Lending Hot Buttons:
Reg Z Common TRID Issues
Flood Insurance Issues
Adverse Actions

September 2026

PATTI D. JOYNER, CRCM

FINANCIAL SOLUTIONS

1

Organization of Reg Z

Subpart A – General

Subpart B – Open-End Credit

Subpart C – Closed-End Credit

Subpart D – Miscellaneous

Subpart E – Certain Home Mortgage Transactions

Subpart F – Private Education Loans

Subpart G – Credit Card Accounts

Appendices

Commentary

2

2

As published in ABA Bank Compliance –
Eight Common TILA-RESPA Integrated Disclosure Errors July/August 2022

Watch Out: TRID Errors

Eight Common TILA-RESPA Integrated Disclosure Errors

BY JIM TREACY, CPA

IT IS HARD TO BELIEVE that the TILA-RESPA Integrated Disclosure (TRID) rules, also known as Know Before You Owe (KBYO), have been in effect since October 2015, almost seven years ago. Although the industry has digested the requirements and configured loan systems to assist with compliance—human error, unexpected events, and miscommunications all contribute to errors that can increase the potential for fee tolerance violations. Personnel may think the bank's loan systems will automatically produce compliant disclosures, and while good system controls certainly help, errors still occur. Whether your institution is large or small, you'll want to be sure not to make any of these eight common errors.

1. Failing to fully document change in circumstance.
2. Including undetected reimbursable fee

1. Failing to fully document change in circumstance

A valid change in circumstance is defined in Regulation Z as an extraordinary event beyond the control of any interested party, reliance by the creditor on information that has become inaccurate, or new information becoming available to the creditor. Failing to obtain basic information on the transaction would not meet this definition so it is critical to obtain accurate information on the borrower, subject property, and purpose of the loan at the time of application.

If a valid change in circumstance does occur, fees directly related to the change are allowed to increase (within reason). However, without a valid change in circumstance, fees are only allowed to change within certain limits, as described in the table on the next page.

3

3

Keeping TRID Compliance on Track

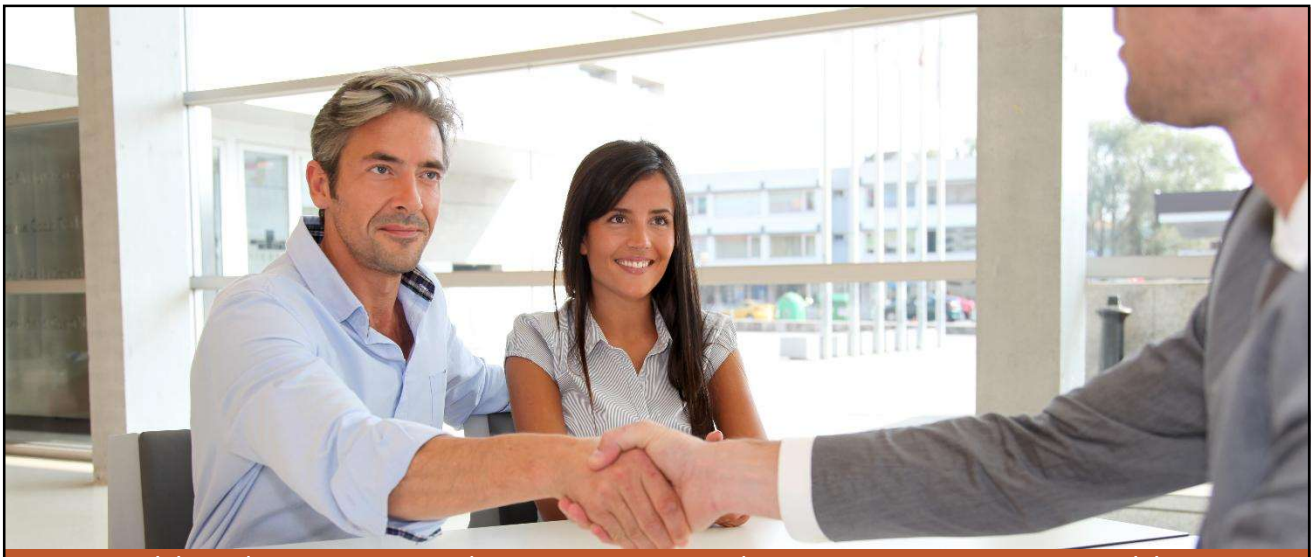
The TRID rule reshaped how lenders communicate with borrowers in real estate transactions. While systems automate much of the process, compliance depends on vigilance. Jim Treacy's original eight TRID errors remain the foundation, but today's compliance environment shows even more pitfalls—from mismatched fee names to missing projected payments tables.

By understanding these risks and implementing strong TRID compliance risk mitigation practices, institutions can minimize errors, protect borrowers, and strengthen trust. In an industry where details matter, careful adherence to TRID requirements is the key to both compliance and customer confidence.

Authored by Shannon Singletary | *November 2025*

4

4



** Failing to Properly Document a Change in Circumstance **
Without proper documentation, lenders cannot reset fee tolerances! Examples include borrower changes, loan amount changes, interest rate locks, etc.

5

5

Valid Change in Circumstance

A valid change in circumstance is defined in Regulation Z as an extraordinary event beyond the control of any interested party, reliance by the creditor on information that has become inaccurate, or new information becoming available to the creditor.

Failing to obtain basic information on the transaction would not meet this definition so it is critical to obtain accurate information on the borrower, subject property, and purpose of the loan at the time of application.

If a valid change in circumstance does occur, fees directly related to the change are allowed to increase (within reason). However, without a valid change in circumstance, fees are only allowed to change within certain limits.

Regulation Z requires this documentation to include the original estimate of the cost, the reason for the revision, and how the change affected settlement costs. Although not required, maintaining a standard change in circumstance form outlining the details of the change will help document compliance

6

6

Fee Tolerance Violations

Omitting fees, misclassifying fees such as “Services You Can Shop For” vs. “Services You Cannot Shop For”, revising fees without a valid reason may result in violations and necessitate reimbursement to the borrower.

Another challenge is to ensure that only fees directly related to the change in circumstance are increased when providing a revised Loan Estimate.

Increasing other fees on the revised disclosure that are not directly related to the change of circumstance could result in tolerance issues that will require a cure.

- For example, an increase in the loan amount is typically not directly related to the appraisal fee, so the tolerance limit for the appraisal fee in this situation cannot be reset. If errors are made that exceed allowed thresholds, they are required to be reimbursed to borrowers.

7

7

Fee Tolerance Violations

Increases in fees can be caused by human error such as fees that are:

- Unintentionally omitted from initial or revised loan disclosures;
- Disclosed as a fee the borrower shopped for when in fact the borrower did not shop for that specific service; or
- Under-disclosed due to insufficient information that is obtained regarding the loan during the application process

Strong internal controls should ensure all applicable fees are included on the initial Loan Estimate and disclosed in the appropriate section of the disclosure.

All standard loan fees required by your institution such as origination charges, credit report fee, appraisal fee, tax service fee, flood-related fees, and applicable title-related fees should be included on all disclosures.

If fees are omitted from the initial Loan Estimate, especially zero tolerance fees, then fees may need to be reimbursed to borrowers. Errors also occur if fees are changed when a revised loan disclosure is issued, but the increase in the fee was not permitted by the TRID regulations.

8

8

Fee Tolerance Limits

ZERO TOLERANCE FEES	10% TOLERANCE FEES	NO TOLERANCE FEES
Not allowed to change without a valid change in circumstance	Not allowed to increase (as a group) by more than 10%	Allowed to change without a tolerance limit

• Fees paid to the creditor, mortgage broker, or an affiliate of the creditor or broker (such as points, or application fees)
• Fees where the borrower was not permitted to shop for the service (such as credit report fees or appraisal fees)
• Transfer taxes
	• Recording fees
	• Fees for 3rd party services where
	  • The charge is not paid to the creditor or the creditor's affiliate
	  • The consumer is permitted to shop for the service and the borrower selects a provider on the written list of service providers
		• Prepaid interest
		• Property insurance premiums
		• Escrow amounts
		• Property taxes
		• Other fees paid to 3rd party providers for services the creditor does not require
		• Fees for services the creditor requires if the borrower is allowed to shop and selects a provider not on the written list of services providers

9

9

Improperly Handling Lender Credits

TRID rules permit lender credits to decrease only if there is an accompanying change in circumstance or another triggering event.

Errors occur when a specific lender credit is listed on loan disclosures to cover certain fees, such as the appraisal, and then the cost for these fees decrease on revised loan disclosures.

TRID does not allow the lender credit to decrease in this situation as it has the same effect as increasing a fee. Lowering the lender credit when not permitted leads to a borrower reimbursement.

The CFPB published 10 frequently asked questions on how to disclose lender credits on loan disclosures and this guidance is very helpful to personnel responsible for producing loan disclosures.

10

10

TRID Lender Credits FAQ #1

For purposes of the TRID Rule, lender credits include:

(1) payments, such as credits, rebates, and reimbursements, that a creditor provides to a consumer to offset closing costs the consumer will pay as part of the mortgage loan transaction; and

(2) premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts, such as for accepting a specific interest rate, or as an incentive, such as to attract consumers away from competing creditors.

- Comments 17(c)(1)-19, 19(e)(3)(i)-5, 37(g)(6)(ii)-1, and 38(h)(3)-1.

Amounts the consumer or seller pays are not lender credits for purposes of the TRID Rule.

For example, amounts that a creditor collects from a consumer, holds for a period of time, and then applies to cover closing costs are not lender credits because, in such cases, the creditor is not providing anything to the consumer. Similarly, amounts that a creditor collects from a consumer, holds for a period of time, and then returns to the consumer later are not lender credits because, in substance, the funds are provided by the consumer rather than the creditor.

11

11

Difference Between Specific and General Lender Credits FAQ #2

A **specific** lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of a specific closing cost the consumer will pay.

- Comment 19(e)(3)(i)-5.

A **general** lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of the closing costs but without specifying the particular closing cost or costs that are being offset. General lender credits also include premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts or as an incentive. Thus, a creditor that offsets a set dollar amount of costs (without specifying which costs it is offsetting) is providing a general lender credit, not a specific lender credit. For example, a creditor that rebates $500 of the consumer's closing costs (without specifying which closing costs it is rebating) is providing a general lender credit. By contrast, a creditor that rebates up to $500 of the consumer's appraisal cost is providing a specific lender credit.

- Comment 19(e)(3)(i)-5.

The distinction between specific lender credits and general lender credits is important because specific lender credits and general lender credits are disclosed differently on the Closing Disclosure.

12

12

Lender Credits on the Closing Disclosure FAQ #6

To disclose **specific** lender credits on the Closing Disclosure, the creditor must separately list the amount of each specific lender credit in either the Loan Costs table or Other Costs table, as applicable, on page 2 of the Closing Disclosure. In either case, the amount of the lender credit is disclosed in the "Paid by Others" column for the row that discloses the specific closing cost to which the lender credit is attributable. Comment 38(h)(3)-1.

To disclose **general** lender credits on the Closing Disclosure, the creditor must add the amounts of all general lender credits together. The total of the general lender credits is disclosed as a negative number, and labeled as "Lender Credits" in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure. Comment 38(h)(3)-1.

The total of the general lender credits must also be disclosed as "Lender Credits" in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure. 12 CFR §1026.38(d)(1)(i)(D).

Additionally, a creditor may provide a lender credit to resolve an excess charge. 12 CFR §1026.38(h)(3). An excess charge is a charge that exceeds the applicable good-faith tolerance limitations set forth in 12 CFR §1026.19(e)(3). If the creditor opts to resolve the excess charge through a lender credit:

- (1) the amount of the lender credit is included in the Closing Costs at the bottom of page 1 and in the Lender Credits disclosed in Section J under the Total Closing Costs (Borrower Paid) subheading on page 2; and
- (2) the creditor must include a statement notifying the consumer that the creditor is paying the amount to offset an excess charge and that the amount is included as part of Lender Credits. Comment 38(h)(3)-2

13

13

Lender Credits on "No Cost" Loans FAQ #7

The answer depends on whether the creditor is absorbing closing costs as well as whether the creditor is offsetting costs for specific settlement services.

If the creditor is incurring closing costs, but will not be charging the consumer for some or all of the closing costs at or before consummation (i.e., the creditor is "absorbing" closing costs), see TRID Lender Credit Questions 3 and 4.

If the creditor is offsetting some or all of the costs for specific settlement services that are being charged to the consumer in connection with the loan, see TRID Lender Credits Question 8.

If the creditor is offsetting all or a portion of the costs that are being charged to the consumer, but not offsetting charges for specific settlement services, the creditor is providing a general lender credit to offset a certain dollar amount of closing costs charged to the consumer without specifying which costs.

14

14

Lender Credits on "No Cost" Loans FAQ #7

On the Loan Estimate, the general lender credit must be included in the total amount, as a negative number, in the "Lender Credits" disclosure in Section J: Total Closing Costs on page 2 of the Loan Estimate. It must also be included in the amount disclosed as "Lender Credits" in the Estimated Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Loan Estimate.

On the Closing Disclosure, the general lender credit must be included as a negative number in the amount disclosed as "Lender Credits" in Section J under the Total Closing Costs (Borrower-Paid) subheading on page 2 of the Closing Disclosure, and in the amount disclosed as "Lender Credits" in the Closing Costs portion of the Costs at Closing table on the bottom of page 1 of the Closing Disclosure.

15

15

Can Lender Credits Change FAQ #10

Yes, but only in certain circumstances. Regulation Z does not limit a creditor's ability to increase the amount of lender credits disclosed on the Loan Estimate. However, a decrease in the amount of the lender credits disclosed on the Loan Estimate can lead to a violation of the good faith disclosure standard under 12 CFR §1026.19(e)(3) (i.e., a tolerance violation). Lender credits may decrease only if there is an accompanying changed circumstance or other triggering event under 12 CFR §1026.19(e)(3)(iv), and the creditor provides the consumer with a revised estimate within three business days of receiving information sufficient to establish that the changed circumstance or other triggering event has occurred. 12 CFR §1026.19(e)(4).

The TRID Rule requires that all estimated closing costs that the consumer will pay be disclosed in good faith. Generally, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed or is otherwise within applicable tolerance standards.

16

16

Missing Loan Estimates for Denied or Withdrawn Applications

TRID rules require that the Loan Estimate and other early disclosures be delivered to applicants no later than the third business day following the day the application is received.

A common error is not providing the required Loan Estimate within 3 business days of application in situations where the loan is not originated. TRID rules define an application as when 6 pieces of information are received by the creditor: **borrower name, income, social security number, property address, estimated property value, and loan amount.** Loan origination systems should have rules embedded to track the application date.

If an application is denied or withdrawn within 3 business days of receiving the application, then the Loan Estimate disclosure is not required to be provided. However, errors occur when the loan is not actually denied or withdrawn until after 3 business days from receipt of the application and personnel fail to provide early disclosures within the required time frame.

You must document when a loan application is denied or withdrawn within 3 days of application receipt, and therefore initial disclosures would not be required.

17

17

Inconsistent Disclosure Formats

Loan systems are often programmed to adjust the format of the disclosures based on system parameters and the data entered into the system.

The standard format includes:

- Information that is applicable to a purchase transaction as it will list detailed information on the amount of cash required for closing;
- Any needed adjustments between the buyer and seller (such as for prorated real estate taxes); and
- Information about the seller.

The alternative format is used for transactions without a seller and will include information on whether the borrower will be receiving cash at closing or if the borrower is required to bring cash to closing. It will also include details on the disbursements of the loan proceeds.

TRID rules allow for use of the standard disclosure format for both loan purchase transactions and refinance transactions. However, TRID states that if the alternative format of the Loan Estimate is used for a transaction without a seller, then the Closing Disclosure must also use the alternative format.

18

18

Missing Intent to Proceed Documentation

Institutions are required to document the fact that the borrower communicated an intent to proceed to satisfy the record retention requirements within Regulation Z.

There are no specific requirements on how this intent is documented, so it can be memorialized in an email, on a checklist, a field in the loan origination system, or a written notice from the borrower.

Errors have occurred when personnel fail to follow established procedures and do not retain evidence.

TRID rules also require the intent to proceed be communicated prior to collecting any loan fees other than the credit report fee.

Controls should be in place to prevent collecting any fees from the borrower until the borrower has communicated the intent to proceed, and it has been evidenced in the loan file or loan origination system.

