

Ver. 08/21/23

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-cv-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**Plaintiffs’ Motion For A Preliminary Injunction
And Expedited Hearing And Oral Argument**

Pursuant to F.R.C.P. 65 and Local Rule 7.1, Plaintiffs respectfully request that the Court issue a preliminary injunction enjoining the Defendants from implementing and enforcing the Small Business Lending Rule promulgated by the Defendant, Consumer Financial Protection Bureau (the “CFPB”), published in the Federal Register on May 31, 2023, 88 Fed. Reg. 35150-35571, and generally codified at 12 C.F.R. §1002.101 to §1002.114 (the “Small Business Lending Rule” or the “Final Rule”). Plaintiffs also request, pursuant to LR 7.1(f), an expedited hearing and oral argument.

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As more fully explained in the accompanying supporting memorandum, there is already a nationwide preliminary injunction staying implementation and enforcement of the Final Rule issued by the United States District Court for the Southern District of Texas (the “Texas Federal Court”) in a lawsuit, Case No. 7:23-cv-00144, filed by the Texas Bankers Association, Rio Bank, and the American Bankers Association against the Defendants in this action (the “Texas CFPB Lawsuit”). A copy of that injunction is attached as Exhibit 5 to Plaintiffs’ Complaint in this proceeding.

However, even though the Texas injunction impacts banks nationwide, it is limited only to members of the Texas Bankers Association and/or the American Bankers Association. The named Plaintiff banks in Kentucky, as well as numerous other banks that are members of the Kentucky Bankers Association, are not members of either of those trade associations. Therefore, they seek protections equal to those already granted by the Texas Federal Court.

It is entirely appropriate that the Plaintiffs obtain the relief sought. Choice of association affiliation does not alter the underlying facts, which are the same in both this case and that brought before the Texas CFPB Lawsuit. Thus, the Plaintiff banks, the Kentucky Bankers Association (the “KBA”) and the other banks represented by the KBA in this case should also be protected from unrecoverable compliance costs pursuant to an invalid Final Rule, particularly when financial institutions located in Kentucky who are members of the American Bankers Association are currently receiving this injunctive relief. The Plaintiffs are seeking a “level playing field” in Kentucky, and the factors to be considered by this Court when deciding to issue injunctive relief support granting this protection.

Plaintiffs respectfully request an expedited hearing and oral argument on their motion to the extent the Court may have questions or concerns that would prevent the prompt issuance of a preliminary injunction after completion of briefing on the motion.

Ver. 08/21/23

Respectfully submitted,

MORGAN POTTINGER MCGARVEY

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Certificate Of Service

On August 21, 2023, I electronically filed this document through the Court's ECF filing system which will send a notice of electronic filing to all counsel of record. I also emailed a copy of this motion to the Defendants' counsel of record in the Texas CFPB Lawsuit who has also filed an entry of appearance in this case: Kevin E. Friedl, Senior Counsel, Consumer Financial Protection Bureau, 1700 G. Street NW, Washington, D.C. 20552, kevin.friedl@cfpb.gov.

/s/ M. Thurman Senn

M. THURMAN SENN

**United States District Court
Eastern District Of Kentucky
London Division**

CASE NO.: 6:23-cv-00148-KKC

THE MONTICELLO BANKING COMPANY, <i>et al.</i> ,)
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CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**PLAINTIFFS’ MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR A PRELIMINARY INJUNCTION**

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Certificate of Service

On August 21, 2023, I electronically filed this document, along with the motion and tendered order, through the Court’s ECF filing which will send a notice of electronic filing to all counsel of record. I also emailed a copy of this motion to the Defendants’ counsel of record in the Texas CFPB Lawsuit who has also filed an entry of appearance in this case: Kevin E. Friedl, Senior Counsel, Consumer Financial Protection Bureau, 1700 G. Street NW, Washington, D.C. 20552, kevin.friedl@cfpb.gov.

/s/ M. Thurman Senn
M. Thurman Senn (KBA #82343)

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Plaintiffs, The Monticello Banking Company, Citizens Deposit Bank Of Arlington, Inc., First Community Bank Of The Heartland, Inc., First Southern National Bank, Morgantown Bank & Trust Company, The Farmers Bank Of Milton, Ky, The Peoples Bank, Marion, Kentucky, The Sacramento Deposit Bank, and the Kentucky Bankers Association, state as following in support of their motion for a preliminary injunction enjoining the Defendants from implementing and enforcing the Small Business Lending Rule promulgated by the Defendant, Consumer Financial Protection Bureau (the “CFPB”), published in the Federal Register on May 31, 2023, 88 Fed. Reg. 35150-35571, and generally codified at 12 C.F.R. §1002.101 to §1002.114 (the “Small Business Lending Rule” or the “Final Rule”).

I. Summary Of Argument.

There is already a nationwide preliminary injunction staying implementation and enforcement of the Final Rule as to some, but not all, of the persons affected by the Final Rule. That injunction was issued by the United States District Court for the Southern District of Texas in a lawsuit, Case No. 7:23-cv-00144, filed by the Texas Bankers Association, Rio Bank, and the American Bankers Association against the Defendants in this action (the “Texas CFPB Lawsuit”). A copy of that injunction (the “Texas Preliminary Injunction”) is attached as Exhibit 5 to Plaintiffs’ Complaint in this proceeding.

However, the Texas Preliminary Injunction is limited only to members of the Texas Bankers Association and the American Bankers Association. The named Plaintiff banks as well as numerous other Kentucky banks that are neither members of the Texas Bankers Association nor the American Bankers Association were not granted relief by the Texas Preliminary Injunction. Thus, the Kentucky Plaintiffs now seek protections equal to that already granted in the Texas CFPB Lawsuit.

It is entirely appropriate that the Plaintiffs in this case be protected from unrecoverable compliance costs pursuant to an invalid Rule, particularly when financial institutions located in Kentucky who are members of the American Bankers Association are currently receiving this injunctive relief. The Plaintiffs are seeking a “level playing field” in Kentucky.

II. Overview Of The CFPB’s Final Rule And The Illegal Aspects Of It.

In 2010, Congress added a single new section to the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*)(the “ECOA”) to create a small business loan data collection system. The legislation was Section 1071 of the Dodd-Frank Wall Street Reform And Consumer Protection Act, Pub.L. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), and it is codified at 15 U.S.C. §1691c-2. A copy of that legislation is attached as Exhibit 1 to Plaintiff’s Complaint. Section 1691c-2(e)(2)(A)-(G) lists 13 items of loan data that Congress directed to be “compiled and maintained” by covered financial institutions. Subparagraph (H) is a catchall for “any additional data that the Bureau determines would aid in fulfilling the purposes of this section.”

The “Bureau” is the Defendant, CFPB, which was created by the same Dodd-Frank Act. Congress constructed the CFPB in a manner that illegally attempted to insulate the CFPB from oversight and accountability. It did that first by providing that the CFPB would be governed by a single Director whose actions could not be questioned or controlled because the President could only remove him or her for inefficiency, neglect or malfeasance. In *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 207 L.Ed.2d 494 (2020), the United States Supreme Court declared this structure unconstitutional and contrary to separation of powers because it insulated the CFPB from accountability to the President.

The next effort in the Dodd-Frank Act to illegally insulate the CFPB was by creating a “funding scheme” that the Fifth Circuit observed “is unique across the myriad independent

executive agencies across the federal government. It is not funded with periodic Congressional appropriations.” See *Community Fin. Servs. Ass’n of Am., Ltd v. Consumer Financial Protection Bureau*, 51 F.4th 616, 624 (5th Cir. 2021), *cert. granted*, 215 L.Ed.2d 104, 143 S. Ct. 978 (Feb. 27, 2023). Rather, the CFPB receives funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments. Each year, the CFPB simply requests an amount “determined by the Director to be reasonably necessary to carry out” the agency’s functions. The Federal Reserve must then transfer that amount so long as it does not exceed 12% of the Federal Reserve’s “total operating expenses.” See 12 U.S.C. 5497(a). Because this funding mechanism circumvents the Congressional appropriations process of the U.S. Constitution, it was declared unconstitutional in the *Community Fin. Servs.* case, and that decision is currently under review by the Supreme Court.

The CFPB has now abused its powers to craft a Final Rule that has transformed a short and simple piece of ECOA legislation (21 lines specifying the specific data to be complied) into a monstrous federal regulation that took 421 pages of three-column, single spaced Federal Register pages to state and begin to explain. The Plaintiffs emphasize “begin” because the needed explanations, guidances and warnings from the CFPB go on and on. The Final Rule was published on May 31, 2023. Plaintiffs have attached only two of the “rule extensions” as exhibits to their Complaint. Exhibit 3 is a forty page “Small Business Lending Rule: Data Points Chart” that sets forth 81 separate data or sub-data points (in contrast to the 13 in the statute). Exhibit 4 is a 123 page “CFPB Filing Instructions Guide” the discusses how to submit all of this additional information that the CFPB has abused its powers to demand. As recently as last week, August 17, 2023, the CFPB made additional modifications to the filing instructions.

It cannot be disputed that the CFPB developed the Final Rule using money that it

obtained under a funding mechanism whose constitutionality is being directly questioned and will be decided in due course by the Supreme Court. A CFPB report indicates that it spent over \$39 million for "Research, Markets & Regulations" during the first three quarters of the fiscal year just prior to the quarter in which the rule was issued. *See* Consumer Protection Financial Bureau, CFO Updated For The Third Quarter Of Fiscal Year 2022 (available at https://files.consumerfinance.gov/f/documents/cfpb_cfo-update_report_fy-2022_q3.pdf). The CFPB would have been unable to promulgate any rules "without its unconstitutional funding" and thus would not have issued the Final Rule here absent that scheme. *See Community Financial*, 51 F.4th at 643.

In general, the Final Rule requires the collection of an expanded set of data that is far in excess of the statutory categories listed in Section 1691c-2(e)(2)(A)-(G). The 81 "data points" now to be collected and submitted is described in the 40-page Data Points Chart that is Exhibit 3 to Plaintiffs' Complaint. *See also* 12 C.F.R. §1002.107(a) (listing various "data [to be] compiled"). The "Filing Instructions" on how to submit all this data is itself 123 pages long. *See* Complaint Exhibit 4. The sole statutory basis for this dramatic expansion in data collection is §1691c-2(e)(2)(H) which includes the catch-all "any additional data that the Bureau determines would aid in fulfilling the purposes of this section."

The Final Rule imposes significant other obligations upon covered financial institutions such as how to collect the data from loan applicants (§1002.107(c)); establishing procedures to monitor compliance with the Final Rule (§1002.107(3)); creating a "firewall" in the financial institution's systems for various data (§1002.108); statements to be placed on a financial institution's website about availability of data reports (§1002.110); and recordkeeping (§1002.111).

While the Final Rule takes effect August 29, 2023 (12 C.F.R. §1002.114(a)), the Final Rule has rolling compliance and reporting deadlines that depend upon the number of covered credit transactions a financial institution originates. *See* 12 C.F.R. §1002.114(b). “Tier 1” institutions originate at least 2,500 covered credit transactions per year, and their compliance date is October 1, 2023. “Tier 2” institutions originate between 500 to 2,499, and their compliance date is April 1, 2024. “Tier 3” institutions originate 100 to 249, and their compliance date is January 1, 2026. The testing dates for determining what tier applies are for the years 2022 and 2023. The CFPB set these deadlines in recognition of the complexity and breadth of the Final Rule along with the perceived compliance resources available to the financial institutions in the various tiers. Given that data used to establish tiers is for 2022 and 2023 and that the Final Rule is incredibly complex, financial institutions are already working on compliance.

The Plaintiffs’ Complaint alleges five counts on why the Final Rule is illegal and improper. Count 1 challenges the Final Rule based upon its being created using funds derived from an unconstitutional funding method. Counts 2 through 4 challenge the Final Rule based upon various requirements of the Administrative Procedure Act. Count 5 challenges specific provisions of the Final Rule that interfere with a loan applicant’s statutory right under 15 U.S.C. §1691c-2-(c) to “refuse to provide any information requested.”

III. The Texas Litigation Over The Final Rule And The Texas Preliminary Injunction.

On April 26, 2023, The Texas Bankers Association (the “TBA”) and one of its member banks, Rio Bank, McAllen, Texas (“Rio Bank”) filed a Complaint challenging the legality of the Final Rule. They filed an amended complaint to add the American Bankers Association (the “ABA”) as a Plaintiff, on May 14, 2023. That amended complaint included as an exhibit the Declaration Of Virginia O’Neill, an Executive Vice President for Regulatory Compliance And

Policy at the ABA, discussing costs of compliance by depository institutions.

After briefing by the parties, on July 31, 2023, the Chief United States District Judge Randy Crane entered in the Texas CFPB Lawsuit an “Order Granting In Part And Denying In-Part Plaintiffs’ Motion For Preliminary Injunction” (the “Texas Preliminary Injunction”). A copy of the Texas Preliminary Injunction was filed as **Exhibit 5** to the Kentucky Complaint in this action.

IV. The Irreparable Harm Being Suffered By The Kentucky Plaintiffs In This Case And Their Preliminary Injunction Request.

All nine of the Plaintiffs in this case have tendered as exhibits to this memorandum declarations explaining the irreparable harm they are suffering on account of the Final Rule. *See* Declaration Of Kenny Ramsey, **Monticello Banking Company (Exhibit 7)**¹ (hereinafter “Monticello Bank Decl.”); Declaration of Danny D. Beyer, **Citizens Deposit Bank Of Arlington, Inc. (Exhibit 8)** (hereinafter “Citizens Deposit Decl.”); Declaration of Bruce Kimbell, **First Community Bank Of The Heartland (Exhibit 9)** (hereinafter “First Community Decl.”); Declaration of Melissa Mahoney, **First Southern National Bank (Exhibit 10)** (hereinafter “First Southern Decl.”); Declaration of Jason Jones, **Morgantown Bank & Trust Company (Exhibit 11)** (hereinafter “Morgantown Bank Decl.”); Declaration of David A. Hertz, **The Farmers Bank Of Milton, Kentucky (Exhibit 12)** (hereinafter “Farmers Bank Decl.”); Declaration of Terry L. Bunnell, **The Peoples Bank, Marion, Kentucky (Exhibit 13)** (hereinafter “Peoples Bank Decl.”); Declaration of Michael W. Hunt, **The Sacramento Deposit Bank (Exhibit 14)** (hereinafter “Sacramento Bank Decl.”); Declaration of Timothy A. Schenk, **Kentucky Bankers Association (Exhibit 15)** (hereinafter “KBA Decl.”)

¹This exhibit is given exhibit number seven as the Complaint has six exhibits. The remainder of the exhibits are numbered consecutively thereafter.

Each of the bank declarations includes the statement that each bank “has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule.” *See* Monticello Bank Decl. ¶7; Citizens Deposit Decl. ¶7; First Community Decl. ¶7; First Southern Decl. ¶7; Morgantown Bank Decl. ¶7; Farmers Bank Decl. ¶7; Peoples Bank Decl. ¶8; Sacramento Bank Decl. ¶7.

The KBA Decl. discusses how it and consumer compliance experts (such as Compliance Alliance) “advised their bank customer to commence compliance preparation steps immediately after the Final Rule was announced and made public.” KBA Decl. ¶7. It notes that 32 bank representatives paid \$195 each to attend a seminar on the necessary compliance work on March 29, 2023. KBA Decl. ¶8. A second formal training program is scheduled for August 31, 2023. KBA Decl. ¶11. Mr. Schenk of the KBA notes that he has “been fielding telephone calls daily from representatives of KBA Member Banks asking questions about the Final Rule and how to implement it.” KBA Decl. ¶12. He also notes how its implementation was discussed at two KBA Compliance and Risk Roundtables and two Regulators Forums. KBA Decl. ¶13. He reports the obvious – “KBA Member Banks currently are taking steps to implement the Final Rule” and that “[a]s a result our members are already incurring, and will continue to incur, direct economic injury caused by the Final Rule.” KBA Decl. ¶13.

Each of the bank declarations includes a statement about the dollar costs of the work the bank will have to incur to comply with the Final Rule. In general, compliance activities will include professional staff time reviewing the 421 federal register pages of the Final Rule and monitoring the issuance of and reviewing all of the other supporting materials the CFPB is issuing relating to complying with the Final Rule; engaging consultants and/or attorneys to advise on requirements and operational changes required to ensure compliance; searching for and

purchasing new software (*e.g.*, loan origination software systems); integrating the new software with existing software and systems; updating existing computer systems; testing and validating systems; engaging vendors to assist with data quality control and analysis; developing forms and applications; drafting new policies and procedures, and amending existing policies and procedures; conducting legal and compliance review; and hiring new employees. *See* KBA Decl. ¶7-¶8; Exh. 17. *See also* Declaration Of Virginia O’Neill, American Bankers Association (**Exhibit 18**).²

Once all that is done, then there is the practical day-to-day work of processing each covered application and obtaining all of the required data points for it. There will be the work of answering the inevitable questions from small business loan applicants about the data collection, data submission, and data utilization process. There will be the steps of assembling and submitting the data to the CFPB. The Final Rule itself categorizes these as “several operational steps ... [which are] transcribing data, resolving reportability questions, transferring data to a data entry system, geocoding, researching questions, resolving question responses, and checking post-submission edits.” *See* 88 Fed. Reg. at p. 35, 517 (column 3).

All of this work triggers the three (3) year record retention requirements under 12 C.F.R. §1002.111(a). Also, the Plaintiff Banks will have to demonstrate their compliance during their regular bank examinations. Whew!! In recognition of this incredible volume of very complex work, the KBA appropriately titled the handout for its March 29, 2023, training seminar – “Prepare Your Bank for Small Business Reporting Burden under 1071” (emphasis added). *See* KBA Decl. ¶8 (**Exhibit 16**).

²Ms. O’Neill’s Declaration was filed in the Texas CFPB Lawsuit, but it can be used in this proceeding as it is sworn to pursuant to 28 U.S.C. §1746.

