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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

[Docket No. CFPB-2017-0009]

RIN 3170-AA65

Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule that amends Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, adds certain model forms and removes others from Regulation B, and makes various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.

DATES: The rule is effective on January 1, 2018, except that the amendment to Appendix B to Part 1002 revising paragraph 1 and removing the existing “Uniform Residential Loan Application” form in amendatory instruction 6 is effective January 1, 2022.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

Regulation B implements the Equal Credit Opportunity Act (ECOA)¹ and, in part, prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of a credit applicant except under certain circumstances.² Two of these circumstances are a requirement for creditors to collect and retain certain information about applicants for certain dwelling-secured loans under Regulation B § 1002.13 and the similar applicant information that financial institutions are required to collect and report under Regulation C, 12 CFR part 1003, which implements the Home Mortgage Disclosure Act (HMDA).³ Regulation B also includes certain optional model forms for use in complying with certain Regulation B requirements, including a model form for complying with § 1002.13 that is a 2004 version of the Uniform Residential Loan Application (URLA) issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).⁴

The HMDA requirement to collect and report applicant information was recently updated through a final rule amending Regulation C, published in October of 2015 (2015 HMDA Final Rule).⁵ In 2016, the Enterprises issued a new version of the URLA that complies with the 2015

¹ 15 U.S.C. 1691 *et seq.*, 12 CFR part 1002.

² 12 CFR 1002.5(b).

³ 12 CFR 1002.5(a)(2).

⁴ Appendix B to 12 CFR part 1003.

⁵ Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

HMDA Final Rule (2016 URLA).⁶ These changes to Regulation C and the URLA require updates to Regulation B to ensure consistency among regulations and facilitate compliance with Regulation B and Regulation C by financial institutions. To address these issues, the Bureau issued a proposal on March 24, 2017, which was published in the *Federal Register* on April 4, 2017 (the 2017 ECOA Proposal).⁷

The Bureau is now publishing final amendments to Regulation B. The final rule will provide creditors flexibility in complying with Regulation B in order to facilitate compliance with Regulation C and transition to the 2016 URLA. The changes to Regulation B in this rule are summarized briefly in this section and discussed in detail below.

A. Scope

The final rule amends parts of Regulation B, its commentary, and its appendices, and affects when and how a creditor may collect information regarding the applicant's ethnicity, race, and sex. The Regulation B creditors affected by this rule are primarily those creditors making mortgage loans subject to § 1002.13, which applies to purchase and refinance transactions involving an applicant's primary residence. Financial institutions that report under Regulation C, have reported in the prior five years, or may report in the near future may also be affected by this rule. Creditors that utilize model forms from appendix B to Regulation B (the Regulation B appendix) for mortgage loans are also affected by the rule.

⁶ See Fannie Mae, Guide Forms, available at <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (last visited Sept. 6, 2017) (listing all selling and servicing guide forms); Freddie Mac, "Forms and Documents," available at <http://www.freddie.mac.com/singlefamily/guide/> (last visited Sept. 6, 2017) (same).

⁷ Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, 82 FR 16307 (Apr. 4, 2017).

B. Changes to Applicant Information Collection for Regulation B Creditors

For Regulation B creditors making mortgage loans subject to § 1002.13, the rule will allow creditors to collect the applicant's information using either the aggregate ethnicity and race categories or disaggregated ethnicity and race categories and subcategories, as set forth in appendix B to Regulation C (the Regulation C appendix) as amended by the 2015 HMDA Final Rule. The rule change therefore will not require Regulation B creditors that are not HMDA reporters (Regulation B-only creditors) to change their § 1002.13 compliance practices, but would allow them to adopt voluntarily new practices for collecting applicant information, including practices that would permit such creditors to transition to the 2016 URLA. Regulation B creditors will also be able to collect voluntarily certain information about applicants for certain mortgage loan scenarios as provided for in § 1002.5(a)(4). These scenarios generally involve types of loans subject to Regulation C where a creditor voluntarily reports information under Regulation C, reported such information in the past five years, or may report such information in the near future.

C. Changes to Applicant Information Collection for HMDA Reporters

Many HMDA reporters are also subject to the collection requirements of § 1002.13. For those HMDA reporters, the rule provides clarity that compliance with applicant information collection under Regulation C generally satisfies similar requirements under Regulation B. HMDA reporters who at some point no longer are required to comply with HMDA can continue to collect certain applicant information as provided for in § 1002.5(a)(4).

D. Changes to Regulation B Model Forms

The rule makes certain changes to the Regulation B appendix. The rule amends the Regulation B appendix to provide two options: a model form for collecting aggregate applicant

race and ethnicity information and a cross-reference to the Regulation C appendix model form for collecting disaggregated applicant race and ethnicity information. The rule also removes as outdated the existing version of the URLA contained in the Regulation B appendix, effective January 1, 2022. The rule does not add the 2016 URLA to the Regulation B appendix; that form is subject to a separate *Federal Register* notice issued by the Bureau acknowledging its compliance with certain provisions of Regulation B.⁸

II. Background

A. Regulation B and Ethnicity and Race Information Collection

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

Section 1002.13 sets forth rules for collecting information about an applicant's ethnicity, race, sex, marital status, and age under Regulation B. (In this document, "applicant demographic information" refers to information about an applicant's ethnicity, race, or sex information, while "certain protected applicant-characteristic information" refers to all information collected under

⁸ Status of New Uniform Loan Application and Collection of Expanded Home Mortgage Information About Ethnicity and Race in 2017, 81 FR 66930 (Sept. 29, 2016).

§ 1002.13, including age and marital status.) Under § 1002.13(a)(1), creditors that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied (or to be occupied) by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must collect certain protected applicant-characteristic information, including specified race and ethnicity categories. These race and ethnicity categories correspond to the Office of Management and Budget (OMB) minimum standards for the classification of Federal data on ethnicity and race.⁹ Certain of these categories include several more specific race, heritage, nationality, or country of origin groups. For example, Hispanic or Latino as defined by OMB for the 2010 Census refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.¹⁰ Section 1002.13(b) through (c) provides instructions on the manner of collection. Unlike financial institutions covered by Regulation C, creditors subject to § 1002.13 but not to Regulation C are required only to collect and retain, but not to report, the required protected applicant-characteristic information.

B. 2015 HMDA Final Rule

Regulation C implements HMDA and sets out specific requirements for the collection, recording, reporting, and disclosure of mortgage lending information, including a requirement to collect and report applicant demographic information. In July 2014, the Bureau proposed amendments to Regulation C to implement the Dodd-Frank Act changes to require collection, recording, and reporting of additional information to further HMDA's purposes, and to

⁹ Revision of the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782, 5878-90 (Oct. 30, 1997).

¹⁰ See U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010*, at 2 (Mar. 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

modernize the manner in which covered institutions report HMDA data.¹¹ The Bureau published a final rule on October 28, 2015, amending Regulation C, with many of the amendments taking effect January 1, 2018.¹² (In this document, “current Regulation C” refers to Regulation C prior to January 1, 2018, and “revised Regulation C” refers to Regulation C as it will be in effect on or after January 1, 2018, as amended by the 2015 HMDA Final Rule.) For data collected in or after 2018, the 2015 HMDA Final Rule amends the requirement for collection and reporting of applicant demographic information. Specifically, covered institutions must permit applicants to self-identify their ethnicity and race using certain disaggregated ethnic and racial subcategories such as Mexican, Puerto Rican, or Cuban under the aggregate category Hispanic or Latino. Covered institutions will report the disaggregated information provided by applicants. However, revised Regulation C will not require or permit covered institutions to use the disaggregated subcategories when collecting and reporting the applicant’s ethnicity and race based on visual observation or surname.¹³

Revised Regulation C § 1003.2(g)(1)(v) and 1003.2(g)(2)(ii) also introduces an exclusion from the definition of financial institution, from which the duty to report HMDA data flows, for entities that, among other criteria, originated fewer than 25 closed-end mortgage loans or fewer than 100 open-end lines of credit in either of the two preceding calendar years.¹⁴ The Bureau recently adopted amendments to Regulation C that will temporarily increase the threshold for collecting and reporting data on certain loans. Financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years will not be required to begin

¹¹ Home Mortgage Disclosure (Regulation C), 79 FR 51731 (Aug. 29, 2014).

¹² 80 FR 66128 (Oct. 28, 2015).

¹³ *Id.* at 66314 (amendments to appendix B to Regulation C, effective January 1, 2018).

¹⁴ *Id.* at 66148.

collecting such data until January 1, 2020.¹⁵ As a result, when revised Regulation C takes effect, an institution's obligation to collect and report information under Regulation C may change over time based on its prior loan volume.

C. Uniform Residential Loan Application

The Enterprises, currently under the conservatorship of the Federal Housing Finance Agency (FHFA), prepare and periodically revise the URLA used by many lenders for certain dwelling-related loans. A mortgage loan application must be documented using the URLA in the mortgage loan file for the loan to be eligible for sale to the Enterprises.¹⁶ A version of the URLA dated January 2004 (2004 URLA) is included in the Regulation B appendix as a model form for use in complying with § 1002.13. The appendix provides that the use of its model forms is optional under Regulation B but that, if a creditor uses an appropriate appendix B model form, or modifies a form in accordance with instructions provided in appendix B, that creditor shall be deemed to be acting in compliance with § 1002.5(b) through (d).¹⁷ The Enterprises, under the conservatorship of the FHFA, issued a revised and redesigned URLA on August 23, 2016 (2016

¹⁵ 82 FR 43088, 43093–43096 (Sept. 13, 2017); *see also id.* at 43132, 43145 (§§ 1003.2(g)(1)(v)(B), (g)(2)(ii)(B), and 1003.3(c)(12)). This temporary increase in the open-end threshold will provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the open-end threshold for data collected beginning January 1, 2020.

