



Section 1071: Prepare Now for Major Small Business Reporting Rule

When planning for the new small business reporting rule, think HMDA + business. The new rule is similar to HMDA, with some substantial additions: compliance monitoring requirements, firewall standards, business status reporting, and small business-related data points. Of course, there is the ever-present challenge of ensuring commercial loans are adequately documented to support accurate recordkeeping and reporting. These new requirements are sweeping, and lenders should learn the requirements of Section 1071 and develop programs and procedures to comply with these data collection and reporting requirements well before they take effect.

BACKGROUND

The Consumer Financial Protection Bureau (CFPB) released the Final Rule implementing reporting requirements for small business lending on March 30, 2023. The CFPB is adding a new Subpart B to Regulation B to implement the requirements of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Starting dates for the data collection requirements under the Final Rule will be based on the number of small business loans lenders originate annually.

Number of Loans	Starting Date
More than 2,500	October 1, 2024
500 to 2,500	April 1, 2025
100 to 500	January 1, 2026

NEW BUSINESS STATUS, DEMOGRAPHIC INFORMATION

Under the Final Rule, lenders must report whether an applicant is a minority-owned, women-owned, and/or LGBTQI+-owned business. That is, one or more individuals, of one or more of these three status groups, holds more than 50 percent of the business' ownership or control and accrues more than 50 percent of the net profits or losses. ***The lender must maintain records of applicants' responses separately from the application and accompanying information.***

Ethnicity, Race, and Sex should be collected for a small business' primary owner applicants. Unlike HMDA reporting, lenders will not be required to record this data based on visual observation if the applicant did not provide it. A lender is permitted, but not required, to reuse previously collected data if it was collected within the preceding 36 months. Several caveats relate to using previously obtained information.



COMPLIANCE MONITORING

Lenders must maintain procedures reasonably designed to obtain a response for applicant-provided data. Additionally, the Final Rule requires lenders to maintain procedures to monitor for potential discouragement, including identifying low response rates for the applicant-provided data. Procedures should also include monitoring for potential steering, improper interference, or other potential discouragement or obstruction of an applicant's response. Regulators will expect to see evidence of adequate training for identifying, and investigating potential discouragement and prompt remedial action if discouragement or improper conduct is evident.

FIREWALL

The Final Rule generally prohibits any employee or officer with a role in the credit determination from accessing demographic information obtained in accordance with the Rule's requirements. An employee with a role is one who -

- Recommends that another employee approve or deny the application;
- Participates in a larger group, such as a committee, that makes a credit determination (unless in a function such as minute-taking); and/or
- Underwrites the application.

If a lender determines certain employees should have this information, the lender must provide a notice to the small business applicants whose demographic information will be accessed.

COVERED AND EXCLUDED TRANSACTIONS

➔ Covered Transactions

A *covered transaction* meets the definition of small business credit under Regulation B, with certain exceptions. A *covered application*, which triggers data collection and reporting, is an oral or written request for a covered transaction made in accordance with the lender's procedures for the type of credit requested.

Covered transactions include:

- Loans
- Lines of credit
- Credit cards
- Merchant cash advances
- Credit products used primarily for agricultural, business or commercial purposes
- Refinancing to a small business

➔ Transactions Not Covered

The following transactions are not reportable:

- Factoring
- Credit extended to government entities or non-profit organizations
- Leases
- Consumer purpose credit
- Trade credit
- HMDA-reportable transactions
- Insurance premium financing
- Public utilities credit
- Securities credit
- Incidental credit
- Purchases of credit
- Inquiries and prequalification requests
- Applications for reevaluation, extension or renewal requests on existing business transactions, unless the request seeks additional credit

Be sure to follow the definitions and guidance in the Final Rule. Terms used in the Final Rule might not match the terms already in use in lender policies, procedures, and internal guidance. For example, names used by the lender for "factoring," "leases," or "prequalifications" may not correlate with the Final Rule's definitions.

KEY DATA POINTS

Here is a sampling of the 81 key data point requirements.

Credit Type - Credit Product

- Term Loan (Secured/Unsecured)
- Line of Credit (Secured/Unsecured)
- Credit card account
- Private label credit card
- Merchant cash advance

If an applicant requests more than one type of credit, each should be reported as a separate application.

Credit Purpose

- Purchase
- Construction or refinance of owner or non-owner occupied real property
- Purchase, refinance, or rehab of motor vehicles or equipment
- Business start-up
- Working capital
- Business expansion or acquisition

Report up to three purposes.

Number of Workers

- Number of people who work for

the applicant, including part-time, full-time and seasonal employees but not principal owners or volunteers.

Gross Annual Revenue (GAR)

- Report applicant's GAR for the preceding fiscal year.
- Lender may rely on applicant's statements if based on estimation.
- If GAR is verified or updated, the new information must be reported.

Pricing Information

- Total Origination Charges
- Total Broker Fees
- Initial Annual Charges
- MCA/Sales-Based Financing Costs Flag and Value
- Prepayment Penalty

Amount Applied For

- Report the initial amount requested.
- For multiple or a range of amounts, report the **midpoint** of that range.

A lender is not required to report amounts discussed before an application is made.

OFFICIAL CFPB RESOURCES

[Small Business Lending Rule Info Sheet](#)

[Small Business Lending Rule Data Points Chart](#)

[Small Entity Compliance Guide](#)

[Filing Instructions Guide \(for Data Collected in 2024\)](#)

[Final Rule and Official Interpretations \(Actual Rule begins on Page 797\)](#)