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May 1, 2026

# Unofficial Redline of the Small Business Lending Reconsideration Final Rule

On May 1, 2026, the Consumer Financial Protection Bureau (CFPB) issued a final rule that reconsidered portions of the small business lending rule, including coverage of certain credit transactions and financial institutions; the small business definition; inclusion of certain data points and how others are collected; and the compliance date.

The CFPB is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that this final rule makes to relevant portions of Regulation B's regulatory text and commentary.

The underlying (unmarked) text and asterisks in this document reflect the existing text of the relevant provisions of Regulation B that were not impacted by the final rule. The changes that the final rule makes to Regulation B are marked in **red**.

This redline is not a substitute for reviewing Regulation B or the final rule. If any conflicts exist between this redline and the text of Regulation B, or the final rule, the documents published in the *Federal Register* are the controlling documents.

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

### SUBPART A—GENERAL

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

(a) *General rules* —

\* \* \* \* \*

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

\* \* \* \* \*

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

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

(ix) A creditor that is not currently a covered financial institution under § 1002.105(b), and is not otherwise a creditor to which ~~paragraph § 1002.5~~(a)(4)(vii) or (viii) of this section applies, may collect information pursuant to subpart B of this part for covered applications from small businesses as defined in §§ 1002.103 and 1002.106(b) regarding whether an applicant for a covered credit transaction is a minority-owned business, ~~or~~ a women-owned business, ~~or an~~

~~LGBTQI+-owned business~~, and the ethnicity, race, and sex of the applicant's principal owners for a transaction if it complies with the requirements for covered financial institutions pursuant to §§ 1002.107 through 1002.112 for that application.

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

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## **SUBPART B—SMALL BUSINESS LENDING DATA COLLECTION**

### **§ 1002.101 Authority, purpose, and scope.**

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

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

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

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

### **§ 1002.102 Definitions.**

In this subpart:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 1002.103 Covered applications.

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

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

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

(2) Inquiries and prequalification requests.

### § 1002.104 Covered credit transactions and excluded transactions.

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

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

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

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

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

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

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

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

(7) *Merchant cash advance.* An agreement under which a small business receives a lump-sum payment in exchange for the right to receive a percentage of the small business's future sales or income up to a ceiling amount.

(8) Agricultural lending. A transaction to fund the production of crops, fruits, vegetables, and livestock, or to fund the purchase or refinance of capital assets such as farmland, machinery and equipment, breeder livestock, and farm real estate improvements.

(9) Small dollar business credit. (i) A transaction in an amount of \$1,000 or less.

(ii) Every 5 years after January 1, 2030, the transaction amount set forth in this paragraph (b)(9) shall adjust based on changes to the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics. Any adjustment that takes effect under this paragraph (b)(9)(ii) shall be rounded to the nearest multiple of \$100. If an adjustment is to take effect, it will do so on January 1 of the following calendar year.

### **§ 1002.105 Covered financial institutions and exempt institutions.**

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

(b) *Covered financial institution* means a financial institution, other than a Farm Credit System lender, that originated at least ~~100~~1,000 covered credit transactions for small businesses in each of the two preceding calendar years.

### **§ 1002.106 Business and small business.**

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

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

(2) ~~*Inflation adjustment*~~. Every 5 years after January 1, ~~2025~~2030, the gross annual revenue threshold set forth in paragraph (b)(1) of this section shall adjust based on changes to the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics. Any adjustment that takes effect under this paragraph ~~(b)(2)~~ shall be rounded to the nearest multiple of ~~\$500~~100,000. If an adjustment is to take effect, it will do so on January 1 of the following calendar year.

### **§ 1002.107 Compilation of reportable data.**

(a) *Data format and itemization*. A covered financial institution shall compile and maintain data regarding covered applications from small businesses. The data shall be compiled in the manner prescribed herein and the Filing Instructions Guide for this subpart for the

appropriate year. The data compiled shall include the items described in paragraphs (a)(1) through (20) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) *Interest rate.*~~

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

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

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

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

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

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

~~(vi) *Prepayment penalties.*~~

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

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

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

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

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

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

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

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

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

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

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

(18) ~~*Minority-owned, and women-owned, and LGBTQI+-owned business statuses.*~~ Whether the applicant is a minority-owned, and/or women-owned, and/or LGBTQI+-owned business. When requesting minority-owned, and women-owned, and LGBTQI+-owned business statuses from an applicant, the financial institution shall inform the applicant that the financial institution cannot discriminate on the basis of minority-owned, or women-owned, or LGBTQI+-owned business statuses, or on whether the applicant provides this information. The financial institution must also inform the applicant of its right to refuse to provide this information.

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

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

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

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

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

(i) The initial request for applicant-provided data occurs prior to notifying an applicant of final action taken on a covered application, or at another time reasonably designed to obtain a response;

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

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

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

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

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

(d) *Previously collected data.* A covered financial institution is permitted, but not required, to reuse previously collected data to satisfy paragraphs (a)(13) through (15) and (17) through (20) of this section if:

(1) To satisfy paragraphs (a)(13), and (a)(15), and (17) through (20) of this section, the data were collected within the 36 months preceding the current covered application, or to satisfy paragraph (a)(14) of this section, the data were collected within the same calendar year as the current covered application; and

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

## **§ 1002.108 Firewall.**

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

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

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

(b) *Prohibition on access to certain information.* Unless the exception under paragraph (c) of this section applies, an employee or officer of a covered financial institution or a covered financial institution's affiliate shall not have access to an applicant's responses to inquiries that the financial institution makes pursuant to this subpart regarding whether the applicant is a minority-owned business, ~~or a women-owned business, or an LGBTQI+-owned business~~ under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(19), if that employee or officer is involved in making any determination concerning that applicant's covered application.

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

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

## **§ 1002.109 Reporting of data to the Bureau.**

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

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

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

(2) *Reporting by subsidiaries.* A covered financial institution that is a subsidiary of another covered financial institution shall complete a separate small business lending application

register. The subsidiary shall submit its small business lending application register, directly or through its parent, to the Bureau.

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

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

(1) Its name.

(2) Its headquarters address.

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

(4) Its Federal prudential regulator, if applicable.

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

(6) Its Legal Entity Identifier (LEI).

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

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

(i) The name of the immediate parent entity;

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

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

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

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

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

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

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

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

### **§ 1002.110 Publication of data and other disclosures.**

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

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

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

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

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

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

### **§ 1002.111 Recordkeeping.**

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

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

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

### **§ 1002.112 Enforcement.**

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

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

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

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

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

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

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

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

### § 1002.113 Severability.

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

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

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

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

(1) A covered financial institution that originated at least ~~2,500~~1,000 covered credit transactions for small businesses in each of calendar years ~~2022~~2026 and ~~2023~~2027 shall comply with the requirements of this subpart beginning ~~July 1, 2026~~January 1, 2028.

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

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

(4) A financial institution that did not originate at least ~~100~~1,000 covered credit transactions for small businesses in each of calendar years ~~2022~~2026 and ~~2023~~2027 but subsequently originates at least ~~100~~1,000 such transactions in two consecutive calendar years shall comply with the requirements of this subpart in accordance with § 1002.105(b), but in any case no earlier than ~~October 1, 2027~~January 1, 2029.

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

(2) *Determining which compliance date applies to a financial institution that does not collect information sufficient to determine small business status.* A financial institution that is unable to determine the number of covered credit transactions it originated for small businesses in each of calendar years ~~2022~~2026 and ~~2023~~2027 for purposes of determining its compliance date pursuant to paragraph (b) of this section, because for some or all of this period it does not have readily accessible the information needed to determine whether its covered credit transactions were originated for small businesses as defined in § 1002.106(b), is permitted to use any reasonable method to estimate its originations to small businesses for either or both of the calendar years ~~2022~~2026 and ~~2023~~2027.

(3) *Alternative time period for determining compliance dates.* A financial institution is permitted to use its originations of covered credit transactions in each of calendar years ~~2023~~2025 and ~~2024~~2026, ~~or 2024 and 2025~~, in lieu of calendar years ~~2022~~2026 and ~~2023~~2027 as specified in paragraphs (b) and (c)(2) of this section.

\* \* \* \* \*

# Sample data collection form

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

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

Information about your application (without your name or other directly identifying information) may eventually be available to the public. Though filling out this form will help to ensure that all small business owners are treated fairly, **YOU ARE NOT REQUIRED TO PROVIDE THIS INFORMATION.**

## Business ownership status

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

### What is your business ownership status? *(Check one or more)*

- I do not wish to provide this information
- Minority-owned business
- Women-owned business
- None of these apply

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

## Number of principal owners

---

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

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

- 0
- 1
- 2
- 3
- 4

# Demographic information about principal owners

As a reminder, **APPLICANTS ARE NOT REQUIRED TO PROVIDE THIS INFORMATION**. We cannot discriminate on the basis of any person's ethnicity, race, or sex. Further, we cannot discriminate on the basis of whether you provide this information. **PLEASE FILL OUT ONE SHEET FOR EACH PRINCIPAL OWNER.**

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## 1. What is your ethnicity?

*(Check only one)*

- I do not wish to provide my ethnicity
  - Hispanic or Latino
  - Not Hispanic or Latino
- 

## 2. What is your race?

*(Check one or more)*

- I do not wish to provide my race
  - American Indian or Alaska Native
  - Asian
  - Black or African American
  - Native Hawaiian or Other Pacific Islander
  - White
- 

## 3. What is your sex?

*(Check only one)*

- I do not wish to provide my sex
  - Male
  - Female
-

# Sample data collection form

---

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

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

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

## Business ownership status

---

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

### What is your business ownership status?

*(Check one or more of the options below)*

- Minority-owned business**
- Women-owned business**
- LGBTQI+-owned business**  
– or –
- None of these apply**  
– or –
- I do not wish to provide this information**

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

## Number of principal owners

---

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

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

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

## Demographic information about principal owners

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

Please fill out one sheet for each principal owner.