¹⁶ Fannie Mae, “Selling Guide: Single Family Seller Servicer,” at § B1-1-01 (Dec. 16, 2014), *available at* <https://www.fanniemae.com/content/guide/selling/b1/1/01.html>; Freddie Mac, “Single-Family Seller/Servicer Guide” (Sep. 21, 2016), § 3401.7, *available at* <http://www.freddiemac.com/singlefamily/guide/bulletins/snapshot.html>.

¹⁷ Comment appendix B–1 provides that a previous version of the URLA, dated October 1992, may be used by creditors without violating Regulation B. In addition, comment appendix B–2 provides that the home-improvement and energy loan application form prepared by the Enterprises, dated October 1986, complies with the requirements of Regulation B for some creditors but not others, depending on whether the creditor is governed by § 1002.13(a) or subject to a substitute monitoring program under § 1002.13(d). The Enterprises no longer offer the home-improvement and energy loan application form identified in comment app. B-2. *See* Fannie Mae, “Guide Forms,” *available at* <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (last visited Sept. 6, 2017) (listing all current selling and servicing guide forms); *see also* Freddie Mac, “Forms and Documents,” *available at* <http://www.freddiemac.com/singlefamily/guide/> (last visited Sept. 6, 2017) (same).

URLA).¹⁸ Among other changes, the 2016 URLA includes a Demographic Information section (section 7) that addresses the requirements in revised Regulation C for collecting applicant demographic information, including the requirement that financial institutions permit applicants to self-identify using disaggregated ethnicity and race categories beginning January 1, 2018. The Enterprises also made available a Demographic Information Addendum, which is identical in form to section 7 of the 2016 URLA.¹⁹ The Enterprises have advised that the Demographic Information Addendum may be used by lenders at any time on or after January 1, 2017, as a replacement for section X (Information for Government Monitoring Purposes) in the current URLA, dated July 2005 (revised June 2009). The Enterprises have not yet provided a date when lenders may begin using the 2016 URLA or the date lenders are required to use the 2016 URLA (the cutover date), but have stated their intention to collaborate with industry stakeholders to help shape the implementation timeline for the 2016 URLA, with a goal to provide lenders with more precise information in 2017 regarding the cutover date.²⁰

¹⁸ See Fannie Mae, “Uniform Residential Loan Application,” <https://www.fanniemae.com/singlefamily/uniform-residential-loan-application#> (last visited Sept. 6, 2017); see also Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, “The Redesigned URLA and ULAD Mapping Document Are Here!” (Aug. 23, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-august-2016.pdf>.

¹⁹ Fannie Mae, Form 1003 and Freddie Mac Form 65, “Demographic Information Addendum,” (Aug. 2016), available at https://www.fanniemae.com/content/guide_form/urla-demographic-addendum.pdf.

²⁰ Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, “URLA Implementation Guidance and Update,” (Nov. 1, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-november-2016.pdf>; Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, “Uniform Residential Loan Application (URLA) / Uniform Loan Application Dataset (ULAD) FAQs,” at ¶ 6 (Nov. 1, 2016), available at <https://www.fanniemae.com/content/faq/urla-ulad-faqs.pdf>.

D. Bureau Approval Notice

On September 23, 2016, the Bureau issued a notice concerning the collection of expanded information about ethnicity and race in 2017 (Bureau Approval Notice).²¹ Before the January 1, 2018, effective date of most provisions of the 2015 HMDA Final Rule, inquiries to collect applicant demographic information using disaggregated ethnic and racial categories are not required by current Regulation C and would not have been allowed under Regulation B § 1002.5(a)(2), and therefore creditors would have been prohibited by Regulation B § 1002.5(b) from requesting applicants to self-identify using disaggregated ethnic and racial categories before January 1, 2018. The Bureau Approval Notice provided that, anytime from January 1, 2017 through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in the revised Regulation C appendix. During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories as instructed in the revised Regulation C appendix shall be deemed to be in compliance with Regulation B § 1002.13(a)(i). In the same notice, the Bureau also determined that the relevant language in the 2016 URLA is in compliance with the regulatory provisions of Regulation B § 1002.5(b) through (d), regarding requests for protected applicant-characteristic information and certain other information. The notice provides that, although the use of the 2016 URLA by creditors is not required under Regulation B, a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) acts in compliance with § 1002.5(b) through (d).

²¹ 81 FR 66930 (Sept. 29, 2016).

III. Summary of the Rulemaking Process

A. Pre-Proposal Outreach

As part of the Bureau's outreach to financial institutions, vendors, and other mortgage industry participants to prepare for the implementation of the 2015 HMDA Final Rule, the Bureau received questions about the requirement to permit applicants to self-identify using disaggregated ethnicity and race categories. The Bureau also received questions as to how that requirement intersected with compliance obligations under Regulation B. The Bureau further received questions related to the Bureau Approval Notice about whether the approval for collecting disaggregated ethnicity and race categories under Regulation B in 2017 would be extended to 2018. In light of these inquiries, the Bureau determined that it would be beneficial to establish through rulemaking appropriate standards in Regulation B concerning the collection of an applicant's ethnicity and race information similar to those in revised Regulation C.

Because many of the financial institutions most affected by this proposed rule are supervised by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), and the National Credit Union Administration (NCUA), the Bureau conducted outreach to these agencies. The Bureau specifically sought input from these agencies concerning their use of applicant ethnicity and race information collected under § 1002.13 but not reported or anticipated to be reported under Regulation C and their views on appropriate standards for collection and retention of this information. The Bureau also conducted outreach with other Federal agencies, including the Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, the Department of the Treasury,

and the Federal Financial Institutions Examination Counsel (FFIEC) concerning the proposed rule.

B. The Bureau's Proposal

On March 24, 2017, the Bureau issued the 2017 ECOA Proposal on its website. The proposal was published in the Federal Register on April 4, 2017.²²

Specifically, the Bureau proposed an amendment to § 1002.13 to permit a creditor additional flexibility in how it collects applicant ethnicity and race information by allowing use of either aggregate or disaggregate ethnicity and race categories on an application-by-application basis. In addition, the Bureau proposed amendments adding § 1002.5(a)(4) to permit creditors to collect applicant demographic information when they would not otherwise be required to do so in certain scenarios where creditors may benefit from being able to adopt Regulation C compliance practices before they become required or maintain them when they are no longer required. The Bureau also proposed to remove the outdated 2004 URLA from the Regulation B appendix, add generic model forms for compliance with § 1002.13, and maintain approval of the 2016 URLA through a freestanding approval notice.

C. Feedback Provided to the Bureau

The Bureau received approximately 36 comments on the 2017 ECOA Proposal during the comment period from consumer advocacy groups, national and State trade associations, banks, individuals, and industry service providers. Comments are publicly available at <http://www.regulations.gov>. This information is discussed below in the section-by-section

²² 82 FR 16307 (Apr. 4, 2017).

analysis and subsequent parts of the notice, as applicable. The Bureau considered the comments, and adopts a modified final rule as described below in the section-by-section analysis.

Comments Related to 2015 HMDA Final Rule

The Bureau received several comments on the proposal concerning the 2015 HMDA Final Rule. These comments were primarily from small financial institutions. Commenters expressed concern that the data points added to Regulation C in the 2015 HMDA Final Rule burdened financial institutions and, because of this burden, the commenters encouraged the Bureau to reduce the HMDA data fields to only statutorily required fields. Commenters also requested that the Bureau increase the thresholds for being a HMDA reporter to a higher limit that would exempt more creditors from HMDA. The Bureau did not propose changes to Regulation C in this rulemaking. The Bureau considered these comments but does not believe that the comments are relevant to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal. The issues raised by these comments were considered as part of the rulemaking to revise Regulation C and addressed in the 2015 HMDA Final Rule, and the Bureau has not reassessed those issues as part of this rulemaking, which concerns only issues relating to the alignment of collection of certain information about applicants under Regulation B and Regulation C and the status and use of the URLA. With respect to the open-end line of credit threshold for HMDA reporting, the Bureau adopted amendments to Regulation C that temporarily increases the open-end line of credit threshold to 500 until January 1, 2020.²³ This temporary increase in the open-end threshold will

²³ 82 FR 43088, 43093–43096 (Sept. 13, 2017); *see also id.* at 43132, 43145 (§§ 1003.2(g)(1)(v)(B), (g)(2)(ii)(B), and 1003.3(c)(12)).

provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the open-end threshold for data collected beginning January 1, 2020.

Comments Related to Other Changes to Regulation B

Some commenters proposed other changes to Regulation B unrelated to alignment with Regulation C or applicant demographic information collection for mortgage applicants. These proposed changes included establishing applicant demographic information collection, reporting, and public disclosure requirements for automobile creditors similar to HMDA, requiring adverse action notices in certain situations involving counteroffers, and adding record-keeping and applicant demographic information collection requirements for brokers and arrangers of credit. The Bureau did not propose these changes to Regulation B. The Bureau does not believe that these comments are relevant to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal.

