

Regulation B – Section 1071 Small Business Data Reporting



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Program Description and Purpose

Introduction

On March 30, 2023, the Consumer Financial Protection Bureau (CFPB) published an 888-page Final rule to implement Section 1071 of the Dodd-Frank Act. That rule amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect and report certain data in connection with credit applications made by women- or minority-owned businesses and small businesses.

- The final rule takes into consideration and addresses key points from the approximately 2,100 comments received on the proposal.
- It splits ECOA into parts A and B.
- It allows for a phased implementation strategy based on the volume of originations.
- It increased the data collection requirements for small business to include LGBTQI+

The industry is in full agreement that implementation of the new rule will consume extensive time and resources. There are critical steps which should be completed before the final rule is published.

This handout is designed to provide guidance on what financial institutions should do now to understand how to navigate this complex implementation.

Purpose

The revisions to Regulation B represent one of the most significant regulatory events in recent history. All financial institutions, except those that originate less than 100 “covered credit transactions” to “small businesses” in each of the two preceding calendar years, must implement a full compliance management program to support the institutions compliance management system. This includes policies, procedures, training, testing, monitoring, and audit. Implementing the rule will impact several areas of the institution for several years.

Program Description and Purpose

Resource Materials For additional information regarding Section 1071 reporting rules. The Consumer Financial Protection Bureau’s created a dedicated landing page. It includes reference materials like:

AGENCY	WEB ADDRESS
Consumer Financial Protection Bureau	https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/

Equal Credit Opportunity Act

Law	The Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act) (15 USC 1601) became law in 1974.
Regulation	The Federal Reserve Board's (FRB) implementing regulation was Regulation B (12 CFR 202). The regulation took effect in 1975. The CFPB was assigned control of the regulation through the Dodd-Frank Act in 2011.
Commentary	The FRB's Official Staff Commentary includes interpretations of and additional information about the regulation. Good faith compliance with the commentary affords protection from civil liability.
ECOA Purpose	The regulation is to require creditors to: <ul style="list-style-type: none">• Promote the availability of credit to all creditworthy applicants without regard to any prohibited basis.• Notify applicants of action taken on their applications.• Report credit history in the names of both spouses on an account.• Retain records of credit applications.• Collect information about the race and other personal characteristics in applications for certain dwelling-related loans; and• Provide applicants with copies of appraisal reports used in connection with credit transactions.

Small Business Data Collection - Definitions

**Authority and
Scope -
§1002.101**

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, Pub. L. 111-203, 124 Stat. 1376, 2004 (2010).

Purpose

This subpart implements section 704B of the Equal Credit Opportunity Act, which Congress intended:

- To facilitate enforcement of fair lending laws; and
 - To enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.
-

Small Business Data Collection - Definitions

**New/Key
Definitions**
§ 1002.102

In this subpart:

- (a) *LGBTQI+ individual* includes an individual who identifies as lesbian, gay, bisexual, transgender, queer, or intersex.
 - (b) *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.
 - (c) *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.
 - (d) *Principal owner* means an individual who directly owns 25 percent or more of the equity interests of a business.
 - (e) *Small business lending application register or register* means the data reported, or required to be reported, annually pursuant to § 1002.109.
 - (f) *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.
-

Small Business Data Collection - Definitions

**Minority,
Women,
LGBTQI+
Individual –
In General**

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(l) and 1002.107(a)(18).

**Minority,
Women,
LGBTQI+
Individual –
In General**

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.

Small Business Data Collection - Definitions

Principal Owner – Natural Person

Paragraph 102(o)
– 1.

Only an individual can be a principal owner of a business for purposes of subpart B of this part.

- Entities, such as trusts, partnerships, limited liability companies, and corporations, are not principal owners for this purpose.
 - Additionally, an individual must directly own an equity share of 25 percent or more in the business in order to be a principal owner.
 - Unlike the determination of ownership for purposes of collecting and reporting minority-owned business status, women-owned business status, and LGBTQI+-owned business status, indirect Entities, such as trusts, partnerships, limited liability companies, and 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.
 - 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.
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Trustee

Paragraph 102(o)

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).

Small Business Data Collection - Covered Credit Transactions and Excluded Transactions

Covered Applications § 1002.103(a)

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.

Procedures Used Paragraph 103(a) – 2.

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.
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Refinancings and Evaluation, Extension, or Renewal Requests that Request Additional Credit Amounts Paragraph 103(a) – 11.

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.

