Consumer Financial Protection Bureau

Official Staff Commentary on Regulation B Equal Credit Opportunity

12 CFR 1002, supplement I; as amended effective August 2, 2024

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

INTRODUCTION

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

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the *Federal Register*. Except in unusual circumstances, official interpretations will be issued only by means of this commentary.

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

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SUBPART A—GENERAL

SECTION 1002.1—Authority, Scope, and Purpose

1(a) Authority and Scope

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

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

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

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SECTION 1002.2—Definitions

2(c) Adverse Action

Paragraph 2(c)(1)(i)

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

Paragraph 2(c)(1)(ii)

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

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

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Paragraph 2(c)(2)(ii)

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

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

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Paragraph 2(c)(2)(iii)

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

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

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

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

iv. The authorization facilities are not functioning.

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

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

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Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under section 1002.9.

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2(e) Applicant

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

6–5161

2(f) Application

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

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

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

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

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

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

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

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

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

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

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

6. *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must

act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But *see* comment 9(a)(1)-3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

6–5162.3

2(g) Business Credit

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

6–5163

2(j) Credit

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

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2(*l*) Creditor

1. *Assignees.* The term creditor includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

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

6–5165

2(p) Empirically Derived and Other Credit Scoring Systems

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

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

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statisti-

cally sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

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

6–5166

2(w) Open-End Credit

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

6–5167

2(z) Prohibited Basis

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

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

6–5168

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

6–5169

SECTION 1002.3—Limited Exceptions for Certain Classes of Transactions

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

6–5170

3(a) Public-Utilities Credit

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equip-

ment, or other durable goods, or for insulation or other home improvements—is not excepted.

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

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

6–5171

3(c) Incidental Credit

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

6–5174

3(d) Government Credit

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

6–5175

SECTION 1002.4—General Rules

Paragraph 4(a)

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

2. *Examples.*

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

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

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

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

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

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

6–5176

Paragraph 4(b)

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the

Act—to promote the availability of credit on a nondiscriminatory basis—section 1002.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

6–5176.1

Paragraph 4(c)

1. *Requirement for written applications.* Model application forms are provided in Appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by section 1002.13 can meet the requirement for written applications by writing down pertinent information that is provided by the applicant.

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (*See* the commentary to section 1002.13(b), Applications through electronic media and Applications through video.)

6–5176.2

Paragraph 4(d)

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

2. *Form of disclosures.* Whether the disclosures required to be on or with an application must be in electronic form depends upon the following:

i. If an applicant accesses a credit application electronically (other than as described under ii below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the applicant, this requirement would not be met.

ii. In contrast, if an applicant is physically present in the creditor's office, and accesses a credit application electronically, such as via a terminal or kiosk (or if the applicant uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

6–5177

SECTION 1002.5—Rules Concerning Requests for Information

5(a) General Rules

Paragraph 5(a)(1)

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 1002.6 governs how information may be used.

6–5177.4

5(a)(2) Required Collection of Information

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a ''state'' statute or regulation includes information required by a local statute, regulation, or ordinance.

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

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

4. *Information required by subpart B.* Subpart B of this part generally requires creditors that are covered financial institutions as defined in section 1002.105(b) to collect and report information about the ethnicity, race, and sex of the principal owners of applicants for certain small business credit, as well as whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, as defined in section 1002.102(m), (s), and (*l*), respectively.

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

1. *Other permissible collection of information.* Information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C, 12 CFR part 1003, or subpart B of this part, may nevertheless be collected under the circumstances set forth in section 1002.5(a)(4) without violating section 1002.5(b). The information collected pursuant to 12 CFR part 1003 must be retained pursuant to the requirements of section 1002.12. The information collected pursuant to subpart B of this part must be retained pursuant to the requirements set forth in section 1002.111.

6–5177.7

5(d) Other Limitations on Information Requests

Paragraph 5(d)(1)

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

i. The applicant's obligation to pay alimony, child support, or separate maintenance income.

ii. The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

iii. Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

iv. The ownership of assets, which could disclose the interest of a spouse.

6–5178

Paragraph 5(d)(2)

1. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance income, a creditor making such an inquiry on an application form should preface the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate main-

tenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

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SECTION 1002.6—Rules Concerning Evaluation of Applications

6(a) General Rule Concerning Use of Information

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by section 1002.5 from obtaining or from using for any purpose other than to conduct a self-test under section 1002.15.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the U.S. Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5. The Act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have income in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and nonminority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6–5181

6(b) Specific Rules Concerning Use of Information

Paragraph 6(b)(1)

1. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (*See* section 1002.8.)

6–5182

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of section 1002.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in section 1002.2(p), with one limitation: Applicants age 62 years or older must be treated at least as favorably as applicants who are under age 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* Some credit systems segment the population and use different scorecards based on the age of an applicant. In such a system, one card may cover a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card may cover all other applicants, who are evaluated under the attributes predictive for that broader class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system is not

deemed to score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the Act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in section 1002.2(t), a creditor may not decide whether to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant. For example, a creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:

i. A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

ii. A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.

iii. A creditor may consider the applicant's age to assess the significance of length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

6–5182.1

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home, or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under section 1002.6(b)(2)(iv). In addition, under section 1002.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

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5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under section 1002.2(p) may consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (*See* comment 6(b)(2)-3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

i. The length of time an applicant will likely remain eligible to receive such income.

ii. Whether the applicant will continue to qualify for benefits based on the status of

the applicant's dependents (as in the case of Temporary Aid to Needy Families, or social security payments to a minor).

iii. Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

6–5184

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance payments, retirement benefits, or public assistance on an individual basis, not on the basis of aggregate statistics; and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

6–5185

3. *Consideration of income.*

i. A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

A. A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income for reliability.

B. A creditor may evaluate each component of the applicant's income, and then score or take into account income determined to be reliable separately from other income; or the creditor may disregard that portion of income that is not reliable when it aggregates reliable income.

C. A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

ii. In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. The creditor may not, however, score or otherwise take into account the number of sources for income such as retirement income, social security, supplemental security income, and alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from, for example, a part-time job.

6–5186

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. On the applicant's request, however, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

6–5187

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bear-

ing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* A denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

6–5187.1

Paragraph 6(b)(8)

1. *Prohibited basis—marital status.* A creditor may consider the marital status of an applicant or joint applicant for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

6–5188

SECTION 1002.7—Rules Concerning Extensions of Credit

7(a) Individual Accounts

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. But the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

6–5189

7(b) Designation of Name

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit cards issued on the account. But the creditor may not require that the name be the husband's name. (*See* section 1002.10 for rules governing the furnishing of credit history on accounts held by spouses.)

6–5190

7(c) Action Concerning Existing Open-End Accounts

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is now unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

i. Repudiate responsibility for future charges on the joint account.

ii. Request separate accounts in their own names.

iii. Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement or reaching a particular age, or a change in name or marital status—to trigger such a request.

6–5191

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from an account holder, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

6–5192

7(d) Signature of Spouse or Other Person

1. *Qualified applicant.* The signature rules ensure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party-but cannot require that it be the spouse. (*See* commentary to sections 1002.7(d)(5) and (6).)

6–5193

Paragraph 7(d)(1)

1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis. (But *see* comment 7(d)(6)-1 concerning guarantors of closely held corporations.)

2. *Joint applicant.* The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

3. *Evidence of joint application.* A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (*See* Appendix B.) The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit.

6–5194

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the existing form of ownership, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property could be transferred into tenancy

by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the non-applicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to qualify for the extension of credit. For example:

A. Providing a co-signer or other party (section 1002.7(d)(5));

B. Requesting that the credit be granted on a secured basis (section 1002.7(d)(4)); or

C. Providing the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (such as a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

6–5195

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

6–5195.1

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require the signatures.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be asked to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

6–5195.2

Paragraph 7(d)(5)

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status, or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-

community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (*See* section 1002.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not warranted, release the additional party.

6–5195.3

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in section 1002.7(d) bar a creditor from requiring the signature of a guarantor's spouse just as they bar the creditor from requiring the signature of an applicant's spouse. For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of another person in appropriate circumstances in accordance with section 1002.7(d)(2).

6–5195.4

7(e) Insurance

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used for determining eligibility and premium rates for insurance, however, and not in making the credit decision.

6–5195.5

SECTION 1002.8—Special Purpose Credit Programs

8(a) Standards for Programs

1. *Determining qualified programs.* The Bureau does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by Federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under section 1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and state law.

3. *Expressly authorized.* Credit programs au-

thorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the Act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose credit program under section 1002.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

6–5195.6

8(b) Rules in Other Sections

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taken as required by section 1002.9.

6–5195.7

8(c) Special Rule Concerning Requests and Use of Information

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by sections 1002.5 and 1002.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information about a prohibited basis are:

i. Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

ii. Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

6–5195.8

8(d) Special Rule in the Case of Financial Need

1. *Request of prohibited basis information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by sections 1002.5 and 1002.6, and to require signatures that would otherwise be prohibited by section 1002.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

i. Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

ii. Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by Federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (*See* sections 1002.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

6–5195.9

SECTION 1002.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term adverse action in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by section 1002.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under section 1002.9. (The creditor must comply, however, with the record retention requirements of the regulation. *See* section 1002.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under section 1002.9 may appear on either or both sides of a form or letter.

5. *Prequalification requests.* Whether a creditor must provide a notice of action taken for a prequalification request depends on the creditor's response to the request, as discussed in comment 2(f)-3. For instance, a creditor may treat the request as an inquiry if the creditor evaluates specific information about the consumer and tells the consumer the loan amount, rate, and other terms of credit the consumer could qualify for under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of section 1002.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if the creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

6–5196

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (*See also* comment 2(f)-6.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under section 1002.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or ''incomplete application'' cannot be given as the reason for the denial.

6–5196.1

5. *Length of counteroffer.* Section 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with section 1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C-4 of Appendix C to the regulation.

7. *Denial of a telephone application.* When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

6–5196.15

Paragraph 9(a)(3)

1. *Coverage.* In determining which rules in this paragraph apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in section 1002.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules govern the application. However, if an applicant applies for business credit as an individual, the rules in section 1002.9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term trade credit generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

6–5196.16

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the Act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in section 1002.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with section 1002.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to section 1002.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of section 1002.9(a)(1) is deemed reasonable in all instances.

6–5196.2

9(b) Form of ECOA Notice and Statement of Specific Reasons

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is ''substantially similar'' to the notice contained in section 1002.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

6–5196.3

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but

disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under sections 1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

6–5196.4

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

6–5196.5

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. If the application is not approved or denied as a result of the credit scoring, but falls into a gray band, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)-1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

6–5196.6

9. *Combined ECOA-FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA)

requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a credit report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy section 1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C-1 through C-5 of Appendix C of the regulation provide for both the ECOA and FCRA disclosures. *See also* comment 9(b)(2)-1.

6–5196.7

9(c) Incomplete Applications

Paragraph 9(c)(1)

1. *Exception for preapprovals.* The requirement to provide a notice of incompleteness does not apply to preapprovals that constitute applications under section 1002.2(f).

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

6–5196.8

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If an applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in sections 1002.9(c)(1) and (2). If the applicant provides the information, the creditor must take action on the application and notify the applicant in accordance with section 1002.9(a).

6–5196.9

9(g) Applications Submitted Through a Third Party

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted, or by a noncreditor third party. If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.

2. *Third party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different Federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

6–5197

SECTION 1002.10—Furnishing of Credit Information

1. *Scope.* The requirements of section 1002.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit

bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of section 1002.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by section 1002.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

6–5197.1

10(a) Designation of Accounts

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor must change the designation on the account to reflect the new parties and must furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse on the account and does not require a creditor to change the name in which the account is maintained.

6–5197.15

SECTION 1002.11—Relation to State Law

11(a) Inconsistent State Laws

1. *Preemption determination—New York.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provisions in the state law of New York are preempted by the Federal law, effective November 11, 1988:

i. Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

ii. Article 15, section 296a(1)(c)—Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. The Board of Governors determined that the following provision in the state law of Ohio is preempted by the Federal law, effective July 23, 1990:

i. Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring sys-

tem; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

6–5197.2

SECTION 1002.12—Record Retention

12(a) Retention of Prohibited Information

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in section 1002.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by section 1002.6.

6–5197.3

12(b) Preservation of Records

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with section 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 section 1002.13 or the creditor is collecting information pursuant to section 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.

6–5197.4

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (*See*, for example, comment 9-2.) In such cases, the 25-month requirement runs from the date of application, as when:

i. An application is withdrawn by the applicant.

ii. An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

6–5197.45

12(b)(6) Self-Tests

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

6–5197.46

12(b)(7) Preapplication Marketing Information

1. *Prescreened credit solicitations.* The rule requires creditors to retain copies of prescreened credit solicitations. For purposes of this part, a prescreened solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(1) of the Fair Credit Reporting Act. A creditor complies with section 1002.12(b)(7) if

it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, or annual fee.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation and to determine who will actually be offered credit.

3. *Correspondence.* A creditor may retain correspondence relating to consumers' complaints about prescreened solicitations in any manner that is reasonably accessible and is understandable to examiners. There is no requirement to establish a separate database or set of files for such correspondence, or to match consumer complaints with specific solicitation programs.

6–5197.5

SECTION 1002.13—Information for Monitoring Purposes

13(a) Information to Be Requested

1. *Natural person.* Section 1002.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of section 1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to section 1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to section 1002.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of section 1002.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C.* For applications subject to section 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to 12 CFR part 1003 is acting in compliance with section 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 section 1002.13(a)(1), a creditor may choose on an application-by-application basis whether to collect aggregate information pursuant to section 1002.13(a)(1)(i)(A) or disaggregated information pursuant to section 1002.13(a)(1)(i)(B) about the ethnicity and race of the applicant.

6–5197.6

13(b) Obtaining of Information

1. *Forms for collecting data.* A creditor may collect the information specified in section 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 section 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 section 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 section 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity designation and more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by section 1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.*

i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

6–5197.61

4. *Video and other electronic-application processes.*

i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or subpart A of this Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent. Similarly, creditors that are covered financial institutions under subpart B of this regulation may also be required to collect, report, and maintain certain data, as set forth in subpart B of this regulation.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by section 1002.13, the creditor may process and retain the application without violating the regulation.

6–5197.7

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 section 1002.13 and that comply with section 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.

6–5197.75

13(d) Substitute Monitoring Program

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to information required by this section.

6–5197.8

SECTION 1002.14—Rules on Providing Appraisals and Valuations

14(a) Providing Appraisals and Other Valuations

1. *Multiple applicants.* If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under section 1002.14(a)(1), but it must be the primary applicant where one is readily apparent.

14(a)(1) In General

1. *Coverage.* Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in section 1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).

2. *Renewals.* Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

3. *Written.* For purposes of section 1002.14, an ''appraisal or other written valuation'' includes, without limitation, an appraisal or other valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. *See* section 1002.14(a)(5) regarding the provision of copies of appraisals and other written valuations to applicants via electronic means.

4. *Timing.* Section 1002.14(a)(1) requires that the creditor ''provide'' copies of appraisals and other written valuations to the applicant ''promptly upon completion,'' or no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

i. For purposes of this timing requirement, ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in section 1002.14(a)(5).

ii. The application and meaning of the ''promptly upon completion'' standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.

iii. ''Completion'' occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. *See also* comment 14(a)(1)-7.

iv. In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under section 1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided ''promptly upon completion'' as provided for in section 1002.14(a)(1), unless the applicant has waived that deadline as provided under section 1002.14(a)(1), in which case as provided for in section 1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5. *Promptly upon completion—examples.* Examples in which the ''promptly upon completion'' standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the ''promptly upon completion'' standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

i. *Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit).* On day 15 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

ii. *Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit).* An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. A week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation (or account opening). The creditor has provided the appraisal copy promptly upon completion.

iii. *Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit).* The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

iv. *Delay in sending an appraisal.* On day 12 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

v. *Delay in sending an AVM report while waiting for completion of a second valuation.* The creditor receives an AVM report on day 5 after application and completes its review of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and the revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except

where otherwise prohibited by law, an applicant's waiver is effective under section 1002.14(a)(1) in either of the following two situations:

i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

ii. If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under section 1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7. *Multiple versions of appraisals or valuations.* For purposes of section 1002.14(a)(1), the reference to ''all'' appraisals and other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with section 1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, then that version must be provided to the applicant to comply with section 1002.14(a)(1). *See also* comment 14(a)(1)-4 above.

14(a)(2) Disclosure

1. *Appraisal independence requirements not affected.* Nothing in the text of the disclosure required by section 1002.14(a)(2) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or the use of applicant-ordered appraisals by creditors.

14(a)(3) Reimbursement

1. *Photocopy, postage, or other costs.* Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).

2. *Reasonable fee for reimbursement.* Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under section 1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).

14(b) Definitions

14(b)(1) Consummation

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; section 1002.14 does not make this determina-

tion. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit vs. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

14(b)(2) Dwelling

1. *"Motor vehicles" not covered.* The requirements of section 1002.14 do not apply to ''motor vehicles'' as defined by 12 U.S.C. 5519(f)(1).

14(b)(3) Valuation

1. *Valuations—examples.* Examples of valuations include but are not limited to:

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value or opinion of value.

ii. A document prepared by the creditor's staff that assigns value to the property.

iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

iv. A report generated by use of an automated valuation model to estimate the property's value.

v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

2. *Attachments and exhibits.* The term ''valuation'' includes any attachments and exhibits that are an integrated part of the valuation.

3. *Other documentation.* Not all documents that discuss or restate a valuation of an applicant's property constitute a ''valuation'' for purposes of section 1002.14(b)(3). Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not ''valuations'' include but are not limited to:

i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

ii. Governmental agency statements of appraised value that are publically available.

iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

iv. Manufacturers' invoices for manufactured homes.

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

vi. Appraisal reviews that do not include the appraiser's estimate of the property's value or opinion of value.

6–5197.85

SECTION 1002.15—Incentives for Self-Testing and Self-Correction

15(a) General Rules

15(a)(1) Voluntary Self-Testing and Correction

1. *Activities required by any governmental authority are not voluntary self-tests.* A governmental authority includes both administrative and judicial authorities for Federal, State, and local governments.

6–5197.86

15(a)(2) Corrective Action Required

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this part. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain

information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an in camera inspection of the privileged documents.

6–5197.87

15(a)(3) Other Privileges

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work-product privilege. Self-testing data may be privileged under this section whether or not the creditor's assertion of another privilege is upheld.

6–5197.88

15(b) Self-Test Defined

15(b)(1) Definition

Paragraph 15(b)(1)(i)

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii)

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

6–5197.89

15(b)(3) Types of Information Not Privileged

Paragraph 15(b)(3)(i)

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether preapplication testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii)

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

6–5197.9

15(c) Appropriate Corrective Action

1. The rule only addresses the corrective actions required for a creditor to take advantage of the privilege in this section. A creditor may be required to take other actions or provide additional relief if a formal finding of discrimination is made.

6–5197.91

15(c)(1) General Requirement

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

6–5197.92

15(c)(2) Determining the Scope of Appropriate Corrective Action

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are a likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the

likely violation, and adopting new policies as appropriate;
iii. Identifying and then training and/or disciplining the employees involved;
iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and
v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

6–5197.93

15(c)(3) Types of Relief

Paragraph 15(c)(3)(ii)

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant who was discriminated against on a prohibited basis, to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor is not required to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii)

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible for certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

6–5197.94

15(d)(1) Scope of Privilege

1. The privilege applies with respect to any examination, investigation or proceeding by Federal, State, or local government agencies relating to compliance with the Act or this part. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases (such as in litigation filed solely under a State's fair lending statute). In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); a creditor may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

6–5197.95

15(d)(2) Loss of Privilege

Paragraph 15(d)(2)(i)

1. A creditor's corrective action, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. The disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii)

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

6–5197.96

15(d)(3) Limited Use of Privileged Information

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with such a requirement does not evidence the creditor's intent to forfeit the privilege.

6–5198.8

SECTION 1002.16—Enforcement, Penalties, and Liabilities

16(c) Failure of Compliance

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under sections 1002.12 and 1002.13, this section requires that they be corrected prospectively.

6–5199

SUBPART B—SMALL BUSINESS LENDING DATA COLLECTION

SECTION 1002.102—Definitions

102(b) Applicant

1. *General.* In no way are the limitations to the term applicant in section 1002.102(b) of subpart B intended to repeal, abrogate, annul, impair, change, or interfere with the scope of the term applicant in section 1002.2(e) as applicable to subpart A.

102(*l*) LGBTQI+-Owned Business

1. *General.* In order to be an LGBTQI+-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of LGBTQI+-owned business. First, one or more LGBTQI+ individuals must own or control more than 50 percent of the business. However, it is not necessary that one or more LGBTQI+ individuals both own and control more than 50 percent of the business. For example, a business that is owned entirely by one or more LGBTQI+ individuals but is not controlled by any one or more such individuals satisfies the first prong of the definition. Similarly, a business that is controlled by an LGBTQI+ individual satisfies this first prong of the definition, even if none of the individuals with ownership in the business are LGBTQI+ individuals. If a business does not satisfy this first prong of the definition, it is not an LGBTQI+-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more LGBTQI+ individuals. If a business does not satisfy this second prong of the definition, it is not an LGBTQI+-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of LGBTQI+-owned business is used only when an applicant determines if it is an LGBTQI+-owned business for purposes of section 1002.107(a)(18). A financial institution shall provide an applicant with the definition of LGBTQI+-owned business when asking the applicant to provide its LGBTQI+-owned business status pursuant to section 1002.107(a)(18). A financial institution satisfies this requirement if it provides the definition as set forth in the sample data collection form in appendix E. The financial institution must provide additional clarification by referencing the definition of LGBTQI+ individual as set forth in section 1002.102(k) if asked by the applicant. The financial institution is neither permitted nor required to make its own

determination regarding the applicant's LGBTQI+-owned business status.

3. *Further clarifications of terms used in the definition of LGBTQI+-owned business.* In order to assist an applicant when determining whether it is an LGBTQI+-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(*l*)–4 through –6. A financial institution may assist an applicant when the applicant is determining its LGBTQI+-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is an LGBTQI+-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of sections 1002.102(*l*) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of applicant company A. Similarly, if an individual directly owns 20 percent of applicant company A and is an equal partner in partnership B that owns the remaining 80 percent of applicant company A, the individual owns 60 percent of applicant company A (i.e., 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more LGBTQI+ individuals if those individuals collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally entitled or required to recognize the net profits or losses for tax purposes.