19

19

Insufficient Proof of Closing Disclosure Delivery

TRID rules require that borrowers receive a Closing Disclosure at least 3 business days prior to the loan closing. It is important that evidence be retained to demonstrate compliance. This evidence could include having the borrower electronically sign the document if it is delivered via a compliant E-SIGN process, hand delivering the disclosure and obtain borrower signature, or mailing the disclosure to the borrower.

A common issue occurs when there are several copies of Closing Disclosures in a loan file, and they all have the same date but disclose varying fee amounts. If no evidence is retained to support how these disclosures were delivered to the borrower, it is difficult to determine which disclosures were actually delivered to the borrower and when.

This could lead to a delay in closing the loan until the institution is able to obtain adequate evidence that the borrower received the Closing Disclosure timely.

Failing to provide Closing Disclosures in a timely manner has the potential to expose the institution to potential litigation from the borrower for Reg Z non-compliance or could extend the borrower's right to rescind if the loan is subject to rescission requirements.

20

20

Expiration Dates on Revised Loan Estimates

Another common error is including an **expiration date** of estimated closing costs on revised Loan Estimate disclosures after the borrower has communicated his or her intent to proceed.

The CFPB provided guidance in 2017 this date is to be left blank on revised Loan Estimates after intent to proceed has been communicated since the institution is locked into the fee amounts disclosed to the borrower.

Fees cannot exceed fee tolerance thresholds unless a valid change in circumstance has occurred once an intent to proceed has been received.

Loan origination systems vary on how this date can be left blank when required, so it is important that loan personnel understand how this can be accomplished or work with system providers to make this correction.

21

21

Inconsistent Fee Names Across Disclosures

Using inconsistent fee names between the Loan Estimate (LE) and the Closing Disclosure (CD), such as labeling a fee as "Settlement Agent Fee" on the LE and "Escrow Fee" on the CD, may obscure cost changes and potentially mislead borrowers. A key principle of TRID is to disclose fees clearly and ensure the applicants understand what they are paying for.

Under TRID rules, fee names must match consistently between the LE and the CD. Inconsistent naming creates compliance risks, audit flags, and potential fee-tolerance cure requirements. Title inconsistency can occur due to:

- **Regional differences:** Local customs use different terms for the exact same service (e.g., calling a fee "settlement fee" in one market and "escrow fee" or "title closing fee" in another).
- **System defaults:** Loan Origination Systems (LOS) and title software use distinct internal mapping dictionaries or free-text fields.
- **Lack of coordination:** Lenders and settlement agents fail to align on a shared fee baseline before issuing initial disclosures.

22

22

Missing Written List of Settlement Service Providers

Failing to provide the written list of settlement service providers within 3 business days of application prevents proper classification of shoppable versus non-shoppable fees.

If the service provider list is late or missing, title fees or other fees may be misclassified, creating tolerance violations.

Title differences can cause confusion regarding what the consumers are paying for and if they are allowed to shop.

Consumers may not know where to go to obtain shoppable services and closing issues could aris.

23

23

Incomplete or Missing Projected Payments Table

Every LE and CD must include accurate projected payments. Missing or blank tables fail TRID's transparency goals.

The Projected Payments Table is not one of the "material disclosures" for the right of rescission under the Truth in Lending Act (TILA) and its implementing Regulation Z. However, because it contains calculations that directly feed into or impact the defined statutory material disclosures, errors within the table could still trigger an extended three-year right of rescission.

24

24

Conflicting TRID Disclosure Issuance Dates

Conflicting TILA-RESPA Integrated Disclosure (TRID) issuance dates happen when disclosure timelines overlap incorrectly, such as listing the same date for a Loan Estimate (LE) and Closing Disclosure (CD), or failing to maintain the required chronological buffer between revised documents.

A clear chronological trail must show that a revised LE was issued, received, and digested by the consumer applicant prior to transitioning to a Closing Disclosure.

For example, a compliance issue exists if the borrower signed a CD on 2/4/2025, but the LE was not issued until 2/10/2025.

25

25

Incomplete Contact Information

All required contact details, including the real estate agent or broker's license number, must be provided unless the transaction qualifies for an exemption, such as a For Sale by Owner arrangement.

Each TRID error can trigger costly tolerance cures, delay closing, damage borrower trust, and draw regulatory scrutiny and penalties. With tolerance cures sometimes costing lenders hundreds of thousands of dollars annually, attention to detail is more than a regulatory necessity, it is a business imperative.

26

26

27

27

Key Flood Insurance Legislation



1928 Flood Control Act

Declared control of Mississippi River a national issue and cost should be borne by the nation



Flood Disaster Protection Act of 1973

Created regulated lender responsibilities and made purchase of flood insurance mandatory for property in Special Flood Hazard Areas



Biggert-Waters Flood Ins Reform Act of 2012

Increased coverage for multi-family structures, increased premiums and NFIP changes, and significantly increased penalties for non-compliance



National Flood Insurance Act of 1968

Created National Flood Insurance Program and made flood insurance available to owners of improved real estate in participating communities for the first time.



National Flood Ins Reform Act of 1994

Substantially changes, such as escrow for flood premiums, civil money penalties added, mandatory force-placement, etc.



Homeowner Flood Ins Affordability Act of 2014

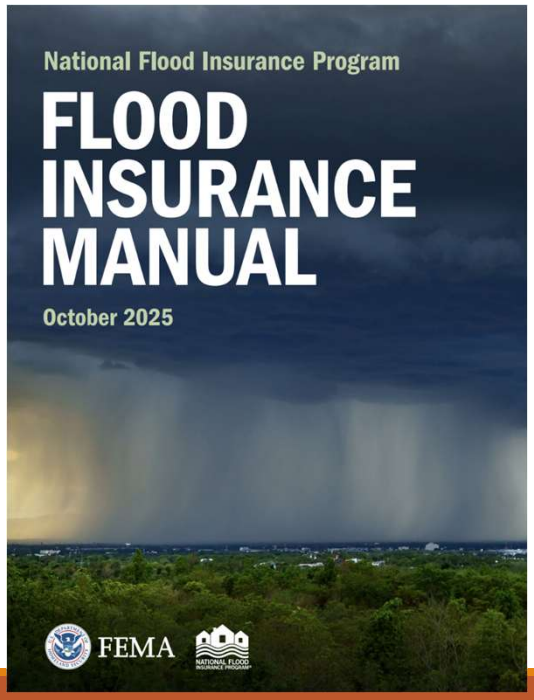
Rolled back some rate hikes, mandatory escrow on consumer loans and implemented optional low-value detached buildings on residential property

28

28

Improved Clarity and Consistency

FEMA aims to make the manual easier to understand and apply for NFIP agents and insurers, improving the overall customer experience for policyholders.



29

29

Risk of Bluelining in Underserved and Vulnerable Communities

Bluelining is an emerging, climate-driven practice where financial institutions and insurers restrict, withdraw, or drastically increase the cost of services (insurance, loans) in areas deemed at high risk from climate change, such as floods or wildfires. It disproportionately impacts low-income communities and communities of color, acting as a modern, climate-focused form of redlining that deepens economic inequality.

The National Community Reinvestment Coalition (NCRC) commented on the Federal Reserve's principles for climate-related financial risk management back in February 2023. NCRC works with community leaders, policymakers, financial institutions, and regulatory agencies to champion fairness and end discrimination in lending, housing, and business.

As banks were directed to create models quantifying climate risk, their risk mitigation solutions should avoid placing the burden on our most underserved, vulnerable communities. If banks pursue climate commitments in a vacuum, without incorporating equity as a factor in climate-related financial risk management, the unintended consequence could be "bluelining" of already underserved and redlined communities, where financial institutions identify areas as having higher environmental risk and avoid offering loans and banking services, or raise costs in those areas.

30

30

Bluelining: Climate Financial Discrimination on the Horizon https://greenlining.org/publications/bluelining-climate-financial-discrimination-on-the-horizon/

As more and more areas in the country face intensifying climate risks–like wildfires, extreme heat, and destructive weather events–banks and insurance companies must begin to consider climate-related financial risks.

However, we're seeing early warning signs that financial institutions are beginning to increase prices or withdraw services altogether from regions they perceive to be at high environmental risk. This emerging phenomenon in the financial services industry is known as bluelining.

Like redlining, bluelining disproportionately impacts communities of color and low-income communities that are more likely to live in these areas due to historic redlining, discrimination, and disinvestment.

31

31

Review of Bank's Basic Flood Insurance Responsibilities

Determine whether a structure is located, or will be located, in a Special Flood Hazard Area (SFHA) prior to making, increasing, renewing or extending (MIRE) a loan secured by that structure;

Document this determination using FEMA's Standard Flood Hazard Determination Form (SFHDF) and retain that documentation throughout the term of the loan;

Provide a notice to the borrower if the collateral property is located in a SFHA — regardless of whether the community participates in the National Flood Insurance Program (NFIP) — as early as possible in the loan origination process to provide sufficient time for the borrower to obtain adequate flood insurance prior to consummation;

Evidence the borrower's receipt of the notice (such as a signed copy or certified mail receipt);

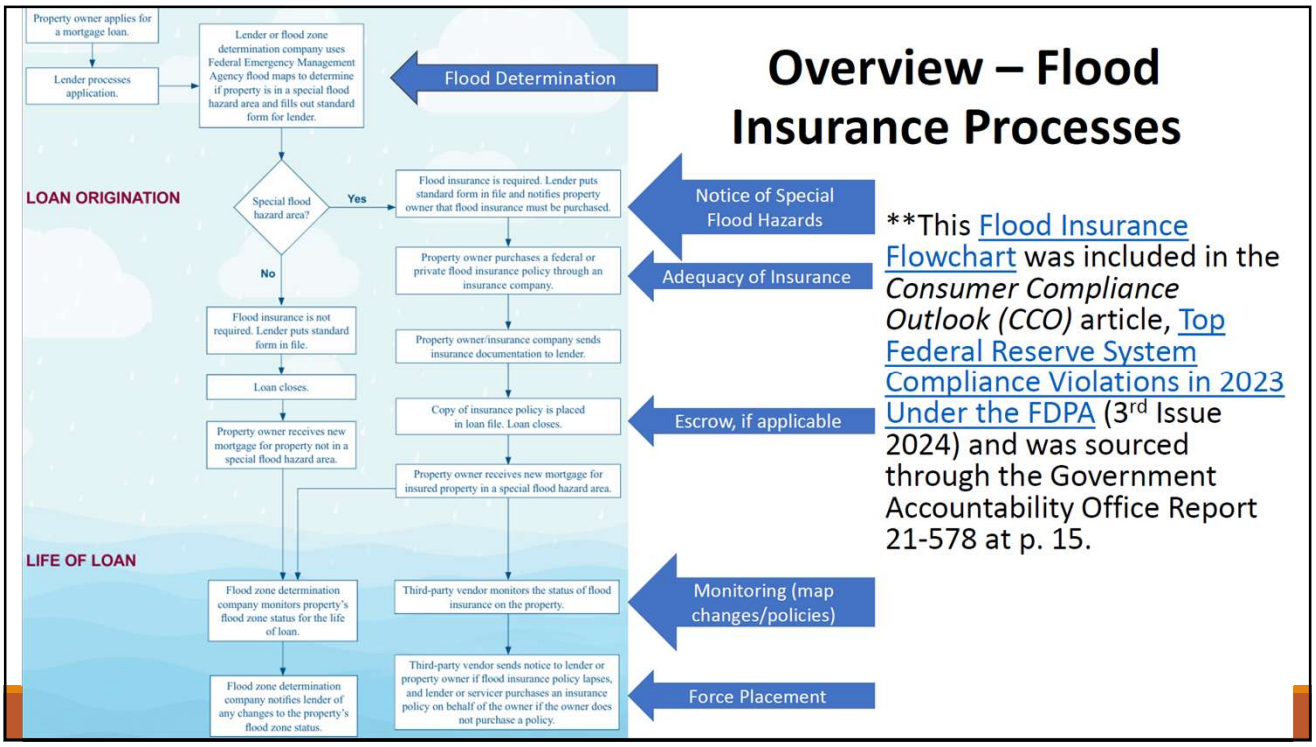
Calculate the required amount of flood insurance for a loan secured by property located in a SFHA in a participating community;

Verify sufficient flood insurance coverage prior to consummation and during the term of the loan;

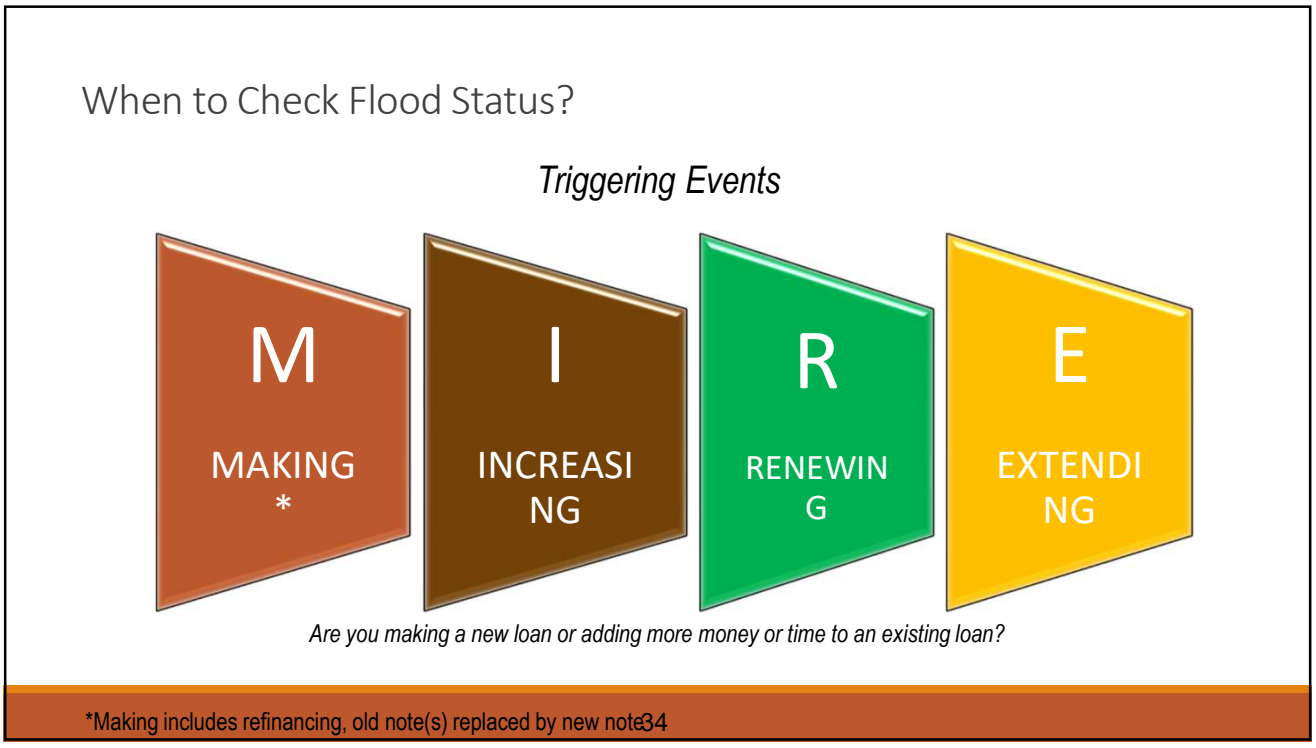
Follow force-placement rules when insufficient coverage is detected.

32

32


Overview – Flood Insurance Processes
Property owner applies for a mortgage loan.
Lender processes application.
Lender or flood zone determination company uses Federal Emergency Management Agency flood maps to determine if property is in a special flood hazard area and fills out standard form for lender.
Flood Determination
LOAN ORIGINATION
Special flood hazard area?
Yes
No
Flood insurance is required. Lender puts standard form in file and notifies property owner that flood insurance must be purchased.
Notice of Special Flood Hazards
Property owner purchases a federal or private flood insurance policy through an insurance company.
Adequacy of Insurance
Property owner/insurance company sends insurance documentation to lender.
Flood insurance is not required. Lender puts standard form in file.
Loan closes.
Copy of insurance policy is placed in loan file. Loan closes.
Escrow, if applicable
Property owner receives new mortgage for property not in a special flood hazard area.
Property owner receives new mortgage for insured property in a special flood hazard area.
LIFE OF LOAN
Flood zone determination company monitors property's flood zone status for the life of loan.
Third-party vendor monitors the status of flood insurance on the property.
Monitoring (map changes/policies)
Flood zone determination company notifies lender of any changes to the property's flood zone status.
Third-party vendor sends notice to lender or property owner if flood insurance policy lapses, and lender or servicer purchases an insurance policy on behalf of the owner if the owner does not purchase a policy.
Force Placement
**This Flood Insurance Flowchart was included in the Consumer Compliance Outlook (CCO) article, Top Federal Reserve System Compliance Violations in 2023 Under the FDPA (3rd Issue 2024) and was sourced through the Government Accountability Office Report 21-578 at p. 15.

