

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
AMENDMENT TO 3 NYCRR 76**

COMPLIANCE WITH COMMUNITY REINVESTMENT ACT REQUIREMENTS

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 101, 201, 202, 301, and 302 of the Financial Services Law, Sections 9-d, 10, 14 and 28-b of the Banking Law, and Section 296-a of the Executive Law, do hereby promulgate the following amendment to Part 76 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(NEW MATTER UNDERSCORED; DELETED MATTER IN BRACKETS)

Section 76.1 is amended to read as follows:

§ 76.1 Statement of policy; explanation

In enacting the CRA, the New York State Legislature required the Superintendent to assess a banking institution's record of helping to meet the credit needs of the local communities in which the banking institution is chartered, consistent with the safe and sound operation of the banking institution, and to take this record into account in the Department's evaluation of those applications by banking institutions which are enumerated in sections 28-b, 225 and 413 of the New York State Banking Law. This Part is intended to carry out the purposes of the CRA. This Part establishes the framework and criteria by which the Department assesses a banking institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods and minority- and women-owned businesses, consistent with the safe and sound operation of the banking institution. In conducting such an assessment, the Department may evaluate the banking institution by performing its CRA examination on-site at the institution or, alternatively, at the Department; may require the submission of written responses to Department requests for documentation and other information, including responses to the so-called "First Day Letter" or similar requests; may interview banking institution personnel; may conduct branch visits; and may require any other information or documentation, or utilize any other procedure that the Superintendent deems necessary. With respect to New York State-chartered multi-state banking institutions, the Department will rely, in part, on the CRA evaluation by the host state, commonwealth or territory with regard to the branches located in the host state, commonwealth or territory or, in those instances in which there is no host state, commonwealth or territory CRA evaluation, upon the CRA evaluation of the appropriate Federal regulatory authorities; however, the Department will independently review the factors set forth in section 28-b.3(a)(1), (2) and (3) of the Banking Law.

Section 76.2 is amended to read as follows:

§ 76.2 Definitions

For purposes of this Part, the following definitions apply:

(a) *Affiliate* means any company, including a subsidiary, that controls, is controlled by, or is under common control with another company.

(b) *Area median income* means:

(1) the median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with section 76.6 of this Part.

(d) *Banking institution* means a New York State-chartered commercial bank, trust company, savings bank, savings and loan association or FDIC insured branch of a foreign bank.

(e) *Branch* means a staffed banking facility approved as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) *Community development* means:

(1) affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) community services targeted to low- or moderate-income individuals or minority- or women-owned businesses;

(3) activities that promote economic development by financing businesses, including minority- and women-owned businesses, or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs or have gross annual revenues of \$ 1 million or less;

(4) activities that revitalize or stabilize:

(i) low- or moderate-income geographies;

(ii) designated disaster areas; or

(iii) distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on:

(a) Rates of poverty, unemployment and population loss; or

(b) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(5) activities that seek to prevent defaults and/or foreclosures in loans included in paragraphs (1) and (3) of this subdivision.

(g) *Community development loan* means a loan that:

(1) has as its primary purpose community development; and

(2) except in the case of a wholesale or limited purpose banking institution:

(i) has not been reported or collected by the banking institution or an affiliate for consideration in the banking institution's evaluation as a home mortgage, small business, minority- or women-owned business, small farm, or consumer loan, unless it is a multifamily dwelling loan; and

(ii) benefits the banking institution's assessment area(s) or a broader statewide or regional area that includes the banking institution's assessment area(s).

(h) *Community development service* means a service that:

(1) has as its primary purpose community development;

(2) is related to the provision of financial services; and

(3) has not been considered in the evaluation of the banking institution's retail banking services.

(i) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card;"

(3) home equity loan, which is a consumer loan secured by a residence of the borrower;

(4) other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(5) other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(j) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(k) *Home mortgage loan* means a home improvement loan, a home purchase loan, a multi-family loan or a refinance loan, including a refinance loan involving a modification, extension and consolidation agreement.

(l) *Home state* means the state where a state-chartered multi-state banking institution is chartered.

(m) *Host state* means a state other than the home state of a multi-state banking institution where the banking institution maintains a branch.