102(m) Minority-Owned Business

1. *General.* In order to be a minority-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of minority-owned business. First, one or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals must own or control more than 50 percent of the business. However, it is not necessary that one or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals both own and control more than 50 percent of the business. For example, a business that is owned entirely, but is not controlled by, individuals belonging to one of these groups satisfies the first prong of the definition. Similarly, a business that is controlled by an American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individual satisfies this first prong of the definition, even if none of

the individuals with ownership in the business are American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino. If a business does not satisfy this first prong of the definition, it is not a minority-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more individuals belonging to these groups. If a business does not satisfy this second prong of the definition, it is not a minority-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of minority-owned business is used only when an applicant determines if it is a minority-owned business for purposes of section 1002.107(a)(18). A financial institution shall provide an applicant with the definition of minority-owned business when asking the applicant to provide its minority-owned business status pursuant to section 1002.107(a)(18), but the financial institution is neither permitted nor required to make its own determination regarding the applicant's minority-owned business status.

3. *Further clarifications of terms used in the definition of minority-owned business.* In order to assist an applicant when determining whether it is a minority-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(m)–4 through –6. A financial institution may assist an applicant when the applicant is determining its minority-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is a minority-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of sections 1002.102(m) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of applicant company A. Similarly, if an individual directly owns 20 percent of applicant company A and is an equal partner in partnership B that owns the remaining 80 percent of applicant company A, the individual owns 60 percent of applicant company A (i.e., 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino individuals if those individuals collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally

entitled or required to recognize the net profits or losses for tax purposes.

7. *Multi-racial and multi-ethnic individuals.* For purposes of subpart B of this part, an individual who is multi-racial or multi-ethnic constitutes an individual for whom the definition of minority-owned business may apply, depending on whether the individual meets the other requirements of the definition. For example, an individual who is both Asian and White is an individual for whom the definition of minority-owned business shall apply if the individual meets the other requirements of the definition related to ownership or control and accrual of profits or losses.

8. *Relationship to disaggregated subcategories used to determine ethnicity and race of principal owners.* The ethnicity and race categories used in this section are aggregate ethnicity (Hispanic or Latino) and race (American Indian or Alaska Native, Asian, Black or African American, and Native Hawaiian or Other Pacific Islander) categories. Those ethnicity and race categories are the same aggregate categories used (along with Not Hispanic or Latino for ethnicity, and White for race) to collect an applicant's principal owners' ethnicity and race pursuant to section 1002.107(a)(19).

102(o) Principal Owner

1. *Individual.* Only an individual can be a principal owner of a business for purposes of subpart B of this part. Entities, such as trusts, partnerships, limited liability companies, and corporations, are not principal owners for this purpose. Additionally, an individual must directly own an equity share of 25 percent or more in the business in order to be a principal owner. Unlike the determination of ownership for purposes of collecting and reporting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, indirect ownership is not considered when determining if someone is a principal owner for purposes of collecting and reporting principal owners' ethnicity, race, and sex or the number of principal owners. Thus, when determining who is a principal owner, ownership is not traced through multiple corporate structures to determine if an individual owns 25 percent or more of the equity interests. For example, if individual A directly owns 20 percent of a business, individual B directly owns 20 percent, and partnership C owns 60 percent, the business does not have any owners who satisfy the definition of principal owner set forth in section 1002.102(o), even if individual A and individual B are the only partners in the partnership C. Similarly, if individual A directly owns 30 percent of a business, individual B directly owns 20 percent, and trust D owns 50 percent, individual A is the only principal owner as defined in section 1002.102(o), even if individual B is the sole trustee of trust D.

2. *Trustee.* Although a trust is not considered a principal owner of a business for the purposes of subpart B, if the applicant for a covered credit transaction is a trust, a trustee is considered the owner of the trust. Thus, if a trust is an applicant for a covered credit transaction and the trust has two co-trustees, each co-trustee is considered to own 50 percent of the business and would each be a principal owner as defined in section 1002.102(o). In contrast, if the trust has five co-trustees, each co-trustee is considered to own 20 percent of the business and would not meet the definition of principal owner under section 1002.102(o).

3. *Purpose of definition.* A financial institution shall provide an applicant with the definition of principal owner when asking the applicant to provide the number of its principal owners pursuant to section 1002.107(a)(20) and the ethnicity, race, and sex of its principal owners pursuant to section 1002.107(a)(19). *See* comments 107(a)(19)–2 and 107(a)(20)–1.

102(s) Women-Owned Business

1. *General.* In order to be a women-owned business for purposes of subpart B of this part, a business must satisfy both prongs of the definition of women-owned business. First, one or more women must own or control more than 50 percent of the business. However, it is not necessary that one or more women both own and control more than 50 percent of the business. For example, a business that is owned entirely by women but is

not controlled by any women satisfies the first prong of the definition. Similarly, a business that is controlled by a woman satisfies this first prong of the definition, even if none of the individuals with ownership in the business are women. If a business does not satisfy this first prong of the definition, it is not a women-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more women. If a business does not satisfy this second prong of the definition, it is not a women-owned business, regardless of whether it satisfies the first prong of the definition.

2. *Purpose of definition.* The definition of women-owned business is used only when an applicant determines if it is a women-owned business pursuant to section 1002.107(a)(18). A financial institution shall provide an applicant with the definition of women-owned business when asking the applicant to provide its women-owned business status pursuant to section 1002.107(a)(18), but the financial institution is neither permitted nor required to make its own determination regarding the applicant's women-owned business status.

3. *Further clarifications of terms used in the definition of women-owned business.* In order to assist an applicant when determining whether it is a women-owned business, a financial institution may provide the applicant with the definitions of ownership, control, and accrual of net profits or losses and related concepts set forth in comments 102(s)–4 through –6. A financial institution may assist an applicant when the applicant is determining its women-owned business status but is not required to do so. For purposes of reporting an applicant's status, a financial institution relies on the applicant's determinations of its ownership, control, and accrual of net profits and losses.

4. *Ownership.* For purposes of determining if a business is a women-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of sections 1002.102(s) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of the applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of the applicant company A. Similarly, if an individual directly owns 20 percent of the applicant company A and is an equal partner in a partnership B that owns the remaining 80 percent of the applicant company A, the individual owns 60 percent of applicant company A (i.e., 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

5. *Control.* An individual controls a business if that individual has significant responsibility to manage or direct the business. An individual controls a business if the individual is an executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer) or regularly performs similar functions. Additionally, a business may be controlled by two or more women if those women collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

6. *Accrual of net profits or losses.* A business's net profits and losses accrue to an individual if that individual receives the net profits or losses, is legally entitled or required to receive the net profits or losses, or is legally entitled or required to recognize the net profits or losses for tax purposes.

6–5199.11

SECTION 1002.103—Covered Applications

103(a) Covered Application

1. *General.* Subject to the requirements of subpart B of this part, a financial institution has latitude to establish its own application procedures, including designating the type and amount of information it will require from applicants.

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

3. *Consistency with subpart A.* Bureau interpretations that appear in this supplement I in connection with sections 1002.2(f) and 1002.9 are generally applicable to the definition of a covered application in section 1002.103. However, the definition of a covered application in section 1002.103 does not include inquiries and prequalification requests. The definition of a covered application also does not include reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts. *See* section 1002.103(b).

4. *Solicitations and firm offers of credit.* For purposes of subpart B of this part, the term covered application does not include solicitations, firm offers of credit, or other evaluations initiated by the financial institution because in these situations the business has not made a request for credit. For example, if a financial institution sends a firm offer of credit to a business for a $10,000 line of credit, and the business does not respond, it is not a covered application because the business never made a request for credit. However, using the same example, if the business seeks to obtain the credit offered, assuming the requirements of a covered application are otherwise met, the business's request constitutes a covered application for purposes of subpart B of this part. *See also* comment 103(b)–4.

5. *Requests for multiple covered credit transactions at one time.* Assuming the requirements of a covered application are met, if an applicant makes a request for two or more covered credit transactions at the same time, the financial institution reports each request as a separate covered application. For example, if an applicant is seeking both a term loan and a line of credit and requests them both on the same application form, the financial institution reports the requests as two separate covered applications, one for a term loan and another for a line of credit. *See* section 1002.107(d) for the requirements for reusing data so that a financial institution need only ask once for certain data required under section 1002.107(a). If, on the other hand, the applicant is only requesting a single covered credit transaction, but has not decided on which particular product, the financial institution reports the request as a single covered application. For example, if the applicant indicates interest in either a term loan or a line of credit, but not both, the financial institution reports the request as a single covered application. *See* comment 107(a)(5)–1 for instructions on reporting credit product in this situation.

6. *Initial request for a single covered credit transaction that would result in the origination of multiple covered credit transactions.* Assuming the requirements of a covered application are met, if an applicant initially makes a request for one covered credit transaction, but over the course of the application process requests multiple covered credit transactions, each covered credit transaction must be reported as a separate covered application. *See* section 1002.107(d) for the requirements for reusing data so that a financial institution need only ask once for certain data required under section 1002.107(a).

7. *Requests for multiple lines of credit at one time.* Assuming the requirements of a covered application are met, if an applicant requests multiple lines of credit on a single credit account, it is reported as one or more covered

applications based on the procedures used by the financial institution for the type of credit account. For example, if a financial institution treats a request for multiple lines of credit at one time as sub-components of a single account, the financial institution reports the request as a single covered application. If, on the other hand, the financial institution treats each line of credit as a separate account, then the financial institution reports each request for a line of credit as a separate covered application, as set forth in comment 103(a)–5.

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

9. *Changes in whether there is a covered credit transaction.* In certain circumstances, an applicant may change the type of product requested during the course of the application process. Assuming other requirements of a covered application are met, if an applicant initially requests a product that is not a covered credit transaction, but prior to final action taken decides to seek instead a product that is a covered credit transaction, the application is a covered application and must be reported pursuant to section 1002.109. In this circumstance, the financial institution shall endeavor to compile, maintain, and report the data required under section 1002.107(a) in a manner that is reasonable under the circumstances. If, on the other hand, an applicant initially requests a product that is a covered credit transaction, but prior to final action taken decides instead to seek a product that is not a covered credit transaction, the application is not a covered application and thus is not reported. *See also* section 1002.112(c)(4), which provides a safe harbor for incorrect collection of certain data if, at the time of collection, the financial institution had a reasonable basis for believing that the application was a covered application. Assuming other requirements of a covered application are met, if an applicant initially requests a product that is a covered credit transaction, the financial institution counteroffers with a product that is not a covered credit transaction, and the applicant declines to proceed or fails to respond, the application is reported as a covered application. For example, if an applicant initially applies for a term loan, but then, after consultation with the financial institution, decides that a lease would better meet its needs and decides to proceed with that product, the application is not a covered application and thus is not reported. However, if an applicant initially applies for a term loan, the financial institution offers to consider the applicant only for a lease, and the applicant refuses, the transaction is a covered application that must be reported.

10. *Multiple unaffiliated co-applicants.* If a covered financial institution receives a covered application from multiple businesses that are not affiliates, as defined by section 1002.102(a), it shall compile, maintain, and report data pursuant to sections 1002.107 through 1002.109 for only a single applicant that is a small business, as defined in section 1002.106(b). A covered financial institution shall establish consistent procedures for designating a single small business for purposes of collecting and reporting data under subpart B in situations where there is more than one small business co-applicant, such as reporting on the first small business listed on an application form. For example, if three businesses jointly apply as co-applicants for a term loan to purchase a piece of equipment, but only one of the businesses is a small business, as defined in section 1002.106(b), the financial institution reports on the single small business. If, however, two of the businesses are small businesses, as defined in section 1002.106(b), the financial institution must have a procedure for designating which small business among multiple small business co-applicants it will report information on, such as consistently reporting on the first small business listed on an application form. *See also* section 1002.5(a)(4)(x), which permits a

creditor to collect certain protected information about co-applicants under certain circumstances.

11. *Refinancings and evaluation, extension, or renewal requests that request additional credit amounts.* As discussed in comments 103(b)–2 and –3, assuming other requirements of a covered application are met, an applicant's request to refinance and an applicant's request for additional credit amounts on an existing account both constitute covered applications.

103(b) Circumstances That Are Not Covered Applications

1. *In general.* The circumstances set forth in section 1002.103(b) are not covered applications for purposes of subpart B of this part, even if considered applications under subpart A of this part. However, in no way are the exclusions in section 1002.103(b) intended to repeal, abrogate, annul, impair, change, or interfere with the scope of the term application in section 1002.2(f) as applicable to subpart A.

2. *Reevaluation, extension, or renewal requests that do not request additional credit amounts.* An applicant's request to change one or more terms of an existing account does not constitute a covered application, unless the applicant is requesting additional credit amounts on the account. For example, an applicant's request to extend the duration on a line of credit or to remove a guarantor would not be a covered application. However, assuming other requirements of a covered application are met, an applicant's request to refinance would be reportable. A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower.

3. *Reevaluation, extension, or renewal requests that request additional credit amounts.* Assuming other requirements of a covered application are met, an applicant's request for additional credit amounts on an existing account constitutes a covered application. For example, an applicant's request for a line increase on an existing line of credit, made in accordance with a financial institution's procedures for the type of credit requested, would be a covered application. As discussed in comment 107(a)(7)–4, when reporting a covered application that seeks additional credit amounts on an existing account, the financial institution need only report the additional credit amount sought, and not the entire credit amount. For example, if an applicant currently has a line of credit account for $100,000, and seeks to increase the line to $150,000, the financial institution reports the amount applied for as $50,000.

4. *Reviews or evaluations initiated by the financial institution.* For purposes of subpart B of this part, the term covered application does not include evaluations or reviews of existing accounts initiated by the financial institution because the business has not made a request for credit. For example, if a financial institution conducts periodic reviews of its existing lines of credit and decides to increase the business's line by $10,000, it is not a covered application because the business never made a request for the additional credit amounts. However, if such an evaluation or review of an existing account by a financial institution results in the financial institution inviting the business to apply for additional credit amounts on an existing account and the business does so, the business's request constitutes a covered application for purposes of subpart B of this part, assuming other requirements of a covered application are met. Similarly, as noted in comment 103(a)–4, the term covered application also does not include solicitations and firm offers of credit.

5. *Inquiries and prequalification requests.* An inquiry is a request by a prospective applicant for information about credit terms offered by the financial institution. A prequalification request is a request by a prospective applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under a financial institution's standards or for a determination on the amount of credit for which the prospective applicant would likely qualify. Inquiries and prequalification requests are not covered applications under subpart B of this part, even though in certain circumstances inquiries and prequalification requests may constitute appli-

cations under subpart A. For example, while an inquiry or prequalification request may become an ''application'' under subpart A if the creditor evaluates information about the business, decides to decline the request, and communicates this to the business, such inquiries or prequalifications would not be ''covered applications'' under subpart B of this part. Whether a particular request is a covered application, or whether instead it is an inquiry or prequalification request that is not reportable under subpart B, may turn, for instance, on how a financial institution structures and processes such requests: does the financial institution require or encourage a preliminary review in order for a business to be considered for a covered credit transaction, or does the business voluntarily seek preliminary feedback as a tool to explore its options before it decides whether to apply for credit with the financial institution? The name used by the financial institution for such a request is not determinative. For example, under subpart B, a review is a reportable covered application if the financial institution requires the business, before it may apply for credit, to pass through a mandatory screening process that considers particular information about the business and denies or turns away the business if it is ineligible or unlikely to qualify for credit. In contrast, a business that requests a financial institution to identify credit products for which the business might qualify based on limited or self-described characteristics, and without any commitment from the financial institution to extend credit, may not have submitted a covered application for purposes of subpart B.

6–5199.111

SECTION 1002.104—Covered Credit Transactions and Excluded Transactions

104(a) Covered Credit Transaction

1. *General.* The term ''covered credit transaction'' includes all business credit (including loans, lines of credit, credit cards, and merchant cash advances) unless otherwise excluded under section 1002.104(b).

104(b) Excluded Transactions

1. *Factoring.* The term ''covered credit transaction'' does not cover factoring as described herein. For the purpose of this subpart, factoring is an accounts receivable purchase transaction between businesses that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment for goods that the recipient has supplied or services that the recipient has rendered but for which payment in full has not yet been made. The name used by the financial institution for a product is not determinative of whether or not it is a ''covered credit transaction.'' This description of factoring is not intended to repeal, abrogate, annul, impair, or interfere with any existing interpretations, orders, agreements, ordinances, rules, or regulations adopted or issued pursuant to comment 9(a)(3)–3. A financial institution shall report an extension of business credit incident to a factoring arrangement that is otherwise a covered credit transaction as ''Other sales-based financing transaction'' under section 1002.107(a)(5).

2. *Leases.* The term ''covered credit transaction'' does not cover leases as described herein. A lease, for the purpose of this subpart, is a transfer from one business to another of the right to possession and use of goods for a term, and for primarily business or commercial (including agricultural) purposes, in return for consideration. A lease does not include a sale, including a sale on approval or a sale or return, or a transaction resulting in the retention or creation of a security interest. The name used by the financial institution for a product is not determinative of whether or not it is a ''covered credit transaction.''

3. *Consumer-designated credit.* The term ''covered credit transaction'' does not include consumer-designated credit that is used for business or agricultural purposes. A transaction qualifies as consumer-designated credit if the financial institution offers or extends the credit primarily for personal, family, or household purposes. For example, an open-end credit account used for both personal and business/agricultural purposes is not business credit for the purpose of subpart B of this part unless the financial institution designated or

intended for the primary purpose of the account to be business/agricultural-related.

4. *Credit transaction purchases, purchases of an interest in a pool of credit transactions, and purchases of a partial interest in a credit transaction.* The term ''covered credit transaction'' does not cover the purchase of an originated credit transaction, the purchase of an interest in a pool of credit transactions, or the purchase of a partial interest in a credit transaction such as through a loan participation agreement. Such purchases do not, in themselves, constitute an application for credit. *See also* comment 109(a)(3)–2.i.

104(b)(1) Trade Credit

1. *General.* Trade credit, as defined in section 1002.104(b)(1), is excluded from the definition of a covered credit transaction. An example of trade credit involves a supplier that finances the sale of equipment, supplies, or inventory. However, an extension of business credit by a financial institution other than the supplier for the financing of such items is not trade credit. Also, credit extended by a business providing goods or services to another business is not trade credit for the purposes of this subpart where the supplying business intends to sell or transfer its rights as a creditor to a third party.

2. *Trade credit under subpart A.* The definition of trade credit under comment 9(a)(3)–2 applies to relevant provisions under subpart A, and section 1002.104(b)(1) is not intended to repeal, abrogate, annul, impair, or interfere with any existing interpretations, orders, agreements, ordinances, rules, or regulations adopted or issued pursuant to comment 9(a)(3)–2.

6–5199.112

SECTION 1002.105—Covered Financial Institutions and Exempt Institutions

105(a) Financial Institution

1. *Examples.* Section 1002.105(a) defines a financial institution as any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity. This definition includes, but is not limited to, banks, savings associations, credit unions, online lenders, platform lenders, community development financial institutions, Farm Credit System lenders, lenders involved in equipment and vehicle financing (captive financing companies and independent financing companies), commercial finance companies, organizations exempt from taxation pursuant to 26 U.S.C. 501(c), and governments or governmental subdivisions or agencies.

2. *Motor vehicle dealers.* Pursuant to section 1002.101(a), subpart B of this part excludes from coverage persons defined by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2004 (2010).

105(b) Covered Financial Institution

1. *Preceding calendar year.* The definition of covered financial institution refers to preceding calendar years. For example, in 2029, the two preceding calendar years are 2027 and 2028. Accordingly, in 2029, Financial Institution A does not meet the loan-volume threshold in section 1002.105(b) if did not originate at least 100 covered credit transactions for small businesses both during 2027 and during 2028.

2. *Origination threshold.* A financial institution qualifies as a covered financial institution based on total covered credit transactions originated for small businesses, rather than covered applications received from small businesses. For example, if in both 2026 and 2027, Financial Institution B received 105 covered applications from small businesses and originated 95 covered credit transactions for small businesses, then for 2028, Financial Institution B is not a covered financial institution.

3. *Counting originations when multiple financial institutions are involved in originating a covered credit transaction.* For the purpose of counting originations to determine whether a

financial institution is a covered financial institution under section 1002.105(b), in a situation where multiple financial institutions are involved in originating a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to count the origination.

4. *Counting originations after adjustments to the gross annual revenue threshold due to inflation.* Pursuant to section 1002.106(b)(2), every five years, the gross annual revenue threshold used to define a small business in section 1002.106(b)(1) shall be adjusted, if necessary, to account for inflation. The first time such an adjustment could occur is in 2030, with an effective date of January 1, 2031. A financial institution seeking to determine whether it is a covered financial institution applies the gross annual revenue threshold that is in effect for each year it is evaluating. For example, a financial institution seeking to determine whether it is a covered financial institution in 2032 counts its originations of covered credit transactions for small businesses in calendar years 2030 and 2031. The financial institution applies the initial $5 million threshold to evaluate whether its originations were to small businesses in 2030. In this example, if the small business threshold were increased to $5.5 million effective January 1, 2031, the financial institution applies the $5.5 million threshold to count its originations for small businesses in 2031.

5. *Reevaluation, extension, or renewal requests, as well as credit line increases and other requests for additional credit amounts.* While requests for additional credit amounts on an existing account can constitute a ''covered application'' pursuant to section 1002.103(b)(1), such requests are not counted as originations for the purpose of determining whether a financial institution is a covered financial institution pursuant to section 1002.105(b). In addition, transactions that extend, renew, or otherwise amend a transaction are not counted as originations. For example, if a financial institution originates 50 term loans and 30 lines of credit for small businesses in each of the preceding two calendar years, along with 25 line increases for small businesses in each of those years, the financial institution is not a covered financial institution because it has not originated at least 100 covered credit transactions in each of the two preceding calendar years.

