

March 30, 2023

## **Factsheet: Required Rulemaking on Small Business Lending Data**

The Consumer Financial Protection Bureau (CFPB) today finalized a rule to increase transparency in small business lending, promote economic development, and combat unlawful discrimination. Under the required small business lending rule, lenders will collect and report information about the small business credit applications they receive, including geographic and demographic data, lending decisions, and the price of credit.

### **Congressional Mandate**

In 2010, Congress enacted sweeping reforms in the wake of a financial crisis that devastated the American economy. A key provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted requirements that would result in lenders collecting data on small business lending and providing it to the CFPB. Congress charged the CFPB with publishing that data, as well as protecting the privacy of small business applicants. The goals of this provision are to help communities, governments, and the financial industry find investment opportunities while promoting fair lending to all entrepreneurs.

Though Congress enacted this provision in 2010, the CFPB only proposed a rule in 2021. In 2019, the California Reinvestment Coalition filed a lawsuit which led to a court order requiring the CFPB to issue a final rule by March 31, 2023. Today's publication of the final rule meets the deadline ordered by the court.

### **Final Rule**

The CFPB has completed the rulemaking, and the final small business lending rule will:

- **Foster transparency and accountability:** Financial institutions, both traditional and alternative, will collect and share information on small business loan applications. The data will encompass details about businesses owned by women and minorities, as well as location, demographic aspects, lending decisions, and credit pricing.
- **Provide a comprehensive market view:** The rule will provide comprehensive data on small business credit applications for the first time. The rule applies to non-banks, including new “Big Tech” and other online lenders, as well as banks and credit unions. The resulting database will cover a range of important data, including credit pricing and availability in different sectors and areas of our country.

- **Empower data-driven decision-making:** The CFPB will establish a comprehensive, publicly accessible database containing small business credit application information. This resource will include geographic and demographic data, lending decisions, and loan pricing, enabling policymakers, borrowers, and lenders to better address economic development needs and adapt to future challenges. The database will be designed to protect privacy and avoid reidentification risk.
- **Create a level playing field:** Bank and non-bank institutions alike will collect and report data about their small business lending activity. Non-bank and online lenders account for a growing portion of small business financing — roughly \$550 billion each year — yet they have historically been subject to little oversight and are not covered by the Community Reinvestment Act.
- **Establish clear definitions:** The rule relies on a straightforward definition of small business that lenders can easily understand and apply in collecting and reporting data. This minimizes burden on lenders and ensures consistent data. Under the rule, a small business has gross revenue of \$5 million or less in its most recent fiscal year.
- **Model form for lender use:** The final rule contains a short, plain-language form that lenders can, but are not required to, use to collect demographic data. As that form reflects, small businesses may choose not to provide demographic data. Lenders must not discourage applicants from providing data. In light of the importance of the data to Congress's stated purposes, the CFPB intends to focus its supervisory and enforcement activities in connection with the new rule on ensuring that lenders do not discourage applicants from submitting information, as explained in a policy statement accompanying the final rule.

## Changes to Simplify Data Collection

The final rule published today contains some key changes from the proposal issued in September 2021. The changes reflect the CFPB's consideration of more than 2,100 public comments on the proposal, as well as extensive public input predating the proposal. These changes will make the rule more effective and easier to follow.

- **Phases in implementation for the largest lenders first:** The CFPB found that there were key differences in how large financial institutions would implement the rule, compared to relationship-based local lenders. The final rule requires the largest lenders, which cover the bulk of the market, to collect and report data earlier than smaller lenders. Specifically:
  - Lenders that originate at least 2,500 small business loans annually must collect data starting October 1, 2024.
  - Lenders that originate at least 500 loans annually must collect data starting April 1, 2025.
  - Lenders that originate at least 100 loans annually must collect data starting January 1, 2026.

While the rule announced today requires data collection and reporting for those that make at least 100 loans annually, the rule will still cover the vast majority of bank small business lending, based on the CFPB's analysis. Lenders originating less than 100 loans per year will still be required to adhere to fair lending laws.

