

### Issue Update

On March 30, 2023 the CFPB issued a final rule to implement section 1071 of the Dodd Frank Act. Section 1071 is an amendment to the Equal Credit Opportunity Act, which requires lenders to collect, and report to the Consumer Financial Protection Bureau, information about lending to “women owned, minority-owned and small businesses.” Section 1071's purpose is to facilitate enforcement of fair lending laws and community development efforts. Although the CFPB’s final rule has been delayed and challenged in court, section 1071 has not been repealed, and advocacy on the rule’s compliance burden and invasion of privacy remain critical.

The final rule applies to banks, credit unions, fintechs and other nonbank lenders that make at least 100 small business loans in each of the two preceding calendar years. Covered “small business loans” are loans to for-profit entities with no more than \$5 million in gross annual revenue in the preceding fiscal year. Reporting will be required on loans originated as well as applications that do not result in loans. The CFPB expanded the 13 data points Congress mandated, requiring lenders to report a total of 81 data points. The data points include the race, gender, and ethnicity of the business's principal owners, and whether the business is owned by minorities, women, and/or LGBTQI+ individuals.

The CFPB staggered the final rule’s mandatory compliance date based on loan volume, with large volume lenders collecting data beginning October 1, 2024; medium-volume lenders would begin collecting data on April 1, 2025; and smaller-volume lenders would begin collecting data on January 1, 2026.

However, the compliance dates have been delayed for all financial institutions. The ABA and the Texas Bankers Association (TBA) challenged the final rule in Federal court in Texas on several grounds, including whether the CFPB’s funding structure is constitutional. On July 31, 2023, the court agreed to stay the final rule’s compliance dates until the Supreme Court rules on a separate legal challenge to the constitutionality of the CFPB’s funding structure. The court also ordered the CFPB to extend the tiered compliance deadlines to compensate for the time period that runs from July 31, 2023 until the Supreme Court rules in the other case.

### Why It Matters

New data collection rules will impose additional compliance burden on banks, especially community banks. While section 1071 applies to non-banks and banks alike, banks will be regularly examined for compliance and data accuracy and non-banks will not face such scrutiny. Non-banks are not subject to Bureau examination for compliance with 1071.

Similarly, the history of redlining enforcement in the mortgage context indicates that regulators and consumer groups will focus on banks' 1071 data for evidence of discrimination and pay scant attention to non-banks. We are concerned that, rather than motivating banks to increase their lending to small businesses, the costs associated with the 1071 data collection and the anticipated reliance on statistical manipulation in fair lending supervision and enforcement may *discourage* bank lending to small businesses, particularly by community and mid-size banks.

## Section 1071 Rulemaking / Small Business Lending Data Collection and Reporting

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Finally, the CFPB will make the 1071 data public at the loan level, creating severe risks to privacy of small businesses.

### Recommended Action Items

**Cosponsor the Small LENDER Act (S. 1159/ H.R. 1806)**, which would exempt lenders originating fewer than 500 small business loans in each of the preceding two calendar years from 1071, and limit 1071's application to small businesses with gross annual revenues of \$1 million or less.

**Cosponsor the Bank Loan Privacy Act (H.R.1810)**, which would require the CFPB to engage in a rulemaking to determine which small business financial data can be made public. A rulemaking is the best way to ensure that all stakeholders, including small businesses themselves, are heard.