(n) *Income level* includes:

(1) low-income, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) upper-income, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(o) *Limited purpose bank* means a banking institution that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose banking institution is in effect.

(p) Loan location. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) Minority means a natural person who is American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and/or Hispanic or Latino.

(s) Minority-owned business means a business more than 50 percent of the ownership or control of which is held by one or more minority individuals.

(t) MSA means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(u) [s] Multi-state banking institution means a banking institution that maintains branches in one or more host states.

(v) [t] Qualified investment means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(w) Principal owner means any natural person who owns 25 percent or more of the equity interest of a business.

(x) [u] Regulation BB of the Board of Governors of the Federal Reserve System means Part 228 of [title] Title 12, Code of Federal Regulations, [parts] Parts 220 to 299 Banks and Banking (revised as of January 1, 2006). (This publication may be viewed at the New York City office of the [Financial Services] Department of Financial Services located at One State Street, New York, NY 10004, [at the address set forth in section 1.1 of Supervisory Policy G1,] and the Department of State located at [41 State Street,] One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. It is published by the Office of the Federal Register, National Archives and Records Administration and is for sale by the U.S. Government [Printing] Publishing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.)

(y) [v] Small banking institution.

(1) Definition. *Small banking institution* means a banking institution that, as of December 31[st] of either of the prior two calendar years, had total assets of less than \$1 billion. *Intermediate small banking institution* means a small banking institution with assets of at least \$ 250 million as of December 31[st] of both of the prior two calendar years and less than \$1 billion as of December 31[st] of either of the prior two calendar years.

(2) Adjustment. The dollar figures in paragraph [(u)(1)] (y)(1) of this section shall be adjusted annually and published by the Federal Financial Institutions Examination Council, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

(z) [w] Small business loan means a small business loan as defined in Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR part 228). This definition is based on the size of the loan.

(aa) [x] Small farm loan means a small farm loan as defined in Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR part 228). This definition is based on the size of the loan.

(bb) [y] Wholesale banking institution means a banking institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale banking institution by the appropriate Federal regulatory authority is in effect.

(cc) Women-owned business means a business more than 50 percent of the ownership or control of which is held by one or more women.

Section 76.6(f) is amended to read as follows:

(f) Use of assessment area(s). The [Banking] Department uses the assessment area(s) delineated by a banking institution in its evaluation of the banking institution's CRA performance unless the [Banking] Department determines that the assessment area(s) do not comply with the requirements of this section.

Section 76.7(b)(10) is amended to read as follows:

(10) any other information deemed relevant by the [Banking] Department.

Section 76.8(a), (b), and (c) are amended to read as follows:

(a) Scope of test. The scope of the lending test is as follows:

(1) The lending test evaluates a banking institution's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a banking institution's home mortgage, small business, minority- and women-owned business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a banking institution's business, the [Banking] Department will evaluate the banking institution's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a banking institution's option, the [Banking] Department will evaluate one or more categories of consumer lending, if the banking institution has collected and maintained the data required by Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR Part 228) for each category that the banking institution elects to have the [Banking] Department evaluate.

(2) The Department considers originations and purchases of loans. The [Banking] Department may also consider any other loan data the banking institution may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) The Department may consider loans originated or purchased by consortia in which the banking institution participates or by third parties in which the banking institution has invested.

(b) Performance criteria. The Department evaluates a banking institution's lending performance pursuant to criteria which may include the following:

(1) Lending activity. The number and amount of the banking institution's home mortgage, small business, minority- and women-owned business, small farm, and consumer loans, if applicable, in the banking institution's assessment area(s).

(2) Geographic distribution. The geographic distribution of the banking institution's home mortgage, small business, minority- and women-owned business, small farm, and consumer loans, if applicable, based on the loan location, including:

- (i) the proportion of the banking institution's lending in the banking institution's assessment area(s);
- (ii) the dispersion of lending in the banking institution's assessment area(s); and
- (iii) the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the banking institution's assessment area(s);

(3) Borrower characteristics. The distribution, particularly in the banking institution's assessment area(s), of the banking institution's home mortgage, small business, minority- and women-owned business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

- (i) home mortgage loans to low-, moderate-, middle-, and upper-income individuals;
- (ii) small business and small farm loans to businesses and farms with gross annual revenues of \$ 1 million or less;
- (iii) small business and small farm loans by loan amount at origination;
- (iv) loans to minority- and women-owned businesses;
- (v) consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals; and
- (vi) the banking institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low or moderate-income individuals.

