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Legal Update

CFPB Issues Proposed US Small Business Data Collection Rule

Over 10 years after announcing it would "expeditiously" implement provisions of the Dodd-Frank Act concerning data collection on small business lending, the Consumer Financial Protection Bureau ("CFPB" or the "Bureau") is finally taking action. On September 1, 2021, the CFPB issued a notice of proposed rulemaking on small business data collection. In this Legal Update, we summarize the CFPB's proposed rulemaking and describe the consequences for small business lenders and other finance providers. (We previously published a high-level overview on the proposed rule on our Consumer Financial Services Review blog.) We do not rehash each of the more than 900 pages of the Bureau's proposal but instead summarize some of the most significant developments that small business lenders and finance providers should review when considering whether to provide comments to the Bureau regarding the proposed rule.

Background of the Proposed Rule

The origin of the proposed rule traces back to 2010 and the passage of the Dodd-Frank Act. Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act ("ECOA") to require creditors to collect, and report to the CFPB, certain information designed to effectuate federal fair lending laws with respect to women-owned, minority-owned and small businesses.[1] It was not clear at the time whether the Section 1071 data collection obligations were self-executing or whether the CFPB was required to promulgate implementing regulations prior to the data collection requirements becoming effective. On April 11, 2011, the CFPB's general counsel issued what was to be the Bureau's first piece of industry guidance, indicating that obligations under Section 1071 would not go into effect until the Bureau issued implementing regulations, which he indicated it would do "expeditiously."[2] Despite this promise, however, the small business data collection rulemaking appeared only sporadically on the Bureau's regulatory agenda throughout the ensuing decade, each time without a proposed rule ever materializing.[3]

The CFPB's delay in beginning the rulemaking process to implement Section 1071 did not go unnoticed by consumer advocacy groups. In 2019, two community groups and two individuals filed suit to compel the agency to carry out the required rulemaking. This suit culminated in a February 2020 settlement, under which the CFPB committed to publicly releasing an outline of proposed options to implement a Section 1071 rule by September 15, 2020.[4] The settlement also required the CFPB to convene a Small Business Advocacy Review panel ("Panel") to make recommendations for an

eventual Section 1071 rulemaking. The Panel consisted of representatives from the CFPB, the Small Business Administration ("SBA"), and the Office of Management and Budget. This Panel consulted with representatives of small entities likely to be affected directly by a Section 1071 regulation, who provided feedback on the CFPB's proposals under consideration for Section 1071 and the potential economic impacts of compliance. The Panel released its report on December 15, 2020. As part of the ongoing settlement discussions, the CFPB and the consumer advocacy groups agreed in July 2021 to a stipulation requiring the CFPB to publish its proposed Section 1071 rule by September 30, 2021.[5]

The Proposed Rule

The proposed rule would amend and supplement the existing Regulation B, which implements ECOA, by adding a new subpart that imposes a basic requirement on certain lenders and finance providers to collect data about applications for business financing that the creditor receives from a small business applicant. Specifically, the proposed rule would require creditors that originated at least 25 "covered credit transactions" for small businesses in each of the two preceding calendar years to collect data about the application.[6]

The proposed rule is not the first data collection requirement applicable to commercial finance creditors. The Home Mortgage Disclosure Act requires entities originating commercial-purpose loans that are secured by residential dwellings (such as "fix and flip" loans, or loans to purchase investment properties) to collect and report certain information about the application.[7] Regulation B also requires creditors that receive applications for the purchase or refinance of an owner-occupied principal residence to collect the ethnicity and race, sex, marital status, and age of the applicant.[8] The Bureau's proposed rule, however, "would create the first comprehensive database of small business credit applications in the United States."[9]

