
Summary of Proposed Rule on Small Business Lending Data Collection – Section 1071 of the Dodd-Frank Act

Background

On September 1, 2021, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) issued a proposed rule (“1071 Rule”) that, when finalized, would require financial institutions to collect and report to the Bureau certain data regarding certain small business credit applications. The Bureau is statutorily mandated under Section 1071 of the Dodd-Frank Act to direct financial institutions to collect and report many of these data points, but the Bureau has used its discretion to require the collection and reporting of several more data points that are not explicitly mandated under law.

The CFPB is currently soliciting feedback on the proposed rule, with comments due within 90 days of publication in the Federal Register (the proposed rule has yet to be published, but ICBA expects that comments will be due approximately in mid-December). To aid in our efforts of formally responding to this proposed rule, ICBA will actively solicit banker feedback. Though not comprehensive, this summary is intended to provide a baseline understanding of the proposed rule so that you will have a working knowledge of how the rule might affect your operations. The full rule is [available here](#), along with a CFPB-produced [summary](#) and [chart of proposed data points](#).

Data Collection and Reporting

Covered financial institutions would be required to compile and maintain the following data from small business loan applications. A financial institution may rely on statements from the applicant when compiling data, unless it verifies the information provided, in which case it shall use the verified information. The Bureau proposes that a covered financial institution maintain procedures to collect the following information at a time and in a manner that is reasonably designed to obtain a response.

- (1) **Unique identifier** – an alphanumeric identifier, starting with a unique legal entity identifier of the financial institution.
- (2) **Application date** – the date the covered application was received by the financial institution.
- (3) **Application method** [*not statutorily mandated*] – the means by which the applicant submitted the covered application to the financial institution (online, in-person, etc.).
- (4) **Application recipient** [*not statutorily mandated*] – whether the applicant submitted the covered application directly to the financial institution (or affiliate), or whether the applicant submitted the covered application indirectly to the financial institution via a third party.
- (5) **Credit type**
 - a. Credit product
 - b. Guarantees
 - c. Loan term



- (6) **Credit purpose** – up to three credit purposes from a list of 15 options.
 - (7) **Amount applied for** – the initial amount of credit or credit limit requested.
 - (8) **Amount approved or originated**
 - a. For closed-end credit that is approved but not accepted – the amount approved
 - b. For closed-end credit that is originated – the amount originated
 - c. For open-end credit that is originated or approved, but not accepted – the amount of the credit limit approved
 - (9) **Action taken** – reported as
 - a. Originated
 - b. Approved but not accepted
 - c. Denied
 - d. Withdrawn by applicant
 - e. Incomplete
 - (10) **Action taken date**
 - (11) **Denial reasons** [*not statutorily mandated*] – principal reason(s) the financial institution denied the covered application.
 - (12) **Pricing information** [*not statutorily mandated*]
 - a. Interest rate
 - i. if **fixed**, report the applicable rate.
 - ii. If **adjustable**, report the margin, index value, and index name.
 - b. Total origination charges – expressed in dollars, the total amount of all charges payable directly/indirectly by the applicant and imposed directly/indirectly by the financial institution at/before origination as incident/condition to extension of credit.
 - c. Broker fees – expressed in dollars, the total amount of origination charges that are fees paid by the applicant directly to a broker or to the financial institution for delivery to a broker.
 - d. Initial annual charges – expressed in dollars, the total amount of all non-interest charges that are scheduled to be imposed over the first annual period of the transaction.
 - e. Additional cost for merchant cash advances or other sales-based financing – expressed in dollars, the difference between the amount advanced and the amount to be repaid.
 - f. Prepayment penalties – Whether the financial institution *could have* included a charge to be imposed for paying the transaction’s principal before the date on which the principal is due and whether the financial institution in fact did charge a prepayment penalty.
 - (13) **Census tract** – location where the proceeds of the credit applied for or originated would be applied. If unknown, then the location of the main office or headquarters of the applicant or another location associated with the applicant.
 - (14) **Gross annual revenue**
 - (15) **NAICS code** [*not statutorily mandated*]
 - (16) **Number of workers** [*not statutorily mandated*]
 - (17) **Time in business** [*not statutorily mandated*]
 - (18) **Minority-owned business status** – the financial institution should collect and report this information in a specific manner.
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- (19) **Women-owned business status** – the financial institution should collect and report this information in a specific manner.
- (20) **Ethnicity, race, and sex of principal owners** – the financial institutions should collect and report this information in a specific manner .
- (21) **Number of principal owners** [*not statutorily mandated*]