(4) Community development lending. The banking institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness.

(5) Innovative or flexible lending practices. The banking institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies, or minority- or women-owned businesses.

(c) Affiliate lending. Affiliate lending will be considered as follows:

(1) At a banking institution's option, the [Banking] Department will consider loans by an affiliate of the banking institution, if the banking institution provides data on the affiliate's loans to the [Banking] Department. The data provided should contain the information specified in Section 228.42 of Regulation BB of the Board of Governors of the Federal Reserve System (12 CFR Part 228).

(2) The Department considers affiliate lending subject to the following constraints:

(i) no affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) if a banking institution elects to have the Department consider loans within a particular lending category made by one or more of the banking institution's affiliates in a particular assessment area, the banking institution shall elect to have the [Banking] Department consider all the loans within that lending category in that particular assessment area made by all of the banking institution's affiliates.

(3) The Department does not consider affiliate lending in assessing a banking institution's performance under subparagraph (b)(2)(i) of this section.

Section 76.12(b)(3) is amended to read as follows:

(3) the banking institution's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels, [and] businesses and farms of different sizes, and minority- and women-owned businesses;

Section 76.13(a), (c), (f) and (g) are amended to read as follows:

(a) Alternative election. The Department will assess a banking institution's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) the banking institution has submitted the plan to the [Banking] Department as provided for in this section;

(2) the Department has approved the plan;

(3) the plan is in effect; and

(4) the banking institution has been operating under an approved plan for at least one year.

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(c) Plans in general.

(1) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the [Banking] Department will evaluate the banking institution's performance.

(2) Multiple assessment areas. A banking institution with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) Treatment of affiliates. Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

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(f) Plan content. The content of the plan shall be as follows:

(1) Measurable goals.

(i) A banking institution shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies, [and] low- and moderate-income individuals, and minority- and women-owned businesses, through lending, investment, and services, as appropriate.

(ii) A banking institution shall address in its plan all three performance categories and, unless the banking institution has been designated as a wholesale or limited purpose banking institution, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the banking institution's capacity and constraints, product offerings, and business strategy.

(2) Confidential information. A banking institution may submit additional information to the [Banking] Department on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the [Banking] Department to judge the merits of the plan.

(3) Satisfactory and outstanding goals. A banking institution shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a banking institution submits, and the [Banking] Department approves, both "satisfactory" and "outstanding" performance goals, the [Banking] Department will consider the banking institution eligible for an "outstanding" performance rating.

(4) Election if satisfactory goals not substantially met. A banking institution may elect in its plan that, if the banking institution fails to meet substantially its plan goals for a satisfactory rating, the [Banking] Department will evaluate the banking institution's performance under the lending, investment, and service tests, the community development test, or the small banking institution performance standards, as appropriate.

(g) Plan approval. Approval of a plan shall be as follows:

(1) Timing. The Department will act upon a plan within 60 calendar days after receipt of the complete plan and other material required under subdivision (e) of this section. If the [Banking] Department fails to act within this time period, the plan shall be deemed approved unless the Department extends the review period for good cause.

(2) Public participation. In evaluating the plan's goals, the Department considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the banking institution to public comment on the plan.

(3) Criteria for evaluating plan. The Department evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) the extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of lending to minority- and women-owned businesses, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) the amount and innovativeness, complexity, and responsiveness of the banking institution's qualified investments; and

(iii) the availability and effectiveness of the banking institution's systems for delivering retail banking services and the extent and innovativeness of the banking institution's community development services.

A new Section 76.16 is added to read as follows:

§ 76.16. Minority- and women-owned business loan data collection.

(a) Purpose. The purpose of this section is to facilitate the Department's evaluations of banking institutions' records of meeting the credit needs of their local communities, in compliance with to Section 28-b of the New York Banking Law, including the assessment factors delineated in Section 28-b(3)(a).

