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Making Sense of Small Biz Fair Lending Compliance

Starting in July 2025, the first tier of small business lenders will begin collecting certain data to report to the Consumer Financial Protection Bureau under Rule 1071, issued pursuant to Section 1071 of the Dodd–Frank Act. While the compliance deadlines still remain, it looks as though they may soon be stayed again, as new leadership at the CFPB seeks to revise the rule.^[1]

The final rule,^[2] first issued on March 30, 2023, amends Regulation B, which implements the federal Equal Credit Opportunity Act. Rule 1071 requires covered financial institutions to collect and report data to the CFPB from credit applications for small businesses, including women-owned and minority-owned businesses.

The purpose behind Rule 1071 is to facilitate the enforcement of fair lending laws by the CFPB and other agencies, and to identify community development needs. To meet this goal, covered financial institutions will be required to collect and annually report certain data points on applications for credit for small businesses, including applications for women-owned, minority-owned and small businesses.

While compliance dates were previously stayed pending ongoing litigation,^[3] the CFPB since issued an interim final rule^[4] in June 2024 extending the compliance dates to begin in July 2025. Covered financial institutions with the largest volume of covered lending transactions are to begin collecting data for reporting the following year. The cutoffs for each tier are discussed below.

Who Is Affected

Rule 1071 applies to “covered financial institutions”—i.e., any financial institutions originating at least 100 covered credit transactions for small businesses in each of the two preceding calendar years—which will have to fulfill reporting requirements.

Financial institutions are those entities engaged in financial activity, and this applies to both chartered depository institutions and

nondepository lenders. Covered credit transactions include loans, lines of credit, credit cards, merchant cash advances and credit products used for agricultural purposes.

Small businesses are defined under the rule as those with \$5 million or less in gross annual revenue. This gross annual revenue can be aggregated with that of affiliates.

Compliance and Scope

Section 1002.107(a)(1) through (20) of the rule outlines the data institutions must collect on covered transactions. Some of these data points include: credit type; purpose; requested amount; application date; approval/denial date; the types and amounts of certain fees charged; whether the applicant is a minority-owned, women-owned and/or LGBTQI+-owned business; and the ethnicity, race and sex of the applicant's principal owners.

It is important to note that, while there is no obligation to verify applicant-provided information, Rule 1071 requires covered institutions to maintain procedures "reasonably designed" to collect applicant-provided information.

Reasonably designed procedures are those designed to maximize data collection and minimize missing or erroneous data. Institutions will also be required to report any "low response rate" for applicant-provided data under Section 1002.107(c)(4), as this could indicate an institution is discouraging applicants from responding.

Current Compliance Dates and Filing Deadlines

The new compliance dates and deadlines for submitting the first filing are based upon tiers determined by the volume of originated covered transactions in each of calendar years 2022 and 2023.

- Tier 1 institutions (those with at least 2,500 originations) must start collecting data in compliance with the rule on July 18, 2025, and submit their first report on June 1, 2026.
- Tier 2 institutions (those with at least 500 originations) must begin collecting data by Jan. 16, 2026, and submit their first

filing by June 1, 2027.

- Tier 3 institutions (those with at least 100 originations) must begin collecting data by Oct. 18, 2026, and submit their filing by June 1, 2027.

Challenges to Enforcement

President Donald Trump has issued several executive orders that seem to conflict with portions of the rule. These include an order to federally recognize only two sexes,^[5] male and female, and an order ^[6] requiring executive agencies to terminate diversity, equity, inclusion and accessibility programs (known as DEIA programs), regulations, policies and mandates.

While executive orders do not immediately stay the compliance deadlines or do away with Rule 1071 itself, the CFPB, under new leadership, has announced plans to revisit the rule via a notice of proposed rulemaking, or NPRM.

On April 3, in a court filing in *Revenue Based Finance Coalition v. CFPB*—a case challenging the rule in the U.S. District Court for the Southern District of Florida—the CFPB stated in response to an unopposed motion to stay proceedings that it “anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible,” which “may moot or otherwise resolve [the] litigation.”^[7]

Turmoil at the CFPB

The announcement comes after widespread changes at the CFPB. In February, then-acting CFPB Director Scott Bessent directed employees to stop nearly all activities, and the CFPB began requesting emergency pauses in litigation challenging the rule.^[8] Similarly, in an email to staff, Bessent instructed the CFPB to “suspend the effective dates” of new rules.

Under Bessent, the CFPB, like many federal agencies, faced mass layoffs in February. Then, in yet another turn of events, on March 13, the U.S. District Court for the District of Maryland in *State of Maryland v. United States Department of Agriculture*^[9] ordered federal agencies to rehire many laid-off employees.

To add to this uncertainty, the White House has nominated Jonathan McKernan as the new director of the CFPB.^[10] McKernan was on the Federal Deposit Insurance Corp. board of directors and previously served as co-chairman of a special committee overseeing the investigation of sexual harassment allegations within the FDIC.

