



**This document reflects the final rule as issued on March 30, 2023.**

The document has not been updated to reflect any effects of ongoing litigation involving the final rule. As a result of that ongoing litigation, the compliance dates in the final rule currently are stayed as to all covered financial institutions.

# Determining institutional coverage pursuant to the small business lending rule

CFPB RegCast | June 2023

This is a Compliance Aid issued by the Consumer Financial Protection Bureau.

The CFPB published a Policy Statement on Compliance Aids, available at [www.consumerfinance.gov/policy-compliance/final-rulemaking/final-rules/policy-statement-compliance-aids/](http://www.consumerfinance.gov/policy-compliance/final-rulemaking/final-rules/policy-statement-compliance-aids/), that explains the CFPB's approach to Compliance Aids.

# Overview of today's presentation

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During this presentation, we will discuss how to determine institutional coverage under the small business lending rule, including the following related topics:

- The origination threshold for coverage;
- Covered originations;
- Covered credit transactions; and
- Small businesses.

We will also briefly discuss compliance date tiers and how to determine a borrower's small business status for 2022 and 2023 if a financial institution did not collect gross annual revenue.

This presentation is accompanied by a set of frequently asked questions available on the CFPB's website.

# Covered financial institutions

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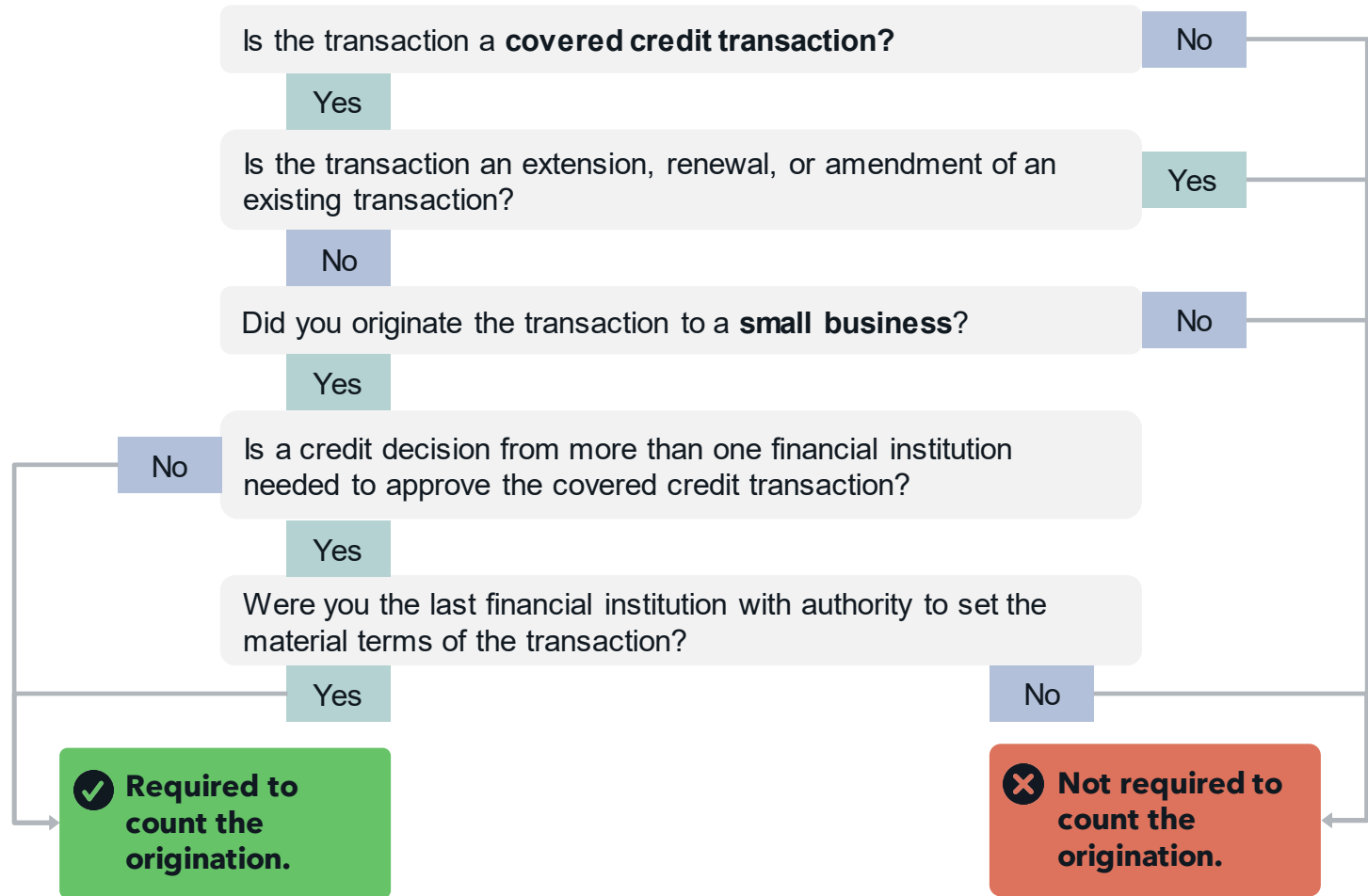
## Is it a “financial institution”?