Small Business Data Collection – Covered Credit Transactions and Excluded Transactions

Excluded Transactions § 1002.104(b)

The requirements of this subpart do not apply to:

- (1) *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.
 - (2) *Leases*. 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.
 - (3) *Consumer-designated credit*. Does not include consumer-designated credit that is used for business or agricultural purposes.
 - (4) *Secured by Certain Investment Properties*
 - (5) *Credit Secured by certain Investment properties*. does not include an extension of credit that is secured by 1-4 individual dwelling units that the applicant (or one or more of the applicant's principal owners) does not, or will not, occupy
 - (6) *Interest in a pool of credit transactions*. purchase of an originated credit transaction, the purchase of an interest in a pool of credit transactions.
 - (7) *Trade credit*. A financing arrangement wherein a business acquires goods or services from another business without making immediate payment to the business providing the goods or services.
 - (8) *Home Mortgage Disclosure Act (HMDA)-reportable* transactions. A covered loan, or application therefore, as defined by Regulation C, 12 CFR 1003.2(e).
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Small Business Data Collection – Covered Credit Transactions and Excluded Transactions

- (9) *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 800 premium financing does not include the financing of insurance policy premiums obtained in connection with the financing of goods and services.
- (10) *Public utilities credit.* Public utilities credit as defined in § 1002.3(a)(1).
- (11) *Securities credit.* Securities credit as defined in § 1002.3(b)(1).
- (12) *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).
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Small Business Data Collection – Covered Credit Transactions and Excluded Transactions

Factoring Paragraph 104(b) – 1.

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 has not yet been made.
- 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 a “Other sales-based financing transaction” under § 1002.107(a)(5).

Leases Paragraph 104(b) – 2.

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.
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Small Business Data Collection – Covered Credit Transactions and Excluded Transactions

Consumer-Designated Credit

Paragraph 104(b) – 3.

The term “covered credit transaction” does not include consumer-designated credit used for business 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 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-related.

Credit Secured by Certain Investment Properties

Paragraph 104(b) – 4.

The term “covered credit transaction” does not include an extension of credit that is secured by 1-4 individual dwelling units that the applicant (or one or more of the applicant’s principal owners) does not, or will not, occupy.

- A financial institution should determine whether the property to which the covered credit transaction or application relates is or will be used as an investment property.
- For purposes of this comment, a property is an investment property if the applicant or one or more of the applicant’s principal owners does not or will not occupy the property.
 - For example, if an applicant purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of this comment.
 - Similarly, if an applicant purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property.
- A property is an investment property if the applicant does not or will not occupy the property, even if the applicant does not consider the property as owned for investment purposes.

Small Business Data Collection – Covered Credit Transactions and Excluded Transactions

Credit Secured by Certain Investment Properties, continued

- For example, if a corporation purchases a property that is a dwelling under § 1002.102(j), that it does not occupy, but that is for the long-term residential use of its employees, the property is an investment, even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time.
- If the property is for transitory use by employees, the property would not be considered a dwelling under § 1002.102(j).

Trade Credit Paragraph 104(b)(1) - 1

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.
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.

Small Business Data Collection – Covered Financial Institutions and Exempt Institutions

Financial Institution
§ 1002.105(a)

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.

Covered Financial Institution –
Paragraph
105(a) - 1

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 2022 and 2023, Financial Institution B received 100 covered applications from small businesses and originated 75 covered credit transactions for small businesses, then for 2024, Financial Institution B is not a covered financial institution.
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Preceding Calendar Year
Paragraph
105(b) - 1

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 100 covered credit transactions for small businesses both during 2027 and during 2028.
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Origination Threshold
Paragraph
105(b) - 2

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, 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.
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Small Business Data Collection – Business and Small Business

Definitions - SBA

§ 1002.106

- (a) *Business* has the same meaning as the term “business concern or concern” in 13 CFR 121.105.
- (b) Small business (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 million or less. North American Industry Classification System (NAICS).

Inflation Adjustment

Paragraph
106(b) - 2

Every 5 years after January 1, 2025, 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 shall be rounded to the nearest multiple of \$500,000. If an adjustment is to take effect, it will do so on January 1 of the following calendar year.

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).

Small Business Data Collection – Compilation of Reportable Data

Data Format and Itemization § 1002.107(a)	<p>A covered financial institution shall compile and maintain data regarding covered applications from small businesses.</p> <ul style="list-style-type: none">• 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.
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General Paragraph 107(a) - 1	<p>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.</p> <ol style="list-style-type: none">i. A covered financial institution reports this 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 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.
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Free-form Text Fields Paragraph 107(a) - 2	<p>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.</p>
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Small Business Data Collection – Compilation of Reportable Data

Filing Instructions Guide

Paragraph 107(a) - 3

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-instructionsguide/>.

Unique Identifier

§ 1002.107(a)(1)

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.

Application Date

§ 1002.107(a)(2)

The date the covered application was received by the financial institution, or the date shown on a paper or electronic application form.

