

Section 1071 – Final Rule Summary

Background

Section 1071 is a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires covered financial institutions (“FIs”) to collect and report data on small business lending. On March 30, 2023, the Consumer Financial Protection Bureau (“CFPB”) finalized a rule that implements Section 1071. **The rule applies to FIs that originated at least 100 small business loans** in each of the two preceding calendar years, and the reporting requirements will be phased in over time based on the loan volume of the institution.

The rule requires FIs to collect and report data on small business lending, including information on the race, ethnicity, and gender of business owners, as well as the size of the loan, the interest rate, and the business's revenue, among other datapoints. The data must be collected for all applications for credit, including denials and approvals.

Though not comprehensive, this ICBA-produced summary is intended to provide a baseline understanding of the final rule so that you will have a working knowledge of how the rule might affect your operations. The full rule is [available here](#), along with a [CFPB-produced summary](#), a [chart of data points](#), and a [Filing Instruction Guide](#). The CFPB also produced [SBL Help](#), designed to provide oral and written assistance to FIs about their obligations to collect and report data on small-business loans under the final rule.

Scope of Coverage

Covered financial institution → A FI that originates at least 100 covered credit transactions in each of the two preceding calendar years.

Covered transaction → An extension of business credit that is not otherwise excluded. This includes term loans, credit cards, lines of credit, and agricultural loans. Transactions that are **NOT** covered include HMDA-reportable loans, factoring, or leases.

Small business → A business with gross annual revenue of \$5 million or less for its preceding fiscal year.

Covered application → An oral or written request for a covered credit transaction, in accordance with procedures used by a financial institution. Reevaluations, extension, or renewal requests on an existing credit account are **NOT** considered covered applications, unless the

NOTE on “Covered application”

The Bureau intended to provide flexibility on this term with data collection obligations triggered at different times for different FIs. For example, a FI may not use a standard form and instead define an application as a request for credit only when the applicant authorizes the creditor to pull a credit check. In that instance, the credit check will be a trigger to collect data.

In contrast, a prospective applicant expressing interest in the types of credit products would not trigger the collection of data in this example.

request seeks additional credit. Inquiries and prequalification requests are also **NOT** covered applications.

Other Defined Terms

Principal owner → An individual who directly owns 25 percent or more of the equity interests of a business.

Minority-owned business → A business for which one or more minority individual holds more than 50 percent of its ownership **OR** control, **AND** for which more than 50 percent of net profits/losses accrue to one or more such individuals.

Women-owned business → A business for which more than 50 percent of its ownership **OR** control is held by one or more women, **AND** more than 50 percent of its net profits or losses accrue to one or more women.

LGBTQI+-owned business → A business for which one or more LGBTQI+ individuals hold more than 50 percent of its ownership **OR** control, **AND** for which more than 50 percent of the net profits or losses accrue to one or more such individuals.

Effective Date, Compliance Date, and Special Transitional Rules

Compliance dates for covered FIs to begin collecting data are staggered, based on a FI's loan volume.

- A covered financial institution that originated **at least 2,500** covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply beginning **October 1, 2024**.
- A covered financial institution that originated **less than 2,500 but at least 500** covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply beginning **April 1, 2025**.
- A covered financial institution that originated less than 500 but **at least 100** covered credit transactions for small businesses in each of calendar years 2022 and 2023 shall comply beginning **January 1, 2026**.

A financial institution that **did not originate at least 100** covered credit transactions for small businesses in each of calendar years 2022 and 2023 but **subsequently originates at least 100** such transactions in two consecutive calendar years shall comply with the requirements no earlier than January 1, 2026.

Covered FIs are permitted but not required to collect information regarding whether an applicant's business is minority-owned, women-owned, or LGBTQI+-owned or information regarding the ethnicity, race, and sex of principal owners beginning 12 months prior to its applicable compliance date. A financial institution that is unable to determine the number of covered credit transactions it originated

for small businesses in each of calendar years 2022 and 2023 for purposes of determining its compliance date is permitted to use any reasonable method to estimate its originations to small businesses for either or both of the calendar years 2022 and 2023.

Data Collection and Reporting

Covered FIs are required to compile and maintain data regarding covered applications from small business loan applications, following the manner prescribed in the [Filing Instructions Guide](#). The FI may rely on information from the applicant, or appropriate third-party sources, when compiling data and is not required to verify the data. If, however, the FI does verify applicant-provided data, then the FI must report the verified data. FIs are permitted to reuse previously collected data so long as the data were collected within the 36 preceding months.