The lead bank, and one of the two largest of the Plaintiff banks, is the Monticello Banking Company (“Monticello Bank”) with deposits of \$937.9 million, and loans and leases of \$840.6 million. *See* Monticello Bank Decl. ¶5. The declaration of its President, Kenny Ramsey, discusses the efforts that have been taken, so far, to comply with the Final Rule. Monticello Bank will be assembling a compliance implementation team of roughly ten (10) full time equivalent employees at a cost of \$50,000. *See* Monticello Bank Decl. ¶8. It also expects to hire one (1) full time equivalent employee to handle Final Rule implementation for another \$50,000. *Id.* at ¶9. Employee responsibilities will have to be reassigned to handle the data collection with an estimated cost of another \$30,000. *Id.* at ¶10. It will cost another \$10,000 to identify, train and compensate the employee who will be the authorized representative to certify the accuracy and completeness of its data being reported to the CFPB. *Id.* at ¶11. Monticello Bank expects to have to spend \$3,000 to update or purchase new computer software. *Id.* at ¶12. Five thousand dollars has been budgeted for expected necessary training seminars. *Id.* at ¶13. Monticello Bank will have to change its record retention practices at a cost of another \$10,000. *Id.* at ¶14.

The smallest of the Plaintiff banks is the Sacramento Deposit Bank with loans and leases of \$78.5 million and deposits of \$123.6 million. All of the bank’s lending staff will have to be involved, and it expects to incur \$10,000 in employee compliance set-up costs. *See* Sacramento Bank Decl. at ¶7. It will incur \$35,000 to \$50,000 for continued compliance work. ¶8-¶9. It expects to have to purchase or upgrade computer software, but it does not yet know the exact cost of that. Even though a small bank may incur smaller compliance costs than a larger bank, the impact can be as great or greater given the smaller amount of resources available.

The declarations from the other six Plaintiff banks reflect costs that range from those of Sacramento Deposit bank to Monticello Bank depending upon the size and complexity of their

operations. The KBA estimates that the average initial compliance costs will be in the range of \$100,000 per community bank. *See* KBA Decl. ¶10.

The CFPB really cannot dispute that the Plaintiff banks are incurring significant initial set-up compliance costs since the CFPB's Final Rule states: "The Bureau estimates that the overall market impact of one-time costs for depository institutions will be between \$147,000,000 and \$159,000,000." *See* Final Rule, 88 Fed. Reg. at p. 35,509 (column 2). To repeat, this is just the cost estimate for initial work to be in a position to comply. For continuing compliance costs, the CFPB Final Rule states: "The Bureau estimates that the total annual ongoing costs for depository institutions will be between about \$297,000,000 and \$313,000,000 per year". *See* Final Rule, 88 Fed. Reg. at p. 35,511 (column 3).

The KBA's representative, Tim Schenk, who has been given primary responsibility at the KBA for addressing compliance work to understand and help member banks implement the Final Rule believes, based upon his own work trying to understand the Final Rule and help member banks deal with it, that these compliance cost estimates of the CFPB are "wholly inadequate and inaccurate." *See* KBA Decl. at ¶9.

To avoid this irreparable harm, the Plaintiffs have filed their motion for a preliminary injunction.

V. The Considerations For Deciding When A Preliminary Injunction Should be Issued.

In the Sixth Circuit:

[F]our factors guide the decision to grant a preliminary injunction: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction."

S. Glazer's Distributors of Ohio, LLC v. Great Lakes Brewing Co., 860 F.3d 844, 849 (6th Cir. 2017) (quoting *Bays v. City of Fairborn*, 668 F.3d 814, 818–19 (6th Cir. 2012)). “[T]hese are factors to be balanced, not prerequisites to be met.” *Id.* (citing *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 542 (6th Cir. 2007)). “For example, a finding that the movant has not established a strong probability of success on the merits will not preclude a court from exercising its discretion to issue a preliminary injunction if the movant has, at minimum, shown serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if the injunction is issued.” *Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 399–400 (6th Cir. 1997) (internal quotations omitted). *See also American Federation of Musicians v. Stein*, 213 F.2d 679, 683 (6th Cir. 1954) (“When the nature of the questions which arise upon a suit make them a proper subject for deliberate examination, and if a stay of proceedings will not result in too great injury to the defendants, it is proper to preserve the existing state of things until the rights of the parties can be fairly and fully investigate and determined.”). That said, “[w]hen a party seeks a preliminary injunction on the basis of a potential constitutional violation, ‘the likelihood of success on the merits often will be the determinative factor.’ ” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)).

VI. Argument.

1. The Texas Preliminary Injunction Should Be Extended To Kentucky Banks Who Are Not TBA Or ABA Members.

This is an unusual, but also easy, situation because the Defendants are already subject to an injunction against enforcing the Final Rule because of the Texas Preliminary Injunction. The CFPB has received requests from the American Bankers Association, the Independent Community Bankers Association, the Texas Bankers Association, the KBA, among others, to

agree to refrain from implementing and enforcing the Final Rule against any banks pending judicial review of its legality, but, to date, it has refused to do so.

All of the Declarations from the Plaintiff Bank contain the same, and obvious, statement equivalent from the one given by lead Plaintiff, Monticello Bank:

20. I believe Monticello Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Monticello Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Monticello Bank's staff from other activities in a way that is a competitive disadvantage.

See Monticello Bank Decl. ¶20. *See also* Citizens Deposit Decl. ¶16; First Community Decl. ¶16; First Southern Decl. ¶14; Morgantown Bank Decl. ¶16; Farmers Bank Decl. ¶20; Peoples Bank Decl. ¶21; Sacramento Bank Decl. ¶16; KBA Decl. ¶15.

All of the Declarations from the Plaintiffs explain the irreparable harm being suffered by them because of the Final Rule.

Other than being located in Kentucky instead of Texas, the Plaintiff Banks are, for purposes of evaluating the appropriateness of an injunction staying application of the Final Rule, no different than Rio Bank being protected by the Texas Preliminary Injunction. Similarly, the KBA is no different from the TBA.

This Court should grant the Kentucky Plaintiffs the same injunctive relief that was granted by the Texas Preliminary Injunction – staying implementation and enforcement of the Final Rule.

2. A Preliminary Injunction Is Warranted Under The Standard Application Of The Well-Recognized Rules For Granting Preliminary Injunctive Relief.

Regardless of the Texas Preliminary Injunction, the four factors to be considered when evaluating the Plaintiffs' motion all support granting them preliminary injunctive relief.

A. Likelihood Of Success On The Merits.

There are two major aspects of the "merits" challenge by the Plaintiff. Count 1 of the Complaint is a challenge based upon the unconstitutional funding of the CFPB. Counts 2, 3 and 4 raise challenges to the entire Final Rule under the Administrative Procedure Act, 5 U.S.C. §706.³

On the merits of Count 1, it cannot be denied that the Plaintiffs likelihood of success on the merits is strong as the Fifth Circuit has already declared the funding to be unconstitutional. *Community Fin. Servs. Ass'n of Am., Ltd v. Consumer Financial Protection Bureau*, 51 F.4th 616, 638 (5th Cir. 2021), *cert. granted*, 215 L.Ed.2d 104, 143 S. Ct. 978 (Feb. 27, 2023). In fact, the Texas Preliminary Injunction states on page 12 that "Here, the parties do not dispute Plaintiffs' likelihood of success on the merits of their claim."

On the merits of the APA challenges to Counts 2, 3 and 4, the Plaintiffs' Complaint explains how the Final Rule's expansion of the data collection from the 13 data points in the statute to the scores of additional data points is a violation of the APA. While this aspect of the dispute was not discussed in the Texas Preliminary Injunction, these additional problems further strengthen the Plaintiffs' showing of a sufficient likelihood of success on the merits on these

³Count 5 is a challenge to a specific part of the Final Rule that would penalize financial institutions from discussing with their loan applicants the applicant's statutory right under 15 U.S.C. §1691c-2(c) to refuse to provide any information to the CFPB. While the Plaintiffs expect to seek remedies specifically addressed to this, including injunctive relief, the current relief enjoining all of the Final Rule makes it unnecessary, at this stage, to discuss this more narrow improper aspect of the Final Rule.

claims to justify preliminary injunctive relief. *See* generally 5 U.S.C. §705 (authorizing a “reviewing court” to “issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.”).

B. Plaintiffs’ Irreparable Injury Absent An Injunction.

The next factor that the Court must balance is whether Plaintiffs would suffer irreparable injury absent an injunction. *See Southern Glazer's Distributors of Ohio, LLC*, 860 F.3d at p. 849.

Part IV of this memo discusses the unrecoverable compliance costs that Plaintiffs are incurring because of the Final Rule. The Texas Preliminary Injunction discussed extensively how “comping with a [rule] later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs.” *See* Texas Preliminary Injunction at p. 13 (quoting *Texas v. EPA*, 829 F.3d 405, 333 (5th Cir. 2016) (court’s emphasis)).

In *Commonwealth v. Biden*, 57 F.4th 545 (6th Cir. 2023), the Sixth Circuit discussed unrecoverable compliance costs as a type of irreparable injury. The court expressly rejected the argument that unrecoverable compliance costs are not a type of irreparable injury. *Id.* at p. 556. Rather, the court held that such costs are more appropriately assessed in the “weight of the equitable balance[ing]” applied in evaluating the four factors to be considered in a preliminary injunction motion. *Id.* The Sixth Circuit in *Biden* cited favorably to Justice Scalia’s concurrence in *Thunder Basin Coal Co. v. Reisch*, 510 U.S. 200, 220-221 (1994), that unrecoverable compliance costs are “almost always ... irreparable harm.” It also favorably cited the reference in *NFIB v. OHSAs*, 595 U.S. ___, 142 S.Ct. 661, 211 L.Ed.2d 448 (2022), to “billions of dollars in unrecoverable compliance costs.” The TBA’s declaration filed in the Texas CFPB Lawsuit estimated its members unrecoverable compliance costs at \$40 million, and the KBA’s

declaration in this case discusses an unrecoverable compliance cost of “\$100,000 per community bank.” *See* KBA Decl. at ¶10.

Another consideration is the contention of the Plaintiffs that the Final Rule was generated using an unconstitutional funding mechanism. Courts have held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of constitutional rights. *See, e.g., Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir.1998) (recognizing that the loss of First Amendment rights, for even a minimal period of time, constitutes irreparable harm) (citations omitted); *Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir.1992) (holding that plaintiffs may establish irreparable harm based on an alleged violation of their Fourth Amendment rights); *McDonell v. Hunter*, 746 F.2d 785, 787 (8th Cir.1984) (finding that a violation of privacy constitutes an irreparable harm). This is a factor that supports Plaintiffs, and it is buttressed by the fact that one portion of the Plaintiff Banks’ constitutional challenge is current before the Supreme Court.

An additional factor of irreparable harm exists in this case that was not discussed in the Texas Preliminary Injunction – the competitive disadvantage facing the Kentucky Plaintiffs if they do not receive the same injunctive protection already granted to ABA member banks that are located in Kentucky or do business in Kentucky. These competing banks are able to focus their time and resources on competing with the Plaintiffs while Plaintiffs must continue to use staff time and resources on compliance with the Final Rule. This is plainly irreparable injury.

C. An Injunction Would Not Cause Others Substantial Harm.

The Defendants are already subject to the Texas Preliminary Injunction so it is not possible for them to argue that they would suffer substantial harm by issuance to the requested preliminary injunction.

Also, preserving the status quo is a factor that weighs in favor of issuing a preliminary injunction. *See Dayton Bd. of Educ. v. Brinkman*, 439 U.S. 1358, 1359 (1978); *J.P. Morgan Securities, LLC v. Kittell*, 554 F.Supp.3d 895, 896-897 (W.D.Ky. 2021) (“Courts may and do grant injunctive relief to prevent harm and preserve the status quo....”).

D. The Public Interest Is Served By Issuance Of A Preliminary Injunction.

This case involves aspects of the funding scheme for the CFPB that involve important constitutional questions about the structure of the federal government and the administrative state. As was noted in *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021), the public interest is clearly “served by maintaining our constitutional structure.” Moreover, given the pending resolution of the CFPB’s funding question by the Supreme Court’s review of the *Community Financial* decision, the interests of judicial efficiency also weigh heavily in favor of a stay.

In considering the interest of the public, the Plaintiffs’ Complaint discusses how the CFPB was repeatedly advised during the comment period on the proposed rule that the overly burdensome data collection requirements that exceeded the Congressional statutory mandated data would result in a reduction of available credit, thus having the opposite effect of what Congress intended. *See* Complaint ¶¶27-¶35. The organization that represents the Plaintiffs’ own state regulators, the Conference Of State Bank Supervisors, urged the CFPB to limit reportable data to the statutorily mandated data points and that the extreme expansion of reporting obligations “will likely hinder the ability of community banks to continue to serve as an important source of small business credit in communities across the country.” *See* Complaint ¶28.

KBA's declaration filed with this motion confirms this potential: “I believe that the KBA Comment Letter accurately reflects the impact of the Final Rule on community banks, including as described in Section 1 and the statement therein that ‘Increased regulatory burden only furthers the

equity gap between small banks and large banks, forcing small banks to face unabsorbable compliance costs, forcing mergers and acquisitions, and ultimately decreasing services to smaller communities contrary to the Purpose.” See KBA Decl. at ¶5 and **Exhibit 17**. In sum, not enjoining the Final Rule risks harming the public by its macroeconomic effects.

The specific effects on a loan-by-loan basis also show the harm to the public of not issuing the preliminary injunction. Specifically, the public will also be harmed since the CFPB concedes that the Rule's 600% expansion in data reporting requirements will increase compliance costs and, more importantly, the CFPB has stated that “the most likely response to the compliance costs of the final rule will be an increase in interest rates or fees to pass on financial institutions’ ongoing variable costs to small business credit applicants.” See Final Rule, 88 Fed. Reg. at p. 35,515 (column 1). In other words, the borrowers from the Plaintiff banks are subject to the harm of higher loan costs if the preliminary injunction is not granted.

In sum, the public interest factor supports issuance of the requested preliminary injunction.

VI. Conclusion.

For all the foregoing reasons, the Plaintiffs’ motion for a preliminary injunction should be granted and implementation and enforcement of the Final rule against the Plaintiff banks and the KBA member financial institutions KBA should be granted.

Respectfully submitted,

MORGAN POTTINGER MCGARVEY

By: /s/ M. Thurman Senn

John T. McGarvey (KBA #46230)

jtm@mpmfirm.com

M. Thurman Senn (KBA #82343)

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Counsel for Plaintiffs

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Kentucky Bankers Association

600 West Main Street, Suite 400

Louisville, Kentucky 40202

(502) 582-2453

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

DECLARATION OF KENNY RAMSEY
President, The Monticello Banking Company

In accordance with 28 U.S.C. §1746, Kenny Ramsey offers the following declaration:

1. My name is Kenny Ramsey. I am the President of Monticello Banking Company (“Monticello Bank”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Monticello Bank is a Kentucky state-chartered bank with its main office located at 50 N. Main Street, Monticello, Wayne County, Kentucky 42633. It also has branches in Barren,

Ver. 08/15/23

Boyle, Casey, Clinton, Fayette, Harlan, Jefferson, Jessamine, Laurel, Madison, Pulaski, Russell, Warren and Wayne counties in Kentucky. It was established in 1895, and its growth is a result of its dedication to its goal of providing premier financial products, superior customer service, and “straight answers” from friendly, interested personnel.

4. Monticello Bank is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to Monticello Bank’s Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Monticello Bank had total loans and leases of \$840.6 million dollars. Of these, \$251.8 million were loans secured by nonfarm nonresidential properties, \$140.7 million were construction or land development loans, \$64.3 were loans secured by multifamily residential properties, \$33.1 million were loans secured by farmland, \$4.4 million were loans to finance agricultural production and other loans to farmers, and \$48.0 million were other commercial and industrial loans; and

b. Monticello Bank had deposit liabilities of \$937.9 million representing deposits made by its customers.

6. Monticello Bank anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having originated between 500 to 2,500 covered credit transactions in both 2022 and 2023. However, Monticello Bank will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered originations for subsequent years.

Ver. 08/15/23

7. Monticello Bank has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of Monticello Bank's staff would otherwise spend on the other operations of our bank.

8. The bank estimates that it will have to assemble a compliance team of existing employees to perform the work to implement and comply with the Small Business Lending Rule. It expects this team will consist of roughly ten (10) full time equivalent employees. Its estimated cost for just its compliance team is \$50,000.

9. Monticello Bank also expects that it will have to hire one (1) full time equivalent employee to handle implementation of the Final Rule at an estimated cost of \$50,000.

10. Monticello Bank further expects that existing employees will have to reallocate their workloads to handle day-to-day work on complying with the Final Rule at an estimated cost of \$30,000.

11. Also, Monticello Bank will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). The bank estimates this cost will be \$10,000.

12. Our current evaluation is that Monticello Bank will have to purchase or update new software for a cost of in the range of approximately \$3,000 to collect data needed to comply with the Small Business Lending Rule and submit this data to the CFPB.

13. Our bank also anticipates incurring expenses in the range of \$5,000 to attend training and seminars on the Small Business Lending Rule.

Ver. 08/15/23

14. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiff Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks' Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

15. Monticello Bank will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank which the bank currently believes will be in the \$10,000 range.

16. Monticello Bank expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; or (d) raise or charge loan origination fees on small business loans. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

17. Rising compliance costs and expenses have been a regular subject of discussion at Monticello Bank and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

18. Monticello Bank would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. This is particularly true as the data collection discussions are likely to involve our employees discussing personal information about business borrowers or their owners that often

Ver. 08/15/23

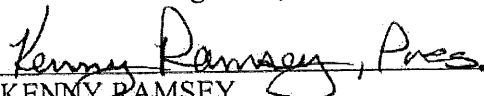
would be viewed as not bearing on the financial condition or creditworthiness of the customer, and this may be perceived as an “uncomfortable” or “inappropriate” subject by the customer.

19. Discussions about the Small Business Lending Rule could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, Monticello Bank is concerned that having such discussions, or charging such fees, might result in its being penalized by its regulators or by the CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Monticello Bank would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

20. I believe Monticello Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Monticello Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Monticello Bank’s staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 18, 2023


Kenny Ramsey, Pres.
KENNY RAMSEY

Ver. 08/17/23

EXHIBIT 8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

DECLARATION OF DANNY D. BEYER
Senior Vice President, Citizens Deposit Bank Of Arlington, Inc.

