

September 10, 2021

Fair Lending and Small Businesses

CFPB Proposed Rule Would Implement Dodd-Frank Small Business Lending Data Collection Requirements

SUMMARY

On September 1, 2021, the Consumer Financial Protection Bureau issued a notice of proposed rulemaking inviting public comment on its proposed rule implementing section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ Section 1071 amended the Equal Credit Opportunity Act to require financial institutions to collect and report information concerning credit applications made by “women-owned, minority-owned, or small business[es].”² Under the proposal, financial institutions would be required to collect and report section 1071 data regarding all applications for credit by small businesses, including those that are owned by women and minorities, but *not* regarding applications for credit by women-owned and minority-owned businesses that are not small.³

If finalized as proposed, the rule would result in the first comprehensive database of small business credit applications in the United States, enabling regulators and the public to identify and address fair lending concerns among small businesses. The database would also enable a range of stakeholders to better identify business and community development needs and opportunities for small businesses, including women-owned and minority-owned small businesses. At the same time, the proposed rule would impose a new comprehensive and potentially highly onerous compliance, collection, reporting, and recordkeeping regime akin to that of the Home Mortgage Disclosure Act.⁴

Comments on the proposed rule are due 90 days after publication in the Federal Register. The CFPB indicated that it does not anticipate a deadline extension.

I. BACKGROUND

The Equal Credit Opportunity Act (“ECOA”) and its implementing regulation, Regulation B, prohibit credit discrimination on the basis of race, color, religion, national origin, sex, marital status, or age.⁵ Section 1071 amended ECOA to require that financial institutions collect and report to the CFPB certain data regarding applications for credit for women-owned, minority-owned, or small businesses, including, among other things, the race, sex, and ethnicity of the principal owners of such businesses.⁶ Congress intended this amendment to “facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”⁷ Under section 1071, the CFPB is required to “prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to [section 1071].”⁸

In April 2011, shortly before section 1071’s effective date,⁹ the CFPB issued guidance stating that institutions’ obligations “do not go into effect until the Bureau issues necessary implementing regulations.”¹⁰ Over the next several years, the CFPB took a number of preliminary steps towards promulgating a proposed rule, but made no issuance. In May 2019, a coalition of community-based organizations and public agencies filed suit against the CFPB seeking a court order requiring the CFPB to “promptly” issue a section 1071 rule.¹¹ Early the following year, the parties stipulated to a settlement under which the CFPB agreed to take certain steps toward implementing section 1071.¹² On July 16, 2021, the parties stipulated that September 30, 2021 would be the deadline for the CFPB to issue a proposed rule, and the court ordered issuance by that date.¹³ The NPRM arrived on September 1, 2021. Under the terms of the settlement, the parties will meet again when the comment period concludes to discuss an appropriate deadline for issuance of the final rule.¹⁴

II. THE NPRM

In the NPRM, the CFPB proposes implementing section 1071’s requirements as a new subpart B to Regulation B. The existing Regulation B would become subpart A.¹⁵ To address various aspects of the new subpart B, the CFPB would add four new appendices to Regulation B and make numerous amendments to its “Official Interpretations.” A final rule implementing section 1071 would be effective 90 days after publication in the Federal Register, with compliance mandated 18 months after publication.¹⁶

In the subsections below, we address the following six key questions prompted by the NPRM.

1. What institutions and transactions would be covered?
2. Which borrowers would be covered?
3. What data would have to be collected and reported and when?
4. Would the data need to be collected in a particular form or manner?
5. What data would become public?

6. What if an institution makes a mistake or commits a violation?

A. WHAT INSTITUTIONS AND TRANSACTIONS WOULD BE COVERED?

1. Covered Financial Institutions

The data collection and reporting requirements of the proposed rule would apply to any “covered financial institution,” which the proposed rule would define as a “financial institution” that originated at least 25 “covered credit transactions” for small businesses in each of the two preceding years.¹⁷ The CFPB would define “financial institution” consistent with section 1071¹⁸ to include “any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.”¹⁹ The CFPB does not propose an asset-based exemption threshold or any other general exemptions for particular categories of financial institutions,²⁰ although the rule would not extend to motor vehicle dealers, consistent with Dodd-Frank’s general exclusion of such dealers from the CFPB’s consumer financial regulations.²¹

