

CA 93940; 831-647-4201; <http://montereybay.noaa.gov/sac/recruit.html>.

- National Marine Sanctuary of American Samoa Advisory Council: National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, P.O. Box 4318, Pago Pago, American Samoa 96799; 684-633-6500; <https://americansamoa.noaa.gov/council/recruitment/>.

- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: NOAA Inouye Regional Center, NOS/ONMS/PMNM, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808-725-5800; <http://www.papahanaumokuakea.gov/new-about/council/apply/>.

- Olympic Coast National Marine Sanctuary Advisory Council: Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362; 360-457-6622; <http://olympiccoast.noaa.gov/involved/sac/recruitment.html>.

- Proposed Lake Ontario Sanctuary Advisory Council; NOAA Office of National Marine Sanctuaries, 4840 South State Road, Ann Arbor, MI 48108; 734-741-2270; <https://sanctuaries.noaa.gov/lake-ontario/advisory/members.html>.

- Proposed Hudson Canyon Sanctuary Advisory Council; NOAA Office of National Marine Sanctuaries, 4840 South State Road, Ann Arbor, MI 48108; 734-741-2270; <https://sanctuaries.noaa.gov/hudson-canyon/involved/advisory-council.html>.

- Stellwagen Bank National Marine Sanctuary Advisory Council: Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; 781-545-8026; <http://stellwagen.noaa.gov/management/sac/recruitment.html>.

- Thunder Bay National Marine Sanctuary Advisory Council: Thunder Bay National Marine Sanctuary, 500 West Fletcher Street, Alpena, MI 49707; 989-356-8805; <https://thunderbay.noaa.gov/involved/recruitment.html>.

- Wisconsin Shipwreck Coast National Marine Sanctuary Advisory Council, University of Wisconsin Green Bay, Sheboygan Campus, One University Drive, Sheboygan, WI 53081; 989-766-3359; <https://sanctuaries.noaa.gov/wisconsin/involved/>.

Privacy Act Statement

Authority. The collection of information concerning the solicitation for applications for sanctuary advisory councils is authorized under the National Marine Sanctuaries Act, 16 U.S.C. 1445a, and Executive Order 13178, and in accordance with the

Privacy Act of 1974, as amended, (Privacy Act) 5 U.S.C. 552a.

Purposes. The collection of names, contact information, professional information, qualifications, and answers to the application questions is required in order for the Office of National Marine Sanctuaries to evaluate and appoint members to the sanctuary advisory councils. The information collected will be reviewed by NOAA employees, and may also be reviewed by current sanctuary advisory council members as part of the evaluation process.

Routine Uses. NOAA will use the application information for the purposes set forth above. The Privacy Act authorizes disclosure of the collected information for the following purposes: to NOAA staff for work-related purposes; for other purposes as set forth in the Privacy Act; and for routine uses published in one or more of the following Privacy Act System of Records Notices, as applicable: COMMERCE/DEPT-11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at <https://www.osec.doc.gov/opog/PrivacyAct/SORNs/dept-11.html>; COMMERCE/DEPT-18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at <https://www.osec.doc.gov/opog/PrivacyAct/SORNs/DEPT-18.html>; and OPM/GOVT-1, General Personnel Records, available at <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-govt-1-general-personnel-records.pdf>, which cover certain records regarding Federal employees and may also cover records of individuals who are not Federal employees who, through their service on a sanctuary advisory council, may be considered as volunteers providing gratuitous services to the agency without compensation; and, for individuals who are also members of a Regional Fishery Management Council, COMMERCE/NOAA-13, Personnel, Payroll, Travel, and Attendance Records of the Regional Fishery Management Councils.

Effects of Not Providing Information. Providing the application information is voluntary; however, if the information is not provided, the individual will not be considered for appointment as a member of a sanctuary advisory council.

Consent. By submitting an application to the Office of National Marine Sanctuaries for appointment to a sanctuary advisory council, you are consenting to the use and disclosure of the information for the purposes and routine uses described above. However,

if you prefer that your application be reviewed by NOAA employees only and not disclosed to current council members as part of the evaluation process, please contact the sanctuary advisory council coordinator to request internal review only, which will not result in any disadvantage or impact regarding your candidacy, or for any questions regarding this Privacy Act Statement.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648-0397) for the collection of public information related to the processing of ONMS national marine sanctuary advisory council applications across the National Marine Sanctuary System. Soliciting applications for sanctuary advisory councils fits within the estimated reporting burden under that control number. See <https://www.reginfo.gov/public/do/PRASearch> (Enter Control Number 0648-0397). Therefore, ONMS will not request an update to the reporting burden certified for OMB control number 0648-0397.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to: Office of National Marine Sanctuaries, 1305 East West Highway, N/NMS, Silver Spring, Maryland 20910.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is #0648-0397.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

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CONSUMER FINANCIAL PROTECTION BUREAU

Statement on Enforcement and Supervisory Practices Relating to the Small Business Lending Rule Under the Equal Credit Opportunity Act and Regulation B

AGENCY: Consumer Financial Protection Bureau.

