

Small Business Loan Reporting

On March 30, 2023, the CFPB released its small business loan reporting final rule that implements Section 1071 of the *Dodd-Frank Act*. Enforcement of the final rule is suspended until the Supreme Court makes its final decision regarding the constitutionality of the funding of the CFPB.

BACKGROUND

Section 1071 of the Dodd-Frank Act requires the Bureau to issue rules to implement requirements to report on lending to small businesses, particularly minority- and women-owned businesses. On October 8, 2021, the Bureau issued a proposed rule under § 1071, and, on January 6, 2022, MBA led a commercial real estate industry [comment letter](#) in response. In March 2023, the CFPB released its small business loan reporting [final rule](#).

Under the final rule, lenders who originate at least 100 small business loans in each of the preceding two calendar years are required to report certain demographic information. A small business has gross revenue of \$5 million or less in its most recent fiscal year and loans reportable under the Home Mortgage Disclosure Act (HMDA) will not need to be reported under the small business lending rule.

While the CFPB small business reporting rule and protections for small business borrowers should not apply to loans to finance income-producing investment properties, the CFPB did not include an overall exemption for this loan category.

Under the final rule, lenders that originate at least 2,500 small business loans annually must collect data starting October 1, 2024. Lenders that originate at least 500 loans annually must collect data starting April 1, 2025. Lenders that originate at least 100 loans annually must collect data starting January 1, 2026.

In August 2023, a federal judge issued an order blocking enforcement of 1071 by the CFPB for only members of the American Bankers Association and/or Texas Bankers Association which will delay implementation dates for these entities. In October 2023, the federal judge extended the order to all financial institutions until the Supreme Court's final decision in the case *Community Financial Services Association v. CFPB*. The new implementation dates are unknown until a ruling by the Supreme Court.

FINAL RULE SUMMARY

- **Investment Properties Exclusion**

MBA Ask: Clarify that investment properties exclusion from §1071 applies to all investment property lending.

For more information, visit mba.org
or call (202) 557-2700.

MBA
MORTGAGE BANKERS ASSOCIATION

CFPB Final Rule: The final rule exempts any HMDA-reportable loans but does not exclude all investment property loans.

- **Maximum “amount applied for” Exclusion**

MBA Ask: Establish a minimum credit “amount applied for” set at the \$750,000 statutory limit for Small Business Association (SBA) loans.

CFPB Final Rule: The Bureau declined to use an “amount applied for” exclusion.

- **Transactional Threshold**

MBA Ask: Increase the transactional threshold from 25 to 500 small business loan originations in each of the two preceding calendar years.

CFPB Final Rule: The Bureau increased the transactional threshold from 25 to 100 small business loan originations in each of the two preceding calendar years.

- **Implementation Period**

MBA Ask: Provide an implementation period that covers two full calendar years after the effective date of the final rule rather than the proposal of “about 18 months.”

CFPB Final Rule: The Final Rule creates a tiered process by which the largest small business lenders collect and report data within 18 months of the publication of the Rule, and the smallest banks will have 33 months until they must comply.

- **Small Business Definition**

- **Newly Formed SPEs**

MBA Ask: For an applicant that is a newly created SPE, permit a financial institution to apply the \$5 million gross annual revenue threshold to either the gross annual revenue of the property for its most recent fiscal year under its prior owner or the SPE’s projected gross annual revenue rather than its (non-existent) prior year’s gross annual revenue.

CFPB Final Rule: The Bureau is not allowing a projection of gross annual revenue.

- **Affiliate Revenue**

MBA Ask: Provide additional guidance on what types of entities may be affiliates of an applicant, e.g., as a result of common ownership or common control.

CFPB Final Rule: Financial institutions can exclude businesses that are, in fact, middle- or large-sized applicants from data collection and reporting under this final rule by considering these businesses’ affiliate revenues.

For more information, visit mba.org
or call (202) 557-2700.

MBA

MORTGAGE BANKERS ASSOCIATION

- **Definition of Affiliate**

MBA Ask: Provide guidance on the application of the definition of affiliates in the real estate lending context.

CFPB Final Rule: Does not define a real estate affiliate.

- **Firewall**

MBA Ask: Clarify operational factors that a financial institution may consider when determining that an officer or employee “should have access” to demographic information collected under §1071.

CFPB Final Rule: By increasing the loan threshold, the CFPB believes it deals with the issues of smaller lenders with smaller staffs. The final rule limits the firewall to employees and officers of a covered financial institution or its affiliate if that employee or officer is involved in making any determination concerning the applicant’s covered application.

- **Race and Ethnicity Information**

MBA Ask: Treat the reporting of race and ethnicity the same as the proposed treatment of the reporting of sex, in cases where the applicant does not provide the information.

CFPB Final Rule: The final rule requires that race and ethnicity be reported based only on information provided by the applicant.

- **Applicant-provided Information**

MBA Ask: Remove the requirement to replace applicant-provided information with information the financial institution verifies.

CFPB Final Rule: Financial institutions may rely on statements of the applicant or information provided by an applicant; however, if a financial institution verifies information, it must report the verified data.

March 2024

For more information, visit mba.org
or call (202) 557-2700.

MBA
MORTGAGE BANKERS ASSOCIATION