In accordance with 28 U.S.C. §1746, Danny D. Beyer offers the following declaration:

1. My name is Danny D. Beyer. I am a Senior Vice President at Citizens Deposit Bank Of Arlington, Inc. (“Citizens Deposit”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Citizens Deposit is a Kentucky state-chartered bank with its main office located at 1 Walnut Street, Arlington, Carlisle County, Kentucky 42021. It also has branches in Ballard and

McCracken counties in Kentucky. It was chartered in 1949. Like all community banks, it views itself as banking with friends, neighbors and relatives. It works to maintain a reputation of being a hometown bank with excellent customer services providing products and services equivalent to the largest banks in the country. Citizens Deposit is not a HMDA reporter so it does not have significant experience tracking and reporting to government agencies loan-level information.

4. Citizens Deposit is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to Citizens Deposit's Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Citizens Deposit had total loans and leases of \$200.12 million dollars. Of these, \$42.03 million were loans secured by farmland, \$8.64 million were loans to finance agricultural production and other loans to farmers, \$31.1 million were loans secured by nonfarm nonresidential properties, and \$36.967 million were other commercial and industrial loans; and

b. Citizens Deposit had deposit liabilities of \$241.1 million representing deposits made by its customers.

6. Citizens Deposit anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 100 but not more than 500 covered credit transactions in both 2022 and 2023. However, Citizens Deposit will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

7. Citizens Deposit has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of Citizens Deposit's staff would otherwise spend on the other operations of our bank.

8. Citizens Deposit estimates that it will have to reallocate the job assignments of existing employees constituting approximately two (2) to three (3) full time equivalent employees to work on the initial compliance work to ready the bank to comply with the Final Rule. It expects the same FTE work will be involved in complying with the Final Rule once data assembly and reporting begins. This FTE cost will easily be in excess of \$75,000 per year.

9. Also, Citizens Deposit will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be \$50,000 per year.

10. Our current evaluation is that Citizens Deposit will have to purchase new software or update existing software to collect data needed to comply with the Small Business Lending Rule. We do not currently have a cost estimate for this, but our staff will be spending time working to obtain bids and developing plans for these software upgrades. Our bank also anticipates incurring expenses for our staff to attend training and seminars on the Small Business Lending Rule.

11. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks'

Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

12. Citizens Deposit will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

13. Citizens Deposit expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise or charge loan origination fees on small business loans; and (d) tighten underwriting standards on small business loans. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

14. Rising compliance costs and expenses have been a regular subject of discussion at Citizens Deposit and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

15. Citizens Deposit would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. Such a discussion could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, Citizens Deposit is concerned that having such discussions, or charging such fees, might result in its being penalized by its regulators or by the

CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Citizens Deposit would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

16. I believe Citizens Deposit will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Citizens Deposit will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Citizens Deposit's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August __, 2023 8/17/2023
DocuSigned by:
Danny D. Beyer
DANNY D. BEYER

Ver. 08/16/23

EXHIBIT 9

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**DECLARATION OF BRUCE KIMBELL
President, First Community Bank Of The Heartland**

In accordance with 28 U.S.C. §1746, Bruce Kimbell offers the following declaration:

1. My name is Bruce Kimbell. I am the President of First Community Bank Of The Heartland (“First Community”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. First Community is a Kentucky state-chartered with its main office located at 114 E. Jackson Street, Clinton, Hickman County, Kentucky 42031. It also has branches in Ballard and

Ver. 08/16/23

Graves counties in Kentucky. It traces its origins to the First National Bank in Clinton that was chartered in 1934. Its passion is to execute community banking at its very best by providing the best possible banking solutions in a way that supports and betters its customers' lives. First Community is not a HMDA reporter so it does not have significant experience tracking and reporting to government agencies loan-level information.

4. First Community is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to First Community's Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. First Community had total loans and leases of \$333.3 million dollars. Of these, \$131.5 million were loans secured by farmland, \$39.76 million were loans to finance agricultural production and other loans to farmers, \$35.97 million were loans secured by nonfarm nonresidential properties, and \$21.58 million were other commercial and industrial loans; and

b. First Community had deposits of \$367.23 million representing deposits made by its customers.

6. First Community anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 500 but not more than 2,500 covered credit transactions in both 2022 and 2023. However, First Community will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

Ver. 08/16/23

7. First Community has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of First Community's staff would otherwise spend on the other operations of our bank. The bank estimates that the number of its existing employees affected or likely to be affected by having to deal with and comply with the Small Business Lending Rule is approximately 20 employees. This includes all of First Community's lending staff because all of them are involved in the origination of "covered applications."

8. First Community also expects that the new work to comply with the Small Business Lending Rule will take the equivalent of approximately one (1) full time equivalent employee, and that FTE will either come from reallocation of work of existing employees or the hiring of a new employee or employees. This FTE cost will easily be in excess of \$45,000 per year.

9. Also, First Community will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be [\$7,500].

10. Our current evaluation is that First Community will have to purchase or update new software to collect data needed to comply with the Small Business Lending Rule. We do not currently have a cost estimate for this, but our staff will be spending time working to obtain bids and developing plans for these software upgrades. Our bank also anticipates incurring expenses to attend training and seminars on the Small Business Lending Rule.

11. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions

Ver. 08/16/23

Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks' Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

12. First Community will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

13. First Community expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise rates/fees on other institution products; and (d) raise or charge loan origination fees on small business loans. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

14. Rising compliance costs and expenses have been a regular subject of discussion at First Community and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

15. First Community would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. Such a discussion could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, First Community is concerned that having such

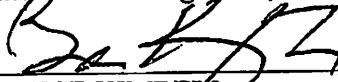
Ver. 08/16/23

discussions, or charging such fees, might result in its being penalized by its regulators or by the CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect First Community would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

16. I believe First Community will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while First Community will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract First Community's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 18, 2023



BRUCE KIMBELL

EXHIBIT 10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)

DECLARATION OF MELISSA MAHONEY
Vice President For Loan Compliance And Loan Operations
First Southern National Bank

In accordance with 28 U.S.C. §1746, Melissa Mahoney offers the following declaration:

1. My name is Melissa Mahoney. I am the Vice President for Loan Compliance And Loan Operations for First Southern National Bank (“First Southern”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. First Southern is a national bank with its main office located at 27 Public Square, Lancaster, Garrard County, Kentucky. It also has branches in Caldwell, Christian, Fayette,

Ver. 08/15/23

Jessamine, Lincoln, Logan, Madison, Muhlenberg, Pulaski, Warren, and Wayne counties in Kentucky. It traces its origin to the National Bank of Lancaster that was established at the end of the Civil War. It anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule that will have originated between 500 to 2,500 covered credit transactions for small businesses in each of calendar years 2022 and 2023.

4. First Southern is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to First Southern's Consolidated Reports of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. First Southern had total loans and leases of \$780.3 million dollars. Of these, \$37.3 million were loans secured by farmland, \$8.7 million were loans to finance agricultural production and other loans to farmers, \$256.395 million were loans secured by nonfarm nonresidential properties, and \$87.745 million were other commercial and industrial loans; and

b. First Southern had deposits of \$1.095 billion representing deposits made by its customers.

6. First Southern anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 500 but not more than 2,500 covered credit transactions in both 2022 and 2023. However, First Southern will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

7. First Southern has already initiated efforts to determine how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee time,

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effort, and costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a combination of the reallocation of time and effort of First Southern's staff that would otherwise be spent on other operational matters and the recent hire of a full-time employee in preparation for the Small Business Lending Rule. First Southern estimates that the cost incurred for the hiring of a new full-time equivalent employee to be \$42,000 to \$46,000.

8. Once implementation begins, First Southern also expects that the new and continuing work to comply with the Small Business Lending Rule will take the equivalent of approximately two to three full time equivalent employees, which include both new and existing employees. First Southern estimates that the cost incurred to it will be approximately \$125,000-\$130,000.

9. Also, First Southern will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be part of the \$125,000-\$130,000 referenced in Paragraph 8 of my declaration.

10. Our current evaluation is that First Southern will have to purchase or update software to collect and submit data needed to comply with the Small Business Lending Rule, at an anticipated cost of \$5,000 to \$10,000. First Southern also anticipates incurring expenses of approximately \$5,000 to attend training and seminars on the Small Business Lending Rule.

11. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks'

Ver. 08/15/23

Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.


12. First Southern will have to change its record retention practices to ensure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

13. Rising compliance costs and expenses have been a regular subject of discussion at First Southern and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

14. I believe First Southern will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while First Southern will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract First Southern's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 17, 2023


MELISSA MAHONEY

Ver. 08/15/23

EXHIBIT 11

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
_____)

**DECLARATION OF JASON JONES
President, Morgantown Bank & Trust Company**

In accordance with 28 U.S.C. §1746, Jason Jones offers the following declaration:

1. My name is Jason Jones. I am the President of Morgantown Bank & Trust Company (“Morgantown Bank”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Morgantown Bank is a Kentucky state-chartered bank with its main office located at 201 N. Main Street, Morgantown, Butler County, Kentucky 42261. It also has branches in

Ver. 08/17/23

Bowling Green, Warren County, Kentucky and a loan production office in Nashville, Davidson County, Tennessee. It was established in 1880 by a special handwritten charter signed by the then Kentucky Governor, Luck Blackburn. Throughout its history, Morgantown Bank has weathered wars, floods, depressions and other setbacks, but it has never closed its doors or ceased serving the banking needs of its customers, including large and small business customers.

4. Morgantown Bank is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to Morgantown Bank's Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Morgantown Bank had total loans and leases of \$207.2 million dollars. Of these, \$21.715 million were loans secured by farmland, \$3.396 million were loans to finance agricultural production and other loans to farmers, \$27.512 million were loans secured by nonfarm nonresidential properties, and \$13.777 million were other commercial and industrial loans; and

b. Morgantown Bank had deposit liabilities of \$262.72 million representing deposits made by its customers.

6. Morgantown Bank anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 100 but not more than 500 covered credit transactions in both 2022 and 2023. However, Morgantown Bank will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

Ver. 08/17/23

7. Morgantown Bank has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of Morgantown Bank's staff would otherwise spend on the other operations of our bank. The bank estimates that the number of its existing employees affected or likely to be affected by having to deal with and comply with the Small Business Lending Rule is approximately 20 employees. This includes all of Morgantown Bank's lending staff because all of them are involved in the origination of "covered applications."

8. Morgantown Bank also expects that the new work to comply with the Small Business Lending Rule will take the equivalent of approximately one (1) to two (2) full time equivalent employees, and that FTE will either come from reallocation of work of existing employees or the hiring of a new employee or employees. This FTE cost will easily be in excess of \$50,000 per year.

9. Also, Morgantown Bank will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be part of the cost in Paragraph 8 of this declaration.

10. Our current evaluation is that Morgantown Bank will have to purchase or update new software for a cost of in the range of approximately \$5,000 to collect data needed to comply with the Small Business Lending Rule. Our bank also anticipates incurring expenses in the range of \$1,000-\$2,000 to attend training and seminars on the Small Business Lending Rule.

11. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions

Ver. 08/17/23

Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks' Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

12. Morgantown Bank will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

13. Morgantown Bank expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise rates/fees on other institution products; (d) raise or charge loan origination fees on small business loans; (e) tighten underwriting standards on small business loans; and (f) absorb the compliance costs as part of general overhead costs, which will reduce institution net revenue. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

14. Rising compliance costs and expenses have been a regular subject of discussion at Morgantown Bank and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

15. Morgantown Bank would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. Such a discussion could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs

Ver. 08/17/23

and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, Morgantown Bank is concerned that having such discussions, or charging such fees, might result in its being penalized by its regulators or by the CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Morgantown Bank would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

16. I believe Morgantown Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Morgantown Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Morgantown Bank's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 18, 2023



JASON JONES

Ver. 08/16/23

EXHIBIT 12

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**DECLARATION OF DAVID A. HERTZ
President Of The Farmers Bank Of Milton, Kentucky**

In accordance with 28 U.S.C. §1746, David A. Hertz offers the following declaration:

1. My name is David A. Hertz. I am the President and Chief Executive Office of The Farmers Bank Of Milton, Kentucky (“Farmers Bank”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Farmers Bank is a Kentucky state-chartered bank with its main office located at 41 Ferry Street, Milton, Trimble County, Kentucky 40045. It also has branches in Carrol, Jefferson,

Ver. 08/16/23

counties in Kentucky, as well as in Jefferson County in Indiana. It was established in 1902. Farmers Bank is locally owned and managed by people who know their customers and are interested in and care about the region where it operates.

4. Farmers Bank is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to Farmers Bank's Consolidated Reports of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Farmers Bank had total loans and leases of \$189.9 million dollars. Of these, \$9.3 million were loans secured by farmland, \$1.9 million were loans to finance agricultural production and other loans to farmers, \$31.85 million were loans secured by nonfarm nonresidential properties, and \$10.51 million were other commercial and industrial loans; and

b. Farmers Bank had deposits of \$253.4 million representing deposits made by its customers.

6. Farmers Bank anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 100 but not more than 500 covered credit transactions in both 2022 and 2023, though it is possible that it does not reach the 100 covered credit transaction threshold initially. However, as the bank grows, I would expect to reach the 100 covered credit transactions. Regardless, Farmers Bank will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

7. Farmers Bank has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. Farmers Bank of Milton has

Ver. 08/16/23

already had three employees attend multiple trainings on this topic as well as provide training to the Board of Directors. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of Farmers Bank's staff would otherwise spend on the other operations of our bank.

8. Farmers Bank expects to need to assign employees equating to one (1) full time equivalent as part of an initial compliance team to work to implement the Final Rule. This reassignment is a reallocation of the time and effort of Farmers Bank's staff would otherwise spend on the other operations of our bank. This FTE cost will easily be in excess of \$75,000.00 per year.

9. Farmers Bank also expects that, after the initial set-up compliance work, it will have to hire an employee equating to one (1) full time equivalent to perform the work required by the Final Rule. This FTE cost will easily be in excess of \$50,000.00 per year.

10. Also, Farmers Bank will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii).

11. Our current evaluation is that Farmers Bank will have to purchase new software or update existing software to collect and report data needed to comply with the Small Business Lending Rule. We do not currently have a cost estimate for this, but our staff will be spending time working to obtain bids and developing plans for these software upgrades.

12. Our bank anticipates incurring expenses to attend training and seminars on the Small Business Lending Rule, and our current cost estimate is \$5,000.00.

Ver. 08/16/23

13. I estimate that between 16 to 18 of our bank employees will be affected by work to comply with the Final Rule if we reach the 100 covered credit transaction threshold. It certainly is already affecting my work and that of our Compliance Officer, Jennifer Lippy.

14. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks' Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

15. Farmers Bank will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

16. Farmers Bank expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise or charge loan origination fees on small business loans; (d) tighten underwriting standards on small business loans; and (e) absorb compliance costs as part of general overhead costs. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

18. Rising compliance costs and expenses have been a regular subject of discussion at Farmers Bank and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

Ver. 08/16/23

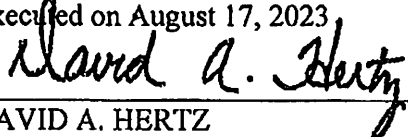
19. Farmers Bank would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. Such a discussion could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, Farmers Bank is concerned that having such discussions, or charging such fees, might result in its being penalized by its regulators or by the CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Farmers Bank would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

20. I believe Farmers Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Farmers Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Farmers Bank's staff from other activities in a way that is a competitive disadvantage.

Ver. 08/16/23

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 17, 2023



DAVID A. HERTZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**DECLARATION OF TERRY L. BUNNELL
Chairman, President and CEO of The Peoples Bank, Marion, Kentucky**

In accordance with 28 U.S.C. §1746, Terry L. Bunnell offers the following declaration:

1. My name is Terry L. Bunnell. I am the Chairman, President and Chief Executive Officer of The Peoples Bank, Marion, Kentucky (“Peoples Bank”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Peoples Bank is a Kentucky state-chartered bank with its main office located at 116 S. Main Street, Marion, Crittenden County, Kentucky 42064. It also has branches in Glasgow and

Cave City, Barren County, Kentucky. It was established in 1946 following the end of World War II. It is a small community bank, but its employees have over 150 years of banking experience. It works to provide a personal, one on one approach to the business of banking with a friendly, hometown feeling that its current and future customers would expect from a local bank headquartered on the Main Street of the town where it was founded.

4. Peoples Bank is not a HMDA reporter so it does not have significant experience tracking and reporting to government agencies loan-level information.

5. Peoples Bank is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

6. According to Peoples Bank's Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Peoples Bank had total loans and leases of \$108.8 million dollars. Of these, \$13.5 million were loans secured by farmland, \$14.9 million were loans to finance agricultural production and other loans to farmers, \$49.2 million were loans secured by nonfarm nonresidential properties, and \$21.0 million were other commercial and industrial loans; and

b. Peoples Bank had deposits of \$121.9 million representing deposits made by its customers.

7. Peoples Bank anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 500 but not more than 2,500 covered credit transactions in both 2022 and 2023. However, Peoples Bank will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

8. Peoples Bank has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs have already been incurred and will continue to be incurred throughout the implementation period. This work is a reallocation of the time and effort of Peoples Bank's staff would otherwise spend on the other operations of our bank.

9. Peoples Bank expects to need to assign employees equating to three (3) full time equivalents as part of an initial compliance team to work to implement the Final Rule. This reassignment is a reallocation of the time and effort of Peoples Bank's staff would otherwise spend on the other operations of our bank. This FTE cost will easily be in excess of \$30,000 per year.

10. Peoples Bank also expects that, after the initial set-up compliance work, it will have to assign employees equating to two (2) to three (3) full time equivalents to perform the work required by the Final Rule. This FTE cost will easily be in excess of \$25,000 per year.

11. Also, Peoples Bank will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be \$30,000.

12. Our current evaluation is that Peoples Bank will have to purchase new software or update existing software to collect and report data needed to comply with the Small Business Lending Rule. We do not currently have a cost estimate for this, but our staff will be spending time working to obtain bids and developing plans for these software upgrades.

13. Our bank anticipates incurring expenses to attend training and seminars on the Small Business Lending Rule, and our current cost estimate of \$1,500 to \$2,500.

14. Peoples Bank also expects to hire outside consultants or attorneys to advise it about the Small Business Rule for a cost of between \$3,000 to \$5,000.

15. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks' Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

16. Peoples Bank will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

17. Also, the "firewall" requirements of the Final Rule are of major concern given the relative small size of Peoples Bank. We will likely have to use the exceptions in 12 C.F.R. §1002.18(c) which will require the bank to spend the time and effort to make the required "determin[ation] that it is not feasible to limit that employee's or officer's access" and to give the notices required by 12 C.F.R. §1002.18(d). Peoples Bank will also be concerned that its regulators will question if its determinations are appropriate.

18. Peoples Bank expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise rates/fees on other institution products; (d) raise or charge loan origination fees on small business loans; (e) tighten underwriting standards on small business loans; and (f) absorb compliance costs as part of general overhead costs. We are also considering charging a fee to persons who request or who

have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

19. Rising compliance costs and expenses have been a regular subject of discussion at Peoples Bank and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

20. Peoples Bank is concerned about having discussions with its customers about the Small Business Lending Rule might result in its being penalized by its regulators or by the CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Peoples Bank would self-censor itself and not have communications that it might otherwise have with its customers about the Small Business Lending Rule.

21. I believe Peoples Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Peoples Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Peoples Bank's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 17, 2023

DocuSigned by:

Terry Bunnell

2023081710035874188
TERRY L. BUNNELL

Ver. 08/17/23

EXHIBIT 14

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**DECLARATION OF MICHAEL W. HUNT
President, The Sacramento Deposit Bank**

In accordance with 28 U.S.C. §1746, Michael W. Hunt offers the following declaration:

1. My name is Michael W. Hunt. I am the President of The Sacramento Deposit Bank (“Sacramento Bank”).
2. Capitalized terms in my declaration which are defined in the Plaintiffs’ Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs’ Complaint.
3. Sacramento Bank is a Kentucky state-chartered bank with its main office located at 335 Main Street, Sacramento, McLean County, Kentucky 42372, and a branch office in

Ver. 08/17/23

Caneyville, Grayson County, Kentucky. It was established in 1895, and it has been successfully serving the banking needs of its customers, including large and small business customers, ever since.

4. Sacramento Bank is a member of the Kentucky Bankers Association. However, it is not a member of either the Texas Bankers Association or the American Bankers Association.

5. According to Sacramento Bank's Consolidated Reports Of Condition submitted to its banking regulators for the period ending June 30, 2023:

a. Sacramento Bank had total loans and leases of \$78.5 million dollars. Of these, \$12.9 million were loans secured by farmland, \$3.56 million were loans to finance agricultural production and other loans to farmers, \$20.92 million were loans secured by nonfarm nonresidential properties, and \$6.2 million were other commercial and industrial loans; and

b. Sacramento Bank had deposits of \$123.6 million representing deposits made by its customers.

6. Sacramento Bank anticipates that it would fall within the category of covered financial institutions under the Small Business Lending Rule having at least 100 but not more than 500 covered credit transactions in both 2022 and 2023. However, Sacramento Bank will need to develop and put in place additional internal reporting systems to determine exactly the number of covered credit transactions it had and will have in 2022 and 2023. It will also have to develop an ongoing system to determine and track the number of covered credit transactions for subsequent years.

7. Sacramento Bank has already begun working on how it will need to change its operations in order to comply with the Small Business Lending Rule. As such, employee costs in excess of \$10,000.00 have already been incurred and will continue to be incurred throughout the

Ver. 08/17/23.

implementation period. This work is a reallocation of the time and effort of Sacramento Bank's staff would otherwise spend on the other operations of our bank. The bank estimates that the number of its existing employees affected or likely to be affected by having to deal with and comply with the Small Business Lending Rule is approximately 8 employees. This includes all of Sacramento Bank's lending staff because all of them are involved in the origination of "covered applications."

8. Sacramento Bank also expects that the new work to comply with the Small Business Lending Rule will take the equivalent of approximately one (1) full time equivalent employee, and that FTE will either come from reallocation of work of existing employees or the hiring of a new employee or employees. This FTE cost will easily be in excess of \$30,000 to \$40,000 per year.

9. Also, Sacramento Bank will have to identify, train, and compensate an employee of the bank to act as the person who will be the authorized representative who would certify to the accuracy and completeness of the data reported to the CFPB as required by 12 C.F.R. §1002.109(a)(ii). We estimate this cost will be \$5,000 to \$10,000.

10. Our current evaluation is that Sacramento Bank will have to purchase new software or update existing software to collect data needed to comply with the Small Business Lending Rule. We do not currently have a cost estimate for this, but our staff will be spending time working to obtain bids and developing plans for these software upgrades. Our bank also anticipates incurring expenses to attend training and seminars on the Small Business Lending Rule.

11. As part of evaluating the impact and work needed on account of the Small Business Lending Rule, the Plaintiffs Banks have obtained a copy of a 123-page CFPB Filings Instructions Guide and a 40-page Data Points Chart that are being filed as an exhibit to the Plaintiff Banks'

Ver. 08/17/23

Complaint and which illustrates a small part of the extensive and time-consuming information collection aspects of the Small Business Lending Rule.

12. Sacramento Bank will have to change its record retention practices to assure compliance with the record retention requirements of the Small Business Lending Rule, and this will be an additional expense to the bank.

13. Sacramento Bank expects that it will likely use some aspects of all of the following to address the costs of compliance with the Small Business Lending Rule: (a) consider compliance costs in setting loan pricing; (b) raise rates/fees on small business loans; (c) raise rates/fees on other institution products; (d) raise or charge loan origination fees on small business loans; or (e) absorb the compliance costs as part of general overhead costs. We are also considering charging a fee to persons who request or who have received an extension of business credit from the bank to cover some or all of the compliance costs and/or data compilation and submission costs.

14. Rising compliance costs and expenses have been a regular subject of discussion at Sacramento Bank and generally in the banking industry. These cost pressures have been recognized as factors driving consolidation in the banking industry.

15. Sacramento Bank would like to be able to discuss with its customers and potential customers their right under Section 1071 not to provide information about their borrowing activities to the government, and I believe our bank's customers would want to have such discussions. Such a discussion could include a discussion of any fee or other charge or cost reimbursement method that our bank might establish to pay some or all of the compliance costs and/or data compilation and submission costs. It could also include discussions about data breaches of the systems of the CFPB. However, Sacramento Bank is concerned that having such discussions, or charging such fees, might result in its being penalized by its regulators or by the

Ver. 08/17/23

CFPB. Without clarification from the Court in this case, to avoid enforcement risks, I expect Sacramento Bank would self-censor itself and not have communications that it would like to have with its customers about the Small Business Lending Rule.

16. I believe Sacramento Bank will be at a competitive disadvantage if it does not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations when the Texas Preliminary Injunction is in place while Sacramento Bank will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Sacramento Bank's staff from other activities in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August 17 2023



MICHAEL W. HUNT

Ver. 08/18/23

EXHIBIT 15

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

CASE NO.: 6:23-CV-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

**DECLARATION OF TIMOTHY A. SCHENK,
Deputy General Counsel and Director Of Education, Kentucky Bankers Association**

In accordance with 28 U.S.C. §1746, Timothy A. Schenk offers the following declaration:

1. My name is Timoty A. Schenk. I am employed as the Deputy General Counsel and Director of Education for Plaintiff, Kentucky Bankers Association (the “KBA”). As part of my job responsibilities, I regularly work with KBA bank members regarding regulatory compliance matters. I have been working on matters involving the banking industry since 2007. My declaration is based upon my personal knowledge and a review of records kept in the ordinary course of business by the KBA.

Ver. 08/18/23

2. Capitalized terms in my declaration which are defined in the Plaintiffs' Complaint in the above-captioned proceeding have the same meaning as defined in Plaintiffs' Complaint.

3. The KBA is a Kentucky non-stock, nonprofit corporation created pursuant to KRS 273.161 through 273.369 and having its offices at 600 W. Main Street, Suite 400, Louisville, Kentucky 40202.

A. The KBA is a trade association having as members approximately 150 national banks, state banks and savings banks representing virtually all of the commercial banking industry in Kentucky.

B. Plaintiffs, Monticello Bank, Citizens Deposit, First Community, First Southern, Morgantown Bank, Farmers Bank, Peoples Bank, and Sacramento Deposit (individually or collectively referred to herein as the "Plaintiff Banks"), are all members of the KBA, but none of them are members of either the Texas Bankers Association or the American Bankers Association.

C. The KBA has been in existence since 1891, and it was formally incorporated in its present form in 1911. According to Article III of the KBA's Articles of Incorporation, the "purposes of the Association are to promote the general welfare and usefulness of banks, trust and title companies, and financial institutions doing business in the Commonwealth of Kentucky; to cultivate a more intimate social and business relation between the representatives of such institutions; to collect and disseminate financial and economic information; to secure unity of action in all matters affecting the common welfare of such institutions; and to promote the educational, financial, industrial, commercial, ecological and agricultural interests of the Commonwealth."

4. All of the members banks of the KBA would be a "covered financial institution" within the meaning of the Small Business Lending Rule (12 C.F.R. §1002.105(b)) or would need to engage in record keeping and analysis to determine whether or not they would be a "covered

Ver. 08/18/23

financial institution”. Accordingly, the KBA has appeared in this action to represent the interests of all of its bank members (the “KBA Member Banks”).

5. The Plaintiffs’ Complaint refers in Paragraph 30 to the KBA’s comment letter filed with the Consumer Financial Protection Bureau (the “CFPB”) on or about December 10, 2021 (the “KBA Comment Letter”). I helped draft the KBA Comment Letter and a copy is attached to my declaration as Exhibit 16. I believe that the KBA Comment Letter accurately reflects the impact of the Final Rule on community banks, including as described in Section 1 and the statement therein that “Increased regulatory burden only furthers the equity gap between small banks and large banks, forcing small banks to face unabsorbable compliance costs, forcing mergers and acquisitions, and ultimately decreasing services to smaller communities contrary to the Purpose.”

6. I have personally observed how the Final Rule is already creating compliance costs for the KBA’s Member Banks.

7. Consumer compliance experts such as the Compliance Alliance (which is owned and endorsed by 30 state banking associations, including the KBA) advised their bank customers to commence compliance preparation steps immediately after the Final Rule was announced and made public. These steps begin with a review of in-house capacity; procurement of software compliance programs; hiring and then training personnel (including search firms in many or almost all cases); and, next, according to the Compliance Alliance’s standard recommendations, implementation of the following start-up processes:

- * Loan Calculators
- * Check Lists
- * Compliance Calendar
- * Flowcharts
- * Forms
- * Handouts
- * Matrices
- * Policies

Ver. 08/18/23

- * Procedures
- * Risk Assessments
- * Signage
- * Training Tools
- * Videos
- * Webinars
- * Worksheets.

I have been working to help KBA Member Banks begin taking these steps, and doing so takes staff time and expense.

8. In Kentucky, this compliance work began even before the publishing of the Final Rule. Specifically, on March 29, 2023, the KBA held a training program titled “Prepare Your Bank For Small Business Reporting Burden Under 1071”. I helped teach that program. Attached to my declaration as Exhibit 17 is a copy of a power point presentation given out at the seminar. The seminar was attended by 32 registrants who each paid \$195 to attend. The staff time, seminar charge, and other expenses of attending the seminar is a practical example of the concrete costs already being incurred by KBA members because of the Small Business Lending Rule.

9. I find it informative that the title of the March 29, 2023 training program included the phrase “Reporting Burden” because the work to implement the Final Rule is a significant “burden” on the KBA Member Banks, and I believe the CFPB has significantly underestimated both the burden and its fiscal and human costs. I believe that the CFPB has significantly underestimated the costs of preparing to start Final Rule compliance and then the annual expenses of actual compliance with the Final Rule. I personally have spent over 400 hours studying the Final Rule and working to understand what it requires to be done, and my review is continuing. For example, on August 17, 2023, the CFPB released an update to the Filings Instructions Guide For Small Business Lending Data that even someone who knew the prior version would have to review and understand. Also, the time I spend does not include work that a KBA Member Bank would have to do to implement the Final Rule once

Ver. 08/18/23

it acquired a full understanding of its requirements. In contrast, the CFPB's "estimated staff hours" for a Type B Financial Institution (receives 400 small business credit applications per year) for "One-Time Costs" to begin complying with the Final Rule was only 461 hours. *See* Table 13, 88 Fed. Reg. 35,507. I believe that this estimate by the CFPB is a wholly inadequate and inaccurate estimation.

10. I reviewed the Declaration Of Celeste M. Embrey that was filed on May 14, 2023 in the Texas CFPB Lawsuit and which provides an amount for initial compliance costs for Texas banks being approximately \$100,000 per community bank. This is an amount that is more consistent with my experience trying to understand the Final Rule and help KBA Member banks deal with the Final Rule.

11. Already the KBA has scheduled a second formal training session to occur on August 31, 2023. The participants will be paying a fee to attend this training session.

12. I have been fielding telephone calls daily from representatives of KBA Member Banks asking questions about the Final Rule and how to implement it. The Final Rule implementation was also discussed at (i) KBA Compliance and Risk Roundtables held on June 7, 2023 and June 14, 2023; and, (ii) Regulators Forums held June 21, 2023 and June 23, 2023.

13. KBA Member Banks currently are taking steps to implement the Final Rule. As a result, our members are already incurring, and will continue to incur, direct economic injury caused by the Final Rule.

14. The KBA has itself extended staff time and money on account of the Small Business Lending Rule in answering questions from its members about the Small Business Lending Rule, designing and providing training materials about it, and otherwise addressing the impacts of the Small Business Lending Rule on its members.

15. I believe that all of the KBA Member Banks who are not members of the American Bankers Association or the Texas Bankers Association (“Non-Protected Banks”) will be at a competitive disadvantage if they do not obtain the same injunctive relief against the Final Rule that has been granted by the Texas Preliminary Injunctions. Banks doing business in Kentucky that are members of the American Bankers Association or the Texas Bankers Association will be able to allocate staff and resources to their business operations while the Texas Preliminary Injunction is in place; however, Non-Protected Banks will have to allocate staff and resources to the work of complying with the Small Business Lending Rule. This will distract Non-Protected Banks that are members of the KBA in a way that is a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief my foregoing declaration is true and correct.

Executed on August ~~18th~~, 2023


TIMOTHY A. SCHENK

EXHIBIT 16



Prepare Your Bank for Small Business Reporting Burden under 1071

KENTUCKY BANKERS ASSOCIATION

MARCH 29, 2023

Before the Webinar



Access the Slides

PDFs will be sent via email after today's session.



The easiest way to listen is through your computer's speakers or headphones

Ensure your device speakers are on, or calling in is an option.



Submit your questions

Have questions for the presenter? Use the Q&A panel on the right-hand side of the screen.



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Disclaimer

This presentation may include statements that constitute “forward-looking statements” relative to publicly available industry data. Forward-looking statements often contain words such as “believe,” “expect,” “plans,” “project,” “target,” “anticipate,” “will,” “should,” “see,” “guidance,” “confident” and similar terms. There can be no assurance that any of the future events discussed will occur as anticipated, if at all, or that actual results on the industry will be as expected. Abrigo is not responsible for the accuracy or validity of this publicly available industry data, or the outcome of the use of this data relative to business or investment decisions made by the recipients of this data. Abrigo disclaims all representations and warranties, express or implied. Risks and uncertainties include risks related to the effect of economic conditions and financial market conditions; fluctuation in commodity prices, interest rates and foreign currency exchange rates. No Abrigo employee is authorized to make recommendations or give advice as to any course of action that should be made as an outcome of this data. The forward-looking statements and data speak only as of the date of this presentation, and we undertake no obligation to update or revise this information as of a later date.

Disclaimer – 1071 Rule

The information in this presentation is based upon the CFPB's Proposed 1071 Rule. The final 1071 Rule is scheduled to be released on March 31, 2023. The actual requirements of the 1071 Rule may differ from the proposed details disclosed in this presentation. Please review the final 1071 Rule to ensure compliance



Abrigo's DNA: Help Communities Win by Championing FIs



FI Focused

Customer Centric

Innovative

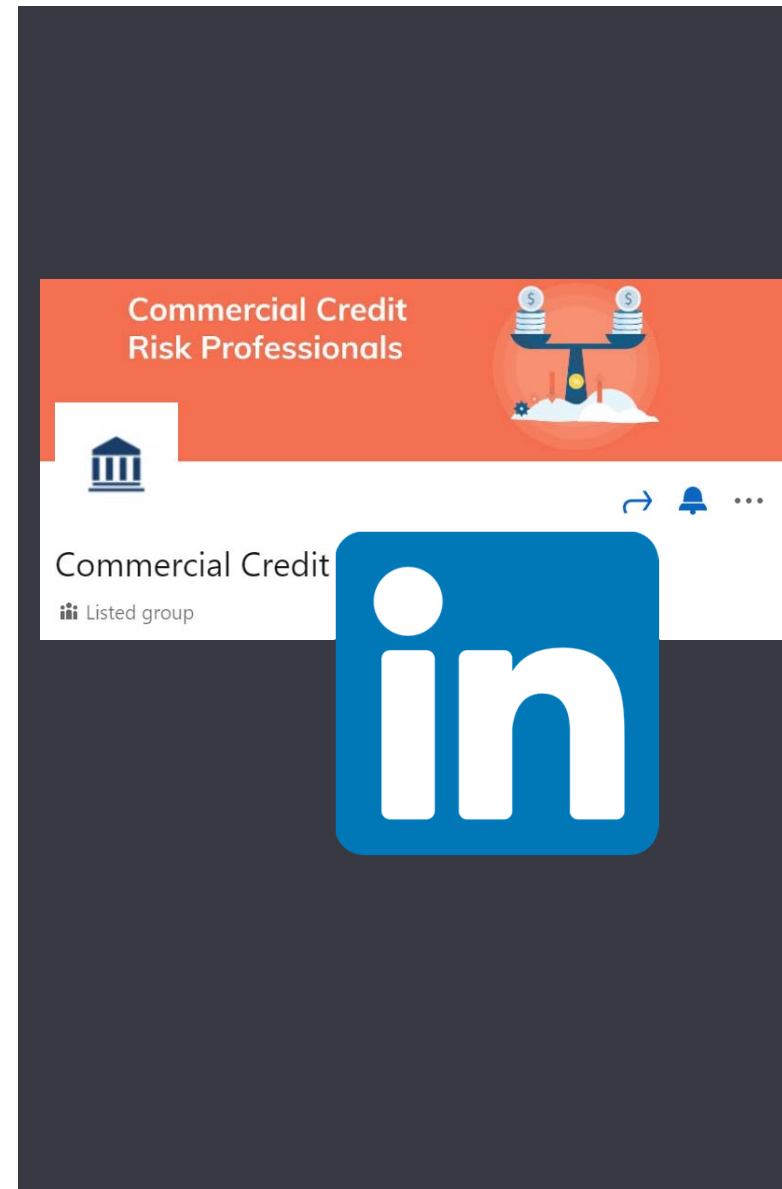
Extended Discussion!