While McKernan stated he intends to “fully and faithfully execute the law” if confirmed as CFPB director, he has expressed skepticism about the effectiveness of DEIA initiatives. In his questions for the record^[11] during nomination hearings, McKernan was asked whether, from his experience on the special committee, he thought the administration’s efforts to eliminate DEIA programs might increase or decrease workplace misconduct, to which he replied, “[M]y experience at the FDIC was that the FDIC’s DEIA offices were not effective in identifying or mitigating workplace misconduct.”^[12]

McKernan has not spoken directly on the rule, and it is uncertain whether the NPRM will be issued prior to his confirmation as director. However, should the NPRM be issued after leadership switches hands, McKernan’s statement regarding DEIA suggests he may seek to pare back the requirements of Rule 1071, if not reverse it entirely.

It is unclear how the NPRM, if issued, may affect Rule 1071, but another delay in compliance deadlines seems imminent. For those institutions that have already begun aligning internal processes to comply with the 2025 deadlines, revisions to the rule may affect the data points to be collected, or, as suggested in the April 3 filing, render the exercise entirely moot.

Additional Pressure Points

The rule faces other challenges that institutions should monitor in the coming months. For example, it may be overturned pursuant to the Congressional Review Act. To this end, on Feb. 4, 2025, Rep. Roger Williams, R-Texas, introduced a bill to repeal Dodd-Frank Section 1071. Shortly thereafter, on Feb. 12, 2025, substantially the same bill, S.B. 557, the 1071 Repeal to Protect Small Business Lending Act, was introduced in the Senate and referred to the Committee on

Banking, Housing and Urban Affairs.[13]

Amid these mounting pressures, it is still important to highlight that these challenges to enforcement may not occur before the first reporting deadlines, and the impact of a future NPRM on the rule as it stands is unknown—**thus, for covered small business lenders, the best course of action may be to prepare for compliance with Rule 1071 as it currently stands.**

Key Takeaways

Despite the uncertainty brought on by ongoing developments concerning Rule 1071, the compliance dates have not yet been stayed, and the rule has not yet been revised. As these dates draw near, small business lenders will need to carefully consider not only what data they are collecting and how it is collected, but also what their data shows about their fair lending compliance efforts.

Even through the uncertainty, the rule remains, and covered financial institutions should prepare accordingly. Beginning to collect data and detect any disparities now can ensure your institution will have better results to report in the future. If you would like to discuss how these recent developments may impact your institution, or other fair lending concerns, please contact the authors or any member of Frost Brown Todd's [Consumer Financial Services and Consumer Protection](#) team.

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[1] See, e.g., Defendants' Response To Plaintiff's Unopposed Motion To Stay The Section 1071 Rule And Hold Proceedings In Abeyance, Case No. 1:23-cv-24882-DSL, Revenue Based Finance Coalition v. CFPB, (S.D. Fla., 2025).

[2] See Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 FR 35150-01 (March 31, 2023); see also Small Business Lending under the Equal Credit Opportunity Act (Regulation B), Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

[3] See Order Granting-in-Part and Denying-in-Part Pls.' Mot. for Prelim. Injunction, Texas Bankers Ass'n, No. 7:23-cv-00144 (S.D. Tex. July 31, 2023), ECF No. 25, https://files.consumerfinance.gov/f/documents/cfpb_pi_order_texas_bankers.

[4] See Small Business Lending under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b-extension-of-compliance-dates/>.

[5] See Exec. Order No. 14168, Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government (January 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

[6] See Exec. Order No. 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity (January 21, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

[7] See Defendants' Response To Plaintiff's Unopposed Motion To Stay The Section 1071 Rule And Hold Proceedings In Abeyance, Case No. 1:23-cv-24882-DSL, Revenue Based Finance Coalition v. CFPB, (S.D. Fla., 2025).

[8] See, e.g., Notice Of Emergency Ex Parte Application For Stay, Case No. 2:24-Cv-04108-Rgk-Ajr, Consumer Financial Protection Bureau v. Solo Funds, Inc., (C.D. Cal. 2025), <https://business.cch.com/BFLD/CFPB-v-SoLo-Funds-Ex-Parte-Application-For-Stay-Of-Proceedings-ECF-87-02032025.pdf>.

[9] State of Maryland v. United States Department of Agriculture, Case No. 1:25-cv-00748, (D. Maryland), <https://www.azag.gov/sites/default/files/2025-03/44-MD%20v.%20USDA%20-%20TRO%20Order.pdf>.

[10] Nominations Sent to the Senate (February 12, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/nominations-sent-to-the-senate/>.

[11] Nomination Hearing for Dr. Stephen Miran, The Honorable Jeffrey Kessler, Mr. William Pulte, and The Honorable Jonathan McKernan Before the Comm. on Banking, Housing, and Urban Affairs.

119th Cong. 15 (February 27, 2025) (questions for the record, Jonathan McKernan response).https://www.banking.senate.gov/imo/media/doc/mckernan_response

[12] Id.

[12] 1071 Repeal to Protect Small Business Lending Act, S.B. 577, 119th Cong. (February 12, 2025), <https://www.congress.gov/119/bills/s557/BILLS-119s557is.pdf>.

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