### 1 Are you Hispanic or Latino?

*i.e., What's your ethnicity? (Check one or more)*

**Hispanic or Latino**

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

**Not Hispanic or Latino**

– or –

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

### 2 What is your sex/gender?

*(Please specify):*

– or –

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

### 3 What is your race?

*(Check one or more)*

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

**Asian**

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

**Black or African American**

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

**Native Hawaiian or Other Pacific Islander**

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

**White**

– or –

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

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

As set out in § 1002.112(b) and in comment 112(b)-1 of supplement I to this part, a financial institution is presumed to maintain procedures reasonably adapted to avoid errors with respect to a given data field if the number of errors found in a random sample of a financial institution’s data submission for a given data field do not equal or exceed the threshold in column C of the following table ~~(Table 1, Tolerance Thresholds for Bona Fide Errors)~~:

**Table 1 to Appendix F—Tolerance Thresholds for Bona Fide Errors**

Small Business Lending Application Register Count (A)	Random Sample Size <sup>†</sup> (B)	Threshold (#) (C)	Threshold (%) (D)
<del>100—130</del>	47	3	6.4
<del>131—190</del>	56	3	5.4
<del>191—500</del>	59	3	5.1
<del>500-1,000</del> – 100,000	79	4	5.1
100,001+	159	4	2.5

The size of the random sample, under column B, shall depend on the size of the financial institution’s small business lending application register, as shown in column A of ~~the Threshold Table~~ table 1 to this appendix.

The thresholds in column C of ~~the Threshold Table~~ table 1 to this appendix reflect the number of unintentional errors a financial institution may make within a particular data field (e.g., the credit product data field within the credit type data point or the ~~ethnicity~~ sex data field for a particular principal owner within the ethnicity, race, and sex of principal owners data point) in a small business lending application register that would be deemed bona fide errors for purposes of § 1002.112(b).

For instance, a financial institution that submitted a small business lending application register containing ~~105~~ 11,000 applications would be subject to a threshold of ~~three~~ four errors per data field. If the financial institution had made two errors in reporting loan amount and two errors reporting gross annual income, all of these errors would be covered by the bona fide error provision of § 1002.112(b) and would not constitute a violation of the Act or this part. If the same financial institution had made ~~four~~ five errors in reporting loan amount and two errors

<sup>†</sup> ~~For a financial institution with fewer than 30 entries in its small business lending application register, the full sample size is the financial institution’s total number of entries. The threshold number for such financial institutions remains three. Accordingly, the threshold percentage will be higher for financial institutions with fewer than 30 entries in their registers.~~

reporting gross annual ~~income~~ revenue, the bona fide error provision of § 1002.112(b) would not apply to the ~~four~~ five loan amount errors but would still apply to the two gross annual ~~income~~ revenue errors.

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

#### *5(a)(2) Required Collection of Information*

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

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

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

4. *Information required by subpart B.* Subpart B of this part generally requires creditors that are covered financial institutions as defined in § 1002.105(b) to collect and report information about the ethnicity, race, and sex of the principal owners of applicants for certain

small business credit, as well as whether the applicant is a minority-owned business, or a women-owned business, ~~or an LGBTQI+ owned business~~, as defined in § 1002.102(m); and (s), ~~and (l)~~, respectively.

\* \* \* \* \*

## *Section 1002.102—Definitions*

### *102(b) Applicant*

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

### ~~*102(l) LGBTQI+ Owned Business*~~

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

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

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

~~4. *Ownership.* For purposes of determining if a business is an LGBTQI+ owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining ownership for purposes of §§ 1002.102(1) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of applicant company A. Similarly, if an individual directly owns 20 percent of applicant company A and is an equal partner in partnership B that owns the remaining 80 percent of applicant company A, the individual owns 60 percent of applicant company A (i.e., 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.~~

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

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

#### *102(m) Minority-Owned Business*

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

Hispanic or Latino. If a business does not satisfy this first prong of the definition, it is not a minority-owned business. Second, 50 percent or more of the net profits or losses must accrue to one or more individuals belonging to these groups. If a business does not satisfy this second prong of the definition, it is not a minority-owned business, regardless of whether it satisfies the first prong of the definition.

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

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

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

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

collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.

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

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

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

#### *102(o) Principal Owner*

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

2. *Trustee.* Although a trust is not considered a principal owner of a business for the purposes of subpart B, if the applicant for a covered credit transaction is a trust, a trustee is considered the owner of the trust. Thus, if a trust is an applicant for a covered credit transaction

and the trust has two co-trustees, each co-trustee is considered to own 50 percent of the business and would each be a principal owner as defined in § 1002.102(o). In contrast, if the trust has five co-trustees, each co-trustee is considered to own 20 percent of the business and would not meet the definition of principal owner under § 1002.102(o).

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

### *102(s) Women-Owned Business*

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

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

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

4. *Ownership.* For purposes of determining if a business is a women-owned business, an individual owns a business if that individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has an equity interest in the business. Examples of ownership include being the sole proprietor of a sole proprietorship, directly or indirectly owning or holding the stock of a corporation or company, directly or indirectly having a partnership interest in a business, or directly or indirectly having a membership interest in a limited liability company. Indirect as well as direct ownership are used when determining

ownership for purposes of §§ 1002.102(s) and 1002.107(a)(18). Thus, where applicable, ownership must be traced through corporate or other indirect ownership structures. For example, assume that the applicant is company A. If company B owns 60 percent of the applicant company A and an individual owns 100 percent of company B, the individual owns 60 percent of the applicant company A. Similarly, if an individual directly owns 20 percent of the applicant company A and is an equal partner in a partnership B that owns the remaining 80 percent of the applicant company A, the individual owns 60 percent of applicant company A (*i.e.*, 20 percent due through direct ownership and 40 percent indirectly through partnership B). A trustee is considered the owner of the trust. Thus, if a trust owns a business and the trust has two co-trustees, each co-trustee owns 50 percent of the business.

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

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

### *Section 1002.103—Covered Applications*

#### *103(a) Covered Application*

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

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

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

4. *Solicitations and firm offers of credit*. For purposes of subpart B of this part, the term covered application does not include solicitations, firm offers of credit, or other evaluations

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

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

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

7. *Requests for multiple lines of credit at one time.* Assuming the requirements of a covered application are met, if an applicant requests multiple lines of credit on a single credit account, it is reported as one or more covered applications based on the procedures used by the financial institution for the type of credit account. For example, if a financial institution treats a request for multiple lines of credit at one time as sub-components of a single account, the financial institution reports the request as a single covered application. If, on the other hand, the financial institution treats each line of credit as a separate account, then the financial institution reports each request for a line of credit as a separate covered application, as set forth in comment 103(a)-5.

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

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

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

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

### *103(b) Circumstances That Are Not Covered Applications*

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

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

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

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

5. *Inquiries and prequalification requests.* An inquiry is a request by a prospective applicant for information about credit terms offered by the financial institution. A prequalification request is a request by a prospective applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under a financial institution's standards or for a determination on the amount of credit for which the prospective applicant would likely qualify. Inquiries and prequalification requests are not covered

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

#### *Section 1002.104—Covered Credit Transactions and Excluded Transactions*

##### *104(a) Covered Credit Transaction*

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

##### *104(b) Excluded Transactions*

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

2. *Leases.* The term “covered credit transaction” does not cover leases as described herein. A lease, for the purpose of this subpart, is a transfer from one business to another of the right to possession and use of goods for a term, and for primarily business or commercial ~~(including agricultural)~~ purposes, in return for consideration. A lease does not include a sale, including a sale on approval or a sale or return, or a transaction resulting in the retention or

creation of a security interest. The name used by the financial institution for a product is not determinative of whether or not it is a “covered credit transaction.”

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

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

#### *104(b)(1) Trade Credit*

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

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

#### *104(b)(9) Small Dollar Business Credit Transactions*

1. *General.* Small dollar business credit transactions, as defined in § 1002.104(b)(9), are excluded from the definition of a covered credit transaction. Applications that are originated or approved but not accepted satisfy this exclusion if the amount originated or approved is \$1,000 or less. Applications that are denied, withdrawn, or incomplete satisfy this exclusion if the amount applied for is \$1,000 or less. If the particular type of credit product applied for does not involve a specific amount requested, and the financial institution as matter of general practice does not originate that particular type of credit product in amounts of \$1,000 or less, the application cannot be treated as a small dollar business credit transaction. See comment 107(a)(7)-2.

2. *Inflation adjustment methodology.* The small dollar business credit transaction amount set forth in § 1002.104(b)(9)(ii) 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 2030 CPI-U; this base value shall be compared to the CPI-U value in January 2035 and every five years thereafter. For example, after the January 2035 CPI-U is made available, the adjustment is calculated by determining the percentage change in the CPI-U between January 2030 and January 2035, applying this change to the \$1,000 small dollar business transaction amount, and rounding to the nearest \$100. If, as a result of this rounding, there is no change in the transaction amount, there will be no adjustment. For example, if in January 2035 the adjusted value were \$950 (reflecting a \$50 decrease from January 2030 CPI-U), then the transaction amount would not adjust because \$950 would be rounded up to \$1,000. If on the other hand, the adjusted value were \$1,120, then the transaction amount would adjust to \$1,100. Where the adjusted value is a multiple of \$50 (e.g., \$1,050), then the transaction amount adjusts upward.

3. *Substitute for CPI-U.* If publication of the CPI-U ceases, or if the CPI-U otherwise becomes unavailable or is altered in such a way as to be unusable, then the Bureau shall substitute another reliable cost of living indicator from the United States Government for the purpose of calculating adjustments pursuant to § 1002.104(b)(9)(ii).

## *Section 1002.105—Covered Financial Institutions and Exempt Institutions*

### *105(a) Financial Institution*

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

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

### *105(b) Covered Financial Institution*

1. *Preceding calendar year.* The definition of covered financial institution refers to preceding calendar years. For example, in 2029, the two preceding calendar years are 2027 and 2028. Accordingly, in 2029, Financial Institution A does not meet the loan-volume threshold in § 1002.105(b) if did not originate at least ~~1001,000~~ 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~~2028 and ~~2027~~2029, Financial Institution B received ~~1051,100~~ covered applications from small businesses and

originated ~~95900~~ covered credit transactions for small businesses, then for ~~20282029~~, Financial Institution B is not a covered financial institution.

3. *Counting originations when multiple financial institutions are involved in originating a covered credit transaction.* For the purpose of counting originations to determine whether a financial institution is a covered financial institution under § 1002.105(b), in a situation where multiple financial institutions are involved in originating a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to count the origination.

4. *Counting originations after adjustments to the gross annual revenue threshold due to inflation.* Pursuant to § 1002.106(b)(2), every five years, the gross annual revenue threshold used to define a small business in § 1002.106(b)(1) shall be adjusted, if necessary, to account for inflation. The first time such an adjustment could occur is in ~~20302035~~, with an effective date of January 1, ~~20312036~~. 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 ~~20322037~~ counts its originations of covered credit transactions for small businesses in calendar years ~~20302035~~ and ~~20312036~~. The financial institution applies the initial \$51 million threshold to evaluate whether its originations were to small businesses in ~~20302035~~. In this example, if the small business threshold were increased to \$~~5.51.1~~ million effective January 1, ~~20312036~~, the financial institution applies the \$~~5.51.1~~ million threshold to count its originations for small businesses in ~~20312036~~.

