

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—CFPB finalizes small business lending rule, creates first major sector database, (Mar. 31, 2023)

Banking and Finance Law Daily Wrap Up

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By Suzanne Cosgrove

The new rule implements the data collection requirements of section 1071 of the Dodd-Frank Act by requiring lenders to report small business credit applications details, including demographic data, lending decisions, and the price of credit.

The Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) amending 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). The rule requires covered lenders to collect certain information from small businesses that apply for credit, and to report that data annually to the CFPB.

The new rule is designed to work in concert with the Community Reinvestment Act, which requires certain financial institutions to meet the needs of the communities they serve, the CFPB said in a [press release](#).

Currently, there is a limited amount of data on small businesses' access to credit and no comprehensive information available about small business lending. Collection of the data is designed to help investors and lenders identify new opportunities to support economic growth, assist policymakers seeking to measure the effectiveness of government programs, and provide a data-driven approach to the detection of discrimination, the agency said.

Pandemic underscored need for data. As reported previously, the pandemic hit small businesses especially hard—more than 33 percent closed at its peak (see [Banking and Finance Law Daily](#), Sept. 1, 2021). "This small business loan census will give the public key data on this market to ensure that banks and nonbanks are serving small businesses fairly," CFPB Director Rohit Chopra said.

According to the House Select Subcommittee on the Coronavirus Crisis in October 2020, certain larger banks participating in the Paycheck Protection Program (PPP) "failed to prioritize small businesses in underserved markets, including minority and women-owned businesses." The report also found that small businesses had to wait longer to access the PPP funds once they submitted applications to banks.

Congress enacted a provision of the Dodd-Frank Act in 2010 that would require lenders to collect data on small business lending and provide it to the CFPB, and CFPB proposed its initial rule in 2021.

Information collection requirements. In line with the parameters of section 1071 "covered financial institutions" are required by the new rule to collect and report data on applications for credit for small businesses, including those owned by women or minorities.

[As defined by the CFPB](#), a "covered financial institution" is a partnership, company, corporation, association, trust, estate, cooperative organization, or other entity engaged in financial activity and had at least 100 covered originations in each of the two preceding calendar years. They include banks, savings associations, credit unions, online lenders, community development financial institutions, farm credit system lenders, commercial finance companies and nonprofit lenders.

In line with the Small Business Administration's guidelines, the CFPB defined a "small business" as one that had \$5 million or less in gross annual revenue for its preceding fiscal year. In addition, non-profit organizations and governmental entities are not considered small businesses in the final rule because they do not meet the SBA's definition.

Revisions detailed. The latest published rule includes a handful of key changes from the CFPB proposal issued in September 2021, itemized in a [CFPB fact sheet](#):

- It phases in implementation for the largest lenders: The final rule requires the largest lenders, which cover the bulk of the market, to collect and report data earlier than smaller lenders.
- Streamlines demographic and financial data collection: Loan officers will not have to determine an applicant's race or ethnicity. Small businesses will be able to self-identify as women-, minority- or LGBTQI+-owned.
- Reduces duplicative reporting requirements: Loans reportable under the Home Mortgage Disclosure Act will not need to report under the small business lending rule.
- Facilitates industry-driven data collection solutions: The finalized rule allows groups of financial institutions and third parties to develop services to assist lenders with data reporting.
- Gives extra time to lenders with strong records of service: The CFPB said it intends to issue a supplementary proposal that would, if finalized, provide additional implementation time for small lenders that have demonstrated high levels of success serving their local communities.

In its [policy and enforcement guidance](#), the Bureau noted that the new rule provides a covered lender with considerable discretion, but it warned against certain collection methods. The CFPB also said it intends to consider how a lender's response rates compare to financial institutions of a comparable size, type, or geographic reach because low response rates may indicate discouragement or failure by a lender to maintain proper collection procedures.

Mixed industry response. In a [statement](#), the American Bankers Association said it supports efforts to lend to underserved small businesses, but was disappointed that it "remains unnecessarily far-reaching. Given the cost of implementing these significant new reporting requirements and their impact on lending, some community banks may be forced to limit their small business loan programs," the ABA said.

Consumer Bankers Association (CBA) President and CEO Lindsey Johnson voiced [two other concerns](#): that the timeline for the rule's final implementation is insufficient, and that a defined \$5 million revenue threshold "will complicate the collection process by capturing data from businesses that are not traditionally considered to be small.

Finally, Independent Community Bankers of America (ICBA) President and CEO Rebeca Romero Rainey issued a [statement](#) indicating her concern about privacy provisions. "The Bureau has dramatically exceeded the clear letter of the law and is requiring community banks to collect numerous intrusive data points beyond what Congress mandated," Romero Rainey said.

Additional guidance. Dates and details for compliance information on the new CFPB rule are available, including a [Small Business Lending Rule Compliance Dates Info Sheet](#), and a [Small Business Lending Data Points Chart](#). Importantly, the Bureau also has published a [Filing Instructions Guide](#) and its [supplemental estimation methodology](#) for institutional coverage and market-level cost estimates.

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