



At the intersection of small business lending and regulatory compliance

Initial perspectives related to the Consumer Financial Protection Bureau’s final rule implementing Section 1071 of the Dodd-Frank Act



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The Consumer Financial Protection Bureau (CFPB) made the collection and reporting of certain small business lending data mandatory for “covered financial institutions,” including banks and nonbanks. Requirements set forth in the agency’s Final Rule represent a significant modification in credit lifecycle management for small business lending.¹ Initial collections begin as early as October 1, 2024, with the initial reports due as early as June 1, 2025. Noncompliance could impair banks from both a reputational and legal risk perspective.

5 insights you should know

Covered financial institutions and covered credit transactions: The Final Rule expanded applicability to in-scope financial institutions (banks and nonbanks) based on the level of activity (originating at least 100 covered credit transactions) and established several small business transaction types (i.e., loans, lines of credit, credit cards, merchant cash advances, and credit products used for agricultural purposes).

Tiered compliance date: The newly implemented and tiered compliance dates are dependent on the number of covered transactions that a financial institution originated in 2022 and 2023. The first reports are due October 1, 2024, for those in-scope institutions with at least 2,500 covered transactions. Financial institutions with lower origination volumes begin collection and reporting activities in later years.

Data field expansion: Demographic data points related to the applicant’s ownership have been extended to include (1) minority-, women-, and LGBTQI+-owned businesses and (2) the ethnicity, race, sex, and gender of the applicant’s principal owners. While these data points have remained categorically consistent, there has been a substantial increase in the expectations on the level of detail required at the point of collection.

Cross regulation intersections: The Final Rule reduced duplicative data collection and reporting by excluding Home Mortgage Disclosure Act (HMDA)-reportable transactions as covered credit transactions, creating linkages with the Community Reinvestment Act (CRA) reporting for census tract information, and aligning to the forthcoming CRA modernization, likely mid-2023.

Firewall and reporting requirements: The Final Rule implements the requirement to limit access to demographic-related data to persons involved in making any determination on the application (i.e., firewall). This, in conjunction with the regulatory submission requirements, creates a need to manage and protect multiple data sets, including the use of upfront (full), middle (masked), and end (enriched) data.

5 actions to take now

1 Confirm applicability of institution: With the activity-based approach outlined by the CFPB, nearly all small business lenders will need to comply with the Final Rule, so the determining and documenting covered transactions completed in the two preceding calendar years will be an important and immediate activity.

2 Determine your tier: Understand what data is available today to assess the total number of small business originations from businesses with gross revenue of \$5 million or less. If the data is not available, then begin to devise a plan to capture new or refinanced originations between October 1 and December 31 to determine your compliance date.

3 Detailed impact analysis: Utilizing the Final Rule requirements conduct a detailed product-level impact analysis across first line processes, technology, data infrastructure, and data quality controls along with recalibration of risk and compliance oversight to identify potential gaps and deficiencies.

4 Stand-up multi-disciplined program management: Given the extensive nature of the rule and impact to small business operations and fair lending programs it is vital that a well governed program be established that determines active engagement of first line product and process owners, technology system administrators, data infrastructure and controls professionals, and support provided by risk and compliance oversight and challenge.

5 Engage technology and data vendors and understand actions: Meet with vendors who provide small business credit and lending systems or data service providers, understand what solutions they are developing, and determine what gaps will remain to be solved through idiosyncratic configurations or other vendor and internal solutions.

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¹ CFPB, “Small Business Lending under the Equal Credit Opportunity Act (Regulation B),” final rule, March 30, 2023.