5. *Reevaluation, extension, or renewal requests, as well as credit line increases and other requests for additional credit amounts.* While requests for additional credit amounts on an existing account can constitute a “covered application” pursuant to § 1002.103(b)(1), such requests are not counted as originations for the purpose of determining whether a financial institution is a covered financial institution pursuant to § 1002.105(b). In addition, transactions that extend, renew, or otherwise amend a transaction are not counted as originations. For example, if a financial institution originates ~~50600~~ term loans and ~~30250~~ lines of credit for small businesses in each of the preceding two calendar years, along with ~~25100~~ 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 ~~1001,000~~ covered credit transactions in each of the two preceding calendar years.

6. *Annual consideration.* Whether a financial institution is a covered financial institution for a particular year depends on its small business lending activity in the preceding two calendar years. Therefore, whether a financial institution is a covered financial institution is an annual consideration for each year that data may be compiled and maintained for purposes of subpart B of this part. A financial institution may be a covered financial institution for a given year of data collection (and the obligations arising from qualifying as a covered financial institution shall continue into subsequent years, pursuant to §§ 1002.110 and 1002.111), but the same financial institution may not be a covered financial institution for the following year of data collection. For example, Financial Institution C originated ~~1051,100~~ covered transactions for small businesses in both 2027 and 2028. In 2029, Financial Institution C is a covered financial institution and therefore is obligated to compile and maintain applicable 2029 small business lending data under

§ 1002.107(a). During 2029, Financial Institution C originates ~~95900~~ covered transactions for small businesses. In 2030, Financial Institution C is not a covered financial institution with respect to 2030 small business lending data, and is not obligated to compile and maintain 2030 data under § 1002.107(a) (although Financial Institution C may volunteer to collect and maintain 2030 data pursuant to § 1002.5(a)(4)(vii) and as explained in comment 105(b)-10). Pursuant to § 1002.109(a), Financial Institution C shall submit its small business lending application register for 2029 data in the format prescribed by the Bureau by June 1, 2030 because Financial Institution C is a covered financial institution with respect to 2029 data, and the data submission deadline of June 1, 2030 applies to 2029 data.

7. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed financial institution is a covered financial institution under § 1002.105(b) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired financial institutions (or acquired branches or locations), satisfies the criteria included in § 1002.105(b). For example, Financial Institutions A and B merge. The surviving or newly formed financial institution meets the threshold in § 1002.105(b) if the combined previous components of the surviving or newly formed financial institution (A plus B) would have originated at least ~~1001,000~~ 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 ~~1001,000~~ covered transactions for small businesses for the year previous to the merger as well as ~~1001,000~~ covered transactions for small businesses for the year of the merger, the threshold described in § 1002.105(b) would be met and the surviving or newly formed financial institution would be a covered institution under § 1002.105(b) for the year following the merger. Comment 105(b)-8 discusses a financial institution’s responsibilities with respect to compiling and maintaining (and subsequently reporting) data during the calendar year of a merger.

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

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

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

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

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

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

10. *Voluntary collection and reporting.* Section 1002.5(a)(4)(vii) through (x) permits a creditor that is not a covered financial institution under § 1002.105(b) to voluntarily collect and report information regarding covered applications from small businesses in certain circumstances. If a creditor is voluntarily collecting information for covered applications regarding whether the applicant is a minority-owned business, ~~and/or a women-owned business, and/or an LGBTQI+~~ owned business under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(19), it shall do so in compliance with §§ 1002.107, 1002.108, 1002.111, 1002.112 as though it were a covered financial institution. If a creditor is reporting those covered applications from small businesses to the Bureau, it shall do so in compliance with §§ 1002.109 and 1002.110 as though it were a covered financial institution.

### *Section 1002.106—Business and Small Business*

#### *106(b) Small Business Definition*

##### *106(b)(1) Small Business*

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

2. *Change in determination of small business status—business is ultimately a small business.* Consistent with comment 107(a)(14)-1, a financial institution need not independently verify gross annual revenue. If a financial institution initially determines that the applicant is not a small business as defined in § 1002.106(b), but later concludes the applicant is a small business

prior to taking final action on the application, the financial institution must report the covered application pursuant to § 1002.109. In this situation, the financial institution shall endeavor to compile, maintain, and report the data required under § 1002.107(a) in a manner that is reasonable under the circumstances. For example, if the applicant initially provides a gross annual revenue of ~~\$5.51.1~~ million (that is, above the threshold for a small business as initially defined in § 1002.106(b)(1)), but during the course of underwriting the financial institution discovers the applicant's gross annual revenue was in fact ~~\$4.75 million~~ 950,000 (meaning that the applicant is within the definition of a small business under § 1002.106(b)), the financial institution is required to report the covered application pursuant to § 1002.109. In this situation, the financial institution shall take reasonable steps upon discovery to compile, maintain, and report the data necessary under § 1002.107(a) to comply with subpart B of this part for that covered application. Thus, in this example, even if the financial institution's procedure is typically to request applicant-provided data together with the application form, in this circumstance, the financial institution shall seek to collect the data during the application process necessary to comply with subpart B in a manner that is reasonable under the circumstances.

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

*4. Multiple unaffiliated co-applicants—size determination.* The financial institution shall not aggregate unaffiliated co-applicants' gross annual revenues for purposes of determining small business status under § 1002.106(b). If a covered financial institution receives a covered application from multiple businesses who are not affiliates, as defined by § 1002.102(a), where at least one business is a small business under § 1002.106(b), the financial institution shall compile, maintain, and report data pursuant to §§ 1002.107 through 1002.109 regarding the covered application for only a single applicant that is a small business. See comment 103(a)-10 for additional details.

### *106(b)(2) Inflation Adjustment*

*1. Inflation adjustment methodology.* The small business gross annual revenue threshold set forth in § 1002.106(b)(1) will be adjusted upward or downward to reflect changes, if any, in the Consumer Price Index for All Urban Consumers (U.S. city average series for all items, not seasonally adjusted), as published by the United States Bureau of Labor Statistics ("CPI-U"). The base for computing each adjustment is the January ~~2025~~2030 CPI-U; this base value shall be compared to the CPI-U value in January ~~2030~~2035 and every five years thereafter. For example, after the January ~~2030~~2035 CPI-U is made available, the adjustment is calculated by determining the percentage change in the CPI-U between January ~~2025~~2030 and January ~~2030~~2035, applying this change to the ~~\$51~~ million gross annual revenue threshold, and rounding to the nearest ~~\$500~~100,000. 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~~2035 the adjusted value were ~~\$4.9 million~~ 950,000 (reflecting a ~~\$100~~50,000 decrease from January ~~2025~~2030 CPI-U),

then the threshold would not adjust because \$~~4.9950,000~~ million would be rounded up to \$51 million. If on the other hand, the adjusted value were \$~~5.71.12~~ million, then the threshold would adjust to \$~~5.51.1~~ million. Where the adjusted value is a multiple of \$~~25050,000~~ (e.g., \$~~5,2501,050,000~~), then the threshold adjusts upward (~~in this example, to \$5,500,000~~).

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

### *Section 1002.107—Compilation of Reportable Data*

#### *107(a) Data Format and Itemization*

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

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

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

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

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

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

4. *Additional data point response options.* The Bureau may add additional response options to the lists of responses contained in the commentary that follows for certain of the data points set forth in § 1002.107(a), via the Filing Instructions Guide. Refer to the Filing Instructions Guide for any updates for each reporting year.

#### *107(a)(1) Unique Identifier*

1. *Unique within the financial institution.* A financial institution complies with § 1002.107(a)(1) by compiling and reporting an alphanumeric application or loan identifier unique within the financial institution to the specific application. The identifier must not exceed

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

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

#### *107(a)(2) Application Date*

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

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

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

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

### *107(a)(3) Application Method*

~~1. *General.* A financial institution complies with § 1002.107(a)(3) by reporting the means by which the applicant submitted the application from one of the following options: in person, telephone, online, or mail. If the financial institution retains multiple versions of the application form, the institution reports the means by which the first application form satisfying the definition of covered application pursuant to § 1002.103 was submitted.~~

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

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

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

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

### *107(a)(4) Application Recipient*

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

### *107(a)(5) Credit Type*

1. *Reporting credit product—in general.* A financial institution complies with § 1002.107(a)(5)(i) by selecting the credit product applied for or originated, from the list below. If the credit product applied for or originated is not included on this list, the financial institution selects “other,” and reports the credit product via free-form text field. If an applicant requested more than one credit product at the same time, the financial institution reports each credit product requested as a separate application. However, if the applicant only requested a single covered credit transaction, but had not decided on which particular product, the financial institution complies with § 1002.107(a)(5)(i) by reporting the credit product originated (if

originated), or the credit product denied (if denied), or the credit product of greater interest to the applicant, if readily determinable. If the credit product of greater interest to the applicant is not readily determinable, the financial institution complies with § 1002.107(a)(5)(i) by reporting one of the credit products requested as part of the request for a single covered credit transaction, in its discretion. See comment 103(a)-5 for instructions on reporting requests for multiple covered credit transactions at one time.

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

2. *Credit card account, not private-label.* A financial institution complies with § 1002.107(a)(5)(i) by reporting the credit product as a “credit card account, not private-label” when the product is a business-purpose open-end credit account that is not private label and that may be accessed from time to time by a card, plate, or other single credit device to obtain credit, except that accounts or lines of credit secured by real property and overdraft lines of credit accessed by debit cards are not credit card accounts. The term credit card account does not include debit card accounts or closed-end credit that may be accessed by a card, plate, or single credit device. The term credit card account does include charge card accounts that are generally paid in full each billing period, as well as hybrid prepaid-credit cards. A financial institution reports multiple credit card account, not private-label applications requested at one time using the guidance in comment 103(a)-7.

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

private-label credit card account applications requested at one time in the same manner as credit card account, not private-label applications, using the guidance in comment 103(a)-7.

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

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

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

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

- i. Personal guarantee—owner(s).
- ii. Personal guarantee—non-owner(s).
- iii. SBA guarantee—7(a) program.
- iv. SBA guarantee—504 program.
- v. SBA guarantee—other.
- vi. USDA guarantee.