Join these LinkedIn Groups for networking and more Q&A

ALLL/CECL Forum

Commercial Credit Risk Prof.

Asset/Liability Forum



Today's Presenter



Paula King, CPA (paula.king@abrigo.com)

Senior Advisor, Advisory Services

Paula assists financial institutions with CECL, credit policies and process enhancements, customized credit reporting and modeling, and recently, the SBA's Paycheck Protection Program forgiveness process. A former banker and bank co-founder, she has held executive positions (CFO, Chief Risk and Compliance Officer and board member) and has more than 25 years' experience across all aspects of banking including credit admin, lending and loan committee representation, financial and asset/liability management, services and product development, and director responsibilities.

Today's Agenda

- 1 CFPB Proposed 1071 Rule Overview
- 2 1071 Rule Project Management
- 3 The Loan Application: Data Gathering Best Practices
- 4 Addressing the Impact of 1071 Rule on Lending Culture
- 5 1071 Rule Tracking, Monitoring and Reporting
- 6 Loan Pricing: Is it Time to Standardize?
- 7 Wrap-Up and Questions

CFPB Proposed 1071 Rule Overview

CFPB 1071 Rule - Newsworthy



"This is a major effort of data collection and reporting not experienced since the Home Mortgage Disclosure Act ("HMDA") requirements of 1975 and creates the first comprehensive database of small business credit applications"



"With more than 20 data points required to be reported under the proposed rule, automation is key to efficiently utilizing staff and minimizing data collection errors"



"Commonly known as the CFPB 1071 Rule, requirements by the Consumer Financial Protection Bureau (CFPB) will represent the most significant effort of data collection and reporting for financial institutions in nearly 50 years"



"According to a recent survey, financial institution executives' top regulatory compliance concern is the final rule from the Consumer Financial Protection Bureau (CFPB) on data collection for small business loan applications. The regulation, expected to be finalized in weeks, outranked BSA/AML rules, beneficial ownership requirements, and CECL obligations"



Section 1071 of Dodd-Frank Act

Purpose:

- To facilitate enforcement of fair lending laws
- To enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for small businesses, including women-owned and minority-owned businesses

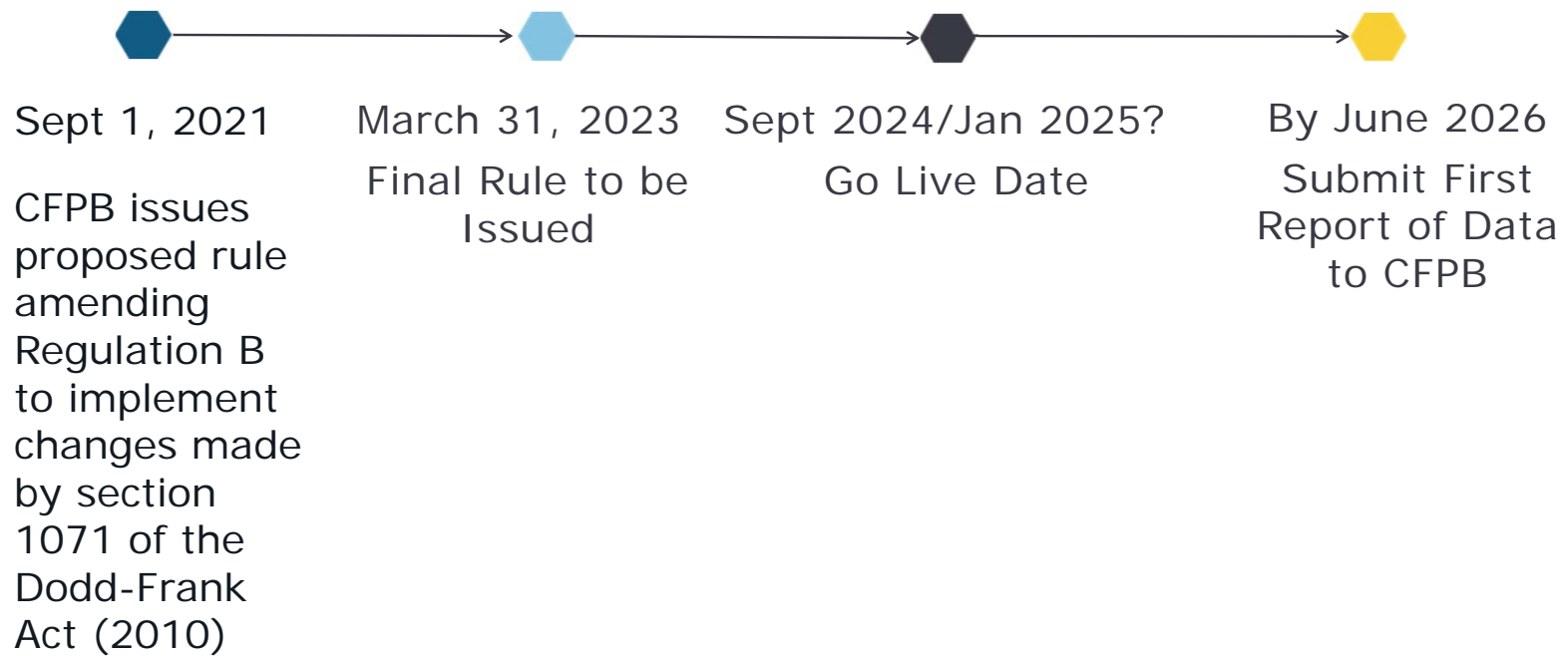


Proposed 1071 Rule Enactment

- Final Rule published March 31, 2023, EQUALS compliance date of September 2024
- CFPB considering whether to permit or require FIs to collect data for partial year from September-December 2024 to:
 - Expedite the collection and, potentially, the publication of data to be used to further the fair lending and community development purposes of the Rule
 - Give FIs time to test their procedures and systems for compiling and maintaining this information in advance of requirement to collect data and report to the CFPB



Proposed 1071 Rule Enactment Timeline



Proposed 1071 Rule

Covered Financial Institution (FIs)

FIs (Banks, Credit Unions), or Any Company, Association or Organization engaging in Lending Activities (Finance Cos., Online, CDFIs, Govt., Nonprofit)

FIs that had at least 25 covered credit transactions to small businesses (defined) in each of the two preceding calendar years prior to the compliance date (est. 5,100 of 5,200 banks; 1,200 of 5,300 CUs, and 2,500 other)

[Note: There is no proposed asset-based threshold exemption]



Proposed 1071 Rule

Covered Credit Transaction

A credit request (application) for a covered credit transaction, including:

- Loans
- Lines of Credits
- Credit Cards
- Merchant Cash Advances

Proposed definition of covered applications is consistent with Regulation B EXCEPT FOR:

- Reevaluation, extension, or renewal requests on existing business accounts if requests seek no additional credit
- Inquiries and prequalification requests



Proposed 1071 Rule

Credit Application Attributes

- Oral or written request
- Definition of application follows FI procedures for the specific credit type
- Application can be incomplete or withdrawn by applicant (reporting depends upon point at which this occurs)



Proposed 1071 Rule

What credit transactions are excluded?

- Trade credit (Financing arrangements such as A/R with business providing goods or services)
- Public utilities credit, motor vehicle dealers, securities credit and incidental credit defined in Regulation B as exempt
- Factoring, leases, consumer-designated credit used for business purposes, and credit secured by non-owner occupied 1-4 dwelling units for investment purposes (as defined in HMDA regulation C)



Proposed 1071 Rule

Small Business Applicant (includes AG)

- Overriding factor: Business that had \$5 million or less in gross annual revenue for its preceding fiscal year
- Size and # of employees definitions that are currently set at the NAICS code level by the SBA
- Seeking SBA approval to use simplified definition of how to classify a small business

[Note: Small business independently owned/operated and not dominant in its industry].



Proposed 1071 Rule

SBA's Small Business Definition

NAICS Codes	NAICS Industry Description	Size standards in millions of dollars	Size standards in number of employees
445291	Baked Goods Retailers	\$16.0	
445292	Confectionery and Nut Retailers	\$19.5	
445298	All Other Specialty Food Retailers	\$10.0	
445320	Beer, Wine, and Liquor Retailers	\$10.0	
449110	Furniture Retailers	\$25.0	
449121	Floor Covering Retailers	\$9.0	
449122	Window Treatment Retailers	\$11.5	
449129	All Other Home Furnishings Retailers	\$33.5	
449210	Electronics and Appliance Retailers	\$40.0	
455110	Department Stores	\$40.0	
455211	Warehouse Clubs and Supercenters	\$47.0	
455219	All Other General Merchandise Retailers	\$40.0	
456110	Pharmacies and Drug Retailers	\$37.5	
456120	Cosmetics, Beauty Supplies, and Perfume Retailers	\$34.0	
456130	Optical Goods Retailers	\$29.5	
456191	Food (Health) Supplement Retailers	\$22.5	
456199	All Other Health and Personal Care Retailers	\$9.5	
457110	Gasoline Stations with Convenience Stores	\$36.5	
457120	Other Gasoline Stations	\$33.5	
457210	Fuel Dealers		100

Example of SBA's definitions of Small Businesses by NAICS codes



Proposed 1071 Rule

SBA's Small Business Definition

Size standards are based upon average annual receipts **or** the average number of employees of the business and customized by industry across 1,057 6-digit NAICS codes

- Average annual gross receipts for businesses in services, retail trade, agricultural, and construction industries
- Average number of employees for businesses in all manufacturing, most mining and utilities industries, and some transportation, information and research and development industries



Proposed 1071 Rule

What is Required of FI?

- To gather 22+ data points from all small business (previously defined) applicants for credit
- Similar but larger scale than HMDA
- Collect during the application process – at what point?
- Collection of data required on incomplete, withdrawn and denied applications
- Record the data throughout the year
- Ensure compliance with 1071 Rule through testing and exception tracking
- File report with CFPB (CFPB will publish results)



Proposed 1071 Rule

What is CFPB Looking For in the Data Reported?

- Disparate treatment in loan terms on women and minority-owned small business loans compared to non-minority loan terms (pricing, fees, etc.)
- Ability to utilize the data for identification of small business owner needs and opportunities



Proposed 1071 Rule

The “Firewall”: Requirement to limit access to certain data*

Underwriters or any officer or employee responsible for disposition of an application will be prohibited from accessing an applicant’s responses to the following data points:

- Minority owned
- Women owned
- Ethnicity
- Race
- Sex



Proposed 1071 Rule

* Firewall would not apply to an employee or officer if the FI determines it is not feasible to limit data access

And

The FI provides notice to the applicant regarding that access to the data

The CFPB is proposing sample language to satisfy the notice requirement for the above



Proposed 1071 Rule

Ownership Definitions

- Principal owner - CDD Rule but only consider direct (not indirect) ownership of 25% or more of the equity of the small business
- Minority/women owned principal owner – CDD Rule but only consider direct (not indirect) ownership of 25% or more of the equity of the small business held by minority or women
- Minority/women-owned small business - More than 50 percent of business ownership or control is held by one or more minority individuals or women, and more than 50 percent of its net profits or losses accrue to one or more minority individuals or women



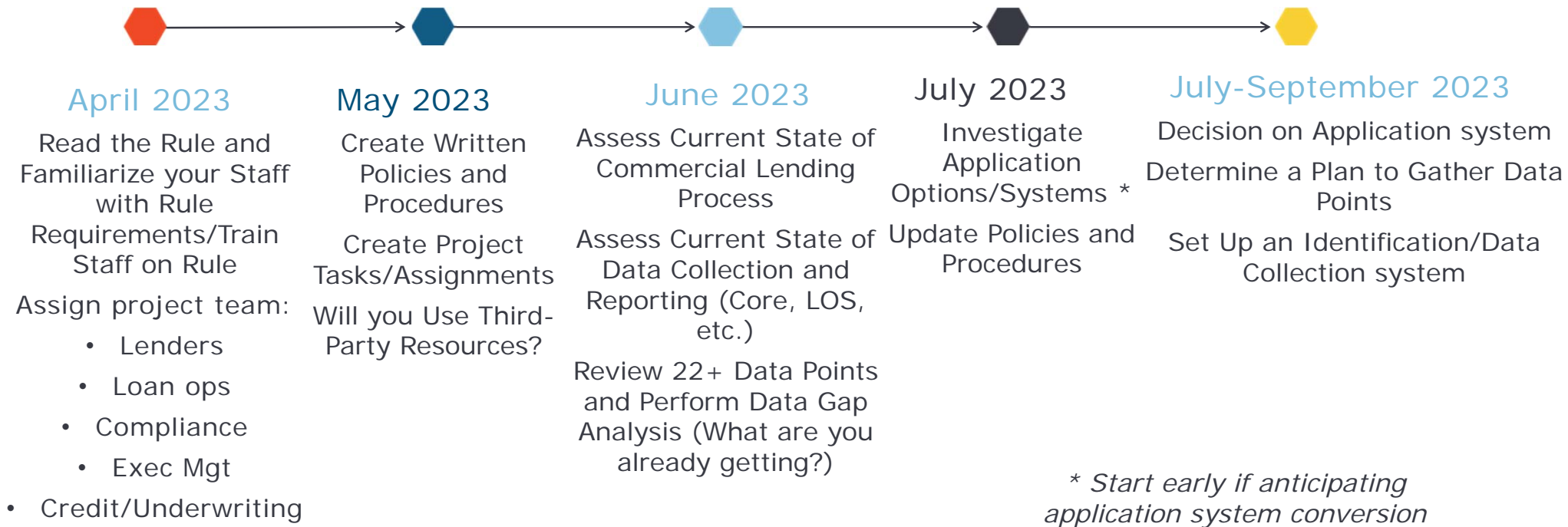
Proposed 1071 Rule - Misc

- From regulators: We anticipate that there will be Interagency Guidance from FI primary regulatory agencies
- From regulators: Preliminary consensus is that recording of data will begin January 2025 (although proposed compliance date is September 2024)
- 1071 Rule becomes Subpart B to Regulation B (ECOA)
- CFPB to post FI data on its website
- FI must post on its website that its 1071 info is posted on CFPB website
- Data gathering is limited to requestor of credit – doesn't apply to guarantors

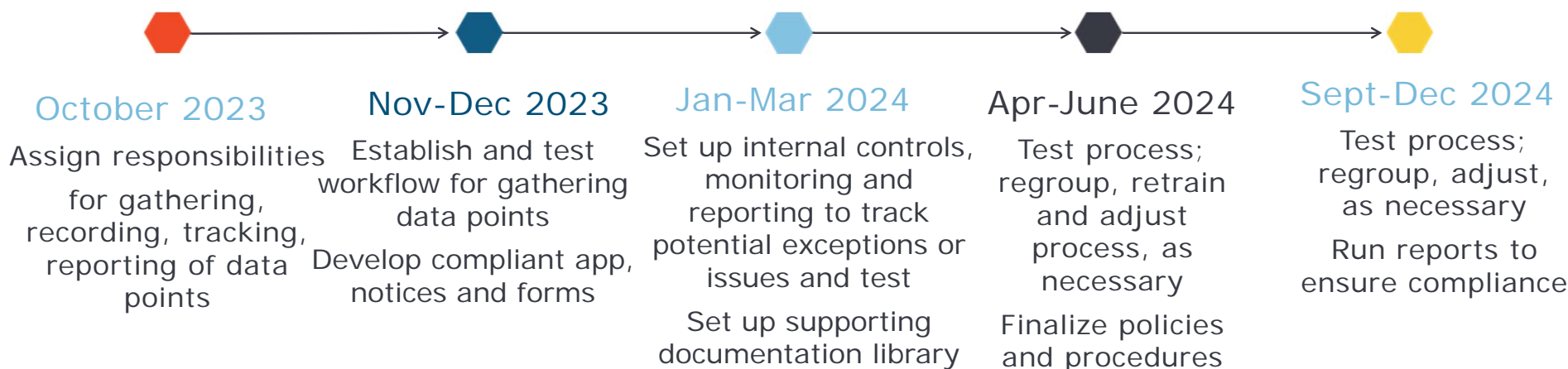


1071 Rule Project Management

Sample Project Management & Timeline



Sample Project Management & Timeline



Other Considerations:

- Standardize small business lending loan originations, pricing, and fee structure

- Develop an objective small business loan pricing model to mitigate unintentional disparate treatment resulting from lender subjectivity in interest rate, fee, and pricing structure
- Automate the reporting of small business loan pricing exceptions to policy to be proactive in making future



The Loan Application: Data Gathering Best Practices



Question

What is your current small business loan application process?:

1. We don't take formal written applications on small business loans
2. Our lending is decentralized, and the small business application process varies across our lenders
3. We consistently take formal applications on small business loans

The Loan Application - Considerations

1. Small Business Formal Loan Application
2. Automated Application
3. Firewall
4. Notice of Compliance with 1071 Rule to Applicants
5. Encompassing all Data Points
6. When to Collect the Data
7. Who will Collect the Data
8. Consistency in Data Collection Process



Data Gathering Requirements

Real Impacts to your FI

Have you been through a core conversion or bank acquisition recently?