A covered financial institution that is a subsidiary of another covered financial institution would be required to maintain its own separate small business lending data, and would be permitted to report its data to the CFPB either directly or through its parent.²² If multiple financial institutions are involved in an origination, the proposed rule would require only the covered financial institution that makes the final approval decision to report the loan as an origination.²³ If no origination is made, any covered financial institution that made a credit decision would be permitted to report the application.²⁴

2. Covered Credit Transactions and Covered Applications

A “covered credit transaction” would be defined as a transaction that meets the definition of “business credit” under Regulation B, but would exclude trade credit, public utilities credit, securities credit, and incidental credit, as those terms are defined in Regulation B.²⁵ Accordingly, loans, lines of credit, credit card accounts, and merchant cash advances would be covered.²⁶ In associated commentary, the CFPB indicated that it would interpret “covered credit transaction” as *not* encompassing factoring, leases, consumer-designated credit used for business purposes, and credit secured by certain investment properties.²⁷ Any request for a “covered credit transaction” made in accordance with the institution’s procedures for the type of credit requested would be a “covered application” under the proposed rule.²⁸ Although otherwise generally consistent with the existing Regulation B definition of “application,” the proposed rule would exclude reevaluation requests, extension requests, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts.²⁹ Also excluded would be inquiries and prequalification requests, both of which are existing concepts in Regulation B.³⁰

B. WHICH BORROWERS WOULD BE COVERED?

The proposed rule would require financial institutions to collect and report section 1071 data regarding *all* “covered applications” from “small businesses.”³¹ “Small business” would be defined by reference to the

definitions of “business concern” and “small business concern” in the Small Business Act³² and the implementing regulations of the Small Business Administration (“SBA”),³³ which is consistent with the approach specified in section 1071.³⁴ The CFPB would *not*, however, employ the SBA’s size standards for defining a small business concern, which vary based on a business’s six-digit North American Industry Classification System (“NAICS”) code. Instead, the CFPB would look to whether the business—regardless of NAICS code—had \$5 million or less in gross annual revenue for its preceding fiscal year.³⁵ Any business that is at or under the \$5 million threshold would be a “small business” for purposes of the proposed rule.

C. WHAT DATA WOULD HAVE TO BE COLLECTED AND REPORTED AND WHEN?

Under the proposed rule, covered financial institutions would be required to collect and report three categories of data: (1) data generated primarily from specific requests by the institution; (2) data that may be provided by the applicant or discerned from information provided by the applicant or a third party; and (3) data that the institution itself generates. These three categories are made up of a total of 21 discrete data points in the proposed rule.³⁶ Covered financial institutions would be permitted to rely on statements made by an applicant or information provided by an applicant when collecting and reporting data, but, as mentioned below, where verification is permitted and the financial institution chooses to do so, a financial institution may be required to report verified information.³⁷ Covered financial institutions would be required to collect data on a calendar-year basis and report that data, along with certain identifying information about the institution, to the CFPB by June 1 of the following year.³⁸ Covered financial institutions would be permitted to reuse certain data points if the data were collected within the same calendar year as the current covered application and the institution has no reason to believe the data are inaccurate.³⁹

1. Data Generated Primarily from Specific Requests

Under the proposed rule, covered financial institutions would be required to collect and report minority-owned business status, women-owned business status, and principal owners’ ethnicity, race and sex. A business would be a “women-owned business” if 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.⁴⁰ Similarly, a business would be a “minority-owned business” if 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.⁴¹ “Minority individual” would be defined as “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.”⁴² “Principal owner” would be defined as a natural person who directly owns 25 percent or more of the equity interests of a business.⁴³ In the preamble to the proposed rule, the CFPB refers to minority-owned business status, women-owned business status, and principal owners’ ethnicity, race and sex as an applicant’s “protected demographic information” (“PDI”).⁴⁴ A covered financial institution generally would be required specifically to request an applicant’s PDI.⁴⁵

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Under the proposed rule, minority-owned business status or women-owned business status could *only* be collected and reported on the basis of information provided by the applicant for purposes of section 1071.⁴⁶ Financial institutions would *not* be permitted to collect or report such data based on any other basis (e.g., observation). In the case of race and ethnicity (but not gender), however, there would be a limited opportunity for the information to be collected on the basis of observation. More specifically, if an applicant does not provide at least one principal owner's ethnicity, race, or sex information and the financial institution meets with any principal owners in person or by video, the financial institution would be required to collect such information via visual observation or surname.⁴⁷