Application Received

Paragraph 107(a)(2) - 2

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.

Application Method

§ 1002.107(a)(3)

The means by which the applicant submitted the covered application directly or indirectly to the financial institution.

Credit Type

§ 1002.107(a)(5)

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.
-
-

Small Business Data Collection – Compilation of Reportable Data

Credit Purpose

§ 1002.107(a)(6) The purpose or purposes of the credit applied for or originated from the list.

Credit Purpose – General

Paragraph

107(a)(6) - 1

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.
 - vii. Refinance existing debt (other than refinancings listed above).
 - viii. Line increase.
 - ix. Overdraft
 - x. Other.
 - xi. Not provided by applicant and otherwise undetermined.
 - xii. Not applicable.
-
-

Small Business Data Collection – Compilation of Reportable Data

Amount Applied For
§ 1002.107(a)(7) The initial amount of credit or the initial credit limit requested by the applicant.

Amount Approved or Originated
§ 1002.107(a)(8) (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 originated or approved but not accepted, the amount of the credit limit approved.

Action Taken
§ 1002.107(a)(9) 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.

Action Taken Date
§1002.107(a)(10) The date of the action taken by the financial institution.

Denial Reasons
§1002.107(a)(11) For denied applications, the principal reason, or reasons the financial institution denied the covered application.

Small Business Data Collection – Compilation of Reportable Data

Pricing Information

§

1002.107(a)(12)

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, and index name that is or would be applicable to the covered credit transaction at origination.
- (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.
 - 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
 - Notwithstanding the response to paragraph (a)(20)(iv)(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.

Small Business Data Collection – Compilation of Reportable Data

Census Tract
§1002.107(a)(13)

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.

Gross Annual Revenue
§ 1002.107(a)(14)

The gross annual revenue of the applicant for its preceding full fiscal year prior to when the information is collected.

NAICS Code
§1002.107(a)(15)

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

Number of Workers
§
1002.107(a)(16)

The number of non-owners working for the applicant.

Time in Business
§ 1002.107(a)(17)

The time the applicant has been in business, described in whole years, as relied on, or collected by the financial institution.

Small Business Data Collection – Compilation of Reportable Data

Ethnicity, Race, and Sex of Principal Owners

§
1002.107(a)(19)

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.

- 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.
-

Sex

Paragraph
107(a)(19) - 15

Generally, a financial institution must permit an applicant to provide each principal owner's sex for purposes of § 1002.107(a)(19). When requesting information about a principal owner's sex, a financial institution shall use the term "sex/gender."

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

Small Business Data Collection – Compilation of Reportable Data

Number of Principal Owners - General Paragraph 107(a)

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.

Time and Manner of Collection - General - Procedures Paragraph 107(c)(1)

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

Small Business Data Collection – Firewall

Definitions § 1002.108(a)

For purposes of this section, the following terms shall have the following meanings:

- (1) *Involved in making any determination concerning a covered application* means participating in a decision regarding the evaluation of a covered application, including the creditworthiness of an 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.
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Involved in Making Any Determination Concerning a Covered Application Paragraph 108(a) - 1

An employee or officer is involved in making a determination concerning a covered application if the employee or officer makes, or otherwise participates in, a decision regarding the evaluation of a covered application or the creditworthiness of an 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.
 - An employee or officer is not involved in making a determination concerning a covered application if the employee or officer:
 - Is involved in making a decision that affects covered applications generally or interacts with small businesses prior to them becoming applicants or submitting a covered application.
 - This group might include officers and employees who develop policies and procedures, program systems, or conduct marketing.
 - Is not involved in making a determination concerning a covered application if makes or participates in a decision after the institution has taken final action on the application, such as a decision about servicing or collecting a covered credit transaction.
-

Small Business Data Collection – Firewall

Involved in Making Any Determination Concerning a Covered Application, continued

- 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.
 - *Example 1* - 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, which makes a determination concerning a covered application.
 - *Example 2* - 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.
 - Simply uses a check box form to confirm whether an applicant has submitted all necessary documents or handles a minor or clerical matter during the application process, such as suggesting or selecting a time for an appointment with an applicant.
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Small Business Data Collection – Firewall

Examples of activities that are not Concerned Involved in Determination -Cont.

Paragraph 108(a) - 1

- B. Discussing credit products, loan terms, or loan requirements with a small business before it submits a covered application.
- C. 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.
- D. 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.
- E. Reviewing previously collected data to determine if it can be reused for a later covered application pursuant to § 1002.107(d).

