



Overview of the New Small Business Lending Requirements under ECOA (1071)

ICBA Community Bank Briefing

April 14, 2023

Background & Basics



- Section 1071 of the Dodd-Frank Act requires CFPB to issue a rule that requires FIs to collect and report data on small business loan applications.
- Bureau finalized its rule on March 30, 2023.
- Compliance date will be staggered, based on loan volume, starting as soon as Oct 2024 for the largest volume banks.
- Banks that originate 100 small business loans are covered.
- Covered banks are required to collect 20 datapoints.

**A more detailed ICBA summary is available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/summaries/section-1071-final-rule-summary.pdf?sfvrsn=98981317_1*

Coverage and Defined Terms



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.

Compliance Date



Obligations to begin collecting and reporting data depend on the loan volume of the bank in 2022 **AND** 2023.

- **2,500 or more** covered transactions → start collecting data on Oct 1, 2024
- **Less than 2,500, but 500 or more** → April 1, 2025
- **Less than 500, but 100 or more** → Jan 1, 2026

**If unsure of the number of covered transactions in 2022 and 2023, the bank is permitted to use reasonable methods to estimate volume to determine their requirement to comply.*

Datapoints



1. Unique identifier
2. Application date
3. Application method
4. Application recipient
5. Credit type
 - a) Credit product
 - b) Guarantees
 - c) Loan term
6. Credit purpose
7. Amount applied for
8. Amount approved or originated
 - a) Closed-end approved, not accepted
 - b) Closed-end originated
 - c) Open-end that is originated/approved; not accepted
9. Action taken
10. Action taken date
11. Denial reasons
12. Pricing information
 - a) Interest rate
 - b) Total origination charges
 - c) Broker fees
 - d) Initial annual charges
 - e) Additional cost for merchant cash advances or other sales-based financing
 - f) Prepayment penalties
13. Census tract
14. Gross annual revenue
15. 3-digit NAICS code
16. Number of workers
17. Time in business
18. Minority-owned, women-owned, and LGBTQI+-owned business statuses
19. Ethnicity, race, and sex of principal owners
20. Number of 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.



Sample data collection form

Federal law requires that we request the following information to help ensure that all small businesses applying for loans and other kinds of credit are treated fairly and that communities' small business credit needs are met.

One or more employees or officers involved in making a determination concerning your application may have access to the information provided on this form. However, **FEDERAL LAW PROHIBITS DISCRIMINATION** on the basis of your answers on this form. Additionally, we cannot discriminate on the basis of whether you provide this information.

While you are not required to provide this information, we encourage you to do so. Importantly, our staff are not permitted to discourage you in any way from responding to these questions. **Filling out this form will help to ensure that ALL small business owners are treated fairly.**

Business ownership status

Please indicate the business ownership status of your small business. For the purposes of this form, your business is a minority-owned, women-owned, or LGBTQI+-owned business if one or more minorities,* women, or LGBTQI+ individuals (i) directly or indirectly own or control more than 50 percent of the business AND (ii) receive more than 50 percent of the net profits/losses of the business.

What is your business ownership status?
(Check one or more of the options below)

- Minority-owned business
- Women-owned business
- LGBTQI+-owned business
- or -
- None of these apply
- or -
- I do not wish to provide this information

*Minority means Hispanic or Latino, American Indian or Alaska Native, Asian, Black or African American, or Native Hawaiian or Other Pacific Islander. A multi-racial or multi-ethnic individual is a minority for this purpose.

Number of principal owners

For purposes of this form, a principal owner is an individual who owns 25 percent or more interest of a business. A business is a minority-owned business if, for example, it is owned by any individuals (i.e., if it is owned by one or more individuals or entities) or if no individual directly or indirectly owns more than 50 percent of the business.

How many principal owners does your business have? (Check one)

- 0
- 1
- 2
- 3
- 4

Demographic information about principal owners

As a reminder, applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of any person's ethnicity, race, or sex/gender. Additionally, we cannot discriminate on the basis of whether you provide this information.

Please fill out one sheet for each principal owner.

1 Are you Hispanic or Latino?
(i.e., What's your ethnicity?) (Check one or more)

- Hispanic or Latino
 - Cuban
 - Mexican
 - Puerto Rican
 - Other Hispanic or Latino (Please specify your origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on):
- Not Hispanic or Latino
- or -
- I do not wish to provide my ethnicity

2 What is your sex/gender?
(Please specify):

- or -

I do not wish to provide my sex/gender

3 What is your race?
(Check one or more)

- American Indian or Alaska Native (Please specify the name of your enrolled or principal tribe):
- Asian
 - Asian Indian
 - Chinese
 - Filipino
 - Japanese
 - Korean
 - Vietnamese
 - Other Asian (Please specify your race, for example, Cambodian, Hmong, Laotian, Pakistani, Thai, and so on):
- Black or African American
 - African American
 - Ethiopian
 - Haitian
 - Jamaican
 - Nigerian
 - Somali
 - Other Black or African American (Please specify your race, for example, Barbadian, Ghanaian, South African, and so on):
- Native Hawaiian or Other Pacific Islander
 - Guamanian or Chamorro
 - Native Hawaiian
 - Samoan
 - Other Pacific Islander (Please specify your race, for example, Fijian, Tongan, and so on):
- White
- or -
- I do not wish to provide my race

Appendix E of final rule

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.

The final rule provides an exception for banks that cannot feasibly firewall the information, but must provide notice of such to the applicant.

Reporting the Data



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.

FIs will be required to format and submit the data pursuant to the Filing Instruction Guide, and an authorized representative shall certify the accuracy and completeness of the data.

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.

Enforcement



Bona fide errors are not violations of Section 1071 or its implementing regulations.

Safe harbors – not violations

- Incorrect entry for application date
- Incorrect entry for census tract
- Incorrect entry for NAICS code
- Incorrect determination of small business status, covered credit transaction, or covered application