- Does it engage in any financial activity?
- For example, financial institutions can include depository institutions, non-profit organizations, governmental subdivisions or agencies, partnerships, companies, corporations, associations, trusts, estates, cooperatives, and other entities.

## Is it a “covered financial institution”?

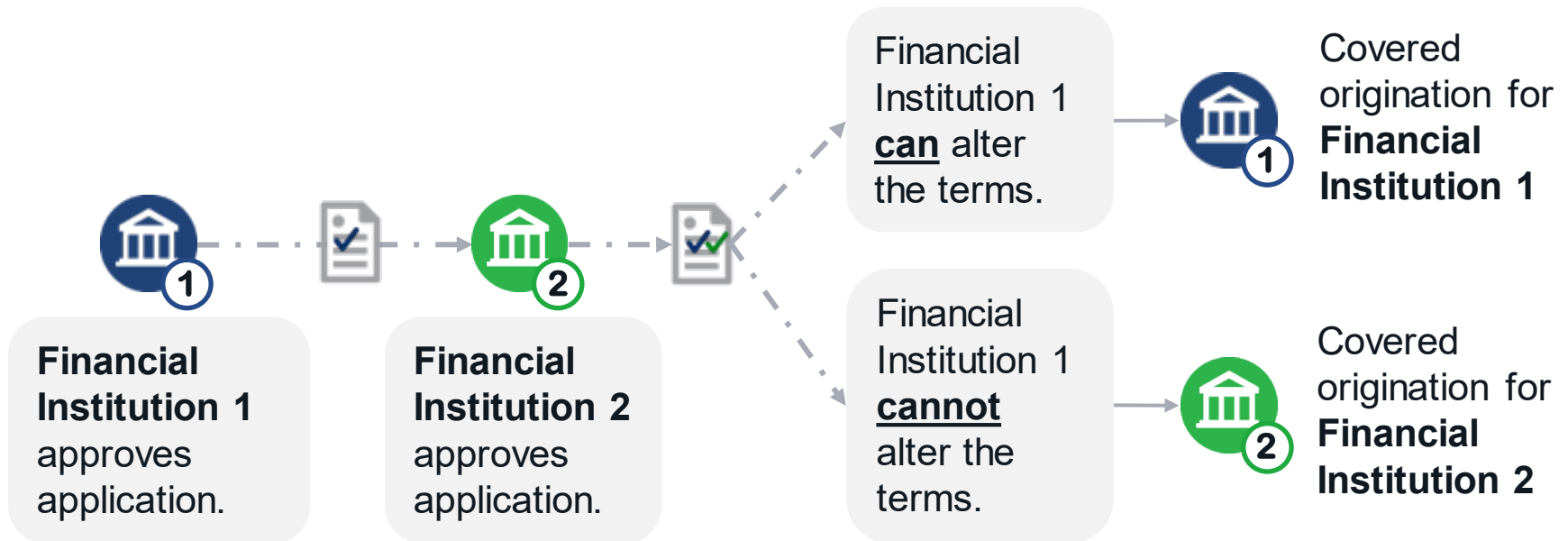
- Did the financial institution have at least 100 “covered originations” in each of the two immediately preceding calendar years?
- For example, to determine coverage for 2027, count covered originations for 2025 and 2026.