Examples of Determination

Paragraph 108(a) - 1

iii - 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.
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Small Business Data Collection – Firewall

Examples of Determination

Paragraph
108(a) - 1

- 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.
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Should Have Access

Paragraph
108(a) – 2i

A financial institution may determine that an employee or officer should have access for purposes of § 1002.108 if that employee or officer is assigned one or more job duties that may require the employee or officer to collect (based on visual observation, surname, or otherwise), see, consider, refer to, or use information otherwise subject to the prohibition in § 1002.108(b).

- The employee or officer does not have to be required to collect, see, consider, refer to or use such information or to actually collect, see, consider, refer to or use such information.
 - It is sufficient if the employee or officer might need to do so to perform the employee’s or officer’s assigned job duties.
 - For example, if a loan officer’s job description states that the loan officer may need to collect ethnicity and race information based on visual observation and/or surname or if the loan officer is assigned the task of assisting applicants with the completion of data collection forms, the financial institution may determine that the loan officer should have access.
 - If a financial institution determines that an employee or officer who is involved in making any determination concerning a covered application should have access for purposes of § 1002.108, the financial institution is responsible for ensuring that the employee or officer only accesses and uses the protected information for lawful purposes.
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Small Business Data Collection – Firewall

Groups Should Have Access

Paragraph
108(a) – 2ii

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.
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Making a Determination on Who Should have Access.

Paragraph
108(a) – 2iii

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.
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Small Business Data Collection – Firewall

Prohibition on Access to Certain Information – Scope of Person Subject to Prohibition
108(b)

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, 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.

Scope of Information Subject to the Prohibition – Applies to an Employee or Officer
Paragraph
108(b) – 1i

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 § 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.
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Small Business Data Collection – Firewall

Scope of Information that Can be Accessed When the Prohibition Applies

Paragraph 108(b) – 1ii

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, 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).

- 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, 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.
 - 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.
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Small Business Data Collection – Firewall

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

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).

Exception to the Prohibition Paragraph 108(c)

A financial institution:

- Is not required to limit the access of a particular employee or officer who is involved in making determinations concerning covered applications if the institution determines that the particular employee or officer should have access to the information collected pursuant to § 1002.107(a)(18) through (20) and the institution provides the notice required by § 1002.108(d).
 - Can determine that several employees and officers should have access or that all of a group of similarly situated employees or officers should have access. See comment 108(a)-2.
 - Cannot permit all employees and officers to have access simply because it has determined that one or more employees or officers should have access.
 - For example, an institution may determine that a single compliance officer or all of its compliance officers should have access and then permit one or all of its compliance officers, respectively, to have access.
 - However, the institution cannot permit other employees or officers to have access unless it independently determines that they should have access.
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Small Business Data Collection – Firewall

Notice
§ 1002.108(d)

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, 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).

Small Business Data Collection – Reporting the Data

Annual Reporting of Data to the CFPB

§ 1002.109(a)(1)

- (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 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.
-

Only One Institution Reports

Paragraph 109(a)(3) – 1i

Only one financial institution reports each originated covered credit transaction as an origination.

If more than one institution...	Then the institution that...
Was involved in the origination of a covered credit transaction,	Made the final credit decision approving the application reports the covered credit transaction as an origination.
It is not relevant whether the covered credit transaction closed or, in the case of an application, would have closed in the financial institution’s name.	
Approved an application prior to closing or account opening and one of those institutions purchased the covered credit transaction after closing,	Purchased the covered credit transaction after closing reports the covered credit transaction as an origination.

Small Business Data Collection – Reporting the Data

Originate or Not Originate
Paragraph
109(a)(3) – 1i
and ii

If an institution...	Then it reports...
Reports a transaction as an origination,	All of the information required for originations, even if the covered credit transaction was not initially payable to the institution that is reporting the covered credit transaction as an origination.
Did not originate the transaction	The action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness.

It is not relevant whether the financial institution received the application directly from the applicant or indirectly through another party, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

Agents
Paragraph
109(a)(3) – 3

If a covered financial institution made a credit decision on a covered application through the actions of an 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 product was originated.
 - Financial Institution A reports the covered credit product as an origination.
 - State law determines whether one party is the agent of another.
-

Small Business Data Collection – Reporting the Data

**Financial
Institution
Identifying
Information**
§ 1002.109(b)

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 who may be contacted with questions about the financial institution's submission.
 - (4) It's 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 for covered credit transactions.
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Small Business Data Collection – Reporting the Data

Legal Entity Identifier (LEI)

Paragraph
109(b)(6) - 1

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.
 - 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.
 - 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.

RSSD ID Number

Paragraph
109(b)(7) - 1.

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.
-

Small Business Data Collection – Reporting the Data

Parents 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 (vii) 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.