You will face similar challenges

1. System compatibility
2. Data mapping
3. Data migration
4. Testing
5. Staff training



1071 Rule Data Gathering Requirements

Required for **ALL** Small Business Credit Applications

Three Major Data Sets:

1. **Data points that the FI generates**
2. **Data points provided by the applicant or that FI verifies by reviewing information provided by the applicant or third party**
3. **Data points that address the demographics of the applicant's owners or ownership status. Generally, a FI would be required to ask the applicant to provide this information.**

[Note: Applicant has the "Right to Refuse" to provide demographic information]



1071 Rule Data Gathering Requirements


Procedures

- Timing – At a point that is reasonably designed to obtain a response
- FI not required to verify applicant-provided info (whether in writing or orally)
- If the FI verifies the information provided it must report the verified information
- FIs can reuse certain previously collected data if taken in preceding 12 months



Data Gathering Requirements

Data points that the FI generates

Data point	NPRM section	Description	Data elements to be reported
Unique identifier	107(a)(1)	FI would report an alphanumeric application or loan identifier unique within the FI to the specific application.	Unique alphanumeric application or loan number not to exceed 45 characters. Must begin with the FI's Legal Entity Identifier (LEI).
Application date	107(a)(2)	FI would report application date using either: (i) the date the application was received by the FI; or (ii) the date shown on a paper or electronic application form.	A complete calendar date (i.e., month, day, and year).  Three -day grace period for Safe Harbor



Data Gathering Requirements

Data points that the FI generates

Data point	NPRM section	Description	Data elements to be reported	Notes
				three calendar days of the actual application date.
Application method	107(a)(3)	FI would report the means by which the applicant submitted the application from the specified list.	One of the following: (1) In-person; (2) Telephone; (3) Mail; or (4) Online.	The proposed commentary provides additional information on how the FI would select the application method if the applicant communicated or provided information via multiple methods or channels.
Application recipient	107(a)(4)	FI would report whether the applicant submitted the application directly to the FI or its affiliate, or whether the applicant submitted the application indirectly to the FI via a third party.	One of the following: (1) the applicant submitted the application directly to the FI or its affiliate; or (2) the applicant submitted the application indirectly to the FI via a third party.	



Data Gathering Requirements:

Data points that the FI generates

Credit type	107(a)(5)	FI would report credit type in three parts: (1) credit product (from specified list); (2) guarantee(s) (from specified list); (3) loan term.	One of the credit products from the following list: (1) Term loan—unsecured; (2) Term loan—secured; (3) Line of credit—unsecured; (4) Line of credit—secured; (5) Credit card; (6) Merchant cash advance; (7) Other sales-based financing transaction; (8) Other (with additional information provided via free form text); (9) Not provided by	construction/improvement, or refinance of non-owner-occupied dwelling(s); (3) Purchase, construction/improvement, or refinance of non-owner occupied, non-dwelling real estate; (4) Purchase, construction/improvement, or refinance of owner-occupied, non-dwelling real estate; (5) Purchase, refinance, or rehabilitation/repair of motor vehicle(s) (including light and heavy trucks); (6) Purchase, refinance, or rehabilitation/repair of equipment; (7) Working capital (includes inventory or floor planning); (8) Business start-up; (9) Business expansion; (10) Business acquisition; (11) Refinance existing debt (other than refinancings listed above); (12) Line increase; (13) Other (with additional information provided via free-form text); (14) Not provided by applicant
Credit purpose	107(a)(6)	FI would report credit purpose(s) from a specified list.	Up to three credit purposes from the following list: (1) Purchase, construction/improvement, or refinance of owner-occupied dwelling(s); (2) Purchase,	



Data Gathering Requirements

Data points that the FI generates

Amount applied for 107(a)(7)	FI would report the initial amount of credit or the credit limit initially requested by the applicant at the application stage or later.	One of the following: (1) Dollar amount for initial amount of credit/credit limit requested by applicant; (2) Dollar amount of a "firm offer," if application is in response to a firm offer that specifies an amount; (3) Dollar amount underwritten (if applicant does not request a particular amount but FI underwrites for a specific amount); (4) Not provided by applicant and otherwise undetermined; (5) Not applicable (if the product applied for does not involve a specific amount).	FI would not be required to report amounts discussed before an application is made but would be required to report the initial amount requested at the application stage or later.
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Data Gathering Requirements

Data points that the FI generates

Amount approved or originated	107(a)(8)	FI would report the credit amount or credit limit approved or originated, using: (1) the amount of the originated loan for a closed-end origination; (2) the amount approved for a closed-end loan application that is approved but not accepted; or (3) the amount of the credit limit approved for open-end credit.	Only report amounts for originated credit or applications that are approved but not accepted.	For applications that are denied, closed for incompleteness, or withdrawn by the applicant, the FI would report "not applicable."
Action taken	107(a)(9)	FI would report one of five specified actions taken on the application.	One of the following: (1) Originated; (2) Approved but not accepted; (3) Denied; (4) Withdrawn by applicant; (5) Incomplete.	Incomplete applications would include (1) instances where an FI took adverse action on the basis of incompleteness, and (2) instances where the FI provided a written notice of incompleteness and the applicant did not respond in the time specified in the notice.



Data Gathering Requirements

Data points that the FI generates

Action taken date	107(a)(10)	FI would report the date the action was taken.	A complete calendar date (i.e., month, day, and year).
Denial reasons	107(a)(11)	For denied applications only, FI would report the principal reason(s) the application was denied from a specified list.	Up to four principal denial reasons from the following list (as applicable): (1) Credit characteristics of the business; (2) Credit characteristics of the principal owner(s) or guarantor(s); (3) Use of loan proceeds; (4) Cashflow; (5) Collateral; (6) Time in business; (7) Government criteria; (8) Aggregate exposure; (9) Unverifiable information; (10) Other (with additional information provided via free form text).



Data Gathering Requirements

Data points that the FI generates

Pricing information 107(a)(12)

FI would report pricing information for originated credit and credit that is approved but not accepted.

If a fixed rate transaction: the interest rate.

If a variable-rate transaction: the margin, index value, and index name. Index name is reported using one of the following: (1) Wall Street Journal Prime; (2) 6-month CD rate; (3) 1-year T-Bill; (4) 3-year T-Bill; (5) 5-year T-Note; (6) 12-month average of 10-year T-Bill; (7) Cost of Funds Index-National; (8) Cost of Funds Index-11th District; (9) Other (with additional information provided via free-form text).



Data Gathering Requirements:

Data points that the FI generates

**Census tract
(principal place of
business)**

107(a)(13)

FI would report a census tract based on an address collected in the application, or during review or origination of the credit. FI also reports the type of address used to determine the census tract.

Census tract based on one of the following: (1) Address where the loan proceeds will principally be applied, if known; (2) If (1) is not known, location of borrower's main office or headquarters; (3) If neither (1) or (2) are known, another address or location associated with the applicant.

The NPRM includes a proposed safe harbor for errors when using an FFIEC or Bureau geocoding tool correctly.

FI also reports which of the three address types was used to determine the census tract.

If no address or location is known, FI would report "not provided by applicant and otherwise undetermined."



Data Gathering Requirements

Data points that the FI generates

<p>North American Industry Classification System (NAICS) code</p>	<p>107(a)(15)</p>	<p>FI would report the NAICS code appropriate for the applicant.</p>	<p>Six-digit NAICS code.</p> <p>If the NAICS code cannot be collected, FI would report “not provided by applicant and otherwise undetermined.”</p>	<p>FI would use NAICS codes in effect as of Jan. 1 of the collection year.</p> <p>FI would be permitted to rely on statements of or information provided by the applicant in collecting and reporting the NAICS code (such as using the NAICS code on an applicant’s tax return), or on a code obtained through the FI’s use of business information products (such as company profiles or business credit reports that provide a NAICS code).</p>
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Data Gathering Requirements

Data points that the applicant provides, or FI generates

Gross annual revenue (GAR)

107(a)(14)

FI would report the GAR of the applicant during the last fiscal year.

The dollar amount of the applicant's GAR during its last fiscal year prior to when the information is collected.

If specific GAR cannot be collected from an applicant, FI would report "not provided by applicant and otherwise undetermined."

If the FI verifies the GAR, it would report the dollar amount of verified GAR. If the FI does not verify the GAR, it would report the dollar amount of GAR as reported by applicant or the GAR dollar amount that the FI otherwise obtained.

The proposed commentary provides a model question that an FI could use to obtain the GAR from the applicant.

Affiliate revenue may or may not be collected, depending on FI practice.



Data Gathering Requirements

Data points that the applicant provides

Number of workers 107(a)(16)

FI would report the number of workers of the applicant.

Number of workers. Includes full-time, part-time, and seasonal workers as well as contractors working primarily for the applicant, but does not include principal owners.

If number of workers cannot be collected, FI would report “not provided by applicant and otherwise undetermined.”

If the FI verifies the number of workers, it would report the verified number. If the FI does not verify the number of workers, it would report the number reported by applicant or that the FI otherwise obtained.

The proposed commentary provides a model question that an FI could use to obtain the number of workers from the applicant.



Data Gathering Requirements

Data points that the applicant provides, or FI generates

Time in business (TIB)	107(a)(17)	FI would report the applicant's time in business, expressed in years.	Number of years that the applicant has been in business. If the FI relied on the applicant's TIB in making the credit decision, the FI would report the TIB it relied on in making the credit decision. If the FI did not rely on the applicant's TIB in making the credit decision, the FI would collect and report TIB. FI would be required to indicate (1) if applicant hasn't started its business yet or (2) if applicant has been in business less than a year.	If the FI verifies TIB, it would report the verified TIB. If the FI does not verify TIB, it would report the TIB provided by applicant or that the FI otherwise obtained.
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Data Gathering Requirements

Required to ask the applicant to provide this information

<p>Minority-owned business status</p>	<p>107(a)(18)</p>	<p>FI would report applicant's response to the FI's § 1002.107(a)(18) inquiry regarding whether the applicant is a minority-owned business.</p>	<p>FI would report applicant's response (yes, no, or "I do not wish to provide this information") or that the applicant did not respond.</p> <p>FI would also report whether it is reporting this information based on previously collected data.</p>	<p>FI would report solely based on applicant-provided information; no verification or visual observation and/or surname analysis would be required or permitted.</p> <p>FI would be required to inform applicant that it is not required to provide this information.</p>
<p>Ethnicity of principal owner(s)</p>	<p>107(a)(20)</p>	<p>Generally, FI would report applicant's response to the FI's § 1002.107(a)(20) inquiry regarding the ethnicity of the applicant's principal owner(s). However, in some circumstances, the FI would report the ethnicity of one or more principal owners based on visual observation and/or surname.</p>	<p>If the FI is reporting applicant-provided information: For each principal owner, the FI would report the aggregate categories and disaggregated subcategories selected by the applicant, that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).</p> <p>If the FI is reporting based on visual observation and/or surname: For at least one principal owner, the FI would report using the aggregate categories only. For other principal owners, the FI would report that the applicant did not wish to provide the information or that the</p>	<p>FI would be required to inform applicant that it is not required to provide this information.</p> <p>The proposed commentary and proposed sample data collection form include the aggregate categories and disaggregated subcategories that would be used when collecting and reporting ethnicity.</p>

- You might need to collect data on 1-4 Principal owners
- Track date the information was collected. Can you reuse information or does the applicant need to answer them again?



Data Gathering Requirements

Required to ask the applicant to provide this information

<p>Race of principal owner(s)</p>	<p>107(a)(20)</p>	<p>Generally, FI would report applicant’s response to the FI’s § 1002.107(a)(20) inquiry regarding the race of the applicant’s principal owner(s). However, in some circumstances, the FI would report the race of one or more principal owners based on visual observation and/or surname.</p>	<p>If the FI is reporting applicant-provided information: For each principal owner, the FI would report the aggregate categories and disaggregated subcategories selected by the applicant, that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).</p> <p>If the FI is reporting based on visual observation and/or surname: For at least one principal owner, the FI would report using the aggregate categories only. For other principal owners, the FI would</p>	<p>FI would be required to inform applicant that it is not required to provide this information.</p> <p>The proposed commentary and proposed sample data collection form include the aggregate categories and disaggregated subcategories that would be used when collecting and reporting race.</p>
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Data Gathering Requirements

Required to ask the applicant to provide this information

Sex of principal owner(s)	107(a)(20)	FI would report applicant's response to the FI's § 1002.107(a)(20) inquiry regarding the sex of applicant's principal owner(s).	For each principal owner, the FI would report the category or categories selected by the applicant (male, female, and/or that the principal owner prefers to self-describe with additional information provided via free form text), that the applicant did not wish to provide the information, or that the applicant did not respond (as applicable).	FI would report solely based on applicant-provided information; no verification or visual observation and/or surname analysis would be required or permitted. FI would be required to inform applicant that it is not required to provide this information.
			If the applicant has fewer than four principal owners, as appropriate, the FI would report that this requirement is not applicable.	



Data Gathering Requirements

Required to ask the applicant to provide this information

Number of principal owners	107(a)(21)	FI would report the number of the applicant's principal owners.	Number of principal owners (i.e., a number from zero to four). If number of principal owners cannot be collected, FI would report "not provided by applicant and otherwise undetermined."	Generally, the FI would report the information provided by the applicant. However, if the FI verifies the number of principal owners, the FI would report the verified information.
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Data Gathering Requirements

Demographic Data

- Race/Ethnicity: A FI is required to report at least one principal owner's ethnicity and race based on visual observation and/or surname if the FI meets in person or virtually with video with one or more of the applicant's principal owners and the applicant does not provide
- Sex: Proposing to permit principal owners to self-describe their sex. Unlike, race and ethnicity, the FI **cannot** complete the data for an applicant's sex by visual observation



Addressing the Impact of 1071 Rule on Lending Culture

The Small Business Lending Culture

Real Impacts to your FI

Changes in current Commercial, CRE, Ag lending processes

1. Relationship-based lending concepts

- Approval process is informal
- Borrower relationship attributes for pricing of deals

2. Application process and platforms

- FS taken in lieu of formal application
- Informal process and platforms not fully automated



The Small Business Lending Culture

Real Impacts to your FI

3. Completing the process - Action taken requirements
 - Lender follow-through with borrower is informal

4. Loan pricing concepts
 - Avoiding fair lending issues

5. Training opportunities
 - Lenders, Admins, Underwriting, Loan Operations, Credit





Change Management and Section 1071 Adoption

- One of the biggest hurdles of successfully implementing automation and technology
- Most people are change adverse
- Watch for a reversion back to old processes when under pressure
- Hold the line for successful implementations

1071 Rule Tracking, Monitoring and Reporting

Commercial Loan Workflow Process – Argument for Automation

- Creates consistency in loan application & underwriting practices
- Employee training and compliance benefits
- Mitigates operational risk
- Enables status reporting on borrowers



Proposed 1071 Rule

Reporting requirements

- Data collected on a calendar-year basis
- Data to be reported to CFPB by June 1 of the following year (through a data export such as API or via CSV file)
- Record retention (3-years of records)
 - Applicant's responses to FI's inquiries re: the protected demographic information (maintain separate)
 - Small business lending application registers (don't include any PII on the applicant or anyone connected to applicant)

[Note: Applicant's responses on data points kept separate from the rest of the application and supporting information]



Proposed 1071 Rule Violations and Errors

- Non-compliance with the 1071 Rule is subject to administrative sanctions and civil liability in Reg B
- Bona fide error that was unintentional and occurred despite procedures reasonably adapted to avoid such error is not a violation of the Rule if the number of such errors does not exceed the thresholds in the Rule (CFPB to define)
- Four safe harbors related to certain errors in:
 - Census tract
 - NAICS code
 - Small business status determination– not a data point
 - Application date



Loan Pricing: Is it Time to Standardize?

Loan Pricing – Impact of 1071 Rule

How do you reconcile existing pricing culture with CFPB 1071 requirements?



Loan Pricing

Current pricing practice for quoting initial rates

- Current pricing practices for quoted rates
 - Who is carrying the pricing risk for rates quoted on term sheets?
 - Are you offering rate lock options?
 - Do you have terminology in term sheets that specify offer rate terms?
 - Are you tracking loan pricing exceptions of current pricing practices?
- Impact of the CFPB 1071 Small Business
 - What percent of your customers will be impacted?
 - How does this change your existing loan pricing practices?
 - Does this require you to move from a profitability to a risk-based pricing model concept?

Product & Pricing Basics

Types of Loan Pricing Models

I. Risk Based Pricing Models

- Uses different loan characteristics to adjust price
- Typically used to set a Base Price (Product Rate Sheet)
- Has some profitability margin baked into Base Price
- Typically requires a default scenario for each Product
- Helps eliminate Fair Lending Issues



Product & Pricing Basics

Types of Loan Pricing Models

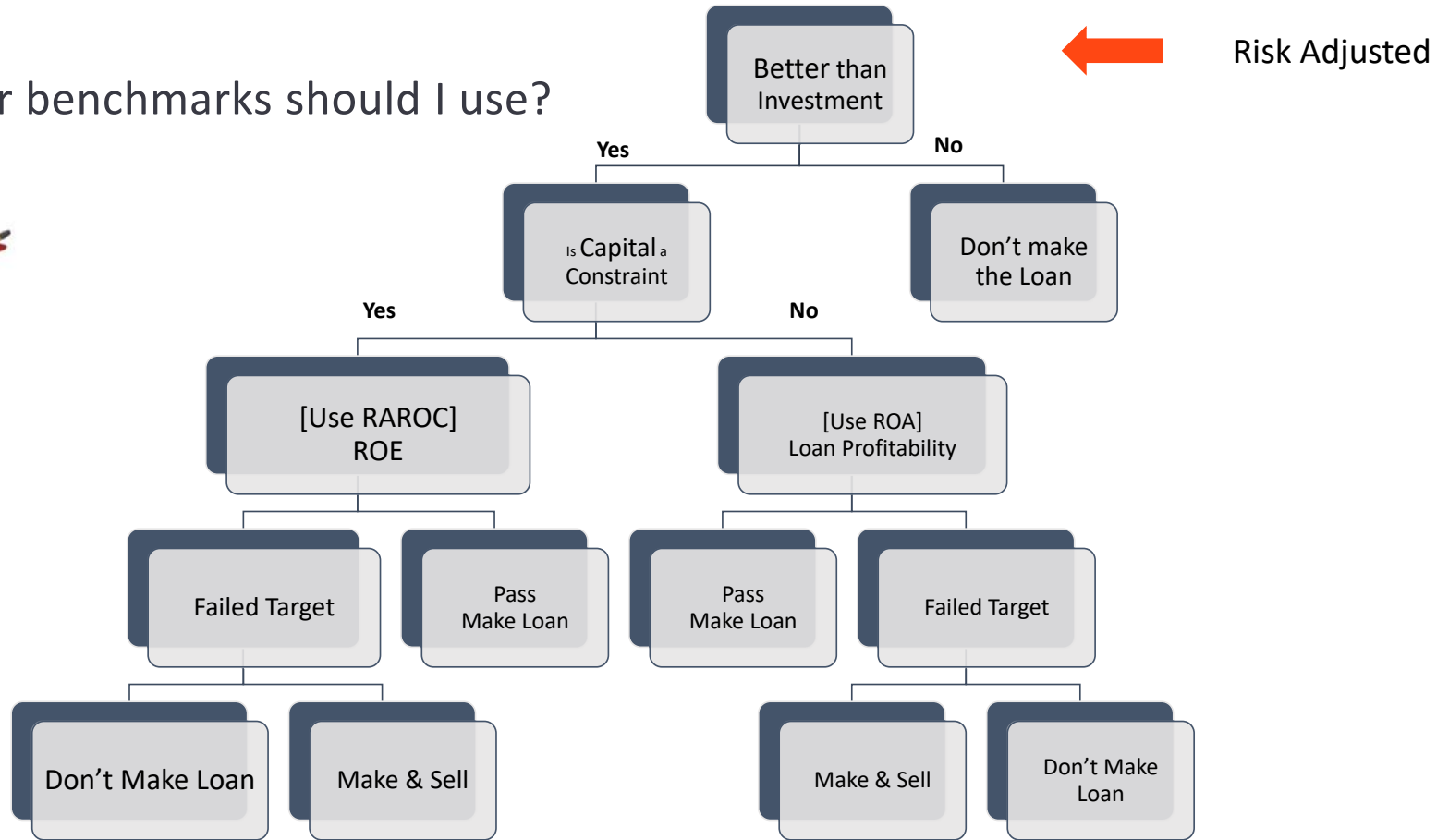
II. Profitability Pricing Models

- Uses revenue/expense/risk assumptions to calculate profitability on an individual loan or total relationship
- Expense allocations become a Key Assumption
- Cost of Funds should be forward looking
- Allows pricing flexibility based on Profitability targets
- Can be used at ALCO to identify what Products to offer or can be used by Lending Staff to justify exceptions to risk based models



Product & Pricing Basics

What target or benchmarks should I use?