The proposed rule cites to Congress's two stated principles for Section 1071 as support for the data collection requirements. In enacting Section 1071, Congress articulated the twin purposes of "facilitat[ing] enforcement of fair lending laws" and "enabl[ing] communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses."[10] According to the Bureau, the data collection requirements are necessary to facilitate efficiency in fair lending examinations, such as by allowing regulators to use pricing and other data to prioritize fair lending examinations, and by "help[ing] the public and regulators to identify potentially discriminatory lending patterns that could constitute violations of fair lending laws."[11] With respect to the second purpose, the Bureau notes that it believes the proposed rule "would provide more data to the public—including communities, governmental entities, and creditors—for analyzing whether financial institutions are serving the credit needs of their small business customers," and provide the public with a greater understanding of access to and sources of credit in a community or an industry, which, in the Bureau's view, "would not only assist in identifying potentially discriminatory practices, but would also contribute to a better understanding of the experiences that members within certain communities may share in the small business financing market."[12]

Below, we summarize (1) the entities to whom the rule applies, (2) the types of financial products covered by the proposed rule, and (3) the information that the proposed rule requires covered persons to collect.

Who Is Required to Collect Information?

The proposed rule would subject a "covered financial institution" that originated at least 25 "covered credit transactions" to small businesses in each of the two preceding calendar years to the information collection requirements.[13] A "financial institution" is defined very broadly as any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.[14] As a result, a diverse variety of lenders, including banks, credit unions, fintechs, and equipment finance companies, among others, would be subject to the rule. If more than one financial institution was involved in the origination of a covered credit transaction, then only the financial institution that made the credit decision approving the application would be required to collect data and report the origination.[15] If the application did not result in the origination of a covered credit transaction, then any covered financial institution that made a credit decision must report the application.[16] This is an important clarification, as brokers and independent sales organizations ("ISOs") often participate in the process of gathering information and submitting applications for business credit on behalf of their clients. This is similar to how the data reporting requirements under HMDA and Regulation C are implemented.

The proposed rule defines a "small business" by reference to the SBA regulations, which prescribe annual revenue thresholds for a variety of industries and businesses.[17] The proposed rule narrows the universe of "small business" by providing that, notwithstanding the SBA size standards, a business would only be a "small business" for purposes of the proposed rule if its gross annual revenue for its preceding fiscal year was $5 million or less.[18] A financial institution is not required to independently verify a business's gross annual revenue (but if it does verify the gross annual revenue reported by the applicant, then it must report the verified information).[19]

Although Section 1071 requires a financial institution to inquire whether a business credit applicant is a minority-owned, women-owned, or a small business, the proposed rule does not extend the data collection obligation to applications from businesses that are not small.[20] Although the Bureau acknowledged the ambiguity in Section 1071, it decided that interpreting Section 1071 to not require financial institutions to collect data on applications from non-small businesses is consistent with the purpose of the statute.[21] Among other reasons, the Bureau noted that almost all women-owned and minority-owned businesses are small businesses, so limiting coverage of the rule to small businesses "would necessarily include nearly all women-owned and minority-owned businesses."[22]

What Credit Products Are Covered?

As noted above, a small business finance provider would become subject to the proposed rule's data collection requirement only if it originates at least 25 "covered credit transactions" in each of the two preceding calendar years.[23] The proposed rule defines a "covered credit transaction" to mean any extension of business credit—as that term is defined in Regulation B—that is not "trade credit" (a financing arrangement wherein a business acquires goods or services from another business without immediate payment), public utilities credit, securities credit, or certain "incidental credit" that is not extended under a credit card agreement, does not bear a finance charge, and is not payable in more than four installments.[24] The proposed rule would also exclude transactions such as leases or "factoring" transactions that courts or regulators have previously determined are not subject to ECOA, as well as credit transactions that are secured by 1-to-4 unit residential properties so long as the

applicant, or one or more of the applicant's principal owners, will not occupy the property (although HMDA applies to business credit extended to purchase, refinance, or improve non-owner occupied residential property).[25]