Definitions

Covered Application

An oral or written request for a covered credit transaction that is made in accordance with the procedures and process typically used by the financial institution for the type of credit requested. However, excluded from coverage are:

- (1) inquiries and prequalification requests, and
- (2) reevaluations, extensions, or renewal requests on existing credit accounts, unless the requests seek additional credit amounts.

Covered Financial Institution

A financial institution that originates at least 25 covered credit transactions in each of the two preceding calendar years. If more than one financial institution was involved in the origination of a credit transaction, only the financial institution that makes the final credit decision shall count the transaction toward the origination threshold.

Covered Credit Transactions

Any extension of credit to a small business, EXCLUDING:

- (1) Trade credit – a financing arrangement where a business acquires a good or service from another business without making immediate payment.
- (2) Public utilities credit
- (3) Securities credit
- (4) Incidental credit

Minority-Owned Business

A business for which (1) more than 50 percent of its ownership or control is held by one or more minority individuals, and (2) more than 50 percent of its net profits or losses accrue to one or more minority individuals.

Principal Owner

A person who directly owns 25 percent or more of the equity interests of a business.

Small Business

A business that had \$5 million or less in gross annual revenue for its preceding fiscal year.

Women-Owned Business

A business for which (1) more than 50 percent of its ownership or control is held by one or more

women, and (2) more than 50 percent of its net profits or losses accrue to one or more women.

Reporting of Data to the Bureau

The proposal indicates that data would be collected on a **calendar year basis** and reported to the Bureau by **June 1** of the following year. Only one report should be submitted per origination. If more than one financial institution is involved in the origination of a covered credit transaction, the financial institution that makes the final credit decision approving the application shall report the loan as an origination.

The CFPB will publish a *Filing Instructions Guide* with technical details about the formatting of data submissions.

Publication of Data

Under the proposal, **the CFPB would publish the data reported to it by financial institutions and make it available to the public on an annual basis.** At its discretion, the CFPB may delete or modify the data if a deletion or modification would advance a privacy interest.

A bank must make available to the public on its website, or otherwise upon request, a statement that its small business lending application register is available on the CFPB's website.

Recordkeeping

The proposed rule would require financial institutions to retain evidence of compliance with this rule, including a copy of their small business lending application register, for at least **three years** after they are required to be submitted.

Financial institutions would be required to maintain, separately from the rest of the application and accompanying information, an applicant's responses to the financial institution's inquiries regarding whether an applicant is a minority-owned or a women-owned business, and the ethnicity, race, and sex of the applicant's principal owners.

Information should not include any name, specific address, telephone number, email address, or any personally identifiable information (PII) concerning any individual who is, or is connected with, an applicant.

Firewall Provisions

Referred to as a "firewall," the proposed rule restricts the access of certain individuals (underwriters, employees making a determination relating to an application, etc.) at a financial institution or its

affiliates to certain race or demographic information provided by an applicant.

If a bank determines that an employee “should have access” to covered information, it must provide a notice to the applicant of the underwriter’s access to such information, along with notice that the financial institution may not discriminate on the basis of such information.

Enforcement

Violations of Section 1071 may result in administrative sanctions and/or civil liability. However, bona fide errors in compiling, maintaining, or reporting data are not subject to enforcement. A bona fide error is one that was “unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error.”

Effective date, compliance date, and special transitional rules

Effective date

The effective date for the final rule would be 90 days after its publication in the Federal Register.

Compliance date

The compliance date for the rule would be approximately 18 months after the date of publication of the final rule in the Federal Register.