant to the final rule. 12 CFR 1002.110(d). A covered financial institution without a website complies with this requirement by providing, upon request, a written statement about the availability of its small business lending application register. Comment 110(c)-2.

- The CFPB will make the data reported to it by financial institutions (subject to deletions or modifications that the CFPB determines would advance a privacy interest) available to the public on an annual basis. 12 CFR 1002.110(a).

A covered financial institution must provide the statement (written or on its website) using the following, or substantially similar, language:

### Small Business Lending Data Notice

Data about our small business lending are available online for review at the Consumer Financial Protection Bureau's (CFPB's) website at <https://www.consumerfinance.gov/data-research/small-business-lending/>. The data show the geographic distribution of our small business lending applications; information about our loan approvals and denials; and demographic information about the principal owners of our small business applicants. The CFPB may delete or modify portions of our data prior to posting it if doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

12 CFR 1002.110(c); comment 110(c)-1.

The CFPB may modify the location at which small business lending data are made available to the public and thus may modify the location that must be referenced in the notice. Changes to the location will be announced in the filing instructions guide and related materials. Covered financial institutions should refer to the filing instructions guide for any updates each filing year. Comment 110(c)-3.

## 8.2 Limits on further disclosure of data

A financial institution shall not disclose or provide to a third party the demographic information it collects pursuant to the final rule (see Sections 3.18 and 3.19 regarding the collection of this demographic information) except to further compliance with ECOA or Regulation B (including the final rule) or as required by law. 12 CFR 1002.110(e)(1). Additionally, a third party that obtains such information for the purpose of furthering compliance with ECOA or Regulation B is prohibited from any further disclosure of such information except to further compliance with ECOA or Regulation B or as required by law. 12 CFR 1002.110(e)(2).

# 9. Effective and compliance dates

The final rule was effective on August 29, 2023, but covered financial institutions were not required to begin complying on that date. 12 CFR 1002.114(a) and (b). Rather, a covered financial institution determines when it is required to begin complying with the final rule based on the number of covered credit transactions it originated to small businesses in calendar years 2022 and 2023 or, at the financial institution's option, in calendar years 2023 and 2024. 12 CFR 1002.114(a) and (b). As discussed below, the final rule specifies three different compliance dates.

## 9.1 Compliance date tiers

The final rule provides that a covered financial institution is required to comply with its requirements as follows:

**Tier 1.** Beginning July 18, 2025. A covered financial institution may use its covered originations for calendar years 2022 and 2023 or its covered originations for calendar years 2023 and 2024 when determining if it is in Tier 1. If it originated at least 2,500 covered originations in both of the two calendar years it chooses, the covered financial institution is in Tier 1 and is required to begin complying with the final rule on July 18, 2025. It is required to collect data for reportable applications during the period from July 18 to December 31, 2025. The covered financial institution must compile data for this period pursuant to the final rule, comply with the firewall requirement, and maintain records as specified in the final rule. In addition, the covered financial institution must report the data collected during this portion of 2025 and comply with the notice of availability requirement by June 1, 2026. 12 CFR 1002.114(b)(1); comments 114(b)-1 and -2.i.

- A covered financial institution that is in Tier 1, Tier 2, or Tier 3 may collect the demographic information described in Sections 3.18 and 3.19 beginning 12 months prior to the applicable compliance date. If it opts to collect such information, it must do so pursuant to the requirements that would otherwise apply to the collection of such demographic information, including those described in Sections 3.18, 3.19, 5 (the firewall), and 6 (recordkeeping). See also Section 8.2.

**Tier 2.** Beginning January 16, 2026. If it is not in Tier 1 and originated at least 500 covered originations in both calendar years it has chosen (either 2022 and 2023 or 2023 and 2024), a covered financial institution is in Tier 2 and is required to begin complying with the final rule on January 16, 2026. It is required to collect data for reportable applications during the period from January 16 to December 31, 2026. The covered financial institution must compile data for this period pursuant to the final rule, comply with the firewall requirement, and maintain records as specified in the final rule. In addition, for data collected during this period, the covered financial institution must report its 2026 data and comply with the notice of availability requirements by June 1, 2027. 12 CFR 1002.114(b)(2); comments 114(b)-1 and -2.ii.

