

Issue Update

On March 30, 2023, the CFPB issued a final rule to implement section 1071 of the Dodd Frank Act. Section 1071 is an amendment to the Equal Credit Opportunity Act, which requires lenders to collect, and report to the Consumer Financial Protection Bureau, information about lending to “women owned, minority-owned and small businesses.” Section 1071's purpose is to facilitate enforcement of fair lending laws and community development efforts. Although the CFPB's final rule has been challenged in court and delayed, section 1071 has not been repealed, and advocacy on the rule's compliance burden and invasion of privacy remain critical.

The final rule applies to banks, credit unions, fintechs and other nonbank lenders that make at least 100 small business loans in each of the two preceding calendar years. Covered “small business loans” are loans to businesses with gross annual revenue of \$5 million or less. The CFPB expanded the 13 data points Congress mandated, requiring lenders to report a total of 81 data points. The data points include the race, gender, and ethnicity of the business's principal owners, and whether the business is owned by minorities, women, and/or LGBTQI+ individuals. The CFPB tiered the compliance dates based on loan volume, with the highest volume lenders required to start collecting data on October 1, 2024, medium volume lenders on April 1, 2025, and smaller volume lenders on January 1, 2026.

The ABA and the Texas Bankers Association (TBA) challenged the final rule in Federal court in Texas on several grounds, including whether the CFPB's funding structure is constitutional. The Federal court stayed the CFPB's final rule pending the Supreme Court's review of the CFPB's funding. On May 16, 2024, the Supreme Court upheld the CFPB's constitutionality, causing the stay to expire. However, the court required the CFPB to extend the compliance dates noted above to compensate for the time period that ran from July 31, 2023 until May 16, 2024, the date of the Supreme Court's ruling. Those dates are: July 18, 2025; January 16, 2026; and October 18, 2026. In August 2024, the court rejected ABA and TBA's motion for summary judgement. ABA and TBA have appealed the court's ruling to the Fifth Circuit Court of Appeals.

Why It Matters

New data collection rules will impose additional compliance burden on banks, especially community banks. While section 1071 applies to non-banks and banks alike, banks will be regularly examined for compliance and data accuracy and non-banks will not face such scrutiny. Nonbanks are not subject to Bureau examination for compliance with 1071. Similarly, the history of redlining enforcement in the mortgage context indicates that regulators and consumer groups will focus on banks' 1071 data for evidence of discrimination and pay scant attention to non-banks. We are concerned that, rather than motivating banks to increase their lending to small businesses, the costs associated with the 1071 data collection and the anticipated reliance on statistical manipulation in fair lending supervision and enforcement may *discourage* bank lending to small businesses, particularly by community and mid-size banks. Finally, the CFPB

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will make the 1071 data public at the loan level, creating severe risks to privacy of small businesses.

Recommended Action Items

- 1. Express support for the Congress to repeal section 1071 altogether**, which would permanently remove lenders' obligation to collect and report small business lending data to the CFPB.
- 2. Call on the CFPB to pause the compliance dates and formally withdraw the rule while Congress considers repealing section 1071.** This would allow banks to avoid wasting time and resources to meet the CFPB's adjusted compliance dates, if Congress completely repeals 1071.