Compliance Hub - Question of the Week:

Q: Is the bank mandated to require *written* applications for credit requests?

A: Regulation B does not generally require that an application be in writing (it can be either oral or written request for an extension of credit); and it is important to note that the definition of an application under the regulation is very reliant upon a bank's own internal policy (i.e. "in accordance with procedures used by a creditor for the type of credit requested.") But, with that said, there are certainly regulatory and risk-based considerations to keep in mind with such a decision.

Perhaps primarily, Regulation B's § 1002.13 requires creditors to collect demographic data - such as race, ethnicity, sex, marital status, and age - for certain dwelling-secured credit applications. In such cases, the regulation requires that the application be in written form. Note, though, an *exception to the exception!* Comment 13(b)-2 lets us know that creditors can satisfy this requirement by recording - either on paper or electronically - the information that the applicant provides orally, *as long as it reflects what the institution would normally consider in a credit decision.*

In addition, § 1002.12(b) outlines Regulation B's record retention requirements; among the preservation of records, the bank is required to keep:

"(1) Applications. For 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section or otherwise provided for in subpart B of this part) after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

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

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part." § 1002.12(b)(1)

So, while a "written" application isn't otherwise required per se, there is a conservative argument that without semi-uniform documentation, the bank could struggle to demonstrate what information was relied on in such cases, or prove that credit decisions were made consistently and fairly; or, in other words, written applications more readily provide defensible, auditable documentation that retention obligations - and other ECOA requirements - have been met.

And, as a treat, here's just one more nuance - while the CFPB has announced it would not prioritize enforcement of the Section 1071 small business lending rule, if 1071 *were* in effect, then its data collection requirements would apply to "covered applications," defined as "*an oral or written request for a covered credit transaction that is made in accordance with procedures used by a financial institution for the type of credit requested."* Again, written applications would not be explicitly required, but similar considerations for favoring written applications (consistent documentation, streamlined data collection, bolstered defensibility, etc.) would still apply.