Statement Paragraph 110(c) - 1

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 website at [a designated Bureau website]. 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 Bureau may delete or modify portions of our data prior to posting it if the Bureau determines that doing so would advance a privacy interest. Small business lending data for many other financial institutions are also available at this website.

Small Business Data Collection – Recordkeeping

Record Retention
§ 1002.111(a)

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.

Evidence of Compliance
Paragraph 111(a) - 1

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.
-

Separate From the Application
Paragraph 111(b) - 1

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) through (20) 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) through (20) need not be maintained in a separate electronic system, nor need they be removed from the physical files containing the application.
 - However, the financial institution may nonetheless need to keep this information in a different electronic or physical file in order to satisfy the requirements of § 1002.108.
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Small Business Data Collection – Administrative Enforcement and Civil Liability

Tolerances and Data Fields
Paragraph 112(b) - 2

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-businesslending/filing-instructions-guide/>.

Some data fields may allow for more than one response.

- For example, with respect to information on the ethnicity and race of an applicant’s principal owner, a data field may identify more than one race or ethnicity.
- If there are one or more errors within an ethnicity data field, or within a race data field, for a particular principal owner, they would count as one (and only one) error for that data field.
- For instance, in the ethnicity data field, if an applicant indicates that one of its principal owners is Cuban, but the financial institution reports that the principal owner is Mexican and Puerto Rican, the financial institution has made one error in the ethnicity data field for that principal owner.

For purposes of the error threshold table in appendix F, the financial institution is deemed to have made one error, not two.

Tolerances and Safe Harbors
Paragraph 112(b) - 3

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 H for a given data field.

Small Business Data Collection – Dates and Transition Rules

Effective Date § 1002.114(a) The effective date for this subpart is [90 days after the date of publication of the final rule in the *Federal Register*].

Compliance Date § 1002.114(b) -1 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 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, 2024.
2. 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 April 1, 2025.
3. 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 January 1, 2026.
4. A financial institution that did not originate at least 100 covered credit transactions for small businesses in each of calendar years 2022 and 2023 but subsequently originates at least 100 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 January 1, 2026.

Appendix F – Tolerances for Bona Fide Errors

Tolerances for Bona Fide Errors in Data Reported Appendix H

As set out in § 1002.112(b) and in comment 112(b)-1, 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 ⁹⁸⁶ (B)	Threshold (#) (C)	Threshold (%) (D)
100 – 130	47	3	6.4
131 – 190	56	3	5.4
191 – 500	59	3	5.1
501 – 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.

The thresholds in column C of the Threshold Table 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 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).

Appendix F – Tolerances for Bona Fide Errors

Tolerances for Bona Fide Errors in Data Reported, continued

For instance, a financial institution that submitted a small business lending application register containing 105 applications would be subject to a threshold of three 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 errors in reporting loan amount and two errors reporting gross annual income, the bona fide error provision of § 1002.112(b) would not apply to the four loan amount errors but would still apply to the two gross annual income 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.

Five Critical Steps Needed Now

Overview

Regardless of Compliance Date Tier - key components needs to be completed now:

1. Determining covered financial institution status/tier.
 2. Conduct a Gap Analysis to understand products, delivery channels and lending life cycle.
 3. Raise the Board and senior management awareness of issues related to implementation of Section 1071.
 4. Commercial Lending Challenges that need focus, training, and action:
 - Understand the product types, processes, rates, and fees of the different loan types offered in commercial and ag lending.
 - Differences by departments?
 - Loan Officer?
 - The data that will be collected and reported may reveal serious issues such as illegal discrimination and lending patterns that show disparate lending based on income. A preliminary analysis of data should be performed to detect questionable lending patterns.
 - Many lenders do not currently use written applications for commercial or agricultural loans. Such an application will likely consist of one or two pages of basic borrower information and two or three pages of information required by the final rule. The regulatory information will have to be placed behind a firewall to prohibit use by underwriters. The appropriate applications should be developed now so the forms can be placed into use no later than, and maybe even before, the effective date.
 - Commercial and agricultural borrowers will likely be overwhelmed by the volume of changes in the application process. A process should be developed to introduce customers to the changes so they will acclimate to the changes before they become mandatory. That final regulations will likely be published during the first quarter of 2023. The effective date is likely to occur during 2024. The cost of implementing the new rules will fall in 2023 and 2024. Budget planning needs to occur immediately.
-

Five Critical Steps Needed Now

Overview – Cont.