6. *Annual consideration.* Whether a financial institution is a covered financial institution for a particular year depends on its small business lending activity in the preceding two calendar years. Therefore, whether a financial institution is a covered financial institution is an annual consideration for each year that data may be compiled and maintained for purposes of subpart B of this part. A financial institution may be a covered financial institution for a given year of data collection (and the obligations arising from qualifying as a covered financial institution shall continue into subsequent years, pursuant to sections 1002.110 and 1002.111), but the same financial institution may not be a covered financial institution for the following year of data collection. For example, Financial Institution C originated 105 covered transactions for small businesses in both 2027 and 2028. In 2029, Financial Institution C is a covered financial institution and therefore is obligated to compile and maintain applicable 2029 small business lending data under section 1002.107(a). During 2029, Financial Institution C originates 95 covered transactions for small businesses. In 2030, Financial Institution C is not a covered financial institution with respect to 2030 small business lending data, and is not obligated to compile and maintain 2030 data under section 1002.107(a) (although Financial Institution C may volunteer to collect and maintain 2030 data pursuant to section 1002.5(a)(4)(vii) and as explained in comment 105(b)–10). Pursuant to section 1002.109(a), Financial Institution C shall submit its small business lending application register for 2029 data in the format prescribed by the Bureau by June 1, 2030 because Financial Institution C is a covered financial institution with respect to 2029 data, and the data submission deadline of June 1, 2030 applies to 2029 data.

7. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed financial institution is a covered finan-

cial institution under section 1002.105(b) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired financial institutions (or acquired branches or locations), satisfies the criteria included in section 1002.105(b). For example, Financial Institutions A and B merge. The surviving or newly formed financial institution meets the threshold in section 1002.105(b) if the combined previous components of the surviving or newly formed financial institution (A plus B) would have originated at least 100 covered credit transactions for small businesses for each of the two preceding calendar years. Similarly, if the combined previous components and the surviving or newly formed financial institution would have reported at least 100 covered transactions for small businesses for the year previous to the merger as well as 100 covered transactions for small businesses for the year of the merger, the threshold described in section 1002.105(b) would be met and the surviving or newly formed financial institution would be a covered institution under section 1002.105(b) for the year following the merger. Comment 105(b)–8 discusses a financial institution's responsibilities with respect to compiling and maintaining (and subsequently reporting) data during the calendar year of a merger.

8. *Merger or acquisition—coverage specific to the calendar year of the merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities specifically for data from the calendar year of a merger or acquisition. For purposes of these illustrations, an ''institution that is not covered'' means either an institution that is not a financial institution, as defined in section 1002.105(a), or a financial institution that is not a covered financial institution, as defined in section 1002.105(b).

i. Two institutions that are not covered financial institutions merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered financial institution. No data are required to be compiled, maintained, or reported for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered financial institution).

ii. A covered financial institution and an institution that is not covered merge. The covered financial institution is the surviving institution, or a new covered financial institution is formed. For the calendar year of the merger, data are required to be compiled, maintained, and reported for covered applications from the covered financial institution and is optional for covered applications from the financial institution that was previously not covered.

iii. A covered financial institution and an institution that is not covered merge. The institution that is not covered is the surviving institution and remains not covered after the merger, or a new institution that is not covered is formed. For the calendar year of the merger, data are required to be compiled and maintained (and subsequently reported) for covered applications from the previously covered financial institution that took place prior to the merger. After the merger date, compiling, maintaining, and reporting data is optional for applications from the institution that was previously covered for the remainder of the calendar year of the merger.

iv. Two covered financial institutions merge. The surviving or newly formed financial institution is a covered financial institution. Data are required to be compiled and maintained (and subsequently reported) for the entire calendar year of the merger. The surviving or newly formed financial institution files either a consolidated submission or separate submissions for that calendar year.

9. *Foreign applicability.* As discussed in comment 1(a)–2, Regulation B (including subpart B) generally does not apply to lending activities that occur outside the United States.

10. *Voluntary collection and reporting.* Section 1002.5(a)(4)(vii) through (x) permits a creditor that is not a covered financial institution under section 1002.105(b) to voluntarily collect and report information regarding covered applications from small businesses in certain circumstances. If a creditor is voluntarily collecting information for covered applications

regarding whether the applicant is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business under section 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under section 1002.107(a)(19), it shall do so in compliance with sections 1002.107, 1002.108, 1002.111, 1002.112 as though it were a covered financial institution. If a creditor is reporting those covered applications from small businesses to the Bureau, it shall do so in compliance with sections 1002.109 and 1002.110 as though it were a covered financial institution.

6–5199.113

SECTION 1002.106—Business and Small Business

106(b) Small Business Definition

106(b)(1) Small Business

1. *Change in determination of small business status—business is ultimately not a small business.* If a financial institution initially determines an applicant is a small business as defined in section 1002.106 based on available information and collects data required by section 1002.107(a)(18) and (19) but later concludes that the applicant is not a small business, the financial institution does not violate the Act or this regulation if it meets the requirements of section 1002.112(c)(4). The financial institution shall not report the application on its small business lending application register pursuant to section 1002.109.

2. *Change in determination of small business status—business is ultimately a small business.* Consistent with comment 107(a)(14)–1, a financial institution need not independently verify gross annual revenue. If a financial institution initially determines that the applicant is not a small business as defined in section 1002.106(b), but later concludes the applicant is a small business prior to taking final action on the application, the financial institution must report the covered application pursuant to section 1002.109. In this situation, the financial institution shall endeavor to compile, maintain, and report the data required under section 1002.107(a) in a manner that is reasonable under the circumstances. For example, if the applicant initially provides a gross annual revenue of $5.5 million (that is, above the threshold for a small business as initially defined in section 1002.106(b)(1)), but during the course of underwriting the financial institution discovers the applicant's gross annual revenue was in fact $4.75 million (meaning that the applicant is within the definition of a small business under section 1002.106(b)), the financial institution is required to report the covered application pursuant to section 1002.109. In this situation, the financial institution shall take reasonable steps upon discovery to compile, maintain, and report the data necessary under section 1002.107(a) to comply with subpart B of this part for that covered application. Thus, in this example, even if the financial institution's procedure is typically to request applicant-provided data together with the application form, in this circumstance, the financial institution shall seek to collect the data during the application process necessary to comply with subpart B in a manner that is reasonable under the circumstances.

3. *Applicant's representations regarding gross annual revenue; inclusion of affiliate revenue; updated or verified information.* A financial institution is permitted to rely on an applicant's representations regarding gross annual revenue (which may or may not include any affiliate's revenue) for purposes of determining small business status under section 1002.106(b). However, if the applicant provides updated gross annual revenue information or the financial institution verifies the gross annual revenue information (*see* comment 107(b)–1), the financial institution must use the updated or verified information in determining small business status.

4. *Multiple unaffiliated co-applicants—size determination.* The financial institution shall not aggregate unaffiliated co-applicants' gross annual revenues for purposes of determining small business status under section 1002.106(b). If a covered financial institution receives a covered application from multiple businesses who are not affiliates, as defined

by section 1002.102(a), where at least one business is a small business under section 1002.106(b), the financial institution shall compile, maintain, and report data pursuant to sections 1002.107 through 1002.109 regarding the covered application for only a single applicant that is a small business. *See* comment 103(a)–10 for additional details.

106(b)(2) Inflation Adjustment

1. *Inflation adjustment methodology.* The small business gross annual revenue threshold set forth in section 1002.106(b)(1) will be adjusted upward or downward to reflect changes, if any, in the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics (''CPI–U''). The base for computing each adjustment is the January 2025 CPI–U; this base value shall be compared to the CPI–U value in January 2030 and every five years thereafter. For example, after the January 2030 CPI–U is made available, the adjustment is calculated by determining the percentage change in the CPI–U between January 2025 and January 2030, applying this change to the $5 million gross annual revenue threshold, and rounding to the nearest $500,000. If, as a result of this rounding, there is no change in the gross annual revenue threshold, there will be no adjustment. For example, if in January 2030 the adjusted value were $4.9 million (reflecting a $100,000 decrease from January 2025 CPI–U), then the threshold would not adjust because $4.9 million would be rounded up to $5 million. If on the other hand, the adjusted value were $5.7 million, then the threshold would adjust to $5.5 million. Where the adjusted value is a multiple of $250,000 (e.g., $5,250,000), then the threshold adjusts upward (in this example, to $5,500,000).

2. *Substitute for CPI–U.* If publication of the CPI–U ceases, or if the CPI–U otherwise becomes unavailable or is altered in such a way as to be unusable, then the Bureau shall substitute another reliable cost of living indicator from the United States Government for the purpose of calculating adjustments pursuant to section 1002.106(b)(2).

6–5199.114

SECTION 1002.107—Compilation of Reportable Data

107(a) Data Format and Itemization

1. *General.* Section 1002.107(a) describes a covered financial institution's obligation to compile and maintain data regarding the covered applications it receives from small businesses.

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

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

iii. A covered financial institution reports data for a covered application on its small business lending application register for the calendar year during which final action was taken on the application, even if the institution received the application in a previous calendar year.

2. *Free-form text fields.* A covered financial institution may use technology such as autocorrect and predictive text when requesting applicant-provided data under subpart B of this part that the financial institution reports via free-form text fields, provided that such technology does not restrict the applicant's ability to write in its own response instead of using text suggested by the technology.

3. *Filing instructions guide.* Additional details and procedures for compiling data pursuant to section 1002.107 are included in the filing instructions guide, which is available at https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/.

4. *Additional data point response options.* The Bureau may add additional response options to the lists of responses contained in the commentary that follows for certain of the data

points set forth in section 1002.107(a), via the filing instructions guide. Refer to the filing instructions guide for any updates for each reporting year.

107(a)(1) Unique Identifier

1. *Unique within the financial institution.* A financial institution complies with section 1002.107(a)(1) by compiling and reporting an alphanumeric application or loan identifier unique within the financial institution to the specific application. The identifier must not exceed 45 characters, and must begin with the financial institution's Legal Entity Identifier (LEI), as defined in comment 109(b)(6)–1. Separate applications for the same applicant must have separate identifiers. The identifier may only include standard numerical and/or upper-case alphabetical characters and cannot include dashes, other special characters, or characters with diacritics. The financial institution may assign the unique identifier at any time prior to reporting the application. Refinancings or applications for refinancing must be assigned a different identifier than the transaction that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same identifiers to refer to multiple applications.

2. *Does not include directly identifying information.* The unique identifier must not include any directly identifying information, such as a whole or partial Social Security number or employer identification number, about the applicant or persons (natural or legal) associated with the applicant. *See also* section 1002.111(c) and related commentary.

107(a)(2) Application Date

1. *Consistency.* Section 1002.107(a)(2) requires that, in reporting the date of covered application, a financial institution shall report the date the covered application was received or the date shown on a paper or electronic application form. Although a financial institution need not choose the same approach for its entire small business lending application register, it should generally be consistent in its approach by, for example, establishing procedures for how to report this date within particular scenarios, products, or divisions. If the financial institution chooses to report the date shown on an application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the definition of covered application pursuant to section 1002.103.

2. *Application received.* For an application submitted directly to the financial institution or its affiliate (as described in section 1002.107(a)(4)), the financial institution shall report the date it received the covered application, as defined under section 1002.103, or the date shown on a paper or electronic application form. For an application initially submitted to a third party, *see* comment 107(a)(2)–3.

3. *Indirect applications.* For an application that was not submitted directly to the financial institution or its affiliate (as described in section 1002.107(a)(4)), the financial institution shall report the date the application was received by the party that initially received the application, the date the application was received by the financial institution, or the date shown on the application form. Although a financial institution need not choose the same approach for its entire small business lending application register, it should generally be consistent in its approach by, for example, establishing procedures for how to report this date within particular scenarios, products, or divisions.

4. *Safe harbor.* Pursuant to section 1002.112(c)(1), a financial institution that reports on its small business lending application register an application date that is within three business days of the actual application date pursuant to section 1002.107(a)(2) does not violate the Act or subpart B of this part. For purposes of this paragraph, a business day means any day the financial institution is open for business.

107(a)(3) Application Method

1. *General.* A financial institution complies with section 1002.107(a)(3) by reporting the means by which the applicant submitted the

application from one of the following options: in-person, telephone, online, or mail. If the financial institution retains multiple versions of the application form, the institution reports the means by which the first application form satisfying the definition of covered application pursuant to section 1002.103 was submitted.

i. *In-person.* A financial institution reports the application method as ''in-person'' if the applicant submitted the application to the financial institution, or to another party acting on the financial institution's behalf, in person. The in-person application method applies, for example, to applications submitted at a branch office (including applications hand delivered by the applicant), at the applicant's place of business, or via electronic media with a video component).

ii. *Telephone.* A financial institution reports the application method as ''telephone'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, by telephone call or via audio-based electronic media without a video component.

iii. *Online.* A financial institution reports the application method as ''online'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, through a website, mobile application (app), fax transmission, electronic mail, text message, or some other form of text-based electronic communication.

iv. *Mail.* A financial institution reports the application method as ''mail'' if the applicant submitted the application to the financial institution, or another party acting on the financial institution's behalf, via United States mail, courier or overnight service, or an overnight drop box.

107(a)(4) Application Recipient

1. *Agents.* When a financial institution is reporting actions taken by its agent consistent with comment 109(a)(3)–3, the agent is considered the financial institution for the purposes of section 1002.107(a)(4). For example, assume that an applicant submitted an application to Financial Institution B, and Financial Institution B made the credit decision acting as Financial Institution A's agent under state law. Financial Institution A reports the application and indicates that the application was submitted directly to Financial Institution A.

107(a)(5) Credit Type

1. *Reporting credit product—in general.* A financial institution complies with section 1002.107(a)(5)(i) by selecting the credit product applied for or originated, from the list below. If the credit product applied for or originated is not included on this list, the financial institution selects ''other,'' and reports the credit product via free-form text field. If an applicant requested more than one credit product at the same time, the financial institution reports each credit product requested as a separate application. However, if the applicant only requested a single covered credit transaction, but had not decided on which particular product, the financial institution complies with section 1002.107(a)(5)(i) by reporting the credit product originated (if originated), or the credit product denied (if denied), or the credit product of greater interest to the applicant, if readily determinable. If the credit product of greater interest to the applicant is not readily determinable, the financial institution complies with section 1002.107(a)(5)(i) by reporting one of the credit products requested as part of the request for a single covered credit transaction, in its discretion. *See* comment 103(a)–5 for instructions on reporting requests for multiple covered credit transactions at one time.

i. Term loan—unsecured.
ii. Term loan—secured.
iii. Line of credit—unsecured.
iv. Line of credit—secured.
v. Credit card account, not private-label.
vi. Private-label credit card account.
vii. Merchant cash advance.
viii. Other sales-based financing transaction.
ix. Other.
x. Not provided by applicant and otherwise undetermined.

2. *Credit card account, not private-label.* A financial institution complies with section 1002.107(a)(5)(i) by reporting the credit product as a ''credit card account, not private-

label'' when the product is a business-purpose open-end credit account that is not private label and that may be accessed from time to time by a card, plate, or other single credit device to obtain credit, except that accounts or lines of credit secured by real property and overdraft lines of credit accessed by debit cards are not credit card accounts. The term credit card account does not include debit card accounts or closed-end credit that may be accessed by a card, plate, or single credit device. The term credit card account does include charge card accounts that are generally paid in full each billing period, as well as hybrid prepaid-credit cards. A financial institution reports multiple credit card account, not private-label applications requested at one time using the guidance in comment 103(a)–7.

3. *Private-label credit card account.* A financial institution complies with section 1002.107(a)(5)(i) by reporting the credit product as a ''private-label credit card account'' when the product is a business-purpose open-end private-label credit account that otherwise meets the description of a credit card account in comment 107(a)(5)–2. A private-label credit card account is a credit card account that can only be used to acquire goods or services provided by one business (for example, a specific merchant, retailer, independent dealer, or manufacturer) or a small group of related businesses. A co-branded or other card that can also be used for purchases at unrelated businesses is not a private-label credit card. A financial institution reports multiple private-label credit card account applications requested at one time in the same manner as credit card account, not private-label applications, using the guidance in comment 103(a)–7.

4. *Credit product not provided by the applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution is required to maintain procedures reasonably designed to collect applicant-provided data, which includes credit product. However, if a financial institution is nonetheless unable to collect or otherwise determine credit product information because the applicant does not indicate what credit product it seeks and the application is denied, withdrawn, or closed for incompleteness before a credit product is identified, the financial institution reports that the credit product is ''not provided by applicant and otherwise undetermined.''

5. *Reporting credit product involving counteroffers.* If a financial institution presents a counteroffer for a different credit product than the product the applicant had initially requested, and the applicant does not agree to proceed with the counteroffer, the financial institution reports the application for the original credit product as denied pursuant to section 1002.107(a)(9). If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the disposition of the application based on the credit product that was offered and does not report the original credit product applied for. *See* comment 107(a)(9)–2.

6. *Other sales-based financing transaction.* For an extension of business credit incident to a factoring arrangement that is otherwise a covered credit transaction, a financial institution selects ''other sales-based financing transaction'' as the credit product. *See* comment 104(b)–1.

7. *Guarantees.* A financial institution complies with section 1002.107(a)(5)(ii) by selecting the type or types of guarantees that were obtained for an originated covered credit transaction, or that would have been obtained if the covered credit transaction was originated, from the list below. The financial institution selects, if applicable, up to a maximum of five guarantees for a single application. If the type of guarantee does not appear on the list, the financial institution selects ''other'' and reports the type of guarantee via free-form text field. If no guarantee is obtained or would have been obtained if the covered credit transaction was originated, the financial institution selects ''no guarantee.'' If an application is denied, withdrawn, or closed for incompleteness before any guarantee has been identified, the financial institution selects ''no guarantee.'' The financial institution chooses state government guarantee or local government guarantee, as applicable, based on the entity directly administering the program, not the source of funding.

i. Personal guarantee—owner(s).
ii. Personal guarantee—non-owner(s).
iii. SBA guarantee—7(a) program.
iv. SBA guarantee—504 program.
v. SBA guarantee—other.
vi. USDA guarantee.
vii. FHA insurance.
viii. Bureau of Indian Affairs guarantee.
ix. Other federal guarantee.
x. State government guarantee.
xi. Local government guarantee.
xii. Other.

xiii. No guarantee.

8. *Loan term.* A financial institution complies with section 1002.107(a)(5)(iii) by reporting the number of months in the loan term for the covered credit transaction. The loan term is the number of months after which the legal obligation will mature or terminate, measured from the date of origination. For transactions involving real property, the financial institution may instead measure the loan term from the date of the first payment period and disregard the time that elapses, if any, between the settlement of the transaction and the first payment period. For example, if a loan closes on April 12, but the first payment is not due until June 1 and includes the interest accrued in May (but not April), the financial institution may choose not to include the month of April in the loan term. In addition, the financial institution may round the loan term to the nearest full month or may count only full months and ignore partial months, as it so chooses. If a credit product, such as a credit card, does not have a loan term, the financial institution reports that the loan term is ''not applicable.'' The financial institution also reports that the loan term is ''not applicable'' if the credit product is reported as ''not provided by applicant and otherwise undetermined.'' For a credit product that generally has a loan term, the financial institution reports ''not provided by applicant and otherwise undetermined'' if the application is denied, withdrawn, or determined to be incomplete before a loan term has been identified. For merchant cash advances and other sales-based financing transactions, the financial institution complies with section 1002.107(a)(5)(iii) by reporting the loan term, if any, that the financial institution estimated or specified in processing, underwriting or providing disclosures for the application or transaction. If more than one such loan term is estimated or specified, the financial institution reports the one it considers to be most accurate, in its discretion. For merchant cash advances and other sales-based financing transactions that do not have a loan term, the financial institution reports ''not provided by applicant and otherwise undetermined.''

107(a)(6) Credit Purpose

1. *General.* A financial institution complies with section 1002.107(a)(6) by selecting the purpose or purposes of the covered credit transaction applied for or originated from the list below.

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

2. *More than one purpose.* If the applicant indicates or the financial institution is otherwise aware of more than one purpose for the credit applied for or originated, the financial institution reports those purposes, up to a maximum of three, using the list provided, in any order it chooses. For example, if an applicant refinances a commercial building it owns and uses the funds to purchase a motor ve-

hicle and expand the business it runs in a part of that building, the financial institution reports that the three purposes of the credit are purchase, construction/improvement, or refinance of owner-occupied real property; purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks); and business expansion. If an application has more than three purposes, the financial institution reports any three of those purposes. In the example above, if the funds were also used to purchase equipment, the financial institution would select only three of the relevant purposes to report.

3. *"Other" credit purpose.* If a purpose of an application does not appear on the list of purposes provided, the financial institution reports ''other'' as the credit purpose and reports the credit purpose via free-form text field. If the application has more than one ''other'' purpose, the financial institution chooses the most significant ''other'' purpose, in its discretion, and reports that ''other'' purpose. The financial institution reports a maximum of three credit purposes, including any ''other'' purpose.

4. *Credit purpose not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes credit purpose. However, if a financial institution is nonetheless unable to collect or determine credit purpose information, the financial institution reports that the credit purpose is ''not provided by applicant and otherwise undetermined.''

5. *Not applicable.* If the application is for a credit product that generally has indeterminate or numerous potential purposes, such as a credit card, the financial institution may report credit purpose as ''not applicable.''

6. *Collecting credit purpose.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, including credit purpose. The financial institution is permitted, but not required, to present the list of credit purposes provided in comment 107(a)(6)–1 to the applicant. The financial institution is also permitted to ask about purposes not included on the list provided in comment 107(a)(6)–1. If the applicant chooses a purpose or purposes not included on the provided list, the financial institution follows the instructions in comment 107(a)(6)–3 regarding reporting of ''other'' as the credit purpose. If an applicant chooses a purpose or purposes that are similar to purposes on the list provided, but uses different language, the financial institution reports the purpose or purposes from the list provided.

7. *Owner-occupied real property.* Real property is owner-occupied if any physical portion of the property is used by the owner for any activity, including storage.

8. *Overdraft.* When overdraft is provided as an aspect of the covered credit transaction applied for or originated, the financial institution reports ''Overdraft'' as a purpose of the credit. The financial institution reports credit type pursuant to section 1002.107(a)(5)(i) as appropriate for the underlying covered credit transaction, such as ''Line of credit—unsecured.'' Providing occasional overdraft services as part of a deposit account offering would not be reported for the purpose of subpart B.

107(a)(7) Amount Applied For

1. *Initial amount requested.* A financial institution complies with section 1002.107(a)(7) by reporting the initial amount of credit or the initial credit limit requested by the applicant. The financial institution is not required to report credit amounts or limits discussed before an application is made, but must capture the initial amount requested at the application stage. If the applicant requests an amount as a range of numbers, the financial institution reports the midpoint of that range.