33


When to Check Flood Status?
Triggering Events
M
MAKING *
I
INCREASING
R
RENEWING
E
EXTENDING
Are you making a new loan or adding more money or time to an existing loan?
*Making includes refinancing, old note(s) replaced by new note
34

34

Requirements for Loan Modifications

Loan modifications may trigger the flood insurance requirements (**FAQ Applicability 6**). Examples include:

- Increasing the principal balance
- Extending the loan maturity date
- Capitalizing flood insurance premiums and fees into the outstanding principal balance unless loan contract includes provision permitting the lender or servicer to advance funds to pay for flood insurance premiums (**Force Placement 10**).

If a loan modification is a triggering event, the lender must comply with the regulation as applicable (**FAQ Applicability 13**), including:

- Conducting a new flood hazard determination, unless a prior determination may be used
- ALWAYS providing applicant the Notice of Special Flood Hazards
- Requiring flood insurance in the amount required
- Escrowing flood payments, if applicable.

35

35

Flood Insurance Coverage Amount

Mandatory purchase requirements apply only to the structures (not to land on which improvements are built), plus any personal property taken as loan collateral

The minimum required coverage for flood insurance whether purchased by the borrower or force placed by the lender is the lesser of:

- Insurable Value of the structure(s);
- Outstanding principal balance of the loan(s); or
- Maximum available through the NFIP

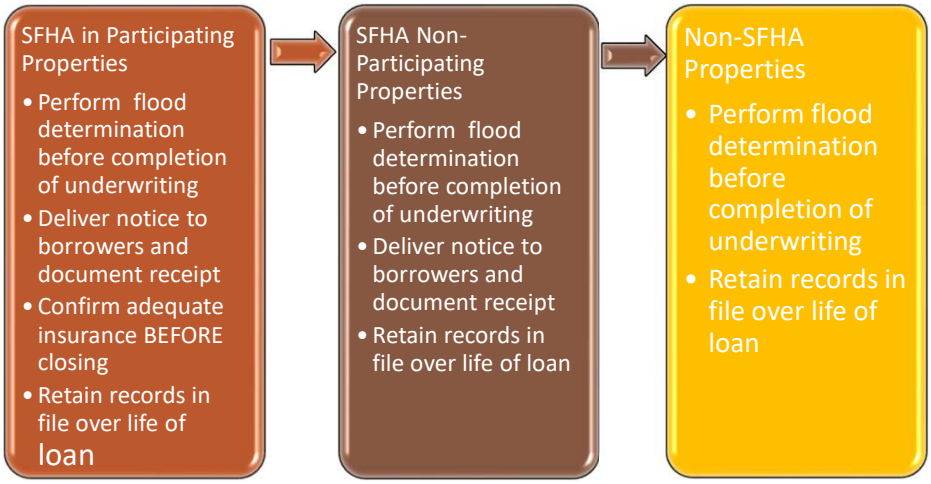
Insure contents only when both the contents and the building they are stored in is also taken as collateral

*Federal Register (Oct 2011) Interagency Q & As Regarding Flood Insurance
http://www.gpo.gov/fdsys/pkg/FR-2011-10-17/pdf/2011-26749.pdf

36

36

Flood Determination Process



37

37

Flood Notice Requirements

Upon MIRE a designated loan:

You must provide notice **each time**, even if flood insurance is in place at origination of subsequent loan!

Bank must retain a record of borrower's and servicer's receipt of the notices for life of the loan.

- **Borrower must sign or initial the notice acknowledging receipt.**

If multiple applicants, lender may decide which applicant to provide the required notice.

38

38

Common Notice Violations

- **Failing to Provide the Notice**
  - Lenders were cited for failing to provide the required flood insurance notice under § 208.25(i).
  - Examiners noted instances where the Notice was not consistently provided for triggering events.
    - The Notice must be provided for each triggering event, even if the bank is relying on a prior determination.
    - As a result, it is important to know when a loan restructure or modification is considered a triggering event. Applicability 6 addresses when a loan being restructured or modified constitutes a triggering event under the Regulation.
- **Failing to Provide the Notice in a Timely Manner**
  - Lenders were cited for failing to provide the required notice in a reasonable time.
  - Examiners noted delays in providing the notice at institutions with separate and/or decentralized processes for pulling determinations and sending the Notices. In these instances, examiners often could not determine when the Notice was mailed or provided.
  - Examiners have also noted delays in providing the Notice where the institution calls the borrower to advise the borrower of the flood insurance requirement rather than send a Notice.
  - In these instances, without a process to mail or deliver the Notice to the borrower, examiners will generally rely on the record of receipt (e.g., signed acknowledgement) to determine timeliness.

39

39

Flood Insurance Coverage Amount

Mandatory purchase requirements apply only to the structures or collateralized personal property

- NOT to land on which improvements are built

The minimum required coverage for flood insurance whether purchased by the borrower or force placed by the lender is the lesser of:

- Insurable Value of the structure(s);
- Outstanding principal balance of the loan(s); or
- Maximum available through the NFIP

Insure contents only when both the contents and the building they are stored in is also taken as collateral

40

40

Insurable Value

- Determining insurable value for properties securing the loan can be done in a variety of ways including (**Amount 2**):
  - an appraisal on the cost value, not the market value;
  - a construction-cost calculation;
  - the insurable value used in a hazard insurance policy (recognizing that adjustments may be necessary, as this value does not include the value of the foundation); or
  - any other reasonable approach that is supportable.

41

41

Calculating Coverage for Multiple Buildings

Commercial Flood Insurance Compliance – Washing Away Common Pitfalls

- This *CCO* article contains eight examples that cover calculating coverage for multiple buildings, mixed-use properties, and contents coverage.

Example 4: Three buildings secure a loan: a residential farmhouse with a commercial barn and a commercial silo. All buildings are in an SFHA and in a participating community. The loan's outstanding principal balance is $1,000,000. The insurable value of the farmhouse is $150,000, the barn is $100,000, and the silo is $600,000.

Structure	Maximum Amount of NFIP	Insurable Value
	$250,000	$150,000
	$500,000	$100,000
	$500,000	$600,000
Aggregate Maximum Amount Available Under the NFIP	$750,000 ($150,000 + $100,000 + $500,000)	
Principal Loan Outstanding	$1,000,000	

Answer: The minimum required amount of flood insurance coverage is the aggregate maximum National Insurance Flood Program coverage of $750,000, which is less than the loan's outstanding balance of $1,000,000.

Note: The aggregate maximum National Flood Insurance Program coverage reflects that the silo's insurable value of $600,000 exceeds the program's maximum nonresidential coverage of $500,000. The farm is also a residential property; therefore, the maximum residential coverage under the program is $250,000.

42

42

Mixed-Use Properties

- A property can be used for both residential and nonresidential purposes. Other residential buildings that are not eligible for RCBAP coverage have maximum available coverage of $500,000 through the NFIP.
- **Amount 3** provides the NFIP definitions of a *"single-family"* dwelling, a *"2-4 family residential building,"* and an *"other residential building."*

Example 6: A loan is secured by an apartment building that contains a convenience store and 15 apartment units. Normal occupancy is 6 months or more. The building is in an SFHA in a participating community.



- The principal loan outstanding is $2,000,000.
- The insurable value is $1,500,000.
- The store is 2,100 square feet; each apartment is 700 square feet.
- Total floor area for the building is 2,100 + (700 square feet x 15) = 12,600 square feet.
- The store is 16.7% of the total floor area (2,100 ÷ 12,600 x 100).
- Therefore, this is an example of an **Other Residential Building**. This is a mixed-use building in which the total floor area devoted to nonresidential uses is less than 25% of the buildings total floor area.
- The maximum amount of coverage available under the National Flood Insurance Program is $500,000 for the structure.

The Minimum Required Amount of Coverage Is the Lesser of These 3 Values:

Principal Loan Outstanding	$2,000,000
Maximum Amount Available Under the NFIP	$500,000 (noncondominium, other residential building)
Insurable Value	$1,500,000

Answer: The 15-unit apartment building is considered a residential building because it is a mixed-use building in which the total floor area devoted to nonresidential use is less than 25% of the building's total floor area. The maximum amount of coverage under the National Flood Insurance Program for residential buildings is $250,000. See 61 C.F.R. §61.6. However, as of June 1, 2014, the Biggert–Waters Act increased the maximum amount of coverage for a noncondominium residential building designed for use of five or more families from $250,000 to $500,000. This is a 15-unit apartment building with normal occupancy of 6 months or more. Therefore, the maximum amount of flood insurance coverage under the program for this property is $500,000, which is also the minimum required flood insurance coverage for this loan because it is less than outstanding principal loan balance and the insurable value.

43

43

Flood Insurance Coverage Violations

- **Insurance Not in Place at Loan Closing** (§ 208.25(c)(1) and **Applicability 15**)
  - A sound practice for ensuring flood insurance is in place at the time of loan closing include a pre-close review of the flood insurance coverage amount and type of insurance (NFIP or Non-NFIP).
  - Understanding timing requirements as previously discussed (wet versus dry funding).
- **Insufficient Coverage at Origination**
  - Sound practices for ensuring flood insurance amount at origination is sufficient include a pre-close review of the flood insurance coverage amount and timing. In addition, ensure the institution is determining the minimum amount of required flood insurance is accurate.
  - Consider "Per Occurrence" or other limits of the policy (**Discretionary 4**). For example, a $2 million loan secured by three commercial buildings in a SFHA where each building requires $500,000 in flood insurance coverage (total required coverage of $1.5 million), would not be in compliance if there was an "Occurrence Limit" or a "Zone Aggregate Limit" of $1.0 million, even if the overall policy is for $2 million.

44

44

Detached Structure Exemption

Implemented by HFIAA to allow (NOT require) lenders to exempt certain detached structures from mandatory purchase requirement.

Flood insurance not required for any structure that is ALL 3:

- Part of any residential property used primarily for personal, family or household purposes
- Physically detached from primary residential structure; and
- Does not serve as a residence (consider whether sleeping, bathroom or kitchen facilities exist and the intended use of the property)

Exemption available for consumer and for business, commercial or agricultural purpose loans if secured by residential property

Exemption effective March 21, 2014 on HFIAA's enactment

Lender has the option to require flood insurance on a detached structure to protect collateral securing the loan

45

45

Detached Structure Exemption Key Points

Must be more than one building

One building must serve as a residence

Detached structure purpose must be personal, family or household but CANNOT be a residence.

Loan purpose DOES NOT matter.

Structure purpose DOES matter.

46

46

Flood Insurance Escrow

Prior to January 1, 2016: An institution must require the escrow of flood insurance premiums for loans secured by "residential improved real estate" if it requires the escrow of other funds to cover other charges such as taxes, hazard or fire insurance, or any other fees.

Since January 1, 2016, HFIAA requires:

- Escrow on all loans made, increased, renewed or extended and secured by residential improved real estate (doesn't matter if escrowing for other things).
- Offer option to escrow to existing borrowers.

47

47

Flood Insurance Escrow Provisions

Insurance premiums required to be escrowed for residential improved real estate if escrow is established for other payments AND flood insurance is required (Before January 1, 2016)

- This applies to Consumer purpose loans only.

Lenders must escrow for flood insurance premiums for loans secured by residential improved real estate or a mobile home experiencing a MIRE triggering event after January 1, 2016 (Appendix A Model Notice) unless lender is exempt

By June 30, 2016, Lenders must offer escrow for existing consumer designated loans in portfolio as of January 1, 2016 (Appendix B Notice)

During the life of the loan, Lenders must offer escrow for designated loans that have lost their exception status as soon as reasonably practicable after status change (Appendix B Notice)

Lender must offer escrow to all designated loans if the Lender loses its small lender status by September 30th of the year in which it loses its status (Appendix B Notice)

Lenders are exempt from mandatory escrow requirement if:

- Lender has less than $1 billion* in assets as of 12/31 at end of either of the 2 prior calendar years, and
- On or before July 6, 2012, the institution
  - Was not required under Federal or State law to escrow taxes or insurance for the entire term of any loan; and
  - Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees or any other charges in escrow

48

48

HFIAA Loan-Related Escrow Exceptions

Extension of credit primarily for business, commercial or agricultural purposes even if secured by residential real estate

Loan is in a subordinate position to a senior lien secured by same property for which flood insurance is being provided

Property is covered by a flood insurance policy that is provided by condominium, cooperative or homeowners association
- Covered by a flood insurance policy that meets mandatory purchase requirements in the proper amount
- Policy must be provided by the association
- Applicable group must pay premium as a common expense

Home equity line of credit (HELOC)

Nonperforming loan (90 or more days past due)

Loan for a term < 12 months

When loan no longer qualifies for a loan exception, must begin escrowing as soon as reasonably practicable.

49

49

When to Force Place?

If Lender or Servicer determines at any time during the life of the loan that property securing the designated loan is inadequate or does not exist, must notify the borrower and give them a 45-day opportunity to procure coverage.
- The notice must state that the borrower must at his or her expense obtain flood insurance that is not less than the amount required by law.
- There is no model notice for flood insurance force-placement.

The BWA allows the lender to force-place and charge for insurance beginning on the date on which flood coverage lapsed or was insufficient in amount.

If borrower proves insurance coverage in the interim, must not charge borrower for any overlapping insurance premiums.
- If borrower provides proof of coverage after flood insurance is force-placed, the lender must cancel its force-placed coverage within 30 days of receiving evidence and refund overlapping premiums to the borrower

50

50

Force Placement of Insurance

Identify insurance is inadequate. Send 45 day letter.

Force placement applies to any designated loan, residential (first and junior liens) or commercial when lender determines sufficient flood insurance coverage is not in place.

Force-place insurance and allow borrower to purchase insurance.

Lender or servicer must purchase the insurance on behalf of the borrower as soon as possible and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer.

May collect premiums from borrower immediately.

May charge borrower premiums and fees for coverage beginning on date the insurance lapsed or was deemed insufficient. Lender must terminate overlapping coverage & refund for overlaps within 30 days of confirmation of borrower's coverage.

51

51

Force Placement of Insurance Issues

- **Ineffective Monitoring for Life-of-Loan Coverage** – Although lenders are not explicitly required to monitor flood insurance over the life of the loan, monitoring continuous coverage of flood insurance helps to ensure that lenders complete the force placement of flood insurance in a timely manner upon lapse of a policy, that there is continuous coverage to protect both the borrower and the lender, and that lenders are promptly made aware of FEMA flood map changes (Force Placement 15).
- **Failing to Follow Force Placement Process for Remapped Loans** – If a lender receives a notice of remapping that states that a property has been or will be remapped into a SFHA, the lender must determine whether the property securing the loan is covered by sufficient flood insurance coverage. Lenders are expected to follow the force placement procedures if it is made aware of loans that are remapped into a SFHA (Force Placement 16).
- **Failing to Ensure Adequacy of Flood Insurance at Renewal / During Life-of-Loan** (e.g., failing to obtain renewal policies for all buildings or ensuring that each building/contents continues to be adequately insured).
- **Inadequate Evidence of Insurance** – Lenders should ensure that adequate evidence of insurance is obtained. Examiners have observed lenders accepting renewal notice as acceptable proof of coverage.
- **Lapse Not a Violation Under Limited Circumstances** – A lapse in coverage during the force placement process is not a flood insurance regulatory violation if the lender waits to force place insurance until 45 days after the lender's notification to the borrower (Force Placement 1).

52

52

Equal Credit Opportunity Act (ECOA) – Reg B
ECOA's Purpose

Promote the availability of credit to all creditworthy applicants without regard to a prohibited basis of discrimination.

Notify applicants of action taken on their applications.

Report credit history in the names of both spouses on an account.

Retain records of credit applications.

Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans.

Provide applicants with copies of appraisal reports used in connection with credit transactions.

53

53

ECOA's Golden Rules

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

A creditor shall take written applications for the dwelling-related types of credit covered by Section 1002.13(a).

A creditor shall provide any written disclosures or information required by this regulation in a clear and conspicuous manner and, except for the disclosures required by §1002.5 and in a form the applicant may retain.

- Disclosures may be made in languages other than English, provided they are available in English upon request.