- A financial institution must also satisfy the threshold for coverage to be required to comply with the final rule for a particular year. See section 2.1 and the [compliance dates info sheet](#) for more information.

**Tier 3.** Beginning October 18, 2026. If it is not in Tier 1 or Tier 2 and originated at least 100 covered originations in both of the calendar years it has chosen (either 2022 and 2023 or 2023 and 2024), a covered financial institution is in Tier 3 and is required to begin complying with the final rule on October 18, 2026. It is required to collect data for reportable applications during the period from October 18 to December 31, 2026. The covered financial institution must compile data for this period pursuant to the final rule, comply with the firewall requirement, and maintain records as specified in the final rule. In addition, for data collected during this period, the covered financial institution must report its 2026 data and comply with the notice of availability requirements by June 1, 2027. 12 CFR 1002.114(b)(3); comment 114(b)-1.

A financial institution that did not originate at least 100 covered originations in calendar years 2022 and 2023 (or 2023 and 2024), but subsequently originates at least 100 covered originations in two consecutive calendar years shall begin to comply with the final rule in accordance with the general coverage provisions of the final rule, which are discussed in Section 2, but in any case, no earlier than October 18, 2026. 12 CFR 1002.114(b)(4).

**Example 1:** Lender originated 3,000 covered originations in 2022, 3,000 in 2023, and 2,600 in 2024. Lender is in Tier 1 and has a compliance date of July 18, 2025.

**Example 2:** Lender originated 2,000 covered originations in 2022, 3,000 in 2023, 2,000 in 2024, and 2,000 in 2025. Because Lender did not originate at least 2,500 covered originations in both 2022 and 2023, it is not in Tier 1 if Lender uses its 2022 and 2023 covered originations. Similarly, Lender is not in Tier 1 if it uses its 2023 and

2024 covered originations because it did not originate at least 2,500 covered originations in 2024. Because Lender did originate at least 500 covered originations in 2022, 2023, and 2024, it is in Tier 2. Additionally, because Lender had at least 100 covered originations in 2024 and 2025, it is a covered financial institution for 2026 and has a compliance date of January 16, 2026.

**Example 3:** Lender originated 400 covered originations in 2022, 1,000 in 2023, 900 in 2024, and 400 in 2025. Because Lender did not originate at least 2,500 covered originations in 2022, 2023, or 2024, it is not in Tier 1. If Lender chooses to use its covered originations in 2022 and 2023, it would not be in Tier 2 because it did not originate at least 500 covered originations in both 2022 and 2023. In that case, Lender would be in Tier 3 because it did originate at least 100 covered originations in 2022 and 2023. It would have a compliance date of October 18, 2026. Alternatively, although not required to do so pursuant to the final rule, Lender could use its covered originations in 2023 and 2024 to determine its compliance date tier. If Lender chooses to do so, it would be in Tier 2 because it originated at least 500 covered originations in both 2023 and 2024. In that case, Lender would have a compliance date of January 16, 2026.

**Example 4:** Lender originated 900 covered originations in 2022, 1,000 in 2023, 400 in 2024, and 400 in 2025. Because Lender did not originate at least 2,500 covered originations in 2022, 2023, or 2024, it is not in Tier 1. If Lender chooses to use its covered originations in 2022 and 2023, it would be in Tier 2 because it originated at least 500 covered originations in both 2022 and 2023. It would have a compliance date of January 16, 2026. Alternatively, the final rule permits Lender to use its covered originations in 2023 and 2024 to determine its compliance date tier. If Lender chooses to do so, it would be in Tier 3 because it did not originate at least 500 covered originations in both 2023 and 2024. In that case, Lender would have a compliance date of October 18, 2026.

**Example 5:** Lender originated 120 covered originations in 2022, 80 in 2023, 90 in both 2024 and 2025, and 95 in both 2026 and 2027. Because Lender did not originate at least 100 covered originations in 2023, it is not in Tier 1, Tier 2, or Tier 3 regardless of whether it uses its covered originations in calendar years 2022 and 2023 or calendar years 2023 and 2024 to determine its compliance date tier. Because it did not originate at least 100 covered originations in subsequent consecutive calendar years, it is not a

covered financial institution and is not required to comply with the final rule for 2026, 2027, or 2028.