2. *No amount requested.* If the applicant does not request a specific amount at the application stage, but the financial institution underwrites the application for a specific amount, the financial institution complies with section 1002.107(a)(7) by reporting the amount considered for underwriting as the amount applied for. If the particular type of credit product applied for does not involve a specific amount

requested, the financial institution reports that the requirement is ''not applicable.''

3. *Firm offers.* When an applicant responds to a ''firm offer'' that specifies an amount or limit, which may occur in conjunction with a pre-approved credit solicitation, the financial institution reports the amount of the firm offer as the amount applied for, unless the applicant requests a different amount. If the firm offer does not specify an amount or limit and the applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution. If the firm offer specifies an amount or limit as a range and the applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution.

4. *Additional amounts on an existing account.* When reporting a covered application that seeks additional credit amounts on an existing account, the financial institution reports only the additional credit amount sought, and not any previous amounts extended. *See* comment 103(b)–3.

5. *Initial amount otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the credit amount initially requested by the applicant (other than for products that do not involve a specific amount requested). However, if a financial institution is nonetheless unable to collect or otherwise determine the amount initially requested, the financial institution reports that the amount applied for is ''not provided by applicant and otherwise undetermined.'' But *see* comment 107(a)(7)–2 for how to report the credit amount initially requested by the applicant for particular types of credit products that do not involve a specific amount requested.

107(a)(8) Amount Approved or Originated

1. *General.* A financial institution complies with section 1002.107(a)(8) by reporting the amount approved or originated for credit that is originated or approved but not accepted. For applications that the financial institution, pursuant to section 1002.107(a)(9), reports as denied, withdrawn by the applicant, or incomplete, the financial institution reports that the amount approved or originated is ''not applicable.''

2. *Multiple approval amounts.* A financial institution may sometimes approve an applicant for more than one credit amount, allowing the applicant to choose which amount the applicant prefers for the extension or line of credit. When multiple approval amounts are offered for a closed-end credit transaction for which the action taken is approved but not accepted, and the applicant does not accept the approved offer of credit in any amount, the financial institution reports the highest amount approved. If the applicant accepts the offer of closed-end credit, the financial institution reports the amount originated. When multiple approval amounts are offered for an open-end credit transaction for which the action taken is approved but not accepted, and the applicant does not accept the approved offer of credit in any amount, the financial institution reports the highest amount approved. If the applicant accepts the offer of open-end credit, the financial institution reports the actual credit limit established.

3. *Amount approved or originated—closed-end credit transaction.* For an originated closed-end credit transaction, the financial institution reports the principal amount to be repaid. This amount will generally be disclosed on the legal obligation.

4. *Amount approved or originated—refinancing.* For a refinancing, the financial institution reports the amount of credit approved or originated under the terms of the new debt obligation.

5. *Amount approved or originated—counteroffer.* If an applicant agrees to proceed with consideration of a counteroffer for an amount or limit different from the amount for which the applicant applied, and the covered credit transaction is approved and originated, the financial institution reports the amount granted. If an applicant does not agree to proceed with consideration of a counteroffer or fails to respond, the institution reports the application as denied and reports ''not applicable'' for the

amount approved or originated. *See* comment 107(a)(9)–2.

6. *Amount approved or originated—existing accounts.* For additional credit amounts that were approved for or originated on an existing account, the financial institution reports only the additional credit amount approved or originated, and not any previous amounts extended.

107(a)(9) Action Taken

1. *General.* A financial institution complies with section 1002.107(a)(9) by selecting the action taken by the financial institution on the application from the following list: originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete. A financial institution identifies the applicable action taken code based on final action taken on the covered application.

i. *Originated.* A financial institution reports that the application was originated if the financial institution made a credit decision approving the application and that credit decision resulted in an extension of credit.

ii. *Approved but not accepted.* A financial institution reports that the application was approved but not accepted if the financial institution made a credit decision approving the application, but the applicant or the party that initially received the application failed to respond to the financial institution's approval within the specified time, or the covered credit transaction was not otherwise consummated or the account was not otherwise opened.

iii. *Denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdrew the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.

iv. *Withdrawn by the applicant.* A financial institution reports that the application was withdrawn if the application was expressly withdrawn by the applicant before the financial institution made a credit decision approving or denying the application, before the application was closed for incompleteness, or before the application was denied on the basis of incompleteness.

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

2. *Treatment of counteroffers.* If a financial institution makes a counteroffer to grant credit on terms other than those originally requested by the applicant (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant declines the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume an applicant applies for a term loan and the financial institution makes a counteroffer to proceed with consideration of a line of credit. If the applicant declines to be considered for a line of credit, the financial institution reports the application as a denied request for a term loan. If, on the other hand, the applicant agrees to be considered for a line of credit, then the financial institution reports the action taken as the disposition of the application for the line of credit. For instance, using the same example, if the financial institution makes a credit decision approving the line of credit, but the applicant fails to respond to the financial institution's approval within the specified time by accepting the credit offer, the financial institution reports the application on the line of credit as approved but not accepted.

3. *Treatment of rescinded transactions.* If a borrower successfully rescinds a transaction after closing but before a financial institution is required to submit its small business lending application register containing the information for the application under section

1002.109, the institution reports the application as approved but not accepted.

4. *Treatment of pending applications.* A financial institution does not report any application still pending at the end of the calendar year; it reports such applications on its small business lending application register for the year in which final action is taken.

5. *Treatment of conditional approvals.* If a financial institution issues an approval that is subject to the applicant meeting certain conditions prior to closing, the financial institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions. Customary commitment or closing conditions may include, for example, a clear-title requirement, proof of insurance policies, or a subordination agreement from another lienholder. Underwriting or creditworthiness conditions may include, for example, conditions that constitute a counteroffer (such as a demand for a higher downpayment), satisfactory loan-to-value ratios, or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of revenue, income or assets.

i. *Conditional approval—denial.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions, those conditions are not met, and the financial institution takes adverse action on some basis other than incompleteness, the financial institution reports the action taken as denied.

ii. *Conditional approval—incompleteness.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions that the financial institution needs to make the credit decision, and the financial institution takes adverse action on the basis of incompleteness under section 1002.9(a)(1)(ii) and (c)(1)(i), or has sent a written notice of incompleteness under section 1002.9(c)(1)(ii) and (2), and the applicant did not respond within the period of time specified in the notice, the financial institution reports the action taken as incomplete.

iii. *Conditional approval—approved but not accepted.* If the approval is conditioned on satisfying conditions that are solely customary commitment or closing conditions and the conditions are not met, the financial institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the financial institution agrees to extend credit but the covered credit transaction is not originated (for example, because the applicant withdraws), the financial institution reports the action taken as approved but not accepted.

iv. *Conditional approval—withdrawn by the applicant.* If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or before the institution closes the file for incompleteness, the financial institution reports the action taken as withdrawn.

107(a)(10) Action Taken Date

1. *Reporting action taken date for denied applications.* For applications that are denied, a financial institution reports either the date the application was denied or the date the denial notice was sent to the applicant.

2. *Reporting action taken date for applications withdrawn by applicant.* For applications that are withdrawn by the applicant, the financial institution reports the date the express withdrawal was received, or the date shown on the notification form in the case of a written withdrawal.

3. *Reporting action taken date for applications that are approved but not accepted.* For applications approved by a financial institution but not accepted by the applicant, the financial institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. A financial institution should generally be consistent in its approach to reporting by, for example, establishing procedures for how

to report this date for particular scenarios, products, or divisions.

4. *Reporting action taken date for originated applications.* For applications that result in an extension of credit, a financial institution generally reports the closing or account opening date. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may, alternatively, use the date of initial disbursement. A financial institution should generally be consistent in its approach to reporting by, for example, establishing procedures for how to report this date for particular scenarios, products, or divisions.

5. *Reporting action taken date for incomplete applications.* For applications closed for incompleteness or denied for incompleteness, the financial institution reports either the date the action was taken or the date the denial or incompleteness notice was sent to the applicant.

107(a)(11) Denial Reasons

1. *Reason for denial—in general.* A financial institution complies with section 1002.107(a)(11) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution reports only the principal reason or reasons it denied the application. For example, if a financial institution denies an application due to insufficient cashflow, unacceptable collateral, and unverifiable business information, the financial institution is required to report these three reasons. The reasons reported must accurately describe the principal reason or reasons the financial institution denied the application. A financial institution reports denial reasons by selecting its principal reason or reasons for denying the application from the following list:

i. *Credit characteristics of the business.* A financial institution reports the denial reason as ''credit characteristics of the business'' if it denies the application based on an assessment of the business's ability to meet its current or future credit obligations. Examples include business credit score, history of business bankruptcy or delinquency, and/or a high number of recent business credit inquiries.

ii. *Credit characteristics of the principal owner(s) or guarantor(s).* A financial institution reports the denial reason as ''credit characteristics of the principal owner(s) or guarantor(s)'' if it denies the application based on an assessment of the principal owner(s) or guarantor(s)'s ability to meet its current or future credit obligations. Examples include principal owner(s) or guarantor(s)'s credit score, history of charge offs, bankruptcy or delinquency, low net worth, limited or insufficient credit history, or history of excessive overdraft.

iii. *Use of credit proceeds.* A financial institution reports the denial reason as ''use of credit proceeds'' if it denies an application because, as a matter of policy or practice, it places limits on lending to certain kinds of businesses, products, or activities it has identified as high risk.

iv. *Cashflow.* A financial institution reports the denial reason as ''cashflow'' when it denies an application due to insufficient or inconsistent cashflow.

v. *Collateral.* A financial institution reports the denial reason as ''collateral'' when it denies an application due to collateral that it deems insufficient or otherwise unacceptable.

vi. *Time in business.* A financial institution reports the denial reason as ''time in business'' when it denies an application due to insufficient time or experience in a line of business.

vii. *Government loan program criteria.* Certain loan programs are backed by government agencies that have specific eligibility requirements. When those requirements are not met by an applicant, and the financial institution denies the application, the financial institution reports the denial reason as ''government loan program criteria.'' For example, if an applicant cannot meet a government-guaranteed loan program's requirement to provide a guarantor or proof of insurance, the financial institution reports the reason for the denial as ''government loan program criteria.''

viii. *Aggregate exposure.* Aggregate exposure is a measure of the total exposure or

level of indebtedness of the business and its principal owner(s) associated with an application. A financial institution reports the denial reason as ''aggregate exposure'' where the total debt associated with the application is deemed high or exceeds certain debt thresholds set by the financial institution. For example, if an application for unsecured credit exceeds the maximum amount a financial institution is permitted to approve per applicant, as stated in its credit guidelines, and the financial institution denies the application for this reason, the financial institution reports the reason for denial as ''aggregate exposure.''

ix. *Unverifiable information.* A financial institution reports the denial reason as ''unverifiable information'' when it is unable to verify information provided as part of the application, and denies the application for that reason. The unverifiable information must be necessary for the financial institution to make a credit decision based on its procedures for the type of credit requested. Examples include unverifiable assets or collateral, unavailable business credit report, and unverifiable business ownership composition.

x. *Other.* A financial institution reports the denial reason as ''other'' where none of the enumerated denial reasons adequately describe the principal reason or reasons it denied the application, and the institution reports the denial reason or reasons via free-form text field.

2. *Reason for denial—not applicable.* A financial institution complies with section 1002.107(a)(11) by reporting that the requirement is not applicable if the action taken on the application, pursuant to section 1002.107(a)(9), is not a denial. For example, if the application resulted in an originated covered credit transaction, or the application was approved but not accepted, the financial institution complies with section 1002.107(a)(11) by reporting not applicable.

107(a)(12) Pricing Information

1. *General.* For applications that a financial institution, pursuant to section 1002.107(a)(9), reports as denied, withdrawn by the applicant, or incomplete, the financial institution reports that pricing information is ''not applicable.''

107(a)(12)(i) Interest Rate

1. *General.* A financial institution complies with section 1002.107(a)(12)(i) by reporting the interest rate applicable to the amount of credit approved or originated as reported pursuant to section 1002.107(a)(8).

2. *Interest rate—initial period.* If a covered credit transaction includes an initial period with an introductory interest rate of 12 months or less, after which the interest rate adjusts upwards or shifts from a fixed to variable rate, a financial institution complies with section 1002.107(a)(12)(i) by reporting information about the interest rate applicable after the initial period. If a covered transaction includes an initial period with an interest rate of more than 12 months after which the interest rate resets, a financial institution complies with section 1002.107(a)(12)(i) by reporting information about the interest rate applicable prior to the reset period. For example, if a financial institution originates a covered credit transaction with a fixed, initial interest rate of 0 percent for six months following origination, after which the interest rate will adjust according to a Prime index rate plus a 3 percent margin, the financial institution reports the 3 percent margin, Prime as the name of the index used to adjust the interest rate, the number 6 for the length of the initial period, and ''not applicable'' for the index value. As another example, in a 10/1 adjustable-rate mortgage transaction, where the first 10 years of the repayment period has a fixed rate of 3 percent and after year 10 the interest rate will adjust according to a Prime index rate plus a 3 percent margin, a financial institution complies with section 1002.107(a)(12)(i) by reporting the fixed rate of 3 percent, the number 120 for the initial period, and ''not applicable'' in the fields for the index, margin, and index value.

3. *Multiple interest rates.* If a covered credit transaction includes multiple interest rates applicable to different credit features, a financial institution complies with section

1002.107(a)(12)(i) by reporting the interest rate applicable to the amount of credit approved or originated reported pursuant to section 1002.107(a)(8). For example, if a financial institution originates a credit card with different interest rates for purchases, balance transfers, cash advances, and overdraft advances, the financial institution reports the interest rate applicable for purchases.

4. *Index names.* A financial institution complies with section 1002.107(a)(12)(i) by selecting the index used from the following list: Wall Street Journal Prime, 6-month CD rate, 1-year T-Bill, 3-year T-Bill, 5-year T-Note, 12-month average of 10-year T-Bill, Cost of Funds Index (COFI)- National, Cost of Funds Index (COFI)-11th District, Constant Maturity Treasury (CMT). If the index used is internal to the financial institution, the financial institution reports ''internal index'' via the list of indices provided. If the index used does not appear on the list of indices provided (and is not internal to the financial institution), the financial institution reports ''other'' and reports the name of the index via free-form text field.

5. *Index value.* For covered transactions with an adjustable interest rate, a financial institution complies with section 1002.107(a)(12)(i)(B) by reporting the index value used to set the rate that is or would be applicable to the covered transaction.

107(a)(12)(ii) Total Origination Charges

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not reportable under section 1002.107(a)(12)(ii). In determining whether an item is part of the total origination charges, a financial institution should compare the covered credit transaction in question with a similar cash transaction. A financial institution financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

2. *Charges by third parties.* A financial institution includes fees and amounts charged by someone other than the financial institution in the total charges reported if the financial institution:

i. Requires the use of a third party as a condition of or an incident to the extension of credit, even if the applicant can choose the third party; or

ii. Retains a portion of the third-party charge, to the extent of the portion retained.

3. *Special rule; broker fees.* A financial institution complies with section 1002.107(a)(12)(ii) by including fees charged by a broker (including fees paid by the applicant directly to the broker or to the financial institution for delivery to the broker) in the total origination charges reported even if the financial institution does not require the applicant to use a broker and even if the financial institution does not retain any portion of the charge. For more information on broker fees, *see* commentary for section 1002.107(a)(12)(iii).

4. *Bundled services.* Total origination charges include all charges imposed directly or indirectly by the financial institution at or before origination as an incident to or a condition of the extension of credit. Accordingly, a financial institution complies with section 1002.107(a)(12)(ii) by including charges for other products or services paid at or before origination in the total origination charges reported if the financial institution requires the purchase of such other product or service as a condition of or an incident to the extension of credit.

5. *Origination charges—examples.* Examples of origination charges may include application fees, credit report fees, points, appraisal fees, and other similar charges.

6. *Net lender credit.* If a financial institution provides a credit to an applicant that is greater than the total origination charges the applicant would have paid, the financial institution complies with section 1002.107(a)(12)(ii) by reporting the net lender credit as a negative amount. For example, if a covered transaction has $500 provided to the applicant at origination to offset closing costs, and the financial institution does not charge any origination charges, the financial institution complies with

section 1002.107(a)(12)(ii) by reporting negative $500 as the total origination charges.

107(a)(12)(iii) Broker Fees

1. *Amount.* A financial institution complies with section 1002.107(a)(12)(iii) by including the fees reported in section 1002.107(a)(12)(ii) that are fees paid by the applicant directly to the broker or to the financial institution for delivery to the broker. For example, a covered transaction has $3,000 of total origination charges. Of that $3,000, $250 are fees paid by the applicant directly to a broker and an additional $300 are fees paid to the financial institution for delivery to the broker. The financial institution complies with section 1002.107(a)(12)(iii) by reporting $550 in the broker fees reported.

2. *Fees paid directly to a broker by an applicant.* A financial institution complies with section 1002.107(a)(12)(iii) by relying on the best information readily available to the financial institution at the time final action is taken. Information readily available could include, for example, information provided by an applicant or broker that the financial institution reasonably believes regarding the amount of fees paid by the applicant directly to the broker.

107(a)(12)(iv) Initial Annual Charges

1. *Charges during the initial annual period.* The total initial annual charges include all charges scheduled to be imposed during the initial annual period following origination. For example, if a financial institution originates a covered credit transaction with a $50 monthly fee and a $100 annual fee, the financial institution complies with section 1002.107(a)(12)(iv) by reporting $700 in the initial annual charges reported. If there will be a charge in the initial annual period following origination but the amount of that charge is uncertain at the time of origination, a financial institution complies with section 1002.107(a)(12)(iv) by not reporting that charge as scheduled to be imposed during the initial annual period following origination.

2. *Interest excluded.* A financial institution complies with section 1002.107(a)(12)(iv) by excluding any interest expense from the initial annual charges reported.

3. *Avoidable charges.* A financial institution complies with section 1002.107(a)(12)(iv) by only including scheduled charges and excluding any charges for events that are avoidable by the applicant from the initial annual charges reported. Examples of avoidable charges include charges for late payment, for exceeding a credit limit, for delinquency or default, or for paying items that overdraw an account.

4. *Initial annual charges—examples.* Examples of charges scheduled to be imposed during the initial annual period may include monthly fees, annual fees, and other similar charges.

5. *Scheduled charges with variable amounts.* A financial institution complies with section 1002.107(a)(12)(iv) by reporting as the default the highest amount for a charge scheduled to be imposed. For example, if a covered credit transaction has a $75 monthly fee, but the fee is reduced to $0 if the applicant maintains an account at the financial institution originating the covered credit transaction, the financial institution complies with section 1002.107(a)(12)(iv) by reporting $900 ($75 × 12) in the initial annual charges reported.

6. *Transactions with a term of less than one year.* For a transaction with a term of less than one year, a financial institution complies with section 1002.107(a)(12)(iv) by reporting all charges scheduled to be imposed during the term of the transaction.

107(a)(12)(v) Additional Cost for Merchant Cash Advances or Other Sales-Based Financing

1. *Merchant cash advances.* Section 1002.107(a)(12)(v) requires a financial institution to report the difference between the amount advanced and the amount to be repaid for a merchant cash advance or other sales-based financing transaction. Thus, in a merchant cash advance, a financial institution reports the difference between the amount advanced and the amount to be repaid, using

the amounts (expressed in dollars) provided in the contract between the financial institution and the applicant.

107(a)(12)(vi) Prepayment Penalties

1. *Policies and procedures applicable to the covered credit transaction.* The policies and procedures applicable to the covered credit transaction include the practices that the financial institution follows when evaluating applications for the specific credit type and credit purpose requested. For example, assume that a financial institution's written procedures permit it to include prepayment penalties in the loan agreement for its term loans secured by non-owner occupied commercial real estate. For such transactions, the financial institution includes prepayment penalties in some loan agreements but not others. For an application for, or origination of, a term loan secured by non-owner occupied commercial real estate, the financial institution reports under section 1002.107(a)(12)(vi)(A) that a prepayment penalty could have been included under the policies and procedures applicable to the transaction, regardless of whether the term loan secured by non-owner occupied commercial real estate actually includes a prepayment penalty.

2. *Balloon finance charges.* A financial institution complies with section 1002.107(a)(12)(vi) by reporting as a prepayment penalty any balloon finance charge that may be imposed for paying all or part of the transaction's principal before the date on which the principal is due. For example, under the terms of a transaction, the amount of funds advanced is $12,000, the amount to be repaid is $24,000 (which includes $12,000 in principal and $12,000 in interest and fees), the length of the transaction is 12 months, and the applicant must repay $2,000 per month. The terms of the transaction state that if the applicant prepays the principal before the 12-month period is over, the applicant is responsible for paying the difference between $24,000 and the amount the applicant has already repaid prior to initiating prepayment. The difference between the $24,000 to be repaid and what the applicant has already repaid prior to initiating prepayment is a balloon finance charge and should be reported as a prepayment penalty.

107(a)(13) Census Tract

1. *General.* A financial institution complies with section 1002.107(a)(13) by reporting a census tract number as defined by the U.S. Census Bureau, which includes state and county numerical codes. A financial institution complies with section 1002.107(a)(13) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting. The financial institution reports census tract based on the following:

i. *Proceeds address.* A financial institution complies with section 1002.107(a)(13) by reporting a census tract based on the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied, if known. For example, a financial institution would report a census tract based on the address or location of the site where the proceeds of a construction loan will be applied.

ii. *Main office or headquarters address.* If the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied is unknown, a financial institution complies with section 1002.107(a)(13) by reporting a census tract number based on the address or location of the main office or headquarters of the applicant, if known. For example, the address or location of the main office or headquarters of the applicant may be the home address of a sole proprietor or the office address of a sole proprietor or other applicant.

iii. *Another address or location.* If neither the address or location where the proceeds of the credit applied for or originated will be or would have been principally applied nor the address or location of the main office or headquarters of the applicant are known, a financial institution complies with section 1002.107(a)(13) by reporting a census tract number based on another address or location associated with the applicant.

iv. *Type of address used.* In addition to re-

porting the census tract, pursuant to section 1002.107(a)(13)(iv) a financial institution must report which one of the three types of addresses or locations listed in section 1002.107(a)(13)(i) through (iii) and described in comments 107(a)(13)–1.i through iii that the census tract is determined from.