(b) Information gathering. Subject to the requirements of this section, in the case of any application for credit by a business to a banking institution which has originated at least 25 credit transactions for businesses in each of the two preceding calendar years, the banking institution shall:

(1) inquire whether the business is a minority- or women-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the banking institution;

(2) at the time of application, notify such applicants in writing, or orally for applications made by telephone or another medium that does not involve providing any paper or electronic documents, that:

(i) any applicant for credit may refuse to provide any information requested pursuant to this subdivision

(b) in connection with any application for credit; and

(ii) that the banking institution is prohibited from discriminating on the basis of any information provided in response to an inquiry made pursuant to this subdivision or on whether the applicant provides this information; and

(3) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

(c) A banking institution may inform the applicant that New York State law requires it to ask for the principal owners' ethnicity and race to help ensure that all applicants for credit are treated fairly and that communities' credit needs are being fulfilled.

(d) A banking institution is neither required nor permitted to verify the minority-owned business status or women-owned business status that the applicant provides, or report any information on an applicant's principal owners based on visual observation and/or surname of any individual associated with the applicant.

(e) No access by underwriters.

(1) Limitation. Where feasible, no loan underwriter or other officer or employee of a banking institution, or any affiliate of a banking institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subdivision (b) of this section in connection with such application.

(2) Limited access. If a banking institution determines that a loan underwriter or other officer or employee of a banking institution, or any affiliate of a banking institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subdivision (b) of this section, the banking institution shall provide written notice to the applicant, at the time of application or as reasonably practicable thereafter, of the access of the underwriter to such information.

(f) Form and manner of information.

(1) In general. As applicable, each banking institution shall compile and maintain a record of the information provided by any applicant pursuant to a request under subdivision (b) of this section, or a record that an applicant declined to provide such information. The Department will issue a sample data collection form that banking institutions may use to collect information provided by applicants pursuant to this section and may update such form from time to time as the Department deems necessary.

(2) Itemization. Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose:

(i) an alphanumeric identifier, unique within the banking institution to the specific application, which can be used to identify and retrieve the specific files corresponding to the application;

(ii) the date the application was received by the banking institution;

(iii) the means by which the applicant submitted the application to the banking institution;

(iv) the type of loan or other credit being applied for, including:

(A) the credit product; and

(B) the length of the loan term, in months, if applicable;

- (v) the purpose of the loan or other credit being applied for;
- (vi) the amount of the loan, credit, or credit limit applied for;
- (vii) if the application is approved, the amount of the credit transaction or the credit limit approved for such applicant;
- (viii) the type of action taken with respect to such application, namely originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete;
- (ix) the date the action reported pursuant to subparagraph (viii) of this paragraph was taken;
- (x) for denied applications, the principal reason or reasons the banking institution denied the application;
- (xi) the census tract in which the principal place of business of the applicant is located;
- (xii) the gross annual revenue of the applicant's business for the last fiscal year preceding the date of the application;
- (xiii) the number of non-owners working for the applicant;
- (xiv) the time the applicant has been in business, described in whole years, as provided by the applicant, unless the banking institution verifies the information provided, in which case it shall use the verified information;
- (xv) pricing information for transactions that were originated or approved but not accepted, including:
 - (A) the interest rate that is or would be applicable to the loan or other credit applied for;
 - (B) the total amount of all charges payable directly or indirectly by the applicant and imposed directly or indirectly by the banking institution at or before origination as an incident to or a condition of the extension of credit;
 - (C) the total amount of all charges included in clause (f)(2)(xi)(B) of this section that are fees paid by the applicant directly to a broker or to the banking institution for delivery to a broker;
 - (D) the total amount of all non-interest charges that are scheduled to be imposed over the first annual period of the credit transaction;
 - (E) for a merchant cash advance or other sales-based financing transaction, the difference between the amount advanced and the amount to be repaid; and
 - (F) whether the terms of the covered credit transaction include a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due;

(xvi) whether the business is a minority-owned business, a women-owned business, or both, as defined in this part, or whether the business has invoked its right to refuse to provide any information requested pursuant to this section;

(xvii) the race and ethnicity of the applicant's principal owners, and

(xviii) any additional data that the Department determines would aid in fulfilling the purposes of this section.