**Example 6:** Lender originated 120 covered originations in 2022, 2023, and 2024, and 90 in 2025. Because Lender did not originate at least 2,500 or at least 500 covered originations in 2022, 2023, or 2024 it is not in Tier 1 or Tier 2 regardless of whether it uses its covered originations in calendar years 2022 and 2023 or calendar years 2023 and 2024 to determine its compliance date tier. Because Lender originated at least 100 covered originations in 2022, 2023, and 2024, it is in Tier 3 regardless of whether it uses its covered originations in calendar years 2022 and 2023 or 2023 and 2024. It would have had a compliance date of October 18, 2026 if it were a covered financial institution for 2026. However, because it did not originate at least 100 covered originations in both 2024 and 2025, it does not satisfy the definition of covered financial institution for 2026. Thus, it is not required to comply with the final rule for 2026.

**Example 7:** Credit Union originated 90 covered originations in 2022, 2023, and 2024, and 120 in 2025 and 2026. Because Credit Union did not originate at least 100 covered originations in 2022, 2023, or 2024, it is not in Tier 1, Tier 2, or Tier 3. Because Credit Union originated at least 100 covered originations in subsequent consecutive calendar years (*i.e.*, 2025 and 2026), it is a covered financial institution for 2027 and is required to comply with the final rule beginning January 1, 2027.

The applicable compliance date is the date by which the covered financial institution must begin to compile data and maintain information in accordance with the final rule (see Sections 3 and 4), comply with the firewall requirement (see Section 5), and begin to maintain records (see Section 6). In addition, the covered financial institution must begin complying with the requirements regarding the notice of availability of its small business lending data no later than June 1 of the year after the applicable compliance date. See Section 8.1. For instance, if a covered financial institution originated 550 covered originations in 2022, 2023, and 2024, it must begin compiling and maintaining data, complying with the firewall requirement, and complying with certain record retention requirements beginning January 16, 2026. It also must comply with the requirements regarding the notice of availability of its small business lending data and with additional record retention requirements no later than June 1, 2027. Comment 114(b)-1.

If a covered financial institution receives an application for a covered credit transaction prior to its initial compliance date, but takes final action on or after that date, the covered financial institution is not required to collect data regarding that application pursuant to the final rule or to report the application pursuant to the final rule. For example, if a financial institution is subject to a compliance date of July 18, 2025, and it receives a reportable application on July 15, 2025, but does not take final action on the application until August 5, 2025, the financial institution is not required to collect data or to report data regarding that application. Comment 114(c)-2.

## 9.2 Determining the number of covered originations for 2022 and 2023 or for 2023 and 2024

A financial institution determines when it is required to begin complying with the final rule based on the number of covered credit transactions it originated to small businesses in calendar years 2022 and 2023 or, at the financial institution's option, in calendar years 2023 and 2024. If a financial institution is unable to determine the number of covered originations it originated in calendar years 2022 and 2023 or calendar years 2023 and 2024 because for some or all of this period it does not have readily accessible the information needed to determine whether its covered credit transactions were originated for small businesses, it is permitted to use any reasonable method to estimate its number of covered originations for the applicable calendar years. 12 CFR 1002.114(c)(2).

A financial institution has readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses if, for instance, in the ordinary course of business it collects data on the precise gross annual revenue of its applicants for business credit, it obtains information sufficient to determine whether an applicant for business credit had gross annual revenue of \$5 million or less, or if it collects and reports similar data to federal or state government agencies pursuant to other laws or regulations. Comment 114(c)-3.

A financial institution does not have readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses if it did not, in the ordinary course of business, collect either precise or approximate information on whether the businesses to which it originated covered credit transactions had gross annual revenue of \$5 million or less. In addition, even if precise or approximate information on gross annual revenue was initially collected, a financial institution does not have readily accessible this information if,

to retrieve this information, for example, it must review paper loan files, recall such information from either archived paper records or scanned records in digital archives, or obtain such information from third parties that initially obtained this information but did not transmit such information to the financial institution. Comment 114(c)-4.