2. *Financial institution discretion.* A financial institution complies with section 1002.107(a)(13) by identifying the appropriate address or location and the type of that address or location in good faith, using appropriate information from the applicant's credit file or otherwise known by the financial institution. A financial institution is not required to make inquiries beyond its standard procedures as to the nature of the addresses or locations it collects.

3. *Address or location not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes at least one address or location for an applicant for census tract reporting. However, if a financial institution is nonetheless unable to collect or otherwise determine any address or location for an application, the financial institution reports that the census tract information is ''not provided by applicant and otherwise undetermined.''

4. *Safe harbor.* As described in section 1002.112(c)(2) and comment 112(c)–1, a financial institution that obtains an incorrect census tract by correctly using a geocoding tool provided by the FFIEC or the Bureau does not violate the Act or subpart B of this part.

107(a)(14) Gross Annual Revenue

1. *Collecting gross annual revenue.* A financial institution reports the applicant's gross annual revenue, expressed in dollars, for its fiscal year preceding when the information was collected. A financial institution may rely on the applicant's statements or on information provided by the applicant in collecting and reporting gross annual revenue, even if the applicant's statement or information is based on estimation or extrapolation. However, pursuant to section 1002.107(b), if the financial institution verifies the gross annual revenue provided by the applicant, it must report the verified information. Also, pursuant to comment 107(c)(1)–5, a financial institution reports updated gross annual revenue data if it obtains more current data from the applicant during the application process. If a financial institution has already verified gross annual revenue data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. The financial institution may use the following language to ask about gross annual revenue and may rely on the applicant's answer (unless subsequently verified or updated):

What was the gross annual revenue of the business applying for credit in its last full fiscal year? Gross annual revenue is the amount of money the business earned before subtracting taxes and other expenses. You may provide gross annual revenue calculated using any reasonable method.

2. *Gross annual revenue not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the gross annual revenue of the applicant. However, if a financial institution is nonetheless unable to collect or determine the gross annual revenue of the applicant, the financial institution reports that the gross annual revenue is ''not provided by applicant and otherwise undetermined.''

3. *Affiliate revenue.* A financial institution is permitted, but not required, to report the gross annual revenue for the applicant that includes the revenue of affiliates as well. Likewise, as explained in comment 106(b)(1)–3, in determining whether the applicant is a small business under section 1002.106(b), a financial institution may rely on an applicant's representations regarding gross annual revenue, which may or may not include affiliates' revenue.

4. *Gross annual revenue for a startup business.* In a typical startup business situation

where the applicant has no gross annual revenue for its fiscal year preceding when the information is collected, the financial institution reports that the applicant's gross annual revenue in the preceding fiscal year is ''zero.'' The financial institution shall not report pro forma projected revenue figures because these figures do not reflect actual gross revenue.

107(a)(15) NAICS Code

1. *General.* NAICS stands for North American Industry Classification System. The Office of Management and Budget has charged the Economic Classification Policy Committee with the maintenance and review of NAICS. A financial institution complies with section 1002.107(a)(15) if it uses the 3-digit NAICS subsector codes in effect on January 1 of the calendar year covered by the small business lending application register that it is reporting.

2. *NAICS not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes NAICS code. However, if a financial institution is nonetheless unable to collect or otherwise determine a NAICS code for the applicant, the financial institution reports that the NAICS code is ''not provided by applicant and otherwise undetermined.''

3. *Safe harbor.* As described in section 1002.112(c)(3) and comment 112(c)–2, a financial institution that obtains an incorrect NAICS code does not violate the Act or subpart B of this part if it either relies on an applicant's representations or on an appropriate third-party source, in accordance with section 1002.107(b), regarding the NAICS code, or identifies the NAICS code itself, provided that the financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.

107(a)(16) Number of Workers

1. *General.* A financial institution complies with section 1002.107(a)(16) by reporting the number of people who work for the applicant, using the ranges prescribed in the filing instructions guide.

2. *Collecting number of workers.* A financial institution may collect number of workers from an applicant using the ranges for reporting as specified by the Bureau (*see* comment 107(a)(16)–1) or as a numerical value. When asking for the number of workers from an applicant, a financial institution shall explain that full-time, part-time and seasonal employees, as well as contractors who work primarily for the applicant, would be counted as workers, but principal owners of the applicant would not. If asked, the financial institution shall explain that volunteers are not counted as workers, and workers for affiliates of the applicant are counted if the financial institution were also collecting the affiliates' gross annual revenue. The financial institution may use the following language to ask about the number of workers and may rely on the applicant's answer (unless subsequently verified or updated): Counting full-time, part-time and seasonal workers, as well as contractors who work primarily for the business applying for credit, but not counting principal owners of the business, how many people work for the business applying for credit?

3. *Number of workers not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the number of workers of the applicant. However, if a financial institution is nonetheless unable to collect or determine the number of workers of the applicant, the financial institution reports that the number of workers is ''not provided by applicant and otherwise undetermined.''

107(a)(17) Time in Business

1. *Collecting time in business.* A financial institution complies with section 1002.107(a)(17) by reporting the time the applicant has been in business.

i. If a financial institution collects or otherwise obtains the number of years an applicant has been in business as part of its procedures for evaluating an application for

credit, it reports the time in business in whole years, rounded down to the nearest whole year.

ii. If a financial institution does not collect time in business as described in comment 107(a)(17)–1.i, but as part of its procedures determines whether or not the applicant's time in business is less than two years, it reports the applicant's time in business as either less than two years or two or more years in business.

iii. If a financial institution does not collect time in business as part of its procedures for evaluating an application for credit as described in comments 107(a)(17)–1.i or .ii, the financial institution complies with section 1002.107(a)(17) by asking the applicant whether it has been in existence for less than two years or two or more years and reporting the information provided by the applicant accordingly.

2. *Time in business collected as part of the financial institution's procedures for evaluating an application for credit.* A financial institution that collects or obtains an applicant's time in business as part of its procedures for evaluating an application for credit is not required to collect or obtain time in business pursuant to any particular definition of time in business for this purpose. For example, if the financial institution collects the number of years the applicant has existed (such as by asking the applicant when its business was started, or by obtaining the applicant's date of incorporation from a Secretary of State or other state or federal agency that registers or licenses businesses) as the time in business, the financial institution reports that information accordingly pursuant to comment 107(a)(17)–1.i. Similarly, if the financial institution collects the number of years of experience the applicant's owners have in the current line of business, the financial institution reports that information accordingly pursuant to comment 107(a)(17)–1.i. If, however, the financial institution collects both the number of years the applicant has existed as well as some other measure of time in business (such as the number of years of experience the applicant's owners have in the current line of business), the financial institution reports the number of years the applicant has existed as the time in business pursuant to comment 107(a)(17)–1.i.

3. *Time in business not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the applicant's time in business. However, if a financial institution is nonetheless unable to collect or determine the applicant's time in business, the financial institution reports that the time in business is ''not provided by applicant and otherwise undetermined.''

107(a)(18) Minority-Owned, Women-Owned, and LGBTQI+-Owned Business Statuses

1. *General.* A financial institution must ask an applicant whether it is a minority-owned, women-owned, and/or LGBTQI+-owned business. The financial institution must permit an applicant to refuse (i.e., decline) to answer the financial institution's inquiry regarding business status and must inform the applicant that the applicant is not required to provide the information. *See* the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. The financial institution must report the applicant's substantive response regarding each business status, that the applicant declined to answer the inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or its failure to respond to the inquiry (that is, ''not provided by applicant''), as applicable.

2. *Definitions.* When inquiring about minority-owned, women-owned, and LGBTQI+-owned business statuses (regardless of whether the request is made on a paper form, electronically, or orally), the financial institution also must provide the applicant with definitions of the terms ''minority-owned business,'' ''women-owned business,'' and ''LGBTQI+-owned business'' as set forth in section 1002.102(*l*), (m), (s), respectively. The financial institution satisfies this requirement if it provides the definitions as set forth in the sample data collection form in appendix E.

3. *Combining questions.* A financial institution may combine on the same paper or electronic data collection form the questions regarding minority-owned, women-owned, and LGBTQI+-owned business status pursuant to section 1002.107(a)(18) with principal owners' ethnicity, race, and sex pursuant to section 1002.107(a)(19) and the applicant's number of principal owners pursuant to section 1002.107(a)(20). *See* the sample data collection form in appendix E.

4. *Notices.* When requesting minority-owned, women-owned, and LGBTQI+-owned business statuses from an applicant, a financial institution must inform the applicant that the financial institution cannot discriminate on the basis of the applicant's minority-owned, women-owned, or LGBTQI+-owned business statuses, or on whether the applicant provides its minority-owned, women-owned, or LGBTQI+-owned business statuses. A financial institution must also inform the applicant that federal law requires it to ask for an applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A financial institution may combine these notices regarding minority-owned, women-owned, and LGBTQI+-owned business statuses with the notices that a financial institution is required to provide when requesting principal owners' ethnicity, race, and sex if a financial institution requests information pursuant to section 1002.107(a)(18) and (19) in the same data collection form or at the same time. *See* the sample data collection form in appendix E for sample language that a financial institution may use for these notices.

5. *Maintaining the record of an applicant's response regarding minority-owned, women-owned, and LGBTQI+-owned business statuses separate from the application.* A financial institution must maintain the record of an applicant's responses to the financial institution's inquiry pursuant to section 1002.107(a)(18) separate from the application and accompanying information. *See* section 1002.111(b) and comment 111(b)–1. If the financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. *See* the sample data collection form in appendix E. For example, if the financial institution sends the data collection form via email, the data collection form should be a separate attachment to the email or accessed through a separate link in the email. If the financial institution uses a web-based data collection form, the form should be on its own page.

6. *Minority-owned, women-owned, and/or LGBTQI+-owned business statuses not provided by applicant.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses. However, if a financial institution does not receive a response to the financial institution's inquiry pursuant to section 1002.107(a)(18), the financial institution reports that the applicant's business statuses were ''not provided by applicant.''

7. *Applicant declines to provide information about minority-owned, women-owned, and/or LGBTQI+-owned business statuses.* A financial institution reports that the applicant responded that it did not wish to provide the information about an applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses, if the applicant declines to provide the information by selecting such a response option on a paper or electronic form (e.g., by selecting an answer option of ''I do not wish to provide this information'' or similar). The financial institution also reports an applicant's refusal to provide such information in this way, if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents.

8. *Conflicting responses provided by applicants.* If the applicant both provides a substantive response to the financial institution's inquiry regarding business status (that is, indicates that it is a minority-owned, women-owned, and/or LGBTQI+-owned business, or checks ''none apply'' or similar) and also checks the box indicating ''I do not wish to provide this information'' or similar, the financial institution reports the substantive response(s) provided by the applicant (rather than reporting that the applicant declined to provide the information).

9. *No verification of business statuses.* Notwithstanding section 1002.107(b), a financial institution must report the applicant's substantive response(s), that the applicant declined to answer the inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or the applicant's failure to respond to the inquiry (that is, that the information was ''not provided by applicant'') pursuant to section 1002.107(a)(18), even if the financial institution verifies or otherwise obtains an applicant's minority-owned, women-owned, and/or LGBTQI+-owned business statuses for other purposes. For example, if a financial institution uses a paper data collection form to ask an applicant if it is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business and the applicant does not indicate that it is a minority-owned business, the financial institution must not report that the applicant is a minority-owned business, even if the applicant indicates that it is a minority-owned business for other purposes, such as for a special purpose credit program or a Small Business Administration program.

107(a)(19) Ethnicity, Race, and Sex of Principal Owners

1. *General.* A financial institution must ask an applicant to provide its principal owners' ethnicity, race, and sex. The financial institution must permit an applicant to refuse (i.e., decline) to answer the financial institution's inquiry and must inform the applicant that it is not required to provide the information. *See* the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. The financial institution must report the applicant's substantive responses regarding principal owners' ethnicity, race, and sex, that the applicant declined to answer an inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or its failure to respond to an inquiry (that is, ''not provided by applicant''), as applicable. The financial institution must report an applicant's responses about its principal owners' ethnicity, race, and sex, regardless of whether an applicant declines or fails to answer an inquiry about the number of its principal owners under section 1002.107(a)(20). If an applicant provides some, but not all, of the requested information about the ethnicity, race, and sex of a principal owner, the financial institution reports the information that was provided by the applicant and reports that the applicant declined to provide or did not provide (as applicable) the remainder of the information. *See* comments 107(a)(19)–6 and –7.

2. *Definition of principal owner.* When requesting a principal owner's ethnicity, race, and sex, the financial institution must also provide the applicant with the definition of the term ''principal owner'' as set forth in section 1002.102(o). The financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form in appendix E.

3. *Combining questions.* A financial institution may combine on the same paper or electronic data collection form the questions regarding the principal owners' ethnicity, race, and sex pursuant to section 1002.107(a)(19) with the applicant's number of principal owners pursuant to section 1002.107(a)(20) and the applicant's minority-owned, women-owned, and LGBTQI+-owned business statuses pursuant to section 1002.107(a)(18). *See* the sample data collection form in appendix E.

4. *Notices.* When requesting a principal owner's ethnicity, race, and sex from an applicant, a financial institution must inform the applicant that the financial institution cannot discriminate on the basis of a principal owner's

ethnicity, race, or sex/gender, or on whether the applicant provides the information. A financial institution must also inform the applicant that federal law requires it to ask for the principal owners' ethnicity, race, and sex/gender to help ensure that all small business applicants for credit are treated fairly and that communities' small business credit needs are being fulfilled. A financial institution may combine these notices with the similar notices that a financial institution is required to provide when requesting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, if a financial institution requests information pursuant to section 1002.107(a)(18) and (19) in the same data collection form or at the same time. *See* the sample data collection form in appendix E for sample language that a financial institution may use for these notices.

5. *Maintaining the record of an applicant's responses regarding principal owners' ethnicity, race, and sex separate from the application.* A financial institution must maintain the record of an applicant's response to the financial institution's inquiries pursuant to section 1002.107(a)(19) separate from the application and accompanying information. *See* section 1002.111(b) and comment 111(b)–1. If the financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, LGBTQI+-owned business status, principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. *See* the sample data collection form in appendix E for sample language. For example, if the financial institution sends the data collection form via email, the data collection form should be a separate attachment to the email or accessed through a separate link in the email. If the financial institution uses a web-based data collection form, the form should be on its own page.

6. *Ethnicity, race, or sex of principal owners not provided by applicant.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the ethnicity, race, and sex of an applicant's principal owners. However, if an applicant does not provide the information, such as in response to a request for a principal owner's ethnicity, race, or sex on a paper or electronic data collection form, the financial institution reports the ethnicity, race, or sex (as applicable) as ''not provided by applicant'' for that principal owner. For example, if the financial institution provides a paper data collection form to an applicant with two principal owners, and asks the applicant to complete and return the form but the applicant does not do so, the financial institution reports that the two principal owners' ethnicity, race, and sex were ''not provided by applicant.'' Similarly, if the financial institution provides an electronic data collection form, the applicant indicates that it has two principal owners, the applicant provides ethnicity, race, and sex for the first principal owner, and the applicant does not make any selections for the second principal owner's ethnicity, race, and sex, the financial institution reports the ethnicity, race, and sex that the applicant provided for the first principal owner and reports that each of the ethnicity, race, and sex for the second principal owner was ''not provided by applicant.'' Additionally, if the financial institution provides an electronic or paper data collection form, the applicant indicates that it has one principal owner, provides the principal owner's ethnicity and sex information, but does not provide information about the principal owner's race and also does not select a response of ''I do not wish to provide this information'' with regard to race, the financial institution reports the ethnicity and sex provided by the applicant and reports that the race of the principal owner was ''not provided by applicant.''

7. *Applicant declines to provide information about a principal owner's ethnicity, race, or sex.* A financial institution reports that the applicant responded that it did not wish to provide the information about a principal owner's ethnicity, race, or sex (as applicable), if the applicant declines to provide the information by selecting such a response option on a paper or electronic form (e.g., by selecting an

answer option of ''I do not wish to provide this information'' or similar). The financial institution also reports an applicant's refusal to provide such information in this way, if the applicant orally declines to provide such information for a covered application taken by telephone or another medium that does not involve providing any paper or electronic documents.

8. *Conflicting responses provided by applicant.* If the applicant both provides a substantive response to a request for a principal owner's ethnicity, race, or sex (that is, identifies a principal owner's race, ethnicity, or sex) and also checks the box indicating ''I do not wish to provide this information'' or similar, the financial institution reports the information on ethnicity, race, or sex that was provided by the applicant (rather than reporting that the applicant declined provide the information). For example, if an applicant is completing a paper data collection form and writes in a response that a principal owner's sex is female and also indicates on the form that the applicant does not wish to provide information regarding that principal owner's sex, the financial institution reports the principal owner's sex as female.

9. *No verification of ethnicity, race, and sex of principal owners.* Notwithstanding section 1002.107(b), a financial institution must report the applicant's substantive responses as to its principal owners' ethnicity, race, and sex (that is, the applicant's identification of its principal owners' race, ethnicity, and sex), that the applicant declined to answer the inquiry (that is, selected an answer option of ''I do not wish to provide this information'' or similar), or the applicant's failure to respond to the inquiry (that is, the information was ''not provided by applicant'') pursuant to section 1002.107(a)(19), even if the financial institution verifies or otherwise obtains the ethnicity, race, or sex of the applicant's principal owners for other purposes.

10. *Reporting for fewer than four principal owners.* If an applicant has fewer than four principal owners, the financial institution reports ethnicity, race, and sex information for the number of principal owners that the applicant has and reports the ethnicity, race, and sex fields for additional principal owners as ''not applicable.'' For example, if an applicant has only one principal owner, the financial institution reports ethnicity, race, and sex information for the first principal owner and reports as ''not applicable'' the ethnicity, race, and sex data fields for principal owners two through four.

11. *Previously collected ethnicity, race, and sex information.* If a financial institution reports one or more principal owners' ethnicity, race, or sex information based on previously collected data under section 1002.107(d), the financial institution does not need to collect any additional ethnicity, race, or sex information for other principal owners (if any). *See also* comment 107(d)–9.

12. *Guarantors.* A financial institution does not collect or report a guarantor's ethnicity, race, and sex unless the guarantor is also a principal owner of the applicant, as defined in section 1002.102(o).

13. *Ethnicity.*

i. *Aggregate categories.* A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of section 1002.107(a)(19) using one or more of the following aggregate categories:

A. Hispanic or Latino.

B. Not Hispanic or Latino.

ii. *Disaggregated subcategories.* A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of section 1002.107(a)(19) using one or more of the following disaggregated subcategories, regardless of whether the applicant has indicated that the relevant principal owner is Hispanic or Latino and regardless of whether the applicant selects any aggregate categories: Cuban; Mexican; Puerto Rican; or Other Hispanic or Latino. If an applicant indicates that a principal owner is Other Hispanic or Latino, the financial institution must permit the applicant to provide additional information regarding the principal owner's ethnicity, by using free-form text on a paper or electronic data collection form or using language that in-

forms the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard. *See* the sample data collection form in appendix E for sample language. If an applicant chooses to provide additional information regarding a principal owner's ethnicity, such as by indicating that a principal owner is Argentinean orally or in writing on a paper or electronic form, a financial institution must report that additional information via free-form text. If the applicant provides such additional information but does not also indicate that the principal owner is Other Hispanic or Latino (e.g., by selecting Other Hispanic or Latino on a paper or electronic form), a financial institution is permitted, but not required, to report Other Hispanic or Latino as well.

iii. *Selecting multiple categories.* The financial institution must permit the applicant to select one, both, or none of the aggregate categories and as many disaggregated subcategories as the applicant chooses. A financial institution must permit an applicant to select a disaggregated subcategory even if the applicant does not select the corresponding aggregate category. For example, an applicant must be permitted to select the Mexican disaggregated subcategory for a principal owner without being required to select the Hispanic or Latino aggregate category. If an applicant provides ethnicity information for a principal owner, the financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects both aggregate categories and four disaggregated subcategories for a principal owner, the financial institution reports the two aggregate categories that the applicant selected and all four of the disaggregated subcategories that the applicant selected. Additionally, if an applicant selects only the Mexican disaggregated subcategory for a principal owner and no aggregate categories, the financial institution reports Mexican for the ethnicity of the applicant's principal owner but does not also report Hispanic or Latino. Further, if the applicant selects an aggregate category (e.g., Not Hispanic or Latino) and a disaggregated subcategory that does not correspond to the aggregate category (e.g., Puerto Rican), the financial institution reports the information as provided by the applicant (e.g., Not Hispanic or Latino, and Puerto Rican).

14. *Race.*

i. *Aggregate categories.* A financial institution must permit an applicant to provide each principal owner's race for purposes of section 1002.107(a)(19) using one or more of the following aggregate categories:

A. American Indian or Alaska Native.

B. Asian.

C. Black or African American.

D. Native Hawaiian or Other Pacific Islander.

E. White.

ii. *Disaggregated subcategories.* The financial institution must permit an applicant to provide a principal owner's race for purposes of section 1002.107(a)(19) using one or more of the disaggregated subcategories as listed in this comment 107(a)(19)–14.ii, regardless of whether the applicant has selected the corresponding aggregate category.

A. The Asian aggregate category includes the following disaggregated subcategories: Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Asian and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Asian, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of

the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Cambodian, Hmong, Laotian, Pakistani, or Thai. *See* the sample data collection form in appendix E for sample language.

B. The Black or African American aggregate category includes the following disaggregated subcategories: African American; Ethiopian; Haitian; Jamaican; Nigerian; Somali; or Other Black or African American. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Black or African American and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Black or African American, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Barbadian, Ghanaian, or South African. *See* the sample data collection form in appendix E for sample language.

C. The Native Hawaiian or Other Pacific Islander aggregate category includes the following disaggregated subcategories: Guamanian or Chamorro; Native Hawaiian; Samoan; and Other Pacific Islander. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Native Hawaiian or Other Pacific Islander and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Pacific Islander, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Fijian or Tongan. *See* the sample data collection form in appendix E for sample language.