Regulation B defines "credit" broadly to mean "the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property and services and defer payment therefor."[26] The CFPB's Official Staff Commentary to Regulation B notes that the Regulation B definition of "credit" covers a wide range of transactions, and applies if there is a right to defer payment of the debt.[27] One question that the proposed rule confronts is whether merchant cash advance ("MCA") and other sales-based financing products, which are an increasingly significant portion of financings extended to small businesses, are credit transactions for purposes of ECOA and the information collection requirement. MCAs generally involve a provider purchasing the right to a percentage of a business's future (but not yet existing) receivables, in exchange for an up-front lump sum payment. Under most MCA agreements, the business delivers the receivables as they are generated in the ordinary course of business. A critical feature of MCAs is that they are, by their terms, nonrecourse. If the recipient of the MCA goes out of business in the ordinary course, or otherwise fails to generate the bargained-for receivables in the absence of a bad faith act, then the MCA provider bears the risk of loss. Because a legitimate MCA is not absolutely repayable in all circumstances, but repayment is instead contingent on the business continuing to operate and generating the bargained-for receivables, MCA providers take the position that their products are a purchase and sale transaction rather than a loan or credit. Although few binding cases have decided this issue, the weight of case law is generally in favor of MCAs being a purchase and sale, rather than credit. The existing Official Staff Commentary to ECOA appears to support this conclusion, as the Commentary provides that "factoring" transactions such as a purchase of accounts receivable are not subject to ECOA or Regulation B, since they do not involve an extension of credit.[28]

Although the Bureau acknowledges that the term "credit" is ambiguous as to whether it covers MCAs, it takes the position in the proposed rule that MCAs would be "credit" for purposes of ECOA and Regulation B.[29] The preamble to the proposed rule points to the Bureau's understanding "that MCAs are underwritten and function like a typical loan (i.e., underwriting of the recipient of the funds; repayment that functionally comes from the recipient's own accounts rather than from a third party; repayment of the advance itself plus additional amounts akin to interest; and, at least for some subset of MCAs, repayment in regular intervals over a predictable period of time)" as support for this position.[30] The Bureau noted in its proposal that it distinguishes MCAs from the "factoring" addressed in the Commentary to Regulation B, on the basis that—according to the CFPB—MCAs are not based on existing accounts receivable, whereas factoring involves the sale of an existing legal right to payment for goods or services that have already been supplied, and the factor pursues the third party for payment rather than the merchant.[31] The Bureau's interpretation is not necessarily supported by the plain language of the existing Commentary. Nevertheless, the CFPB notes in the proposal that "[i]n contrast, at the time of the advance in an MCA, the recipient of the financing has no existing rights to payment that it can transfer. The transaction thus constitutes only a promise by the 'seller' to transfer funds to the 'buyer' once they materialize at a later date. The Bureau believes that the ECOA definition of credit, by referring to the right to 'defer' payments, necessarily invokes this temporal consideration."[32]

What Information Must Be Collected?

First, the Regulation B currently prohibits creditors from inquiring about the race, color, religion, national origin, or sex of an applicant, unless an exception applies—such as if the loan is secured by a dwelling and HMDA-reportable, if a creditor is collecting the information to conduct a self-test, or requesting the applicant's title (such as Mr. or Mrs.), if the applicant's response is optional.[33] The proposed rule would amend Regulation B's information collection rules to permit creditors to inquire whether the applicant is a minority-owned or women-owned business, and also the race, ethnicity, and sex of the applicant's principal owners when collecting small business demographic information pursuant to the proposed rule.[34]

The proposed rule would not require that information be collected by any one method (such as on an application form); the proposed rule gives lenders flexibility by allowing lenders to collect data "at a time and in a manner that is reasonably designed to obtain a response."[35] The Bureau's proposal includes a sample data collection form that, if finalized, covered financial institutions can use to collect required information about the applicant and its principal owners.[36] The proposal also provides that lenders would be permitted to reuse previously collected data about the small business applicant if the data was collected within the same calendar year as the current covered application, and the lender has no reason to believe the data is inaccurate.[37] That said, the proposed Appendix to the rule states that a financial institution generally must ask the applicant whether it is a minority-owned business and whether it is a women-owned business on a paper or electronic data collection form that is separate from the application form and other documents used to collect other information related to the application.[38] Information obtained about whether an applicant is a minority- or women-owned business and the race, ethnicity and sex of the applicant's principal owners should be maintained separately from the rest of the application and accompanying information.[39]

