

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1002**

**[Docket No. CFPB-2017-0009]**

**RIN 3170-AA65**

**Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race**

**Information Collection**

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

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) proposes amendments to Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, to add certain model forms and remove others from Regulation B, and to make various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.

**DATES:** Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2017-0009 or RIN 3170-AA65, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2017-0009 or RIN 3170-AA65 in the subject line of the email.
- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552. Include CFPB-2017-0009 or RIN 3170-AA65 in a reference line at the top of the submission.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002. Include CFPB-2017-0009 or RIN 3170-AA65 in a reference line at the top of the submission.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Lazarev or James Wylie, Counsels, Office of Regulations, at 202-435-7700.

**SUPPLEMENTARY INFORMATION:**

## **I. Summary of the Proposed Rule**

Regulation B implements the Equal Credit Opportunity Act (ECOA) and, in part, prohibits a creditor from inquiring about the race, color, religion, national origin or sex of a credit applicant except under certain circumstances.<sup>1</sup> One of those circumstances is a requirement for creditors to collect and retain certain information about applicants for certain dwelling-secured loans under Regulation B § 1002.13. Another circumstance is the applicant information required to be collected and reported under Regulation C by financial institutions. Regulation C, 12 CFR part 1003, implements the Home Mortgage Disclosure Act (HMDA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>2</sup> Regulation B also includes certain optional model forms for use in complying with certain Regulation B requirements. One of those forms is a 2004 version of the Uniform Residential Loan Application (URLA) issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

The Bureau issued a final rule in October of 2015 amending Regulation C (2015 HMDA final rule), which included changes to the collection of applicants' ethnicity and race information.<sup>3</sup> The Enterprises recently issued a new version of the URLA (2016 URLA).<sup>4</sup> The Bureau proposes to amend various sections of Regulation B to further the purposes of ECOA including to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the

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

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Home Mortgage Disclosure (Regulation C); 80 FR 66128 (Oct. 28, 2015).

<sup>4</sup> See Fannie Mae, Guide Forms (2016), available at, <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (listing all selling and servicing guide forms); see also Freddie Mac, Forms and Documents (2016) <http://www.freddiemac.com/singlefamily/guide/> (same).

capacity to contract) and other protected characteristics. The proposed amendments to § 1002.13 would permit a creditor additional flexibility in how it collects applicant ethnicity and race information in order to better align with Regulation C, as amended in the 2015 HMDA final rule. The proposed amendments to Appendix B would remove the URLA dated January 2004 (2004 URLA) from Regulation B and add additional sample forms to Regulation B to facilitate compliance. The proposed amendments to § 1002.5 would permit creditors to collect applicant information in certain circumstances when they would not otherwise be required to do so. The proposed amendments to § 1002.12 would address retention of information about certain applicants.

## **II. Background**

### *A. Regulation B and Ethnicity and Race Information Collection*

With some exceptions, Regulation B § 1002.5(b) prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person (protected applicant-characteristic information) in connection with a credit transaction. Section 1002.5(a)(2) provides an exception to that prohibition for information that creditors are required to request for certain dwelling-secured loans under § 1002.13, and for information required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B, or other Federal or State statutes or regulations, including Regulation C.

Section 1002.13 sets forth the scope, required information, and manner for collecting information about an applicant's ethnicity, race, sex, marital status, and age under Regulation B (In this notice, “applicant demographic information” refers to information about an applicant’s ethnicity, race, or sex information collected under § 1002.13 or, as discussed below, Regulation

C, while “certain protected applicant-characteristic information” refers to all information collected under § 1002.13, including age and marital status.) Under § 1002.13(a)(1), creditors that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied (or to be occupied) by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must collect certain protected applicant-characteristic information, including specified race and ethnicity categories. These race and ethnicity categories correspond to the OMB standards for the classification of Federal data on ethnicity and race minimum standards.<sup>5</sup> Certain of these categories include several more specific race, heritage, nationality, or country of origin groups. For example, Hispanic or Latino as defined by OMB for the 2010 Census refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.<sup>6</sup> Section 1002.13(b) through (c) provides instructions on the manner of collection. Unlike financial institutions covered by Regulation C, creditors subject to § 1002.13 but not to Regulation C are required only to collect and retain, but not to report, the required protected applicant-characteristic information.

#### *B. 2015 HMDA Final Rule*

The Dodd-Frank Act transferred rulemaking authority for HMDA to the Bureau, effective July 2011.<sup>7</sup> It also amended HMDA to add new data points and authorized the Bureau to require additional information from covered institutions. Regulation C implements HMDA and sets out specific requirements for the collection, recording, reporting, and disclosure of mortgage lending

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<sup>5</sup> Office of Mgmt. and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 FR 58782-90 (Oct. 30, 1997).

<sup>6</sup> See U.S. Census Bureau, C2010BR-02, *Overview of Race and Hispanic Origin: 2010*, at 2 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

<sup>7</sup> Public Law 111-203, 124 Stat. 1376.

information, including a requirement to collect and report information about an applicant’s ethnicity, race, and sex (applicant demographic information).

In July 2014, the Bureau proposed amendments to Regulation C to implement the Dodd-Frank Act changes to require collection, recording, and reporting of additional information to further HMDA’s purposes, and to modernize the manner in which covered institutions report HMDA data.<sup>8</sup> The Bureau published a final rule on October 28, 2015, amending Regulation C, with many of the amendments taking effect January 1, 2018.<sup>9</sup> (In this notice, “current Regulation C” refers to Regulation C prior to January 1, 2018, and “revised Regulation C” refers to Regulation C as it will be in effect on or after January 1, 2018, as amended by the 2015 HMDA final rule.) For data collected in or after 2018, the 2015 HMDA final rule amends the requirement for collection and reporting of applicant demographic information. Specifically, covered institutions must permit applicants to self-identify their ethnicity and race using certain disaggregated ethnic and racial subcategories. Covered institutions will report the disaggregated information provided by applicants. However, revised Regulation C will not require or permit covered institutions to use the disaggregated subcategories when collecting and reporting the applicant’s ethnicity and race based on visual observation or surname.<sup>10</sup>

Revised Regulation C § 1003.2(g)(1)(v) and 1003.2(g)(2)(ii) also introduces an exemption to the requirement to report information for financial institutions that originated fewer than 25 closed-end mortgage loans or fewer than 100 open-end lines of credit in either of the two prior years. As a result, when revised Regulation C takes effect, an institution’s obligation to

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<sup>8</sup> Home Mortgage Disclosure (Regulation C), 79 FR 51731 (Aug. 29, 2014).

<sup>9</sup> 80 FR 66128 (Oct. 28, 2015).

<sup>10</sup> *Id.* at 66314 (amendments to appendix B to Regulation C, effective January 1, 2018).

collect and report information under Regulation C may change over time based on its prior loan volume.

### C. Uniform Residential Loan Application

The Enterprises, currently under the conservatorship of the Federal Housing Finance Agency (FHFA), prepare and periodically revise a Uniform Residential Loan Application (URLA) used by many lenders for certain dwelling-related loans. A mortgage loan application must be documented using the URLA in the mortgage loan file for the loan to be eligible for sale to the Enterprises.<sup>11</sup> A version of the URLA dated January 2004 (2004 URLA) is included in appendix B to Regulation B as a model form for use in complying with § 1002.13. Appendix B provides that the use of its model forms is optional under Regulation B but that, if a creditor uses an appropriate appendix B model form, or modifies a form in accordance with instructions provided in appendix B, that creditor shall be deemed to be acting in compliance with § 1002.5(b) through (d).<sup>12</sup>

The Enterprises, under the conservatorship of the FHFA, issued a revised and redesigned URLA on August 23, 2016 (2016 URLA).<sup>13</sup> This issuance was part of the effort of these entities

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<sup>11</sup> Fannie Mae, *Selling Guide: Single Family Seller Servicer* (Dec. 16, 2016), § B1-1-01, available at <https://www.fanniemae.com/content/guide/selling/b1/1/01.html>; Freddie Mac, *Single-Family Seller/Servicer Guide* (Sep. 21, 2016), § 3401.7, available at <http://www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html>.

<sup>12</sup> Comment app. B-1 provides that a previous version of the URLA, dated October 1992, may be used by creditors without violating Regulation B. In addition, comment app. B-2 provides that the home-improvement and energy loan application form prepared by the Enterprises, dated October 1986, complies with the requirements of Regulation B for some creditors but not others, depending on whether the creditor is governed by § 1002.13(a) or subject to a substitute monitoring program under § 1002.13(d). The Enterprises no longer offer the home-improvement and energy loan application form identified in comment app. B-2. See Fannie Mae, Guide Forms (2016), available at <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (listing all current selling and servicing guide forms); see also Freddie Mac, Forms and Documents (2016) available at <http://www.freddiemac.com/singlefamily/guide/> (same).