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

E. In addition to permitting an applicant to indicate that a principal owner is American Indian or Alaska Native, a financial institution must permit an applicant to provide the name of an enrolled or principal tribe, by using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by

means other than a paper or electronic data collection form, such as by telephone. If an applicant chooses to provide the name of an enrolled or principal tribe, a financial institution must report that information via free-form text in the appropriate data reporting field. If the applicant provides the name of an enrolled or principal tribe but does not also indicate that the principal owner is American Indian or Alaska Native (e.g., by selecting American Indian or Alaska Native on a paper or electronic form), a financial institution is permitted, but not required, to report American Indian or Alaska Native as well.

iii. *Selecting multiple categories.* The financial institution must permit the applicant to select as many aggregate categories and disaggregated subcategories as the applicant chooses. A financial institution must permit an applicant to select one or more disaggregated subcategories even if the applicant does not select an aggregate category. For example, an applicant must be permitted to select the Chinese disaggregated subcategory for a principal owner without being required to select the Asian aggregate category. If an applicant provides race information for a principal owner, the financial institution reports all of the aggregate categories and disaggregated subcategories provided by the applicant. For example, if an applicant selects two aggregate categories and five disaggregated subcategories for a principal owner, the financial institution reports the two aggregate categories that the applicant selected and the five disaggregated subcategories that the applicant selected. Additionally, if an applicant selects only the Chinese disaggregated subcategory for a principal owner, the financial institution reports Chinese for the race of the principal owner but does not also report that the principal owner is Asian. Similarly, if the applicant selects an aggregate category (e.g., Asian) and a disaggregated subcategory that does not correspond to the aggregate category (e.g., Native Hawaiian), the financial institution reports the information as provided by the applicant (e.g., Asian and Native Hawaiian).

15. *Sex.* Generally, a financial institution must permit an applicant to provide each principal owner's sex for purposes of section 1002.107(a)(19). When requesting information about a principal owner's sex, a financial institution shall use the term ''sex/gender.'' If the financial institution uses a paper or electronic data collection form to collect the information, the financial institution must allow the applicant to provide each principal owner's sex/gender using free-form text. When a financial institution collects the information orally, such as by telephone, the financial institution must inform the applicant of the opportunity to provide each principal owner's sex/gender and record the applicant's response. A financial institution reports the substantive information provided by the applicant (reported via free-form text in the appropriate data reporting field), or reports that the applicant declined to provide the information.

16. *Ethnicity and race information requested orally.* As described in comments 107(a)(19)–13 and –14, when collecting principal owners' ethnicity and race pursuant to section 1002.107(a)(19), a financial institution must present the applicant with the specified aggregate categories and disaggregated subcategories. When collecting ethnicity and race information orally, such as by telephone, a financial institution may not present the applicant with the option to decline to provide the information without also presenting the applicant with the specified aggregate categories and disaggregated subcategories.

i. *Ethnicity and race categories.* Notwithstanding comments 107(a)(19)–13 and –14, a financial institution is not required to read aloud every disaggregated subcategory when collecting ethnicity and race information orally, such as by telephone. Rather, the financial institution must orally present the lists of aggregate ethnicity and race categories, followed by the disaggregated subcategories (if any) associated with the aggregate categories selected by the applicant or which the applicant requests to be presented. After the applicant makes any disaggregated category selections associated with the aggregate ethnicity or race category, the financial institution must also ask

if the applicant wishes to hear the lists of disaggregated subcategories for any aggregate categories not selected by the applicant. The financial institution must record any aggregate categories selected by the applicant, as well as any disaggregated subcategories regardless of whether such subcategories were selected based on the disaggregated subcategories read by the financial institution or were otherwise provided by the applicant.

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

107(a)(20) Number of Principal Owners

1. *General.* If the financial institution asks the applicant to provide the number of its principal owners pursuant to section 1002.107(a)(20), a financial institution must provide the definition of principal owner set forth in section 1002.102(o). The financial institution satisfies this requirement if it provides the definition of principal owner as set forth in the sample data collection form in appendix E.

2. *Number of principal owners provided by applicant; verification of number of principal owners.* The financial institution may rely on statements or information provided by the applicant in collecting and reporting the number of the applicant's principal owners. However, pursuant to section 1002.107(b), if the financial institution verifies the number of principal owners provided by the applicant, it must report the verified information.

3. *Number of principal owners not provided by applicant and otherwise undetermined.* Pursuant to section 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the number of principal owners of the applicant. However, if a financial institution is nonetheless unable to collect or otherwise determine the applicant's number of principal owners, the financial institution reports that the number of principal owners is ''not provided by applicant and otherwise undetermined.''

107(b) Reliance on and Verification of Applicant-Provided Data

1. *Reliance on information provided by an applicant or appropriate third-party sources.* A financial institution may rely on statements made by an applicant (whether made in writing or orally) or information provided by an applicant when compiling and reporting data pursuant to subpart B of this part for applicant-provided data; the financial institution is not required to verify those statements or that information. However, if the financial institution does verify applicant statements or information for its own business purposes, such as statements relating to gross annual revenue or time in business, the financial institution reports the verified information. Depending on the circumstances and the financial institution's procedures, certain applicant-provided data can be collected from appropriate third-party sources without a specific request from the applicant, and such information may also be relied on. For example, gross annual revenue or NAICS code may be collected from tax return documents; a financial institution may also collect an applicant's NAICS code using third-party sources such as business information products. Applicant-provided data are the data that are or could be provided by the applicant, including section 1002.107(a)(5) through (7) and (13) through (20). *See* comment 107(c)(1)–3. In regard to restrictions on verification of minority-owned, women-owned, and LGBTQI+-owned business statuses, and principal owners' ethnicity, race, and sex, *see* comments 107(a)(18)–9 and 107(a)(19)–9.

107(c) Time and Manner of Collection

107(c)(1) In General

1. *Procedures.* The term ''procedures'' refers to the actual practices followed by a financial institution as well as its stated procedures. For example, if a financial institution's stated procedure is to collect applicant-provided data on or with a paper application form, but employees encourage applicants to skip the page that asks whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business under section 1002.107(a)(18), the financial institution's procedures are not reasonably designed to obtain a response.

2. *Latitude to design procedures.* A financial institution has flexibility to establish procedures concerning the timing and manner in which it collects applicant-provided data that work best for its particular lending model and product offerings, provided those procedures are reasonably designed to collect the applicant-provided data in section 1002.107(a), as required pursuant to section 1002.107(c)(1), and where applicable comply with the minimum requirements set forth in section 1002.107(c)(2).

3. *Applicant-provided data.* Applicant-provided data are the data that are or could be provided by the applicant, including section 1002.107(a)(5) (credit type), section 1002.107(a)(6) (credit purpose), section 1002.107(a)(7) (amount applied for), section 1002.107(a)(13) (address or location for purposes of determining census tract), section 1002.107(a)(14) (gross annual revenue), section 1002.107(a)(15) (NAICS code, or information about the business such that the financial institution can determine the applicant's NAICS code), section 1002.107(a)(16) (number of workers), section 1002.107(a)(17) (time in business), section 1002.107(a)(18) (minority-owned business status, women-owned business status, and LGBTQI+-owned business status), section 1002.107(a)(19) (ethnicity, race, and sex of the applicant's principal owners), and section 1002.107(a)(20) (number of principal owners). Applicant-provided data do not include data that are generated or supplied only by the financial institution, including section 1002.107(a)(1) (unique identifier), section 1002.107(a)(2) (application date), section 1002.107(a)(3) (application method), section 1002.107(a)(4) (application recipient), section 1002.107(a)(8) (amount approved or originated), section 1002.107(a)(9) (action taken), section 1002.107(a)(10) (action taken date), section 1002.107(a)(11) (denial reasons), section 1002.107(a)(12) (pricing information), and section 1002.107(a)(13) (census tract, based on address or location provided by the applicant).

4. *Collecting applicant-provided data without a direct request to the applicant.* Depending on the circumstances and the financial institution's procedures, certain applicant-provided data can be collected without a direct request to the applicant. For example, credit type may be collected based on the type of product chosen by the applicant. Similarly, a financial institution may rely on appropriate third-party sources to collect certain applicant-provided data. *See* section 1002.107(b) concerning the use of third-party sources.

5. *Data updated by the applicant.* A financial institution reports updated data if it obtains more current data from the applicant during the application process. For example, if an applicant states its gross annual revenue for the preceding fiscal year was $3 million, but then the applicant notifies the financial institution that its revenue in the preceding fiscal year was actually $3.2 million, the financial institution reports gross annual revenue of $3.2 million. For reporting verified applicant-provided data, *see* section 1002.107(b) and comment 107(b)–1. If a financial institution has already verified data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. If a financial institution receives updates from the applicant after the application process has closed (for example, after closing or account opening), the financial institution may, at its discretion, update the data at any time prior to reporting the covered application to the Bureau.

107(c)(2) Applicant-Provided Data Collected Directly from the Applicant

1. *In general.* Whether a financial institution's procedures are reasonably designed to collect applicant-provided data is a fact-based determination and may depend on the financial institution's particular lending model, product offerings, and other circumstances; procedures that are reasonably designed to obtain a response may therefore require additional provisions beyond the minimum criteria set forth in section 1002.107(c)(2). In general, reasonably designed procedures will seek to maximize collection of applicant-provided data and minimize missing or erroneous data. While the requirements of section 1002.107(c)(2) do not apply to applicant-provided data that a financial institution obtains without a direct request to the applicant, as explained in comment 107(c)(1)–4, in such instances, a covered financial institution must still comply with section 1002.107(c)(1).

2. *Specific components.*

i. *Timing of initial collection attempt.* While a financial institution has some flexibility concerning when applicant-provided data is are collected, under no circumstances may the initial request for applicant-provided data occur simultaneous with or after notifying an applicant of final action taken on a covered application. Generally, the earlier in the application process the financial institution initially seeks to collect applicant-provided data, the more likely the timing of collection is reasonably designed to obtain a response.

ii. *The request for applicant-provided data is prominently displayed or presented.* Pursuant to section 1002.107(c)(2)(ii), a financial institution must ensure an applicant actually sees, hears, or is otherwise presented with the request for applicant-provided data. If an applicant is likely to overlook or miss a request for applicant-provided data, the financial institution does not have reasonably designed procedures. Similarly, a financial institution also does not have reasonably designed procedures if it obscures, prevents, or inhibits an applicant from accessing or reviewing a request for applicant-provided data.

iii. *The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data.*

A. A covered financial institution avoids discouraging a response by, for example, communicating to the applicant that the collection of applicant-provided data is worthy of the applicant's attention or is as important as information collected in connection with the financial institution's creditworthiness determination. In contrast, a covered financial institution that collects applicant-provided data in a time or manner that directly or indirectly discourages or obstructs an applicant from responding or providing a particular response violates section 1002.107(c)(2)(iii). For example, a financial institution may not discourage a response to inquiries regarding the demographic data pursuant to section 1002.107(a)(18) and (19) by communicating to the applicant that the request is unimportant, encouraging the applicant to bypass the form altogether, or attempting to influence or alter the applicant's preferred response.

B. A covered financial institution also avoids discouraging a response by requiring an applicant to provide a response to one or more requests for applicant-provided data in order to proceed with a covered application, including, as applicable, a response of ''I do not wish to provide this information'' or similar. (As described in comments 107(a)(18)–1 and 107(a)(19)–1, a financial institution must permit an applicant to decline to provide the demographic data required by section 1002.107(a)(18) and (19), which can be satisfied by providing a response option of ''I do not wish to provide this information'' or similar.) For example, in an electronic application, a financial institution may require the applicant to either make a substantive selection about a principal owner's ethnicity, race, or sex, select an option of ''I do not wish to provide this information'' or similar, or

indicate there are no principal owners before allowing the applicant to proceed to the next page of requested information.

iv. *The applicant can easily provide a response.* Pursuant to section 1002.107(c)(2)(iv), a financial institution must structure the request for information in a manner that makes it easy for the applicant to provide a response. For example, a financial institution requests applicant-provided data in the same format as other information required for the covered application, provides applicants multiple methods to provide or return applicant-provided data (for example, on a written form, through a web portal, or through other means), or provides the applicant some other type of straightforward and seamless method to provide a response. Conversely, a financial institution must avoid imposing unnecessary burden on an applicant to provide the information requested or requiring the applicant to take steps that are inconsistent with the rest of its application process. For example, a financial institution does not have reasonably designed procedures if it collects application information related to its own creditworthiness determination in electronic form, but mails a paper form to the applicant initially seeking the data required under section 1002.107(a) that the financial institution does not otherwise need for its creditworthiness determination and requiring the applicant to mail it back. On the other hand, a financial institution complies with section 1002.107(c)(2)(iv) if, at its discretion, it requests the applicant to respond to inquiries made pursuant to section 1002.107(a)(18) and (19) through a reasonable method intended to keep the applicant's responses discrete and protected from view.

v. *Multiple requests for applicant-provided data.* A financial institution is permitted, but not required, to make more than one attempt to obtain applicant-provided data if the applicant does not respond to an initial request. For example, if an applicant initially does not respond when asked early in the application process (before notifying the applicant of final action taken on the application, pursuant to section 1002.107(c)(2)(i)) to inquiries made pursuant to section 1002.107(a)(18) and (19), a financial institution may request this information again, for example, during a subsequent in-person meeting with the applicant or after notifying the applicant of final action taken on the covered application.

107(c)(3) Procedures to Monitor Compliance

1. *Procedures to identify and respond to indicia of potential discouragement, including low response rates.* Section 1002.107(c)(3) requires a covered financial institution to maintain procedures designed to identify and respond to indicia of potential discouragement, including low response rates for applicant-provided data. In general, these include monitoring for low response rates (i.e., the percentage of covered applications for which the financial institution has obtained some type of response to requests for applicant-provided data, including, as applicable, an applicant response of ''I do not wish to provide this information'' or similar); monitoring for significant irregularities in any particular response that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses; monitoring response rates and responses by division, location, loan officer, or other factors to ensure that no discouragement or improper conduct is occurring in some parts of a financial institution, even if the financial institution maintains adequate response rates and responses overall; providing adequate training to loan officers and other persons involved in collecting applicant-provided data; promptly investigating any indicia of potential discouragement; and taking prompt remedial action if discouragement or other improper conduct is identified.

107(c)(4) Low Response Rates

1. *In general.* A low response rate for applicant-provided data may indicate that the financial institution has engaged in discouragement or otherwise failed to maintain reasonably designed procedures. Response rate generally refers to whether the financial institution has obtained some type of response to

requests for applicant-provided data (including, as applicable, an applicant response of ''I do not wish to provide this information'' or similar). A response rate may be measured, as appropriate, as compared to financial institutions of a similar size, type, and/or geographic reach, or other factors, as appropriate. Similarly, significant irregularities in a particular response (for example, very high rates of an applicant response of ''I do not wish to provide this information'' or similar) may also indicate that a financial institution does not have reasonably designed procedures, for example, because of steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses. Response rates may be relevant across all applicant-provided data, though are particularly relevant for the collection of the demographic data pursuant to section 1002.107(a)(18) and (19) given the heightened sensitivity of these inquiries and the importance of those data to the purposes of subpart B.

107(d) Previously Collected Data

1. *In general.* A financial institution may, for the purpose of reporting such data pursuant to section 1002.109, reuse certain previously collected data if the requirements of section 1002.107(d) are met. In that circumstance, a financial institution need not seek to collect the data anew in connection with a subsequent covered application to satisfy the requirements of this subpart. For example, if an applicant applies for and is granted a term loan, and then subsequently applies for a credit card in the same calendar year, the financial institution need not request again the data specified in section 1002.107(d). Similarly, if an applicant applies for more than one covered credit transaction at one time, a financial institution need only ask once for the data specified in section 1002.107(d).

2. *Data that can be reused.* Subject to the requirements of section 1002.107(d), a financial institution may reuse the following data: section 1002.107(a)(13) (address or location for purposes of determining census tract), section 1002.107(a)(14) (gross annual revenue) (subject to comment 107(d)–7), section 1002.107(a)(15) (NAICS code), section 1002.107(a)(16) (number of workers), section 1002.107(a)(17) (time in business) (subject to comment 107(d)–8), section 1002.107(a)(18) (minority-owned business status, women-owned business status, and LGBTQI+-owned business status) (subject to comment 107(d)–9), section 1002.107(a)(19) (ethnicity, race, and sex of applicant's principal owners) (subject to comment 107(d)–9), and section 1002.107(a)(20) (number of principal owners). A financial institution is not, however, permitted to reuse other data, such as section 1002.107(a)(6) (credit purpose).

3. *Previously reported data without a substantive response.* Data have not been ''previously collected'' within the meaning of section 1002.107(d) if the applicant did not provide a substantive response to the financial institution's request for that data and the financial institution was not otherwise able to obtain the requested data (for example, from the applicant's credit report, or tax returns).

4. *Updated data.* If, after the application process has closed on a prior covered application, a financial institution obtains updated information relevant to the data required to be collected and reported pursuant to section 1002.107(a)(13) through (20), and the applicant subsequently submits a new covered application, the financial institution must use the updated information in connection with the new covered application (if the requirements of section 1002.107(d) are otherwise met) or seek to collect the data again. For example, if a business notifies a financial institution of a change of address of its sole business location, and subsequently submits a covered application within the time period specified in section 1002.107(d)(1) for reusing previously collected data, the financial institution must report census tract based on the updated information. In that circumstance, the financial institution may still reuse other previously collected data to satisfy section 1002.107(a)(14) through (20) if the requirements of section 1002.107(d) are met.

5. *Collection within the preceding 36 months.* Pursuant to section 1002.107(d)(1), data can

be reused to satisfy section 1002.107(a)(13) and (15) through (20) if they are collected within the preceding 36 months. A financial institution may measure the 36-month period from the date of final action taken (section 1002.107(a)(9)) on a prior application to the application date (section 1002.107(a)(2)) on a subsequent application. For example, if a financial institution takes final action on an application on February 1, 2025, it may reuse certain previously collected data pursuant to section 1002.107(d)(1) for subsequent covered applications dated or received by the financial institution through January 31, 2028.

6. *Reason to believe data are inaccurate.* Whether a financial institution has reason to believe data are inaccurate pursuant to section 1002.107(d)(2) depends on the particular facts and circumstances. For example, a financial institution may have reason to believe data on the applicant's minority-owned business status, women-owned business status, and LGBTQI+-owned business status may be inaccurate if it knows that the applicant has had a change in ownership or a change in an owner's percentage of ownership.

7. *Collection of gross annual revenue in the same calendar year.* Pursuant to section 1002.107(d)(1), gross annual revenue information can be reused to satisfy section 1002.107(a)(14) provided it is collected in the same calendar year as the current covered application, as measured from the application date. For example, if an application is received and gross annual revenue is collected in connection with a covered application in one calendar year, but then final action was taken on the application in the following calendar year, the data may only be reused for the calendar year in which it was collected and not the calendar year in which final action was taken on the application. However, if an application is received and gross annual revenue is collected in connection with a covered application in one calendar year, a financial institution may reuse that data pursuant to section 1002.107(d) in a subsequent application initiated in the same calendar year, even if final action was taken on the subsequent application in the following calendar year.

8. *Time in business.* A financial institution that decides to reuse previously collected data to satisfy section 1002.107(a)(17) (time in business) must update the data to reflect the passage of time since the data were collected. If a financial institution only knows that the applicant had been in business less than two years at the time the data was initially collected, as described in comment 107(a)(17)–1.ii or iii, it updates the data based on the assumption that the applicant had been in business for 12 months at the time of the prior collection. For example:

i. If a financial institution previously collected data on a prior covered application that the applicant has been in business for four years, and then seeks to reuse that data for a subsequent covered application submitted one year later, it must update the data to reflect that the applicant has been in business for five years.

ii. If a financial institution previously collected data on a prior covered application that the applicant had been in business less than two years (and was not aware of the business's actual length of time in business at the time), and then seeks to reuse that data for a subsequent covered application submitted 18 months later, the financial institution reports time in business on the subsequent covered application as over two years in business.

9. *Minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex.* A financial institution may not reuse data to satisfy section 1002.107(a)(18) and (19) unless the data were collected in connection with a prior covered application pursuant to this subpart B. If the financial institution previously asked the applicant to provide its minority-owned business status, women-owned business status, and LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex for purposes of section 1002.107(a)(18) and (19), and the applicant declined to provide the information (such as by selecting "I do not wish to provide this information" or similar on a data collection form or by telling the financial institution that it did not wish to provide the information),

the financial institution may use that response when reporting data for a subsequent application pursuant to section 1002.107(d). However, if the applicant failed to respond (such as by leaving the response to the question blank or by failing to return a data collection form), the financial institution must inquire about the applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, or sex, as applicable, in connection with a subsequent application because the data were not previously obtained. *See also* comment 107(a)(19)–11 concerning previously collected ethnicity, race, and sex information.

6–5199.115

SECTION 1002.108—Firewall

108(a) Definitions

1. *Involved in making any determination concerning a covered application from a small business.*

i. *General.* An employee or officer is involved in making a determination concerning a covered application from a small business for purposes of section 1002.108 if the employee or officer makes, or otherwise participates in, a decision regarding the evaluation of a covered application from a small business or the creditworthiness of a small business applicant for a covered credit transaction. This includes, but is not limited to, employees and officers serving as underwriters. The decision that an employee or officer makes or participates in must be about a specific covered application or about the creditworthiness of a specific applicant. An employee or officer is not involved in making a determination concerning a covered application if the employee or officer is only involved in making a decision that affects covered applications generally, or if the employee or officer only interacts with small businesses prior to them becoming applicants or submitting an application. An employee or officer may be participating in a determination concerning a covered application even if the employee or officer is not the ultimate decision maker or the sole decision maker. For example, an employee participates in a determination concerning a covered application if the employee recommends that another employee or officer approve or deny the application. Similarly, an employee or officer participates in a determination concerning a covered application if the employee or officer is part of a larger group, such as a committee, that makes a determination concerning a covered application. For example, an employee participates in a decision if the employee is a member of a committee that approves the terms offered to an applicant for a covered application. This is true even if the employee does not support the committee's ultimate decision regarding the terms offered. Conversely, an employee or officer does not participate in a determination concerning a covered application if the employee or officer only performs ministerial functions for the committee, such as recording the minutes, or if the committee does not make a determination concerning a specific covered application.

ii. *Examples of activities that do not constitute being involved in making a determination concerning a covered application from a small business.* The following are examples of activities that do not constitute being involved in making a determination concerning a covered application:

A. Developing policies and procedures, designing or programming computer or other systems, or conducting marketing.

B. Discussing credit products, loan terms, or loan requirements with a small business before it submits a covered application.