5. Budget
 - Estimate expenditures for training.
 - Staffing needs – compliance, lending staff
 - Make plans to develop or purchase new software to collect and report required data, or to purchase an upgrade to existing collection and reporting software to facilitate collection of Section 1071 data.
 - Make estimates of the volume of data to be collected and estimate the time needed to collect, scrub, and submit the data to regulators. Anticipate the increased level of staffing needed to accomplish full compliance.
-

Five Critical Steps Needed Now

1. Determine Financial Institution Compliance Date Tier

- Create a written plan to determine the financial institutions tier (i.e., 1, 2, or 3).
 - Focus on 2022 and 2023
 - Clear, logical steps.
 - Measurement standards
 - Thorough
 - Ensure methodology is reasonably designed and does not include subjective language which could appear to be avoiding compliance.
 - Good faith effort
-

2. Perform a Gap Analysis

Perform a Gap Analysis so our FI can make a plan for how your institution will comply with Section 1071. The results of a Gap Analysis would be instrumental in outlining your plan for compliance, communicating with the BOD and Management, and understanding where your biggest risks exist. Consider the following in your analysis:

- Financial institution specific loan data, it can help you report real facts about your institution to BOD and management, when discussing the impact of implementation and managing this challenging requirement.
 - If your institution uses an application compare it to the data collection requirements.
 - If you do not use an application – pull files to see what you can use for collection.
 - Pull small business and agricultural loans using rules to understand:
 - Application vs origination numbers. (100 origination makes you a covered FI)
 - The type and consistency of supporting documentation. (i.e., credit reports, applications, corporate, LLC, sole proprietorship papers, financial information, business type etc.)
 - Fee and rate sheets and rate information loan notes
 - Different terms, rates, conditions for same or similar originations
 - Turn times – how long it took to make a decision from application to action taken.
 - Look at denials – identify areas of disparate treatment.
-

Five Critical Steps Needed Now

Perform a Gap Analysis – Cont.

- Start talking with employees at each stage of the lending process.
 - Job shadow – learn their job, know their back up, and determine how they will be involved in complying.
 - How much time does application – origination take today? How will it change with 1071 implementation?
 - Are there different processes by department/loan officer?
 - Fees/Rates
 - Application process
 - Prepayment penalties
 - Who will you need to be a compliance champion?
 - At what stage is collection, inputting, and validation going to be best?
 - Are there enough resources in the customer facing (first line) to ease the burden these new rules will make?
 - Start digging into the compliance management process.
 - Are there enough resources to proactively:
 - Test 1071 requirements,
 - What will need to be monitored, and
 - What needs to be reported, how will it be done and what is the frequency?
 - How and who you will analyze for fair lending disparities.
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Five Critical Steps Needed Now

3. Raising Board and Senior Management Awareness

The information that needs to be communicated to the board and senior management now, including the

- Nature of the pending changes.
 - Impact on staffing and budgeting for the coming years.
 - Impact on the institution's compliance risk analysis resulting from the changes; and
 - Timeline for implementing the rules.
 - Budget
-

4. Commercial Lending Challenges that Need Focus, Training, and Action -

Perform a Preliminary Data Analysis

The data that will be collected and reported may reveal issues such as redlining, illegal discrimination, and lending patterns that show disparate lending based on minority status and income. A preliminary analysis of data should be performed to detect questionable lending patterns.

- What data?
 - Small business and small farm loans.
 - Compare approved versus denied applications for disparate underwriting practices.
 - Review approved applications to consider pricing and other loan terms
 - How to do it?
 - Look for comparable borrowers – using surname methodology look to find and compare a woman-owned or minority-owned business to a business that is owned by a male or a non-minority.
 - Maintain a single point of focus. For example, do compare a business that is owned by a minority woman to a business that is owned by a white male. Is any disparate treatment due to sex (sexual orientation/gender) or to race?
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Five Critical Steps Needed Now

Commercial Lending Challenges that Need Focus, Training, and Action -

Implement Application Forms for Commercial and Agricultural Loans

Many lenders do not currently use written applications for commercial or agricultural loans.

- An application will likely consist of one or two pages of basic borrower information and a page or two of information required by the final rule. However, it will NOT include any of business status information (i.e., Minority, Women or LGBTQI+) or the GMI questions.
 - The regulatory information will have to be placed behind a firewall to prohibit use by underwriters.
 - The appropriate applications should be developed now so the forms can be placed into use no later than, and maybe even before, the effective date.
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Commercial Lending Challenges that Need Focus, Training, and Action -

Acclimate Commercial and Agricultural Borrowers to the New Rules

Commercial and agricultural borrowers will likely be overwhelmed by the volume of changes in the application process. A process should be developed to introduce customers to the changes so they will acclimate to the changes before they become mandatory.