Wrap-Up and Questions

Takeaways

- 1** Study the 1071 Rule and Start Planning Now
- 2** Establish a 1071 Project Plan (team members, training options, culture alignment, timelines, milestones, implementation)
- 3** Assess Your Current Credit and Data Collection Processes. Early Investigate Automated Application Options, if necessary
- 4** Test the system and process for gathering, recording and reporting
- 5** Perform periodic analysis/validation to assess internal controls, process improvements and pricing exceptions. Adjust process, re-train, if necessary



Poll Question

I would like to be contacted by Abrigo to learn about the following services and products:

1. Advisory assistance with CFPB 1071 Rule compliance
2. Advisory assistance with risk-based loan pricing modeling
3. Enhanced data analytics, monitoring and reporting tools
4. Automated small business application/LOS solution
5. Quarterly FI/peer comparison reporting package



Additional Resources

- Resource Page:
 - [CFPB 1071 Compliance](#)
- From the Blog:
 - [Commercial Credit Analysis 101: Back to the Basics](#)
 - [Ask Your Credit Analysts These Questions to Optimize Deal Flow](#)
- Whitepapers and Checklists:
 - [From Policy to Practice: A Guide to Implementing Credit Policy](#)
 - [Digital Lending and Credit Automation: Before and After](#)
 - [Commercial Credit Analysis: Common Missteps and How to Avoid](#)
- Register for our ThinkBIG Convention:
 - <https://www.abrigo.com/thinkbig/>
 - Use discount for \$50 off registration **STBK50**
 - May 8-11, 2023 | Miami, FL

SAVE THE DATE

THINKBIG 2023

BSA • LENDING • ALM • CECL



May 8 – 11, 2023

at JW Marriott Miami Turnberry
Resort and Spa
Miami, Florida

Thinkbigconference.com

(Registration closes 4/14/2023)





Thank you

Paula King, Senior Advisor

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Kentucky Bankers Association

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EXHIBIT 17

December 10, 2021

SENT VIA FIRST CLASS MAIL AND E-MAIL

Consumer Financial Protection Bureau
Attn: Comment Intake-Section 1071 Small
Business Lending Data Collection
1700 G Street NW
Washington, DC 20552
Email: 2021-NPRM-1071@cfpb.gov

Re: Request for Public Comment: Small Business Data Collection Under the Equal Credit Opportunity Act (Regulation B), Docket No. CFPB-2021-0015, RIN-3170-AA09.¹

Dear Consumer Financial Protection Bureau,

The Kentucky Bankers Association (KBA) is pleased to submit this response to the Notice of Proposed Rulemaking (Proposal) from the Consumer Financial Protection Bureau (CFPB), which proposes to “add a new subpart B to Regulation B to implement the requirements of section 1071” that would create a “database that would enable stakeholders to better identify business and community development needs and opportunities for small businesses, including women-owned and minority-owned small businesses” (Purpose).²

After consulting with representatives from the Kentucky Bankers Association’s one hundred and fifty-four (154) member institutions ranging in asset size from twenty-one million dollars (\$21,000,000) to over three hundred and seventy billion dollars (\$370,000,000.00), the Kentucky Bankers Association submits its comments to the Proposal as set forth below.

- The Proposal will limit access to credit for small businesses in contravention of its Purpose;
- The Proposal is not narrowly tailored to serve its Purpose;
- The Proposal is duplicative of current bank regulatory regulations and review;
- The CFPB does not have the capacity or correct fields to analyze data that would be collected in the Proposal.

These recommendations and analysis of the Proposal follow.

1. The Proposal will Limit Access to Credit for Small Businesses

¹ Consumer Financial Protection Bureau, Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Federal Register 56356, October 8, 2021.

² Proposal, page 56356.

The CFPB asserts that “If finalized, the Bureau’s proposed rule would create the first comprehensive database of small business credit applications in the United States. This would include critical information about women-owned and minority-owned small businesses to help regulators and the public identify and address fair lending concerns.”

As noted in the Proposal, “bank closures may have made it more difficult for small businesses, particularly women-owned businesses, to access credit and remain open—particularly in low- and moderate- income areas and rural communities.”³ “During the last two decades, the small business lending landscape has transformed. Traditional providers—namely banks—consolidated, leading to branch closures. The number of banks in the U.S. has declined from over 18,000 in 1986 to under 5,200 today and the number of branches declined by 14 percent from 2009 to 2020.”⁴

“In the past, small businesses principally sought credit from banks; however, as banks have merged and consolidated, particularly in the wake of the Great Recession, they have provided less financing to small businesses. As noted earlier, the number of banks has declined significantly since a post-Great Depression peak in 1986 of over 18,000 institutions to around 5,200 institutions today, while 13,500 branches closed from 2009 to mid-2020, representing a 14 percent decrease. Although nearly half of counties either gained bank branches or retained the same number between 2012 and 2017, the majority lost branches over this period. Out of 44 counties that were deeply affected by branch closures, defined as having 10 or fewer branches in 2012 and seeing five or more of those close by 2017, 39 were rural counties. Of rural counties, over 40 percent lost bank branches in that period; the rural counties that experienced substantial declines in bank branches tend to lower-income and with higher proportion of African American residents relative to rural counties, raising concerns about equal access to credit.”⁵

“As banks and branches have merged and/or closed, the share of banking assets has also become increasingly concentrated in the largest institutions, with banks over \$10 billion assets representing 84 percent of all industry assets in 2018, totaling \$15.1 out of \$17.9 trillion. Nevertheless, banks under \$10 billion in assets continue to hold approximately half of all small business loans, highlighting the importance of smaller banks to the small business lending market.”

In short, small banks and community banks, generally defined by the Federal Reserve as those having less than \$10 billion in assets,⁶ have traditionally served, and continue to serve, as the primary lenders for small businesses, including those businesses who are traditionally categorized as underserved. As the number of small banks decrease, so have the credit opportunities for many small businesses. As the Federal Deposit Insurance Corporation stated, “small banks have a competitive advantage in lending to small businesses.”⁷ Similarly, “small banks viability is dependent on small business lending.”⁸ It is a cohesive relationship where both must exist to ensure mutual “viability.”⁹

³ Proposal, page 56360.

⁴ Proposal, page 56359.

⁵ Proposal, page 56364.

⁶ Ron J. Feldman, *Assessing Community Bank Consolidation*, February 6, 2014, Minneapolis Federal Reserve, <https://www.minneapolisfed.org/article/2014/assessing-community-bank-consolidation>.

⁷ FDIC Advisory Committee of State Regulators, *Community Bank Consolidation*, October 14, 2020, <https://www.fdic.gov/about/advisory-committees/state-regulators/2020-10-14-agenda/2020-10-14-dir-community-bank-consolidation.pdf>.

⁸ FDIC Advisory Committee of State Regulators, *Community Bank Consolidation*, October 14, 2020, <https://www.fdic.gov/about/advisory-committees/state-regulators/2020-10-14-agenda/2020-10-14-dir-community-bank-consolidation.pdf>.

In order to increase small business lending, and to preserve the symbiotic relationship of small banks and small businesses, there cannot be continued consolidation of the small banks that serve these needs. However, contrary to the Purpose of the Proposal, more regulation will only further reduce the number of small banks and decrease access to credit for those businesses that the Proposal is seeking to serve.

Numerous studies have shown that increasing regulation, and ultimately regulatory compliance costs, increases the rate of bank consolidation. “We look to periods when Congress took major legislative steps perceived as increasing regulatory cost. Specifically, we look at rates of consolidation in the five years post-passage of laws that augmented bank regulations/supervision. These laws include the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the Federal Deposit Insurance Corporation Improve Act of 1991 (FDICIA) as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA). As seen in Table 5 and Figure 10, the rates change during those periods were, indeed, higher than outside those periods.”¹⁰

“Regulatory burden had an incalculable influence on merger decisions. In the wake of so many bank failures, the regulator headcount ballooned to record numbers by the early 1990s. With more personnel came more supervision.”¹¹ “As the GAO reports, regulators, industry participants, and Fed studies all find that consolidation is likely driven by regulatory economies of scale – larger banks are better suited to handle heightened regulatory burdens than are smaller banks, causing the average costs of community banks to be higher.”¹² “Any regulatory requirement is likely to be disproportionately costly for community banks, since the fixed costs associated with compliance must be spread over a smaller base of assets.”¹³

As one writer stated, “The mega banks can have departments to administer these massive regulations but the community banks don’t have that.”¹⁴

Increased regulatory burden only furthers the equity gap between small banks and large banks, forcing small banks to face unabsorbable compliance costs, forcing mergers and acquisitions, and ultimately decreasing services to smaller communities contrary to the Purpose.

“Today, scale and expense concerns are arguably even more pressing issues than they were 20 years ago. As the FDIC acknowledged in its quarterly report, scale in among the leading reasons that banks merge. However, the FDIC did not mention its own data

⁹ FDIC Advisory Committee of State Regulators, *Community Bank Consolidation*, October 14, 2020, <https://www.fdic.gov/about/advisory-committees/state-regulators/2020-10-14-agenda/2020-10-14-dir-community-bank-consolidation.pdf>.

¹⁰ Ron J. Feldman, *Assessing Community Bank Consolidation*, February 6, 2014, Minneapolis Federal Reserve, <https://www.minneapolisfed.org/article/2014/assessing-community-bank-consolidation>.

¹¹ Richard J. Parsons, *The Bell Tolls for Community Banks – Unless the FDIC Acts*, April 30, 2014, AMERICAN BANKER, <https://www.americanbanker.com/opinion/the-bell-tolls-for-community-banks-unless-the-fdic-acts>.

¹² Marshall Lux and Robert Greene, *The State and Fate of Community Banking*, February 2015, Harvard Kennedy School Mossavar-Rahmani Center for Business and Government, [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final State and Fate Lux Greene.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final%20State%20and%20Fate%20Lux%20Greene.pdf).

¹³ Marshall Lux and Robert Greene, *The State and Fate of Community Banking*, February 2015, Harvard Kennedy School Mossavar-Rahmani Center for Business and Government, [https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final State and Fate Lux Greene.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final%20State%20and%20Fate%20Lux%20Greene.pdf).

¹⁴ Glenys Young, *Researchers Warn Community Banks are ‘Dying Out’ Just When Needed Most*, September 2, 2020, TEXAS TECH TODAY.

revealing that the bigger banks' efficiency ratio advantage has widened materially since the '90s, suggesting that bank size is highly correlated to profitability."¹⁵

"During the decade of the 1990s, banks with over \$10 billion in assets had a mere 100 basis-point advantage in efficiency ratio compared to banks with asset sizes between \$100 million and \$1 billion. Compared to banks under \$100 million in assets, the advantage was greater at 400 basis points. During the past four years, the gap between larger and smaller banks has widened to 1200 basis points and 1900 basis points, respectively."¹⁶

Small banks cannot bear the expense of additional regulation. Return on assets are at near record lows with quarterly net operating revenue to average assets at its lowest level since 1984.¹⁷ With minimal margins, banks that have to bear additional compliance costs will be forced to merge, sell or increase fees and interest to continue operating all in contravention of the Purpose.

Furthermore, new banks are not forming to fill community needs when a branch closes due to a merger. There are significant barriers to entry for new banks to form. The cost of chartering a new bank has increased nearly six times since the year 2000 when bank charters cost just above \$5 million compared to 2019 when bank charters costs close to \$35 million.¹⁸ "New chartering remains near historic lows."¹⁹

Through the Proposal, it is clear that the CFPB believes that one of the primary catalysts for limited access to funding for small businesses are bank mergers, consolidations and closures. However, if the CFPB adopts the Proposal, it will be in contravention of its Purpose by increasing regulation and costs to banks which will only increase mergers and consolidations and further limit access credit for small businesses. The CFPB should not exacerbate the problem by creating new regulation without exception for asset size, limitations and the communities at risk. Simply put, the Proposal as written will be extremely detrimental to small banks and the small businesses they serve. "Traditional banks tailor products to borrowers' needs in local communities, and prescriptive rules inevitably translate into less access to credit and banking services."²⁰

For these reasons, the KBA believes the Proposal should not be adopted as it will detrimentally affect underserved communities, the banks that serve these communities and the small businesses seeking credit in these communities.

2. The Proposal is not Narrowly Tailored to Serve its Purpose

¹⁵ Richard J. Parsons, *The Bell Tolls for Community Banks – Unless the FDIC Acts*, April 30, 2014, AMERICAN BANKER, <https://www.americanbanker.com/opinion/the-bell-tolls-for-community-banks-unless-the-fdic-acts>.

¹⁶ Richard J. Parsons, *The Bell Tolls for Community Banks – Unless the FDIC Acts*, April 30, 2014, AMERICAN BANKER, <https://www.americanbanker.com/opinion/the-bell-tolls-for-community-banks-unless-the-fdic-acts>.

¹⁷ FDIC Quarterly, Section Quarter 2021, Vol 15. No. 3, <https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2021-vol15-3/fdic-v15n3-2q2021.pdf>.

¹⁸ FDIC Advisory Committee of State Regulators, *Community Bank Consolidation*, October 14, 2020, <https://www.fdic.gov/about/advisory-committees/state-regulators/2020-10-14-agenda/2020-10-14-dir-community-bank-consolidation.pdf>.

¹⁹ FDIC Advisory Committee of State Regulators, *Community Bank Consolidation*, October 14, 2020, <https://www.fdic.gov/about/advisory-committees/state-regulators/2020-10-14-agenda/2020-10-14-dir-community-bank-consolidation.pdf>.

²⁰ Marshall Lux and Robert Greene, *The State and Fate of Community Banking*, February 2015, Harvard Kennedy School Mossavar-Rahmani Center for Business and Government, https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final_State_and_Fate_Lux_Greene.pdf.

“Covered financial institutions” are subject to the Proposal.²¹ The Proposal defines “covered financial institutions” to include banks and other lenders²² “that originated at least 25 covered credit transactions for small businesses in each of the two preceding calendar years. The Bureau is not proposing an asset-based exemption threshold for depository institutions, or any other general exemptions for particular categories of financial institutions.”²³ The CFPB’s proposed definition of “small business” is “whether the business had \$5 million or less in gross annual revenue for its preceding fiscal year.”²⁴

The Proposal also asserts that its Purpose will help small businesses like the Home Mortgage Disclosure Act²⁵ (HMDA) has mortgage lending. “The Bureau believes that 1071 data will come to play an important role as HMDA data has done for the mortgage market. HMDA data has provided lenders, community groups, and others the tools to identify and address fair lending risks and strengthen the fair lending oversight and enforcement.”²⁶ “HMDA data has also proven effective in creating transparency in the mortgage market that improves the understanding of credit needs, where they remain unmet, and the relationship between mortgage lending and community development.”²⁷

The CFPB clearly believes that the implementation of HMDA data reporting has been a tremendous success. However, despite this success, the CFPB ignored the exceptions built within HMDA that keep smaller lenders from being overwhelmed with data reporting and being able to continue to serve their communities.

Under HMDA, “a depository institution is required to comply with Regulation C if it meets the asset-size threshold, location test, loan activity test, federally related test, and the loan-volume threshold for either closed-end loans or open-end lines of credit set forth in the regulation.”²⁸ The loan volume threshold is a key exception for HMDA, allowing smaller institutions to focus on customers and keep costs low without substantially altering reporting statistics for the CFPB. “In May 2020, the CFPB raised the closed-end reporting threshold from 25 loan originations per year, where it had remained for HMDA reporting activity for 2018 and 2019, to 100 loan originations per year, effective July 1, 2020.”²⁹ The current reporting threshold for open-end transactions is 500 loan originations per year.³⁰ HMDA also has exemptions that adjust for an institutions’ asset size and other factors.³¹

The Proposal ignored prior challenges of overreporting in HMDA that made adjustments through the years to account for smaller institutions and reporting information, which would be overly burdensome and ultimately limit access to this credit. Unlike HMDA, this Proposal makes virtually no exceptions. A 25-loan threshold can easily be reached by loaning \$50 to small businesses 25 times. The Proposal as written will require lenders to spend more time compiling paperwork, less time lending, and accruing additional costs that will either ultimately be passed to the customer or limit access to credit due to an inability to process and seek out new small-business lending. This is in direct contravention of the Purpose.