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under section 703 of ECOA, as amended by section 1085 of the Dodd-Frank Act.²⁴ ECOA authorizes the Bureau to issue regulations to carry out the purposes of ECOA.²⁵ These regulations may contain but are not limited to such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA.²⁶ A purpose of ECOA is to

²⁴ 15 U.S.C. 1691b; Public Law 111–203, 124 Stat. 1376, 2083–84 (2010).

²⁵ 15 U.S.C. 1691b(a).

²⁶ *Id.*

promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract) or other protected characteristics.²⁷ ECOA section 703 serves as a source of authority to establish rules concerning the taking and evaluation of credit applications, collection and retention of applicant demographic information concerning the applicant or co-applicant, use of designated model forms, and substantive requirements to carry out the purposes of ECOA.

The Bureau is also issuing this final rule pursuant to its authority under sections 1022 and 1061 of the Dodd-Frank Act. Under Dodd-Frank Act section 1022(b)(1), the Bureau has authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.²⁸ Section 1061 of the Dodd-Frank Act transferred to the Bureau consumer financial protection functions previously vested in certain other Federal agencies, including the authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law and perform appropriate functions to promulgate and review such rules, orders, and guidelines.²⁹ Both ECOA and title X of the Dodd-Frank Act are consumer financial laws.³⁰ Accordingly, the Bureau has authority to issue regulations to administer ECOA.

V. Section-by-Section Analysis

Section 1002.5 Rules Concerning Requests for Information

5(a) General Rules

²⁷ 12 CFR 1002.1(b).

²⁸ Public Law 111–203, 124 Stat. 1375, 1980 (2010) (codified at 12 U.S.C. 5512(b)(1)).

²⁹ Public Law 111–203, 124 Stat. 1375, 2035–39 (2010) (codified at 12 U.S.C. 5581).

³⁰ 12 U.S.C. 5481(12), (14).

Section 1002.5 provides rules concerning requests for information. In general, § 1002.5(b) prohibits a creditor from inquiring about protected applicant-characteristic information in connection with a credit transaction, except under certain circumstances. The Bureau proposed to amend § 1002.5(a)(4) to authorize creditors to collect such information under certain additional circumstances. In addition, the Bureau proposed to add commentary for § 1002.5(a)(4) to provide guidance and proposed amendments to comment 5(a)(2)-2 to make conforming changes and further align Regulation B and revised Regulation C.

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

Section 1002.5(a)(2) provides that, notwithstanding the limitations in § 1002.5(b) through (d) on collecting protected applicant-characteristic information and other applicant information, a creditor shall request information for monitoring purposes as required by § 1002.13. Section 1002.5(a)(2) further provides that a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B, or other Federal or State statutes and regulations. However, § 1002.5(a)(2) does not authorize collection of information beyond what is required by law. The Bureau proposed to add § 1002.5(a)(4) to authorize a creditor to obtain information in certain additional specified circumstances other than as described in § 1002.5(a)(2). Proposed § 1002.5(a)(4)(i) and (ii) would permit a creditor that is a financial institution under revised Regulation C § 1003.2(g) to collect demographic information of an applicant for a closed-end mortgage loan or an open-end line of credit that is an excluded transaction under revised Regulation C § 1003.3(c)(11) or § 1003.3(c)(12) if it submits HMDA

data concerning those applications and loans or if it submitted HMDA data concerning closed-end mortgage loans or open-end lines of credit in any of the preceding five calendar years.³¹

Proposed § 1002.5(a)(4)(iii) would permit a creditor that falls below both of the revised Regulation C loan-volume thresholds to continue to collect applicant demographic information for five calendar years after first becoming exempt from HMDA reporting. Proposed § 1002.5(a)(4)(iv) would permit a creditor that exceeds a revised Regulation C loan-volume threshold in the first year of a two-year threshold period to collect, in the second year, applicant demographic information for a loan that would otherwise be a covered loan under Regulation C. For the reasons provided below, the Bureau is adopting § 1002.5(a)(4)(i) through (iv) as proposed. In addition, the Bureau is adopting new § 1002.5(a)(4)(v) and (vi) in response to comments, as discussed below.

The Bureau solicited comment on permitting the collection of applicant demographic information in the circumstances described in proposed § 1002.5(a)(4), and, in particular, regarding the proposed five-year time frame, and whether there are other specific, narrowly tailored circumstances not described in § 1002.5(a)(2) or proposed § 1002.5(a)(4) under which a creditor would benefit from being able to collect applicant demographic information for mortgage loan applicants. A large number of industry commenters supported proposed § 1002.5(a)(4) and the five-year timeframe for § 1002.5(a)(4)(i), (ii), and (iii). Commenters

³¹ The Bureau recently amended Regulation C to explicitly permit optional reporting of closed-end mortgage loans and open-end lines of credit even if a financial institution does not meet the applicable loan volume threshold. 82 FR 43088, 43100–43102 (Sept. 13, 2017); *see also id.* at 43132 (§ 1003.3(c)(11) and (12)). Regulation B § 1002.5(a)(4)(i) and (ii) as finalized in this rule correspond to those provisions in revised Regulation C and permit the collection of applicant demographic information necessary to facilitate that optional reporting. Other circumstances permitting voluntary collection of applicant demographic information finalized in this rule do not correspond to provisions in Regulation C addressing optional reporting.

noted that being able to collect applicant demographic data when not required by HMDA would facilitate better data collection procedures, aid in retaining system and organizational knowledge, help prepare for reporting data in subsequent years, and help creditors transition to the 2016 URLA. Commenters noted that the five-year timeframe for § 1002.5(a)(4)(i), (ii), and (iii) was realistic and would provide enough time to allow institutions to keep their systems updated, but not so long that it would be unlikely the institution would become a HMDA reporter again.

One commenter requested clarification that the voluntary collection under proposed § 1002.5(a)(4) was truly voluntary and not a new compliance requirement. Proposed § 1002.5(a)(4) provides authorization to collect applicant demographic information, but does not require collection in the circumstances described. As discussed below, though, a creditor must comply with the record retention requirements of § 1002.12 if it chooses to take advantage of the authorization in § 1002.5(a)(4). The Bureau also proposed comment 5(a)(4)–1 to provide guidance on proposed § 1002.5(a)(4) and to highlight the voluntary nature of the rule. The Bureau is finalizing this comment as proposed. Comment 5(a)(4)–1 provides that information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C may nevertheless be collected under the circumstances set forth in § 1002.5(a)(4) without violating § 1002.5(b). It also provides that the information must be retained pursuant to the requirements of § 1002.12.

Two industry commenters proposed two alternative voluntary collection authorizations that would replace proposed § 1002.5(a)(4). One alternative would permit collection of applicant demographic information for any loan secured by an applicant's dwelling with no timeframe restriction. The other alternative would permit collection of applicant demographic information for any covered loan under Regulation C with no timeframe restriction, even if the

creditor was not a financial institution under Regulation C. The Bureau is not adopting these proposed alternatives. The primary difference between these proposals and the collection permitted by final § 1002.5(a)(4)(i), (ii), and (iii) would be the removal of the five-year timeframe. As the Bureau noted in the 2017 ECOA Proposal, without a time limit such voluntary collection would permit a creditor to collect protected applicant-characteristic information for a period of time that is too attenuated from any past Regulation C legal requirement and associated compliance process. While final § 1002.5(a)(4) provides a narrow exception to the general limitations in § 1002.5(b) through (d), these alternative proposals would create a much broader exception to the general limitations on collecting such information in Regulation B. The Bureau believes that such a broad exception could significantly alter the limitations and would not be appropriate without further rulemaking and consideration.

Industry commenters proposed two additional, narrowly tailored exceptions that the Bureau is substantially adopting. One industry commenter proposed permitting collection for dwelling-secured loans made primarily for a business or commercial purpose that might be covered loans, regardless of whether or not they are for the purpose of home purchase, refinancing, or home improvement and therefore reportable under revised Regulation C. Under revised Regulation C, dwelling-secured loans made primarily for a business or commercial purpose are only required to be reported if they meet the definition of a home purchase, refinancing, or home improvement loan.³² In contrast, dwelling-secured loans that are not made primarily for a business or commercial purpose are generally required to be reported even if they

³² See revised Regulation C § 1003.3(c)(10). 80 FR 66128, 66139, and 66169 (Oct. 28, 2015).

do not meet the definition of a home purchase, refinancing, or home improvement loan.³³ The Bureau believes that permitting collection of applicant demographic information in this narrowly tailored circumstance may be beneficial for some financial institutions because it would allow them to collect applicant demographic information early in the collection process, when they have determined that the loan would be dwelling secured and primarily for a business or commercial purpose but may not yet have determined whether it meets the definition of a home purchase loan, refinancing, or home improvement loan under revised Regulation C. Collection of applicant demographic information at that point in the application process may allow for more consistent collection and may be easier to integrate into the application process when compared with collection after HMDA coverage has been determined. The permitted collection may also alleviate concerns about violating § 1002.5(b) if a financial institution collects applicant demographic information for a particular dwelling-secured loan made primarily for a business or commercial purpose, based on the financial institution's belief that it is a home purchase loan, a refinancing, or a home improvement loan, but the financial institution later discovers that this belief was mistaken, and therefore collection of applicant demographic information was not required under Regulation C. The Bureau is adopting § 1002.5(a)(4)(v) to address the commenter's suggestion. Section 1002.5(a)(4)(v) permits a creditor that is a financial institution under revised Regulation C § 1003.2(g) or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under revised Regulation C § 1003.2(g) to collect information regarding the ethnicity, race, and sex of an applicant for a loan

³³ See revised Regulation C § 1003.2(e), 80 FR 66128, 80 FR 66140, and 66144 (Oct. 28, 2015).

that would otherwise be a covered loan under revised Regulation C § 1003.2(e) if not excluded by revised Regulation C § 1003.3(c)(10).