Consistent with its earlier outline of proposals, the Bureau is proposing to clarify circumstances that would not be reportable, even if they might be considered an "application" for Regulation B purposes, including inquiries, prequalifications, reevaluation, extension, and renewal requests, and solicitations and firm offers of credit.[40] Consistent with the Panel's recommendation, the Bureau is seeking comment on whether to include line increase requests as a "covered application" and information on how financial institutions currently process requests for a line of credit increase.[41] At least one Panel participant had suggested that treating line increases as reportable applications would require some lenders to make significant changes to how they do business.[42] The Bureau is also proposing to require the collection of data on incomplete or withdrawn applications, which stakeholders said would highlight potential issues of discouragement, level of assistance disparities, or other discriminatory treatment.[43]

The proposed rule would require covered financial institutions to collect a variety of information about the applicant, the credit product, and the owners of the business applicant. The CFPB published a chart alongside the proposed rule that identifies the data elements that the proposed rule would require covered financial institutions to collect. These include:

- **Applicant Information:** The proposed rule would require covered financial institutions to collect several pieces of demographic information about the applicant and the principal owner(s) of the applicant. First, the financial institution would be required to collect the gross annual revenue of the applicant business, the number of workers the business employs, the business's North American Industry Classification System ("NAICS") code, number of employees, and its time in business.[44]

Financial institutions would also be required to collect the census tract of the business applicant based on one of the addresses where the loan proceeds will principally be applied, or if that address is not known, the location of borrower's main office or headquarters.[45] If neither of those addresses are known, the proposed rule would require that the financial institution report another address or location associated with the applicant.[46]

The financial institution would also be required to collect information about whether the applicant is a "women-owned business" or a "minority-owned business."[47] The proposed rule defines a "minority-owned business" as a business for which more than 50 percent of its ownership or control is held by one or more minority individuals, and more than 50 percent of its net profits or losses accrue to one or more minority individuals.[48] The proposed Commentary provides that both indirect and direct ownership are to be used when determining whether a minority individual owns a business, and ownership must be traced through corporate or other indirect ownership structures.[49] A minority individual is considered to control a business if that individual has "significant responsibility to manage or direct the business."[50] This includes acting as an executive officer or senior manager.[51] The proposed Commentary provides that a business may be controlled by two or more minority individuals if those individuals collectively control the business, such as constituting a majority of the board of directors or a majority of the partners of a partnership.[52] The proposed rule defines a "women-owned business" as 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, and similar ownership-and-control tests are used to determine whether a business is women-owned.[53]

The proposed rule would require covered financial institutions to inform the applicant that the financial institution cannot discriminate on the basis of women-owned or minority-owned business status, or on whether the applicant provides this information, when requesting women-owned or minority-owned business status.[54] This information is to be self-reported by the applicant; the financial institution must permit an applicant to refuse to answer the inquiry into women-owned or minority-owned business status, and must inform the applicant that the applicant is not required to provide the information.[55] Financial institutions would be required to report the applicant's response, the applicant's refusal to answer the inquiry, or the applicant's failure to respond, even if the financial institution verifies or obtains an applicant's minority-owned or women-owned business status for another purpose.[56]