<sup>13</sup> Fannie Mae, Uniform Residential Loan Application (Aug. 2016), [https://www.fanniemae.com/content/guide\\_form/urla-borrower-information.pdf](https://www.fanniemae.com/content/guide_form/urla-borrower-information.pdf); see also Press Release, Uniform

to update the Uniform Loan Application Dataset (ULAD). Among other changes, the 2016 URLA includes a Demographic Information section (section 7) that addresses the requirements in revised Regulation C for collecting applicant demographic information, including the requirement that financial institutions permit applicants to self-identify using disaggregated ethnicity and race categories beginning January 1, 2018. The Enterprises also made available a Demographic Information Addendum, which is identical in form to section 7 of the 2016 URLA.<sup>14</sup> The Enterprises have advised that the Demographic Information Addendum may be used by lenders at any time on or after January 1, 2017, as a replacement for section X (Information for Government Monitoring Purposes) in the current URLA, dated 7/05 (revised 6/09).<sup>15</sup> The Enterprises have not yet provided a date when lenders may begin using the 2016 URLA (the effective date) or the date lenders are required to use the 2016 URLA (the cutover date), but have stated their intention to collaborate with industry stakeholders to help shape the implementation timeline for the 2016 URLA, with a goal to provide lenders with more precise information in 2017 regarding the cutover date.<sup>16</sup>

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Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, *The Redesigned URLA and ULAD Mapping Document Are Here!* (Aug. 23, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-august-2016.pdf>.

<sup>14</sup> Fannie Mae, Demographic Information Addendum (Aug. 2016), available at [https://www.fanniemae.com/content/guide\\_form/urla-demographic-addendum.pdf](https://www.fanniemae.com/content/guide_form/urla-demographic-addendum.pdf).

<sup>15</sup> Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, *URLA Implementation Guidance and Update* (Nov. 1, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-november-2016.pdf>; Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, *Uniform Residential loan Application (URLA) / Uniform Loan Application Dataset (ULAD) FAQs*, ¶ 6 (Nov. 1, 2016), available at <https://www.fanniemae.com/content/faq/urla-ulad-faqs.pdf>.

<sup>16</sup> Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, *URLA Implementation Guidance and Update* (Nov. 1, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-november-2016.pdf>.

#### *D. Bureau Approval Notice*

On September 23, 2016, the Bureau issued a notice concerning the collection of expanded information about ethnicity and race in 2017 (Bureau Approval Notice).<sup>17</sup> Under current Regulation C § 1003.4(a)(10), covered financial institutions are required to collect, record, and report applicant demographic information. Revised Regulation C will require financial institutions to permit applicants to self-identify using disaggregated ethnic and racial categories beginning January 1, 2018.<sup>18</sup> However, before that date, such inquiries are not required by current Regulation C and would not have been allowed under Regulation B § 1002.5(a)(2), and therefore creditors would have been prohibited by Regulation B § 1002.5(b) from requesting applicants to self-identify using disaggregated ethnic and racial categories before January 1, 2018.

The Bureau Approval Notice provided that, anytime from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in appendix B to revised Regulation C. During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories as instructed in appendix B to revised Regulation C shall be deemed to be in compliance with Regulation B § 1002.13(a)(i).

In the same notice, the Bureau also determined that the relevant language in the 2016 URLA is in compliance with the regulatory provisions of Regulation B § 1002.5(b) through (d), regarding requests for protected applicant-characteristic information and certain other

information. The notice provides that, although the use of the 2016 URLA by creditors is not required under Regulation B, a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) acts in compliance with § 1002.5(b) through (d).

### **III. Outreach**

As part of the Bureau’s outreach to financial institutions, vendors, and other mortgage industry participants to prepare for the implementation of the 2015 HMDA final rule, the Bureau has received questions about the requirement to permit applicants to self-identify using disaggregated ethnicity and race categories and how that requirement intersects with compliance obligations under Regulation B. The Bureau also received questions related to the Bureau Approval Notice about whether the approval for collecting disaggregated ethnicity and race categories under Regulation B in 2017 would be extended to 2018. In light of these inquiries, the Bureau determined that it would be beneficial to establish through rulemaking appropriate standards in Regulation B concerning the collection of an applicant’s ethnicity and race information similar to those in revised Regulation C. Because many of the financial institutions most affected by this proposed rule are supervised by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the National Credit Union Administration (NCUA), the Bureau conducted outreach to these agencies. The Bureau specifically sought input from these prudential regulators concerning their use of applicant ethnicity and race information collected under § 1002.13 but not reported or anticipated to be reported under current or revised Regulation C and their views on appropriate standards for collection and retention of this information. The Bureau also conducted outreach with other Federal agencies, including Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance

Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, concerning this proposed rule.

#### **IV. Legal Authority**

The Bureau is issuing this proposed rule pursuant to its authority under section 703 of ECOA, as amended by section 1085 of the Dodd-Frank Act.<sup>19</sup> ECOA authorizes the Bureau to issue regulations to carry out the purposes of ECOA.<sup>20</sup> These regulations may contain but are not limited to such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA.<sup>21</sup> A purpose of ECOA is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract) and other protected characteristics.<sup>22</sup> ECOA section 703 serves as a source of authority to establish rules concerning the taking and evaluation of credit applications, collection and retention of applicant demographic information concerning the applicant or co-applicant, use of designated model forms, and substantive requirements to carry out the purposes of ECOA.

The Bureau is also issuing this proposed rule pursuant to its authority under sections 1022 and 1061 of the Dodd-Frank Act. Under Dodd-Frank Act section 1022(b)(1), the Bureau has authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and

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<sup>19</sup> 15 U.S.C. 1691b; Public Law 111-203, 124 Stat. 1376, 2083-84 (2010).

<sup>20</sup> 15 U.S.C. 1691b(a).

<sup>21</sup> *Id.*

<sup>22</sup> 12 CFR 1002.1(b).

to prevent evasions thereof.<sup>23</sup> Section 1061 of the Dodd-Frank Act transferred to the Bureau consumer financial protection functions previously vested in certain other Federal agencies, including the authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law and perform appropriate functions to promulgate and review such rules, orders, and guidelines.<sup>24</sup> Both ECOA and title X of the Dodd-Frank Act are consumer financial laws.<sup>25</sup> Accordingly, the Bureau has authority to issue regulations to administer ECOA.

## **V. Proposed Implementation Period**

Except as set forth below, the Bureau proposes an effective date of January 1, 2018, for any final rule based on this proposal to align with the effective dates of the relevant provisions of the 2015 HMDA final rule. As an effective date for any final rule removing the 2004 URLA from appendix B of Regulation B, the Bureau proposes the cutover date designated by the Enterprises for the mandatory use of the 2016 URLA or January 1, 2022, whichever occurs first.

## **VI. Section-by-Section Analysis**

### *Section 1002.5 Rules Concerning Requests for Information*

Section 1002.5 provides rules concerning requests for information. In general, § 1002.5(b) prohibits a creditor from inquiring about protected applicant-characteristic information in connection with a credit transaction, except under certain circumstances. The Bureau is proposing to add proposed § 1002.5(a)(4), to authorize creditors to collect such information under certain additional circumstances. The Bureau is proposing to make conforming changes to comment 5(a)(2)-2 to reference the types of loans covered by revised

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<sup>23</sup> Public Law 111-203, 124 Stat. 1375, 1980 (2010) (codified at 12 U.S.C. 5512(b)(1)).

<sup>24</sup> Public Law 111-203, 124 Stat. 1375, 2035-39 (2010) (codified at 12 U.S.C. 5581).

<sup>25</sup> 12 U.S.C. 5481(12),(14).

Regulation C and provide a citation to Regulation C. The Bureau is also proposing to add proposed comment 5(a)(4)-1 to provide guidance on proposed § 1002.5(a)(4).

### *5(a) General Rules*

#### *5(a)(4) Other Permissible Collection of Information*

Section 1002.5(a)(2) provides that, notwithstanding the limitations in § 1002.5(b) through (d) on collecting protected applicant-characteristic information and other applicant information, a creditor shall request information for monitoring purposes as required by § 1002.13.

Section 1002.5(a)(2) further provides that a creditor may obtain information required by a regulation, order, or agreement issued by, or entered with, a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B, or other Federal or State statutes and regulations. However, § 1002.5(a)(2) does not authorize collection of information beyond what is required by law. The Bureau is proposing to add § 1002.5(a)(4) to authorize a creditor to obtain information in certain additional specified circumstances other than information required as described in § 1002.5(a)(2). Proposed § 1002.5(a)(4) would provide that, notwithstanding § 1002.5(b), a creditor may collect information under the circumstances included under that section, provided that the creditor collects the information in compliance with appendix B to revised Regulation C

The Bureau understands that certain creditors who will be excluded from reporting under revised Regulation C in a given reporting year may want to continue to collect or report applicant demographic information during that time to maintain consistent compliance standards from year-to-year. The Bureau also understands that certain creditors who are not subject to revised Regulation C in a given calendar year but may become subject to reporting in the next calendar year may want to collect applicant demographic information for applications that may become

revised Regulation C covered loans if the creditor becomes subject to reporting and final action is taken on the application in the next calendar year. Therefore, the Bureau believes that it is appropriate to permit creditors to collect such information in the specifically permitted circumstances explained below. The Bureau believes that permitting creditors to collect information without interruption or break from year-to-year would further the purposes of ECOA by easing overall burden on creditors and improving the quality and reliability of the data that are used to promote the availability of credit to all creditworthy applicants. The Bureau also believes that permitting creditors to collect certain protected applicant-characteristic information in these circumstances provides a narrow exception to the general limitations in § 1002.5(b) through (d) that preserves the protection and respects the purposes of those prohibitions.