5. Budget

- Estimate expenditures for training.
 - Make plans to develop or purchase new software to collect and report required data, or to purchase an upgrade to existing collection and reporting software to facilitate collection of Section 1071 data.
 - Make estimates of the volume of data to be collected and estimate the time needed to collect, scrub, and submit the data to regulators. Anticipate the increased level of staffing needed to accomplish full compliance.
-

Seven Steps to Consider in the Gap Analysis

Step 1 –
Gather Relevant
Information
About Your
Financial
Institution’s
Commercial
Lending Practices

Real facts about your institution’s commercial lending process will make managing 1071 requirements and discussing the impact of implementation with management and the Board of Directors easier.

Consider:

- How many commercial lending products does your institution offer? Do they each have unique rates, fees, and lifecycle processes?
- What does the loan policy say? Is there subjective language that leaves room for the loan officer’s discretion or deviations in lending process?
- How are loan requests received? Do you have an application or a LOS? Does your institution work with third parties?
- Does your institution have rate sheets? Does the institution set fee schedules?
- What are the exception requirements to underwriting and/or pricing. Are they clearly documented and not subjective?

Step 2 -
Determine if
Your Institution
Uses a Loan
Application or
Has an LOS

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- If your institution uses a commercial loan application, compare the loan application to the required data collection requirements and look for missing data points in the application.
 - If your institution does not use a commercial loan application, pull relevant loan files and determine if your institution is collecting the information section 1071 requires in other ways. Identify source documents that may be used for gathering the required data fields.
 - If key collection fields aren’t currently requested in your institution’s lending process, make a plan to determine how you can improve the process and capture the required information.
-

Seven Steps to Consider in the Gap Analysis

Step 3 - Review Small Business and Agricultural Loan Files

- Assess the application and origination numbers to determine if you are a covered institution.
 - Review the type and consistency of supporting documentation.
(For example: look at credit reports, applications, company formation documentation, financial information, etc.)
 - Inspect fee and rate sheets:
 - Does your institution have or use them?
 - Are the fees based on specific product requests?
 - Are fees a set amount or are they in a range? A range of fees may allow for discretion. Be aware of increased compliance risk if discretion is present.
 - Review the notes from loan officer files.
 - Look for explanations or reasons for approvals, denials, rate changes, or fee waivers. Is it possible to understand the lending process from the file notes? Be diligent and pay special attention to potential disparities.
 - Take note of different terms, rates, and conditions for the same or similar originations.
 - Determine how long it took to make a decision, from application to final action, to establish your institution's "turn times" for all borrower types.
 - Look for fair lending and/or redlining issues.
-

Step 4 – Take in-depth look at denials

Review denied applications to uncover instances and/or areas of disparate treatment and possible redlining.

- Compare loan applications and their outcomes.
 - Can you find similarities in the loan applications where a protected class applicant was denied, and a non-protected class applicant approved?
 - Are there cases of similarly situated applicants, applying for the same type of credit, where one of the applicants received a counteroffer?
-

Seven Steps to Consider in the Gap Analysis

Step 5 –
Begin talking with commercial department employees relevant to each stage of the lending process

- These employees could include loan officers, credit analysts, underwriters, and other staff assisting in the process.
 - Learn their job, know their back-up, and determine how they will be involved in complying with 1071.
- How much time does the application to origination process take today? How will that change with 1071 implementation?
- Which employees may be able to act as a “compliance champion?”
- Determine which stages in the process are best for collecting, imputing, and validating data.
- Are there enough resources in the frontline, or customer facing roles, to ease the burden of these new requirements?

Step 6 –
Dig into and understand the Compliance Management System (CMS)

- Who will be the point of contact for SBLAR?
 - How can you best use the three lines of defense for quality control and compliance?
 - Are there enough resources to implement and then proactively test 1071 requirements?
 - Determine what will need to be monitored and the way it will need to be reported.
 - Establish who and how you will analyze fair lending disparities.
-

Seven Steps to Consider in the Gap Analysis

Step 7 – Create a plan for compliance

- Once you've ascertained how your lending process aligns with the requirements, create an action plan for addressing the gaps and implementing the necessary changes.
 - Notify the board and senior management of your findings. Share your recommendations and discuss next steps and budgetary needs.
 - Develop a 1071 project plan with timelines and milestones.
 - Develop a comprehensive training plan (i.e., general and role specific).
 - Your analysis has provided insight into who and how your institution needs to be trained to be compliant with section 1071's implementation. Take those findings and be proactive with training.
 - Test, monitor, and adjust the new processes.
 - To get a complaint, you'll most likely have to implement new things and tweak your institution's lending process. Be flexible, communicate (a lot) and continue to monitor, test, and refine the new process.
 - As you move forward, it will be up to management, compliance, and the business line, to solve challenges as they arise and make proactive adjustments to ensure your institution is appropriately addressing the regulation's requirements.
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CFPB Budget Planning Guidance

Estimating Costs - Overview

The tasks related to collecting and reporting small business loan data under Section 1071 are extensive. Most financial institutions will need to add staff, purchase, or expand collection/reporting systems, and conduct extensive training. Every financial institution needs to develop cost estimates for these tasks.

