

# Section 1071 NPRM

Small business lending data collection notice of proposed rulemaking

CFPB Advisory Committee Meetings | November 3 and 4, 2021



# Disclaimer

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# Section 1071 of the Dodd-Frank Act

(ECOA section 704B, 15 U.S.C. 1691c-2)

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- Requires financial institutions to collect and report to the Bureau certain data regarding applications for credit for women-owned, minority-owned, and small businesses.
- Statutory purpose: (1) “to facilitate enforcement of fair lending laws” and (2) “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”

# Rulemaking milestones

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- May 2017: Bureau issued an RFI and white paper, and held a field hearing on small business lending
- Nov. 2019: Bureau convened a symposium on section 1071
- Feb. 2020: Bureau entered into a settlement agreement in *CRC* litigation setting deadlines for 1071 SBREFA process and a process for setting proposed and final rule deadlines
- Sept. 15, 2020: Bureau released SBREFA Outline of Proposals Under Consideration and Alternatives Considered

# Rulemaking milestones

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- Oct. 2020: Bureau convened SBREFA Panel and met with small entity representatives
- Dec. 15, 2020: Bureau released Final Report of the Small Business Review Panel
- Sept. 1, 2021: Bureau released 1071 NPRM
- Oct. 8, 2021: 1071 NPRM published in the *Federal Register*
- Jan. 6, 2022: 1071 NPRM comment period closes

# 1071 NPRM: Covered financial institutions

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- Financial institution (FI) = any partnership, company, corporation, association (incorporated or not), trust, estate, cooperative organization, or other entity that engages in any financial activity.
- Covered financial institution = an FI that originated at least **25** covered credit transactions for small businesses in each of the two preceding calendar years.

# 1071 NPRM: Covered credit transactions

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- Covered credit transaction = an extension of business credit that is not an excluded transaction.
  - Includes loans, lines of credit, credit cards, merchant cash advances, credit transactions for agricultural purposes, certain HMDA-reportable transactions.
- Excluded: trade credit, public utilities credit, securities credit, incidental credit.
- Also not covered: factoring, leases, consumer-designated credit used for business purposes, credit secured by certain investment properties.

# 1071 NPRM: Covered applications

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- Covered application = an oral or written request for a covered credit transaction, made in accordance with procedures used by an FI for the type of credit requested.
- Would not include:
  - Reevaluation, extension, or renewal requests on an existing business credit account (unless the request seeks additional credit amounts).
  - Inquiries and prequalification requests.

# 1071 NPRM: Small businesses

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- Small business = a “small business” as defined in the Small Business Act and SBA regulations.
- However, notwithstanding the SBA’s size standards, for the 1071 rule a business would be a small business only if its gross annual revenue is \$5 million or less in past fiscal year.
- The Bureau is seeking SBA approval for this alternate size standard.

# 1071 NPRM: Data points (in general)

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- FIs would be required to compile and maintain the data points enumerated in the rule regarding covered applications from small businesses.
- FIs would be required to maintain procedures to collect applicant-provided data at a time and in a manner reasonably designed to obtain a response.

# 1071 NPRM: Data points (in general)

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- FIs would be permitted to rely on statements made or information provided by an applicant when collecting and reporting 1071 data, although for most data points if the FI verifies information, it must report the verified information.
- FIs would be permitted to reuse certain previously collected data in certain circumstances.

# 1071 NPRM: Data points

*Certain data points are, or could be, provided by applicant*

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- Data points related to the credit applied for:
  - Credit type (credit product, types of guarantees, loan term).
  - Credit purpose.
  - Amount applied for.
- Data points related to the applicant's business:
  - Census tract based on location provided by the applicant.
  - Gross annual revenue for the applicant's preceding full fiscal year.
  - 6-digit NAICS code appropriate for the applicant.
  - Number of workers.
  - Applicant's time in business.
  - Number of principal owners of the applicant.

# 1071 NPRM: Data points

*Certain data points are, or could be, provided by applicant*

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- Data points addressing demographics of ownership:
  - Whether the applicant is a minority-owned or women-owned business.
  - Ethnicity, race, and sex of the applicant's principal owners.
- NPRM includes a sample form FIs could use in collecting this info.
- Principal owners' ethnicity and race would be collected using aggregate categories and disaggregated subcategories.
- Principal owners would have the option to self-describe their sex (instead of or in addition to choosing male and/or female).
- If no ethnicity, race, or sex is provided for any principal owner, FIs would be required to collect at least one principal owner's race and ethnicity (but not sex) via visual observation or surname if the FI meets with any principal owners in person or by video.

# 1071 NPRM: Data points

*Certain data points are generated or supplied solely by the FI*

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- For all applications:
  - Unique identifier for each application/extension of credit.
  - Application date.
  - Application method (i.e., how the application was submitted).
  - Application recipient (that is, whether the FI received the application directly or via a third party).
  - Action taken by the FI on the application.
  - Action taken date.

# 1071 NPRM: Data points

*Certain data points are generated or supplied solely by the FI*

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- For denied applications:
  - Denial reasons.
- For applications that are originated or approved but not accepted:
  - Amount originated or approved.
  - Pricing information (including, as applicable, interest rate, total origination charges, broker fees, initial annual charges, additional cost for MCAs or other sales-based financing, and prepayment penalties).

# 1071 NPRM: Firewall

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- Section 1071 requires that certain data collected be shielded from underwriters and certain other persons involved in making any determination concerning an application for credit
- Proposing that the prohibition not apply to an employee or officer if the FI determines that it is not feasible to limit that employee's or officer's access to protected demographic information, and FI provides notice.

# 1071 NPRM: Recordkeeping and reporting 1071 data

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- 1071 data would be collected on a calendar year basis and reported on or before June 1 of the following year.
- The Bureau plans to provide technical instructions regarding submitting 1071 data via a *Filing Instructions Guide*.
- FIs would be required to provide certain information about themselves when submitting 1071 data.

# 1071 NPRM: Publication of 1071 data

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- The Bureau would make available to public, on an annual basis and on its website, the data submitted to it by FIs.
  - These data would be made available subject to deletions or modifications made by the Bureau, at its discretion, if the Bureau determines that such deletions or modifications would advance a privacy interest.
  - The Bureau would make its deletion and modification decisions using a balancing test.
- FIs would retain evidence of compliance, including a copy of its small business lending application register, for at least 3 years after the register must be submitted.

# 1071 NPRM: Other provisions

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- The NPRM also addresses:
  - Administrative sanctions and civil liability under ECOA for violations of the 1071 rule.
  - Safe harbors and “tolerance thresholds” for certain types of errors.
  - Voluntary collecting and reporting of 1071 data by certain FIs.

# 1071 NPRM: Effective date, compliance date

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- 1071 rule would become effective 90 days after publication in the *Federal Register*.
- Compliance with the final rule would not be required until approximately 18 months after publication in the *Federal Register*.

# 1071 rulemaking resources

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[cfpb.gov/1071-rule](http://cfpb.gov/1071-rule)



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