- **Streamlines and improves demographic and financial data collection:** In a change from the proposal, loan officers will not be required to make their own determinations of an applicant's race or ethnicity — or any other demographic information. Small businesses will be able to self-identify as women-, minority-, or LGBTQI+-owned. Lenders will be able to rely on the financial and other information provided by the small business.
- **Reduces duplicative reporting requirements:** Loans reportable under the Home Mortgage Disclosure Act will not need to be reported under the small business lending rule. The rule will also work in concert with forthcoming rules under the Community Reinvestment Act's reporting requirements. Under the regulators' Community Reinvestment Act proposal, data submitted under the CFPB's rule will satisfy the relevant Community Reinvestment Act requirements.
- **Facilitates industry-driven solutions on data collection:** The rule finalized today allows groups of financial institutions and third parties, including industry associations, to develop services and technologies to assist lenders with collecting and reporting data. The CFPB is committed to working collaboratively with technology providers selected by industry participants to facilitate the submission and are open to industry innovations to facilitate the process.
- **Give extra time to lenders with strong records of service to meet the needs of the communities they serve:** The CFPB intends to issue a supplementary proposal that would, if finalized, provide additional implementation time for small lenders that have

demonstrated high levels of success in serving their local communities, as measured by their performance under relevant frameworks like the Community Reinvestment Act and similar state laws.

## **Small businesses drive the nation's economy**

- **Foundation of the economy:** From 1995 to 2020, small businesses generated more than 60 percent of all new jobs in the United States. As of 2019, some 33 million small businesses accounted for the employment of nearly 50% of all U.S. private sector workers.
- **Rural stability and prosperity:** Small farms are essential to the resilience and prosperity of rural communities as well as to securing our national food supply. In 2016, there were more than 2 million family farms with annual gross sales of under \$500,000, well within the rule's \$5 million threshold.
- **Engines of wealth creation:** Small businesses are vital to wealth creation, particularly for minority- and women-owned businesses. As of 2018, some 10 million small businesses in the United States were minority-owned and 12 million were women-owned.
- **Post-pandemic growth:** Since the COVID-19 pandemic, female and minority self-employment has risen at a faster rate than male and white self-employment, further emphasizing the importance of small businesses to wealth creation for women and minority communities.
- **Vital financing for underserved communities:** Access to financing is especially important for those entrepreneurs, disproportionately from historically underserved communities, who are not able to self-finance from personal household wealth. In 2019, median Black and Hispanic net worth was 13% and 19%, respectively, of median white household net worth, even as many white small business owners also lack sufficient personal wealth to self-finance.

## **A Vital and Opaque Market**

The CFPB estimates the size of the small business financing market at approximately \$1.4 trillion in 2019. Yet despite its importance, there is no comprehensive data on the small business lending market. Data from bank or credit union call reports, as well as reporting under the Community Reinvestment Act, do not track lending by non-depository financial institutions and do not include information about applications, only originations. These data mostly lack demographic information about applicants and borrowers.

- **Market fragmentation:** The market is fragmented across numerous different product types, making small business lending very different from residential mortgage lending. Among other sources of financing, small businesses use credit cards and lines of credit; equipment, vehicle, and other closed-end loans, both secured and unsecured; and merchant cash advances. Some lenders offer a variety of products while others specialize.
- **Rapid evolution:** The market is changing quickly due to consolidation, the development of new products, and increased use of financial technology by both online and traditional lenders. These changes may bring opportunities for increased access and affordability, but also carry risks of abuse or bias.
- **Online lenders' growth:** Non-depository lenders are gaining market share and in 2019 accounted for around \$550 billion in financing to small businesses. Data show that minority-owned businesses were particularly heavily dependent on non-depository online lenders to access funds from the Paycheck Protection Program.
- **Challenges due to data scarcity:** The lack of comprehensive data, especially when set against the complexity and fast evolution of the market, makes it harder for small businesses to assess credit options and access the credit they need. Lenders and community groups also face challenges in understanding where there may be gaps in the market for the development of new credit products. Government entities lack information to evaluate where there are gaps in oversight. These challenges are particularly acute with respect to non-depository lenders, which are not subject to reporting frameworks such as the Community Reinvestment Act.
- **Impact of public data:** Data collected under the small business lending rule will provide insight into credit supply and demand across financing products. This will allow financial institutions and the public to analyze credit availability and cost over time, and address community development needs.
- **Informing policies and rules:** Government programs provided over \$1 trillion in lending to small businesses in 2020 and 2021, with \$800 billion coming from the Paycheck Protection Program and \$200 billion from the Economic Injury Disaster Loan Program. Had comprehensive market data been available sooner, it would have informed the development of the Paycheck Protection Program, potentially allowing Congress to better target the much-needed support for struggling small businesses.

## **Rulemaking Timeline**

- **July 2010:** Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1071 of the Act amended the Equal Credit Opportunity Act to require lenders to collect and report to the CFPB data about credit applications from small businesses and women- or minority-owned businesses.
- **May 2019:** California Reinvestment Coalition sued the CFPB for failure to implement the required small business lending rulemaking.
- **September 2021:** The CFPB issued a proposed rule to implement the Congressional mandate. The agency subsequently received and reviewed more than 2,100 comments from the public about this proposal.