Under proposed § 1002.5(a)(4)(i) a creditor that is a financial institution under revised Regulation C § 1003.2(g) may collect information regarding the applicant demographic information of an applicant for a closed-end mortgage loan that is an excluded transaction under revised Regulation C § 1003.3(c)(11) if it submits HMDA data concerning those applications and loans or if it submitted HMDA data concerning closed-end mortgage loans in any of the preceding five calendar years. The proposal would permit a financial institution that voluntarily reports HMDA data concerning closed-end mortgage loans to collect applicant demographic information for such reporting in compliance with Regulation B. The proposal would also permit a financial institution to collect applicant demographic information for closed-end mortgage loans for up to five years after it fell below the loan volume threshold for closed-end mortgage loans in revised Regulation C § 1003.3(c)(11). The Bureau believes that creditors in this latter situation may not want to incur the burden of altering their compliance process, particularly when they may become subject to reporting again in the near future. The Bureau

believes that permitting such collection for five years provides an appropriate time frame under which a financial institution should be permitted to continue collecting the information without having to change its compliance processes; the Bureau believes the period is long enough that it would provide a creditor a strong indication that its present business trend is unlikely to subject it to reporting in the near future, but the period would not be so long as to permit a creditor to collect protected applicant-characteristic information for a period of time that is too attenuated from the previous Regulation C legal requirement and associated compliance process. The Bureau invites comment on this proposal to permit collection of applicant demographic information in these circumstances and the proposed five-year time frame.

Under proposed § 1002.5(a)(4)(ii), a creditor that is a financial institution under Regulation C § 1003.2(g) may collect information regarding the applicant demographic information of an applicant for an open-end line of credit that is an excluded transaction under revised Regulation C § 1003.3(c)(12) if it submits HMDA data concerning those applications and open-end lines of credit or if it submitted HMDA data concerning open-end lines of credit in any of the preceding five calendar years. Similar to proposed § 1002.5(a)(4)(i), the proposal would permit a financial institution that voluntarily reports HMDA data concerning open-end lines of credit to collect applicant demographic information for such reporting in compliance with Regulation B. The proposal would also permit a financial institution to collect applicant demographic information for open-end lines of credit for up to five years after it fell below the loan volume threshold for open-end lines of credit in revised Regulation C § 1003.3(c)(12). The Bureau believes that the proposal is justified for similar reasons and provides similar benefits to proposed § 1002.5(a)(4)(i) discussed above. The Bureau invites comment on this proposal to

permit collection of applicant demographic information in these circumstances and the proposed five-year time frame.

Under proposed § 1002.5(a)(4)(iii), a creditor that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under revised Regulation C § 1003.2(g) may collect information regarding the applicant demographic information of an applicant for a loan that would otherwise be a covered loan under revised Regulation C § 1003.2(e) if not excluded by Regulation C §§ 1003.3(c)(11) or (12). This proposal would permit a creditor that falls below the loan-volume threshold<sup>26</sup> and is therefore no longer required to collect and report information under revised Regulation C to continue to collect applicant demographic information. The Bureau believes that the proposal is justified for similar reasons and provides similar benefits to proposed § 1002.5(a)(4)(i) discussed above. The Bureau invites comment on this proposal to permit collection of applicant demographic information in these circumstances and the proposed five-year time frame.

Under proposed § 1002.5(a)(4)(iv), a creditor that exceeded a loan volume threshold in the first year of a two-year threshold period provided in revised Regulation C §§ 1003.2(g), 1003.3(c)(11), or 1003.3(c)(12) may, in the subsequent year, collect the applicant demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 1003.2(e) if not excluded by revised Regulation C § 1003.3(c)(11) or (12). The proposal would benefit creditors in certain situations in which the creditor is uncertain whether it will be required to report information under revised Regulation C in a future calendar year. For

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<sup>26</sup> The loan-volume thresholds in revised Regulation C are 25 or more closed-end mortgage loans originated in each of the two proceeding calendar years and 100 open-end lines of credit in each of the two proceeding calendar years. Revised Regulation C § 1003.2(g)(1)(v), (g)(2)(ii).

example, where a creditor meets the closed-end mortgage loan coverage threshold or open-end line of credit coverage threshold in revised Regulation C § 1003.2(g)(1)(v) and (g)(2)(ii) for the first time in a given calendar year, it may wish to begin collecting certain protected applicant-characteristic information for applications received in the next calendar year (second calendar year) so as to be prepared to report that information if final action is taken in the following calendar year (third calendar year), when the creditor would be required to report the information under revised Regulation C if it exceeded the applicable two-year threshold at the end the second calendar year. The Bureau believes that a creditor would benefit from being able to collect applicant demographic information concerning such applications with assurance of compliance with § 1002.5 regardless of whether or not it becomes subject to HMDA reporting at the end of the two-year threshold period. The Bureau invites comment on this proposal to permit collection of applicant demographic information in these circumstances.

The Bureau is also proposing to add new comment 5(a)(4)-1 which provides that applicant demographic information that is not required to be collected pursuant to Regulation C may nevertheless be collected under the circumstances set forth in § 1002.5(a)(4) without violating § 1002.5(b) and highlights that, as discussed below, such information should be retained pursuant to § 1002.12. The Bureau also invites comment on whether there are other specific, narrowly tailored circumstances not described in § 1002.5(a)(2) or proposed § 1002.5(a)(4) under which a creditor would benefit from being able to collect applicant demographic information for mortgage loan applicants.

#### *Section 1002.12 Record Retention*

Section 1002.12 provides rules concerning permissible and required record retention. In light of proposed § 1002.5(a)(4), the Bureau is also proposing to amend § 1002.12(b)(1)(i) to

require retention of certain protected applicant-characteristic information obtained pursuant to proposed § 1002.5(a)(4).

*12(a) Retention of Prohibited Information*

*12(b) Preservation of Records*

*12(b)(1) Applications*

*12(b)(1)(i)*

Section 1002.12(b)(1) provides that a creditor must retain certain records for 25 months.

Under § 1002.12(b)(1)(i), these records include any information required to be obtained concerning characteristics of the applicant to monitor compliance with ECOA and Regulation B or other similar law. The Bureau is proposing to amend § 1002.12(b)(1)(i) to include within its preservation requirements any information obtained pursuant to proposed § 1002.5(a)(4). The Bureau believes that, if a creditor voluntarily collects applicant demographic information pursuant to proposed § 1002.5(a)(4), the creditor should be required to maintain those records in the same manner as protected applicant-characteristic information it is required to collect. This would allow the information to be available for its primary purpose of monitoring and enforcing compliance with ECOA, Regulation B, and other Federal or State statutes or regulations.

Without a corresponding record retention requirement, a creditor could collect but not retain the information, thus preventing the use of the information for these purposes. The Bureau is also proposing to amend comment 12(b)-2 to require retention of applicant demographic information obtained pursuant to proposed § 1002.5(a)(4). The Bureau invites comment on the proposed amendment.

### *Section 1002.13 Information for Monitoring Purposes*

Section 1002.13 sets forth the scope, required information, and manner for the mandatory collection of certain protected applicant-characteristic information under Regulation B. Section 1002.13(a)(1) requires creditors to collect information about the applicant, including ethnicity and race information, for certain dwelling-related loans. Among other revisions to § 1002.13 and its commentary, the Bureau proposes to amend § 1002.13(a)(1)(i) to provide that, for applications subject to § 1002.13(a)(1), a creditor must collect the applicant's information using either aggregate ethnicity and race categories or the ethnicity and race categories and subcategories set forth in appendix B to revised Regulation C, which provide disaggregated ethnicity and race categories.