One industry commenter also noted that the 2016 URLA includes a form for the collection of applicant demographic information for additional borrowers and does not necessarily limit the collection to the applicant and the first co-applicant, even though Regulation C requires financial institutions to provide the ethnicity, race and sex information only for the applicant and first co-applicant.³⁴ The commenter suggested that the Bureau revise § 1002.5(b) to permit collection of demographic information for any additional co-applicants using the 2016 URLA. As discussed below in the section-by-section analysis for § 1002.13, the Bureau is amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant. With the introduction of the 2016 URLA the Bureau believes that permitting collection of applicant demographic information in this narrowly tailored circumstance may be beneficial for some financial institutions because it would allow them to use more easily standard forms for collection of applicant demographic information without identifying at the time of collection which applicants are the primary and first co-applicant. The Bureau is adopting § 1002.5(a)(4)(vi) to address the commenter's suggestion by clarifying that the collection of applicant demographic information for additional borrowers is permitted. Accordingly, § 1002.5(a)(4)(vi) permits a creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant to collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a

³⁴ Fannie Mae, "Uniform Residential Loan Application," <https://www.fanniemae.com/singlefamily/uniform-residential-loan-application#> (last visited Sept. 6, 2017).

covered loan under Regulation C § 1003.2(e), or for a loan described in paragraphs (a)(4)(i) through (v). Authorization for this collection, consistent with the other provisions of § 1002.5(a)(4), is not limited to collection using the 2016 URLA.

Having considered the comments received and for the reasons discussed above, the Bureau is finalizing § 1002.5(a)(4)(i) through (iv) generally as proposed with minor wording changes for clarity, finalizing new § 1002.5(a)(4)(v) and (vi), and finalizing the conforming amendments to comment 5(a)(2)–2 and new comment 5(a)(4)–1 as proposed. The Bureau believes that these provisions further the purposes of ECOA by easing overall burden on creditors and improving the quality of the data that is used to promote the availability of credit to all creditworthy applicants. The Bureau also believes that permitting creditors to collect certain protected applicant-characteristic information in these circumstances provides a narrow exception to the general limitations in § 1002.5(b) through (d) respects the purposes of those prohibitions.

Section 1002.12 Record Retention

Section 1002.12 provides rules concerning permissible and required record retention. In light of proposed § 1002.5(a)(4), the Bureau also proposed to amend § 1002.12(b)(1)(i) to require retention of certain protected applicant-characteristic information obtained pursuant to proposed § 1002.5(a)(4).

12(b) Preservation of Records

12(b)(1) Applications

12(b)(1)(i)

Section 1002.12(b)(1) provides that a creditor must retain certain records for 25 months, or 12 months for business credit.³⁵ Regulation B § 1002.2(g) defines business credit to mean, with certain exceptions, extensions of credit primarily for business or commercial purposes. Under § 1002.12(b)(1)(i), these records include any information required to be obtained concerning characteristics of credit applicants to monitor compliance with ECOA and Regulation B or other similar law. The Bureau proposed to amend § 1002.12(b)(1)(i) to include within its preservation requirements any information obtained pursuant to § 1002.5(a)(4). The Bureau also proposed to amend comment 12(b)–2 to require retention of applicant demographic information obtained pursuant to § 1002.5(a)(4).

Two commenters supported the proposal regarding record retention, noting that it would facilitate monitoring of fair lending laws and serve ECOA’s purposes and that it seemed appropriate given the proposed amendments to § 1002.5(a)(4). One commenter noted that Regulation B § 1002.12(b)(1) provides a 25-month record retention period for most transactions, but a 12-month period for business credit transactions, and that the Bureau’s proposal would create a longer retention period for business credit for which a creditor voluntarily collected applicant demographic information under proposed § 1002.5(a)(4). The Bureau acknowledges that the preamble to the proposed rule stated that § 1002.12(b)(1) required retention of certain

³⁵ Section 1002.12(b)(1) provides that creditors must retain records for 12 months for business credit, except as provided in § 1002.12(b)(5).

records for 25 months and did not acknowledge the different 12 month period for business credit provided for in § 1002.12(b)(1). The Bureau did not intend to extend the record retention period under Regulation B for business credit transactions through the proposal and this final rule does not do so. The Bureau is finalizing the amendments to § 1002.12(b)(1)(i) and comment 12(b)–2 as proposed.

The Bureau believes that, if a creditor voluntarily collects applicant demographic information pursuant to § 1002.5(a)(4), the creditor should be required to maintain those records in the same manner as it does for protected applicant-characteristic information it is required to collect. This will allow the information to be available for monitoring and enforcing compliance with ECOA, Regulation B, and other Federal or State statutes or regulations. Without a corresponding record retention requirement, a creditor might collect but not retain the information, thus preventing the use of the information for these purposes.

Section 1002.13 Information for Monitoring Purposes

Section 1002.13 sets forth the scope, required information, and manner for the mandatory collection of certain protected applicant-characteristic information under Regulation B. The Bureau proposed to amend § 1002.13(a)(1)(i) to provide a creditor flexibility to collect applicant ethnicity and race information using either aggregate or disaggregated categories, thereby furthering the purposes of ECOA, reducing compliance burden, and facilitating use of the 2016 URLA. In addition, the Bureau proposed several revisions to § 1002.13(b) and (c) and its commentary to align further the collection requirements of Regulation B with revised Regulation C.

13(a) Information to be Requested

13(a)(1)

13(a)(1)(i)

Section 1002.13(a) sets forth certain protected applicant-characteristic information a creditor must collect for applications on certain dwelling-secured loans. Current § 1002.13(a)(1) requires that creditors collect information regarding the applicant's ethnicity and race using two aggregate ethnicity categories (Hispanic or Latino and Not Hispanic or Latino) and five aggregate race categories (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White). Proposed § 1002.13(a)(1)(i) provided that a creditor must collect the applicant's information using either the aggregate ethnicity and race categories currently required or the ethnicity and race categories and subcategories set forth in the revised Regulation C appendix, which provide disaggregated ethnicity and race categories. Through this proposed change, creditors taking applications for loans subject to § 1002.13(a)(1) but not required to submit HMDA data under Regulation C would have the option of either maintaining their current collection practices or transitioning to the revised Regulation C collection practices and the 2016 URLA. The Bureau also proposed comments 13(a)–7 and 13(a)–8 to provide that a creditor that collects applicant information in compliance with the revised Regulation C appendix will be acting in compliance with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information and to clarify that a creditor may choose on an application-by-application basis whether to collect aggregate or disaggregated information. For the reasons provided below, the Bureau is adopting § 1002.13(a) and comments 13(a)–7 and 13(a)–8 as proposed.

The Bureau solicited comment on its proposal to allow creditors to collect applicant race and ethnicity information using, at the creditor's option, either aggregate or disaggregated categories. A large number of industry commenters supported the proposed amendments to § 1002.13(a)(1)(i). Many of these commenters stated that the proposal would simplify the collection process and reduce regulatory burden by ensuring that creditors are not subject to differing collection requirements under Regulation B and Regulation C. Commenters also expressed the view that the proposal would ease compliance burden because it would provide creditors the flexibility to use the method most suitable for them. Commenters also noted that it would facilitate use of the 2016 URLA. One industry commenter supporting the proposal stated that mandating disaggregated collection for all creditors would be unduly burdensome.

A number of commenters recommended alternative approaches to proposed § 1002.13(a)(1)(i). Two industry groups suggested that the Bureau remove § 1002.13 altogether. One of these commenters stated that the collection of applicant demographic information is duplicative of Regulation C and that removing this requirement in Regulation B would reduce burden. The other commenter asserted that collection of applicant demographic information requires significant time and resources for Regulation B-only creditors and that the information is virtually never used.

On the other hand, consumer advocacy groups and an industry service provider suggested that creditors be required to collect disaggregated ethnicity and race information after a multi-year phase in period. The consumer advocacy groups stated that mandatory disaggregated collection would ensure uniform data collection practices and facilitate fair lending analysis, including identifying potential discrimination against racial and ethnic subgroups. The consumer advocacy groups further expressed the view that mandatory disaggregated collection would

prepare lenders to submit HMDA data in the future should they cross a reporting threshold and that the burden of mandatory disaggregated collection would not be significant because the 2016 URLA makes it easy to record these categories. An industry service provider also supported a uniform standard based on the requirements in revised Regulation C in order to reduce the costs of supporting dual collection methods. Similarly, an industry commenter stated that the collection methods used in Regulation B and Regulation C should match.

