

# Financial Institutions Additional Flexibility in Collecting Government Monitoring Information

October 23, 2017

The Consumer Financial Protection Bureau (“CFPB”) has issued a final rule (the “Final Rule”) amending Regulation B, which implements the Equal Credit Opportunity Act, to provide creditors additional flexibility in collecting ethnicity, race and sex information about applicants for certain dwelling-secured loans. The Final Rule finalizes the proposal to amend Regulation B issued by the CFPB in March 2017 (our advisory discussing the proposal can be found [here](#)).

The Final Rule is effective on January 1, 2018, except for the amendment removing the existing form of Uniform Residential Loan Application (“URLA”), which will be effective January 1, 2022.

## I. Background

Subject to certain exceptions, Regulation B generally prohibits creditors from inquiring about a borrower’s demographic information, including race, color, religion, national origin, or sex in connection with a credit transaction. One exception to this prohibition is the requirement within Regulation B itself to collect information about an applicant’s ethnicity, race, sex, marital status and age (“certain protected applicant-characteristic information”) for certain dwelling-secured loans. Another exception is to collect and report an applicant’s ethnicity, race and sex information (“demographic information”) under the Home Mortgage Disclosure Act (“HMDA”), and its implementing regulation, Regulation C.

The requirements for collecting and reporting applicant demographic information under Regulation C were significantly updated in October 2015 (“Revised Regulation C”). Additionally, Fannie Mae and Freddie Mac issued a new version of the URLA in 2016 to comply with the Revised Regulation C. This new URLA requires updates to the Regulation B provisions that reference the URLA and the model forms that may be used to collect applicant information.

Revised Regulation C and the redesigned URLA required the CFPB to update Regulation B to ensure alignment of Regulation B and Regulation C, and to facilitate compliance by financial institutions with the requirements of these regulations.

## II. Major Changes

The Final Rule contains several major changes as explained below.

## 1. Rules Concerning Requests for Information

Regulation B creditors are permitted to voluntarily collect ethnicity, race and sex information of an applicant under any of the following circumstances:

- a. If a creditor is a covered financial institution under Revised Regulation C, it can collect demographic information for a closed-end mortgage loan or open-end line of credit that is not subject to Regulation C if the creditor submits HMDA data regarding such loan or line of credit or if it submitted such HMDA data for any of the preceding five calendar years.
- b. If a creditor is not currently a covered financial institution under Revised Regulation C but submitted HMDA data for any of the preceding five calendar years, it can collect demographic information for below-threshold closed-end mortgage loans or below-threshold open-end lines of credits.
- c. A creditor that is a covered financial institution under Revised Regulation C or has submitted HMDA data but is not currently a covered financial institution can collect demographic information for dwelling-secured business loans that are not for the purpose of a home purchase, home improvement or refinancing.
- d. A creditor that exceeded an applicable loan volume threshold in the first year of a two-year threshold period set forth in Revised Regulation C can collect applicant demographic information in the second year.
- e. A creditor is permitted, but not required, to collect demographic information from a second or additional co-applicant for a covered loan under Revised Regulation C or any of the above circumstances.

Please note that the voluntary options to collect information for business loans and co-applicants are new provisions which were not in the proposal.

## 2. Record Retention

If a creditor voluntarily collects an applicant's demographic information under the additional authorized circumstances, the creditor must comply with record retention requirements pursuant to Regulation B.

## 3. Information for Monitoring Purposes

The Final Rule permits HMDA reporting-creditors that are also subject to the Regulation B government monitoring information collection requirement to collect an applicant's information using either aggregate or disaggregated ethnicity and race categories in accordance with correlated Revised Regulation C requirements. Regulation B creditors not subject to HMDA are not required by Regulation B to change their current practice of collecting applicant demographic information. They have the option of using existing aggregated categories pursuant to Regulation B or adopting the new disaggregated categories pursuant to Revised Regulation C in collecting race and ethnicity information.

## 4. Changes to Regulation B Model Forms

The Final Rule removes the 2004 URLA as a model form in Regulation B effective January 1, 2022. A new model form is being inserted in Appendix B to Regulation B for creditors collecting aggregated applicant demographic information. A model form reference in Appendix B to Regulation C is provided for creditors that collect information using the disaggregated race and ethnicity categories pursuant to the Revised Regulation C.

## III. Further Information

A copy of the Final Rule published in the Federal Register is available [here](#).

Please note that this advisory is a general overview of the Final Rule amending Regulation B and is not intended as a comprehensive explanation of all aspects of the amendments or as formal legal advice. If you have any questions regarding the Final Rule amending Regulation B, Regulation B, Regulation C or mortgage compliance issues in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com), Kevin Patterson at 516-296-9196 or via email at [kpatterson@cullenanddykman.com](mailto:kpatterson@cullenanddykman.com), or Mandy Xu at 516-357-3850 or via email at [mxu@cullenanddykman.com](mailto:mxu@cullenanddykman.com).

1. Section 1002.13(a)(1) of Regulation B provides that a creditor that receives 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. In this advisory, “Regulation B creditor” refers to this type of creditor.
2. For Regulation C purposes, if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, it is considered “below-threshold” for closed-end mortgage loans.
3. For Regulation C purposes, if the financial institution originated fewer than 500 dwelling secured open-end lines of credit in either of the two preceding calendar years, it is considered “below-threshold” for open-end lines of credit.

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