1. **Unique identifier** → An alphanumeric identifier, starting with the legal entity identifier of the financial institution, unique within the financial institution to the specific covered application.
2. **Application date** → The date the covered application was received or the date shown on a paper or electronic application form.
3. **Application method** → The means by which the applicant submitted the covered application directly or indirectly to the financial institution.
4. **Application recipient** → Whether the applicant submitted the covered application directly to the financial institution or its affiliate, or to the financial institution via a third party.
5. **Credit type** → The following information regarding the type of credit applied for or originated:
 - a. *Credit product* - The credit product.
 - b. *Guarantees* - The type or types of guarantees that were obtained or would have been obtained if transaction were originated.
 - c. *Loan term* - The length of the loan term, in months, if applicable.
6. **Credit purpose** → The purpose or purposes of the credit applied for or originated.
7. **Amount applied for** → The initial amount of credit or the initial credit limit requested by the applicant.
8. **Amount approved or originated**
 - a. *Closed-end approved*, not accepted – report the amount approved by the FI;
 - b. *Closed-end originated* – report the amount of credit originated; and
 - c. *Open-end* that is originated/approved; not accepted – report the amount of the credit limit approved.
9. **Action taken** → Reported as originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete.
10. **Action taken date** → The date of the action taken by the financial institution.
11. **Denial reasons** → The principal reason(s) the financial institution denied the application.
12. **Pricing information** → The following information regarding the pricing of a covered credit transaction that is originated or approved but not accepted, as applicable.
 - a. *Interest rate*
 - i. If fixed - report the interest rate that is or would be applicable to the covered credit transaction.

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- ii. If adjustable – report the margin, index value, initial rate period expressed in months (if applicable), and index name that is or would be applicable to the covered credit transaction.
 - b. *Total origination charges* → The total amount of all charges payable directly/indirectly by the applicant and imposed directly/indirectly by the financial institution.
 - c. *Broker fees* → The total amount of all origination charges that are fees paid by the applicant directly/indirectly to a broker or to the financial institution for delivery to a broker.
 - d. *Initial annual charges* → The total amount of all non-interest charges that are scheduled to be imposed over the first annual period of the covered credit transaction.
 - e. *Additional cost for merchant cash advances or other sales-based financing* → The difference between the amount advanced and the amount to be repaid, expressed in dollars.
 - f. *Prepayment penalties*
 - i. Report whether the FI has ability to charge prepayment penalty.
 - ii. Report whether prepayment penalty clause is included in credit.
13. **Census tract** → The census tract in which is located (waterfall requirement based on order):
- a. The address or location where the proceeds of the credit applied for or originated will be or would have been principally applied; or
 - b. If location of where proceeds will be applied is **unknown**, then the address or location of the main office or headquarters of the applicant; or
 - c. If location of where proceeds will be used and location of borrower's headquarters are both **unknown**, then another address or location associated with the applicant.
14. **Gross annual revenue** → The applicant's gross annual revenue for its preceding fiscal year.
15. **NAICS code** → A 3-digit North American Industry Classification System (NAICS) code for the applicant.
16. **Number of workers** → The number of non-owners working for the applicant.
17. **Time in business** → Time the applicant has been in business.
18. **Minority-owned, women-owned, and LGBTQI+-owned business statuses** → Whether the applicant is a minority-owned, women-owned, and/or LGBTQI+-owned business.
19. **Ethnicity, race, and sex of principal owners** → The ethnicity, race, and sex of the applicant's principal owners.
20. **Number of principal owners** → The number of the applicant's principal owners.

NOTE on Datapoint #19 – ethnicity, race, and sex of principal owner

FIs are **NOT** required to conduct a visual observation and/or surname analysis on applicants that do not provide this information, in contrast from the proposed rule.

Further, a covered FI shall maintain, separately from the rest of the application and accompanying information, an applicant's responses to the FI's inquiries regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business and regarding the ethnicity, race, and sex of the applicant's principal owners.

Time and Manner of Collection

A covered financial institution will be required to maintain procedures to collect this data at a time and in a manner that are reasonably designed to obtain a response. For data collected directly from the applicant, the financial institution will need to have procedures that are reasonably designed to obtain a response, including:

1. The initial request for applicant-provided data occurs prior to notifying an applicant of final action taken on a covered application;
2. The request for applicant-provided data is prominently displayed or presented;
3. The collection does not have the effect of discouraging an applicant from responding to a request for applicant-provided data; and
4. Applicants can easily respond to a request for applicant-provided data.

FIs will be required to monitor for low response rates of applicant-provided information.

NOTE on time and manner of collection

The Bureau will review data to determine whether there are unusually high approval rates or unusually low rates of incomplete and withdrawn applications. Such anomalies might indicate that the FI's definition of "application" in its procedures are capturing information later in the process than actually occurs in practice.

Further, if a FI has very high approval rate because all "applications" have been vetted earlier in the process, the FIs stated definition of "application" likely does not reflect actual practices.

Firewall

A FI employee that is involved in a credit determination cannot have access to an applicant's responses to inquiries regarding whether the applicant is a minority-owned business, a women-owned business, or an LGBTQI+-owned business, or information regarding the ethnicity, race, and sex of the applicant's principal owners.

Exception: The above prohibition shall not apply if a FI determines that it is not feasible to limit an employee's or officer's access to an applicant's responses and the FI provides the required notice to the applicant. It is not feasible to limit an employee or officer's access if they "may need to collect, see, consider, refer to, or otherwise use the information to perform that employee's or officer's assigned job duties."