Under the proposed rule, if an applicant declines to or does not provide PDI, the covered financial institution would be required to report the declination or non-provision.⁴⁸ Financial institutions would not be permitted to verify an applicant's responses to PDI inquiries, "even if the financial institution verifies or otherwise obtains the ethnicity, race, or sex of the applicant's principal owners for other purposes."⁴⁹

2. Data Provided Directly by the Applicant or Discerned from Information Provided by the Applicant or a Third Party

Non-PDI data that could be provided by the applicant or that an institution could discern from information provided by the applicant or a third party would include information related to the credit being applied for (e.g., credit type, credit purpose, and the amount requested) and to the applicant's business (e.g., the census tract, gross annual revenue, the applicant's six-digit NAICS code, the number of non-owners working for the applicant, the applicant's time in business, and the number of principal owners of the applicant).⁵⁰ For this category of data, a financial institution generally may rely on information provided by the applicant and is not required to undertake verification; however, if an institution chooses to verify, it would be required to report the verified information.⁵¹

3. Institution-Generated Data

Data that only the institution can generate would include a unique identifier, the application date, the means by which the applicant submitted its application, the recipient of the application (e.g., the financial institution, its affiliate, or a third party), the action taken by the institution on the application, the date such action was taken, the amount of and pricing information for an originated credit transaction, and the reasons for any denial.⁵² If an approved credit is not accepted by the applicant, the institution would still need to collect and report the amount approved and pricing information.⁵³

D. WOULD THE DATA NEED TO BE COLLECTED OR RECORDED IN A PARTICULAR MANNER OR FORM?

The proposed rule would require covered financial institutions to implement procedures to collect section 1071 data, to satisfy non-discrimination notice requirements with respect to PDI, to collect race and ethnicity data using specified categories, and to permit applicants to self-describe race, ethnicity and sex.

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1. Procedures

Covered financial institutions would have “flexibility to establish procedures concerning the timing and manner that it collects applicant-provided data that work best for its particular lending model and product offerings, provided that those procedures are reasonably designed to collect the applicant-provided data [under the proposed rule].”⁵⁴ “Reasonable design” would need to be reassessed on a periodic basis.⁵⁵ The proposed rule includes detailed instructions, in proposed appendices F and G, for financial institutions regarding how to collect (and report) PDI.⁵⁶ The NPRM also addresses how a financial institution should report data if, despite having the requisite procedures in place, it is unable to obtain the data from an applicant.⁵⁷

2. Notices

Under the proposed rule, covered financial institutions would be required to provide a notice to applicants when requesting PDI advising that the institution is not permitted to discriminate on the basis of an applicant’s PDI or on whether the applicant provides PDI, and informing applicants that they are not required to provide a response to the institution’s request for PDI.⁵⁸ A sample data collection form with the requisite notices is in the proposed appendix E.

3. Race, Ethnicity and Sex

Under the proposed rule, principal owners’ ethnicity would be collected using aggregate categories (Hispanic or Latino and Not Hispanic or Latino) and disaggregated subcategories (Cuban, Mexican, Puerto Rican, or Other Hispanic or Latino).⁵⁹ If an applicant selects Other, the institution must permit the applicant to provide additional ethnicity information (e.g., Argentinean).⁶⁰ Institutions would be required to permit applicants to select as many aggregate and disaggregate categories as the applicant chooses.⁶¹

Principal owners’ race would also be collected using aggregate categories (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White) and disaggregated subcategories (e.g., Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, or Other Asian).⁶² If an applicant selects “Other,” the institution must permit the applicant to provide additional race information (e.g., Thai).⁶³ Institutions would be required to permit applicants to select as many aggregate and disaggregate categories as the applicant chooses.⁶⁴

Covered financial institutions would be required to permit applicants to provide principal owners’ sex using the categories Male, Female and/or that the principal owner prefers to self-describe their sex.⁶⁵ In the case of self-description, applicants must be permitted to provide additional information about their sex. Applicants must also be able to select as many sex categories as the applicant chooses.⁶⁶ Notably, the CFPB seeks comment on whether and how the collection of principal owners’ sex should incorporate sexual orientation and gender identity in light of the Supreme Court’s June 2020 holding in *Bostock v. Clayton County* that the prohibition on sex-based discrimination in Title VII of the Civil Rights Act of 1964