(3) No personally identifiable information. In compiling and maintaining any record of information under this section, a banking institution may not include in such record the name, specific address (other than the census tract required under subparagraph (2)(v) of this subdivision), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is connected with the minority- or women-owned business applicant.

(4) Previously collected data. A banking institution is permitted, but not required, to reuse previously collected data to satisfy paragraph (2) of this subdivision, and not required to restate the disclosures otherwise required by paragraph (2) of subdivision (b) of this section, if:

(i) The data were collected within the same calendar year as the current application; and

(ii) The banking institution has no reason to believe the data are inaccurate.

(5) Race and ethnicity of the applicant's principal owners.

(i) When asking for a principal owner's ethnicity and race, a banking institution shall allow the applicant to respond using aggregate and disaggregated ethnicity and race categories and subcategories. The disaggregated subcategories shall include the "other" disaggregated subcategories that provide the option to self-identify using free-form text on a paper or electronic data collection form or using language that informs the applicant of the opportunity to self-identify when taking the application by means other than a paper or electronic data collection form, such as by telephone.

(ii) When asking for a principal owner's ethnicity and race, a banking institution may, but is not obligated to, use the sample data collection form in Appendix A to Part 76.

(iii) A banking institution shall permit an applicant to identify its principal owners as being of the same particular disaggregated race and/or ethnicity subcategories specified in 12 CFR Part 1003 ("Regulation C") and its appendices.

(iv) A banking institution shall offer the applicant the option of selecting more than one ethnicity and race for each principal owner. If an applicant selects more than one ethnicity or race for a principal owner, the banking institution shall report each selected designation. The banking institution shall also report any additional information that the applicant has provided as free-form text in the appropriate data reporting field.

(v) If an applicant provides ethnicity or race information for one or more principal owners, the banking institution shall report the ethnicity and race as provided by the applicant.

(vi) If the applicant declines to provide a principal owner's ethnicity or race, the banking institution shall report that the applicant declined to provide this information. The banking institution shall report that the applicant declined to provide information only if the applicant specifically declines to provide that information. If the applicant does not respond to a request about a principal owner's ethnicity or race, the banking institution shall report that the information was not provided by the applicant. If an applicant provides some but not all of the requested ethnicity and race information, the banking institution shall report the information that was provided by the applicant and shall report that the applicant declined to provide or did not provide (as applicable) the remainder of the information.

(vii) If an applicant provides information in response to the question requesting a given principal owner's ethnicity or race and also indicates that the applicant does not wish to provide the information, the banking institution shall report the information on ethnicity or race that was provided by the applicant (rather than reporting that the applicant declined to provide the information).

(viii) If a banking institution reports ethnicity or race information based on previously collected data, the banking institution shall also report that it is providing that information based on previously collected data.

(ix) If a banking institution reports one or more principal owner's ethnicity or race information based on previously collected data, the banking institution does not need to collect any additional ethnicity or race information. However, the banking institution may need to report that the applicant did not provide or declined to provide information when the banking institution previously collected the data, as applicable.

(6) Joint applications from multiple entities. In the event of a single application from multiple entities operating pursuant to a joint venture agreement or other form of business combination, the banking institution shall obtain information pursuant to this section for all entities participating in the application.

(g) Availability of information.

(1) Submission to Department.

(i) The data required to be compiled and maintained under this section by any banking institution shall be submitted to the Department upon the Department's request.

(ii) Each banking institution shall submit to the Department a copy of each report and document which it is required to prepare and file with the Consumer Financial Protection Bureau and/or another Federal agency by Section 704B of the Equal Credit Opportunity Act, codified at 15 USC § 1691c-2, as implemented by regulation, upon the Department's request.

(2) Retention of information. Information compiled and maintained under this section shall be retained by the banking institution for not less than six years after the date of preparation;

(3) Availability of information. The Department and banking institutions will maintain any information compiled under this section that could be used to identify any applicant or their associated business as confidential, except as required by federal law.

(h) Alternative forms of compliance.

