

CFPB Proposes Small Business Lending Data Collection Rules



On September 1, 2021, the US Consumer Financial Protection Bureau (CFPB) proposed new requirements for financial institutions to collect and report data on small businesses' access to credit.ⁱ The proposed rule would require financial institutions to report for small businesses the amount and type of credit applied for and extended, demographic information, and key elements of the price of the credit offered. The goal of the proposed rule is to boost transparency and fair lending.

The 918-page proposal falls under Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect and report to the CFPB certain data regarding certain business credit applications.

The CFPB is considering the breadth and scope of its rulemaking and related impact on those it regulates, including whether to narrow the definition of "financial institution"; limit or clarify the definitions of "small business," "minority-owned business," and "women-owned business"; and/or carve out certain financial products that otherwise would fall under the definitions of "application" and "credit," triggering data collection. The CFPB also is considering which additional discretionary data points financial institutions must collect and timing considerations related to collection, reporting, and implementation.

The requirements would apply to a range of products, including lines of credit, term loans, merchant cash advances, and credit cards. Applications covered under the proposal would exclude reevaluation and extension requests, renewal requests on an existing business account (unless seeking additional credit), and inquiries and prequalification requests. The proposed requirements are part of the broader Wall Street reforms in the wake of the 2008 financial crisis.

Financial Institutions Covered

Section 1071(h) defines a “financial institution” as an entity engaging in financial activity, which includes both depository and non-depository institutions such as online lenders, commercial finance companies, government lending entities, platform lenders, and lenders involved in equipment. The CFPB proposes an activity-based exemption that would exclude financial institutions originating fewer than twenty-five “covered credit transactions” in each of the two preceding calendar years to “small businesses.”

Section 1071(h) adopts the meaning of a “small business” in the same way as the meaning of “small business concern” in the Small Business Act. The CFPB proposes a “small business” as an entity with \$5 million or less in gross annual revenue in its preceding fiscal year. Currently, Section 1071 requires financial institutions to gather data if a loan applicant is “women-owned, minority-owned, or small business.” The proposed rule would require data collection and reporting on loan applications under Section 1071 only for small businesses. As a result, women- or minority-owned businesses that do not fall under the small business definition would be excluded from data collection and reporting requirements.

Data Points Collected

Section 1071 requires ten statutorily mandated data points for each applicant:

- Status as a minority- or women-owned small business
- Application number
- Application date
- Type of loan or credit
- Loan purpose
- Amount of credit or credit limit applied for
- Type of action take and date of action
- Location by census tract
- Gross annual revenue of the business
- Race, sex, and ethnicity of the principal owner(s)

The CFPB proposal considers an additional three data points for collection and reporting:

- Credit pricing
- Applicant time in business
- Applicant NAICS industry code and number of employees

Implementation

The CFPB is considering allowing financial institutions approximately two calendar years to implement the proposed requirements following issuance of the final Section 1071 rule.

Benefits and Drawbacks

A Federal Reserve survey earlier this year revealed that a vast majority of small businesses have lost revenue during the COVID-19 pandemic.ⁱⁱ In particular, minority-owned businesses struggled the most, and many worried about access to credit.

The goals of Section 1071 are to ensure fair and equitable financial opportunities. These proposed requirements are intended to boost transparency and fair lending. However, there is potential for unintended consequences, such as increased compliance costs, an overly complex and overly broad requirement for data collection, and an increased burden for lenders resulting in restricted access to credit for small business.

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i The CFPB announcement and additional resources may be found here: <https://www.consumerfinance.gov/1071-rule/>
ii US Federal Reserve System, Small Business Credit Survey: 2021 Report on Employer Firms (2021), available at: <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2021-sbcs-employer-firms-report>

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