²¹ Proposal, page 56357.

²² Proposal, page 56357.

²³ Proposal, page 56357.

²⁴ Proposal, page 56357.

²⁵ 12 U.S.C. § 29.

²⁶ Proposal, page 56375.

²⁷ Proposal, page 56375.

²⁸ Proposal, page 56379.

²⁹ Feng Liu and Alex Rodriguez, *HMDA Threshold Reporting Blog*, June 14, 2021, <https://www.consumerfinance.gov/about-us/blog/hmda-threshold-report-blog/>.

³⁰ 12 CFR § 1003.

³¹ Federal Financial Institutions Examination Council, *A Guide to HMDA Reporting: Getting it Right!*, January 1, 2020, <https://www.ffiec.gov/hmda/pdf/2020Guide.pdf>.

Furthermore, it is almost impossible for the KBA to understand why there would be no exceptions in a myriad of forms. For example, areas of consideration should have been loan amounts. Loans under \$100 would count towards the threshold. Data shows that during the PPP process, banks made numerous loans under \$1,000. Given the current return on assets, these loans were made at a loss to the bank after processing costs. Despite losing money, bankers did the right thing in serving the needs of their customers. However, this rule, as proposed, will exacerbate that loss by requiring banks to report it numerous times in various capacities. This Proposal fails to account for any good faith efforts of banks to serve community needs. There must be some threshold as to loan amount to count toward the minimum.

The Proposal also contains no thresholds for asset size, loan amount, form of loan and a de minimis threshold for number of loans. Before any Proposal can proceed, the CFPB must consider exemptions that make this rule practical to implement.

If HMDA exemptions do not have a negative effect on the quantity and quality of information, neither should the exemptions to this Proposal modeled after HMDA. For these reasons, the KBA believes the Proposal should not be adopted until further consideration is given for exemptions.

3. The Proposal is Duplicative for Banks

“The primary source of information on lending by depository institutions are the Federal Financial Institutions Examination Council (FFIEC) and National Credit Union Association (NCUA) Consolidated Reports of Condition and Income (Call Reports), as well as reporting under the CRA. Under the FFIEC and CRA reporting regimes, small loans to businesses of any size are used in whole or in part as a proxy for loans to small businesses. The FFIEC Call Report captures banks’ outstanding number and amount of small loans to businesses (that is, loans originated under \$1million to businesses of any size; small loans to farms are those under \$500,000). The CRA requires banks and savings associations with assets over a specified threshold to report loans in original amounts of \$1million or less to businesses; reporters are asked to indicate whether the borrower’s gross annual revenue is \$1million or less, if they have that information. The NCUA Call report captures data on all loans over \$50,000 to members for commercial purposes, regardless of any indicator about the business’s size.”³²

In summary, banks have to report much of this data in various forms without accounting for the amount of information they have to provide on these loans through the examination process, which includes examinations for fair lending and CRA compliance.

The CFPB appears to assert that these reports are not sufficient because “Federal sources of small business data are not standardized across agencies and cannot be easily compared.”³³

If that is the reason for this Proposal, why are further efforts not undertaken to standardize call reports and include any data the CFPB feels is insufficient? That would be significantly easier to implement and more cost effective for banks and other lenders while minimizing negative impacts for small business access to credit. Implementing an entirely new system of reporting, as set forth *supra*, will only further limit credit opportunities and avenues for credit. This duplicitous reporting simply makes no sense in light of current reporting that contains much, if not all, of the desired data. The FFIEC exists for a reason

³² Proposal, page 56362.

³³ Proposal, page 56363.

and it would be more judicious to work with the FFIEC and current frameworks than to implement an entirely new platform issues by one agency.

Nonetheless, the larger challenge appears to be those entities who currently do no reporting on small business lending. As noted in the Proposal, lending by nondepository institutions, which comprises almost half of all small business financing, do not have to report.³⁴

It makes more much more sense to create a new system for these non-reporting entities and to standardize reporting for current reporters under the existing system than to use a broad brush and require all lenders, of all different forms, to have to utilize a new reporting system. The primary source of missing data appears to be non-depository institutions. Consequently, the CFPB should subject solely those entities to a new reporting system and not those who are already reporting that are subject to substantial reporting and compliance requirements.

There is no reason for banks to have to report the same data multiple different ways. It makes substantially more sense to amend its current call reports to add any additional fields of information than it does to create a whole new system of reporting that will ultimately limit access to credit as set forth above. For these reasons the KBA believes the Proposal should not be adopted until further consideration is given to amending current reporting systems to include additional fields as necessary and to create a system for nonreporting entities than to require reporting lenders to duplicate reporting.

4. The CFPB Lacks Capacity and the Correct Fields to Analyze the Data

The Proposal sets forth a number of data fields it intends to collect, the number of which is somewhat unclear in the Proposal due to aggregated and disaggregated categories. Nonetheless, it is readily apparent that the Proposal is suggesting data fields similar to that of HMDA, which can include up to 110 data fields.

If the Proposal is adopted, there will unquestionably be a large amount of data submitted.

The CFPB has limited capacity. One bank recently waited several business days to have a question about an error code in its HMDA transmission answered. Furthermore, technical problems have hampered the HMDA system throughout its history. The CFPB simply does not appear to have the resources to service this new system.

Given this current limited capacity to assist with intaking data under HMDA, it is difficult to think that there will be sufficient capacity to intake and analyze this substantive data; much less make specific conclusions about whether an institution is meeting fair lending standards. The margin for error is tremendously small given the potential repercussions of a lender being charged with violations that may be untrue where data is the primary metric.

Furthermore, the data points themselves are flawed. In its analysis, the Proposal lists a number of data points it intends to collect.³⁵ Noticeably absent from these data points are metrics such as credit score. If an institution were to theoretically receive 1,000 applicants that were all denied on the basis low credit scores, that would not be reflected in the current system because that is not a data point listed for collection.

³⁴ Proposal, page 56360.

³⁵ Proposal, page 56358.

Lending is not solely based on demographics. Underwriting issues such as collateralization, loan-to-value, credit scores and other metrics have to be considered as part of the lending process to ensure regulated lenders, especially banks, meet safety and soundness standards set forth by their regulators. The Proposal simply fails to account for these standards.

While the Proposal is filled with data for interest rates, fees charges, broker fees and the cost of the transaction, there is little transparency provided as to what fields will be collected to reflect actual credit decisions. This is problematic as it only tells parts of a credit application and not the entirety of the loan process.

For these reasons the KBA believes the Proposal should not be adopted until further consideration is given to full data points that are necessary for showing credit quality to avoid any errors in determining a financial institution's position in small business lending.

5. The KBA Supports the Intent of the Rule

The KBA and its members have, and will continue to serve the needs of small businesses of various sizes, backgrounds and ownership throughout the Commonwealth of Kentucky. The KBA supports the intent of the rule to ensure that small businesses have access to lending and credit. However, the KBA believes that the Proposal, as written, will have the opposite effect of the Purpose and will severely small businesses' access to credit.

Thank you for considering our suggestions. If there are any questions, please do not hesitate to contact the undersigned.

Sincerely,



Debra K. Stamper
General Counsel
Kentucky Bankers Association
dstamper@kybanks.com

EXHIBIT 18

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TEXAS BANKERS ASSOCIATION;
RIO BANK, MCALLEN, TEXAS; and
AMERICAN BANKERS ASSOCIATION

Plaintiffs,

v.

Case No: 7:23-cv-00144

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his official
capacity as Director of the Consumer Financial
Protection Bureau,

Defendants.

DECLARATION OF VIRGINIA O'NEILL

In accordance with 28 U.S.C. § 1746, Virginia O'Neill offers the following declaration:

1. I am the American Bankers Association's ("ABA") Executive Vice President for Regulatory Compliance and Policy and am responsible for consumer protection regulatory policy advocacy.
2. ABA is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits, and extend \$12.2 trillion in loans. ABA advocates for banks before Congress, regulatory agencies, and the courts to drive pro-growth policies that help customers, clients, and communities thrive. ABA regularly advocates before the Consumer Financial Protection Bureau ("CFPB") to promote regulatory and supervisory policies that

protect consumers, while ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

3. The purpose of this declaration is to discuss the effects of a rule finalized by the CFPB on March 30, 2023, to implement section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Final Rule”). Section 1071 amended the Equal Credit Opportunity Act (“ECOA”) to require financial institutions to collect and report to the CFPB certain data regarding applications for credit by women-owned, minority-owned, and small businesses. 15 U.S.C. §1691c-2.
4. Unless otherwise stated, this Declaration is based upon my personal knowledge and belief and/or upon my review of business records of ABA. If called as a witness, I could and would testify competently thereto.
5. ABA’s membership covers depository institutions offering small business loans in each compliance tier category covered by Final Rule (e.g.—2,500 hundred loans or more; 500 to 2,499 business loans; and 100 to 499 small business loans).
6. I have worked closely with many ABA members, including members of ABA’s 1071 Working Group, to understand how the Final Rule will affect member banks. I have also discussed with ABA members the substantial costs that they will incur to implement and comply on an annual basis with the Final Rule.
7. After the CFPB released a proposed rule to implement 1071, ABA conducted a survey of members in November 2021, to quantify the cost of implementing and complying with the proposed rule. 479 banks and savings associations operating in 40 states responded to the survey. Survey respondents ranged from banks with assets of less than \$500 million to more than \$75 billion. The results of that survey show:

- a. 88% of respondents stated they would need to hire more full-time employees (FTEs) to comply with the data collection and submission requirements of the proposed rule and to conduct fair lending analysis of the data. The mean number of new FTEs required was 3. However, some community banks indicated they would need to hire 10 FTE.
- b. 73% of survey respondents stated that to comply with the proposed data collection and reporting requirements, the bank would need to update commercial loan operating software at a median estimated cost of \$29,029.
- c. 33% of survey respondents stated that to comply with the proposed data collection and reporting requirements, the bank would need to purchase commercial loan operating software at a median estimated cost of \$131,133.
- d. 67% of survey respondents stated that to comply with the proposed data collection and reporting requirements, the bank would need to purchase software to assist with data submission to the CFPB at a median estimated cost of \$23,927.
- e. Survey respondents estimated the following additional one-time implementation costs to comply with the proposed rule (all cost estimates are median responses):
 - Preparing/planning: \$15,388
 - Testing validating computer systems: \$8483
 - Developing applications, forms, and disclosures: \$5971
 - Training staff and third parties: \$8734
 - Developing policies and procedures: \$5416
 - Legal and compliance review: \$7992
 - Post implementation review: \$9696

8. The data collection and reporting requirements of the Final Rule are almost identical to those of the proposed rule; therefore, the survey data provide accurate median estimates of the implementation costs required to comply with the Final Rule.
9. ABA has advised its members to begin implementation immediately in order to meet the compliance dates established by the Final Rule.
10. ABA members currently are taking steps to implement the Final Rule. As a result, our members are already incurring or are about to incur direct economic injury caused by the Final Rule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12^h day of May, 2023 in Washington, DC.



Virginia O'Neil

Ver. 08/21/23

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

CASE NO.: 6:23-cv-00148-KKC

THE MONTICELLO BANKING COMPANY;)
CITIZENS DEPOSIT BANK OF ARLINGTON, INC.;)
FIRST COMMUNITY BANK OF THE HEARTLAND, INC.;)
FIRST SOUTHERN NATIONAL BANK;)
MORGANTOWN BANK & TRUST COMPANY;)
THE FARMERS BANK OF MILTON, KY;)
THE PEOPLES BANK, MARION, KENTUCKY;)
THE SACRAMENTO DEPOSIT BANK;)
and)
KENTUCKY BANKERS ASSOCIATION)
)
Plaintiffs,)
v.)
)
CONSUMER FINANCIAL PROTECTION)
BUREAU and ROHIT CHOPRA, in his official)
capacity as the Director of the Consumer)
Financial Protection Bureau)
)
Defendants.)
)

Order Granting Plaintiffs’ Motion For A Preliminary Injunction

Upon motion of the Plaintiffs, pursuant to F.R.C.P. 65 for a preliminary injunction, and the Court being sufficiently advised, the Court make the following findings and restrains the following acts:

1. The Court states the following reasons why the injunction is being issued:

A. The Plaintiffs, The Monticello Banking Company, Citizens Deposit Bank Of Arlington, Inc., First Community Bank Of The Heartland, Inc., First Southern National Bank, Morgantown Bank & Trust Company, The Farmers Bank Of Milton, Ky, The Peoples Bank, Marion, Kentucky, The Sacramento Deposit Bank, are eight banks that are headquartered and

conducting banking business in the Commonwealth of Kentucky, and their trade association, the Kentucky Bankers Association (the “KBA”) which appears on behalf of its member banks.

B. The Defendants are an agency of the United States of America, the Consumer Financial Protection Bureau (the “CFPB”), and its Director, in his official capacity.

C. Plaintiffs have moved that this Court issue a preliminary injunction enjoining the Defendants from implementing and enforcing the Small Business Lending Rule promulgated by the Defendant, Consumer Financial Protection Bureau (the “CFPB”), published in the Federal Register on May 31, 2023, 88 Fed. Reg. 35150-35571, and generally codified at 12 C.F.R. §1002.101 to §1002.114 (the “Small Business Lending Rule” or the “Final Rule”).

D. There is already a nationwide preliminary injunction staying implementation and enforcement of the Rule issued by the United States District Court for the Southern District of Texas (the “Texas Federal Court”) in a lawsuit, Case No. 7:23-cv-00144, in a lawsuit filed by the Texas Bankers Association, Rio Bank, and the American Bankers Association against the Defendants in this action (the “Texas CFPB Lawsuit”). A copy of that injunction (the “Texas Preliminary Injunction”) attached as Exhibit 5 to Plaintiffs’ Complaint in this proceeding.

E. However, the Texas Preliminary Injunction is limited to members of the Texas Bankers Association and the American Bankers Association. The named plaintiff banks in Kentucky as well as numerous other banks that are members of the Kentucky Bankers Association, are not members of either of the two trade associations the members of which were granted relief in the Texas case, so they have sought protections equal to those already granted by the Texas Federal Court.

F. In support of their motion, each of the Plaintiffs has submitted a declaration explaining how the Rule is affecting them. In each case, the Plaintiffs are incurring significant

compliance costs to comply with the Final Rule. Unrecoverable compliance costs are recognized as irreparable harm. *Commonwealth v. Biden*, 57 F.4th 545 (6th Cir. 2023).

G. It is entirely appropriate that the Plaintiffs in this case be protected from unrecoverable compliance costs pursuant to an invalid Rule, particularly when financial institutions located in Kentucky who are members of the American Bankers Association are currently receiving this injunctive relief. The Plaintiffs seek a “level playing field” among banks in Kentucky, and the factors to be considered by this Court when deciding to issue injunctive relief support granting this protection.

H. Furthermore, the factors this Court is required to consider when deciding whether to issue a preliminary injunction support granting the preliminary injunction ordered herein.

I. The Plaintiffs have shown a likelihood of success on the merits as evidenced by the issuance of the Texas Preliminary Injunction, the decision in *Community Fin. Servs. Ass’n of Am., Ltd v. Consumer Financial Protection Bureau*, 51 F.4th 616, 624 (5th Cir. 2021), *cert. granted*, 215 L.Ed.2d 104, 143 S. Ct. 978 (Feb. 27, 2023), the deficiencies under the Administrative Procedures Act (the “APA”) pointed out in Counts 2 through 4 of the Complaint, and the provision of the APA at 5 U.S.C. §705 which authorizes a “reviewing court” to “issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.”

J. The Plaintiffs will experience irreparable injury absent an injunction in the form of unrecoverable compliance costs and also being at a competitive disadvantage if ABA member banks in Kentucky are protected by the Texas Preliminary Injunction, but the Plaintiffs were not.

K. An injunction will not cause other substantial harm. The Defendants are already subject to the Texas Preliminary Injunction so it is not possible for them to argue that they would suffer substantial harm by issuance to the requested preliminary injunction. Also, preserving the status quo is a factor that weighs in favor of issuing a preliminary injunction.

L. The public interest is served by issuance of a preliminary injunction. This case involves aspects of the funding scheme for the CFPB that involve important constitutional questions about the structure of the federal government and the administrative state. As was noted in *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021), the public interest is clearly “served by maintaining our constitutional structure.” Moreover, given the pending resolution of the CFPB’s funding question by the Supreme Court’s review of the *Community Financial* decision, the interests of judicial efficiency also weigh heavily in favor of a stay. Furthermore, the Plaintiffs have raised serious questions about the adverse macroeconomic effects involving reduction of available credit to small businesses which support issuance of a preliminary injunction. Furthermore, even the CFPB acknowledges that the costs of compliance with the Final Rule will likely be passed on to small business borrowers, and protecting such borrowers from higher costs during this proceeding is in the public interest.

2. For the reasons stated in Paragraph 1 of this Order,

A. The Court **ORDERS** that Plaintiffs’ motion is **GRANTED**; and

B. Defendants, Consumer Financial Protection Bureau and Rohit Chopra, in his official capacity as the Director of the Consumer Financial Protection Bureau, and their officers, agents, servants, employees and attorneys, and all other person who are in active concert or participation with any of them (the “Enjoined Persons”), are preliminarily enjoined from

Ver. 08/21/23

implementing and enforcing the Final Rule against Plaintiffs and the members of the KBA until a trial on the merits of this action, or until further order of this Court.

C. The Enjoined Persons are further ordered to immediately cease all implementation of the Final Rule against the Plaintiffs as well as all other members of the KBA that are not already protected by the Texas Preliminary Injunction.

D. The Court further orders that all deadlines for compliance with the requirements of the Final Rule are stayed for Plaintiffs and the members of the KBA until a trial on the merits of this action, or until further order of this Court.

E. In the event that this injunction is set aside, Defendants are ordered to extend to Plaintiffs and the members of the KBA all deadlines for compliance with the requirements of the Final Rule to compensate for the period such deadlines are stayed.

F. The Court further orders that no security bond shall be required under Federal Rule Of Civil Procedure 65(c).

SO ORDERED this ____ day of _____, 2023.

Karen C. Caldwell
United State District Judge

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