

# 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.

<sup>\*</sup>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

<sup>\*</sup>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**

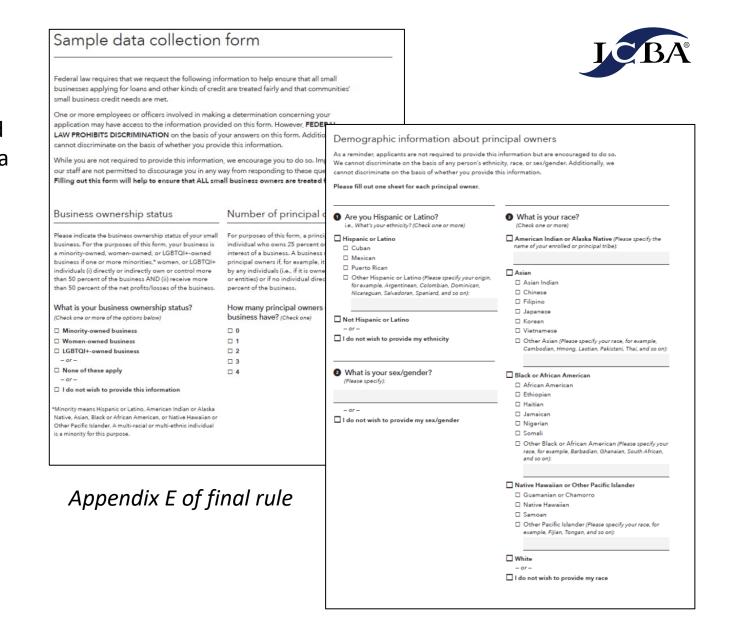


- 1. Unique identifier
- 2. Application date
- 3. Application method
- 4. Application recipient
- 5. Credit type
  - a) Credit product
  - b) Guarantees
  - c) Loan term
- 6. Credit purpose
- 7. Amount applied for
- 8. Amount approved or originated
  - a) Closed-end approved, not accepted
  - b) Closed-end originated
  - c) Open-end that is originated/approved; not accepted
- 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 salesbased 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.



#### **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