- vii. FHA insurance.
- viii. Bureau of Indian Affairs guarantee.
- ix. Other Federal guarantee.
- x. State government guarantee.
- xi. Local government guarantee.
- xii. Other.
- xiii. No guarantee.

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

#### *107(a)(6) Credit Purpose*

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

- i. Purchase, construction/improvement, or refinance of non-owner-occupied real property.
- ii. Purchase, construction/improvement, or refinance of owner-occupied real property.

iii. Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks).

iv. Purchase, refinance, or rehabilitation/repair of equipment.

v. Working capital (includes inventory or floor planning).

vi. Business start-up.

vii. Business expansion.

viii. Business acquisition.

ix. Refinance existing debt (other than refinancings listed above).

x. Line increase.

xi. Overdraft.

xii. Other.

xiii. Not provided by applicant and otherwise undetermined.

xiv. Not applicable.

2. *More than one purpose.* If the applicant indicates or the financial institution is otherwise aware of more than one purpose for the credit applied for or originated, the financial institution reports those purposes, up to a maximum of three, using the list provided, in any order it chooses. For example, if an applicant refinances a commercial building it owns and uses the funds to purchase a motor vehicle and expand the business it runs in a part of that building, the financial institution reports that the three purposes of the credit are purchase, construction/improvement, or refinance of owner-occupied real property; purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks); and business expansion. If an application has more than three purposes, the financial institution reports any three of those purposes. In the example above, if the funds were also used to purchase equipment, the financial institution would select only three of the relevant purposes to report.

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

4. *Credit purpose not provided by applicant and otherwise undetermined.* Pursuant to § 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes credit purpose. However, if a financial institution is

nonetheless unable to collect or determine credit purpose information, the financial institution reports that the credit purpose is “not provided by applicant and otherwise undetermined.”

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

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

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

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

#### *107(a)(7) Amount Applied For*

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

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

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

applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution. If the firm offer specifies an amount or limit as a range and the applicant does not request a specific amount, the amount applied for is the amount underwritten by the financial institution.

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

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

#### *107(a)(8) Amount Approved or Originated*

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

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

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

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

5. *Amount approved or originated—counteroffer.* If an applicant agrees to proceed with consideration of a counteroffer for an amount or limit different from the amount for which the

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

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

#### *107(a)(9) Action Taken*

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

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

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

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

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

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

2. *Treatment of counteroffers.* If a financial institution makes a counteroffer to grant credit on terms other than those originally requested by the applicant (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant declines the counteroffer or fails to respond, the institution reports the action taken as a denial on the

original terms requested by the applicant. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume an applicant applies for a term loan and the financial institution makes a counteroffer to proceed with consideration of a line of credit. If the applicant declines to be considered for a line of credit, the financial institution reports the application as a denied request for a term loan. If, on the other hand, the applicant agrees to be considered for a line of credit, then the financial institution reports the action taken as the disposition of the application for the line of credit. For instance, using the same example, if the financial institution makes a credit decision approving the line of credit, but the applicant fails to respond to the financial institution's approval within the specified time by accepting the credit offer, the financial institution reports the application on the line of credit as approved but not accepted.

3. *Treatment of rescinded transactions.* If a borrower successfully rescinds a transaction after closing but before a financial institution is required to submit its small business lending application register containing the information for the application under § 1002.109, the institution reports the application as approved but not accepted.

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

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

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

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

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

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

#### *107(a)(10) Action Taken Date*

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

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

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

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

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

#### *107(a)(11) Denial Reasons*

~~1. *Reason for denial—in general.* A financial institution complies with § 1002.107(a)(11) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution reports only the principal reason or reasons it denied the application. For example, if a financial institution denies an application due to insufficient~~

cashflow, unacceptable collateral, and unverifiable business information, the financial institution is required to report these three reasons. The reasons reported must accurately describe the principal reason or reasons the financial institution denied the application. A financial institution reports denial reasons by selecting its principal reason or reasons for denying the application from the following list:

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

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

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

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

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

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

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

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

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

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

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

#### ~~107(a)(12) Pricing Information~~

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

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

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

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

~~3. *Multiple interest rates.* If a covered credit transaction includes multiple interest rates applicable to different credit features, a financial institution complies with § 1002.107(a)(12)(i) by reporting the interest rate applicable to the amount of credit approved or originated reported pursuant to § 1002.107(a)(8). For example, if a financial institution originates a credit card with different interest rates for purchases, balance transfers, cash advances, and overdraft advances, the financial institution reports the interest rate applicable for purchases.~~

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

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

#### ~~107(a)(12)(ii) *Total Origination Charges*~~

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

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

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

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

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

~~4. *Bundled services.* Total origination charges include all charges imposed directly or indirectly by the financial institution at or before origination as an incident to or a condition of the extension of credit. Accordingly, a financial institution complies with § 1002.107(a)(12)(ii)~~

by including charges for other products or services paid at or before origination in the total origination charges reported if the financial institution requires the purchase of such other product or service as a condition of or an incident to the extension of credit.

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

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

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

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

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

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

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

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

*3. Avoidable charges.* A financial institution complies with § 1002.107(a)(12)(iv) by only including scheduled charges and excluding any charges for events that are avoidable by the applicant from the initial annual charges reported. Examples of avoidable charges include

charges for late payment, for exceeding a credit limit, for delinquency or default, or for paying items that overdraw an account.

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

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

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

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

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

#### ~~107(a)(12)(vi) *Prepayment Penalties*~~

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

~~2. *Balloon finance charges.* A financial institution complies with § 1002.107(a)(12)(vi) by reporting as a prepayment penalty any balloon finance charge that may be imposed for paying all or part of the transaction's principal before the date on which the principal is due. For example, under the terms of a transaction, the amount of funds advanced is \$12,000, the amount to be repaid is \$24,000 (which includes \$12,000 in principal and \$12,000 in interest and fees), the length of the transaction is 12 months, and the applicant must repay \$2,000 per month. The~~

~~terms of the transaction state that if the applicant prepays the principal before the 12-month period is over, the applicant is responsible for paying the difference between \$24,000 and the amount the applicant has already repaid prior to initiating prepayment. The difference between the \$24,000 to be repaid and what the applicant has already repaid prior to initiating prepayment is a balloon finance charge and should be reported as a prepayment penalty.~~

*107(a)(13) Census Tract*

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

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

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

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

iv. *Type of address used.* In addition to reporting the census tract, pursuant to § 1002.107(a)(13)(iv) a financial institution must report which one of the three types of addresses or locations listed in § 1002.107(a)(13)(i) through (iii) and described in comments 107(a)(13)-1.i through iii that the census tract is determined from.

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

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

otherwise determine any address or location for an application, the financial institution reports that the census tract information is “not provided by applicant and otherwise undetermined.”

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

#### *107(a)(14) Gross Annual Revenue*

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

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

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

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

4. *Gross annual revenue for a startup business.* In a typical startup business situation where the applicant has no gross annual revenue for its fiscal year preceding when the information is collected, the financial institution reports that the applicant’s gross annual revenue in the preceding fiscal year is “zero.” The financial institution shall not report pro forma projected revenue figures because these figures do not reflect actual gross revenue.

### *107(a)(15) NAICS Code*

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

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

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

### *107(a)(16) Number of Workers*

~~1. *General.* A financial institution complies with § 1002.107(a)(16) by reporting the number of people who work for the applicant, using the ranges prescribed in the Filing Instructions Guide.~~

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

~~*Counting full-time, part-time and seasonal workers, as well as contractors who work primarily for the business applying for credit, but not counting principal owners of the business, how many people work for the business applying for credit?*~~

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

~~applicant, the financial institution reports that the number of workers is “not provided by applicant and otherwise undetermined.”~~

#### *107(a)(17) Time in Business*

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

i. If a financial institution collects or otherwise obtains the number of years an applicant has been in business as part of its procedures for evaluating an application for credit, it reports the time in business in whole years, rounded down to the nearest whole year.

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

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

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

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

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

1. *General.* A financial institution must ask an applicant whether it is a minority-owned, ~~and/or~~ 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, ~~and~~ 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,” ~~and~~ “women-owned business,” ~~and~~ “LGBTQI+-owned business” as set forth in § 1002.102(m), ~~and~~ (s) ~~and~~ (t), respectively. The financial institution satisfies this requirement if it provides the definitions as set forth in the sample data collection form in appendix E to this part.

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

4. *Notices.* When requesting minority-owned, ~~and~~ 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, ~~or~~ women-owned, ~~or~~ LGBTQI+-owned business statuses, or on whether the applicant provides its minority-owned, ~~or~~ 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, ~~and~~ 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, ~~and~~ women-owned, ~~and~~ LGBTQI+-owned business statuses with the notices that a financial institution is required to provide when requesting principal owners’ ethnicity, race, and sex if a financial institution requests information pursuant to § 1002.107(a)(18) and (19) in the same data collection form or at the same time. See the sample data collection form in appendix E to this part for sample language that a financial institution may use for these notices.

5. *Maintaining the record of an applicant’s response regarding minority-owned, ~~and~~ women-owned, ~~and~~ LGBTQI+-owned business statuses separate from the application.* A financial institution must maintain the record of an applicant’s responses to the financial institution’s inquiry pursuant to § 1002.107(a)(18) separate from the application and

accompanying information. See § 1002.111(b) and comment 111(b)-1. If the financial institution provides a paper or electronic data collection form, the data collection form must not be part of the application form or any other document that the financial institution uses to provide or collect any information other than minority-owned business status, women-owned business status, ~~LGBTQI+-owned business status,~~ principal owners' ethnicity, race, and sex, and the number of the applicant's principal owners. See the sample data collection form in appendix E to this part. 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+-women-owned~~ business statuses not provided by applicant.* Pursuant to § 1002.107(c), a financial institution shall maintain procedures reasonably designed to collect applicant-provided data, which includes the applicant's minority-owned, and women-owned, and ~~LGBTQI+-owned~~ business statuses. However, if a financial institution does not receive a response to the financial institution's inquiry pursuant to § 1002.107(a)(18), the financial institution reports that the applicant's business statuses were "not provided by applicant."

7. *Applicant declines to provide information about minority-owned, ~~women-owned,~~ and/or ~~LGBTQI+-women-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 about an applicant's minority-owned and women-owned business statuses 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 on a paper or electronic form), ~~a financial institution reports that the applicant responded that it did not wish to provide the information.~~ 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~~forms.