The Bureau is not adopting any of the alternatives suggested by commenters. Although the information collected under § 1002.13 and Regulation C overlap, in part, as discussed in the 2017 ECOA Proposal, regulators will rely on applicant demographic information collected under § 1002.13 to supervise and enforce fair lending laws, including for a substantial number of creditors that will not be required to report under revised Regulation C.³⁶ Thus, the Bureau concludes that retaining § 1002.13 serves the purposes of ECOA to promote the availability of credit to all creditworthy applicants without regard to protected characteristics.

On the other hand, the Bureau believes that requiring disaggregated collection for Regulation B-only creditors would impose additional burden on creditors without significant benefits. Requiring disaggregated collection, even after a multi-year phase in period, would add complexity and burden to an already complex timeline that includes implementation of the 2015 HMDA Final Rule and transition to the 2016 URLA. As further discussed in the Section 1022(b) analysis below, the Bureau believes that the additional burden would have few benefits. The incremental benefits of this alternative are also likely to be low because many creditors will collect disaggregated categories under Regulation B in any case, either because they are required

³⁶ 82 FR 16307, 16313, and 16317–18 (Apr. 4, 2017).

to do so under revised Regulation C or as part of the transition to the 2016 URLA. The Bureau is therefore not requiring the collection of disaggregated categories for Regulation B-only creditors. The Bureau may reevaluate the need for mandatory disaggregated collection under § 1002.13 after implementation of the 2015 HMDA Final Rule and transition to the 2016 URLA, when more information is available on creditor collection practices. If it appears that action is warranted, the Bureau will engage in further rulemaking as appropriate.

Two industry commenters, while supportive of the flexibility provided in the 2017 ECOA Proposal, sought clarification on how aggregate and disaggregated data will be evaluated against one another, including how aggregate information collected under Regulation B would be compared to disaggregated information collected under revised Regulation C. The commenters expressed concern that the optionality could result in dissimilar demographic reporting and potentially greater compliance burden for creditors who choose to continue to collect aggregate information. The Bureau does not believe that flexibility will result in additional burden and reiterates that § 1002.13(a)(1)(i) would permit a Regulation B-only creditor to maintain its existing practices and collect aggregate race and ethnicity categories. Moreover, because both methods use the same aggregate categories, a creditor can compare information collected under either method by rolling up the disaggregated subcategories into their corresponding aggregate categories. The Bureau, however, declines to set forth specific instructions on how a data user should evaluate the information collected pursuant to § 1002.13 or Regulation C as the Bureau only sought comment on data collection practices under § 1002.13. Having considered the comments received and for the reasons discussed above, the Bureau is finalizing § 1002.13(a)(1)(i) as proposed.

An industry service provider asked the Bureau to provide guidance regarding whether the term “natural person” as used in Regulation B and Regulation C includes living trusts or sole proprietorships. Because Regulation B and Regulation C do not provide inconsistent instructions on the scope of the term “natural person,” the Bureau declines to provide additional guidance on this issue within this final rule, which, as related to § 1002.13, is limited to modifications that harmonize the collection requirements of Regulation B and Regulation C.

The Bureau proposed revised comment 13(a)–7 to provide that, for applications subject to § 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of the revised Regulation C appendix will be acting in compliance § 1002.13 concerning the collection of an applicant’s ethnicity, race, and sex information. The Bureau received one industry comment supporting alignment of the instructions in § 1002.13 with the revised Regulation C appendix. The commenter noted that differing instructions may lead to uncertainty and that Regulation B-only creditors would benefit from the additional instructions provided in revised Regulation C. No commenters opposed the proposed comment, and so the Bureau is finalizing comment 13(a)–7 as proposed.

As proposed, comment 13(a)–8 permitted a creditor to choose on an application-by-application basis whether to collect aggregate information pursuant to § 1002.13(a)(1)(i)(A) or disaggregated information pursuant to § 1002.13(a)(1)(i)(B). One industry commenter generally supported the proposal, noting the flexibility would reduce compliance burden. Another industry commenter was concerned about how a creditor would decide which collection method to use and whether the instruction could have a discriminatory impact. Various consumer advocacy groups also opposed proposed comment 13(a)–8, arguing that the instruction could encourage

creditors to develop and maintain haphazard, inaccurate, and inconsistent data collection methods.

The Bureau is adopting comment 13(a)–8 as proposed. The Bureau believes that most creditors will voluntarily adopt a consistent collection method because uniform practices are generally easier and less costly for creditors to implement. If the Bureau were to require creditors to adopt a consistent collection method across applications, the Bureau would also need to issue additional guidance in the official commentary concerning how often and under what circumstances a creditor may change its collection method, among other implementation issues. The Bureau believes that such guidance would add complexity and compliance burden on creditors without furthering the purposes of ECOA, and so declines to do so as part of this rulemaking.

The Bureau received several additional comments about topics other than those raised by the Bureau in the 2017 ECOA Proposal. These included, for example, a comment supporting the collection of loan officers' demographic information, a request to collect information on whether the applicant is divorced, a request for guidance on when previously gathered applicant demographic information can be used for new applications, and a request that the Bureau provide a safe harbor for information collected in 2017. The Bureau did not propose these changes in the 2017 ECOA Proposal. The Bureau does not believe that these comments are relevant to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal, which, as related to § 1002.13, is limited to modifications that harmonize the collection requirements of Regulation B and Regulation C.

For the reasons discussed above, the Bureau is adopting § 1002.13(a)(1)(i) and comments 13(a)–7 and 13(a)–8 as proposed. The Bureau believes that creditors should not be subject to

differing collection requirements, and that aligning the requirements of § 1002.13 and revised Regulation C furthers the purposes of ECOA by facilitating practices that promote the availability of credit to all creditworthy applicants.

13(b) Obtaining Information

Section 1002.13(b) discusses how creditors may obtain applicant information required under § 1002.13(a). Among other instructions, current § 1002.13(b) provides that, if an applicant chooses not to provide some or all of the requested applicant demographic information, the creditor must, in certain circumstances, collect the information on the basis of visual observation or surname. If a creditor collects disaggregated race and ethnicity information pursuant to § 1002.13(a)(1)(i)(B), proposed § 1002.13(b) provided that a creditor must comply with the restrictions on the collection of an applicant's ethnicity and race on the basis of visual observation or surname set forth in the revised Regulation C appendix, which limits such collection to the aggregate race and ethnicity categories. For the reasons provided below, the Bureau is adopting the revisions to § 1002.13(b) concerning the collection of ethnicity and race information on the basis of visual observation or surname as proposed. To further align the collection requirements of Regulation B and Regulation C, the Bureau is further amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant.

The few commenters who specifically addressed the Bureau's proposed amendment to § 1002.13(b) generally supported the modification, noting that it aligned with revised Regulation C and would facilitate consistent data collection. One commenter argued that the proposed rule would add complexity, however, as creditors would be required to report disaggregated information under revised Regulation C, permitted to collect such information under revised

§ 1002.13, but prohibited from collecting disaggregated information if the applicant does not provide it.

Two commenters opposed the collection of applicant demographic information on the basis of visual observation or surname under any circumstances. One commenter stated that extending the requirement to collect applicant demographic information on the basis of visual observation or surname to Regulation B-only creditors is outside the scope of ECOA. The commenters also argued that such collection is often inaccurate, cannot be relied upon for fair lending analysis, and is contrary to the purposes of ECOA. In support, one of the commenters cited a report finding that 10 million Americans change their racial and ethnic identifications between U.S. Census surveys. The same commenter also cited a report by health researchers discussing, among other topics, that observer-selected race, often used for death certificates, may not match self-selected race. The commenters proposed that the requirement to collect applicant demographic information on the basis of visual observation or surname should be eliminated or that the Bureau provide additional instructions to aid creditors to identify an applicant's ethnicity and race based on visual observation or surname.

The Bureau will finalize as proposed the revisions to § 1002.13(b) concerning the collection of an applicant's ethnicity and race information on the basis of visual observation or surname. The requirement to collect, in certain circumstances, applicant demographic information on the basis of visual observation or surname where the applicant does not provide this information has been a longstanding requirement of § 1002.13(b). The amendment to § 1002.13(b) in the 2017 ECOA Proposal would not impose any new obligation on creditors to collect an applicant's ethnicity and race on the basis of visual observation or surname but, rather, would limit such collection to the aggregate ethnicity and race categories, even if the creditor

permits an applicant to self-identify using the disaggregated categories. The proposed amendment would align § 1002.13 collection of disaggregated information with the collection requirements of Regulation C. While the Bureau acknowledges that this limitation on the collection of applicant demographic information involves some complexity, the Bureau believes that, on balance, aligning § 1002.13 collection methods with Regulation C will be less complex than introducing different rules for § 1002.13(b) alone.

The Bureau declines to consider the proposals to eliminate altogether the requirement to collect applicant demographic information on the basis of visual observation or surname in § 1002.13 or to provide further instructions on how to collect such information as both proposals go beyond the issues on which the Bureau solicited comment. Indeed, given that Regulation C requires collection of certain applicant demographic information on the basis of visual observation or surname, adopting either proposal would undermine the purpose of this rulemaking by imposing different requirements in Regulation B and Regulation C.³⁷ Moreover, the cited studies conclude only that some applicants may self-identify as different races over time and that visual observation of race is not always accurate. Thus, even if the Bureau were reconsidering its approach to visual observation or surname collection, which it is not, the Bureau does not believe the evidence submitted by the commenters demonstrate that collection based on visual observation or surname do not serve the purposes of ECOA.