#### *13(a) Information to be Requested*

##### *13(a)(1)*

###### *13(a)(1)(i)*

Under § 1002.13(a)(1), creditors that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must collect certain information about the applicant, including ethnicity and race information. Specifically, under current § 1002.13(a)(1)(i) creditors must collect information regarding the applicant's ethnicity using the categories Hispanic or Latino and not Hispanic or Latino, and the applicant's race using the categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific

Islander, and White. Under Regulation B, creditors are required to collect and retain such data, but have no obligation to report the data to a regulator.<sup>27</sup>

As set forth above, in 2015 the Bureau issued the 2015 HMDA final rule, which adopted certain revisions to Regulation C.<sup>28</sup> Under current Regulation C, financial institutions are required to collect and report an applicant's or borrower's information using aggregate ethnicity and race categories that are identical to the ethnicity and race categories set forth under current § 1002.13(a)(1)(i). In contrast, under revised Regulation C, financial institutions are required to permit applicants or borrowers to self-identify using disaggregated ethnicity and race categories.<sup>29</sup> Once revised Regulation C goes into effect on January 1, 2018, the race and ethnicity categories financial institutions use to collect information under revised Regulation C will no longer correspond with the race and ethnicity categories a creditor uses to collect information under current § 1002.13(a)(1)(i). Many creditors are subject to both § 1002.13 and revised Regulation C. The Bureau believes that such creditors should not be subject to differing collection requirements, and that aligning the two requirements furthers the purposes of ECOA by facilitating practices that promote the availability of credit to all creditworthy applicants.<sup>30</sup>

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<sup>27</sup> 12 CFR 1002.12 and 1002.13.

<sup>28</sup> 80 FR 66127 (Oct. 28, 2015).

<sup>29</sup> See also revised Regulation C § 1003.4(a)(10)(i) and comment 4(a)(10)(i)-1 (requiring financial institution to report information about the applicant's or borrower's ethnicity and race using the instructions in appendix B to Regulation C).

<sup>30</sup> Because of the differences between revised Regulation C and current § 1002.13, some creditors may be uncertain whether compliance with revised Regulation C also satisfies compliance with current § 1002.13 or whether additional collection to satisfy current § 1002.13 would also be required. The Bureau believes that resolving this issue through rulemaking will provide certainty to such creditors.

Accordingly, the Bureau proposes to revise § 1002.13(a)(1)(i) to provide that, for applications subject to § 1002.13(a)(1), a creditor must collect an applicant’s information using either the aggregate or disaggregated ethnicity and race categories (creditors subject to revised Regulation C will be required to use the disaggregated race and ethnicity categories for applications subject to revised Regulation C). Specifically, the Bureau proposes to amend § 1002.13(a)(1)(i) to allow a creditor to comply with either § 1002.13(a)(1)(i)(A) or § 1002.13(a)(1)(i)(B). Under proposed § 1002.13(a)(1)(i)(A), a creditor may collect information regarding the applicant using the aggregate ethnicity and race categories set forth in current § 1002.13(a)(1)(i). Under proposed § 1002.13(a)(1)(i)(B), a creditor may collect an applicant’s ethnicity and race information using the categories and subcategories set forth in appendix B to revised Regulation C, which provides disaggregated ethnicity and race categories. Thus, under the proposal, a creditor subject to collection requirements under both § 1002.13(a)(1) and revised Regulation C that collects information pursuant to the requirements of appendix B to revised Regulation C would also satisfy § 1002.13(a)(1)(i).

For applications subject to § 1002.13(a)(1), the Bureau believes there are compelling reasons for permitting a creditor to collect an applicant’s information using disaggregated ethnicity and race categories, even if the creditor is not required to submit HMDA data concerning the application under revised Regulation C (Regulation B-only creditors or transactions). As discussed in the preamble to the 2015 HMDA final rule, among other reasons, the Bureau revised Regulation C to require financial institutions to allow applicants to self-identify using the disaggregated ethnicity and race categories based on the conclusion that it would further HMDA’s purpose to identify possible discriminatory lending patterns, encourage self-reporting by applicants and borrowers, and more accurately reflect the nation’s ethnic and

racial diversity.<sup>31</sup> The Bureau believes these same benefits will also further the purpose of ECOA, which, similar to HMDA, seeks to promote the availability of credit to all creditworthy applicants without regard to protected characteristics, such as national origin and race.

The Bureau believes that optional collection of disaggregated ethnicity and race information under proposed § 1002.13(a)(1)(i)(B) is also appropriate given that the 2016 URLA provides for the collection of disaggregated ethnicity and race categories. As noted above, the Enterprises have indicated their intent to mandate use of the 2016 URLA at some point in the future for all loans eligible for purchase by the Enterprises. Given the widespread use of the current URLA among lenders, the Bureau expects that on or prior to the cutover date, many creditors will want to adopt the 2016 URLA irrespective of whether the creditor or transaction is subject to the collection and reporting requirements in revised Regulation C. Accordingly, the Bureau believes that the proposed revisions will facilitate the transition to the 2016 URLA for all creditors seeking to use the updated form.

The Bureau also considered the alternative, for all applications subject to § 1002.13(a)(1), of requiring creditors to use the disaggregated ethnicity and race categories. The Bureau is not proposing this approach for several reasons. First, the Bureau believes that the creditors that would be most affected by such a change would primarily be small creditors that will not meet the loan-volume thresholds, asset-size thresholds, or location test under revised Regulation C.<sup>32</sup> Creditors within the scope of revised Regulation C would be minimally affected as they will already be required to use the disaggregated ethnicity and race categories under revised

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<sup>31</sup> 80 FR 66127, 66190 (Oct. 28, 2015).

<sup>32</sup> Revised Regulation C § 1003.2(g)(i),(ii), and (v); *see also id.* § 1003.3(c)(11) and (12).

Regulation C. Regulation B-only creditors, however, would incur various costs and heightened compliance burdens as a result of adopting this alternative option, including updating application forms, revising policies and procedures, and providing additional training. Second, these small creditors would potentially have a short timeframe to come into compliance with any requirement to use the disaggregated ethnicity and race categories. To resolve the differences between Regulation B and revised Regulation C in a timely manner, the proposed revisions to § 1002.13(a)(1) would ideally take effect on or prior to January 1, 2018. While the Bureau could impose a staggered effective date for Regulation B-only creditors, the Bureau believes such an approach would create additional complexity that the Bureau would like to avoid. Thus, the burden of this alternative option on affected creditors would likely be compounded by the short implementation timeline available. Third, the Bureau believes the benefits of requiring (rather than permitting) creditors to use the disaggregated ethnicity and race categories would be limited, as most creditors will likely adopt the disaggregated ethnicity and race categories under the proposed optional approach, eventually if not immediately. Many will be required to use the disaggregated information under revised Regulation C, and many that are not subject to revised Regulation C are nevertheless likely to adopt the 2016 URLA at some point because of business considerations unrelated to Regulations B and C.

On the other hand, the Bureau acknowledges that requiring creditors to use the disaggregated ethnicity and race categories under § 1002.13(a)(1)(i) may maximize the benefits of disaggregation by affecting all applications subject to § 1002.13(a)(1). The Bureau also acknowledges that under this alternative option, Regulation B-only creditors would incur the costs of collecting disaggregated ethnicity and race information, and would not incur the more costly burdens of also reporting such data.

Despite these considerations, the Bureau believes the potential incremental benefits of requiring creditors to use disaggregated ethnicity and race categories for applications subject to § 1002.13(a)(1) do not outweigh the burdens of such a proposal on Regulation B-only creditors.

In addition to the alternative approach discussed above, the Bureau also considered eliminating altogether the requirement in § 1002.13(a)(1)(i) that creditors collect information on an applicant's ethnicity and race. While there is significant overlap between § 1002.13 and revised Regulation C, the transactions covered under the two regulations are not identical and, as discussed above, many creditors are not subject to Regulation C. Based on outreach to other regulators, including the FDIC, OCC, FRB, and NCUA, the Bureau understands that a substantial percentage of supervised entities are expected to be Regulation B-only creditors and that the protected-applicant characteristic information collected under § 1002.13 is frequently relied upon by such regulators to monitor compliance with fair lending laws. Accordingly, the Bureau believes that the collection of applicant race and ethnicity information under § 1002.13 serves the important function of monitoring and enforcing compliance with ECOA and other antidiscrimination laws and therefore continues to serve the purposes of ECOA.

For the reasons discussed above, the Bureau proposes to revise § 1002.13(a)(1)(i), including adding § 1002.13(a)(1)(i)(A) and § 1002.13(a)(1)(i)(B) to set forth the two options available to creditors. Under the proposal, for any applications subject to § 1002.13(a)(1), a creditor must seek to collect information concerning the applicant using, at its option, either aggregate race and ethnicity categories (proposed § 1002.13(a)(1)(i)(A)) or disaggregated race and ethnicity categories (proposed § 1002.13(a)(1)(i)(B)).

Proposed § 1002.13(a)(1)(i)(A) is intended to mirror the ethnicity and race categories set forth in existing § 1002.13(a)(1)(i). The addition of the word “aggregate” in proposed

§ 1002.13(a)(1)(i)(A) is not a substantive revision but, rather, is included to clarify that the enumerated categories in proposed § 1002.13(a)(1)(i)(A) differ from the disaggregated ethnicity and race categories under proposed § 1002.13(a)(1)(i)(B).