While there are a variety of methods available for estimating the costs, the most predictive method is the one based on your institution's own data.

Updating the Compliance Program for a Strong CMS

A compliance management system (CMS) consists of a policy, procedures, training, and audit. For HMDA-reporting institutions, the collecting data for Section 1071 can largely mirror the HMDA-reporting program.

Estimate the number of hours needed to update the program to include Section 1071.

Data Collection and Reporting - Staffing

Make estimates of the volume of data to collect and estimate the time needed to collect, scrub, and submit the data to regulators. Anticipate the increased level of staffing needed to accomplish full compliance.

- Estimate the current volume of small business loans and projected volume for coming years.
 - Estimate time to collect current application data and the time to collect expanded data.
 - Determine the number of full-time equivalents needed to collect expanded data at the anticipated volume; and
 - Project the number of and cost of the expanded staff needed to complete the new collection and reporting burden.
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CFPB Budget Planning Guidance

Data Collection and Reporting -System

Make plans to develop or purchase new software to collect and report required data, or to purchase an upgrade to existing collection and reporting software to facilitate collection of Section 1071 data.

The regulations require submission of data through a free agency-provided portal. Other aspects of collecting, reporting, and analyzing can be performed manually or using an automated solution. An automated solution is recommended.

An automated solution can be:

- Purchased.
- Obtained on a subscription basis; or
- Developed internally.

Estimate the initial and ongoing cost of the Collection and Reporting System.

Data Scrubbing

Data must be scrubbed prior to submission to your regulator. Additional scrubs are suggested:

- Quarterly – Rather than performing all scrubbing immediately prior to submission, it is suggested that data be scrubbed quarterly to spread the workload through the year.
 - Entry errors will be most common when the system is implemented. Double checking data for an initial period (i.e., first 60 days after implementation) is encouraged.
 - At time of submission the CFPB portal performs automated scrubs of all data. Additional samples are pulled for manual scrubs.
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Data Submission

All Section 1071 data must be submitted by June 1 of each year. Since data is collected on a calendar year basis, there is a four-month period between the end of the calendar year and the submission date – ample time for extensive data scrubbing and analysis.

CFPB Budget Planning Guidance

Data Analysis

The significant pile of Section 1071 data collected by your institution tells a story. That story may present a positive narrative about your institution, or a negative one.

- Once quarterly data is collected and scrubbed, it should be analyzed.
 - Once final Section 1071 rules are published, the CFPB will produce templates for the Section 1071 data to be made public.
 - Quarterly analysis should reflect the data that will appear in the CFPB's annual report.
 - A quick response to adverse data in the quarterly data can stem the impact of the negative trend so the annual data should be less ominous.
- Simultaneous to annual data submission to the CFPB an analysis of the full year of data should be performed.
- Upon receipt of compiled data from the agency, the agency reports should be compared to the year-end reports developed by your institution.

Marketing

The collection of section 1071 data will be a major procedural change for small business and small farm borrowers. The new data requested from applicants may seem like an invasion of customer privacy. An effort should be made prior to the date that the new data collection begins to orient customers to the changes. Customer announcements should clarify:

- The new data that is to be collected.
 - All financial institutions are required by federal law to collect the data; and
 - How the data will be used.
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CFPB Budget Planning Guidance

Training

Implementation of Section 1071 data collection and reporting rules will involve significant training efforts throughout the institution. Groups to be trained include:

- The Board and senior management.
- Front line - data collection and reporting.
- Review and audit – Scrubbing and analysis; Compliance.
- Audit.
- Commercial lenders and commercial loan department support staff.
- Agricultural lenders and agricultural loan department support staff; and
- Marketing

Estimate expenditures for training each of the above groups:

- Hours of training needed.
 - Topics to be covered.
 - Training technique (live, virtual, on-line, etc.).
 - Timing of initial and on-going training; and
 - Training of new hires.
-

CFPB Budget Planning Guidance

Estimating Costs – Overview

The CFPB estimates are based on industry-wide data and conjecture. They are good starting point for most financial institutions. After developing initial estimates, the basic presumptions may be tweaked to yield a more accurate estimate.

Estimating Costs – Institution Types

Table 3 below summarizes the typical approach to seven key aspects or dimensions of compliance costs across three representative types of financial institutions based on level of complexity in compliance operations. Financial institutions that are Type A have the lowest level of complexity in compliance operations, while Type B and Type C have the middle and highest levels of complexity, respectively.