C. Making or participating in a decision after the financial institution has taken final action on the covered application, such as a decision about servicing or collecting a covered credit transaction.

D. Using a check box form to confirm whether an applicant has submitted all necessary documents or handling a minor or clerical matter during the application process, such as suggesting or selecting a time for an appointment with an applicant.

E. Gathering information (including information collected pursuant to section 1002.107(a)(18) or (19)) and forwarding the information or a covered application to other individuals or entities.

F. Reviewing previously collected data to determine if it can be reused for a later covered application pursuant to section 1002.107(d).

iii. *Examples of activities that constitute being involved in making a determination concerning a covered application from a small business.* The following are examples of activities (done individually or as part of a group) that constitute being involved in making a determination concerning a covered application:

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

B. Making or participating in a decision regarding the reason(s) for denial of a covered application.

C. Making or participating in a decision that a guarantor or collateral is required in order to approve a specific covered application.

D. Making or participating in a decision regarding the credit amount or credit limit that will be approved for a specific covered application.

E. Making or participating in a decision to set one or more of the other terms that will be offered for a specific covered credit transaction. This includes, but is not limited to, making or participating in a decision regarding the interest rate, the loan term, or the payment schedule that will be offered for a specific covered credit transaction.

F. Making or participating in a decision regarding a counteroffer made to a specific applicant, including a decision regarding the terms of such a counteroffer.

G. Recommending that another decision maker approve or deny a specific covered application, provide a specific reason for denying a covered application, require a guarantor or collateral in order to approve a covered application, approve a credit amount or credit limit for a covered credit transaction, set one or more other terms for a covered credit transaction, make a counteroffer regarding a covered application, or set a specific term for such a counteroffer.

2. *Should have access.*

i. *General.* A financial institution may determine that an employee or officer who is involved in making a determination concerning a covered application from a small business should have access to information otherwise subject to the prohibition in section 1002.108(b) if that employee or officer is assigned one or more job duties that may require the employee or officer to collect, see, consider, refer to, or otherwise use information subject to the prohibition in section 1002.108(b). If the employee or officer might need to collect, see, consider, refer to, or use such information to perform the employee's or officer's assigned job duties, the financial institution may determine that the employee or officer should have access. For example, if a loan officer is involved in making a determination concerning a covered application and that loan officer's job description or the financial institution's policies and procedures state that the loan officer may need to collect information pursuant to section 1002.107(a)(18) or (19), the financial institution may determine that the loan officer should have access.

ii. *When a group of employees or officers should have access.* A financial institution may determine that all employees or officers with the same job description or assigned duties should have access for purposes of section 1002.108. For example, if a job description, a policy, a procedure, or another document states that a loan officer may have to collect or explain any part of a data collection form that includes the inquiries described in section 1002.107(a)(18) and (19), the financial institution may determine that all employees and officers who have been assigned the position of loan of-

ficer should have access for purposes of section 1002.108.

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

108(b) Prohibition on Access to Certain Information

1. *Scope of persons subject to the prohibition.* The prohibition in section 1002.108(b) applies to an employee or officer of a covered financial institution or its affiliate if the employee or officer is involved in making any determination concerning a covered application from a small business. For example, if a financial institution is affiliated with company B and an employee of company B is involved in making a determination concerning a covered application on behalf of the financial institution, then the financial institution must comply with section 1002.108 with regard to company B's employee. Section 1002.108 does not require a financial institution to limit the access of employees and officers of third parties who are not affiliates of the financial institution.

2. *Scope of information that cannot be accessed when the prohibition applies to an employee or officer.*

i. *Information that cannot be accessed when the prohibition applies.* If a particular employee or officer is involved in making a determination concerning a covered application from a small business, the prohibition in section 1002.108(b) only limits that employee's or officer's access to that small business applicant's responses to the inquiries that the covered financial institution makes to satisfy section 1002.107(a)(18) and (19). For example, if a financial institution uses a paper data collection form to request information pursuant to section 1002.107(a)(18) and (19), an employee or officer that is subject to the prohibition is not permitted access to the paper data collection form that contains the applicant's responses to the inquiries made pursuant to pursuant to section 1002.107(a)(18) and (19), or to any other record that identifies how the particular applicant responded to those inquires. Similarly, if a financial institution makes the inquiries required pursuant to section 1002.107(a)(18) and (19) during a telephone call, the prohibition applies to the applicant's responses to those inquiries provided during that telephone call and to any record that identifies how the particular applicant responded to those inquiries.

ii. *Information that can be accessed when the prohibition applies.* If a particular employee or officer is involved in making a determination concerning a covered application, the prohibition in section 1002.108(b) does not limit that employee's or officer's access to an applicant's responses to inquiries regarding whether the applicant is a minority-owned, women-owned, or LGBTQI+-owned business, or principal owners' ethnicity, race, or sex, made for purposes other than compliance with section 1002.107(a)(18) or (19). Thus, for example, an employee or officer who is subject to the prohibition in section 1002.108(b) may have access to information regarding whether an applicant is eligible for a Small Business Administration program for women-owned businesses without regard to whether the exception in section 1002.108(c) is satisfied. Additionally, an employee or officer who knows that an applicant is a minority-owned business, women-owned business, or

LGBTQI+-owned business, or who knows the ethnicity, race, or sex of any of the applicant's principal owners due to activities unrelated to the inquiries made to satisfy the financial institution's obligations under section 1002.107(a)(18) and (19) is not prohibited from making a determination concerning the applicant's covered application. Thus, an employee or officer who knows, for example, that an applicant is a minority-owned business due to a social relationship or another professional relationship with the applicant or any of its principal owners may make determinations concerning the applicant's covered application. Furthermore, an employee or officer that is involved in making a determination concerning a covered application may see, consider, refer to, or use data collected to satisfy aspects of section 1002.107 other than section 1002.107(a)(18) or (19), such as gross annual revenue, number of workers, and time in business.

108(c) Exception to the Prohibition on Access to Certain Information

1. *General.* A financial institution is not required to limit the access of an employee or officer who is involved in making determinations concerning a covered application from a small business if the financial institution determines that the particular employee or officer should have access to the information collected pursuant to section 1002.107(a)(18) or (19), and the financial institution provides the notice required by section 1002.108(d). A financial institution is not required to perform a separate analysis of the feasibility of maintaining a firewall. A determination that an employee or officer should have access means that it is not feasible to maintain a firewall as to that particular employee or officer, and the exception applies to that employee or officer if the financial institution provides the notice required by section 1002.108(d). However, the fact that a financial institution has made a determination that an employee or officer should have access does not mean that the financial institution can permit other employees and officers who are involved in making determinations concerning a covered application to have access to the information collected pursuant to section 1002.107(a)(18) and (19). A financial institution may only permit an employee or officer who is involved in making a determination concerning a covered application to have access to information collected pursuant to section 1002.107(a)(18) and (19) if it has determined that employee or officer or a group of which the employee or officer is a member should have access to the information.

2. *Applying the exception to a specific employee or officer or group of similarly situated employees or officers.* The exception applies to an employee or officer if the financial institution determines that the employee or officer should have access to the information collected pursuant to section 1002.107(a)(18) or (19), and the financial institution provides the notice required by section 1002.108(d). A financial institution can also determine that several employees and officers should have access, that all of a group of similarly situated employees or officers should have access, and that multiple groups of similarly situated employees or officers should have access to information collected pursuant to section 1002.107(a)(18) or (19). *See also* comment 108(a)–2. For example, a financial institution could determine that all its small business loan officers, small business loan processors, compliance officers, and legal officers should have access. If the financial institution provides the notice required in section 1002.108(d), the financial institution may permit all of its small business loan officers, small business loan processors, compliance officers, and legal officers to have access. However, the financial institution cannot permit other employees and officers to have access simply because it has determined that the small business loan officers, loan processors, compliance officers, and legal officers should have access. For example, in this case, the financial institution may not permit its underwriters or chief executive officer to have access to the information collected from the applicant pursuant to section 1002.107(a)(18) or (19) if they are involved in making any determination concerning a covered application, unless the financial institution also determines

that they should have access. This would be true even if the chief executive officer or underwriter had some of the same assigned duties as a loan officer, such as being a member of a credit committee, but has not been assigned the task(s) that may require access to one or more applicants' responses to the financial institution's inquiries under section 1002.107(a)(18) or (19). If the financial institution separately determines that underwriters and the chief executive officer should have access, then the underwriters and chief executive officer may also have access.

108(d) Notice

1. *General.* If a financial institution determines that one or more employees or officers should have access pursuant to section 1002.108(c), the financial institution must provide the required notice to, at a minimum, the applicant or applicants whose responses will be accessed by an employee or officer involved in making determinations concerning the applicant's or applicants' covered applications. Alternatively, a financial institution may also provide the required notice to applicants whose responses will not or might not be accessed. For example, a financial institution could provide the notice to all applicants for covered credit transactions or all applicants for a specific type of product.

2. *Content of the required notice.* The notice must inform the applicant that one or more employees and officers involved in making determinations concerning the applicant's covered application may have access to the applicant's responses regarding the applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and its principal owners' ethnicity, race, and sex. *See* the sample data collection form in appendix E to this part for sample language for providing this notice to applicants. If a financial institution establishes and maintains a firewall and chooses to use the sample data collection form, the financial institution can delete this sample language from the form.

3. *Timing for providing the notice.* If the financial institution is providing the notice orally, it must provide the notice required by section 1002.108(d) prior to asking the applicant if it is a minority-owned business, women-owned business, or LGBTQI+-owned business and prior to asking for a principal owner's ethnicity, race, or sex. If the notice is provided on the same paper or electronic data collection form as the inquiries about minority-owned business status, women-owned business status, LGBTQI+-owned business status and the principal owners' ethnicity, race, or sex, the notice must appear before the inquiries. If the notice is provided in an electronic or paper document that is separate from the data collection form, the notice must be provided at the same time as the data collection form or prior to providing the data collection form. Additionally, the notice must be provided with the non-discrimination notices required pursuant to section 1002.107(a)(18) and (19). *See* appendix E for sample language.

6–5199.116

SECTION 1002.109—Reporting of Data to the Bureau

109(a) Reporting to the Bureau

109(a)(2) Reporting by Subsidiaries

1. *Subsidiaries.* A covered financial institution is considered a subsidiary of another covered financial institution for purposes of reporting data pursuant to section 1002.109 if more than 50 percent of the ownership or control of the first covered financial institution is held by the second covered financial institution.

109(a)(3) Reporting Obligations Where Multiple Financial Institutions Are Involved in a Covered Credit Transaction

1. *General.* The following clarifies how to report applications involving more than one financial institution. The discussion below assumes that all parties involved with the covered credit transaction are covered financial institutions. However, the same principles apply if any party is not a covered financial institution.

i. A financial institution shall report the action that it takes on a covered application, whether or not the covered credit transaction closed in the financial institution's name and even if the financial institution used underwriting criteria supplied by another financial institution. However, where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to report. Setting the material terms of the covered credit transaction include, for example, selecting among competing offers, or modifying pricing information, amount approved or originated, or repayment duration. In this situation, the determinative factor is not which financial institution actually made the last credit decision prior to closing, but rather which financial institution last had the authority for setting the material terms of the covered credit transaction prior to closing. Whether a financial institution has taken action for purposes of section 1002.109(a)(3) and comment 109(a)(3)–1 is not relevant to, and is not intended to repeal, abrogate, annul, impair, or interfere with, section 701(d) (15 U.S.C. 1691(d)) of the Act, section 1002.9, or any other provision within subpart A of this Regulation.

ii. A financial institution takes action on a covered application for purposes of section 1002.109(a)(3) if it denies the application, originates the application, approves the application but the applicant did not accept the transaction, or closes the file or denies for incompleteness. The financial institution must also report the application if it was withdrawn. For reporting purposes, it is not relevant whether the financial institution receives the application directly from the applicant or indirectly through another party, such as a broker, or (except as otherwise provided in comment 109(a)(3)–1.i) whether another financial institution also reviews and reports an action taken on a covered application involving the same credit transaction.

iii. Where it is necessary for more than one financial institution to make a credit decision in order to approve a single covered credit transaction and where more than one financial institution denies the application or otherwise does not approve the application, the reporting financial institution (the last financial institution with authority to set the material terms of the covered credit transaction) shall have a consistent procedure for determining how it reports inconsistent or differing data points for purposes of subpart B. For example, Financial Institution A is the reporting entity because it has the last authority to set the material credit terms. Financial Institution A sends the application to Financial Institution B and Financial Institution C for review, but both Financial Institution B and Financial Institution C deny the application, with different denial reasons. Based on these denials, Financial Institution A follows suit and denies the application. Financial Institution A must have a consistent procedure for what denial reason(s) to report, such as reporting the denial reason(s) from the first financial institution that denied the covered application.

2. *Examples.* The following scenarios illustrate how a financial institution reports a particular covered application. The illustrations assume that all parties involved with the covered credit transaction are covered financial institutions. However, the same principles apply if any party is not a covered financial institution. Examples i through iv involve a single financial institution with responsibility for making a credit decision without the involvement of an intermediary. Example v describes a financial institution intermediary with only passive involvement in the covered credit transaction. Example vi describes a transaction where multiple financial institutions independently decision and take action on a covered application. Examples vii and viii describe situations where more than one financial institution must make a credit decision in order to approve the covered credit transaction. Examples ix and x describe situations involving pooled and participation interests.

i. Financial Institution A received a covered application from an applicant and approved

the application before closing the covered credit transaction in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B later purchased the covered credit transaction from Financial Institution A. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this transaction.

ii. Financial Institution A received a covered application from an applicant. If approved, the covered credit transaction would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A took action on the application, Financial Institution A reports the application as denied. Financial Institution B does not report the application.

iii. Financial Institution A reviewed a covered application and made a credit decision to approve it using the underwriting criteria provided by a Financial Institution B. Financial Institution B did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution A reports the application. Financial Institution B has no reporting obligation for this application.

iv. Financial Institution A reviewed and made the credit decision on a covered application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

v. Financial Institution A received a covered application from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. The covered credit transaction closed in Financial Institution A's name. Financial Institution B purchased the covered credit transaction from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, and Financial Institution A's approval was not necessary for the credit transaction, Financial Institution B reports the origination. Financial Institution A does not report the application. Assume the same facts, except that Financial Institution B reviewed the application before the covered credit transaction would have closed, but Financial Institution B denied the application. Financial Institution B reports the application as denied. Financial Institution A does not report the application because it did not take an action on the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application for the same reason.

vi. Financial Institution A received a covered application and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. Financial Institutions B and C are not working together with Financial Institutions A or D, or with each other, and are solely responsible for setting the terms of their own credit transactions. Financial Institution B made a credit decision approving the application, and Financial Institution C made a credit decision denying the application. The applicant did not accept the covered credit transaction from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application, because it was acting as Financial Institution D's agent. The applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the application as originated. Financial Institution C reports the application as denied.

vii. Financial Institution A received a covered application and made a credit decision to approve it using the underwriting criteria provided by Financial Institution B. Finan-

cial Institution A was not acting as Financial Institution B's agent. Financial Institution A forwarded the application to Financial Institution B. Financial Institution B reviewed the application and made a credit decision approving the application prior to closing. Financial Institution A makes a credit decision on the application and modifies the credit terms (the interest rate and repayment term) offered by Financial Institution B. The covered credit transaction reflecting the modified terms closes in Financial Institution A's name. Financial Institution B purchases the covered credit transaction from Financial Institution A after closing. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as originated. Financial Institution B does not report the origination because it was not the last financial institution with the authority to set the material terms on the application. If, under the same facts, Financial Institution A did not modify the credit terms offered by Financial Institution B, Financial Institution A still reports the application as originated because it was still the last financial institution with the authority for setting the material terms, even if it chose not to so do in a particular instance. Financial Institution B does not report the origination.

viii. Financial Institution A received a covered application and forwarded it to Financial Institutions B, C, and D. Financial Institution A was not acting as anyone's agent. Financial Institution B and C reviewed the application and made a credit decision approving the application and Financial Institution D reviewed the application and made a credit decision denying the application. Prior to closing, Financial Institution A makes a credit decision on the application by deciding to offer to the applicant the credit terms offered by Financial Institution B and does not convey to the applicant the credit terms offered by Financial Institution C. The applicant does not accept the covered credit transaction. As the last financial institution with the authority for setting the material terms of the covered credit transaction, Financial Institution A reports the application as approved but not accepted. Financial Institutions B, C, and D do not report the application because they were not the last financial institution with the authority for setting the material terms of the covered credit transaction. Assume the same facts, except the applicant accepts the terms of the covered credit transaction from Financial Institution B as offered by Financial Institution A. The covered credit transaction closes in Financial Institution A's name. Financial Institution B purchases the transaction after closing. Here, Financial Institution A reports the application as originated. Financial Institutions B, C, and D do not report the application because they were not the last financial institution responsible for setting the material terms of the covered credit transaction.

ix. Financial Institution A receives a covered application and approves it, and then Financial Institution A elects to organize a loan participation agreement where Financial Institutions B and C agree to purchase a partial interest in the covered credit transaction. Financial Institution A reports the application. Financial Institutions B and C have no reporting obligation for this application.

x. Financial Institution A purchases an interest in a pool of covered credit transactions, such as credit-backed securities or real estate investment conduits. Financial Institution A does not report this purchase.

3. *Agents.* If a covered financial institution takes action on a covered application through its agent, the financial institution reports the application. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered credit transaction was originated. Financial Institution A reports the covered credit transaction as an origination. State law determines whether one party is the agent of another.

109(b) Financial Institution Identifying Information

1. *Changes to financial institution identifying information.* If a financial institution's infor-

mation required pursuant to section 1002.109(b) changes, the financial institution shall provide the new information with the data submission for the collection year of the change. For example, assume two financial institutions that previously reported data under subpart B of this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new TIN in February 2028. The surviving institution must report the new TIN with its data submission for its 2028 data (which is due by June 1, 2029) pursuant to section 1002.109(b)(5). Likewise, if that financial institution's federal prudential regulator changes in February 2028 as a result of the merger, it must identify its new federal prudential regulator in its annual submission for its 2028 data.

Paragraph 109(b)(4)

1. *Federal prudential regulator.* For purposes of section 1002.109(b)(4), federal prudential regulator means, if applicable, the federal prudential regulator for a financial institution that is a depository institution as determined pursuant to section 3q of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System; or the National Credit Union Administration Board for financial institutions that are federal credit unions.

Paragraph 109(b)(6)

1. *Legal Entity Identifier (LEI).* A Legal Entity Identifier is a utility endorsed by the LEI Regulatory oversight committee, or a utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system. A financial institution complies with section 1002.109(b)(6) by reporting its current LEI number. A financial institution that does not currently possess an LEI number must obtain an LEI number, and has an ongoing obligation to maintain the LEI number. The GLEIF website provides a list of LEI issuing organizations. A financial institution may obtain an LEI, for purposes of complying with section 1002.109(b)(6), from any one of the issuing organizations listed on the GLEIF website.

Paragraph 109(b)(7)

1. *RSSD ID number.* The RSSD ID is a unique identifying number assigned to institutions, including main offices and branches, by the Board of Governors of the Federal Reserve System. A financial institution's RSSD ID may be found on the website of the National Information Center, which provides comprehensive financial and structure information on banks and other institutions for which the Federal Reserve Board has a supervisory, regulatory, or research interest including both domestic and foreign banking organizations that operate in the United States. If a financial institution does not have an RSSD ID, it reports that this information is not applicable.

Paragraph 109(b)(8)

1. *Immediate parent entity.* An entity is the immediate parent of a financial institution for purposes of section 1002.109(b)(8)(i) through (iii) if it is a separate entity that directly owns more than 50 percent of the financial institution.

2. *Top-holding parent entity.* An entity is the top-holding parent of a financial institution for purposes of section 1002.109(b)(8)(iv) through (vi) if it ultimately owns more than 50 percent of the financial institution, and the entity itself is not controlled by any other entity. If the immediate parent entity and the top-holding parent entity are the same, the financial institution reports that section 1002.109(b)(8)(iv) through (vi) are not applicable.

3. *LEI.* For purposes of section 1002.109(b)(8)(ii) and (v), a financial institution shall report the LEI of a parent entity if the parent entity has an LEI number. If a financial institution's parent entity does not have an LEI, the financial institution reports that this information is not applicable.

4. *RSSD ID numbers.* For purposes of section 1002.109(b)(8)(iii) and section

1002.109(b)(8)(vi), a financial institution shall report the RSSD ID number of a parent entity if the entity has an RSSD ID number. If a financial institution's parent entity does not have an RSSD ID, the financial institution reports that this information is not applicable.

Paragraph 109(b)(9)

1. *Type of financial institution.* A financial institution complies with section 1002.109(b)(9) by selecting the applicable type or types of financial institution from the list below. A financial institution shall select all applicable types.

i. Bank or savings association.
ii. Minority depository institution.
iii. Credit union.
iv. Nondepository institution.
v. Community development financial institution (CDFI).
vi. Other nonprofit financial institution.
vii. Farm Credit System institution.
viii. Government lender.
ix. Commercial finance company.
x. Equipment finance company.
xi. Industrial loan company.
xii. Online lender.
xiii. Other.

2. *Use of "other" for type of financial institution.* A financial institution reports type of financial institution as ''other'' where none of the enumerated types of financial institution appropriately describe the applicable type of financial institution, and the institution reports the type of financial institution via free-form text field. A financial institution that selects at least one type from the list is permitted, but not required, to also report ''other'' (with appropriate free-form text) if there is an additional aspect of its business that is not one of the enumerated types set out in comment 109(b)(9)–1.

3. *Additional types of financial institution.* The Bureau may add additional types of financial institutions via the filing instructions guide and related materials. Refer to the filing instructions guide for any updates for each reporting year.

Paragraph 109(b)(10)

1. *Financial institutions that voluntarily report covered applications under subpart B of this part.* A financial institution that is not a covered financial institution pursuant to section 1002.105(b) but that elects to voluntarily compile, maintain, and report data under sections 1002.107 through 1002.109 (*see* comment 105(b)–10) complies with section 1002.109(b)(10) by selecting ''voluntary reporter.''