Proposed § 1002.13(a)(1)(i)(B) provides that a creditor may alternatively collect information regarding the applicant using the categories and subcategories for the collection of race and ethnicity set forth in appendix B to revised Regulation C. Proposed § 1002.13(a)(1)(i)(B) cross-references the ethnicity and race categories and subcategories set forth in appendix B to revised Regulation C; the proposed provision does not recite those categories and subcategories. Thus, a creditor would comply with proposed § 1002.13(a)(1)(i)(B) so long as it collects information concerning an applicant's ethnicity and race using all of the same categories and subcategories as then in effect under appendix B to revised Regulation C. For example, if appendix B to revised Regulation C is amended at a later date to require a financial institution to collect, for example, additional or different ethnicity and race categories or subcategories, then a creditor seeking to comply with proposed § 1002.13(a)(1)(i)(B) must also allow an applicant to select such amended categories or subcategories. The Bureau solicits comment on this proposal.

The Bureau also proposes to add comment 13(a)-8 to clarify that a creditor may choose, on an application-by-application basis, whether to collect aggregate information pursuant to proposed § 1002.13(a)(1)(i)(A) or disaggregated information pursuant to proposed § 1002.13(a)(1)(i)(B). The Bureau solicits comment on proposed comment 13(a)-8.

In addition, the Bureau proposes to revise comment 13(a)-7 to provide, for applications subject to § 1002.13(a)(1), that a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to revised Regulation C

will be acting in compliance with § 1002.13 concerning the collection of an applicant’s ethnicity, race, and sex information. Section 1002.13(b) through (c) provides instructions on how to collect an applicant’s ethnicity, race, and sex information, including directions on how to obtain the required information, required disclosures concerning the collection, and instructions on when to collect the information on the basis of visual observation or surname. As discussed above, many applications subject to § 1002.13(a)(1) will also be subject to collection and reporting under revised Regulation C. While the instructions for the collection of applicant demographic information in appendix B to revised Regulation C impose similar requirements as those set forth in § 1002.13(b) through (c), the Bureau acknowledges that the two sets of instructions are not identical and that revised Regulation C sometimes provides additional instructions absent from § 1002.13. For example, paragraph 12 of appendix B to revised Regulation C provides that, if an applicant begins an application by mail, internet, or telephone and does not provide the requested applicant information but does not check or select the “I do not wish to provide this information” box on the application, and the applicant then meets in person with the financial institution and the financial institution requests the information but the applicant does not provide the information during the in-person meeting, the financial institution must collect the information on the basis of visual observation or surname. Current § 1002.13, on the other hand, is silent on whether a creditor is required to collect applicant demographic information if the application is initiated by mail, internet, and telephone, and the applicant subsequently meets in-person with the creditor.

While the Bureau believes that the instructions in § 1002.13 for the collection of applicant demographic information are not inconsistent with revised Regulation C, to eliminate any uncertainty, the Bureau proposes to revise comment 13(a)-7 to provide that for applications

subject to § 1002.13(a)(1), a creditor that collects an applicant's ethnicity, race, and sex information in compliance with the instructions set forth in appendix B to revised Regulation C is acting in compliance with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information. The Bureau believes this clarification will also reduce the compliance burden on creditors subject to both § 1002.13(a)(1) and revised Regulation C by allowing such creditors to follow a single set of instructions.

The Bureau solicits comment on proposed comment 13(a)-7.

*13(b) Obtaining Information*

Section 1002.13(b) provides rules and instructions for obtaining applicant information required under § 1002.13(a). The Bureau is proposing to amend § 1002.13(b) to provide that, when a creditor collects ethnicity and race information pursuant to proposed § 1002.13(a)(1)(B), the creditor must comply with any restrictions on the collection of an applicant's ethnicity or race on the basis of visual observation or surname set forth in appendix B to revised Regulation C.

Among other instructions, current § 1002.13(b) provides that, if an applicant chooses not to provide some or all of the requested applicant demographic information, the creditor shall, to the extent possible, note on the form the ethnicity, race, and sex of the applicant on the basis of visual observation or surname. Instruction 10 in appendix B to revised Regulation C provides, however, that when a financial institution collects an applicant's ethnicity, race, and sex on the basis of visual observation or surname, the financial institution must select from the aggregate ethnicity and race categories.

In light of the revisions to proposed § 1002.13(a)(1)(i), the Bureau proposes to amend § 1002.13(b) to restrict the collection of applicant demographic information where collected on

the basis of visual observation or surname. The Bureau believes that a creditor that wishes to collect an applicant’s ethnicity and race information under proposed § 1002.13(a)(1)(i)(B) should be subject to the same restrictions as set forth in appendix B to revised Regulation C. The Bureau further believes that keeping the requirements aligned is appropriate given the similar requirements and to promote regulatory consistency. The Bureau invites comment on this amendment.

Comment 13(b)-1 provides guidance on the forms a creditor may use to collect applicant information under § 1002.13(a). The Bureau is proposing to amend the comment to reference the data collection model forms the Bureau proposes to provide in appendix B of Regulation B, as further discussed below. The Bureau is also proposing to amend comment 13(b)-1. First proposed comment 13(b)-1 would reiterate the current interpretation that when a creditor collects only aggregate ethnicity and race information pursuant to proposed § 1002.13(a)(1)(i)(A) (current § 1002.13(a)(1)(i)), the applicant must be offered the option to select more than one racial designation. Proposed comment 13(b)-1 would also provide that when a creditor collects applicant information pursuant to § 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity and more than one racial designation. The Bureau invites comment on these proposed amendments.

### *13(c) Disclosure to Applicant(s)*

Section 1002.13(c) sets forth the required disclosures a creditor must provide to applicants when collecting the required protected applicant-characteristic information. Current comment 13(c)-1 provides, among other things, that appendix B contains a sample disclosure and that a creditor may devise its own disclosure so long as it is substantially similar. In light of the proposed amendments to appendix B described below, the Bureau is proposing to amend

comment 13(c)-1 to reference the two data collection model forms provided for in proposed appendix B. While the Bureau acknowledges that the disclosures in the two data collection model forms are slightly different from each other, the Bureau concludes that use of either form complies with § 1002.13(c) and that the two forms are substantially similar. The Bureau invites comment on this proposed amendment.

*Appendix B to Part 1002—Model Application Forms*

Regulations B and C both contain an appendix B that provides model forms for use when collecting applicant demographic information required under the regulations. Current appendix B to Regulation B (Regulation B appendix) includes the 2004 URLA, which provides for the same ethnicity and race categories as required under current § 1002.13. Appendix B to current and revised Regulation C (current Regulation C appendix or revised Regulation C appendix, as applicable) includes instructions and a data collection model form for collecting applicant demographic information. In light of the proposed revisions to § 1002.13(a)(1)(i), the Bureau also proposes to amend the Regulation B appendix.

The current Regulation B appendix includes five model forms, each designated for use in a particular type of consumer credit transaction. The fifth model form, the 2004 URLA, is described in the Regulation B appendix as appropriate for residential mortgage transactions and contains a model disclosure for use in complying with current § 1002.13. While use of the model forms is optional, if a creditor uses the appropriate model form, or modifies a form in accordance with the instructions provided in the Regulation B appendix, that creditor is deemed

to be acting in compliance with § 1002.5(b) through (d).<sup>33</sup> The section in the 2004 URLA used to collect an applicant’s ethnicity and race information (section X) conforms with the aggregate ethnicity and race categories set forth in current § 1002.13(a)(1)(i). The most current version of the URLA (prior to the 2016 URLA) used by the Enterprises is dated July 2005 and was revised in June 2009.

On September 23, 2016, the Bureau issued the Bureau Approval Notice, which approved, pursuant to section 706(e) of ECOA, use of the 2016 URLA.<sup>34</sup> In the Bureau Approval Notice, the Bureau determined that, while a creditor is not required to use the 2016 URLA, a creditor that uses the form without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d).<sup>35</sup> Unlike prior versions of the URLA, the 2016 URLA permits the applicant to select disaggregated ethnicity and race categories, as required under revised Regulation C.

As explained above, the Bureau proposes to revise § 1002.13(a)(1)(i) to provide that, for applications subject to § 1002.13(a)(1), a creditor must collect information concerning the applicant using, at its option, either aggregate or disaggregated ethnicity and race categories. In light of this revision, the Bureau proposes to revise the Regulation B appendix to reflect these alternative approaches in proposed § 1002.13(a)(1)(i). Given the release of the 2016 URLA and the Bureau’s approval of that form in the Bureau Approval Notice, the Bureau also proposes to remove the 2004 URLA from the Regulation B appendix, effective upon the Enterprises’ cutover

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<sup>33</sup> Appendix B to part 1002 ¶¶ 1, 3.

<sup>34</sup> *Status of New Uniform Residential Loan Application and Collection of Expanded Home Mortgage Disclosure Act Information About Ethnicity and Race in 2017*, 81 FR 66930 (Sep. 23, 2016).