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+-women-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~~ reports ~~ing~~ that the applicant declined to provide the information).

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

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

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

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

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

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, ~~and~~ women-owned business status, ~~and~~ LGBTQI+-owned business status, if a financial institution requests information pursuant to § 1002.107(a)(18) and (19) in the same

data collection form or at the same time. See the sample data collection form in appendix E for sample language that a financial institution may use for these notices.

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

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

7. *Applicant declines to provide information about a principal owner's ethnicity, race, or sex.* ~~A financial institution reports that the applicant responded that it did not wish to provide the information about a principal owner's ethnicity, race, or sex (as applicable),~~ if the applicant declines to provide the information about a principal owner's ethnicity, race, or sex (as applicable), ~~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 on a paper or

electronic form), a financial institution reports that the applicant responded that it did not wish to provide the information. 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~~forms.

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, race, 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~~indicates 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 that the applicant declined to provide the information~~the principal owner's sex as female.~~

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

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

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

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

13. *Ethnicity. i. Aggregate categories.* A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of § 1002.107(a)(19) using ~~one or more of~~

the following aggregate categories, or allow the applicant to decline to provide such information for a principal owner if it so chooses:

A. Hispanic or Latino.

B. Not Hispanic or Latino.

~~ii. *Disaggregated subcategories.* A financial institution must permit an applicant to provide each principal owner's ethnicity for purposes of § 1002.107(a)(19) using one or more of the following disaggregated subcategories, regardless of whether the applicant has indicated that the relevant principal owner is Hispanic or Latino and regardless of whether the applicant selects any aggregate categories: Cuban; Mexican; Puerto Rican; or Other Hispanic or Latino. If an applicant indicates that a principal owner is Other Hispanic or Latino, the financial institution must permit the applicant to provide additional information regarding the principal owner's ethnicity, by using free form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, or Spaniard. See the sample data collection form in appendix E for sample language. If an applicant chooses to provide additional information regarding a principal owner's ethnicity, such as by indicating that a principal owner is Argentinean orally or in writing on a paper or electronic form, a financial institution must report that additional information via free form text. If the applicant provides such additional information but does not also indicate that the principal owner is Other Hispanic or Latino (e.g., by selecting Other Hispanic or Latino on a paper or electronic form), a financial institution is permitted, but not required, to report Other Hispanic or Latino as well.~~

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

14. *Race. i. Aggregate categories.* A financial institution must permit an applicant to provide each principal owner's race for purposes of § 1002.107(a)(19) using one or more of the following aggregate categories, or allow the applicant to decline to provide such information for a principal owner if it so chooses:

- A. American Indian or Alaska Native.
- B. Asian.
- C. Black or African American.
- D. Native Hawaiian or Other Pacific Islander.
- E. White.

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

~~A. The Asian aggregate category includes the following disaggregated subcategories: Asian Indian; Chinese; Filipino; Japanese; Korean; Vietnamese; and Other Asian. An applicant must also be permitted to provide the principal owner's race using one or more of these disaggregated subcategories regardless of whether the applicant indicates that the principal owner is Asian and regardless of whether the applicant selects any aggregate categories. Additionally, if an applicant indicates that a principal owner is Other Asian, the financial institution must permit the applicant to provide additional information about the principal owner's race, by using free form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone. The financial institution must permit the applicant to provide additional information indicating, for example, that the principal owner is Cambodian, Hmong, Laotian, Pakistani, or Thai. See the sample data collection form in appendix E for sample language.~~

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

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

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

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

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

~~disaggregated subcategory for a principal owner, the financial institution reports Chinese for the race of the principal owner but does not also report that the principal owner is Asian. Similarly, if the applicant selects an aggregate category (e.g., Asian) and a disaggregated subcategory that does not correspond to the aggregate category (e.g., Native Hawaiian), the financial institution reports the information as provided by the applicant (e.g., Asian and Native Hawaiian).~~

15. ~~Sex. Generally, a~~ financial institution must permit an applicant to provide each principal owner's sex for purposes of § 1002.107(a)(19) using the categories male or female, or allow the applicant to decline to provide such information about a principal owner if it so chooses. ~~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, and sex information requested orally.~~ As described in comments 107(a)(19)-13 and -14, when collecting principal owners' ethnicity, ~~and race, and sex~~ pursuant to § 1002.107(a)(19), a financial institution must present the applicant with the specified aggregate ethnicity, race, and sex categories ~~and disaggregated subcategories~~. When collecting ethnicity, ~~and race, and sex~~ information orally, such as by telephone, a financial institution must present to the applicant the option to decline to provide ethnicity, race, and sex information before listing the aggregate ethnicity, race, and sex categories ~~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. ~~[Reserved] Ethnicity and race categories.~~ Notwithstanding comments 107(a)(19)-13 and -14, a financial institution is not required to read aloud every disaggregated subcategory when collecting ethnicity and race information orally, such as by telephone. Rather, the financial institution must orally present the lists of aggregate ethnicity and race categories, followed by the disaggregated subcategories (if any) associated with the aggregate categories selected by the applicant or which the applicant requests to be presented. After the applicant makes any disaggregated category selections associated with the aggregate ethnicity or race category, the financial institution must also ask if the applicant wishes to hear the lists of disaggregated subcategories for any aggregate categories not selected by the applicant. The financial institution must record any aggregate categories selected by the applicant, as well as any disaggregated subcategories regardless of whether such subcategories were selected based on the disaggregated subcategories read by the financial institution or were otherwise provided by the applicant.

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

principal owners' ethnicity at the same time, rather than asking about ethnicity, race, and sex for the first principal owner followed by ethnicity, race, and sex for the second principal owner.

#### *107(a)(20) Number of Principal Owners*

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

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

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

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

1. *Reliance on information provided by an applicant or appropriate third-party sources.* A financial institution may rely on statements made by an applicant (whether made in writing or orally) or information provided by an applicant when compiling and reporting data pursuant to subpart B of this part for applicant-provided data; the financial institution is not required to verify those statements or that information. However, if the financial institution does verify applicant statements or information for its own business purposes, such as statements relating to gross annual revenue or time in business, the financial institution reports the verified information. Depending on the circumstances and the financial institution's procedures, certain applicant-provided data can be collected from appropriate third-party sources without a specific request from the applicant, and such information may also be relied on. For example, gross annual revenue or NAICS code may be collected from tax return documents; a financial institution may also collect an applicant's NAICS code using third-party sources such as business information products. Applicant-provided data are the data that are or could be provided by the applicant, including § 1002.107(a)(5) through (7) ~~and~~, (13) through (15), and (17) through (20). See comment 107(c)(1)-3. In regard to restrictions on verification of minority-owned; ~~and~~ 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, ~~or a women-owned business, or an LGBTQI+-owned business~~ under § 1002.107(a)(18), the financial institution’s procedures are not reasonably designed to obtain a response.

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

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

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

5. *Data updated by the applicant.* A financial institution reports updated data if it obtains more current data from the applicant during the application process. For example, if an applicant states its gross annual revenue for the preceding fiscal year was ~~\$3-million~~900,000, but then the applicant notifies the financial institution that its revenue in the preceding fiscal year was

actually ~~\$3.2 million~~950,000, the financial institution reports gross annual revenue of ~~\$3.2 million~~950,000. For reporting verified applicant-provided data, see § 1002.107(b) and comment 107(b)-1. If a financial institution has already verified data and then the applicant updates it, the financial institution reports the information it believes to be more accurate, in its discretion. If a financial institution receives updates from the applicant after the application process has closed (for example, after closing or account opening), the financial institution may, at its discretion, update the data at any time prior to reporting the covered application to the Bureau.

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

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

2. *Specific components.* i. *Timing of initial collection attempt.* While a financial institution has some flexibility concerning when applicant-provided data ~~is~~are collected, ~~under no circumstances may it~~should attempt to make the initial request for applicant-provided data ~~occur simultaneous with or after~~before 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. ~~However, under certain circumstances making an initial collection attempt before a decision is made on the application may not be feasible because the party that must report the transaction might not be in direct contact with the applicant before making a decision on the application. For example, comments 109(a)(3)-2.v and 109(a)(3)-2.vi (with respect to Financial Institutions B and C) describe scenarios in which a financial institution makes a credit decision on an application forwarded by an intermediary and therefore might not have direct contact with the applicant. Therefore, a financial institution's procedure still may be considered reasonably designed to obtain a response if it makes the initial request after notifying the applicant of final action, provided that the financial institution may not feasibly collect data from the applicant prior to that notification because, for instance, it has had no direct contact with the applicant. This flexibility is intended for transactions where the lack of direct contact is inherent to the business model; a financial institution may not purposefully structure its application process to avoid direct contact with the applicant in order to delay the collection of data.~~

ii. *The request for applicant-provided data is prominently displayed or presented.* Pursuant to § 1002.107(c)(2)(ii), a financial institution must ~~make a reasonable attempt to~~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. ~~[Reserved] The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data.~~

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

~~B. A covered financial institution also avoids discouraging a response by requiring an applicant to provide a response to one or more requests for applicant-provided data in order to proceed with a covered application, including, as applicable, a response of "I do not wish to provide this information" or similar. (As described in comments 107(a)(18)-1 and 107(a)(19)-1, a financial institution must permit an applicant to decline to provide the demographic data required by § 1002.107(a)(18) and (19), which can be satisfied by providing a response option of "I do not wish to provide this information" or similar.) For example, in an electronic application, a financial institution may require the applicant to either make a substantive selection about a principal owner's ethnicity, race, or sex, select an option of "I do not wish to provide this information" or similar, or indicate there are no principal owners before allowing the applicant to proceed to the next page of requested information.~~

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

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

### ~~107(c)(3) Procedures To Monitor Compliance~~

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

### ~~107(c)(4) Low Response Rates~~

~~1. *In general.* A low response rate for applicant-provided data may indicate that the financial institution has engaged in discouragement or otherwise failed to maintain reasonably designed procedures. Response rate generally refers to whether the financial institution has obtained some type of response to requests for applicant-provided data (including, as applicable, an applicant response of “I do not wish to provide this information” or similar). A response rate may be measured, as appropriate, as compared to financial institutions of a similar size, type, and/or geographic reach, or other factors, as appropriate. Similarly, significant irregularities in a particular response (for example, very high rates of an applicant response of “I do not wish to provide this information” or similar) may also indicate that a financial institution does not have reasonably designed procedures, for example, because of steering, improper interference, or other potential discouragement or obstruction of applicants’ preferred responses. Response rates may be relevant across all applicant-provided data, though are particularly relevant for the collection of the demographic data pursuant to § 1002.107(a)(18) and (19) given the heightened sensitivity of these inquiries and the importance of those data to the purposes of subpart B.~~

### *107(d) Previously Collected Data*

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

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

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

4. *Updated data.* If, after the application process has closed on a prior covered application, a financial institution obtains updated information relevant to the data required to be collected and reported pursuant to § 1002.107(a)(13) through (15) and (17) through (20), and the applicant subsequently submits a new covered application, the financial institution must use the updated information in connection with the new covered application (if the requirements of § 1002.107(d) are otherwise met) or seek to collect the data again. For example, if a business notifies a financial institution of a change of address of its sole business location, and subsequently submits a covered application within the time period specified in § 1002.107(d)(1) for reusing previously collected data, the financial institution must report census tract based on the updated information. In that circumstance, the financial institution may still reuse other previously collected data to satisfy § 1002.107(a)(14), (15), and (17) through (20) if the requirements of § 1002.107(d) are met.

