Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—CFPB proposes small business lending data collection requirements, (Sept. 1, 2021)

Banking and Finance Law Daily Wrap Up

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The Bureau has issued a proposed rule requesting information on small business lending data, which is intended to increase transparency and access to credit for small businesses.

The Consumer Financial Protection Bureau has issued a proposal to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. The proposed rule would amend Regulation B to implement changes to the Equal Credit Opportunity Act made by section 1071 of the Dodd-Frank Act, which requires the CFPB to collect data about small business lending to facilitate enforcement of fair lending laws and to help identify business and community development needs and opportunities. The rule, if finalized, would require lenders to disclose information about their lending to small businesses. Under the proposal, lenders would be required to report the amount and type of small business credit applied for and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered. Comments on the proposal are due 90 days from publication in the *Federal Register.*

The CFPB also launched a web portal for small business entrepreneurs to communicate regarding applying for credit, which the CFPB hopes will help it understand small business challenges and successes in accessing credit.

Proposed requirements. The proposed requirements would apply to a wide range of credit products and would help the CFPB better understand: information about the credit small businesses seek and obtain; demographic information about small business owners; and how applications are received and their outcomes. According to the Bureau, this would allow community organizations, researchers, lenders, and others to better support small business and community development needs. "Small businesses are the primary job creators and wealth builders in communities across the country," said CFPB Acting Director Dave Uejio. "After homeownership, small business ownership is the primary means by which families and communities build wealth. Yet too often, small business development is starved for want of access to responsible, fairly priced credit."

The Bureau is proposing to add a new subpart B to Regulation B to implement Section 1071's requirements. According to a summary released by the Bureau, the requirements would apply to "covered financial institutions." The proposal would permit creditors that are not covered financial institutions to voluntarily collect and report data under Section 1071 in certain circumstances.

The Bureau's proposal would apply to businesses with $5 million or less in gross annual revenue for its preceding fiscal year. A covered financial institution would be required to collect and report data and satisfy other requirements for applications that are "covered applications" from small businesses. The proposal defines a "covered application" 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. The Bureau noted that, while this proposed definition of covered application is largely consistent with the existing Regulation B definition of "application," under the proposed rule certain circumstances would not be covered applications, even if they are considered applications under existing Regulation B. Under the proposal, a covered application would not include the following:

- Reevaluation requests, extension requests, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts; or

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- inquiries and prequalification requests.

Additionally, under the proposal, "covered credit transactions" would not include the following, even if they satisfy the definition of business credit:

- financing arrangements wherein a business acquires goods or services from another business without making immediate payment to the business providing the goods or services (i.e., trade credit);
- public utilities credit as defined in Regulation B, 12 CFR 1002.3(a)(1);
- securities credit as defined in Regulation B, 12 CFR 1002.3(b)(1); and
- incidental credit as defined in Regulation B, 12 CFR 1002.3(c)(1), but without regard to whether the credit is consumer credit, is extended by a creditor, or is extended to a consumer.

Effect of pandemic. The Bureau stated in a release that the COVID-19 pandemic highlighted the negative economic impact that occurs when policymakers lack the data to best target financial relief. The pandemic hit small businesses hard, with over 33 percent of small businesses closed at the height of the pandemic. Yet many small businesses struggled to access the small business relief funds Congress appropriated during the COVID-19 emergency. According to the House Select Subcommittee on the Coronavirus Crisis, in October 2020, some larger banks participating in the Paycheck Protection Program (PPP) "failed to prioritize small businesses in underserved markets, including minority and women-owned businesses." The report also found that those same small businesses had to wait longer to access the PPP funds once they submitted applications to banks.

Additional comments requested. In addition to comments on the overall proposal, the CFPB also requested comments on a variety of issues, including:

- how to define a small business for purposes of this data collection;
- where to set the activity threshold for when a lender is required to report information;
- how best to collect pricing information for transparency into the cost of small business credit;
- whether and how to collect certain information about the sex of an applicant’s principal owners;
- how to balance the benefits of public disclosure and the risk to privacy interests; and the appropriate implementation period.

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