<sup>35</sup> *Id.*

date for the 2016 URLA or January 1, 2022, whichever comes first. Each of these proposed revisions is discussed in depth below.

*Model Forms for Complying with Proposed § 1002.13(a)(1)(i)*

Under proposed § 1002.13(a)(1)(i)(B) a creditor may request information concerning the applicant using disaggregated ethnicity and race categories. In light of this revision, the Bureau believes it is appropriate to provide creditors a model form to use when complying with proposed § 1002.13(a)(1)(i)(B). Specifically, the Bureau proposes to cross-reference the data collection model form included in the revised Regulation C appendix and thereby establish it as a model form for complying with proposed § 1002.13(a)(1)(i)(B). The Bureau proposes to cross-reference this form, rather than create a new model form, based on the belief that doing so will ease the compliance burden on creditors by providing them a single form that may be used with both revised Regulation C and proposed § 1002.13(a)(1)(i)(B). The Bureau believes cross-referencing the data collection model form in revised Regulation C is also appropriate because it will avoid the possibility of inconsistent forms.

The Bureau considered the alternative approach of including the 2016 URLA as a model form for use in complying with proposed § 1002.13(a)(1)(i)(B). The Bureau is not proposing this alternative for several reasons. As discussed above, the Bureau approved use of the 2016 URLA under section 706(e) of ECOA through the Bureau Approval Notice and believes that including the 2016 URLA as a model form is unnecessary given the approvals already provided to the 2016 URLA in that notice. The Bureau also believes that a model form designated for use in complying with § 1002.13(a)(1)(i)(B) is properly limited to include only information relevant to the collection applicant demographic information and that inclusion of unrelated sections of the 2016 URLA is not necessary to further the purposes of ECOA or provide relevant guidance

to creditors. Moreover, the Bureau anticipates that the Enterprises may update the 2016 URLA in the future. By maintaining approval of the 2016 URLA in a freestanding notice, the Bureau avoids the risk that the model form will become outdated or that the Bureau will need to make ongoing revisions and updates within Regulation B. Although the Bureau does not propose to include the 2016 URLA in Regulation B as a model form, the Bureau notes that the substance and form of section 7 of the 2016 URLA is substantially similar to the data collection model form the Bureau proposes to designate for use in complying with revised § 1002.13(a)(1)(i)(B). The Bureau does not intend to convey disapproval of the 2016 URLA and has no plans at this time to revise or withdraw the Bureau Approval Notice currently in effect.

The Bureau also proposes to add a model form to the Regulation B appendix to be used for the collection of an applicant's ethnicity and race information in compliance with proposed § 1002.13(a)(1)(i)(A). The text of the proposed model form substantially mirrors both section X in the 2004 URLA and the data collection model form contained in the current Regulation C appendix. Given these similarities, the Bureau believes that a creditor can comply with revised § 1002.13(a)(1)(i)(A) without modifying its existing forms for the collection of an applicant's ethnicity and race information. Like the proposed model form that may be used in compliance with § 1002.13(a)(1)(i)(B), the Bureau's proposed model form for § 1002.13(a)(1)(i)(A) is one-page in length and limited to information concerning the applicant's ethnicity, race, and sex.

The Bureau solicits comment on this proposal to provide alternative model forms for compliance with revised § 1002.13(a)(1)(i).

#### *Removal of the 2004 URLA as a Model Form*

As discussed above, the current Regulation B appendix includes the 2004 URLA as a model form for use in complying with § 1002.13. In light of the proposed revisions to

§ 1002.13(a)(1)(i) and the proposal to provide two additional model forms for use in complying with revised § 1002.13(a)(1)(i), the Bureau proposes to remove the 2004 URLA as a model form in Regulation B. The Bureau proposes that the 2004 URLA be removed on the cutover date the Enterprises designate for use of the 2016 URLA or January 1, 2022, whichever comes first.

As noted above, the Bureau expects the Enterprises will designate in 2017 a cutover date for mandatory use of the 2016 URLA. The Bureau expects that the vast majority of creditors that use the URLA either currently do not use the already outdated 2004 URLA or will cease using the 2004 URLA on or prior to the 2016 URLA cutover date. Accordingly, the Bureau believes that removal of the 2004 URLA from appendix B upon the cutover date designated by the Enterprises will successfully eliminate an outdated form without imposing an appreciable burden on creditors. Alternatively, if the cutover date is after January 1, 2022, the Bureau proposes an effective date of January 1, 2022; the Bureau believes that five years provides creditors ample time to update their forms if they wish to.

The Bureau further believes that removal of the 2004 URLA is appropriate because it would be duplicative of the form the Bureau proposes to provide for use in complying with proposed § 1002.13(a)(1)(i)(A). As discussed above, the proposed one-page data collection model form is substantially similar to section X of the 2004 URLA. The Bureau believes that retention of the 2004 URLA in Regulation B is therefore unnecessary and could create uncertainty as to the purpose of the two forms.

Finally, the Bureau believes that removal of the 2004 URLA from Regulation B is appropriate in light of the proposal not to include the 2016 URLA as a model form. The Bureau is concerned that maintaining the 2004 URLA as a model form in Regulation B, while not including the 2016 URLA, may discourage some creditors from using the 2016 URLA or the

disaggregated ethnicity and race categories. The Bureau further believes that removal of the 2004 URLA from Regulation B is appropriate for many of the same reasons the Bureau identified above for not proposing to include the 2016 URLA, including that the 2004 URLA contains numerous sections that are irrelevant to compliance with § 1002.13. In proposing to remove the 2004 URLA, however, the Bureau does not intend to suggest that the content and wording of the form no longer complies with § 1002.5(b) through (d) or § 1002.13(a)(1)(i).

In light of these considerations, the Bureau proposes to remove the 2004 URLA as a model form in the Regulation B appendix, effective upon the cutover date designated by the Enterprises for use of the 2016 URLA or January 1, 2022, whichever comes first. The Bureau solicits comment on this proposal.

*Removal of the Official Commentary to Appendix B*

As discussed above, commentary to appendix B includes a discussion of two forms created by the Enterprises that are no longer in use: a 1992 version of the URLA and a 1986 home-improvement and energy loan application form. Given that neither form discussed in the commentary to the Regulation B appendix is currently used by the Enterprises, the Bureau believes that few, if any, creditors continue to use the referenced forms. Accordingly, the Bureau proposes to remove in its entirety the commentary to the Regulation B appendix based on the belief that it no longer provides useful guidance to creditors. While the Bureau acknowledges that the commentary in the Regulation B appendix instructs creditors to delete, strike, or modify the data-collection section on the referenced forms when using the forms for transaction not covered by § 1002.13(a), the Bureau believes that this language is unnecessary and duplicative of appendix B itself, which provides that a creditor may alter the model forms by

deleting any information request. The Bureau solicits comment on this proposal, including specifically whether any portion of the current commentary to appendix B should be retained.

## **VII. Dodd-Frank Act Section 1022(b) Analysis**

### *A. Overview*

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.<sup>36</sup> The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency), the Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market or systematic objectives administered by such agencies.

The purpose of ECOA, as implemented by Regulation B, is to promote access to credit by all creditworthy applicants without regard to protected characteristics. The proposal would make three substantive changes to Regulation B, along with other clarifications, minor changes, and technical corrections to align the language of Regulation B with Regulation C as amended by the 2015 HMDA Final Rule. The first would give persons who collect and retain race and

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<sup>36</sup> Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

ethnicity information in compliance with ECOA as implemented in Regulation B the option of permitting applicants to self-identify using the disaggregated race and ethnicity categories required by the 2015 HMDA Final Rule. In practice, this would allow entities that report race and ethnicity in accordance with the 2015 HMDA Final Rule and Regulation C to comply with Regulation B without further action, while entities that do not report under HMDA but record and retain race and ethnicity data under Regulation B would have the option of recording data either using the existing aggregated categories or the new disaggregated categories.

The Bureau believes that, absent this change, entities which currently report race and ethnicity data under the HMDA could conclude that they have different obligations under Regulation B and Regulation C once the 2015 HMDA Final Rule goes into effect on January 1, 2018. This would lead to unnecessary burden from collecting both aggregated and disaggregated data. By making disaggregated collection an option under Regulation B, entities who will report race and ethnicity information under the HMDA final rule will also be in compliance with Regulation B with certainty. The Bureau believes that making collection of disaggregated race and ethnicity an option for all entities covered by Regulation B will pose little or no additional burden on those entities who are not HMDA reporters. The proposed amendment may have some benefits to non-HMDA reporting entities, as the current language of Regulation B would not allow these entities to use the 2016 version of the Enterprises' Uniform Residential Loan Application (URLA) for the purpose of collecting race and ethnicity data, as the 2016 URLA uses the disaggregated race and ethnicity categories matching the 2015 HMDA Final Rule and not the specific categories required by current Regulation B. Thus, the proposed amendment has the added benefit that it will allow non-HMDA reporting entities to use the 2016 URLA as an instrument to collect race and ethnicity information.