5. *Collection within the preceding 36 months.* Pursuant to § 1002.107(d)(1), data can be reused to satisfy § 1002.107(a)(13), ~~and (15)~~, and (17) through (20) if they are collected within the preceding 36 months. A financial institution may measure the 36-month period from the date of final action taken (§ 1002.107(a)(9)) on a prior application to the application date (§ 1002.107(a)(2)) on a subsequent application. For example, if a financial institution takes final

action on an application on February 1, ~~2025~~2027, it may reuse certain previously collected data pursuant to § 1002.107(d)(1) for subsequent covered applications dated or received by the financial institution through January 31, ~~2028~~2030.

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

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

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

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

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

9. *Minority-owned business status, women-owned business status, LGBTQI+-owned business status, and principal owners' ethnicity, race, and sex.* A financial institution may not reuse data to satisfy § 1002.107(a)(18) and (19) unless the data were collected in connection with a prior covered application pursuant to ~~this~~ subpart B of this part. If the financial institution previously asked the applicant to provide its minority-owned business status, ~~and~~ women-owned business status, and LGBTQI+ owned business status, and principal owners' ethnicity, race, and

sex for purposes of § 1002.107(a)(18) and (19), and the applicant declined to provide the information (such as by selecting “I do not wish to provide this information” or similar on a data collection form or by telling the financial institution that it did not wish to provide the information), the financial institution may use that response when reporting data for a subsequent application pursuant to § 1002.107(d). However, if the applicant failed to respond (such as by leaving the response to the question blank or by failing to return a data collection form), the financial institution must inquire about the applicant’s minority-owned business status, women-owned business status, ~~LGBTQI+-owned business status,~~ and principal owners’ ethnicity, race, or sex, as applicable, in connection with a subsequent application because the data were not previously obtained. See also comment 107(a)(19)-11 concerning previously collected ethnicity, race, and sex information.

## *Section 1002.108—Firewall*

### *108(a) Definitions*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *108(b) Prohibition on Access to Certain Information*

1. *Scope of persons subject to the prohibition.* The prohibition in § 1002.108(b) applies to an employee or officer of a covered financial institution or its affiliate if the employee or officer is involved in making any determination concerning a covered application from a small business. For example, if a financial institution is affiliated with company B and an employee of company B is involved in making a determination concerning a covered application on behalf of the

financial institution, then the financial institution must comply with § 1002.108 with regard to company B's employee. Section 1002.108 does not require a financial institution to limit the access of employees and officers of third parties who are not affiliates of the financial institution.

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

ii. *Information that can be accessed when the prohibition applies.* If a particular employee or officer is involved in making a determination concerning a covered application, the prohibition in § 1002.108(b) does not limit that employee's or officer's access to an applicant's responses to inquiries regarding whether the applicant is a minority-owned, ~~or~~ women-owned, ~~or~~ ~~LGBTQI+~~ owned business, or principal owners' ethnicity, race, or sex, made for purposes other than compliance with § 1002.107(a)(18) or (19). Thus, for example, an employee or officer who is subject to the prohibition in § 1002.108(b) may have access to information regarding whether an applicant is eligible for a Small Business Administration program for women-owned businesses without regard to whether the exception in § 1002.108(c) is satisfied. Additionally, an employee or officer who knows that an applicant is a minority-owned business, ~~or a~~ women-owned business, ~~or~~ ~~LGBTQI+~~ owned business, or who knows the ethnicity, race, or sex of any of the applicant's principal owners due to activities unrelated to the inquiries made to satisfy the financial institution's obligations under § 1002.107(a)(18) and (19) is not prohibited from making a determination concerning the applicant's covered application. Thus, an employee or officer who knows, for example, that an applicant is a minority-owned business due to a social relationship or another professional relationship with the applicant or any of its principal owners may make determinations concerning the applicant's covered application. Furthermore, an employee or officer that is involved in making a determination concerning a covered application may see, consider, refer to, or use data collected to satisfy aspects of § 1002.107 other than § 1002.107(a)(18) or (19), such as gross annual revenue, ~~number of workers~~, and time in business.

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

1. *General.* A financial institution is not required to limit the access of an employee or officer who is involved in making determinations concerning a covered application from a small business if the financial institution determines that the particular employee or officer should have access to the information collected pursuant to § 1002.107(a)(18) or (19), and the financial

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

*2. Applying the exception to a specific employee or officer or group of similarly situated employees or officers.* The exception applies to an employee or officer if the financial institution determines that the employee or officer should have access to the information collected pursuant to § 1002.107(a)(18) or (19), and the financial institution provides the notice required by § 1002.108(d). A financial institution can also determine that several employees and officers should have access, that all of a group of similarly situated employees or officers should have access, and that multiple groups of similarly situated employees or officers should have access to information collected pursuant to § 1002.107(a)(18) or (19). See also comment 108(a)-2. For example, a financial institution could determine that all its small business loan officers, small business loan processors, compliance officers, and legal officers should have access. If the financial institution provides the notice required in § 1002.108(d), the financial institution may permit all of its small business loan officers, small business loan processors, compliance officers, and legal officers to have access. However, the financial institution cannot permit other employees and officers to have access simply because it has determined that the small business loan officers, loan processors, compliance officers, and legal officers should have access. For example, in this case, the financial institution may not permit its underwriters or chief executive officer to have access to the information collected from the applicant pursuant to § 1002.107(a)(18) or (19) if they are involved in making any determination concerning a covered application, unless the financial institution also determines that they should have access. This would be true even if the chief executive officer or underwriter had some of the same assigned duties as a loan officer, such as being a member of a credit committee, but has not been assigned the task(s) that may require access to one or more applicants' responses to the financial institution's inquiries under § 1002.107(a)(18) or (19). If the financial institution separately determines that underwriters and the chief executive officer should have access, then the underwriters and chief executive officer may also have access.

#### *108(d) Notice*

*1. General.* If a financial institution determines that one or more employees or officers should have access pursuant to § 1002.108(c), the financial institution must provide the required notice to, at a minimum, the applicant or applicants whose responses will be accessed by an employee or officer involved in making determinations concerning the applicant's or applicants' covered applications. Alternatively, a financial institution may also provide the required notice to

applicants whose responses will not or might not be accessed. For example, a financial institution could provide the notice to all applicants for covered credit transactions or all applicants for a specific type of product.

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

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

## *Section 1002.109—Reporting of Data to the Bureau*

### *109(a) Reporting to the Bureau*

#### *109(a)(2) Reporting by Subsidiaries*

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

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

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

i. A financial institution shall report the action that it takes on a covered application, whether or not the covered credit transaction closed in the financial institution's name and even if the financial institution used underwriting criteria supplied by another financial institution. However, where it is necessary for more than one financial institution to make a credit decision

in order to approve a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to report. Setting the material terms of the covered credit transaction include, for example, selecting among competing offers, or modifying pricing information, amount approved or originated, or repayment duration. In this situation, the determinative factor is not which financial institution actually made the last credit decision prior to closing, but rather which financial institution last had the authority for setting the material terms of the covered credit transaction prior to closing. Whether a financial institution has taken action for purposes of § 1002.109(a)(3) and comment 109(a)(3)-1 is not relevant to, and is not intended to repeal, abrogate, annul, impair, or interfere with, section 701(d) (15 U.S.C. 1691(d)) of the Act, § 1002.9, or any other provision within subpart A of this Regulation part.

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

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

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

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

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

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

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

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

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

Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application, because it was acting as Financial Institution D's agent. The applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the application as originated. Financial Institution C reports the application as denied.

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

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

ix. Financial Institution A receives a covered application and approves it, and then Financial Institution A elects to organize a loan participation agreement where Financial Institutions B and C agree to purchase a partial interest in the covered credit transaction.

Financial Institution A reports the application. Financial Institutions B and C have no reporting obligation for this application.

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

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

#### *109(b) Financial Institution Identifying Information*

1. *Changes to financial institution identifying information.* If a financial institution's information required pursuant to § 1002.109(b) changes, the financial institution shall provide the new information with the data submission for the collection year of the change. For example, assume two financial institutions that previously reported data under subpart B of this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new TIN in February ~~2028~~2029. The surviving institution must report the new TIN with its data submission for its ~~2028~~2029 data (which is due by June 1, ~~2029~~2030) pursuant to § 1002.109(b)(5). Likewise, if that financial institution's Federal prudential regulator changes in February ~~2028~~2029 as a result of the merger, it must identify its new Federal prudential regulator in its annual submission for its ~~2028~~2029 data.

#### *Paragraph 109(b)(4)*

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

#### *Paragraph 109(b)(6)*

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

*Paragraph 109(b)(7)*

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

*Paragraph 109(b)(8)*

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

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

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

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

*Paragraph 109(b)(9)*

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

- i. Bank or savings association.
- ii. Minority depository institution.
- iii. Credit union.
- iv. Nondepository institution.
- v. Community development financial institution (CDFI).

- vi. Other nonprofit financial institution.
- vii. ~~[Reserved]Farm Credit System institution.~~
- viii. Government lender.
- ix. Commercial finance company.
- x. Equipment finance company.
- xi. Industrial loan company.
- xii. Online lender.
- xiii. Other.