54

54

Immigration Status and Eligibility for Credit

CFPB and DOJ (Oct. 12, 2023) issued a Joint Statement on creditors' use of immigration status for eligibility for credit transactions

- Issued in response to consumers reportedly being rejected for credit cards and loans because of their immigration status, even when they have strong credit histories and are otherwise qualified to receive the loans

Warns lenders that "unnecessary or overbroad" reliance on immigration status in credit decisioning process may violate ECOA and other federal laws

- "Immigration status may broadly overlap with or, in certain circumstances, serve as a proxy for…protected characteristics [including race and national origin]. Creditors should therefore be aware that if their consideration of immigration status is not 'necessary to ascertain the creditor's rights and remedies regarding repayment' and it results in discrimination on a prohibited basis, it violates ECOA and Regulation B."

Examples of ECOA violations – creditor:

- Who has a blanket policy of refusing to consider applications from certain groups of noncitizens regardless of the credit qualifications of individual borrowers
- With a policy of placing undue consideration on certain criteria, such as how long a consumer has had a SSN, which may serve as a proxy for citizenship or immigration status, which in turn, may implicate a protected characteristic
- Who requires documentation, identification, or in-person applications only from certain groups of noncitizens

Recommends creditors evaluate whether their reliance on immigration or citizenship status is necessary to ascertain their repayment rights

55

55

55

Equal Credit Opportunity Act –Regulation B
Credit Decision

Timing of Decision: ECOA- Reg B Commentary to §1002.9(a)(1)

Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the **creditor has 30 calendar days in which to notify the applicant of the credit decision**.

As a general rule, when underwriting, we may consider any information so long as it is not used to discriminate against an applicant on a prohibited basis. §1002.6

Without the regulation's specific permission, do not consider a prohibited basis in making a credit decision.

56

56

Reg B: Evaluating Applications, §1002.6 Age

Some factors are closely related to prohibited information but also bear on the applicant's creditworthiness. For these, we follow special procedures.

- **Age.** Discrimination based on age is strictly prohibited. But the applicant's age can be connected to certain qualifications.
  - We may consider age to favor an elderly applicant (age 62 or older.)
  - We may consider the applicant's youth – especially for the ability to enter into a legally binding contract.
  - We may not use statistics to estimate the applicant's life expectancy – no matter how old they are.
  - We may not base or credit decision on availability credit life, health, accident disability or other credit-related insurance.

57

57

Reg B: Evaluating Applications, §1002.6 Income

- **Income**. Some income, such as social security income, is specifically protected under Regulation B. Other income must sometimes get special treatment because receiving the income can be connected to a prohibited basis, such as marital status. The general rule is based on common sense. When evaluating income, we may consider:
  - The reliability of the income.
  - How long the applicant will receive the income.
  - Whether to include future income.
  - Whether the source of income is reliable and consistent.
- Never discount or refuse to consider income because its' nature or source is related to a prohibited basis.
  - Income from public sources
  - Marriage-related income
  - Age-related income
- There is special treatment for tax-free income. Remember to gross it up if certain underwriting steps normally are based upon gross income.

58

58

Reg B: Evaluating Applications, §1002.6
National Origin

- **National Origin**: Discrimination on the basis of the applicant's national origin is strictly prohibited.
  - Although we cannot consider the applicant's national origin, we may consider the applicant's immigration status with regard to collectability.
  - No matter what the individual's status in the country, we may not discriminate against them because of their national origin.
  - Limited English Proficiency (LEP) can also be an issue per the DOJ's and CFPB's recent interpretations.

59

59

ECOA & Reg B Evaluating Applications, §1002.6

ECOA has special rules on how to consider the applicant's credit history. These rules are designed to be sure that applicants, such as married women, who have accounts under another person's name, receive full and fair consideration of their credit history.

- We must consider information the applicant presents that indicates the history does not accurately reflect the applicant's creditworthiness.
- We must consider information reported in the name of applicant's spouse that the applicant can demonstrate reflects her/his creditworthiness.
  - For both of these rules, the burden of proof is on the applicant. We must use fair and reasonable standards when we consider information that the applicants puts forward.
  - NOTE: The FACT Act now brings in identity theft information that the applicant may produce.

60

60

Evaluating Applications, §1002.6
Credit Scores

Credit Scores

- ECOA definition: An empirically derived, demonstrably and statistically sound credit scoring system is:
  - Developed using sample groups of the creditor's own applicants or a comparable applicant group,
  - Developed for the purpose of evaluating the creditworthiness of applicant's,
  - Developed and validated using accepted statistical principles and methodology; and
  - Periodically revalidated using appropriate statistical principles and methods.



61

61

Evaluating Applications, §1002.6
Credit Scores, cont.

- ECOA restricts how credit scoring systems may consider applicant age.
  - *In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.* §1002.6(b)(2)(ii)
- This definition exists for the purpose of triggering credit score notices. As long as the scoring system does not consider applicant age, the system does not have to meet ECOA's criteria.
- If a creditor uses either type of credit scoring system to make a credit decision, some of the reasons for adverse action must be taken from the scoring system
- FACT Act defines credit score as:
  - A numerical value or a categorization
  - Derived from a statistical tool or modeling system
  - Used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors.

62

62

ECOA Notification of Action Taken, §1002.9

When we take an application from a consumer we also take on an obligation to tell the customer whether we will approve or deny their application or whether we might make the loan on other terms or conditions.

For every application that we take, we must make a decision unless the customer actually withdraws the application.

- There are several different types of notices, based on whether we approve the application, make a counter-offer, take adverse action or the applicant withdraws the application.

Key definition: **Adverse Action**

- A refusal to grant credit in "substantially the terms requested" unless the creditor makes a counter-offer that the applicant accepts
- A termination of an account or unfavorable change in terms that does not affect a substantial portion of a class of a creditor's accounts; or
- A refusal to increase the amount of credit in response to a request.

63

63

ECOA Notification of Action Taken, §1002.9, cont.

- **Counter-Offer** occurs when we offer credit on terms other than what the consumer requested. This could be an offer:
  - For a lower loan amount.
  - With additional conditions, such as mortgage insurance.
  - With a higher interest rate or higher fees

- A **Withdrawn Application** is one on which we take no action because the **customer cancelled** the request for credit. Withdrawals occur when:
  - The customer fails to pick up the check.
  - Tells us they got the loan from someone else.
  - Takes other steps to cancel the application.
  - It is not a withdrawal when the customer "withdraws" the application in response to a counter-offer from the lender.

64

64

Notification of Action Taken, §1002.9, cont.

There are **Timing Requirements** for making decisions and sending the notice. We must notify the applicant:

- Within 30 days of receiving a completed application or taking adverse action on an incomplete application.
- Within 90 days of a counter-offer if the applicant did not accept it.
  - Commentary to § 1002.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time. It sets an outer limit.

The **Approval Notice** is the easiest. It is usually in the form of an approval letter. It could be as simple as a verbal notice – "Hey, great news. You are approved for credit!"

65

65

Notification of Action Taken, §1002.9, cont.

When we take some form of **Adverse Action**, we have to give the applicant more information. Most important, when we deny any application, we have to explain the denial to the customer by giving them reasons for our action.

- The adverse action notice helps the customer understand weaknesses in their credit qualification. It also tells the customer where the weakness was – their credit history, the security property, insufficient income, or somewhere else.
- With the information in the notice, the consumer is able to evaluate the fairness of our decision, based on what they know about themselves.
- With the information in the notice, the consumer can identify mistakes in the information we used.

66

66

Notification of Action Taken, §1002.9, cont.

The **Adverse Action Notice** must contain several items of information. These include:

- Creditor name, address and contact information.
- The type of action taken on the application.
- The reasons for adverse action, or a statement that the applicant has the right to obtain reasons.
- A statement of the applicant's credit rights under the Equal Credit Opportunity Act.
- Giving reasons for adverse action also makes us look carefully at our decision to make sure it was correct and fair. When we prepare an adverse action notice, we must select the factors or reasons from the consumer's application that led to, or caused our denial.

- Comment 9(a)(1)-7 **Denial of a telephone application.** When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.
  - Beware = Did you have an address used when pulling the credit report??

67

67

ECOA Decision Disclosure Summary

Everyone gets a piece of paper!

"Yes" (Loan Approved) = Note *("Approval may be express or by implication")*

"No" (Denial) = Adverse Action Notice (AAN)

"No, but"

- Counter-offer not accepted = AAN
- Counter-offer accepted = "yes", then no need for an AAN for original request because a note will be given.

Incomplete notice (can be verbal, but if info detailing the missing items required is not provided, must either send AAN (denied due to incomplete) or Notice of Incompleteness)

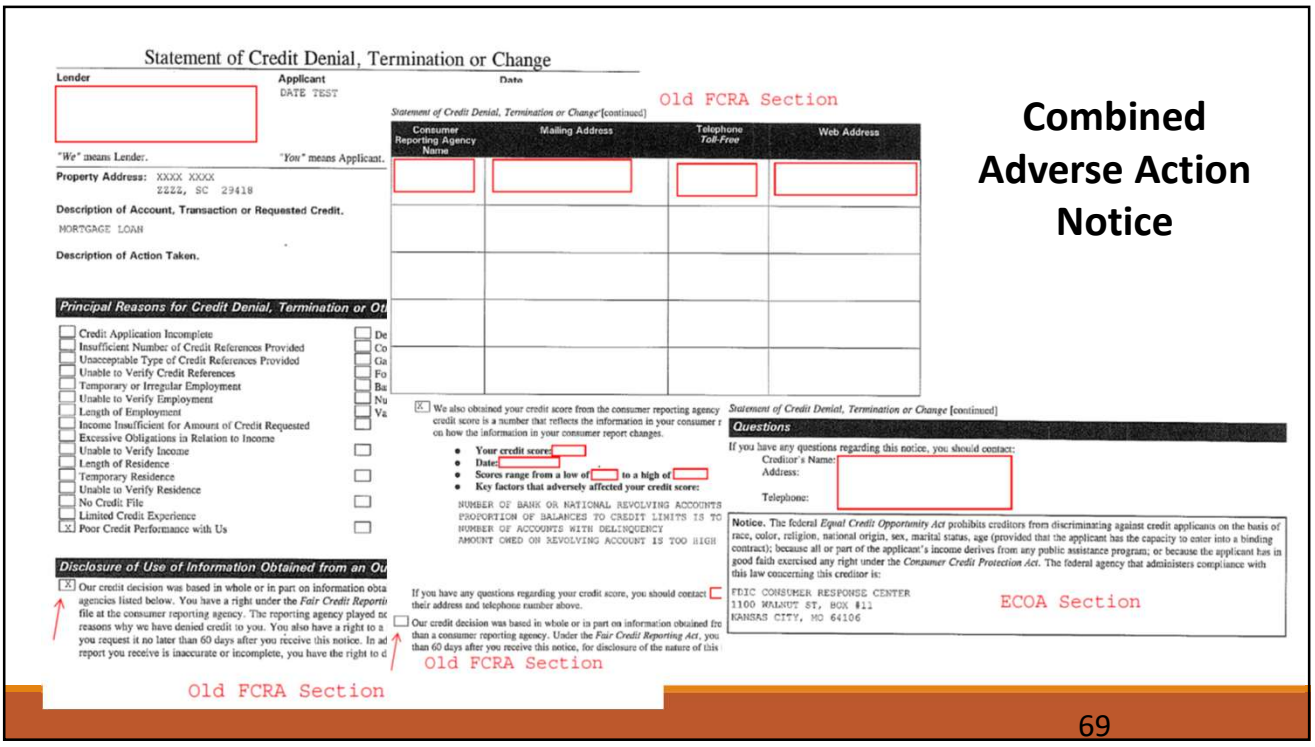
Exceptions:

Only applications expressly withdrawn BY THE APPLICANT before a denial or counter-offer communicated – whichever is sooner.

When approved and the applicants notified, but applicants don't respond within 30 days of notice.

68

68



Combined Adverse Action Notice

69

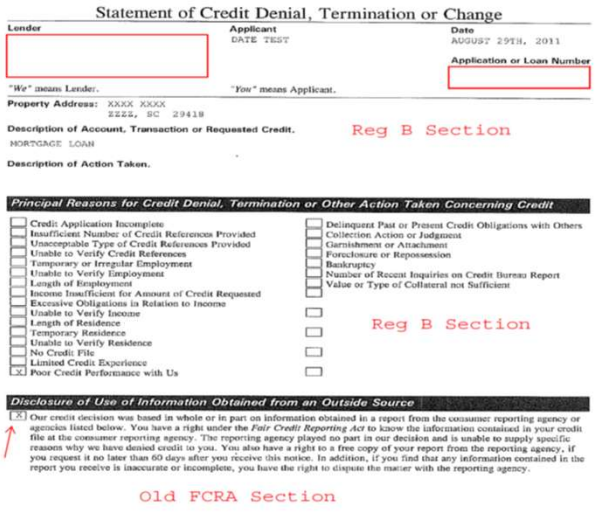
69

ECOA – Reg B
Reasons for Action Taken

§1002.9(a)(2)(i): State the specific reason for the action taken on the Adverse Action Notice

Reg B Commentary to §1002.9(b)(2) -1

A creditor must disclose **(all)** the principal reasons for denying an application or taking other adverse action. **The regulation does not mandate that a specific number of reasons be disclosed**, but disclosure of more than four reasons is not likely to be helpful to the applicant.



70

70

Equal Credit Opportunity Act (ECOA) – Regulation B Statement of Specific Reasons Upon Request

Reg B §1002.9(a)(2)(ii)

Provide a statement that the creditor will give the specific reasons for the action taken within 30 days of an applicant's request, if the request is dated within 60 days of the creditor's original notification of action taken.

If the creditor provides the consumer with a statement of the action taken and informs them of their right to request the specific reasons for the action within 60 days of the notification, the creditor should document the specific reasons for the action so they will be ava for the act

☐ We cannot approve your request. If you would like a statement of specific reasons why your application was denied, please contact us at the address shown above within 60 days of the date of this letter. We will provide you with a statement of the specific reasons for our action within 30 days after receiving your request.

71

71

Adverse Action Notices (AAN)

- When "adverse action" taken due (in part) to the consumer's report, notify **every** consumer applicant contributing to decision to decline credit must receive:
  - Name and contact of CRA
  - Statement that the CRA did not make the decision
  - Inform consumer of the right to free copy of the report
  - Reiterate the consumer's right to dispute inaccurate information contained in his or her consumer report
- Business individual applicants entitled to both AAN and credit score notices if consumer report is a factor in decision
  - Don't forget Equal Credit Opportunity Act's adverse action notice coverage for businesses with less than $1 million in gross revenues

72

72

Adverse Action: Third Party Information

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Old FCRA Section

- Only required when credit application is for a **consumer purpose** (personal, family, or household)
- When "adverse action" taken due (in part) to information from third parties (other than a CRA), notify the consumer:
  - Adverse action due to third party information
  - An explanation that the consumer may request the **nature** of the information within 60 days of notification
    - The specific information and where it was obtained need not be disclosed – bank must respond within a reasonable period of time

73

73

Adverse Action: Affiliate Information

- When "adverse action" taken on a consumer request due (in part) to information from affiliates that is of the type covered by FCRA
  - Notice includes the Action taken and an explanation that the consumer may request the nature of the information relied upon to take the action
    - Consumer must make request in writing within 60 days of notice
    - Bank must respond within 30 days following receipt of customer's written request

74

74

FCRA – Reg V
Consumer Reporting Agencies

Old FCRA Section

Statement of Credit Denial, Termination or Change [continued]

Consumer Reporting Agency Name	Mailing Address	Telephone *Toll-Free*	Web Address

- When a credit score is used in the evaluation of consumer purpose residential real estate loans or lines of credit, User must disclose to <u>all</u> applicants:
  - **Notice to Home Loan Applicant** narrative
  - Name, address and phone number of CRA

75

75

FCRA – Reg V
Credit Score Info

Be sure to check this box if a credit report was used in your adverse decision.

☒ We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- **Your credit score:**
- **Date:**
- **Scores range from a low of** to a high of
- **Key factors that adversely affected your credit score:**

New FCRA Section

NUMBER OF BANK OR NATIONAL REVOLVING ACCOUNTS WITH BALANCES
PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH ON BANK REVOLVING
NUMBER OF ACCOUNTS WITH DELINQUENCY
AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH

If you have any questions regarding your credit score, you should contact at their address and telephone number above.