The second substantive change would remove the outdated 2004 URLA as a model form, concurrent with the date that the Enterprises have announced they will cease accepting that form or on January 1, 2022, whichever occurs first. The Bureau issued an Approval Notice under its authority in section 706(e) of ECOA on September 23, 2016, that a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d). The Bureau is not proposing to add the 2016 URLA as a model form in place of the 2004 version. Instead, the Bureau is proposing to provide for two alternative data collection model forms for the purpose of collecting ethnicity and race information. The Bureau believes this practice of acknowledging future versions of the URLA via a Bureau Approval Notice rather than a revision to Regulation B will avoid the risk that the model form included in Regulation B will become outdated in the future.

Finally, the Bureau proposes amending Regulation B and the associated commentary to allow creditors to collect ethnicity, race and sex from mortgage applicants in certain cases where the creditor is not required to report under HMDA and Regulation C. These cases include creditors that submit HMDA data even though not required to do so, and creditors that submitted HMDA data in any of the preceding five calendar years. This change would primarily benefit institutions that may be near the loan volume reporting threshold, such that they may be required to report under HMDA and Regulation C in some years and not others, or may be uncertain about their reporting status. The Bureau believes that allowing voluntary collection will reduce the burden of compliance with Regulation C on some entities and provide certainty regarding Regulation B compliance over time.

*B. Potential Benefits and Costs to Consumers and Covered Persons*

*Providing an Option to Collect Disaggregated Race and Ethnicity for Regulation B*

Relative to the state of Regulation B and Regulation C following the effective date of the 2015 HMDA Final Rule, the proposed amendment provides clear benefits to entities that will be required to collect and report race and ethnicity data under HMDA. Currently the disaggregated race and ethnicity categories required by the amendments to Regulation C in the 2015 HMDA Final Rule, effective January 1, 2018, do not match the categories specified in current Regulation B. Because of the differences between the categories, some creditors required to collect and report race and ethnicity using the disaggregated categories set forth in Regulation C may be uncertain whether additional collection using aggregated categories would also be required to satisfy current Regulation B. Complying with both Regulations would require burdensome and duplicative collection of race and ethnicity data at both the aggregated and disaggregated level. In practice, the proposal simply makes clear that the existing collection that will be required for Regulation C is sufficient for compliance with Regulation B.

The proposal may have small benefits to consumers, to the extent that lending entities voluntarily choose to collect disaggregated race and ethnicity information. As discussed in the section 1022 analysis for the 2015 HMDA Final Rule, collection of disaggregated race and ethnicity data can enhance the ability of regulators to conduct fair lending analysis. These benefits are limited for three reasons, however. First, non-HMDA reporters will not be required to permit applicants to self-identify using disaggregated ethnicity and race categories. Second, many Regulation B-only creditors will be exempt from reporting under Regulation C because they originate fewer than 25 closed-end mortgage loans in each of the two preceding calendar years, which means both that few consumers would be affected and that the resulting data would

likely be too sparse for statistical analysis even of the aggregated race and ethnicity data. Finally, demographic data retained by Regulation B-only creditors is not reported under Regulation C. Consequently, most oversight and analysis of demographic data retained by Regulation B-only creditors will be done only by regulators, whereas researchers and community groups also conduct analysis of HMDA data reported under Regulation C. The Bureau believes the proposal will not impose any costs on consumers.

The proposal may have benefits to some Regulation B-only creditors. Although these entities need not make any changes to their race and ethnicity collection procedures, they may desire to do so in the future by adopting the 2016 URLA for non-HMDA reportable loan applications. The Enterprises have announced that they will cease accepting older versions of the URLA at a date to be determined and require firms that sell to the Enterprises to use the 2016 URLA form. Some Regulation B-only creditors sell mortgages to the Enterprises, and would benefit from being able to use the 2016 URLA. Because the policy change on the part of the Enterprises is not a part of the rule, the Bureau believes any operational costs from adopting the 2016 URLA are part of the normal course of business and are not a cost of the proposed rule change.

In addition to the proposed change, the Bureau considered two alternatives to address the differing race and ethnicity requirements of Regulation B and Regulation C. The Bureau considered requiring all persons subject to the collection and retention requirement of Regulation B to permit applicants to self-identify using disaggregated race and ethnicity categories. To the extent that consumers would benefit from disaggregated race and ethnicity collection, this alternative would provide greater benefits than the Bureau's proposal. However, of the three limitations to consumer benefits listed above, only the first (that disaggregated categories would

be optional) is alleviated by requiring the use of disaggregated race and ethnicity categories under Regulation B. It is still the case that due to the low volume of mortgages by many affected entities and the lack of reporting, disaggregated race and ethnicity data may have limited benefits. Finally, the Bureau believes many entities will adopt the 2016 URLA as part of the course of business and thus permit applicants to self-identify using disaggregated race and ethnicity categories.

At the same time, mandatory use of disaggregated collection of race and ethnicity categories would impose greater costs on firms than the Bureau's proposal, particularly on smaller entities. These costs include greater operational costs and one-time database upgrades. Unlike adoption of the 2016 URLA, these costs would not be incurred in the normal course of business. The Bureau does not have data available to estimate these costs, but given the small marginal benefits of mandatory use of disaggregated race and ethnicity categories, the Bureau is not proposing making disaggregated race and ethnicity categories mandatory for compliance with Regulation B. The Bureau requests comments on both the costs and benefits associated with this alternative approach.

The Bureau also considered eliminating entirely the collection and retention requirement of Regulation B. Although this alternative would reduce burden to firms who do not report under HMDA, the Bureau believes it may impose costs on consumers. The prudential regulators confirm that data collected and retained by entities subject to Regulation B but not Regulation C may be used for fair lending supervision and enforcement. Institutions subject to Regulation B but not Regulation C include, for example, institutions that do not have a branch or home office in a Metropolitan Statistical Area, do not meet an applicable asset threshold, or do not meet an applicable loan volume threshold.

For instance, the 2015 NCUA Call Report and the 2015 Nationwide Mortgage Licensing System & Registry (NMLS) Mortgage Call Report data include 489 credit unions and 161 non-depository institutions that originated at least 25 closed-end mortgages that are not found in the 2015 HMDA data.<sup>37</sup> In addition, many community banks in rural areas are already exempt from HMDA reporting because they do not have a branch or home office in a Metropolitan Statistical Area (MSA).<sup>38</sup> Demographic information collected under Regulation B by those institutions with larger loan volumes may be used in statistical analysis that supports fair lending supervision and enforcement. Removing the Regulation B requirement altogether would make detection of any discrimination by these entities more difficult, with potentially large costs to consumers where such discrimination exists. Even for institutions with very small volumes of originations that may not be subject to HMDA reporting because they do not meet an applicable loan volume threshold, the retained information may be useful for comparative file reviews. In 2015 there were 1,178 institutions that reported HMDA data but had fewer than 25 originations and therefore would likely be exempt under the 2015 HMDA Final Rule if they continue to originate loans at a similar volume. Although the loan volumes of most of these institutions would be too sparse for statistical analysis, the ability to conduct comparative file reviews using data retained under Regulation B has some benefit. Accordingly, the Bureau does not propose removing the Regulation B requirement to collect and retain race and ethnicity information.

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<sup>37</sup> The criteria for being a financial institution and reporting transactions under HMDA are different in some ways from the criteria for reporting under the NMLS Mortgage Call Report and reporting transactions under it. It is possible that the NMLS omits some non-depository institutions that originated at least 25 closed-end mortgages, did not report HMDA data, and are subject to Regulation B. Some or all of these institutions may also not have been required to report HMDA data.

<sup>38</sup> The Bureau does not have an estimate of the number of rural community banks that are currently exempt from HMDA reporting and originate at least 25 loans per year. The FFIEC call report for banks does not report originations for depository institutions that do not report to HMDA.

### *Model Forms for Collecting Race and Ethnicity Data*

The Bureau believes that the proposal to change the model forms for collecting race and ethnicity data will have modest benefits to firms collecting these data, by providing updated model forms, and reducing confusion regarding the outdated 2004 URLA. The proposal does not impose any new costs on firms, nor does the Bureau believe that consumers will experience any cost or benefit from the proposal. The Bureau requests comment regarding the costs and benefits associated with this proposal.

### *Allowing Voluntary Collection of Applicant Information*

Regarding the proposal to allow certain creditors to voluntarily collect demographic information, the Bureau believes the financial institutions that will most likely exercise such options would be low-volume, low-complexity institutions that have made a one-time investment in HMDA collection and reporting and would like to utilize that collection process already in place. The Bureau believes the proposed provision will provide modest benefits to such institutions, by saving on one-time adjustment costs required to shift in and out of collection. The Bureau expects that institutions will only exercise this option if voluntary collection provides a net benefit. The Bureau does not believe that consumers will experience any cost or benefit from the proposal. The Bureau requests comment regarding the costs and benefits associated with this proposal, particularly data on the number of firms that might be interested in voluntary collection under this provision.