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

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

*Paragraph 109(b)(10)*

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

*Section 1002.110—Publication of Data and Other Disclosures*

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

1. *Statement.* A financial institution shall provide the statement required by § 1002.110(c) using the following, or substantially similar, language:

Small Business Lending Data Notice

*Data about our small business lending are available online for review at the Consumer Financial Protection Bureau’s (CFPB’s) website at <https://www.consumerfinance.gov/data-research/small-business-lending/>. The*

*data show the geographic distribution of our small business lending applications; information about our loan approvals and denials; and demographic information about the principal owners of our small business applicants. The CFPB may delete or modify portions of our data prior to posting it if doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.*

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

3. *Revised location for publicly available data.* The Bureau may modify the location specified in comment 110(c)-1 at which small business lending data are available via the Filing Instructions Guide and related materials. Refer to the Filing Instructions Guide for any updates for each reporting year.

### *Section 1002.111—Recordkeeping*

#### *111(a) Record Retention*

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

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

#### *111(b) Certain Information Kept Separate From the Rest of the Application*

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

information in a different electronic or physical file in order to satisfy the prohibition in § 1002.108(b).

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

#### *111(c) Limitation on Personally Identifiable Information in Certain Records Retained Under This Section*

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

2. *Examples.* Section 1002.111(c) prohibits a financial institution from including any name, specific address (other than the census tract required under § 1002.107(a)(13)), telephone number, or email address of any individual who is, or is connected with, an applicant in the small business lending application register it reports pursuant to § 1002.109, in the copy of the register the financial institution retains under § 1002.111(a), and in the records of certain information it must retain separately from the application pursuant to § 1002.111(b). It likewise prohibits a financial institution from including any other personally identifiable information concerning any individual who is, or is connected with, an applicant, except as required pursuant to § 1002.107 or § 1002.111(b). Examples of such personally identifiable information that a financial institution may not include in its small business lending application register include, but are not limited to, the following: date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

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

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

#### *Section 1002.112—Enforcement*

##### *112(b) Bona Fide Errors*

1. *Tolerances for bona fide errors.* Section 1002.112(b) provides that a financial institution is presumed to maintain procedures reasonably adapted to avoid errors with respect to a given data field if the number of errors found in a random sample of the financial institution's

data submission for the data field does not equal or exceed a threshold specified by the Bureau for this purpose. The Bureau's thresholds appear in column C of ~~the~~ table 1 in appendix F to this part. 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 table 1 in appendix F. A financial institution has not maintained procedures reasonably adapted to avoid errors if either there is a reasonable basis to believe the error was intentional or there is evidence that the financial institution has not maintained procedures reasonably adapted to avoid errors.

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

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

#### *112(c) Safe Harbors*

1. *Information from a Federal agency—census tract.* Section 1002.112(c)(2) provides that an incorrect entry for census tract is not a violation of the Act or subpart B of this part, if the financial institution obtained the census tract using a geocoding tool provided by the FFIEC or the Bureau. However, this safe harbor provision does not extend to a financial institution's failure to provide the correct census tract number for a covered application on its small business lending application register, as required by § 1002.107(a)(13), because the FFIEC or Bureau geocoding tool did not return a census tract for the address provided by the financial institution. In addition, this safe harbor provision does not extend to a census tract error that results from a financial institution entering an inaccurate address into the FFIEC or Bureau geocoding tool.

2. *Applicability of NAICS code safe harbor.* The safe harbor in § 1002.112(c)(3) applies to an incorrect entry for the 3-digit NAICS code that financial institutions must collect and report pursuant to § 1002.107(a)(15), provided certain conditions are met. For purposes of § 1002.112(c)(3)(i), a financial institution is permitted to rely on statements made by the applicant, information provided by the applicant, or on other information obtained through its

use of appropriate third-party sources, including business information products. See also comments 107(a)(15)-4 and 107(b)-1.

3. *Incorrect determination of small business status, covered credit transaction, or covered application—examples.* Section 1002.112(c)(4) provides a safe harbor from violations of the Act or this ~~regulationpart~~ for a financial institution that initially collects data under § 1002.107(a)(18) and (19) regarding whether an applicant for a covered credit transaction is a minority-owned, ~~a or~~ women-owned, ~~or~~ ~~LGBTQI+~~ owned business, and the ethnicity, race, and sex of the applicant’s principal owners, but later concludes that it should not have collected this data, if certain conditions are met. Specifically, to qualify for this safe harbor, § 1002.112(c)(4) requires that the financial institution have had a reasonable basis at the time it collected data under § 1002.107(a)(18) and (19) for believing that the application was a covered application for a covered credit transaction from a small business pursuant to §§ 1002.103, 1002.104, and 1002.106, respectively. For example, Financial Institution A collected data under § 1002.107(a)(18) and (19) from an applicant for a covered credit transaction that had self-reported its gross annual revenue as ~~\$4.8 million~~ 900,000. 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 ~~\$5.21.1~~ million. Financial Institution A is permitted to rely on representations made by the applicant regarding gross annual revenue in determining whether an applicant is a small business (see § 1002.107(b) and comments 106(b)(1)-3 and 107(a)(14)-1). Thus, Financial Institution A may have had a reasonable basis to believe, at the time it collected data under § 1002.107(a)(18) and (19), that the applicant was a small business pursuant to § 1002.106, in which case Financial Institution A’s collection of such data would not violate the Act or this ~~regulationpart~~.

### *Section 1002.114—Effective Date, Compliance Date, and Special Transition Rules*

#### *114(b) Compliance Date*

1. *Application of initial compliance date.* The ~~applicable~~ compliance date in § 1002.114(b) is the date by which the covered financial institution must begin to compile data as specified in § 1002.107, comply with the firewall requirements of § 1002.108, and begin to maintain records as specified in § 1002.111. In addition, the covered financial institution must comply with § 1002.110(c) and (d) no later than June 1 of the year after the ~~applicable~~ compliance date. ~~For instance, if § 1002.114(b)(2) applies to a financial institution, it must comply with §§ 1002.107 and 1002.108, and portions of § 1002.111, beginning January 1, 2027, and it must comply with § 1002.110(c) and (d), and portions of § 1002.111, no later than June 1, 2028.~~

2. ~~[Reserved] *Initial collections pursuant to § 1002.114(b).*~~

~~i. When the compliance date of July 1, 2026, specified in § 1002.114(b)(1) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from July 1, 2026, to December 31, 2026. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected~~

~~during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2027.~~

~~ii. When the compliance date of January 1, 2027, specified in § 1002.114(b)(2) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from January 1, 2027, to December 31, 2027. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2028.~~

~~iii. When the compliance date of October 1, 2027, specified in § 1002.114(b)(3) or (4) applies to a covered financial institution, the financial institution is required to collect data for covered applications during the period from October 1, 2027, to December 31, 2027. The financial institution must compile data for this period pursuant to § 1002.107, comply with the firewall requirements of § 1002.108, and maintain records as specified in § 1002.111. In addition, for data collected during this period, the covered financial institution must comply with §§ 1002.109 and 1002.110(c) and (d) by June 1, 2028.~~

3. ~~[Reserved]~~ *Informal names for compliance date provisions.* To facilitate discussion of the compliance dates specified in § 1002.114(b)(1), (2), and (3), in the official commentary and any other documents referring to these compliance dates, the Bureau adopts the following informal simplified names. Tier 1 refers to the cohort of covered financial institutions that have a compliance date of July 1, 2026, pursuant to § 1002.114(b)(1). Tier 2 refers to the cohort of covered financial institutions that have a compliance date of January 1, 2027, pursuant to § 1002.114(b)(2). Tier 3 refers to the cohort of covered financial institutions that have a compliance date of October 1, 2027, pursuant to § 1002.114(b)(3).

4. *Examples.* The following scenarios illustrate how to determine whether a financial institution is a covered financial institution and which compliance date specified in § 1002.114(b) applies. Unless otherwise indicated, in each example the financial institution has chosen to use its originations in 2022 and 2023 (rather than 2023 and 2024, or 2024 and 2025, as permitted by § 1002.114(e)(3)) to determine its initial compliance tier, subject to the initial compliance date specified in § 1002.114(b)(1).

i. Financial Institution A originated 3,000 covered credit transactions for small businesses in calendar year ~~2022~~2026, and 3,000 in calendar year ~~2023~~2027. Financial Institution A ~~is in Tier 1 and~~ has a compliance date of ~~July 1, 2026~~January 1, 2028.

ii. ~~[Reserved]~~ Financial Institution B originated 2,000 covered credit transactions for small businesses in calendar year 2022, and 3,000 in calendar year 2023. Because Financial Institution B did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1. Because Financial Institution B did originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 2 and has a compliance date of January 1, 2027.

iii. ~~[Reserved] Financial Institution C originated 400 covered credit transactions to small businesses in calendar year 2022, and 1,000 in calendar year 2023. Because Financial Institution C did not originate at least 2,500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1, and because it did not originate at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 2. Because Financial Institution C did originate at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 1, 2027.~~

iv. Financial Institution D originated ~~90-990~~ covered credit transactions to small businesses in calendar year ~~2022-2026~~, ~~120-1,020~~ in calendar year ~~2023-2027~~, and ~~90-990~~ in calendar years ~~2024, 2025, 2026, 2028~~ and ~~2027-2029~~. Because Financial Institution D did not originate at least ~~100-1,000~~ covered credit transactions for small businesses in each of ~~2022-2026~~ and ~~2023-2027~~, it is not ~~subject to the initial compliance date set forth in Tier 1, Tier 2, or Tier 3-§ 1002.114(b)(1)~~. Because Financial Institution D did not originate at least ~~100-1,000~~ covered credit transactions for small businesses in subsequent consecutive calendar years, it is not a covered financial institution under § 1002.105(b) and is not required to comply with the rule in ~~2026, 2027, 2029~~ or ~~2028-2030~~.

v. ~~[Reserved] Financial Institution E originated 120 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, and 90 in 2026. Because Financial Institution E did not originate at least 2,500 or 500 covered credit transactions for small businesses in each of 2022 and 2023, it is not in Tier 1 or Tier 2. Because Financial Institution E originated at least 100 covered credit transactions for small businesses in each of 2022 and 2023, it is in Tier 3 and has a compliance date of October 1, 2027. However, because Financial Institution E did not originate at least 100 covered credit transactions for small businesses in both 2025 and 2026, it no longer satisfies the definition of a covered financial institution in § 1002.105(b) at the time of the compliance date for Tier 3 institutions and thus is not required to comply with the rule in 2027.~~

vi. Financial Institution F originated ~~90-990~~ covered credit transactions for small businesses in calendar year ~~2022-2026~~, and ~~120-1,020~~ in ~~2023, 2024, 2025-2027, 2028,~~ and ~~2026-2029~~. Because Financial Institution F did not originate at least ~~100-1,000~~ covered credit transactions for small businesses in each of ~~2022-2026~~ and ~~2023-2027~~, it is not ~~subject to the initial compliance date set forth in Tier-§ 1002.114(b)(1, Tier 2, or Tier 3.)~~. Because Financial Institution F originated at least ~~100-1,000~~ covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution F. Because Financial Institution F originated at least ~~100-1,000~~ covered credit transactions for small businesses in each of ~~2025-2027~~ and ~~2026-2028~~, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning ~~October 1, 2027~~ ~~January 1, 2029~~. Alternatively, if Financial Institution F chooses to use its originations in calendar years 2023 and 2024 (or 2024 and 2025) to determine its compliance tier pursuant to § 1002.114(c)(3), it would be in Tier 3 and likewise required to comply with the rule beginning October 1, 2027.