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the *Fair Credit Reporting Act*, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

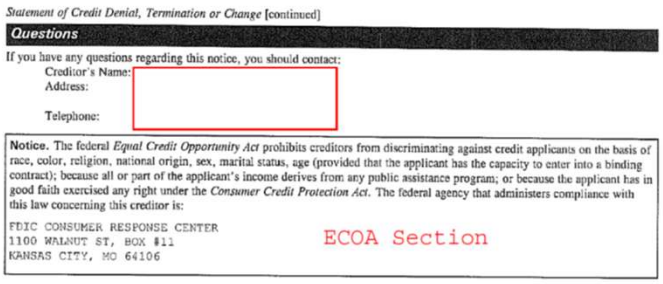
Old FCRA Section

- When a credit score is used in the evaluation of consumer purpose residential real estate loans or lines of credit, User must disclose to <u>all</u> applicants:
  - Consumer's score and range of possible scores
  - Date the score was obtained
  - Up to 4 (possibly 5) key factors that influenced the score calculation
    - 5th factor **<u>ONLY</u>** if "Excessive Inquiries" is a factor, but <u>not</u> included in the top 4 negative factors

76

76

ECOA – Reg B
Creditor & Regulator



Statement of Credit Denial, Termination or Change [continued]

Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name:
Address:

Telephone:

Notice. The federal *Equal Credit Opportunity Act* prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the *Consumer Credit Protection Act*. The federal agency that administers compliance with this law concerning this creditor is:

FDIC CONSUMER RESPONSE CENTER
1100 WALNUT ST, BOX #11
KANSAS CITY, MO 64106

ECOA Section

Reg B Appendix A - Federal Agencies to be Listed in Adverse Action Notices

APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES

The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to §1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

77

77

FCRA – Regulation V and FCRA §615
Denied Applications

Fair Credit Reporting Act (FCRA) requires **consumer** notification of the use of a consumer credit report when adverse action is taken in whole or in part on an application for credit, deposit account or other products or services.

- If any condition or term is imposed that would not have otherwise been required to approve the request based on a consumer report, a **denial** requiring disclosure occurred.

A denial also includes situations where applicant required to put more money down, obtain a co-signer or guarantor, add more collateral, shorter maturity or other similar increased underwriting requirement.

If a deposit account is closed, a check is returned unpaid, or any other negative action based on a consumer report information , an adverse action notice is required.

78

78

Guarantor or Co-Signer Adverse Action Notices

As with FCRA's risk-based pricing credit score notice, only the person to whom the credit score relates should receive the credit score notice

- Guarantors not entitled to RBPN or CSEN or AAN

While an applicant must receive AAN and a guarantor or co-signer need not, the applicant should not receive the credit score of guarantors or cosigners even if their score was a factor in the adverse action

- Simply state as a reason in ECOA section of AAN that the guarantor's or co-applicant's score was too low –
  - Do NOT disclose anyone's specific score to another individual
  - FCRA does not have the same privacy forfeiture for individual privacy in a joint application. It upholds the right to protect specificity beyond a general statement.

79

79

CFPB's Blog Post on July 7, 2020 Providing AAN when using AI/ML Models

The blog post primarily recycles information from the Bureau's annual fair lending report issued in May 2020. The Bureau indicates that artificial intelligence (AI) and a subset of AI, machine learning (ML), is an area of innovation that it is monitoring.

As it did in the fair lending report, the Bureau comments that "the existing regulatory framework has built-in flexibility that can be compatible with AI algorithms" and repeats the two examples of such flexibility given in the report:

- (1) The absence of a requirement for a creditor, when giving specific reasons for adverse action, to describe how or why a disclosed factor adversely affected an application, or, for credit scoring systems, how the factor relates to creditworthiness, and
- (2) The absence of a requirement for a creditor to use any particular list of reasons.

The Bureau encourages entities to consider using its new innovation policies (e.g. No-Action Letter and Trial Disclosure Policies) to address potential compliance issues.

80

80

CFPB's Blog Post on July 7, 2020 Providing AAN when using AI/ML Models

In connection with encouraging entities to use its innovation policies, the Bureau identifies three areas that it is "particularly interested in exploring":

- Methodologies for determining the principal reasons for an adverse action
- Accuracy of explainability methods, particularly as applied to deep learning and other complex ensemble methods
- How to convey the principal reasons in a manner that accurately reflects the factors used in the model and is understandable to consumers, including how to describe varied and alternative data sources, or their interrelationships, in an adverse action reason.

Whenever you make a decision about a consumer, give them a notice and in that notice, explain why you made the decision. Providing understandable transparency is the big challenge! Appendix C reasons commonly used by creditors may not be suitable, so the creditor should modify the checklist by substituting or adding other reasons.

Bureau wants creditors to take full advantage of their "sandbox" to continue to find innovative ways to provide credit to consumers that may have none or too little traditional information to be evaluated by a widely used credit scoring model.

81

81

Patti D. Joyner, CRCM

Patti.Joyner@finsolinc.com

www.finsolinc.com



82

82

2026 FINAL RULE DODD FRANK ACT'S §1071 PREPARATION
DISPARATE IMPACT
COMMUNITY REINVESTMENT ACT

Patti D. Joyner, CRCM
Financial Solutions
September 2026

1

1071 FINAL RULE FROM 2023 – REPLACED BY THE 2026 FINAL RULE

- CFPB (Mar. 30, 2023) issued a Final Rule (*only* 888 pages long; Table of Contents document) to implement Dodd-Frank Act Section 1071, which requires lenders to collect and annually report data on applications for credit for small businesses, including those that are owned by women or minorities, to the CFPB
  - Created a new subpart B to Reg. B, Small Business Lending Data Collection (Interactive Reg. B with new rule embedded) as required by the Dodd Frank Act of 2010
- Fact sheet:
  - Rule is intended to foster transparency and accountability by requiring financial institutions (banks and nonbanks alike) to collect and disclose data about small business loan recipients' race, ethnicity, and gender, as well as geographic information, lending decisions, and credit pricing
  - Application information will be compiled in a comprehensive, publicly available database to help policymakers, borrowers, and lenders better address economic development needs and adapt to future challenges
- Resources page
- Executive Summary of the Small Business Lending Rule
- **Then the rule was updated several times before being finalized most recently May 1, 2026.**

2

2

MAY 1, 2026 SBL RULE FEDERAL REGISTER PUBLICATION

- The CFPB revised certain provisions of Regulation B, subpart B, which implements changes to the Equal Credit Opportunity Act made by section 1071 of the Dodd Frank Wall Street Reform and Consumer Protection Act. The Bureau amended:
  - Coverage of certain credit transactions and financial institutions;
  - The small business definition;
  - Inclusion of certain data points and how others are collected; and
  - The compliance date.
- The Bureau believes these changes will streamline the rule, reduce complexity for lenders, improve data quality, and advance the purposes of section 1071.
- DATES: Final rule is effective June 30, 2026. The compliance date is January 1, 2028.
- ***91 FR 23530 (May 1, 2026)***

3

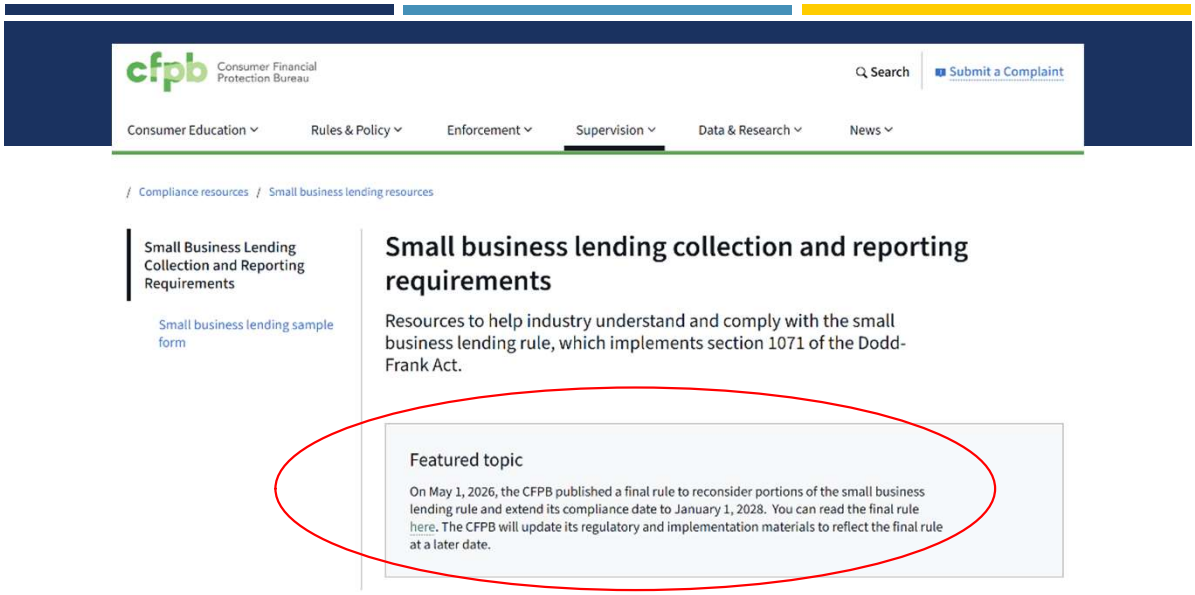
3

BANKERS CRAVE CERTAINTY

- The new January 1, 2028, compliance date could be impacted by further legal developments, financial institutions that are covered by the new rule should take advantage of the compliance lead time to develop and perfect systems used to collect and report accurate 1071 data and begin to test those systems.
- Institutions should perfect their 1071 policies and procedures, train personnel, and build processes equipped to monitor for potential fair lending violations. Without question, the 1071 data will be a priority in regulators' supervisory and enforcement work.
- While some institutions have reported some small business lending data under other legal obligations, the 1071 data collection and reporting requirements are unique and present many challenges.

4

4



5

5

1071 DEADLINES HAD BEEN OFFICIALLY EXTENDED TIERS ELIMINATED AS OF MAY 2026 RULE

- CFPB (May 17, 2024) announced new deadlines for compliance with the Small Business Data Collection Rule (Interim Final Rule issued by CFPB on July 3, 2024)
  - Tier 1: N… compliance date is …18, 2025; first filing deadline is …1, 2026
  - Tier 2: New com… …e is January 16, 2026; first filing deadline is J… …027
  - Tier 3: New com… …e … is October 18, 2026; first filing deadlin… …une 1, 2…
- Effective dat… …anged due to litiga… …esolution
  - CFPB's funding structure was found constitutional
  - U.S. District Court in Texas required CFPB to extend the effective dates to compensate for the stay period

Thresholds:

Compliance date tier	Origination threshold for the compliance date tier	Date that a covered financial institution begins collecting data and otherwise complying with the final rule	Deadline for a covered financial institution to report first year of data to the CFPB
Tier 1	At least 2… covered orig… …s in both 2022 a… 2023	July 18, 2025 / October 1…	June 1, 2026 / June 1, 2025
Tier 2	At least 500 covered originations in both 2022 and 2023 but not 2,500 or more covered originatio… in both 2022 a… 2023	January 1, 2026 / …pr… …025	June 1, 2027 / June 1, 2026
Tier 3	At least 1… …ered originations in both 2022 and 2023 but not 500 or more covered originations in both 2022 and 2023	October 18, 2026 / January 1, 2026	June 1, 2027 / June 1, 2027

Additionally, even if it originates fewer than 100 covered originations in 2022 or 2023, a financial institution that originates at least 100 covered originations in 2024 and 2025 must collect data and otherwise comply with the final rule beginning January 1, 2026.

6

6



7

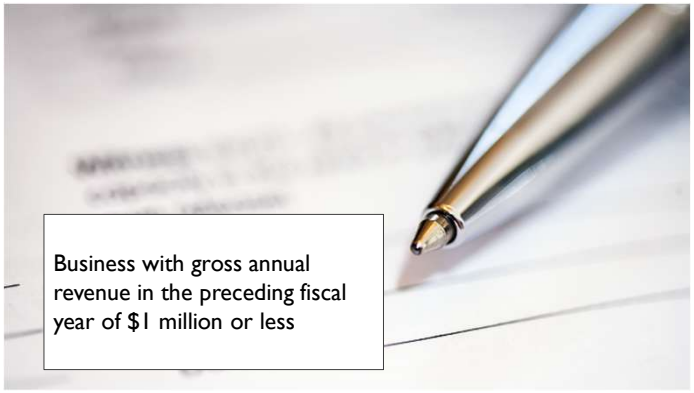
KEY DATES FOR THE 2026 FINAL RULE

- **June 30, 2026:** The revised rule officially takes effect.
- **December 31, 2026:** End of the optional transition look-back period. Lenders have the option to use 2025 and 2026 as the timeframe to determine if they meet the 1,000-loan coverage threshold.
- **December 31, 2027:** End of the standard look-back period. Lenders use 2026 and 2027 originations to determine if they must comply.
- **January 1, 2028:** Mandatory uniform compliance date. All covered institutions must begin tracking and collecting small business loan data.
- **January 1, 2028 – December 31, 2028:** A one-year grace period applies. The CFPB will not assess penalties for data errors, provided lenders make good-faith compliance efforts.
- **June 1, 2029:** The first full year of data will be collected in calendar year 2028 and submitted by this date.

FINANCIAL SOLUTIONS FOR GROWING COMPANIES, INC.

8

8



2026 "SMALL BUSINESS" DEFINITION

9

9

2026 SMALL BUSINESS LENDING (SBL) FINAL RULE

- Final rule is now effective June 30, 2026. The compliance date is January 1, 2028.
- SBL Rule was updated again in response to industry feedback and ongoing litigation.
- CFPB decided that the 2023 Final Rule included an overly broad initial coverage of credit products, lenders, small businesses and data points, and was not conducive to the long-term success of the data collection process. Modeled the decreased coverage and data points on the philosophy of an "incremental approach" used in HMDA, gradual increase over time.
- The CFPB altered the core definition of a "small business" and narrowed the required data points significantly. It also focuses on widely used lending products foundational to small businesses.
- The final rule now excludes merchant cash advances, agricultural lending and small dollar loans from "Covered Credit Transactions"
- Farm Credit System lenders are excluded from the SBL rule entirely.
- The CFPB exempted agricultural lending by any covered lender

10

10

2026 1071 FINAL RULE

- Significant modification to institution coverage – threshold of 1,000 or more **originated** covered transactions in each of the last 2 years rather than 100 or more
  - Farm Credit System (FCS) lenders are completely excluded
- Redefines coverage of certain credit transactions – more exemptions for types of business credit
  - Merchant cash advances and agricultural lending
- Defines "small business" – $1 million or less in gross annual revenues rather than the original $5 million
  - Added an inflation adjustment every 5 years component to the revenue amount
- As such, the 2023 final rule landed at defining a "small business" as a business that has $5 million or less gross annual revenue for its preceding fiscal year. Given the CFPB's desire to narrow the scope of the rule to focus on what the agency now calls "truly small businesses," it now only requires collecting data from small business applicants that have $1 million or less gross annual revenue for its preceding fiscal year.
- Given this change, fewer small business applicants will be covered by the rule. However, as support for the revised definition, the agency contends that it "maintain[s] broad coverage of small businesses" including "a high share of minority-owned and women-owned businesses."

11

11

2026 1071 FINAL RULE

- The rule removes LGBTQI+-owned business status, simplifies gender tracking to a binary male/female field, and uses aggregate race and ethnicity categories
- Revised required data points by eliminating some of the optional fields, but not all
- Reconsiders how other data points are collected by modifying required policies
- Excludes small loans of $1,000 or less (adjust every 5 years in $100 increments as of 1/1/30)

12

12

2026 RULE COVERED FINANCIAL INSTITUTIONS

- The final rule requires an institution to consider its small business **originations** in 2026 and 2027 to determine whether it meets the 1,000-loan threshold to be required to report its SB loans under the rule beginning January 1, 2028.
- To ease compliance, the rule permits institutions that do not have ready access to sufficient information to determine whether they are covered by the rule:
  - To use reasonable methods to estimate their volume of originations to small businesses for this purpose, and
  - May look to 2025 and 2026 small business originations (new provision).
- Given the higher origination threshold (now 1,000 versus 100), the exemption of FCS lenders, and as discussed below, the exclusion of merchant cash advances as a product (which results in the exclusion of merchant cash advance providers), significantly fewer financial institutions will be covered by the rule. These combined changes are arguably the most impactful of any that the agency has made.