6–5199.117

SECTION 1002.110—Publication of Data and Other Disclosures

110(c) Statement of Financial Institution's Small Business Lending Data Available on the Bureau's Website

1. *Statement.* A financial institution shall provide the statement required by section 1002.110(c) using the following, or substantially similar, language: Small Business Lending Data Notice Data about our small business lending are available online for review at the Consumer Financial Protection Bureau's (CFPB's) website at https://www.consumerfinance.gov/data-research/small-business-lending/. The data show the geographic distribution of our small business lending applications; information about our loan approvals and denials; and demographic information about the principal owners of our small business applicants. The CFPB may delete or modify portions of our data prior to posting it if doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

2. *Website.* A financial institution without a website complies with section 1002.110(c) by making a written statement using the language in comment 110(c)–1, or substantially similar language, available upon request.

3. *Revised location for publicly available data.* The Bureau may modify the location specified in comment 110(c)–1 at which small business lending data are available via the fil-

ing instructions guide and related materials. Refer to the filing instructions guide for any updates for each reporting year.

6–5199.118

SECTION 1002.111—Recordkeeping

111(a) Record Retention

1. *Evidence of compliance.* Section 1002.111(a) requires a financial institution to retain evidence of compliance with subpart B of this part for at least three years after its small business lending application register is required to be submitted to the Bureau pursuant to section 1002.109. In addition to the financial institution's small business lending application register, such evidence of compliance is likely to include, but is not limited to, the applications for credit from which information in the register is drawn, as well as the files or documents that, under section 1002.111(b), are kept separate from the applications for credit. This three-year record retention requirement applies to any records covered by section 1002.111(a), notwithstanding the more general 12-month retention period for records related to business credit specified in section 1002.12(b).

2. *Record retention for creditors under section 1002.5(a)(4)(vii) and (viii).* A creditor that is voluntarily, under section 1002.5(a)(4)(vii) and (viii), collecting information pursuant to subpart B of this part complies with section 1002.111(a) by retaining evidence of compliance with subpart B for at least three years after June 1 of the year following the year that data was collected.

111(b) Certain Information Kept Separate from the Rest of the Application

1. *Separate from the application.* A financial institution may satisfy the requirement in section 1002.111(b) by keeping an applicant's responses to the financial institution's request pursuant to section 1002.107(a)(18) and (19) in a file or document that is discrete or distinct from the application and its accompanying information. For example, such information could be collected on a piece of paper that is separate from the rest of the application form. In order to satisfy the requirement in section 1002.111(b), an applicant's responses to the financial institution's request pursuant to section 1002.107(a)(18) and (19) need not be maintained in a separate electronic system, nor need they be removed from the physical files containing the application so long as there is some separation between the demographic information and the rest of the application and its accompanying information. However, the financial institution may nonetheless need to keep this information in a different electronic or physical file in order to satisfy the prohibition in section 1002.108(b).

2. *Number of principal owners.* A financial institution is permitted to maintain information regarding the applicant's number of principal owners pursuant to section 1002.107(a)(20) with an applicant's responses to the financial institution's request pursuant to section 1002.107(a)(18) and (19).

111(c) Limitation on Personally Identifiable Information in Certain Records Retained under This Section

1. *Small business lending application register.* The prohibition in section 1002.111(c) applies to data in the small business lending application register submitted by the financial institution to the Bureau under section 1002.109, the version of the register that the financial institution maintains under section 1002.111(a), and the separate record of certain information created pursuant to section 1002.111(b).

2. *Examples.* Section 1002.111(c) prohibits a financial institution from including any name, specific address (other than the census tract required under section 1002.107(a)(13)), telephone number, or email address of any individual who is, or is connected with, an applicant in the small business lending application register it reports pursuant to section 1002.109, in the copy of the register the financial institution retains under section 1002.111(a), and in the records of certain information it must retain separately from the application pursuant to section 1002.111(b). It likewise prohibits a financial institution from

including any other personally identifiable information concerning any individual who is, or is connected with, an applicant, except as required pursuant to section 1002.107 or section 1002.111(b). Examples of such personally identifiable information that a financial institution may not include in its small business lending application register include, but are not limited to, the following: date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

3. *Other records.* The prohibition in section 1002.111(c) does not extend to an application for credit, or any other records that the financial institution maintains that are not specifically enumerated in section 1002.111(c).

4. *Name and business contact information for submission.* The prohibition in section 1002.111(c) does not bar financial institutions from providing to the Bureau, pursuant to section 1002.109(b)(3), the name and business contact information of the person who may be contacted by the Bureau or other regulators with questions about the financial institution's submission under section 1002.109.

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SECTION 1002.112—Enforcement

112(b) Bona Fide Errors

1. *Tolerances for bona fide errors.* Section 1002.112(b) provides that a financial institution is presumed to maintain procedures reasonably adapted to avoid errors with respect to a given data field if the number of errors found in a random sample of the financial institution's data submission for the data field does not equal or exceed a threshold specified by the Bureau for this purpose. The Bureau's thresholds appear in column C of the table in appendix F. The size of the random sample, set out in column B, shall depend on the size of the financial institution's small business lending application register, as shown in column A of the table in appendix F. A financial institution has not maintained procedures reasonably adapted to avoid errors if either there is a reasonable basis to believe the error was intentional or there is evidence that the financial institution has not maintained procedures reasonably adapted to avoid errors.

2. *Tolerances and data fields.* For purposes of determining whether an error is bona fide under section 1002.112(b), the term ''data field'' generally refers to individual fields. All required data fields, and valid response options for those fields, are set forth in the Bureau's filing instructions guide, available at https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/. Some data fields may allow for more than one response. For example, with respect to information on the ethnicity and race of an applicant's principal owner, a data field may identify more than one race or ethnicity. If there are one or more errors within an ethnicity data field, or within a race data field, for a particular principal owner, they would count as one (and only one) error for that data field. For instance, in the ethnicity data field, if an applicant indicates that one of its principal owners is Cuban, but the financial institution reports that the principal owner is Mexican and Puerto Rican, the financial institution has made one error in the ethnicity data field for that principal owner. For purposes of the error threshold table in appendix F, the financial institution is deemed to have made one error, not two.

3. *Tolerances and safe harbors.* An error that meets the criteria for one of the four safe harbor provisions in section 1002.112(c) is not counted as an error for purposes of determining whether a financial institution has exceeded the relevant error threshold in appendix F for a given data field.

112(c) Safe Harbors

1. *Information from a federal agency—census tract.* Section 1002.112(c)(2) provides that an incorrect entry for census tract is not a violation of the Act or subpart B of this part, if the financial institution obtained the census tract using a geocoding tool provided by the FFIEC or the Bureau. However, this safe harbor provision does not extend to a financial institu-

tion's failure to provide the correct census tract number for a covered application on its small business lending application register, as required by section 1002.107(a)(13), because the FFIEC or Bureau geocoding tool did not return a census tract for the address provided by the financial institution. In addition, this safe harbor provision does not extend to a census tract error that results from a financial institution entering an inaccurate address into the FFIEC or Bureau geocoding tool.

2. *Applicability of NAICS code safe harbor.* The safe harbor in section 1002.112(c)(3) applies to an incorrect entry for the 3-digit NAICS code that financial institutions must collect and report pursuant to section 1002.107(a)(15), provided certain conditions are met. For purposes of section 1002.112(c)(3)(i), a financial institution is permitted to rely on statements made by the applicant, information provided by the applicant, or on other information obtained through its use of appropriate third-party sources, including business information products. *See also* comments 107(a)(15)–4 and 107(b)–1.

3. *Incorrect determination of small business status, covered credit transaction, or covered application—examples.* Section 1002.112(c)(4) provides a safe harbor from violations of the Act or this regulation for a financial institution that initially collects data under section 1002.107(a)(18) and (19) regarding whether an applicant for a covered credit transaction is a minority-owned, a women-owned, or LGBTQI+-owned business, and the ethnicity, race, and sex of the applicant's principal owners, but later concludes that it should not have collected this data, if certain conditions are met. Specifically, to qualify for this safe harbor, section 1002.112(c)(4) requires that the financial institution have had a reasonable basis at the time it collected data under section 1002.107(a)(18) and (19) for believing that the application was a covered application for a covered credit transaction from a small business pursuant to sections 1002.103, 1002.104, and 1002.106, respectively. For example, Financial Institution A collected data under section 1002.107(a)(18) and (19) from an applicant for a covered credit transaction that had self-reported its gross annual revenue as $4.8 million. Sometime after Financial Institution A had collected this data from the applicant, the financial institution reviewed the applicant's tax returns, which indicated the applicant's gross annual revenue was in fact $5.2 million. Financial Institution A is permitted to rely on representations made by the applicant regarding gross annual revenue in determining whether an applicant is a small business (*see* section 1002.107(b) and comments 106(b)(1)–3 and 107(a)(14)–1). Thus, Financial Institution A may have had a reasonable basis to believe, at the time it collected data under section 1002.107(a)(18) and (19), that the applicant was a small business pursuant to section 1002.106, in which case Financial Institution A's collection of such data would not violate the Act or this regulation.

6–5199.121

SECTION 1002.114—Effective Date, Compliance Date, and Special Transitional Rules

114(b) Compliance Date

1. *Application of compliance date.* The applicable compliance date in section 1002.114(b) is the date by which the covered financial institution must begin to compile data as specified in section 1002.107, comply with the firewall requirements of section 1002.108, and begin to maintain records as specified in section 1002.111. In addition, the covered financial institution must comply with section 1002.110(c) and (d) no later than June 1 of the year after the applicable compliance date. For instance, if section 1002.114(b)(2) applies to a financial institution, it must comply with sections 1002.107 and 1002.108, and portions of section 1002.111, beginning January 16, 2026, and it must comply with section 1002.110(c) and (d), and portions of section 1002.111, no later than June 1, 2027.

2. *Initial partial year collections pursuant to section 1002.114(b).*

i. When the compliance date of July 18, 2025 specified in section 1002.114(b)(1) applies to a covered financial institution, the financial institution is required to collect

data for covered applications during the period from July 18, 2025 to December 31, 2025. The financial institution must compile data for this period pursuant to section 1002.107, comply with the firewall requirements of section 1002.108, and maintain records as specified in section 1002.111. In addition, for data collected during this period, the covered financial institution must comply with sections 1002.109 and 1002.110(c) and (d) by June 1, 2026.

ii. When the compliance date of January 16, 2026 specified in section 1002.114(b)(2) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from January 16, 2026 to December 31, 2026. The financial institution must compile data for this period pursuant to section 1002.107, comply with the firewall requirements of section 1002.108, and maintain records as specified in section 1002.111. In addition, for data collected during this period, the covered financial institution must comply with sections 1002.109 and 1002.110(c) and (d) by June 1, 2027.

iii. When the compliance date of October 18, 2026 specified in section 1002.114(b)(3) or (4) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from October 18, 2026 to December 31, 2026. The financial institution must compile data for this period pursuant to section 1002.107, comply with the firewall requirements of section 1002.108, and maintain records as specified in section 1002.111. In addition, for data collected during this period, the covered financial institution must comply with sections 1002.109 and 1002.110(c) and (d) by June 1, 2027.

3. *Informal names for compliance date provisions.* To facilitate discussion of the compliance dates specified in section 1002.114(b)(1), (2), and (3), in the official commentary and any other documents referring to these compliance dates, the Bureau adopts the following informal simplified names. Tier 1 refers to the cohort of covered financial institutions that have a compliance date of July 18, 2025 pursuant to section 1002.114(b)(1). Tier 2 refers to the cohort of covered financial institutions that have a compliance date of January 16, 2026 pursuant to section 1002.114(b)(2). Tier 3 refers to the cohort of covered financial institutions that have a compliance date of October 18, 2026 pursuant to section 1002.114(b)(3).

4. *Examples.* The following scenarios illustrate how to determine whether a financial institution is a covered financial institution and which compliance date specified in section 1002.114(b) applies. Unless otherwise indicated, in each example the financial institution has chosen to use its originations in 2022 and 2023 (rather than 2023 and 2024 as permitted by section 1002.114(c)(3)) to determine its initial compliance tier.

i. Financial Institution A originated 3,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Financial Institution A is in Tier 1 and has a compliance date of July 18, 2025.

ii. Financial Institution B originated 2,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Because Financial Institution B did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1. Because Financial Institution B did originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 2 and has a compliance date of January 16, 2026.

iii. Financial Institution C originated 400 covered credit transactions to small businesses in calendar year 2022, and 1,000 in calendar year 2023. Because Financial Institution C did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, and because it did not originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 2. Because Financial Institution C did originate at least 100 covered credit transactions for small businesses in

each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 18, 2026.

iv. Financial Institution D originated 90 covered credit transactions to small businesses in calendar year 2022, 120 in calendar year 2023, and 90 in calendar years 2024, 2025, and 2026. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution D did not originate at least 100 covered credit transactions for small businesses in subsequent consecutive calendar years, it is not a covered financial institution under section 1002.105(b) and is not required to comply with the rule in 2025, 2026, or 2027.

v. Financial Institution E originated 120 covered credit transactions for small businesses in each of calendar years 2022, 2023, and 2024, and 90 in 2025. Because Financial Institution E did not originate at least 2,500 or 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1 or Tier 2. Because Financial Institution E originated at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 18, 2026. However, because Financial Institution E did not originate at least 100 covered credit transactions for small businesses in both 2024 and 2025, it no longer satisfies the definition of a covered financial institution in section 1002.105(b) at the time of the compliance date for Tier 3 institutions and thus is not required to comply with the rule in 2026.

vi. Financial Institution F originated 90 covered credit transactions for small businesses in calendar year 2022, and 120 in 2023, 2024, and 2025. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in subsequent calendar years, section 1002.114(b)(4), which cross-references section 1002.105(b), applies to Financial Institution F. Because Financial Institution F originated at least 100 covered credit transactions for small businesses in each of 2024 and 2025, it is a covered financial institution under section 1002.105(b) and is required to comply with the rule beginning October 18, 2026. Alternatively, if Financial Institution F chooses to use its originations in calendar years 2023 and 2024 to determine its compliance tier pursuant to section 1002.114(c)(3), it would be in Tier 3 and likewise required to comply with the rule beginning October 18, 2026.

vii. Financial Institution G originated 90 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, and 2026, and 120 in each of 2027 and 2028. Because Financial Institution F did not originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in subsequent calendar years, section 1002.114(b)(4), which cross-references section 1002.105(b), applies to Financial Institution G. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in each of 2027 and 2028, it is a covered financial institution under section 1002.105(b) and is required to comply with the rule beginning January 1, 2029.

viii. Financial Institution H originated 550 covered credit transactions for small businesses in each of calendar years 2022 and 2023, 450 in 2024, and 550 in 2025. Because Financial Institution H originated at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it would be in Tier 2 and have a compliance date of January 16, 2026. However, section 1002.114(c)(3) permits financial institutions to use their originations in 2023 and 2024, rather than in 2022 and 2023, to determine compliance tier. If Financial Institution H elects to use its originations in 2023 and 2024, it would be in Tier 3 and required to comply with the rule beginning October 18, 2026.

114(c) Special Transition Rules

1. *Collection of certain information prior to a financial institution's compliance date.* Notwithstanding section 1002.5(a)(4)(ix), a financial institution that chooses to collect information on covered applications as permitted by section 1002.114(c)(1) in the 12 months prior to its initial compliance date as specified in section 1002.114(b)(1), (2) or (3) need comply only with the requirements set out in sections 1002.107(a)(18) and (19), 1002.108, and 1002.111(b) and (c) with respect to the information collected. During this 12-month period, a covered financial institution need not comply with the provisions of section 1002.107 (other than sections 1002.107(a)(18) and (19)), 1002.109, 1002.110, 1002.111(a), or 1002.114.

2. *Transition rule for applications received prior to a compliance date but final action is taken after a compliance date.* If a covered financial institution receives a covered application from a small business prior to its initial compliance date specified in section 1002.114(b), but takes final action on or after that date, the financial institution is not required to collect data regarding that application pursuant to section 1002.107 nor to report the application pursuant to section 1002.109. For example, if a financial institution is subject to a compliance date of July 18, 2025, and it receives an application on July 7, 2025 but does not take final action on the application until July 25, 2025, the financial institution is not required to collect data pursuant to section 1002.107 nor to report data to the Bureau pursuant to section 1002.109 regarding that application.

3. *Has readily accessible the information needed to determine small business status.* A financial institution has readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in section 1002.106 if, for instance, it in the ordinary course of business collects data on the precise gross annual revenue of the businesses for which it originates loans, it obtains information sufficient to determine whether an applicant for business credit had gross annual revenues of $5 million or less, or if it collects and reports similar data to federal or state government agencies pursuant to other laws or regulations.

4. *Does not have readily accessible the information needed to determine small business status.* A financial institution does not have readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in section 1002.106 if it did not in the ordinary course of business collect either precise or approximate information on whether the businesses to which it originated covered credit transactions had gross annual revenue of $5 million or less. In addition, even if precise or approximate information on gross annual revenue was initially collected, a financial institution does not have readily accessible this information if, to retrieve this information, for example, it must review paper loan files, recall such information from either archived paper records or scanned records in digital archives, or obtain such information from third parties that initially obtained this information but did not transmit such information to the financial institution.

5. *Reasonable method to estimate the number of originations.* The reasonable methods that financial institutions may use to estimate originations for 2022 and 2023 (or for 2023 and 2024, pursuant to section 1002.114(c)(3)) include, but are not limited to, the following:

i. A financial institution may comply with section 1002.114(c)(2) by determining the small business status of covered credit transactions by asking every applicant, prior to the closing of approved transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of $5 million or less, during the period October 1 through December 31, 2023. The financial institution may annualize the number of covered credit transactions it originates to small businesses from October 1 through December 31, 2023 by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years 2022 and 2023. Pursuant to section 1002.114(c)(3), a financial institution is permitted to use its originations in

2023 and 2024, rather than 2022 and 2023, to determine its compliance tier. Thus, a financial institution may ask applicants to self-report revenue information during the period of October 1 through December 31, 2024, and then may annualize the number of covered credit transactions it originated to small businesses during that period and apply the annualized number of originations to both calendar years 2023 and 2024.

ii. A financial institution may comply with section 1002.114(c)(2) by assuming that every covered credit transaction it originates for business customers in calendar years 2022 and 2023 (or in 2023 and 2024) is to a small business.

iii. A financial institution may comply with section 1002.114(c)(2) by using another methodology provided that such methodology is reasonable and documented in writing.

6. *Examples.* The following scenarios illustrate the potential application of section 1002.114(c)(2) to a financial institution's compliance date under section 1002.114(b). Unless otherwise indicated, in each example the financial institution has chosen to estimate its originations for 2022 and 2023 (rather than 2023 and 2024 as permitted by section 1002.114(c)(3)) to determine its initial compliance tier.

i. Prior to October 1, 2023, Financial Institution A did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution A chose to use the methodology set out in comment 114(c)–5.i and as of October 1, 2023 began to collect information on gross annual revenue as defined in section 1002.107(a)(14) for its covered credit transactions originated for businesses. Using this information, Financial Institution A determined that it had originated 750 covered credit transactions for businesses that were small as defined in section 1002.106. On an annualized basis, Financial Institution A originated 3,000 covered credit transactions for small businesses (750 originations * 4 = 3,000 originations per year). Applying this annualized figure of 3,000 originations to both calendar years 2022 and 2023, Financial Institution A is in Tier 1 and has a compliance date of July 18, 2025.

ii. Prior to July 1, 2023, Financial Institution B collected gross annual revenue information for some applicants for business credit, but such information was only noted in its paper loan files. Financial Institution B thus does not have reasonable access to information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions for calendar years 2022 and 2023. Financial Institution B chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2023, Financial Institution B began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenues in the preceding fiscal year of $5 million or less. Using this information, Financial Institution B determined that it had originated 350 covered credit transactions for businesses that were small as defined in section 1002.106. On an annualized basis, Financial Institution B originated 1,400 covered credit transactions for small businesses (350 originations * 4 = 1,400 originations per year). Applying this estimated figure of 1,400 originations to both calendar years 2022 and 2023, Financial Institution B is in Tier 2 and has a compliance date of January 16, 2026.

iii. Prior to April 1, 2023, Financial Institution C did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution C chose its own methodology pursuant to comment 114(c)–5.iii, basing it in part on the methodology specified in comment 114(c)–5.i. Starting on April 1, 2023, Financial Institution C began to ask all business applicants for covered credit transactions if they had gross annual revenue in their preceding fiscal year of $5 million or less. Using this information, Financial Institution C determined that it had originated 100 covered

credit transactions for businesses that were small as defined in section 1002.106. On an annualized basis, Financial Institution C originated approximately 133 covered credit transactions for small businesses ((100 originations * 365 days)/275 days = 132.73 originations per year). Applying this estimate of 133 originations to both calendar years 2022 and 2023, Financial Institution C is in Tier 3 and has a compliance date of October 18, 2026.

iv. Financial Institution D did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution D determined that it had originated 3,000 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution D assumed that all 3,000 covered credit transactions originated in each of 2022 and 2023 were to small businesses. On that basis, Financial Institution D is in Tier 1 and has a compliance date of July 18, 2025.

v. Financial Institution E did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution E determined that it had originated 700 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)–5.ii, Financial Institution E assumed that all such transactions in each of 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is in Tier 2 and has a compliance date of January 16, 2026.

vi. Financial Institution F does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution F determined that it had originated 80 total covered credit transactions for businesses in 2022 and 150 total covered credit transactions for businesses in 2023. Applying the methodology set out in comment 114(c)–5.ii, Financial Institution F assumed that all such transactions originated in 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is not in Tier 1, Tier 2 or Tier 3, and is subject to the compliance date provision specified in section 1002.114(b)(4).

vii. Financial Institution G does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022, 2023, or 2024. Financial Institution G chose to use the methodology set out in comment 114(c)–5.i, and as of October 1, 2024, Financial Institution G began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenue in the preceding fiscal year of $5 million or less. Using this information, Financial Institution G determined that it had originated 700 covered credit transactions during that period for businesses that were small as defined in section 1002.106. On an annualized basis, Financial Institution G originated 2,800 covered credit transactions for small businesses (700 originations * 4 = 2,800 originations per year). Applying this estimated figure of 2,800 originations to both calendar years 2023 and 2024, Financial Institution G is in Tier 1 and has a compliance date of July 18, 2025.

6–5199.2

APPENDIX C—Sample Notification Forms

1. *Form C-9.* If not otherwise provided under other applicable disclosure requirements, creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.