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encompasses discrimination on the basis of sexual orientation or gender identity⁶⁷ and the CFPB's subsequent interpretive rule clarifying that the prohibition against sex discrimination in ECOA and Regulation B "encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations."⁶⁸

4. Recordkeeping

Under the proposed rule, a covered financial institution would be required to retain evidence of compliance with the rule, including a copy of its reported data (*i.e.*, the institution's "small business lending application register"), for at least three years after submission to the CFPB.⁶⁹ An applicant's responses to inquiries regarding the applicant's PDI would need to be maintained separate from the rest of the application.⁷⁰ In addition, in compiling and maintaining its small business lending application register, a financial institution would not be permitted to include any personally identifiable information concerning any individual connected with an applicant.⁷¹

E. WHAT DATA WOULD BECOME PUBLIC AND WOULD THERE BE LIMITATIONS ON ACCESSING DATA?

1. Public Availability

Under the proposed rule, application-level data submitted by financial institutions would be made publicly available on an annual basis on the CFPB's website, subject to modifications by the CFPB to advance privacy interests.⁷² In exercising its discretion to modify the data, the CFPB proposes to employ a "balancing test" that assesses the risks and benefits of public disclosure.⁷³ The CFPB also proposes to issue a policy statement regarding its intended data modifications after receiving at least one full year of section 1071 data.⁷⁴

Under the proposed rule, the CFPB's publication of data would satisfy a financial institution's statutory obligation under section 1071 to make data publicly available upon request, although the institution would also need to publish a statement that the institution's section 1071 data is available on the CFPB's website.⁷⁵ The NPRM includes proposed language for use in this statement. The CFPB also proposes, at its discretion, to make aggregate data publicly available.⁷⁶

2. Access Limitations

The CFPB proposes implementing the statutory limitations on access to data collected under section 1071⁷⁷ by imposing a "firewall" that would prohibit an employee or officer of a covered financial institution (or of its affiliate) involved in decisioning an application from accessing an applicant's responses to inquiries made regarding the applicant's PDI.⁷⁸ The prohibition would not apply if the financial institution determines it is not feasible to restrict a particular individual's access, provided the institution provides notice to the applicant regarding that access.⁷⁹ Such notice may be provided either to individual applicants or to all

applicants. The NPRM includes proposed language for this notice.⁸⁰ Because the prohibition would encompass only an applicant's responses, it would not encompass ethnicity or race information that the institution collects via visual observation or surname; it also would not prohibit an employee or officer who, for example, knows by virtue of professional relationships that an applicant is a minority-owned business from being involved in decisioning an application.⁸¹

F. WHAT IF AN INSTITUTION MAKES A MISTAKE OR COMMITS A VIOLATION?

1. Errors

Under the proposed rule, an error that was “unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error” (*i.e.*, a “bona fide error”) would be presumed not to be a violation of ECOA or the proposed rule if the number of such errors does not exceed the thresholds specified in a proposed appendix H.⁸² As proposed, permissible error rates would range from 10 percent for the smallest institutions to 2.5 percent for the largest institutions.⁸³ An error would not be bona fide if there was a reasonable basis to believe that it was intentional or there is evidence that the institution did not maintain the requisite procedures.⁸⁴

The CFPB also proposes four safe harbors under which certain errors regarding census tract, NAICS code, small business status, and application date would not constitute violations.⁸⁵

2. Violations

A violation of section 1071 or proposed subpart B would be subject to administrative sanctions and civil liability as provided in sections 704 and 706 of ECOA.⁸⁶

IMPLICATIONS

A final rule implementing section 1071 is likely to elevate significantly the fair lending profile of small business lending. Indeed, small business lending to women and racial and ethnic minorities may become subject to the same level of public and regulatory scrutiny as is currently the case with home mortgage lending. Under the Home Mortgage Disclosure Act (“HMDA”) regime, extensive data on home mortgage lending is publicly available; this availability has been used by public interest groups to scrutinize the data to identify institutions that, in their view, fall short in their lending to women and minorities. Similarly, regulators and law enforcement agencies have scrutinized HMDA data for statistical disparities on which to base actions asserting redlining, discriminatory pricing and approval practices, and other forms of discrimination. These stakeholders can be expected to make similar use of data reported pursuant to section 1071, resulting in the potential for more enforcement actions and more protests of applications by banking organizations to expand.