Last, a covered financial institution would be required to collect the ethnicity, race, and sex of the applicant's principal owners.[57] If the applicant does not provide this information, then the covered financial institution would be required to collect ethnicity and race information based on visual observation if the application was obtained through a face-to-face meeting or video meeting, and report that fact.[58] If the applicant does not provide this information and the application was not obtained through a face-to-face meeting or video meeting, then the financial institution reports that this information was not provided by the applicant.[59] Financial institutions should not report sex based on visual observation.[60] The proposed rule also provides that a covered financial institution would not be required—nor permitted—to verify the ethnicity, race, or sex information that the applicant provides.[61] The proposed rule would also impose several procedural requirements when a covered financial institution collects the ethnicity, race, and sex of the applicant's principal owners.[62] The rule would require covered financial institutions to provide the applicant with the definition of the terms "minority individual," "minority-owned business," "women-owned business," and "principal owner" as set forth in the proposed rule, although the rule

allows the covered financial institution to satisfy this requirement by providing the proposed sample data collection form the Bureau included with the proposed rule.[63] A covered financial institution must also inform the applicant that the financial institution cannot discriminate on the basis of minority-owned or women-owned business status, or on whether the applicant provides this information.[64]

- **Product Information:** The proposed rule would require covered financial institutions to collect information about the type of credit product offered, such as an unsecured or secured term loan, a line of credit, a credit card, MCA, or other sales-based financing transaction.[65] Covered financial institutions would also be required to collect information about the type(s) of guarantees obtained; the credit purpose (such as, for example, the purchase or refinance of real estate, repair or purchase of equipment, working capital such as floorplanning, acquisition of expansion of a business, or refinancing business debt); the initial amount of credit or initial credit limit requested by the applicant and the amount of credit approved or originated, and the length of the loan term, in months (if applicable).[66]
- **Pricing Information:** The proposed rule would require covered financial institutions to report pricing information for both originated credit and credit that is approved but not accepted.[67] Among other items, the proposed rule would require covered financial institutions to report the interest rate, the total amount of all origination charges payable directly or indirectly by the applicant and imposed directly or indirectly by the financial institution at or before origination; the total amount of any broker fees that are paid by the applicant; the total amount of all non-interest charges scheduled to be imposed over the first annual period of the credit transaction, and information about prepayment penalties.[68] The proposed rule would require a covered financial institution originating an MCA or other "sales-based financing" transaction to collect the difference between the amount advanced and the amount to be repaid.[69]

  Notably, the proposed rule's requirement to report "origination charges" would capture fees and charges that are excluded from the Regulation Z definition of a "finance charge," such as application fees or certain fees in a real property-secured transaction.[70] The Bureau notes in the proposed rule that it "believes that many of the upfront fees omitted from the finance charge, such as application fees, are typical of small business credit transactions, and therefore including such charges helps data users to understand pricing in the small business lending market."[71] The Bureau also notes that allowing exclusions from "origination charges" "may encourage financial institutions to shift costs to the excluded fees, where they would be hidden from users of the 1071 data."[72]
- **Action Taken:** The covered financial institution would be required to collect the action taken on the application, reporting the action as "originated," "approved but not accepted," "denied," "withdrawn by the applicant," or "incomplete," and the date the action was taken.[73] If the covered financial institution denies the application, it must report the principal reason (or reasons) the financial institution denied the application from a list provided in the proposed rule.[74]

What Must Financial Institutions Do With the Data?

Once a covered financial institution has conducted the data collection that the proposed rule would require, it must report the information on an annual basis on or before June 1 following the calendar year during which the covered financial institution collected the data.[75] The proposed rule would require covered financial institutions to submit data in a register, similar to the process that mortgage lenders subject to HMDA follow when submitting a loan application register.[76] And, similar to HMDA,

the proposed rule would provide that the Bureau will make small business data collected and reported by covered financial institutions available for public inspection, subject to deletions or modifications made by the Bureau.[77]

To address privacy concerns, the Bureau is proposing to use a balancing test that weighs the risks and benefits of public disclosure of Section 1071 data.[78] The Bureau has discretion under ECOA to modify or delete fields from the public application-level data where the release of the unmodified data would create risks to privacy interests.[79] The Bureau's proposed 1071 balancing test would consider the privacy interests of not just applicants, but also related natural persons who might not be applicants (such as principal owners of a business, where a legal entity is the applicant), as well as the privacy interests of financial institutions reporting 1071 data.[80]