13

13

MINORITY-OWNED BUSINESS AND WOMEN-OWNED BUSINESS

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

14

14

SMALL BUSINESS LOAN CORE PRODUCTS

- In revising the small business credit product scope, the CFPB focused on what it determined to be core "widely used lending products most likely to be foundational to small businesses' formation and operation" and not, for example, "more niche or specialty lending products." The agency also sought to lessen operational complexity and poor data quality by focusing on a limited set of credit transactions.
- Given this approach, the final rule now continues to cover only the following "core products":
  - Loans
  - Lines of credit
  - Credit cards

15

15

SMALL BUSINESS LOAN PRODUCT EXCEPTIONS

- Of great significance, the 1071 rule no longer covers the following transactions as of the 2026 revisions:
  - Merchant cash advances
  - Agricultural lending
  - Transactions of $1,000 or less
- The 2026 rule continues to exclude the following transactions:
  - Trade credit
  - Factoring
  - Leases
  - Home Mortgage Disclosure Act (HMDA)-reportable transactions
  - Insurance premium financing
  - Public utilities credit; securities credit; and incidental credit
  - Consumer-designated credit used for business or agricultural purposes
  - Credit transaction purchases; purchases of an interest in a pool of credit transactions; and purchases of a partial interest in a credit transaction

16

16

1071 DATA POINTS: STATUTE VS. REGULATION

- Section 1071(g)(1) of the Dodd-Frank Act states: "IN GENERAL.—The Bureau shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section."
- DFA Section 1071(e)(2)(H) allows "any additional data that the Bureau determines would aid in fulfilling the purposes of this section."
  - The 2023 final rule resulted in a comprehensive dataset requiring collection and reporting of the 12 statutory data points (which when reporting requires 56 total data fields be completed or left blank when not applicable), along with nine discretionary data points (which when reporting requires 27 total data fields be completed or left blank when not applicable).
  - The rationale for the comprehensive 2023 dataset was to save banks money by deleting their requirements to submit small business and small farm lending data required under the CRA regulations. The 2026 rule reinstated data reporting under CRA and Section 1071 for these banks. We must monitor CRA reporting rule requirements that may be subject to change.

17

17

DFA REQUIRED SMALL BUSINESS LENDING RULE FIELDS

- Unique identifier
- Application date
- Credit type (including credit product, guarantee types, and loan term)
- Credit purpose
- Amount applied for
- Amount approved or originated
- Action taken
- Action taken date
- Census tract of principal owner's place of business
- Gross annual revenue of the business in previous fiscal year
- Women-owned and minority-owned business statuses
- Ethnicity, race, and sex of principal owners (*with changes to the collection categories, which dramatically reduces the number of data fields*)
  - Ethnicity – aggregate categories only (no disaggregated subcategories)
  - Race – aggregate categories only (no disaggregated subcategories)
  - Sex – binary, male/female (no gender identity)

18

18

2026 FINAL RULE DISCRETIONARY DATA POINTS

- The final rule also continues to cover these three *discretionary data points* needed to facilitate the collection of the statutory data points:
  - North American Industry Classification System (NAICS) three-digit code
  - Time in business
  - Number of principal owners
    - Principal owner means an individual who **directly** owns 25 percent or more of the equity interests of a business.
- The CFPB retained a few free-form text fields for reporting certain data – namely, the type of financial institution, credit product, or the type of guarantee – despite concerns from some commenters about data consistency, quality, and comparability.

19

19

2026 FINAL RULE DISCRETIONARY DATA POINTS REMOVED

- Notably, the rule *no longer covers* the following discretionary data points:
  - Application method
  - Application recipient
  - Denial reasons
  - Pricing information
  - Number of workers
  - LGBTQI+-owned business status

20

20

SOME KEY 2026 DEMOGRAPHIC DATA POINT CHANGES

- Covered Financial Institutions are not required to obtain information about LBGTQI+-owned status. The CFPB reasoned that the sensitivity of the question outweighed the utility of the information collected. Information about women-owned or minority-owned status is still required, consistent with the statute's original intent.
- Sample data form was revised to eliminate the free form text field for principal owner's sex/gender with a designation of the owner's sex using the categories Male, Female, or the option not to provide the information. CFPB stated this was consistent with the Executive Order #14168, Defending Women.
- All disaggretated categories of race and ethnicity were removed from the sample data collection form.

21

21

DATA COLLECTION TIMING AND POTENTIAL DISCOURAGEMENT

- The new rule retained the requirement that financial institutions maintain procedures to collect information that is provided by an applicant at a time and in a manner that are reasonably designed to obtain a response. What has changed are certain "anti-discouragement" provisions that seemed to presume that financial institutions would not seek to obtain applicant-provided data – especially the principal owners' demographic information (ethnicity, race, and sex) – and dictated when in the application process such information must be collected.
- The agency is also emphasizing the importance of an applicant's right to refuse to provide demographic data by including that statutory right in the regulatory text itself and with revisions to the sample demographic data form lenders may choose to use.
- The CFPB decided to also add the following new language to the sample demographic data form:
  - "Information about your application (without your name or other directly identifying information) may eventually be available to the public."

22

22

APPENDIX E TO PART 1002—SAMPLE FORM FOR COLLECTING CERTAIN APPLICANT-PROVIDED DATA UNDER SUBPART B OF THIS PART

Sample data collection form

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

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

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

23

23

SBL RULE HELPFUL IMPLEMENTATION PROVISIONS

- Sample "notice" to comply with the statutory requirement to "firewall" demographic data (race, ethnicity, and sex of principal owners) from underwriters and others
- Safe harbors – a total of four safe harbors related to reporting application date, incorrect entry for census tract, three-digit NAICS code, and the determination of small business status, covered credit transaction, or covered application
- Tolerance threshold for bona fide errors in data reported – revised to conform with the new 1,000-loan threshold
- Grace period (January 1, 2028, through December 31, 2028) – retains one-year grace period during which the CFPB, for institutions under its jurisdiction, will not assess penalties for errors in data reporting, and will conduct examinations only to assist institutions in diagnosing compliance weaknesses, to the extent that these institutions engaged in good faith compliance efforts
- Voluntary collection of applicants' demographic data (race, ethnicity, and sex of principal owners) one year prior to compliance date to help prepare for coming into compliance –may begin January 1, 2027

24

24

DATA COLLECTION 2026 CHANGES

What has changed in the 2026 rule:

- No longer provides that low response rates of applicant-provided data may be indicia of discouragement
- No longer requires lenders to monitor for indicia of discouragement, such as low response rates from applicants, by, for example, performing peer comparisons
- Removes prior restrictions on the time and manner of collecting applicant-provided data by clarifying that "while the general expectation remains that financial institutions should attempt to collect data prior to notification of the credit decision,**" it now requires that data be collected at a time "reasonably designed to obtain a response," which creates "a flexible regulatory standard that permits financial institutions to collect data in a manner consistent with their operations."**

25

25

HMDA COVERED LOAN TYPES AND PURPOSE
EXCLUDED FROM SMALL BUSINESS LENDING REPORTING

Consumer Loans	Commercial Loans
• Home purchase • Refinancing • Cash-out refinancing • Home improvement • Other	• Home purchase • Refinancing • Home improvement

26

26

HMDA - SECURED BY A "DWELLING"

- Loans and lines must be secured by a "dwelling" to be HMDA reportable
  - This means a residential structure (no matter how many units)
    - Doesn't necessarily have to be the "primary" dwelling, or even owner-occupied – doesn't matter
    - Whether or not attached to real property
      - Mobile home without land counts
- Mixed-use property loans
  - Primary use of a building determines whether you have a dwelling or not
    - Any reasonable standard to determine primary purpose (sq. footage or income generated; can apply on a case-by-case basis

27

27

HMDA - WHAT IS A DWELLING?

Single family structures	Multifamily structures	Mixed-use purposes
Dwelling	Dwelling	Dwelling
▪ Principal residences ▪ Second homes ▪ Vacation homes ▪ Manufactured Homes or other factory built homes ▪ Investment properties ▪ Individual condominium units ▪ Detached homes ▪ Individual cooperative units	▪ Apartment buildings or complexes ▪ Manufactured home communities ▪ Condominium buildings or complexes ▪ Cooperative buildings or complexes	▪ Mixed-use property if primary use is residential ▪ Properties for long-term housing and related services (such as assisted living for senior citizens or supportive housing for people with disabilities) ▪ Properties for long-term housing and medical care if primary use is residential
Not a Dwelling	Not a Dwelling	Not a Dwelling
▪ Transitory residences ▪ Recreational vehicles ▪ Boats ▪ Campers ▪ Travel trailers ▪ Park model RVs ▪ Floating homes ▪ Houseboats ▪ Mobile homes constructed before June 15, 1976	▪ Transitory residences ▪ Hotels ▪ Hospitals and properties used to provide medical care (such as skilled nursing, rehabilitation, or long-term medical care) ▪ College dormitories ▪ Recreational vehicle parks	▪ Mixed-use property if primary use is not residential ▪ Transitory residences ▪ Structures originally designed as Dwellings but used exclusively for commercial purposes ▪ Properties for long-term housing and medical care if primary use is not residential

[1]Dwelling means a residential structure, whether or not attached to real property. § 1003.2(f) and comments 2(f)-1 through -5.

28

28

2026 FINAL RULE EXCLUDES AGRICULTURAL LENDING

- The CFPB defined "agricultural lending" as "a transaction to fund the production of crops, fruits, vegetables, and livestock, or to fund the purchase or refinance of capital assets such as farmland, machinery and equipment, breeder livestock, and farm real estate improvements."

29

29

- The CFPB decided that "agricultural loans are often secured by biological-based assets such as crops or livestock, which are subject to variables and risk from weather and disease., These characteristics create unique underwriting challenges that make such loans difficult to compare to those in other industries."

UNIQUE FEATURES OF AGRICULTURAL LOANS JUSTIFIES SBL EXCLUSION

30

30

FIREWALL PROTECTION OF DEMOGRAPHIC INFORMATION

- The final rule implements the statutory "firewall" provision of 15 U.S.C. 1691c–2(d) in § 1002.108.
- This provision generally prohibits underwriters and other employees involved in making a determination concerning a covered credit application from accessing an applicant's demographic information collected under section 1071.
- However, the rule includes an exception permitting access if a financial institution determines that limiting access is not feasible. Under the rule, it is not feasible to limit access if the institution determines that an employee or officer "should have access" to the information to perform their assigned job duties, provided the institution issues a specific notice to the applicant.
- The Bureau retained the firewall requirements in §1002.108 without significant modification. The Bureau declined requests to eliminate the firewall provision entirely or to replace it with a HMDA-style applicant disclosure. **The firewall is an explicit statutory requirement.** The CFPB stated Congress, which would have been aware of the HMDA data collection regime and its lack of a firewall, specifically mandated that financial institutions limit certain employees' and officers' access to the demographic information collected under this statute.

31

31

SBL RULE'S FIREWALL REQUIREMENTS

§1002.108 Firewall. (a) Definitions. For purposes of this section, the following terms shall have the following meanings:

- (1) *Involved in making any determination concerning a covered application from a small business* means participating in a decision regarding the evaluation of a covered application from a small business or the creditworthiness of a small business applicant for a covered credit transaction.
- (2) *Should have access* means that an employee or officer may need to collect, see, consider, refer to, or otherwise use the information to perform that employee's or officer's assigned job duties.

32

32

"INVOLVED IN MAKING A DETERMINATION"

- An employee or officer is involved in making a determination if the employee or officer makes, or otherwise participates in, a decision regarding the evaluation of a covered application from a small business or the creditworthiness of a small business applicant for a covered credit transaction. This includes, but is not limited to, employees and officers serving as underwriters.
- The decision that an employee or officer makes or participates in must be about a specific covered application or about the creditworthiness of a specific applicant.
- An employee or officer is not involved in making a determination concerning a covered application if the employee or officer is only involved in making a decision that affects covered applications generally, or if the employee or officer only interacts with small businesses prior to them becoming applicants or submitting an application.

33

33

"INVOLVED IN MAKING A DETERMINATION"

- An employee or officer may be participating in a determination even if the employee or officer is not the ultimate decision maker or the sole decision maker. For example, an employee participates in a determination concerning a covered application if the employee recommends that another employee or officer approve or deny the application.
- Similarly, an employee or officer participates in a determination concerning a covered application if the employee or officer is part of a larger group, such as a committee, that makes a determination concerning a covered application. For example, an employee participates in a decision if the employee is a member of a committee that approves the terms offered to an applicant for a covered application. This is true even if the employee does not support the committee's ultimate decision regarding the terms offered.
- Conversely, an employee or officer does not participate in a determination concerning a covered application if the employee or officer only performs ministerial functions for the committee, such as recording the minutes, or if the committee does not make a determination concerning a specific covered application.

34

34

EXAMPLES OF ACTIVITIES THAT CONSTITUTE BEING INVOLVED IN MAKING A DETERMINATION CONCERNING A COVERED APPLICATION

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

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

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

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

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

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

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

35

35

EXAMPLES OF ACTIVITIES THAT DO NOT CONSTITUTE BEING INVOLVED IN MAKING A DETERMINATION CONCERNING A COVERED APPLICATION FROM A SMALL BUSINESS

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

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

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

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

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

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

36

36

SBL RULE'S FIREWALL REQUIREMENTS

- **§1002.108 Firewall (b) Prohibition on access to certain information.** Unless the exception under paragraph (c) of this section applies, an employee or officer of a covered financial institution or a covered financial institution's affiliate shall not have access to an applicant's responses to inquiries that the financial institution makes pursuant to this subpart regarding whether the applicant is a minority-owned business, or a women-owned business under § 1002.107(a)(18), and regarding the ethnicity, race, and sex of the applicant's principal owners under § 1002.107(a)(19), if that employee or officer is involved in making any determination concerning that applicant's covered application.

37

37

SBL RULE'S FIREWALL REQUIREMENTS

- §1002.108 Firewall (c) Exception to the prohibition on access to certain information. The prohibition in paragraph (b) of this section **shall not apply to an employee or officer if the financial institution determines that it is not feasible to limit that employee's or officer's access to an applicant's responses to the financial institution's inquiries** under §1002.107(a)(18) or (19) and the financial institution provides the notice required under paragraph (d) of this section to the applicant.
- It is not feasible to limit access as required pursuant to paragraph (b) of this section if the financial institution determines that an employee or officer involved in making any determination concerning a covered application from a small business should have access to one or more applicants' responses to the financial institution's inquiries under § 1002.107(a)(18) or (19).

38

38

SBL RULE'S FIREWALL REQUIREMENTS

- **§1002.108 Firewall(d) Notice.** In order to satisfy the exception set forth in paragraph (c) of this section, a financial institution shall provide a notice to each applicant whose responses will be accessed, informing the applicant that one or more employees or officers involved in making determinations concerning the covered application may have access to the applicant's responses to the financial institution's inquiries regarding whether the applicant is a minority-owned business, or a women-owned business, and regarding the ethnicity, race, and sex of the applicant's principal owners. The financial institution shall provide the notice required by this paragraph (d) when making the inquiries required under § 1002.107(a)(18) and (19) and together with the notices required pursuant to § 1002.107(a)(18) and (19).

39

39

PRESIDENT TRUMP'S EXECUTIVE ORDERS

- President Trump's executive orders have had a significant impact on the banking sector, particularly in the areas of
  - **Regulatory policy:** deregulation trend with a lighter enforcement touch;
  - **Financial technology and digital assets:** administrative support for innovation;
  - **Fair lending practices:** Executive orders targeting disparate impact liability could have broad implications for fair lending enforcement, potentially weakening protections against discriminatory lending practices.
  - **Modernization of government payments:** Executive Order 14247 mandates a shift to electronic payments for all Federal disbursements and receipts by September 30, 2025. This means that banks will play a crucial role in facilitating these electronic transfers, which could boost their EFT services and digital payment offerings.
  - **Increased focus on financial integrity and consumer protection:** Despite a general move towards deregulation, areas like Bank Secrecy Act/Anti-Money Laundering (BSA/AML) and fair lending compliance are still expected to be under scrutiny. This indicates a more targeted approach to regulation.

Executive Orders alone do NOT change laws or regulations!