The rule will also impose significant costs and duplicative requirements on banks. Currently, some small business data is collected and reported under the Community Reinvestment Act (the “CRA”).⁸⁷ In the

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NPRM, “the [CFPB] agrees—as do other Federal regulators that the [CFPB] has consulted in developing this proposed rule—that [section] 1071 data would be an important supplementation to CRA and HMDA data...” Under the CRA reporting regime for home lending, HMDA reporting satisfies CRA reporting requirements.⁸⁸ The CRA small business lending reporting criteria differ in important ways from the criteria in the CFPB’s proposed rule, but presently there is no indication that the banking agencies intend to similarly align the two. Unless the banking agencies permit the section 1071 reporting regime to substitute for the current CRA regulation reporting criteria, dual data collection and reporting systems may be required, raising costs and compliance risks.

The NPRM includes a lengthy analysis of the costs and benefits of the proposed section 1071 regime. The CFPB estimates that the one-time costs of implementing the regulation would be between \$312 million and \$323 million for depository and non-depository institutions, and ongoing annual costs of between \$372 million and \$392 million.⁸⁹ The NRPM indicates that these costs do not outweigh the benefits of a better system for identifying potential discrimination in small business lending. The CFPB specifically notes that the inclusion of pricing data, which is not one of section 1071’s required data fields, is important in assessing whether discrimination exists, and that the pricing data and several other data fields that would be required under the NPRM, but are not listed in section 1071, would enhance the ability of communities, governments and creditors to better understand small business credit conditions.⁹⁰

The CFPB issued the NPRM more than ten years after Dodd-Frank was enacted, and it will be at least two more years before compliance will be required, with an additional lag for public reporting. The impact of the small business reporting regime, however, may be quite significant in the long run as lenders seek to avoid negative publicity and regulatory scrutiny by focusing more small business lending efforts on women-owned and minority-owned businesses.

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ENDNOTES

- ¹ Bureau of Consumer Financial Protection, *Small Business Lending Data Collection under the Equal Credit Opportunity Act* (Sept. 1, 2021), available at <https://www.consumerfinance.gov/rules-policy/rules-under-development/small-business-lending-data-collection-under-equal-credit-opportunity-act-regulation-b/>. Simultaneously, the CFPB issued a series of supplemental materials aimed at facilitating the public's understanding of the notice of proposed rulemaking ("NPRM") and a web portal for small business entrepreneurs to share their stories about applying for credit and access educational resources.
- ² Pub. L. 111-203, tit. X, section 1071, 124 Stat. 1376, 2056 (2010), codified at ECOA section 704B, 15 U.S.C. § 1691c-2.
- ³ NPRM at 5.
- ⁴ 12 U.S.C. § 2810, *et seq.*
- ⁵ 15 U.S.C. § 1691 and 12 C.F.R. § 1002.2(z). ECOA and Regulation B also prohibit discrimination on the basis of receipt of public assistance or the applicant's good faith exercise of a right under the Consumer Credit Protection Act. As originally enacted in 1974, ECOA prohibited discrimination only on the basis of sex or marital status. ECOA was amended in 1976 to include the additional prohibited bases.
- ⁶ 15 U.S.C. § 1691c-2(b), (e).
- ⁷ 15 U.S.C. § 1691c-2(a).
- ⁸ 15 U.S.C. § 1691c-2(g).
- ⁹ 15 U.S.C. § 1691c-2 note (specifying the section's effective date as the "designated transfer date"). In September 2010, the Secretary of the Treasury designated July 21, 2011 as the "designated transfer date." 75 Federal Register 57,252 (Sept. 20, 2010).
- ¹⁰ Memorandum from Leonard J. Kennedy, General Counsel, CFPB, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act Re: Section 1071 of the Dodd-Frank Act, dated April 11, 2011, available at <https://files.consumerfinance.gov/f/2011/04/GC-letter-re-1071.pdf>.
- ¹¹ See *California Reinvestment Coalition v. Kathleen L. Kraninger, Director, Consumer Financial Protection Bureau, In Her Official Capacity, and Consumer Financial Protection Bureau*, No. 19-cv-02572, ECF No. 1.
- ¹² *Id.*, ECF No. 52.
- ¹³ *Id.*, ECF No. 61.
- ¹⁴ *Id.*, ECF No. 52.
- ¹⁵ The CFPB would also amend the existing provision in Regulation B related to requests for information and associated commentary to expressly permit voluntary collection of minority-owned business status, women-owned business status, and the race, sex, and ethnicity of applicants' principal owners in accordance with the requirements of the new subpart B. NPRM at 115. In addition, the CFPB would revise certain references to the entire regulation in existing Regulation B to instead refer specifically to subpart A. *Id.*
- ¹⁶ NPRM at 554.
- ¹⁷ NPRM at 788.
- ¹⁸ *Id.*
- ¹⁹ See 15 U.S.C. § 1691c-2(h)(1).
- ²⁰ NPRM at 6.