ACTION: Policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is publishing a statutorily mandated small business lending rule concurrently with this Policy Guidance. The rule amends Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Consumer Financial Protection Act of 2010 (CFPA). This policy guidance informs covered financial institutions that the CFPB intends to focus its supervisory and enforcement activities in connection with the new rule in particular on ensuring that covered lenders do not discourage small business loan applicants from providing responsive data, including responses to lenders' ECOA-mandated demographic data requests.

DATES: This Policy Guidance is applicable August 29, 2023.

FOR FURTHER INFORMATION CONTACT: Vincent Herman, Senior Counsel, Office of Enforcement, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, Congress passed the CFPA. Section 1071 of the CFPA¹ amended ECOA² to require that financial institutions collect and report certain data regarding applications for credit for small businesses. The CFPB has now implemented section 1071 by means of a new rule that requires covered lenders to collect, and annually report to the CFPB, certain information from small businesses applying for credit.³

Part II.A below outlines core regulatory requirements relating to the rule's prohibition against discouraging applicants from providing responsive information. Lenders covered by the rule violate ECOA if they fail to observe these requirements. Part II.B explains that the Bureau intends for its enforcement and supervisory work in connection with the new rule to focus

¹ Public Law 111-203, tit. X, section 1071, 124 Stat. 1376, 2056 (2010), codified at ECOA section 704B, 15 U.S.C. 1691c-2. Section 1071's statutory purposes are to: (1) facilitate enforcement of fair lending laws; and (2) enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

² 15 U.S.C. 1691 *et seq.*

³ The rule requires lenders to seek some data from the applicant, some data from the applicant or appropriate third-party sources at the lender's discretion, and some data internally. This Policy Statement pertains to the collection of data from applicants.

on covered lenders' compliance with the rule's prohibition against discouraging applicants from providing responsive information.

II. Policy Guidance

A. Relevant Regulatory Requirements

Although the new rule provides a covered lender with considerable discretion in designing its data collection procedures, it requires that collection methods be designed not to have the effect of discouraging applicants from submitting responsive information.⁴ The rule also requires that requests for data be prominent to applicants, that applicants can easily respond to such requests, that such requests initially be made prior to notifying an applicant of the lender's decision on the application, and that the time and manner of a lender's collection procedures otherwise serve to obtain responsive information.⁵ In general, compliant lenders will seek to maximize the collection of responses from applicants and minimize missing or erroneous data.⁶

Covered lenders must also work to identify and respond to potential indicia of discouragement in their practices, policies, and procedures, including low response rates from applicants to lenders' requests.⁷ In general, this includes promptly investigating any indicia of potential discouragement; taking prompt remedial action if discouragement or other improper conduct is identified; monitoring for low response rates and for significant irregularities in any particular response that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses; monitoring response rates and responses by division, location, loan officer, or other factors to ensure that no discouragement or improper conduct is occurring in some parts of a financial institution, even if the financial institution maintains adequate response rates and responses overall; and providing adequate training to loan officers and other persons involved in collecting data from loan applicants.

⁴ 12 CFR 1002.107(c)(1) and (2)(iii); *see also generally* § 1002.107(c)(2).

⁵ 12 CFR 1002.107(c)(1), (2)(i), (ii), and (iv).

⁶ Comment 107(c)(2)-1.

⁷ 12 CFR 1002.107(c)(3) and (4). Response rates may appropriately be measured as the percentage of covered applications for which the lender obtains some type of response to data requests submitted to applicants. For demographic data subject to the statutory right to refuse, this includes responses of "I do not wish to provide this information" or similar, or if an applicant responds that there are no principal owners.

B. Enforcement and Supervisory Action

The CFPB intends to use its enforcement and supervisory authorities to focus on covered lenders' compliance with these requirements relating to the rule's prohibition against discouraging applicants from submitting responsive information. The CFPB intends to pay particular attention to covered lenders' response rates for data requested from applicants.⁸ As appropriate, the CFPB intends to consider how a lender's response rates compare to financial institutions of a similar size, type, geographic reach, or other relevant factors, because, as noted in the rule, low response rates may indicate discouragement or other failure by that lender to maintain proper collection procedures consistent with the rule.⁹ Similarly, the CFPB intends to consider, among other things, irregularities in a particular response (for example, very high rates, relative to similar lenders, of an applicant response of "I do not wish to provide this information" or similar) because that may indicate steering, improper interference, or other potential discouragement or obstruction of applicants' preferred responses.

III. Regulatory Requirements

This Policy Guidance is a non-binding general statement of policy articulating considerations relevant to the CFPB's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The CFPB has determined that this Policy Guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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⁸ Response rates may be relevant across all applicant-provided data, though they are particularly relevant for the collection of the protected demographic data pursuant to § 1002.107(a)(18) and (19). These inquiries are particularly sensitive and responsive data are especially important for the purposes of the rule.

⁹ 12 CFR 1002.107(c)(4).