An industry service provider suggested the Bureau standardize the treatment of co-applicants between § 1002.13 and Regulation C. The commenter noted that the two rules imposed different requirements where there are multiple “applicants,” stating that while

³⁷ 80 FR 66128, 66187–88 (Oct. 28, 2015).

§ 1002.13 requires a financial institution to collect information from any applicant who is a natural person, the revised Regulation C appendix instructs a financial institution to provide applicant demographic information for only the applicant and the first co-applicant listed on the collection form. The industry service provider commented that this distinction makes data collection more complex and burdensome, and requested that the Bureau clarify the collection requirements for co-applicants under Regulation B.

The Bureau acknowledges that the requirement to collect or provide applicant demographic information from co-applicants differs between § 1002.13 and revised Regulation C. The Bureau concludes that these differences may create additional burden and complexity for creditors, who may need to modify their practices concerning co-applicant collection depending on whether collection is required under both Regulation B and revised Regulation C or only under revised Regulation C. The Bureau is therefore revising § 1002.13(b) to clarify that a creditor is permitted, but is not required, to collect the information set forth in § 1002.13(a) from a second or additional co-applicant. The Bureau believes this clarification will simplify collection practices and reduce compliance burden by aligning Regulation B and Regulation C. The clarification will also allow Regulation B-only creditors to maintain their existing practices under § 1002.13 if so desired. By providing flexibility and reducing burden, the Bureau believes this modification will further the purposes of ECOA by facilitating practices that promote the availability of credit to all creditworthy applicants. As discussed above in the section-by-section analysis for § 1002.5(a)(4), the Bureau is also adopting new § 1002.5(a)(4)(vi) to permit collection of applicant demographic information for second or additional co-applicants in certain circumstances, thereby providing additional optionality for creditors to maintain consistent collection practices under Regulation B and Regulation C.

For the reasons discussed above, the Bureau is finalizing as proposed the revisions to § 1002.13(b) concerning the collection of ethnicity and race information on the basis of visual observation or surname. To facilitate compliance with Regulation B and further align the collection requirements of Regulations B and Regulation C, the Bureau is also amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant.

Current comment 13(b)–1 provides guidance on the forms and collection methods a creditor may use to collect applicant information under § 1002.13(a). In the 2017 ECOA Proposal, the Bureau proposed to amend comment 13(b)–1 to reference the data collection model forms the Bureau proposed to provide in the Regulation B appendix. The Bureau also proposed to revise comment 13(b)–1 to reiterate that when a creditor collects only aggregate ethnicity and race information pursuant to § 1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. If a creditor collects applicant information pursuant to § 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity and more than one racial designation. The Bureau received no comments specifically addressing the revisions to proposed comment 13(b)–1, and so is finalizing it as proposed. Comments related to the data collection model forms are addressed in the section-by-section analysis of the Regulation B appendix.

13(c) Disclosure to Applicant(s)

Section 1002.13(c) sets forth disclosures a creditor must provide to an applicant when collecting the information set forth in § 1002.13(a). Current comment 13(c)–1 provides, among other information, that the Regulation B appendix contains a sample disclosure. The Bureau proposed to amend comment 13(c)–1 to reference two data collection model forms the Bureau

proposed to provide in the Regulation B appendix. The Bureau received no comments on proposed comment 13(c)–1, and so is finalizing comment 13(c)–1 as proposed. Comments related to the data collection model forms and the 2016 URLA are addressed in the section-by-section analysis of the Regulation B appendix.

Appendix B to Part 1002—Model Application Forms

Regulations B and C both contain an appendix B that provides model forms for use when collecting applicant demographic information required under the regulations. The current Regulation B appendix includes the 2004 URLA as a model form. The current and revised Regulation C appendix include instructions and a data collection model form for collecting applicant demographic information.

The current Regulation B appendix includes five model forms, each designated for use in a particular type of consumer credit transaction. The fifth model form, the 2004 URLA, is described in the Regulation B appendix as appropriate for residential mortgage transactions and contains a model disclosure for use in complying with current § 1002.13. While use of the model forms is optional, if a creditor uses the appropriate model form, or modifies a form in accordance with the instructions provided in the Regulation B appendix, that creditor is deemed to be acting in compliance with § 1002.5(b) through (d).³⁸

As discussed above, on September 23, 2016, the Bureau issued the Bureau Approval Notice, pursuant to section 706(e) of ECOA.³⁹ In the Bureau Approval Notice, the Bureau determined that, while a creditor is not required to use the 2016 URLA, a creditor that uses the

³⁸ Appendix B to part 1002, at paragraphs 1, 3.

³⁹ 81 FR 66930 (Sept. 23, 2016).

form without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d).⁴⁰ Unlike prior versions of the URLA, the 2016 URLA permits an applicant to select disaggregated ethnicity and race categories, as required under revised Regulation C.

Given the issuance of the Bureau Approval Notice and the modifications to § 1002.13, the Bureau proposed several revisions to the Regulation B appendix as discussed below.

Model Forms for Complying with Section 1002.13(a)(1)(i)

The Bureau proposed to revise the Regulation B appendix to provide two additional model forms for use in complying with § 1002.13. First, for creditors collecting disaggregated applicant demographic information pursuant to § 1002.13(a)(1)(i)(B) and (ii), the Bureau proposed to amend the Regulation B appendix to cross-reference the data collection model form included in the revised Regulation C appendix. Second, for creditors collecting aggregate applicant demographic information pursuant to § 1002.13(a)(1)(i)(A) and (ii), the Bureau proposed to amend the Regulation B appendix to add a model form. The proposed model form substantially mirrors section X in the 2004 URLA and the data collection model form contained in the current Regulation C appendix. The Bureau received no comments opposing and one comment supporting the proposed amendments and so is finalizing the Regulation B appendix to provide alternative model forms as proposed.

In the 2017 ECOA Proposal, the Bureau also considered but did not propose the alternative of including the 2016 URLA as a model form in the Regulation B appendix.⁴¹ No

⁴⁰ *Id.*

⁴¹ 82 FR 16307, 16315 (Apr. 4, 2017).

commenters opposed the decision not to include the 2016 URLA as a model form in the Regulation B appendix, and several commenters noted that the proposed rule would encourage use and transition to the 2016 URLA. Accordingly, the Bureau is finalizing the Regulation B appendix as proposed, without including the 2016 URLA.

One industry commenter requested clarification that use of the 2016 URLA complies with Regulation B. The Bureau believes that no additional approval is necessary: The Bureau Approval Notice provides that a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) acts in compliance with § 1002.5(b) through (d).⁴² Similarly, because the substance and form of section 7 of the 2016 URLA is substantially similar to the form the Bureau provides as a model form in Regulation C, the 2016 URLA may be used in complying with § 1002.13.

Removal of the 2004 URLA as a Model Form

The current Regulation B appendix includes the 2004 URLA as a model form for use in complying with § 1002.13. In light of the revisions to § 1002.13(a)(1)(i), the amendment to the Regulation B appendix to provide two additional model forms, and the fact that the Bureau separately approved use of the 2016 URLA in the Bureau Approval Notice, the Bureau proposed to remove the 2004 URLA as a model form in Regulation B. The Bureau proposed that the 2004 URLA be removed on the cutover date the Enterprises designate for use of the 2016 URLA or January 1, 2022, whichever comes first. The Bureau received no comments on the proposal to remove the 2004 URLA or the timing of the removal and so is finalizing removal of the 2004

⁴² 81 FR 66930 (Sept. 23, 2016).

URLA as proposed. The date for removal of the 2004 URLA from the Regulation B appendix is discussed further in the Effective Date section below.

Removal of the Official Commentary to Appendix B

Commentary to the Regulation B appendix includes a discussion of two forms created by the Enterprises that are no longer in use: a 1992 version of the URLA and a 1986 home-improvement and energy loan application form. Given that neither of these forms is currently used by the Enterprises, the Bureau proposed to remove in its entirety the commentary to the Regulation B appendix. The Bureau received no comments on its proposal and so is removing the commentary to the Regulation B appendix in this final rule.

VI. Effective Date

The Bureau proposed an effective date of January 1, 2018, which aligns with the effective date for the bulk of the revisions to Regulation C in the 2015 HMDA Final Rule. The effective date of the 2015 HMDA Final Rule applies to covered loans and applications with respect to which final action is taken beginning on January 1, 2018, even if the application is received in 2017. One commenter indicated that the Bureau's proposed effective date for this rule creates concerns that it does not indicate that the collection of disaggregated applicant demographic information is permitted for applications received in 2017 for which final action is taken in 2018. The commenter noted that the Bureau Approval Notice applied to all applications taken in 2017 and suggested that the proposed effective date for this rule sends a mixed message. The Bureau Approval Notice provides that, at any time from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in revised Regulation C. During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories

as instructed in the Regulation C appendix is not deemed to violate Regulation B § 1002.5(b). During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories as instructed in the Regulation C appendix is also deemed to be in compliance with Regulation B § 1002.13(a)(1)(i) even though applicants are asked to self-identify using categories other than those explicitly provided in that section. Because the Bureau Approval Notice remains in effect for all of 2017, the amendments in this rule are not necessary to permit Regulation B-only creditors or HMDA reporters to collect disaggregated applicant demographic information for applications taken in 2017; they are already permitted to do so by the Bureau Approval Notice for any application for a covered loan under revised Regulation C § 1003.2(g) or any application subject to § 1002.13 for all of 2017.