### *C. Impact on Depository Institutions and Credit Unions With \$10 Billion or Less in Assets, As Described in Dodd-Frank Section 1026*

The Bureau believes that depository institutions and credit unions with \$10 billion or less in assets will not be differentially affected by the substantive proposed amendments. The

primary benefit to lenders from the proposed rule is the reduced uncertainty and compliance burden from allowing the disaggregated race and ethnicity information collected under Regulation C to be used to comply with Regulation B. Both certain depository institutions and credit unions with less than \$10 billion in assets and covered persons with more than \$10 billion in assets currently report data under HMDA and thus will receive these benefits. The benefits may be somewhat larger for depository institutions and credit unions with less than \$10 billion in assets because the relative costs of duplicative collection would be greater for these entities.

#### *D. Impact on Access to Credit*

The Bureau does not believe that there will be an adverse impact on access to credit resulting from any of the proposed provisions.

#### *E. Impact on Consumers in Rural Areas*

The Bureau believes that rural areas might benefit from the provision to allow collection of disaggregated race and ethnicity information more than urban areas. One of the exceptions to the reporting requirements under HMDA is for entities which do not have a branch or home office located in an MSA. Such entities likely serve primarily customers in rural areas. To the extent that the proposed provision benefits firms and consumers, consumers in rural areas will see the largest benefits.

### **VIII. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small business, small governmental units, and small nonprofit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on any small entities. The Bureau does not expect the proposal to impose costs on covered persons. All methods of compliance under current law will remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with current law need not take any additional action if the proposal is adopted, save those already required by the 2015 HMDA Final Rule.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

## **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB)'s approval for information collection requirements prior to implementation. The collections of information related to Regulation B and Regulation C have been previously reviewed and approved by OMB and assigned OMB Control Number 3170-0013(Regulation B) and 3170-0008 (Regulation C).

Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this Proposed Rule would not impose any new or revised information collection requirements (recordkeeping, reporting or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. Although some entities subject to Regulation B but not Regulation C may choose to voluntarily begin collecting disaggregated race and ethnicity information, the Bureau believes the most likely reason for this to occur is through adoption of the 2016 URLA, which is not part of the proposed rule.

The Bureau welcomes comments on this determination, which may be submitted to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to [CFPB\\_PRA@cfpb.gov](mailto:CFPB_PRA@cfpb.gov). All Comments are matters of Public Record.

### **List of Subjects in 12 CFR Part 1002**

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

### **Authority and Issuance**

For the reasons set forth above, the Bureau proposes to amend Regulation B, 12 CFR part 1002, as set forth below:

### **PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)**

1. The authority citation for part 1002 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

2. Section 1002.5 is amended by adding paragraph (a)(4) to read as follows:

## **§ 1002.5 Rules concerning requests for information.**

(a) \* \* \*

(4) *Other permissible collection of information.* Notwithstanding paragraph (b) of this section, a creditor may collect information under the following circumstances provided that the creditor collects the information in compliance with appendix B to Regulation C, 12 CFR part 1003:

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

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

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

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

\* \* \* \*

3. Section 1002.12 is amended by revising paragraph (b)(1)(i) to read as follows:

**§ 1002.12 Record retention.**

\* \* \* \*

(b) \* \* \*

(1) \* \* \*

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

4. Section 1002.13 is amended by revising paragraphs (a)(1)(i) and paragraph (b) to read as follows:

**§ 1002.13 Information for monitoring purposes.**

(a) \* \* \*

(1) \* \* \*

(i) Ethnicity and race using either:

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

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

\* \* \* \*

(b) *Obtaining information.* Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(B), the creditor must comply with any restrictions on the collection of an applicant's ethnicity or race on the basis of visual observation or surname set forth in appendix B to Regulation C, 12 CFR part 1003.

\* \* \* \*

5. APPENDIX B TO PART 1002—MODEL APPLICATION FORMS is amended by revising paragraph (1) and adding a Data Collection Model Form to read as follows:

**APPENDIX B TO PART 1002—MODEL APPLICATION FORMS**

1. This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second

for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property States; and the fifth in residential mortgage transactions which contains a model disclosure for use in complying with 1002.13 for certain dwelling-related loans. This appendix also contains a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(A) and (ii). Appendix B to Regulation C, 12 CFR part 1003, provides a data collection model form for collecting information concerning an applicant's ethnicity, race and sex that complies with the requirements of § 1002.13(a)(1)(i)(B) and (ii). All forms contained in this appendix are models; their use by creditors is optional.

\* \* \* \*

DATA COLLECTION MODEL FORM  
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

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

APPLICANT:

I do not wish to furnish this information

Ethnicity

Hispanic or Latino  
 Not Hispanic or Latino

Race

American Indian or Alaska Native  
 Asian  
 Black or African American  
 Native Hawaiian or Other Pacific Islander  
 White

Sex

Female  
 Male

CO-APPLICANT:

I do not wish to furnish this information

Ethnicity

Hispanic or Latino  
 Not Hispanic or Latino

Race

American Indian or Alaska Native  
 Asian  
 Black or African American  
 Native Hawaiian or Other Pacific Islander  
 White

Sex

Female  
 Male

\* \* \* \*

6. APPENDIX B TO PART 1002—MODEL APPLICATION FORMS is amended by revising paragraph 1 and under paragraph 3 removing the form “Uniform Residential Loan Application”.

The revision reads as follows:

#### **APPENDIX B TO PART 1002—MODEL APPLICATION FORMS**

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

\* \* \* \*

#### **7. SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS:**

##### **a. Under Section 1002.5—Rules concerning requests for information:**

i. Under *Paragraph 5(a)(2)*, paragraph 2 is revised.

ii. New heading *Paragraph 5(a)(4)* is added, and under *Paragraph 5(a)(4)* new paragraph 1 is added.

##### **b. Under Section 1002.12—Record retention:**

i. Under *Paragraph 12(b)*, paragraph 2 is revised.

- c. Under *Section 1002.13—Information for monitoring purposes*:
  - i. Under *Paragraph 13(a) —Information to be requested*, paragraph 7 is revised and paragraph 8 is added.
  - ii. Under *Paragraph 13(b)—Obtaining of information*, paragraph 1 is revised.
  - iii. Under *Paragraph 13(c)—Disclosure to applicants*, paragraph 1 is revised.
- d. The heading **APPENDIX B—MODEL APPLICATION FORMS** and paragraphs 1 and 2 thereunder are removed.

The revisions, additions, and removals read as follows:

## **SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS**

\* \* \* \*

### *Section 1002.5—Rules Concerning Requests for Information*

#### *5(a) General rules.*

\* \* \* \*

##### *Paragraph 5(a)(2).*

\* \* \* \*

*2. Information required by Regulation C.* Regulation C, 12 CFR part 1003, generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for certain dwelling-secured loans, including some types of loans not covered by § 1002.13.

\* \* \* \*

##### *Paragraph 5(a)(4).*

*1. Other permissible collection of information.* Information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C may nevertheless be collected

under the circumstances set forth in § 1002.5(a)(4) without violating § 1002.5(b). The information must be retained pursuant to the requirements of § 1002.12.

\* \* \* \*

*Section 1002.12—Record Retention*

\* \* \* \*

*12(b) Preservation of records.*

\* \* \* \*

*2. Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 1002.13 or the creditor is collecting information pursuant to § 1002.5(a)(4), however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

\* \* \* \*

*Section 1002.13—Information for Monitoring Purposes*

*13(a) Information to be requested.*

\* \* \* \*

*7. Data collection under Regulation C.* For applications subject to § 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to Regulation C, 12 CFR part 1003, is acting in compliance

with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information.

*See also* comment 5(a)(2)-2.

8. *Application-by-application basis.* For applications subject to § 1002.13(a)(1), a creditor may choose on an application-by-application basis whether to collect aggregate information pursuant to § 1002.13(a)(1)(i)(A) or disaggregated information pursuant to § 1002.13(a)(1)(i)(B) about the ethnicity and race of the applicant.

*13(b) Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 1002.13(a) either on an application form or on a separate form referring to the application. Appendix B to this part provides for two alternative data collection model forms for use in complying with the requirements of § 1002.13(a)(1)(i) and (ii) to collect information concerning an applicant's ethnicity, race, and sex. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity designation and more than one racial designation.

\* \* \* \*

*13(c) Disclosure to applicants.*

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B provides data collection model forms for use in complying with § 1002.13 and that comply with § 1002.13(c). A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

\* \* \* \*

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED  
“AMENDMENTS TO EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)  
ETHNICITY AND RACE INFORMATION COLLECTION”]

Dated: March 24, 2017.

A handwritten signature in blue ink that reads "Richard Cordray". The signature is fluid and cursive, with "Richard" on top and "Cordray" below it, both written in a single continuous stroke.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*