Firewall

The proposed rule would also impose a "firewall" by prohibiting employees of the covered financial institution that are involved in making the credit decision from accessing the applicant's responses to inquiries regarding the applicant's status as a women-owned or minority-owned business, or the race, ethnicity, and sex of its principal owners.[81] However, the proposed rule provides at least some flexibility for smaller creditors for whom restricting access to demographic information might not be feasible. The proposed rule would allow employees or officers involved in making a credit decision to access demographic information, so long as the financial institution provides a notice to the applicant that personnel involved in making the credit decision may have access to the applicant's responses regarding whether it is a minority-owned business or a women-owned business, and regarding the ethnicity, race, and sex of the applicant's principal owners.[82]

Liability

The proposed rule would impose liability under ECOA for persons that fail to comply with the small business data collection requirements.[83] This includes potential administrative penalties, as well as liability for actual and punitive damages in a private action.[84] That said, the proposed rule would create a limited safe harbor from liability for a covered financial institution that incorrectly gathers the small business applicant's census tract, if the financial institution obtained the census tract by correctly using a geocoding tool provided by the Bureau or the FFIEC; if the financial institution reports on its small business lending application register an application date that is within three calendar days of the actual application date even though the reported date is inaccurate, or if the covered financial institution incorrectly identifies the NAICS code, provided the first two digits of the NAICS code are correct and the financial institution maintains procedures that are reasonably adapted to correctly identify the subsequent four digits.[85] Finally, the proposed rule would shield a financial institution from liability under ECOA if the financial institution collected information based on an initial determination that the applicant was a small business, but later concluded the applicant was not in fact a small business.[86]

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These are just some of the key takeaways of the lengthy proposed rulemaking. Small business lenders and finance providers should carefully review the proposal and consider whether to submit comments. The comment period is 90 days from the date the notice is published in the *Federal*

Register. When finalized, the rule will become effective approximately 18 months after publication in the *Federal Register*.

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Endnotes

[1] Pub. L. 111-203, tit. X, section 1071, 124 Stat. 1376, 2056 (2010), codified at ECOA section 704B, 15 U.S.C. § 1691c-2.

[2] See Letter from Leonard Kennedy, General Counsel, CFPB, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act (Apr. 11, 2011), *available at* https://files.consumerfinance.gov/f/2011/04/GC-letter-re1071.pdf.

[3] The Section 1071 rulemaking first appeared on the CFPB's Fall 2015 regulatory agenda, and was subsequently carried over to the Spring 2016 and Spring 2017 rulemaking agenda. In Fall 2018, the Bureau noted in its rulemaking agenda that it reclassified the Section 1071 rulemaking from pre-rule status to "longer-term action" status.

[4] Stipulated Settlement Agreement and Order, *Calif. Reinvestment Coalition et al. v. Kraninger*, Case No. 4:19-cv-02572-JSW (N.D. Cal. Feb. 26, 2020).

[5] Stipulation and Order, *Calif. Reinvestment Coalition et al. v. Uejio*, Case No. 4:19-cv-02572-JSW (N.D. Cal. Jul. 16, 2021).

[6] Proposed 12 C.F.R. § 1002.107(a).

[7] *See* 12 C.F.R. § 1003.3(c)(10).

[8] *See id.* § 1002.13(a).

[9] Proposed Rule at 4.

[10] 15 U.S.C. § 1691c-2(a).

[11] Proposed Rule at 59.

[12] *Id.* at 61.

[13] Proposed 12 C.F.R. § 1002.105(b).

[14] *Id.* § 1002.105(a).

[15] *Id.* § 1002.105(b).

[16] *Id.* § 1002.109(3).

[17] *Id.* § 1002.106(b).

[18] *Id.*

[19] *Id.*

[20] *See* 15 U.S.C. § 1691c-2(b)(1).

[21] *See* Proposed Rule at 100.

[22] *Id.* at 102.