The reasonable methods that financial institutions may use to estimate originations for 2022 and 2023 (or for 2023 and 2024) include, but are not limited to, the following:

- During the period from October 1 through December 31, 2023, asking every applicant of an approved covered credit transaction, prior to the closing, to self-report whether it had gross annual revenue for its preceding fiscal year of \$5 million or less. The financial institution may annualize the number of covered credit transactions it originated for small businesses from October 1 through December 31, 2023 by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years 2022 and 2023. A financial institution is permitted to use its covered originations in 2023 and 2024, rather than 2022 and 2023, to determine its compliance tier. Thus, a financial institution may ask applicants to self-report revenue information during the period of October 1 through December 31, 2024, and then may annualize the number of covered credit transactions it originated to small businesses during that period and apply the annualized number of originations to both calendar years 2023 and 2024.
- Assuming that every covered credit transaction it originates for business customers in calendar years 2022 and 2023 (or in 2023 and 2024) is to a small business.
- Using another methodology provided that such methodology is reasonable and documented in writing.

Comment 114(c)-5.

**Example 1:** Prior to October 1, 2023, Lender did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in 2022 and 2023. Lender decides to begin collecting gross annual revenue information for covered credit transactions it originates to businesses on or after October 1, 2023. Using this information, Lender determines that it originated 650 covered originations between October 1 and December 31, 2023. Lender annualizes this information (650 originations x 4= 2,600 originations per year). Applying this annualized figure of 2,600 covered originations to both 2022 and 2023, Lender is in Tier 1 and has a compliance

date of July 18, 2025. Alternatively, Lender could use its annualized 2023 originations and its actual 2024 covered originations to determine its compliance date. Assume that Lender originated 2,490 covered originations in 2024. In this case, Lender would be in Tier 2 and have a compliance date of January 16, 2026.

**Example 2:** Prior to October 1, 2023, Lender collected gross annual revenue information for some applicants for business credit, but such information was only noted in its paper loan files. Thus, Lender does not have readily accessible information that would allow it to determine the small business status of the borrowers for these transactions for 2022 and 2023. Starting June 1, 2023, Lender decides to begin asking all business applicants for covered credit transactions if they had gross annual revenue in their preceding fiscal year of \$5 million or less. Using this information, Lender determines that it originated 700 covered originations between July 1 and December 31, 2023 (half of 2023). Lender annualizes this information (700 originations x 2 = 1,400 originations per year). Applying this annualized figure of 1,400 originations to both 2022 and 2023, Lender is in Tier 2 and has a compliance date of January 16, 2016. Assume that Lender determines that it originated 2,510 covered originations in 2024. Lender would still be in Tier 2 because its annualized number of covered originations for 2023 is less than 2,500 covered originations.

**Example 3:** Lender did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for which it originated covered credit transactions in 2022 and 2023. Lender begins collecting information to determine whether applicants for covered credit transactions are small businesses on January 1, 2024. Lender determines that, in 2022 and 2023, it originated 3,000 covered credit transactions that would be covered originations if made to small businesses. Lender assumes that all 3,000 covered credit transactions originated in each of 2022 and 2023 were to small businesses and, thus, are covered originations. Using the information it began collecting in January 2024, Lender also determines that it originated 2,400 covered originations in 2024. On the basis of its assumption that all 3,000 of its covered credit transactions in 2022 and 2023 were originated for small businesses, Lender would be in Tier 1 and have a compliance date of July 18, 2025. However, Lender is permitted to use its 2023 and 2024 covered originations to determine its compliance date. In that case, Lender would be in Tier 2 and have a

compliance date of January 16, 2026 because it did not have at least 2,500 covered originations in 2024.

**Example 4:** Lender did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in 2022 and 2023. Lender decides to begin collecting gross annual revenue information for covered credit transactions it originates to businesses on or after October 1, 2024. Using this information, Lender determines that it originated 120 covered originations between October 1 and December 31, 2024. Lender annualizes this information (120 covered originations x 4 = 480 covered originations). Lender determines that, in 2022 and 2023, it originated 700 covered credit transactions that would be covered originations if made to small businesses. Lender assumes that all 700 covered credit transactions originated in each of 2022 and 2023 were to small businesses and, thus, are covered originations. On that basis, Lender would be in Tier 2 and have a compliance date of January 16, 2026. However, Lender may use its annualized 2024 covered originations to determine its covered originations for 2023 and 2024. In that case, Lender would be in Tier 3 and have a compliance date of October 18, 2026.