

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members of the Subcommittee on Economic Growth, Tax, and Capital Access

FROM: Committee Majority Staff

DATE: March 24, 2023

RE: Subcommittee Hearing Titled: “The End of Relationship Banking? Examining the CFPB’s *‘Small Business Lending Data Collection’* Rule”

On **March 28, 2023, at 10:00 A.M. (EST)**, the Subcommittee on Economic Growth, Tax, and Capital Access will hold a hearing titled, “**The End of Relationship Banking? Examining the CFPB’s ‘Small Business Lending Data Collection’ Rule.**” The meeting will convene in room 2360 of the Rayburn House Office Building. The purpose of this hearing is to examine the Consumer Financial Protection Bureau’s (CFPB) proposed rule that would attempt to implement Section 1071 of the Dodd-Frank Act.

I. Witnesses

- Mr. Troy Peters, President and CEO, JBT Bank
- Mr. Lucas White, President, The Fountain Trust Company
- Mr. Michael Wilson, Chief Experience Officer, Members 1st FCU
- Ms. Luz Urrutia, Chief Executive Officer, Accion Opportunity Fund

II. Background

On September 1, 2021, the CFPB published a notice of proposed rulemaking (NPRM) in the Federal Register entitled, Small Business Lending Data Collection under the Equal Credit Opportunity Act (ECOA).¹ The proposal would require financial institutions to collect and report Sec. 1071 data regarding applications for credit for small businesses, including those that are owned by women and minorities. Sec. 1071’s purpose is to provide insight into lending practices and potentially fill gaps in data describing lending for small, minority, or women owned businesses.²

¹ 86 FR 56356.

² 15 U.S.C. § 1691 et seq.

Specifics of the Rule

Section 1071 of the Dodd-Frank and Wall Street Reform Act (Dodd-Frank) amended the Equal Credit Opportunity Act (ECOA) to require lenders to collect and maintain data on loan applications by small businesses.³ Lenders must ask small-business applicants whether they are a women- or minority-owned business, defined respectively as a business where more than 50 percent of ownership or control, and of net profit or loss, accrues to one or more women or minority individuals. Section 1071 also requires lenders to collect the following information from small-business loan applicants:⁴

- the number and date of the application;
- the type and purpose of the credit being applied for;
- the amount of credit or credit limit applied for;
- the lender’s decision on the application, and the date of that decision;
- the census tract of the applicant’s principal place of business;
- the gross annual revenue of the business in the last fiscal year;
- the race, sex, and ethnicity of the principal owners of the business;
- and any additional data the Bureau deems appropriate

The CFPB proposal would apply the Sec. 1071 requirements to “covered financial institutions.” A “financial institution” is defined as any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.⁵ A financial institution would fall within the scope of the proposed rule if it originated at least 25 “covered credit transactions” to “small businesses” in each of the two preceding calendar years.⁶

The NPRM provides that the applicants themselves do not have to provide their information, but if the applicant does not provide the information, the financial institution must provide it based on visual observation or surname.⁷

The CFPB has proposed that compliance with the rule become effective 18 months after publication in the Federal Register. That timeline is swiftly approaching as CFPB has now agreed to a March 31, 2023, deadline for issuing the final rule.⁸ Unlike other compliance requests, this would require financial institutions to develop a new data collection system, which would be costly and time consuming.

³ Small Business Loan Data Collection, 15 U.S.C. § 1691c–2, (2010).

⁴ *Id.*

⁵ 86 FR § 56573.

⁶ *Id.*

⁷ 86 FR at 56582.

⁸ Rosenberg et al., *CFPB Agrees to March 31, 2023 Deadline for Final Rule Under Section 1071*, TROUTMAN PEPPER (Jul. 12, 2022), <https://www.consumerfinancialserviceslawmonitor.com/2022/07/cfpb-agrees-to-march-31-2023-deadline-for-final-rule-under-section-1071/>.

Last Congress, Rep. Williams (TX-25), Rep. Luetkemeyer (MO-03), and Rep. Hill (AR-02) introduced the *Preventing Racial Profiling in Lending Acts* as a part of a three-bill package.⁹ The bill was designed to block the CFPB from mandating loan officers from having to guess the ethnicity of a loan applicant based on his or her appearance and last name, should this information not be voluntarily provided.

In addition to these bills, a letter from these Members of Congress to the CFPB requested an expansion of the de minimis exemption from compliance (the proposed 25 covered credit transactions requirement); a longer implementation period than the proposed 18-month period; and clarity on what collected data will be made public before the data is collected.¹⁰

Concerns From SBA's Office of Advocacy

SBA's Office of Advocacy (Advocacy) has concerns that the rule may be unnecessarily burdensome on small businesses.¹¹ Advocacy has noted concerns about the definition of small business, the scope of coverage, the discretionary data points, the visual identification requirement, and the implementation date.¹²

There are various concerns with the data that the CFPB is planning to collect. Small entity representatives (SERs) are concerned that there may be public disclosure of pricing information, and that it may lead to unfair practices and distortions to the market through interference in risk-based pricing.¹³ Advocacy encouraged the CFPB to disregard the discretionary data points as they are costly, not required by statute, and have potential privacy concerns.¹⁴

Advocacy has concerns relating to the requirement of financial institutions to guess demographic information of customers based on geography or surname. Advocacy recommends that this requirement be deleted.¹⁵

Advocacy encourages the CFPB to consider an implementation period of three years or longer.¹⁶ Essentially requiring every financial institution to collect all this data in this short amount of time does not serve the public interest. This will only burden these lenders and therefore other small businesses that need the access to capital.

III. Conclusion

There are a number of concerns with the CFPB's proposed rule as written. The Committee is concerned that this rule may affect access to and the cost of credit for small businesses and that it will be overly burdensome for small financial institutions to implement.

⁹ Preventing Racial Profiling in Lending Act, H.R.6802 (2021-2022).

¹⁰ Letter from Blaine Luetkemeyer, *et al.*, Ranking Member, H. Comm. on Small Bus., to Rohit Chopra, Dir., Consumer Fin. Prot. Bureau (Feb. 16, 2022).

¹¹ SBA Office of Advocacy Letter, *supra* note 5, at 4.

¹² *Id.* at 5.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*