[23] Proposed 12 C.F.R. § 1002.105(b).

[24] *Id*. § 1002.104.

[25] Proposed Comment 104(b) to 12 C.F.R. § 1002.

[26] 12 C.F.R. § 1002.2(j).

[27] Comment 2(j)-1 to 12 C.F.R. § 1002.

[28] Comment 9(a)(3)-3 to 12 C.F.R. § 1002.

[29] Proposed Rule at 182-83.

[30] *Id*. at 184.

[31] *Id*. at 183.

[32] *Id.*

[33] 12 C.F.R. § 1002.5(b).

[34] Proposed 12 C.F.R. § 1002.5.

[35] *Id*. § 1002.107(c)(1).

[36] *See* Proposed Appendix E to 12 C.F.R. § 1002.

[37] Proposed 12 C.F.R. § 1002.107(c)(2).

[38] *See* Proposed Appendix F to 12 C.F.R. § 1002.

[39] Proposed 12 C.F.R. § 1002.111(b).

[40] *See CFPB Issues Proposed Small Business Lending Rule*, Mayer Brown Consumer Financial Services Review Blog, Sep. 1, 2021; Proposed Comment 103(a)-3 to 12 C.F.R. § 1002.

[41] *See id.,* Proposed Rule at 172.

[42] *See id.;* Proposed Rule at 163.

[43] *See id.;* Proposed 12 C.F.R. § 1002.107(a)(9).

[44] Proposed 12 C.F.R. § 1002.107(a)(15)–(17).

[45] *Id*. § 1002.107(a)(13).

[46] *Id.*

[47] Proposed 12 C.F.R. § 1002.107(a)(18).

[48] *Id*. § 1002.102(m).

[49] Proposed Comment 102(m)-4 to 12 C.F.R. § 1002.

[50] Proposed Comment 102(m)-5 to 12 C.F.R. § 1002.

[51] *Id.*

[52] *Id.*

[53] Proposed 12 C.F.R. § 1002.102(s).

[54] *Id*. § 1002.107(a)(18)-(19).

[55] Proposed Comment 107(a)(18)-1, 107(a)(19)-1 to 12 C.F.R. § 1002.

[56] Proposed Comment 107(a)(18)-5, 107(a)(19)-5 to 12 C.F.R. § 1002.

[57] Proposed 12 C.F.R. § 1002.107(a)(20).

[58] *See* Proposed Comment 107(a)(20)-9 to 12 C.F.R. § 1002.

[59] *See* Proposed Appendix G to 12 C.F.R. § 1002.

[60] *Id.*

[61] *See* Proposed Appendix G to 12 C.F.R. § 1002.

[62] Proposed 12 C.F.R. § 1002.107(a)(20).

[63] *See* Proposed Appendix F to 12 C.F.R. § 1002.

[64] *Id.*

[65] Proposed 12 C.F.R. § 1002.107(a)(5).

[66] *Id.*

[67] *Id*. § 1002.107(a)(12).

[68] *Id.*

[69] Proposed 12 C.F.R. § 1002.107(a)(12)(v).

[70] Proposed Rule at 377.

[71] *Id.* at 377.

[72] *Id.*

[73] Proposed 12 C.F.R. § 1002.107(a)(9), (10).

[74] *Id*. § 1002.107(a)(11).

[75] *Id*. § 1002.109(a).

[76] *Id.*

[77] Proposed 12 C.F.R. § 1002.110(a).

[78] *See* Proposed Rule at 571.

[79] 15 U.S.C. § 1691c-2(e)(4).

[80] *Id.*; Proposed 12 C.F.R. § 1002.110(a); Proposed Rule at 578-79.

[81] Proposed 12 C.F.R. § 1002.108(b).

[82] *Id*. § 1002.108(c)-(d).

[83] *Id.*§ 1002.112(a).

[84] 15 U.S.C. § 1691e.

[85] Proposed 12 C.F.R. § 1002.112(c).

[86] *Id.*