# Covered originations



# Multiple financial institutions

If more than one financial institution must make a credit decision to approve a covered credit transaction, only the last financial institution with authority to set the material terms of the transaction is required to count the resulting covered origination.



# Covered credit transactions

## STEP 1

Is the transaction an extension of credit used for a business, commercial, or agricultural purpose?

- Covered credit transactions can include loans, lines of credit, credit cards, merchant cash advances, and other credit products.
- But do not include leases, factoring, consumer-designated credit, purchases of credit transactions, or purchases of partial interests in credit transactions.

## STEP 2

Is the transaction excluded from being a covered credit transaction under the small business lending rule?

- The following are excluded:
  - Trade credit
  - HMDA-reportable loans
  - Insurance premium financing
  - Securities credit
  - Public utilities credit
  - Incidental credit

# Are these “covered credit transactions”?

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Agricultural-purpose transactions

Consumer-designated credit

HMDA-reportable loans

Construction loans

Extensions, renewals, and other amendments

Refinancings



# Small business

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Is it a “**small business**”?

A small business is:

1. A business concern as defined in the SBA regulations
  - Generally, a business that is “organized for profit” with a place of business in the United States
  - May be in a variety of legal forms
2. That had gross annual revenue of \$5 million or less in its preceding fiscal year

# Determining small business status

## ✓ A financial institution may:

- Rely on an applicant's statements regarding gross annual revenue, unless the financial institution verifies gross annual revenue.
- Aggregate the gross annual revenue of *affiliated* applicants or borrowers.

## ✗ A financial institution may not:

- Rely on previously obtained gross annual revenue information if the financial institution obtains updated or verified information during the application process.
- Aggregate the gross annual revenue of *unaffiliated* applicants or borrowers.

# Are these “small businesses”?

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Individuals and sole  
proprietorships

Start up businesses

Single purpose  
entities

# Compliance date tiers

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Did the financial institution originate 2500 or more **covered originations** in 2022 and 2023?

Yes

✓ Tier 1

No

Did the financial institution originate 500 or more **covered originations** in 2022 and 2023?

Yes

✓ Tier 2

No

Did the financial institution originate 100 or more **covered originations** in 2022 and 2023?

Yes

✓ Tier 3

No

The financial institution may be required to comply with the small business lending rule in accordance with the general coverage provisions (*i.e.*, the financial institution originated 100 or more covered originations in each of the two immediately preceding calendar years), but no earlier than covered financial institutions in Tier 3.

# Transitional provision: counting covered originations for 2022 and 2023

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- If the information needed to determine whether a financial institution originated covered credit transactions for small businesses in 2022 and/or 2023 is not readily accessible, the financial institution may use any reasonable method to estimate its covered originations for 2022 and/or 2023.
  - Reasonable methods are discussed in the rule and the small entity compliance guide.
  - One such method permits a financial institution to annualize covered originations for 2022 and 2023 based on the number of covered originations between October 1 and December 31, 2023.

## The CFPB has resources to help you comply.

These slides, FAQs on the topics discussed during this presentation, a small entity compliance guide, and other resources are available at:

<https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements>.

Also, on this website, there is a place to sign up to receive emails announcing the availability of additional materials and webinars.

If there are topics that you would like addressed or questions you would like answered in future RegCasts or FAQs, please send that information to [CFPB\\_RegulatoryImplementation@cfpb.gov](mailto:CFPB_RegulatoryImplementation@cfpb.gov).

However, please do not send individual informal guidance inquiries to this email address. We will use the information provided to inform the content of future implementation resources, but we will not provide individualized responses. We will not attribute specific questions to any person or entity in future presentations or FAQs.