40

40

SUPREME COURT OVERTURNS CHEVRON DOCTRINE

- U.S. Supreme Court (June 28, 2024) issued an opinion overturning the Chevron Deference Doctrine, a test used by federal regulators to interpret ambiguous language in existing law in rulemaking and enforcement actions
  - 6-3 ruling results from combined two cases, Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. U.S. Department of Commerce that challenged a ruling that leveraged the Chevron Deference Doctrine
  - Overturns a 1984 decision (Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.) that led federal courts to defer to administrative agencies in interpreting ambiguous statutes
    - Chevron doctrine was based on the idea that when Congress passes a statute ambiguous enough to have multiple interpretations, it implicitly delegates to agencies enforcing the statute the authority to resolve the ambiguity based on their expertise
    - Court rejects Chevron's core premise by requiring courts to decide the meaning of ambiguous statutes without deferring to an agency's interpretation – rejected the idea that agencies are better positioned than courts to interpret statutes relevant to their expertise

41

41

SUPREME COURT OVERTURNS CHEVRON DOCTRINE (CONTINUED)

- Court held that according to the Administrative Procedure Act (APA), courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority," stipulating that courts cannot reference an agency's interpretation of law they claim is ambiguous
  - Decided that "a statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question" and that Chevron's presumptions were "misguided"
  - Agencies' interpretations should provide informative expertise instead of binding a court
- But preserved deference to agencies' decisions where Congress has explicitly delegated authority: Court recognized that "some statutes expressly delegate to an agency the authority to give meaning to a particular statutory term."
- Emphasized prior decisions relying on Chevron were unaffected: "we do not call into question prior cases that relied on the Chevron framework. The holdings of those cases that specific agency actions are lawful…are still subject to statutory stare decisis despite our change in interpretive methodology"

42

42

FAIR HOUSING ACT (FHA)

- The FHA prohibits discrimination in all aspects of "residential real-estate related transactions," including but not limited to:
  - Making loans to buy, build, repair or improve a dwelling;
  - Purchasing real estate loans;
  - Selling, brokering, or appraising residential real estate; and
  - Selling or renting a dwelling.
- The FHA covers most housing. In very limited circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family houses sold or rented by the owner without the use of an agent, and housing operated by religious organizations and private clubs that limit occupancy to members.

43

43

ORIGINS OF EQUAL CREDIT OPPORTUNITY ACT (ECOA)

- ECOA was passed at a time when discrimination against women applying for credit was common. Many mortgage lenders often discounted a married woman's income, especially if she was of childbearing age. Doctors were asked for "baby letters" attesting to a woman's birth control practices, considered a significant factor in her income earning probability. Things weren't much better for single women, either.
- Organizations lobbying for equal rights claimed mortgage lenders were more likely to deny credit to single women compared to other applicants.
- The Equal Credit Opportunity Act was signed into law by President Gerald Ford on October 28, 1974, prohibiting discrimination in credit based on sex and marital status. It was later amended in March of 1976 to expand protections by adding race, color, religion, national origin, age, receipt of public assistance income and exercising one's rights under certain consumer protection laws.

44

EQUAL CREDIT OPPORTUNITY ACT (ECOA)

- The ECOA prohibits discrimination in any aspect of a credit transaction. It applies to any extension of credit, including those to small businesses, corporations, partnerships, and trusts. Prohibitions were established against signature practices obligating women to notes and other legal orders against their will simply because they were married to an applicant or borrower.
- Regulation B describes lending acts and practices specifically prohibited, permitted, or required such as timely adverse action notices including reasons for denial, notice of incomplete applications, information on the creditor's primary regulator to whom complaints may be forwarded, and other critical pieces of information to arm applicants with
- In January 2013, the CFPB amended Regulation B to reflect the Dodd-Frank Act amendments requiring creditors to provide applicants with free copies of all appraisals and other written valuations developed in connection with all credit applications to be secured by a first lien on a dwelling. This Reg B amendment also requires creditors to notify applicants in writing that copies of all appraisals will be provided to them promptly.
  - Please don't uniformly use appraisal waivers to postpone delivery of appraisal copies to borrowers until closing!!!!

45

45

	FHA – applies to the sale, rental or financing of housing	ECOA – applies to all types of consumer and commercial credit
Race	X	X
Color	X	X
National Origin	X	X
Religion	X	X
Sex	X	X
Familial Status	X	
Handicap or Disability	X	
Marital Status		X
Age		X
Receipt of public assistance program income		X
Exercise of any right under CCPA		X

46

- Footnote 1: Regulators align definitions of LMI areas with the US Dept. of HUD's defined standards of area median income (AMI).
- Footnote 2: The ECOA, enacted in 1974, makes it unlawful for creditors to discriminate based on race, color, religion, national origin, sex, ,marital status, age, receipt of public assistance income, or the exercise of any rights under the Consumer Credit Protection Act. The FHA, enacted in 1968, makes it unlawful to discriminate in housing transactions based on race, color, religion, sex, handicap, familial status, or national origin.



47

WHAT ARE THE DIFFERENCES?

- Community Reinvestment Act - CRA
  - Evaluated using closed loans
  - Not based on race/ethnicity or any other prohibited basis
  - Low-to-moderate income (LMI) requirements
    - Qualifying income is 80% or less of Area Median Income (AMI)
    - Property is in a LMI census tract
- Fair Lending
  - Evaluated using applications and originations
  - Not income based
  - Lending without discrimination on prohibited basis including (among others) race, ethnicity as well as the demographic composition of the geographic location of the borrower or property (redlining)

48

48

- Redlining occurs when lenders deny or discourage applications or avoid providing loans or other credit services in neighborhoods because of the race, color, or national origin of the residents of those neighborhoods
- Violates both the Fair Housing Act and the Equal Credit Opportunity Act

REDLINING

49

49

REDLINING DEFINED

- **Redlining** is an illegal disparate treatment in which lenders avoid providing credit services to individuals living in minority communities because of the race, color, national origin or other prohibited bases of residents of those communities. Lenders redline by providing unequal access to credit or unequal terms of credit.
- **Reverse redlining** is the illegal practice of extending credit on unfair terms in specific communities on a discriminatory basis. For example, lenders have been found to target low-income borrowers with subprime and balloon loans (high-interest, high-costs products and services) without considering the entire portfolio of loans based on each applicant's merits.
- **Digital redlining** is the use of digital resources (websites, social media, etc.) to market or provide unequal access to or terms of credit to potential applicants via "targeted marketing" methods. Based on some prohibited bases, individuals are only shown loan options the marketer allows them to see. What information is used to reach the "perfect applicant" for each product or service – religious views, political perspectives, marital status, etc.?????

50

50

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: June 27, 2025

Mortgagee Letter 2025-15

To: All FHA-Approved Mortgagees
All Direct Endorsement Underwriters
All Eligible Submission Sources for Condominium Project Approvals
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All HUD-Certified Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject	Rescission of the Supplemental Consumer Information Form Requirement
Purpose	This Mortgagee Letter (ML) rescinds the Handbook 4000.1 requirement to provide the Fannie Mae/Freddie Mac Form 1103, *Supplemental Consumer Information Form (SCIF)*, which collects and reports certain information from Borrowers.
Effective Date	The provisions of this ML are effective immediately.

51

51

FANNIE MAE MORTGAGE FRAUD TRENDS 2025

- The Fannie Mae Financial Crimes team dedicates its efforts to identifying fraudulent activities and sharing information that supports and educates our industry partners. Their goal is to help industry professionals become more proactive in the fight against mortgage fraud.
- Mortgage fraud is a material misstatement, misrepresentation, or omission relied upon to fund or purchase – or not to fund or purchase – a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument.
- Fannie Mae rely on their lender partners, servicers, and other members of the mortgage industry for identification of potential mortgage fraud. Complete and submit the Suspected Mortgage Fraud Report or call 1-800-2FANNIE (1-800-232-6643).

https://singlefamily.fanniemae.com/mortgage-fraud-prevention

52

52

FANNIE MAE MORTGAGE FRAUD PREVENTION HIGH-LEVEL RED FLAGS

- Social Security number discrepancies within the loan file.
- Address discrepancies within the loan file.
- Verifications addressed to a specific party's attention.
- Verifications completed on the same day they were ordered.
- Verifications completed on weekend or holiday.
- Documentation that includes deletions, correction fluid, or other alterations.
- Numbers on the documentation that appear to be "squeezed" due to alteration.
- Different handwriting or type styles within a document.
- Excessive number of automated underwriting system submissions.

53

53

FANNIE MAE MORTGAGE FRAUD PREVENTION MORTGAGE APPLICATION RED FLAGS

- Significant or contradictory changes from handwritten to typed application.
- Unsigned or undated application.
- Employer's address shown only as a post office box.
- Loan purpose is cash-out refinance on a recently acquired property.
- Buyer currently resides in subject property.
- Same telephone number for applicant and employer.
- Extreme payment shock (may signal straw buyer and/or or inflated income).
- Purchaser of investment property does not own residence.

54

54

FANNIE MAE MORTGAGE FRAUD PREVENTION SALES CONTRACT RED FLAGS

- Non-arm's length transaction: seller is real estate broker, relative, employer, etc.
- Seller is not currently reflected on title.
- Purchaser is not the applicant.
- Purchaser(s) deleted from/added to sales contract.
- No real estate agent is involved.
- Power of attorney is used.
- Second mortgage is indicated, but not disclosed on the application.
- Earnest money deposit equals the entire down payment or is an odd amount for the local market.
- Multiple deposit checks have inconsistent dates, e.g., #303 dated 10/1, #299 dated 11/1.
- Name and/or address on earnest money deposit check differ from buyers.
- Real estate commission is excessive.
- Contract dated after credit documents.
- Contract is "boiler plate" with limited fill-in-the-blank terms, not reflective of a true negotiation.

55

55

FANNIE MAE MORTGAGE FRAUD PREVENTION CREDIT REPORT RED FLAGS

- No credit history or "thin" credit files.
- Invalid Social Security number or variance from that on other documents.
- Duplicate Social Security number or additional user of Social Security number.
- Recently issued Social Security number.
- Liabilities shown on credit report that are not on mortgage application.
- Length of established credit is not consistent with applicant's age.
- Credit patterns are inconsistent with income and lifestyle.
- All tradelines opened at the same time.
- Authorized user accounts have superior payment histories.
- Significant differences between original and new or supplemental credit reports.
- "Also known as" (AKA) or "doing business as" (DBA) indicated.
- Numerous recent inquiries.
- Missing pages and/or supplements.
- Employment discrepancies.
- Social Security number, death, or fraud alerts.

56

56

FANNIE MAE MORTGAGE FRAUD PREVENTION MORTGAGE APPLICATION RED FLAGS

- Applicant's job title is generic, e.g., "manager," "vice president."
- Employer's address is a post office box, the property address, or applicant's current residence.
- Applicant's residence is (will be) in location remote from employer.
- Employer name is similar to a party to the transaction, e.g., uses the applicant's initials.
- Employer unable to be contacted.
- Year-to-date or past-year earnings are even dollar amounts.
- Withholding not calculated correctly (check FICA tables).
- Withholding totals vary significantly from pay period to pay period.
- Pay period dates overlap and/or do not correspond with other documentation.
- Abnormalities in paycheck numbering.
- Handwritten VOE, pay stubs, or W-2 form.

57

57

FANNIE MAE MORTGAGE FRAUD PREVENTION MORTGAGE APPLICATION RED FLAGS (CONTINUED)

- W-2 form presented is not the employee's copy.
- Employer's identification number has a format other than 12-3456789.
- Income appears to be out of line with type of employment.
- Self-employed applicant does not make estimated tax payments.
- Real estate taxes or mortgage interest claimed, but no ownership of real property disclosed.
- Tax returns not signed or dated.
- High-income applicant without paid preparer.
- Paid preparer signs taxpayer's copy of tax returns.
- Interest and dividend income do not align with assets.
- Applicant reports substantial income but has no cash in bank.
- Large increase in housing expense.
- Reasonableness test: income appears to be out of line with type of employment, applicant age, education, and/or lifestyle.

58

58

FANNIE MAE MORTGAGE FRAUD PREVENTION ASSET DOCUMENTATION RED FLAGS

- Down payment source is other than deposits (gift, sale of personal property).
- Applicant's salary does not support savings on deposit.
- Applicant does not use traditional banking institutions.
- Pattern of loyalty to financial institutions other than the subject lender.
- Balances are greater than the FDIC or SIPC insured limits.
- High-asset applicant's investments are not diversified.
- Excessive balance maintained in checking account.
- Dates of bank statements are unusual or out of sequence.
- Recently deposited funds without a plausible paper-trail or explanation.

59

59

FANNIE MAE MORTGAGE FRAUD PREVENTION ASSET DOCUMENTATION RED FLAGS (CONTINUED)

- Bank account ownership includes unknown parties.
- Balances verified as even dollar amounts.
- Two-month average balance is equal to present balance.
- Source of earnest money is not apparent.
- Earnest money is not reflected in account withdrawals.
- Earnest money is from a bank or account with no relationship to the applicant.
- Bank statements do not reflect deposits consistent with income.
- Reasonableness test: assets appear to be out of line with type of employment, applicant age, education, and/or lifestyle.

60

60

FANNIE MAE MORTGAGE FRAUD PREVENTION APPRAISAL RED FLAGS

- Appraisal ordered by a party to the transaction.
- Occupant shown to be tenant or unknown.
- Owner is someone other than seller shown on sales contract.
- Appraisal indicates transaction is a refinance, but other documentation reflects a purchase.
- Purchase price is substantially higher than predominant market value.
- Purchase price is substantially lower than predominant market value.
- Subject property obsolescence is minimized.
- Large positive adjustments made to comparable properties.
- Comparables' sales prices do not bracket the subject's adjusted value.
- Comparable sales are not similar in style, size, and amenity.

61

61

FANNIE MAE MORTGAGE FRAUD PREVENTION APPRAISAL RED FLAGS (CONTINUED)

- Dated sales used as comparable sales.
- New construction/condo conversion: all comparable sales located in subject development.
- Comparable properties are a significant distance from the subject, or located across neighborhood boundaries (main arteries, waterways, etc.).
- Map scale distorts distance of comparable properties.
- "For Rent" sign appears in photographs.
- Photos appear to be taken from an awkward or unusual standpoint.
- Address reflected in photos does not match property address.
- Weather conditions in photos inconsistent with date of appraisal.
- Appraisal dated before sales contract.
- Significant appreciation in short period of time.
- Prior sales are listed for subject and/or comparables without adequate explanation.

62

62

CRA: PURPOSE AND COVERAGE

- Encourage banks to help meet credit needs of their communities, including low- and moderate-income (LMI)
  - Always look for the LMI connection
- Covers all FDIC-insured financial institutions
  - Some limited special purpose banks exempted
  - Poster in each lobby

63

CRA: TESTS

- Three core ways to meet or serve needs of LMI:
  - Lending
  - Investment
  - Service
- CRA Rating is based on performance on all three tests
  - Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, Substantial Non-compliance

64

CRA: TESTS

Three sizes of financial institutions:

- Small Bank: for 2026, had 'assets of' less than $412 million as of December 31 for **either** of the prior two calendar years.
- Intermediate Small Bank: for 2026, had 'assets of' at least $412 million as of December 31 for **both** of the prior two calendar years and less than $1.649 billion as of December 31 for **either** of the prior two calendar years.
- Large Bank: for 2026, had 'assets of' at least $1.649 billion as of December 31 for **both** of the prior two calendar years.