ENDNOTES (CONTINUED)

21 See 12 U.S.C. § 5519.

22 NPRM at 796.

23 *Id.* at 796-797.

24 *Id.* at 797.

25 *Id.* at 788.

26 *Id.* at 835.

27 *Id.*

28 *Id.* at 787.

29 *Id.* at 788.

30 *Id.*

31 The NPRM includes a series of rationales for not extending the proposed rule to encompass all women-owned and minority-owned businesses, including, among others, that almost all women-owned and minority-owned businesses are small businesses. *Id.* at 101-108. Alternatively, the CFPB proposes this approach pursuant to its authority to adopt exceptions to any requirement of section 1071 and its implied *de minimis* authority. *Id.* at 108. The CFPB seeks comments on its proposed interpretation. *Id.*

32 15 U.S.C. 631 *et seq.*

33 NPRM at 789.

34 See 15 U.S.C. § 1691c-2(h)(2).

35 NPRM at 789. The Bureau is seeking SBA approval for this alternate small business size standard as required under the Small Business Act. *Id.* at 7.

36 *Id.* at 789-793.

37 *Id.* at 794.

38 *Id.* at 796. The CFPB indicated that it would provide technical instructions for these data submissions in the form of a Filing Instructions Guide and related materials. *Id.* at 798.

39 *Id.* at 486 and 794.

40 *Id.* at 787.

41 *Id.*

42 *Id.*

43 An applicant may have no more than four principal owners and may have no principal owners. *Id.* at 470.

44 *Id.* at 9.

45 *Id.*

46 *Id.* at 808.

47 *Id.* at 810-811.

48 *Id.* at 877, 879 and 890.

49 *Id.*

50 *Id.* at 8.

51 *Id.* at 794.

ENDNOTES (CONTINUED)

- 52 *Id.* at 9.
- 53 *Id.* at 791.
- 54 *Id.* at 892.
- 55 *Id.* at 893.
- 56 These appendices related to collecting and reporting PDI would be distinct from the technical instructions for submitting section 1071 data, which would be included in a Filing Instructions Guide and related materials.
- 57 *See, e.g., id.* at 898.
- 58 *Id.* at 793.
- 59 *Id.* at 882-883.
- 60 *Id.* at 883.
- 61 *Id.*
- 62 *Id.* at 884-885.
- 63 *Id.* at 885.
- 64 *Id.* at 886.
- 65 *Id.* at 887.
- 66 *Id.*
- 67 140 S. Ct. 1731 (2020).
- 68 86 Fed. Reg. 14363 (Mar. 16, 2021).
- 69 NPRM at 799.
- 70 *Id.* at 799.
- 71 *Id.*
- 72 *Id.* at 798.
- 73 *Id.* at 11.
- 74 *Id.* at 11-12.
- 75 *Id.* at 12.
- 76 *Id.* at 798.
- 77 *See* 15 U.S.C. § 1691c-2(d).
- 78 NPRM at 794-795.
- 79 *Id.* at 795.
- 80 *Id.* at 903.
- 81 *Id.* at 902.
- 82 *Id.* at 800.
- 83 *Id.* at 819-820.
- 84 *Id.* at 800.
- 85 *Id.* at 800-801.
- 86 *Id.* at 800.

ENDNOTES (CONTINUED)

- 87 See, e.g., 12 C.F.R. § 25.42(i)(OCC).
- 88 See, e.g., 12 C.F.R. § 25.42(b)(3)(OCC).
- 89 NPRM at 727 and 731.
- 90 *Id.* at 743-744.

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