vii. ~~Financial Institution G originated 90 covered credit transactions for small businesses in each of calendar years 2022, 2023, 2024, 2025, 2026, and 2027, and 120 in each of 2028 and 2029. Because Financial Institution G did not originate at least 100 covered credit transactions~~

~~for small businesses in each of 2022 and 2023, it is not in Tier 1, Tier 2, or Tier 3. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in subsequent calendar years, § 1002.114(b)(4), which cross-references § 1002.105(b), applies to Financial Institution G. Because Financial Institution G originated at least 100 covered credit transactions for small businesses in each of 2028 and 2029, it is a covered financial institution under § 1002.105(b) and is required to comply with the rule beginning January 1, 2030.~~

~~viii. Financial Institution H originated 550 covered credit transactions for small businesses in each of calendar years 2022 and 2023, 450 in 2024, and 550 in 2025 and 2026. Because Financial Institution H originated at least 500 covered credit transactions for small businesses in each of 2022 and 2023, it would be in Tier 2 and have a compliance date of January 1, 2027. However, § 1002.114(c)(3) permits financial institutions to use their originations in 2023 and 2024 (or 2024 and 2025), rather than in 2022 and 2023, to determine compliance tier. If Financial Institution H elects to use its originations in 2023 and 2024, it would be in Tier 3 and required to comply with the rule beginning October 1, 2027.~~

#### *114(c) Special Transition Rules*

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

2. *Transition rule for applications received prior to a compliance date but final action is taken after a compliance date.* If a covered financial institution receives a covered application from a small business prior to ~~itsthe~~ initial compliance date specified in § 1002.114(b)(1), but takes final action on or after that date, the financial institution is not required to collect data regarding that application pursuant to § 1002.107 nor to report the application pursuant to § 1002.109. For example, if a financial institution ~~is subject to a compliance date of July 1, 2026, and it~~ receives an application on ~~JuneDecember~~ 27, ~~20262027~~, but does not take final action on the application until ~~JulyJanuary~~ 25, ~~20262028~~, the financial institution is not required to collect data pursuant to § 1002.107 nor to report data to the Bureau pursuant to § 1002.109 regarding that application.

3. *Has readily accessible the information needed to determine small business status.* A financial institution has readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in § 1002.106 if, for instance, it in the ordinary course of business collects data on the precise gross annual revenue of the businesses for which it originates loans, it obtains information sufficient to determine whether an applicant for business credit had gross annual revenues of ~~\$5~~1 million or less, or if it collects and reports similar data to Federal or State government agencies pursuant to other laws or regulations.

4. *Does not have readily accessible the information needed to determine small business status.* A financial institution does not have readily accessible the information needed to determine whether its originations of covered credit transactions were for small businesses as defined in § 1002.106 if it did not in the ordinary course of business collect either precise or approximate information on whether the businesses to which it originated covered credit transactions had gross annual revenue of \$51 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~~2026 and ~~2023~~2027 ~~(or for 2023 and 2024, or 2024 and 2025, pursuant to § 1002.114(c)(3))~~ include, but are not limited to, the following:

i. A financial institution may comply with § 1002.114(c)(2) by determining the small business status of covered credit transactions by asking every applicant, prior to the closing of approved transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of \$51 million or less, during the period October 1 through December 31, ~~2023~~2026. The financial institution may annualize the number of covered credit transactions it originates to small businesses from October 1 through December 31, ~~2023~~2026, by quadrupling the originations for this period, and apply the annualized number of originations to both calendar years ~~2022 and 2023~~2026 and 2027. ~~Pursuant to § 1002.114(c)(3), a financial institution is permitted to use its originations in 2023 and 2024 (or 2024 and 2025), rather than 2022 and 2023, to determine its compliance tier. Thus, for example, a financial institution may ask applicants to self-report revenue information during the period of October 1 through December 31, 2024, and then may annualize the number of covered credit transactions it originated to small businesses during that period and apply the annualized number of originations to both calendar years 2023 and 2024.~~

ii. A financial institution may comply with § 1002.114(c)(2) by ~~assuming that every asking a representative sample of applicants for~~ covered credit ~~transaction it originates for~~ business customers in calendar years ~~2022 and 2023 (or in 2023 and 2024, or 2024 and 2025)~~ is ~~to a~~ transactions whether they are small ~~business~~businesses.

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

6. *Examples.* The following scenarios illustrate the potential application of § 1002.114(c)(2) to a financial institution's initial compliance date under § 1002.114(b). Unless otherwise indicated, in each example the financial institution has chosen to estimate its originations for ~~2022~~2026 and ~~2023~~2027 (rather than ~~2023~~2025 and ~~2024~~2026 ~~or 2024 or 2025~~ as permitted by § 1002.114(c)(3)) to determine ~~its initial compliance tier~~ whether it is subject to the initial compliance date set forth in § 1002.114(b)(1).

i. Prior to ~~October~~July 1, ~~2023~~2026, 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~~year 2026. Financial Institution A chose to use the methodology set out in comment 114(c)-5.i and as of ~~October~~July 1, ~~2023~~2026, began to collect information on gross annual revenue as defined in § 1002.107(a)(14) for its covered credit transactions originated for businesses. Using this information, Financial Institution A determined that it had originated 750 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution A originated 3,000 covered credit transactions for small businesses (750 originations \* 4 = 3,000 originations per year). Applying this annualized figure of 3,000 originations to both calendar years ~~2022~~2026 and ~~2023~~2027, Financial Institution A is ~~in Tier 1 and has a~~subject to the initial compliance date ~~of July 1, 2026~~set forth in § 1002.114(b)(1).

ii. Prior to July 1, ~~2023~~2026, 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 ~~the first half of~~ calendar ~~years 2022 and 2023~~year 2026. Financial Institution B chose to use the methodology set out in comment 114(c)-5.i, and as of October 1, ~~2023~~2026, 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~~1 million or less. Using this information, Financial Institution B determined that it had originated ~~350~~850 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution B originated ~~13~~400 covered credit transactions for small businesses (~~350~~850 originations \* 4 = ~~13~~400 originations per year). Applying this estimated figure of ~~13~~400 originations to both calendar years ~~2022~~2026 and ~~2023~~2027, Financial Institution B is ~~in Tier 2 and has a~~subject to the initial compliance date ~~of January 1, 2027~~set forth in § 1002.114(b)(1).

iii. ~~[Reserved] Prior to April 1, 2023, Financial Institution C did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution C chose its own methodology pursuant to comment 114(c)-5.iii, basing it in part on the methodology specified in comment 114(c)-5.i. Starting on April 1, 2023, Financial Institution C began to ask all business applicants for covered credit transactions if they had gross annual revenue in their preceding fiscal year of \$5 million or less. Using this information, Financial Institution C determined that it had originated 100 covered credit transactions for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution C originated approximately 133 covered credit transactions for small businesses ((100 originations \* 365 days)/275 days = 132.73 originations per year). Applying this estimate of 133 originations to both calendar years 2022 and 2023, Financial Institution C is in Tier 3 and has a compliance date of October 1, 2027.~~

iv. Financial Institution D did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years ~~2022~~2026 and ~~2023~~2027. Financial Institution D determined that it had originated 3,000 total covered credit transactions for businesses in each of

~~20222026~~ and ~~20232027~~. 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 ~~20222026~~ and ~~20232027~~ were to small businesses. On that basis, Financial Institution D is ~~in Tier 1 and has~~ subject to the initial compliance date ~~of July 1, 2026, set forth in § 1002.114(b)(1).~~

v. ~~[Reserved] Financial Institution E did not collect gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years 2022 and 2023. Financial Institution E determined that it had originated 700 total covered credit transactions for businesses in each of 2022 and 2023. Applying the methodology specified in comment 114(c)-5.ii, Financial Institution E assumed that all such transactions in each of 2022 and 2023 were originated for small businesses. On that basis, Financial Institution E is in Tier 2 and has a compliance date of January 1, 2027.~~

vi. Financial Institution F does not have readily accessible gross annual revenue or other information that would allow it to determine the small business status of the businesses for whom it originated covered credit transactions in calendar years ~~20222026~~ and ~~20232027~~. Financial Institution F determined that it had originated ~~80480~~ total covered credit transactions for businesses in ~~20222026~~ and ~~150550~~ total covered credit transactions for businesses in ~~20232027~~. Applying the methodology set out in comment 114(c)-5.ii, Financial Institution F assumed that all such transactions originated in ~~20222026~~ and ~~20232027~~ were originated for small businesses. On that basis, Financial Institution F is not ~~in Tier 1, Tier 2 or Tier 3, and is~~ subject to the initial compliance date ~~provision specified set forth~~ in § 1002.114(b)(41).

vii. Financial Institution G chose to estimate its originations for 2025 and 2026 (rather than 2026 and 2027), as permitted by § 1002.114(c)(3), and 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 either of those calendar years ~~2022, 2023, 2024, or 2025~~. Financial Institution G chose to use the methodology set out in comment 114(c)-5.i, and as of October 1, 2025, Financial Institution G began to ask all businesses for whom it was closing covered credit transactions if they had gross annual revenue in the preceding fiscal year of ~~\$15~~ million or less. Using this information, Financial Institution G determined that it had originated 700 covered credit transactions during that period for businesses that were small as defined in § 1002.106. On an annualized basis, Financial Institution G originated 2,800 covered credit transactions for small businesses (700 originations \* 4 = 2,800 originations per year). Applying this estimated figure of 2,800 originations to both calendar years ~~20242025~~ and ~~20252026~~, Financial Institution G is subject to the initial compliance date set forth in § 1002.114(b)(1) ~~is in Tier 1 and has a compliance date of July 1, 2026.~~