

# Insights

## CFPB Seeks to Ease Compliance with Small Business Lending Data Collection Rule

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The Consumer Financial Protection Bureau (“CFPB”) has proposed changes to the small business lending data collection requirements under section 1071 of the Equal Credit Opportunity Act (“ECOA”). Section 1071 requires financial institutions to collect and report to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses. The CFPB promulgated rules under Regulation B to implement section 1071 of ECOA. Various court orders challenging the rules have resulted in interim final rules that have extended compliance deadlines.

The CFPB stated that the broad data collection approach in the existing rule was not conducive to the long-term success of the data collection regime. As a result, several changes are being proposed by the agency.

### **Covered Credit Transactions and Covered Financial Institutions**

The proposed rule would revise various definitions that reduce the transactions required to be reported and the number of financial institutions required to report the data to the CFPB.

- Exclude merchant cash advances, agricultural lending, and small dollar loans (less than \$1,000) from the rule’s definition of “covered credit transaction.”
- Exclude Farm Credit System lenders from the rule’s definition of “covered financial institution.”
- Increase the threshold from 100 to 1,000 “covered credit transactions” for two consecutive years within the definition of “covered financial institution.”
- Change the definition of a small business to those having gross annual revenue of more than \$1 million instead of the previous \$5 million threshold.

### **Data Fields**

For those institutions that will be required to report data to the CFPB, the proposed rule would significantly narrow the data points required to be collected.

The rule would remove the data points for application method, application recipient, denial reasons, pricing, and number of workers. The proposed rule would also remove references to and questions about “LGBTQI+”-owned business status. Questions related to “sex/gender” would be changed to “sex,” and would only be answered with a response of male/female, as opposed to the previously required free-form text field.

The CFPB may also remove the requirement to provide disaggregated data on the race and ethnicity of principal owners. They are seeking comment as to whether the rule should be revised to require collection of

only aggregate ethnicity and race.

### **Applicant Rights and Discouragement**

The proposed rule change also modifies the CFPB's sample form to emphasize applicants' right to refuse to provide demographic information.

The rules related to discouragement of applicants providing their demographic information would be significantly pulled back, as the CFPB views them as redundant and unnecessarily complex. The proposed rule also removes certain requirements for financial institutions' monitoring for signs of discouragement.

### **Financial Institution Next Steps**

The proposed rule would require financial institutions to count their originations of covered credit transactions in each of calendar years 2026 and 2027 to determine whether they must comply with the data collection requirements in 2028.

Financial institutions will need to change the way "covered credit transactions" are tracked and counted to establish whether they are considered a "covered financial institution" under the new proposed rule. As described above, many transactions will no longer be counted, and the annual threshold for number of transactions will be increased. As a result, many institutions that have prepared to report this data to the CFPB will no longer be covered under the proposed rule changes.

Those financial institutions who will still be required to report the lending data required by the revised regulation will need to ensure their systems, processes, and forms adhere to the rule, and that the proper data is collected and reported to the CFPB in accordance with the proposed rule.

Krieg DeVault's Financial Institutions attorneys are closely monitoring the changes to the data collection requirements under section 1071 of the Equal Credit Opportunity Act and are able to provide counsel to financial institutions on the impact of these changes to their operations.

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