The Bureau proposed as an effective date for the removal of the 2004 URLA from Regulation B appendix either the cutover date designated by the Enterprises for the mandatory use of the 2016 URLA or January 1, 2022. The Bureau did not receive any comments on the proposed effective date for this provision. Because the Enterprises have not announced a cutover date for the mandatory use of the 2016 URLA, the Bureau is finalizing January 1, 2022, as the effective date for the removal of the 2004 URLA from the Regulation B appendix.

The rule is effective on January 1, 2018, except that the amendment to the Regulation B appendix removing the existing “Uniform Residential Loan Application” form is effective January 1, 2022.

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

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.⁴³ In the 2017 ECOA Proposal, the Bureau set forth a preliminary analysis of these effects, and the Bureau requested comment and submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposal. The Bureau received some comments on the topic. Comments on the benefits and costs of the rule are also discussed above in the section-by-section analysis of the preamble. The Bureau has consulted, or offered to consult with, the prudential regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency), the Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market or systematic objectives administered by such agencies.

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

⁴³ Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

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

The Bureau believes that, absent this change, entities that currently report race and ethnicity data under Regulation C could conclude that they have different obligations under Regulation B and Regulation C once the 2015 HMDA Final Rule goes into effect on January 1, 2018. This would lead to unnecessary burden from collecting both aggregate and disaggregated data. Industry commenters noted this potential conflict and expressed their support for the proposal. By making disaggregated collection an option under Regulation B, entities who will report race and ethnicity information under revised Regulation C will also be in compliance with Regulation B with certainty. The Bureau believes that making collection of disaggregated race and ethnicity an option for all entities covered by Regulation B will pose little or no additional burden on those entities who are not HMDA reporters. The final rule may have some benefits to Regulation B-only creditors, as the current language of Regulation B would not allow these entities to use the 2016 URLA for the purpose of collecting race and ethnicity data, as the 2016 URLA uses the disaggregated race and ethnicity categories set forth in revised Regulation C and not the specific categories required by current Regulation B. Thus, the final rule has the added benefit that it will allow Regulation B-only creditors to use the 2016 URLA as an instrument to collect race and ethnicity information.

The second substantive change will remove the outdated 2004 URLA as a model form. The Bureau issued the Bureau Approval Notice under its authority in section 706(e) of ECOA on September 23, 2016, which provides that a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d). The Bureau is not adding the 2016 URLA as a model form in place of the 2004 version. Instead, the Bureau is providing for two alternative data collection model forms for the purpose of collecting ethnicity and race information. The Bureau believes this practice of acknowledging future versions of the URLA via a Bureau Approval Notice rather than a revision to Regulation B will reduce the risk that the model form included in Regulation B will become outdated in the future.

Finally, the Bureau is amending Regulation B and the associated commentary to allow creditors to collect ethnicity, race, and sex from mortgage applicants in certain cases where the creditor is not required to report under HMDA and Regulation C. These circumstances include when: (1) a creditor that is a financial institution under revised Regulation C § 1003.2(g), originates a closed-end mortgage loan or an open-end line of credit that is an excluded transaction under revised Regulation C § 1003.3(c)(11) or § 1003.3(c)(12), if it submits HMDA data concerning those applications and loans or if it submitted HMDA data concerning closed-end mortgage loans or open-end lines of credit in any of the preceding five calendar years; (2) a creditor that submitted HMDA data in any of the preceding five calendar years but is not currently a financial institution under Regulation C § 1003.2(g), collects demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 1003.2(e), if not excluded by Regulation C § 1003.3(c)(11) or § 1003.3(c)(12); (3) a creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold

period provided in Regulation C § 1003.2(g), § 1003.3(c)(11), or § 1003.3(c)(12), collects, in the second year, demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 12 CFR 1003.2(e), if the loan were not excluded by Regulation C § 1003.3(c)(11) or § 1003.3(c)(12); (4) a creditor that is a financial institution under Regulation C § 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under Regulation C § 1003.2(g), collects demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 1003.2(e) if the loan were not excluded by Regulation C § 1003.3(c)(10); and (5) a creditor that collects demographic information of a second or additional co-applicant for a covered loan under Regulation C § 1003.2(e), or for a second or additional co-applicant for a loan described in amended § 1002.5(a)(4)(i) through (v). These changes will primarily benefit institutions that may be near the loan volume reporting threshold, such that they may be required to report under HMDA and Regulation C in some years and not others, or may be uncertain about their reporting status. The Bureau believes that allowing voluntary collection will reduce the burden of compliance with Regulation C on some entities and provide certainty regarding Regulation B compliance over time.

B. Potential Benefits and Costs to Consumers and Covered Persons

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

Relative to current Regulation B following the effective date of the 2015 HMDA Final Rule, the final rule provides clear benefits to entities that will be required to collect and report race and ethnicity data under HMDA. Currently the disaggregated race and ethnicity categories required by the amendments to Regulation C in the 2015 HMDA Final Rule, effective January 1, 2018, do not match the categories specified in current Regulation B. Because of the differences

between the categories, some creditors required to collect and report race and ethnicity using the disaggregated categories set forth in revised Regulation C may be uncertain whether additional collection using aggregated categories would also be required to satisfy current Regulation B. Complying with both Regulations B and C would require burdensome and duplicative collection of race and ethnicity data at both the aggregated and disaggregated level. In practice, the final rule simply makes clear that the existing collection required under revised Regulation C is sufficient for compliance with Regulation B.

The final rule may have benefits to consumers, to the extent that lending entities voluntarily choose to collect disaggregated race and ethnicity information. As discussed in the Section 1022(b) analysis for the 2015 HMDA Final Rule, collection of disaggregated race and ethnicity data can enhance the ability of regulators, researchers and community groups to conduct fair lending analysis. There are three reasons, however, that this rule will likely have a limited effect on fair lending analysis. First, Regulation B-only creditors will not be required to permit applicants to self-identify using disaggregated ethnicity and race categories, likely resulting in few creditors adopting disaggregated ethnicity and race categories. Second, many Regulation B-only creditors will be exempt from reporting under revised Regulation C because they originate fewer than 25 closed-end mortgage loans in each of the two preceding calendar years, which means both that few consumers would be affected and any disaggregated data would likely be too sparse for statistical analysis. Finally, demographic data retained by Regulation B-only creditors is not reported under Regulation C. Consequently, most oversight and analysis of demographic data retained by Regulation B-only creditors will be done only by regulators, whereas researchers and community groups also conduct analysis of HMDA data

reported under Regulation C. The Bureau believes the final rule will not impose any costs on consumers.

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

In addition to the amendment to Regulation B in the proposal, the Bureau considered two alternatives to address the differing race and ethnicity requirements of Regulation B and revised Regulation C. The Bureau considered requiring all creditors subject to the collection and retention requirement of Regulation B to permit applicants to self-identify using disaggregated race and ethnicity categories. To the extent that consumers would benefit from disaggregated race and ethnicity collection, this alternative would provide greater benefits than the Bureau's proposal. However, of the three limitations to consumer benefits listed above, only the first (that disaggregated categories would be optional) is alleviated by requiring the use of disaggregated race and ethnicity categories under Regulation B. It is still the case that due to the low volume of mortgages by many affected entities and the lack of reporting, disaggregated race and ethnicity data may have limited benefits. Finally, the Bureau believes many entities will adopt the 2016

URLA as part of the course of business and thus permit applicants to self-identify using disaggregated race and ethnicity categories.

At the same time, mandatory use of disaggregated collection of race and ethnicity categories would impose greater costs on creditors than the Bureau's proposal, particularly on smaller entities. These costs include greater operational costs and one-time database upgrades. Unlike the costs associated with the adoption of the 2016 URLA, these costs would not otherwise be incurred in the normal course of business. The Bureau requested comments on both the costs and benefits associated with this alternative approach.

A consumer advocacy group commenter argued that the Bureau should adopt the alternative of requiring all persons subject to the collection and retention requirement of Regulation B to permit applicants to self-identify using disaggregated race and ethnicity categories. The commenter disputed the Bureau's assessment that the potential alternative would impose substantial costs on Regulation B-only creditors. The commenter argued that the availability of the 2016 URLA would reduce the cost of collecting disaggregated race and ethnicity information, and advocated for a two-year implementation period for mandatory disaggregated collection to further reduce the costs. However, the commenter did not address the Bureau's conclusion, mentioned in the proposal and again above, that the benefits of mandatory disaggregated collection are quite limited. A credit union trade association explicitly opposed the alternative, asserting that its members would be unduly burdened by mandatory collection of disaggregated race and ethnicity information. Other commenters did not directly address this alternative, but several industry commenters supported the flexibility of the proposal with respect to collection of disaggregated race and ethnicity information, implicitly opposing making this collection mandatory.

As discussed above in Part V, the Bureau disagrees with the consumer advocacy group commenter that there would be little burden to Regulation B-only creditors from making the collection of disaggregated race and ethnicity categories mandatory. Even accepting the commenter's premise, however, the Bureau notes again that it believes the additional benefits of this alternative to be quite limited because, among other reasons, many Regulation B-only creditors are likely to eventually collect disaggregated race and ethnicity data through adoption of the 2016 URLA. Moreover, the commenter did not address the limited usefulness of disaggregated race and ethnicity data from lenders with a very low volume of loan originations. The Bureau continues to believe that the benefits of this alternative are very low. Accordingly, the Bureau is not making disaggregated race and ethnicity categories mandatory for compliance with Regulation B at this time.