Notice: If a bank intends to use the above exception, they must provide notice of such to the applicant. The final rule provides a sample notice form for FIs to use. (See Appendix E to Part 1002 – Sample Form for Collecting Certain Applicant-Provided Data under Subpart B).

Reporting of Data to Bureau

FIs are required to report data to the Bureau on or before June 1 following the calendar year for which data is collected. For example, data collected from Jan 1 through Dec 31, 2026 shall be reported no later than June 1 2027.

An authorized representative of the covered financial institution with knowledge of the data shall certify to the accuracy and completeness of the data. [The detailed Filing Instruction Guide is linked here.](#)

Subsidiaries: A covered financial institution that is a subsidiary of another covered financial institution shall complete a separate small business lending application register. It can be submitted either directly or through its parent to the CFPB.

Multiple FI Participation: Where it is necessary for more than one FI to make a credit decision in order to approve a single covered credit transaction, only the last covered financial institution with authority to set the material terms of the covered credit transaction is required to report the application.

Required Data: A FI shall provide each of the following with its submission:

1. Its name.
2. Its headquarters address.
3. The name and business contact information of a person that the Bureau or other regulators may contact about the FI's submission.
4. Its Federal prudential regulator, if applicable.
5. Its Federal Taxpayer Identification Number (TIN).
6. Its Legal Entity Identifier (LEI).
7. Its Research, Statistics, Supervision, and Discount identification (RSSD ID) number, if applicable.
8. Parent entity information, if applicable, including:
 - a. The name of the immediate parent entity;
 - b. The LEI of the immediate parent entity, if available;
 - c. The RSSD ID number of the immediate parent entity, if available;
 - d. The name of the top-holding parent entity; (v) The LEI of the top-holding parent entity, if available; and
 - e. The RSSD ID number of the top-holding parent entity, if available.
9. The type of financial institution that it is, indicated by selecting the appropriate type or types of institution from the list provided.
10. Whether the financial institution is voluntarily reporting covered applications from small businesses.

Privacy Concerns - Publication of Data and Other Disclosures

On an annual basis, the CFPB will make the data reported to it by FIs available to the public. However, the CFPB may make deletions or modifications to the data if the Bureau determines that deletion or modification of the data would advance a privacy interest.

The CFPB may compile and aggregate data submitted by FIs and make any compilations or aggregations of such data publicly available as they deem appropriate.

A FI shall not disclose or provide to a third party the information it collects regarding whether a business is minority-owned, women-owned, or LGBTQI+-owned or information regarding the ethnicity, race, and sex of principal owners except to further compliance with the Act or as required by law.

NOTE on availability of data

A covered financial institution shall make available to the public on its website, or otherwise upon request, a statement that the covered FI's small business lending application register is or will be available from the Bureau.

Recordkeeping

A covered FI shall retain evidence of compliance with Section 1071, which includes a copy of its small business lending application register, **for at least three years** after the register is required to be submitted to the CFPB.

A covered FI shall maintain, separately from the rest of the application and accompanying information, an applicant's responses to the FI's inquiries regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business and regarding the ethnicity, race, and sex of the applicant's principal owners.

In reporting a small business lending application register, maintaining the register, and maintaining a separate record of information described above, a FI shall not include any name, specific address, telephone number, email address, or any other personally identifiable information concerning any individual who is, or is connected with, an applicant.

Enforcement

Violations of Section 1071 and its implementing regulations are subject to administrative sanctions and civil liability.

Bona fide error: A bona fide error is not a violation of Section 1071 or its implementing regulations. A bona fide error is defined as an “error in compiling, maintaining, or reporting data with respect to a covered application is one that was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error.”

Safe harbors: The following are not violations of Section 1071 or its implementing regulations:

1. ***Incorrect entry for application date*** → An incorrect date is not a violation if the date reported is within three days of the actual application date.
2. ***Incorrect entry for census tract*** → incorrect entry of a census tract is not a violation if the financial institution obtained the census tract by correctly using a geocoding tool provided by the FFIEC or the Bureau.
3. ***Incorrect entry for NAICS code*** → An incorrect three-digit NAICS code is not a violation if:
 - a. the financial institution obtained the code by relying on an applicant’s representations or on an appropriate third-party source regarding the NAICS code; **or**
 - b. the financial institution made an error in identifying the NAICS code itself, the financial institution maintains procedures reasonably adapted to correctly identify a 3-digit NAICS code.
4. ***Incorrect determination of small business status, covered credit transaction, or covered application*** → A financial institution that collects information regarding whether an applicant’s business is minority-owned, women-owned, or LGBTQI+-owned or information regarding the ethnicity, race, and sex of principal owners of an applicant, but later concludes that it should not have collected such data, does not violate Section 1071 or its implementing regulations if it had a reasonable basis for believing that the application was a covered application at the time it collected the data.

Severability

If any provision of this regulation, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.