- Special examination procedure for each bank size

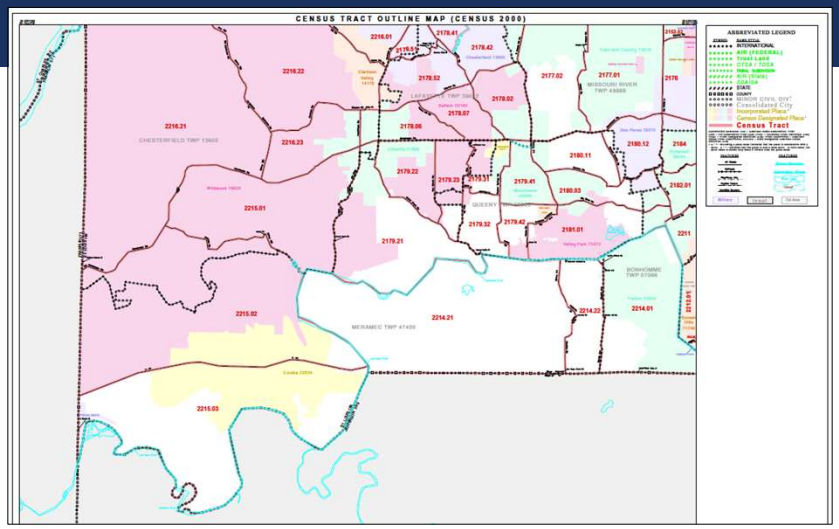
65

ASSESSMENT AREA

- Delineate Assessment area(s)
  - Consist generally of one or more MSAs, metropolitan divisions, or one or more contiguous political subdivision; and
  - Include geographies in which bank has main office, branches and deposit-taking ATMs; and
  - Surrounding areas where bank has originated or purchased a substantial portion of its loans

66

ASSESSMENT AREA



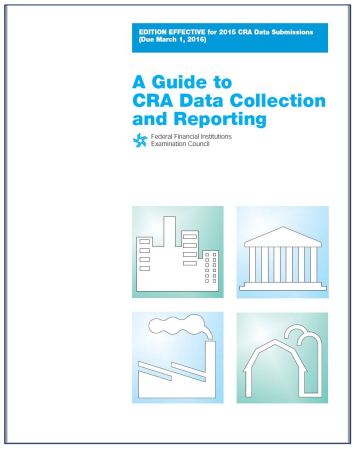
67

ASSESSMENT AREA

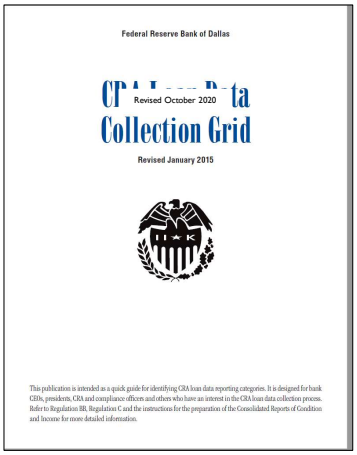
- Limitations on assessment areas:
  - Must consist of whole geographies
    - Geography = census tract
  - May not reflect illegal discrimination
  - May not arbitrarily exclude LMI
  - May not extend substantially beyond MSA or state boundary unless bank serves a geographic area that extends substantially beyond the boundary
  - Must be assessment area for each state served

68

HELPFUL RESOURCES



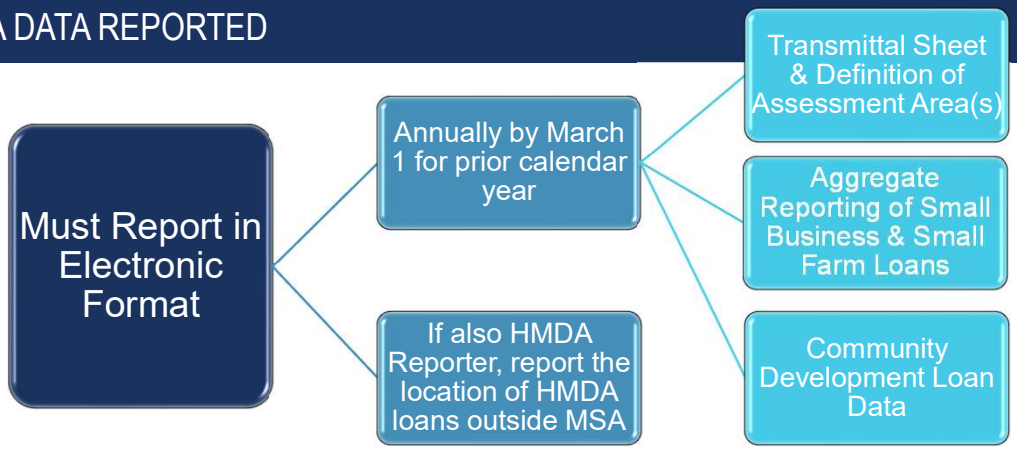
https://www.ffiec.gov/cra/pdf/2015_CRA_Guide.pdf



https://www.dallasfed.org/~/media/documents/cd/pubs/craloan.pdf

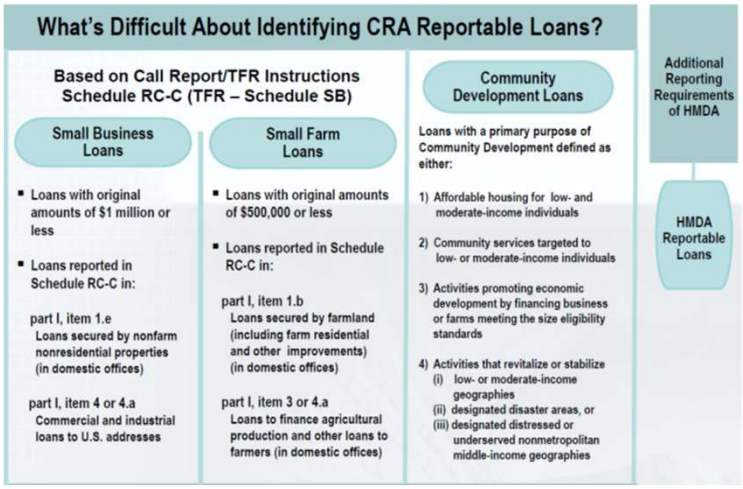
69

CRA DATA REPORTED



70

CRA LOAN DATA REPORTED



71

SMALL BUSINESS LOANS

- Small Business Loans are loans of $1 million or less originated, or maturity extended by renewal or refinance or modification, or new money added in the applicable time period from the following Call Report line items on Schedule RC-C1:
- Loans and Leases:
  - Line 1.e(1) – Loans secured by owner occupied nonfarm nonresidential properties
  - Line 1.e(2) - Loans secured by other nonfarm nonresidential properties
  - Line 4.a – Commercial and industrial loans to US addresses

72

SMALL FARM LOANS

- Small Farm Loans are loans of $500 thousand or less (same caveats on extended/renewed/refinanced) from the following Call Report line items on Schedule RC-C2:
- Loans and Leases:
  - Line 1.b – Secured by Farmland
  - Line 3 – Loans to finance agricultural production and other loans to farmers
- Loans are reported if they meet these criteria regardless of annual revenue. The revenue is reported using:
  - Code 1 (revenue of $1 million or less) or
  - Code 2 (greater than $1 million)

73

SMALL BUSINESS AND SMALL FARM LOAN AGGREGATE REPORTING

- An institution subject to data reporting requirements must report the aggregate number and amount of loans for each geography in which it originated or purchased a small business or small farm loan
- Loans to businesses and farms are reported by origination amounts of:
  - $100,000 or less;
  - More than $100,000 but less than or equal to $250,000; and
  - More than $250,000
- Institutions must also report loans to businesses and farms with gross annual revenues of $1 million or less, using the revenues that the institution considered in making its credit decisions

74

CRA DATA REPORTING LINES OF CREDIT

- Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations
- Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination
  - Full amount of the credit line is the amount that is considered originated
  - In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported
  - Consistent with Call Report instructions, if an increase to an existing line would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line, the institution would not report the increase

75

GEOGRAPHIC DISTRIBUTION OF SMALL BUSINESS AND SMALL FARM LENDING

- The availability of information about the geographic location of businesses and farms receiving credit provides an opportunity to examine the distribution of farm lending across areas grouped by socio-demographic and economic characteristics
- Information on the distribution of businesses and population provides some context within which to view these distributions
- CRA performance assessments include an analysis of the distribution of small business and small farm loans (of all types) across census tracts grouped into 4 income categories: low, moderate-, middle-, and upper-income

76

RULES FOR REPORTING REFINANCES

- May report only 1 origination (whether a refinance or renewal) per loan per year, unless an increase in the loan amount is granted
- If the loan amount increases when extending the term of the loan, always report the amount of the increase as a small business or farm loan
- Report only the amount of the increase if the original or remaining amount has already been reported

77

REPORTING GROSS ANNUAL REVENUE

Indicator of Gross Annual Revenues: What to report?

Revenues Considered/Relied On			Gross Annual Revenues to Report
Entity Only			Only entity gross annual revenues
Entity	+	Parent or Subsidiary	Aggregate the revenues of the entity and the parent or subsidiary
Entity	+	Co-Signor or guarantor ≠ affiliate of borrower (i.e., a sole proprietor)	Only entity revenues – do not combine
Start-up business			Actual revenue to date, including $0 if the business has no revenue to date

FRB Outlook Live * Tips for Reporting Accurate HMDA and CRA Data * 2010

78

PUBLIC FILE MUST INCLUDE

- CRA Performance Evaluation
- Branch Information
  - List of branches with street addresses and geographies
  - List of branches opened/closed (last 2 years)
  - List of services offered at branches and any material differences
- Map of Assessment Area
- Be sure to include comments and complaints (last 2 years)
- Additional information to be considered
  - Consumer loans (if elected)
  - CRA Disclosure Statement
  - HMDA notice stating that the HMDA Disclosure Statement, and if applicable affiliate bank HMDA Disclosure Statement, by be obtained on CFPB's website

79

AVAILABILITY OF PUBLIC FILE

- A bank shall make the following information available to the public for inspection on request and at no cost:
  - At the main office (and if an interstate bank, at one branch office in each state), the entire contents of its public file
  - At each branch office
    - A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and
    - Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located
- Copies must be provided to any person that request. A reasonable fee may be assessed

80

PUBLIC NOTICE

- A bank must provide in the public of its main office and each of its branches the appropriate public notice

81

PERFORMANCE CONTEXT

- Evaluated based on performance context
  - Demographic data
  - Economic conditions
  - Lending, investment and service opportunities
  - Bank's size, condition
  - Bank's business strategy
  - Products and services

82

CRA EXAM: SMALL BANK

- Loan to deposit ratio is reasonable
- Majority of loans are within assessment area.
- Distribution of loans to borrowers of different income levels is reasonable
- Geographic distribution of loans within assessment area
- Responses to complaints and community groups

83

CRA EXAM: INTERMEDIATE SMALL BANK

- Community investment and development loans
- Affordable housing
- Community services
- Economic development financing
- Activities that stabilize or revitalize
  - LMI, disaster areas and distressed non-metropolitan middle-income geographies

84

CRA EXAM: LARGE BANK

- Lending Test:
  - Record of helping to meet credit needs of assessment area(s) including LMI
    - Home mortgages
    - Small business and small farm loans
    - Community development lending
    - Consumer loans if substantial majority of business
  - Originations and purchases
  - Measure by revenue and demographics

85

CRA EXAM: LARGE BANK

- Investment Test
  - Help meet community credit needs with qualified investments
    - Excludes lending and service already considered.
    - Performance measured by dollar amount, innovativeness, complexity, responsiveness to needs, and not provided by private investors
    - May be in greater regional area

86

CRA EXAM: LARGE BANK

- Service Test
  - Availability and effectiveness of systems for delivering retail banking products
    - Branch distribution and opening or closing
    - Availability and effectiveness of alternative systems of delivery
  - Extent of innovativeness of community development services

87

CRA: WHOLESALE AND LIMITED PURPOSE

- Bank must request designation as wholesale or limited purpose
- Performance criteria include:
  - Community development loans, investments and services
  - Innovative or complex investments, loans, and services
  - Qualified activities of affiliate and through consortia

88

CRA: STRATEGIC PLAN

- Subject to review and approval by regulator
- Plan must be in effect for at least one year
- Plan requirements:
  - May be for no more than five years
  - Must have measurable goals
  - Separate plan for each assessment area
  - Based on comment received from public

89

CRA: COMMUNITY DEVELOPMENT

- Community development includes:
  - Affordable housing
  - Community services targeted to LMI
  - Activities that revitalize or stabilize
    - LMI geographies
    - Designated disaster areas
    - Designated distressed or underserved non-metropolitan middle-income geographies

90

CRA: COMMUNITY DEVELOPMENT

- Primary Purpose
  - Revitalizing or stabilizing LMI areas
  - Providing community services targeted to LMI persons
  - Promoting economic development by financing small businesses and farms
- Primary purpose measurements:
  - Majority of dollars or beneficiaries clearly targeted to benefit LMI individuals and areas and is related to a community development purpose, or
  - Express, stated intent of activity is primarily for community development

91

CRA: COMMUNITY DEVELOPMENT

- Community Development Loans:
  - Primary purpose must be community development
  - Loan not reported in any other loan category on the Call Report

92

CRA: COMMUNITY DEVELOPMENT

- Community Development Service:
  - Primary purpose is community development
  - Service is related to provision of financial services
  - Service has not been considered in other categories for purposes of CRA evaluation.
- Examples:
  - Financial education to LMI
  - Technical assistance

93

CRA: RATINGS

- Outstanding, Satisfactory, Needs to Improve, or Substantial Non-compliance
  - Based on performance in lending, service and investment
  - Ratings will be lower if problems in fair lending, HOEPA, ECOA, UDAAP, or RESPA

Component Test Ratings	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

Points	Composite Assigned Rating
20 +	Outstanding
11 – 19	Satisfactory
5 – 10	Needs to Improve
0 – 4	Substantial Noncompliance

- Must receive at least Low Satisfactory on the lending test to obtain a composite rating of Satisfactory or higher
- Rating is considered in applications for branch or acquisition

94

REGULATION G: CRA SUNSHINE AGREEMENTS

- Make public any agreement involving a payment of more than $10,000 or loans in excess of $50,000
- Covers:
  - Depository institutions
  - Non-governmental entities or persons (NGEPs)
  - Affiliates of depository institutions

95

CRA SUNSHINE AGREEMENTS

- Agreement must be:
  - In writing
  - Between depository institution and NGEP
  - Provide for payments or commitment to make loans
  - In fulfillment of CRA
- Nongovernmental Entity or Person (NGEP)
  - Must have had a CRA communication before entering into agreement
    - Oral or written comment or testimony
    - Meetings or discussion with bank

96

CRA SUNSHINE AGREEMENTS

- Requirements:
  - Both NGEP and bank must make a copy available to public upon request
    - Bank may withhold confidential or proprietary information
  - Must disclose parties to agreement, amount of any payments, description of how funds to be used, and term of agreement
  - Annually report loans, donations and investments

97

SKILLFULLY NAVIGATING A VUCA ENVIRONMENT

- The **VUCA** framework (Volatility, Uncertainty, Complexity, Ambiguity) was coined by the U.S. Army War College in the late 1980s to describe the turbulent, post-Cold War geopolitical landscape. It is widely used in modern defense planning to assess and adapt to unpredictable environments.

- **V**olatile represents a condition where events unfold in unexpected ways and uncertain frequency.
- **U**ncertain describes a lack of event predictability, making it difficult to apply lessons learned in the past to predict future outcomes.
- **C**omplex problems have multilayered, intermingled causes that drive ineffective reaction and counter-reaction.
- **A**mbiguous issues limit clarity and make the "one size fits all" answer from yesterday ineffective today.

https://en.wikipedia.org/wiki/VUCA
www.wpafb.af.mil/News/Article-Display/Article/2847919/how-can-we-thrive-in-a-vuca-environment/

98

THE VUCA MATRIX: MILITARY ASSESSMENT

Dimension	Definition	Military Reality	Strategic Countermeasure
Volatility	The nature and speed of rapid, unpredictable change.	Sudden shifts in operating domains, shifting weather, or enemy movement.	**Vision & Agility:** Decentralized command structures (e.g., Mission Command) that empower rapid decision-making in the field.
Uncertainty	The lack of predictability and baseline knowledge.	Intel gaps; historical data and past lessons cannot accurately predict future outcomes.	**Understanding & Forecasting:** Heavy emphasis on rigorous intelligence, surveillance, and reconnaissance (ISR) and wargaming.

99

THE VUCA MATRIX: MILITARY ASSESSMENT

Dimension	Definition	Military Reality	Strategic Countermeasure
Complexity	The interconnection of multiple variables and confounding factors.	Multi-domain operations (cyber, space, land, sea, air) involving diverse state and non-state actors.	**Clarity:** Building modular, cross-functional teams and leveraging advanced data fusion for a unified common operating picture.
Ambiguity	The haziness of reality and the potential for multiple misreadings.	Lack of precedent; situations where "cause and effect" are unclear and there are no easy "right" answers.	**Agility:** Cultivating a learning mindset, encouraging dissenting perspectives, and remaining highly adaptable to shifting ROIs.

Ambiguity is considered one of the leading causes of conflict within organizations.

100

VUCA ASSESSMENT FRAMEWORKS

To survive and win in a VUCA environment, defense organizations utilize specific processes to counter the framework:

- **Leader's Intent (Vision):** By clearly defining the end goal but remaining flexible on *how* it is achieved, subordinates can adapt to chaotic events without waiting for top-down orders.
- **Rapid Decision-Making and Synchronization Process (RDSP):** A doctrinal tool used by staff to adjust current operations, shifting the focus from perfect planning to rapid implementation and learning.
- **Continuous Testing and Monitoring:** Running simulation exercises and testing helps leaders anticipate unexpected scenarios and build institutional reflexes before entering actual conflict.

101



THANK YOU!!

PATTI D. JOYNER, CRCM
PATTI.JOYNER@FINSOLINC.COM

102

102