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

For instance, the 2015 NCUA Call Report and the 2015 Nationwide Mortgage Licensing System & Registry (NMLS) Mortgage Call Report data include 489 credit unions and 161 non-

depository institutions that originated at least 25 closed-end mortgages that are not found in the 2015 HMDA data.⁴⁴ In addition, many community banks in rural areas are already exempt from HMDA reporting because they do not have a branch or home office in an MSA.⁴⁵ Demographic information collected under Regulation B by those institutions with larger loan volumes may be used in statistical analysis that supports fair lending supervision and enforcement. Removing the Regulation B requirement altogether would make detection of any discrimination by these entities more difficult, with potentially large costs to consumers where such discrimination exists. Even for institutions with very small volumes of originations that may not be subject to HMDA reporting because they do not meet an applicable loan volume threshold, the retained information may be useful for comparative file reviews. In 2015, there were 1,178 institutions that reported HMDA data but had fewer than 25 originations and therefore would likely be exempt under the 2015 HMDA Final Rule if they continue to originate loans at a similar volume. Although the loan volumes of most of these institutions would be too sparse for statistical analysis, the ability to conduct comparative file reviews using data retained under Regulation B has some benefit.

A small financial institution commenter advocated for eliminating the Regulation B requirement to collect and retain race and ethnicity information. The commenter asserted the resulting data are never used by regulators, while the collection and retention imposes a

⁴⁴ The criteria for being a financial institution and reporting transactions under HMDA are different in some ways from the criteria for reporting under the NMLS Mortgage Call Report and reporting transactions under it. It is possible that the NMLS omits some non-depository institutions that originated at least 25 closed-end mortgages, did not report HMDA data, and are subject to Regulation B. Some or all of these institutions may also not have been required to report HMDA data.

⁴⁵ The Bureau does not have an estimate of the number of rural community banks that are currently exempt from HMDA reporting and originate at least 25 loans per year. The FFIEC call report for banks does not report originations for depository institutions that do not report to HMDA.

substantial burden. A credit union trade association commenter also argued that the Bureau should remove the requirement, asserting that removing it would reduce the regulatory burden on its members.

The Bureau acknowledges that the collection and retention requirement of Regulation B imposes some burden on financial institutions. As noted above, the Bureau believes that consumers could suffer substantial harm if the requirement were removed. Although it may be true in the particular case of the community bank commenter, the Bureau believes it is not the case that these data are never used by regulators. Both the Bureau's consultations with the prudential regulators and its own experience in fair lending enforcement indicate that these data are used. Accordingly, the Bureau is not removing the Regulation B requirement to collect and retain race and ethnicity information.

Model Forms for Collecting Race and Ethnicity Data

The Bureau believes that the provision to change the model forms for collecting race and ethnicity data will have modest benefits to firms collecting these data, by providing updated model forms, and reducing confusion regarding the outdated 2004 URLA. The final rule does not impose any new costs on firms, nor does the Bureau believe that consumers will experience any cost or benefit from the provision. The Bureau requested comment regarding the costs and benefits associated with this provision. Industry commenters supported the change, with several confirming the potential benefits noted above.

Allowing Voluntary Collection of Applicant Information

Regarding the provision to allow certain creditors to voluntarily collect demographic information, the Bureau believes the financial institutions that will most likely exercise such options will be low-volume, low-complexity institutions that have made a one-time investment

in HMDA collection and reporting and would like to utilize that collection process already in place. The Bureau believes the final rule will provide modest benefits to such institutions, by saving on one-time adjustment costs required to shift in and out of collection. The Bureau expects that institutions will only exercise this option if voluntary collection provides a net benefit. The Bureau does not believe that consumers will experience any costs or benefits from this provision except to the extent that financial institutions achieve cost savings and pass any such cost savings on to their customers.

The Bureau requested comment regarding the costs and benefits associated with this provision. The Bureau also requested data on the number of firms that might be interested in voluntary collection under this provision. No commenters provided such data.

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

The Bureau believes that depository institutions and credit unions with \$10 billion or less in assets will not be differentially affected by the substantive amendments. The primary benefit to lenders from the final rule is the reduced uncertainty and compliance burden from allowing the disaggregated race and ethnicity information collected under Regulation C to be used to comply with Regulation B. Both certain depository institutions and credit unions with less than \$10 billion in assets and covered persons with more than \$10 billion in assets currently report data under HMDA and thus will receive these benefits. The benefits may be somewhat larger for depository institutions and credit unions with less than \$10 billion in assets because the relative costs of duplicative collection will be greater for these entities.

D. Impact on Access to Credit

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

E. Impact on Consumers in Rural Areas

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

VIII. Regulatory Flexibility Act Analysis

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

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

On March 24, 2017, the Bureau issued the 2017 ECOA Proposal on its website. The Bureau concluded that the proposal, if adopted, would not have a significant economic impact on any small entities and that an IRFA was therefore not required. The Bureau requested comment on the analysis under the RFA and any relevant data. The Bureau did not receive any comments on the analysis or data.

This final rule adopts the proposed rule without making changes that would affect the Bureau's conclusion that the rule will not have a significant economic impact on any small entities. All methods of compliance under current law will remain available to covered persons, including small entities, when these provisions become effective. Thus, a small entity that is in compliance with current law need not take any additional action, save those already required by the 2015 HMDA Final Rule.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies are generally required to seek the Office of Management and Budget (OMB)'s approval for information collection requirements prior to implementation. The collections of information related to Regulation B and Regulation C have been previously reviewed and approved by OMB and assigned OMB Control Number 3170-0013 (Regulation B) and 3170-0008 (Regulation C). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

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

List of Subjects in 12 CFR Part 1002

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

Authority and Issuance

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

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

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

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

2. Amend § 1002.5 by adding paragraph (a)(4) to read as follows:

§ 1002.5 Rules concerning requests for information.

(a) * * *

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

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

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

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

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

(v) A creditor that is a financial institution under 12 CFR 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g), may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(10).

(vi) A creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant may collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under 12 CFR 1003.2(e) or for a second or additional co-applicant for a loan described in paragraphs (a)(4)(i) through (v) of this section.

* * * * *

3. Amend § 1002.12 by revising paragraph (b)(1)(i) to read as follows:

§ 1002.12 Record retention.

* * * * *

(b) * * *

(1) * * *

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

* * * * *

4. Amend § 1002.13 by revising paragraph (a)(1)(i) and paragraph (b) to read as follows:

§ 1002.13 Information for monitoring purposes.

(a) * * *

(1) * * *

(i) Ethnicity and race using either:

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

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

* * * * *

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

* * * * *

5. Effective January 1, 2018, amend Appendix B to Part 1002 by revising paragraph 1 and adding a Data Collection Model Form to the end of the Appendix to read as follows:

APPENDIX B TO PART 1002—MODEL APPLICATION FORMS

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

* * * * *

DATA COLLECTION MODEL FORM
INFORMATION FOR GOVERNMENT MONITORING PURPOSES

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

APPLICANT:

I do not wish to furnish this information

Ethnicity

- Hispanic or Latino
- Not Hispanic or Latino

Race

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

Sex

- Female
- Male

CO-APPLICANT:

I do not wish to furnish this information

Ethnicity

- Hispanic or Latino
- Not Hispanic or Latino

Race

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

Sex

- Female
- Male

6. Effective January 1, 2022, amend Appendix B to Part 1002 by revising paragraph 1 and under paragraph 3 removing the form “Uniform Residential Loan Application”.

The revision reads as follows:

APPENDIX B TO PART 1002—MODEL APPLICATION FORMS

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

* * * * *

7. Amend Supplement I to Part 1002:

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

i. *Paragraph 5(a)(2)* is revised.

ii. *Paragraph 5(a)(4)* is added.

b. Under Section 1002.12—Record retention, *Paragraph 12(b)* is revised.

c. Under Section 1002.13—Information for monitoring purposes:

i. *Paragraph 13(a)—Information to be requested* is revised.

- ii. *Paragraph 13(b)—Obtaining of information* is revised.
- iii. *Paragraph 13(c)—Disclosure to applicants* is revised.
- d. APPENDIX B—MODEL APPLICATION FORMS is removed.

The revisions and additions read as follows:

SUPPLEMENT I TO PART 1002—OFFICIAL INTERPRETATIONS

* * * * *

Section 1002.5—Rules Concerning Requests for Information

5(a) General rules.

* * * * *

Paragraph 5(a)(2).

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

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

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

Paragraph 5(a)(4).

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

* * * * *

Section 1002.12—Record Retention

* * * * *

12(b) Preservation of records.

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

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

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Section 1002.13—Information for Monitoring Purposes

13(a) Information to be requested.

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

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

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

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

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or

refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

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

7. *Data collection under Regulation C.* For applications subject to § 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to 12 CFR part 1003 is acting in compliance with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information. *See also* comment 5(a)(2)–2.

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

13(b) Obtaining of information.

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

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

3. *Telephone, mail applications.*

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

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

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

4. Video and other electronic-application processes.

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

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

5. Applications through loan-shopping services. When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

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

13(c) Disclosure to applicants.

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

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Richard Cordray,

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