(1) The Department may, at its discretion, determine that a banking institution's or group of banking institutions' compliance with the requirements of Section 704B of the Equal Credit Opportunity Act, codified at 15 USC § 1691c-2, as implemented by regulation, shall constitute compliance with the data collection requirements of this section.

(i) Application defined. For the purposes of this section only, the term "application" means an oral or written request by a business for a loan or other extension of credit that is made in accordance with procedures used by a banking institution for the type of credit requested, including such requests received by the banking institution that are incomplete or subsequently withdrawn, and shall not mean (i) reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts, or (ii) inquiries and prequalification requests.

(j) Compliance Date and Transitional Period.

(1) The compliance date for Section 76.16 of this Part is six months after the date of publication of the Notice of Adoption in the State Register.

(2) Banking institutions shall have an additional transition period of three months from the compliance date of Section 76.16 to comply with the requirements set forth in Section 76.16(d)(1) of this Part to limit, where feasible, underwriter access to any information provided by the applicant pursuant to a request under subdivision (b) of this section. During this transition period, banking institutions that can feasibly limit access, but need to make technological and process adjustments to do so, may rely on Section 76.16(d)(2) of this Part.

New York law requires that we ask if a business applicant is a minority-owned business or a women-owned business. New York law also requires us to ask business applicants for their principal owners’ ethnicity and race.

Applicants are not required to provide this information but are encouraged to do so. We collect this information to help ensure that all applicants are treated fairly and that communities’ business credit needs are being fulfilled.

Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the information provided on this form. However, we cannot discriminate on the basis of minority-owned business status, women-owned business status, or a principal owner’s ethnicity, race, or sex. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

Minority-owned business status

For purposes of this form, an applicant is a minority-owned business if more than 50 percent of the ownership or control of the business is held by one or more minority individuals.

A minority individual is a natural person who is American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino. A multi-racial or multi-ethnic individual is a minority individual for this purpose.

Is the applicant a minority-owned business?

- Yes
- No
- I do not wish to provide this information

Women-owned business status

For purposes of this form, an applicant is a women-owned business if more than 50 percent of the ownership or control of the business is held by one or more women.

Is the applicant a women-owned business?

- Yes
- No
- I do not wish to provide this information

Number of principal owners

For purposes of this form, a principal owner is any natural person who owns 25 percent or more of the equity interest of a business. An applicant might not have any principal owners if, for example, it is not directly owned by any natural persons (i.e., if it is owned by another entity or entities) or if no natural person directly owns at least 25 percent of the business.

How many principal owners does the applicant have?

Demographic information about principal owners

Applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of a principal owner's ethnicity or race. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

Please fill out one sheet for each principal owner.

Ethnicity (*Check one or more*)

- Hispanic or Latino
 - Cuban
 - Mexican
 - Puerto Rican
 - Other Hispanic or Latino (*Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard*):
- Not Hispanic or Latino
- I do not wish to provide this information

Race (*Check one or more*)

- American Indian or Alaska Native (*Print name of enrolled or principal tribe*):
- Asian
 - Asian Indian
 - Chinese
 - Filipino
 - Japanese
 - Korean
 - Vietnamese
 - Other Asian (*Print origin, for example, Cambodian, Hmong, Laotian, Pakistani, Thai*):
- Black or African American
 - African American
 - Ethiopian
 - Haitian
 - Jamaican
 - Nigerian
 - Somali
 - Other Black or African American (*Print origin, for example, Barbadian, Ghanaian, South African*):
- Native Hawaiian or Other Pacific Islander
 - Guamanian or Chamorro
 - Native Hawaiian
 - Samoan
 - Other Pacific Islander (*Print origin, for example, Fijian, Tongan*):
- White
- I do not wish to provide this information

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

CERTIFICATION

I, Adrienne A. Harris, Superintendent of Financial Services, do hereby certify that the attached amendment to Part 76 of the Superintendent's Regulations, Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, was duly authorized by me, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 10, 14, and 28-b of the Banking Law, to take effect upon publication of the Notice of Adoption in the New York State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on October 26, 2022, and November 3, 2021.

Signed copy filed with DFS

Adrienne A. Harris
Superintendent of Financial Services

Dated: January 19, 2023