

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No.: CFPB-2017-0011]

Request for Information Regarding the Small Business Lending Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) seeks information about the small business lending market. Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. In an effort to inform the Bureau's work on the business lending data collection rulemaking to implement section 1071, the Bureau seeks to learn more about the small business financing market, including understanding more about the products that are offered to small businesses, including women-owned and minority-owned small businesses, as well as the financial institutions that offer such credit. The Bureau also seeks to learn more about the business lending data that currently is used and may be maintained by financial institutions in connection with credit applications made by small businesses, including women-owned and minority-owned small businesses, and the potential complexity and cost of small business data collection and reporting. The Bureau is also seeking comment from the public on privacy concerns related to the disclosure purposes of section 1071.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2017-0011, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2017-0011 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002.

Instructions: Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as

account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202-435-7275.

AUTHORITY: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION:

The Bureau is seeking comment through this Request for Information (RFI) to better understand the small business lending market in order to prioritize and streamline work to implement section 1071. The feedback obtained in response to this RFI will help the Bureau fulfill the statutory purpose of section 1071 in a manner that is efficient and minimizes burden on industry.

The Bureau encourages comments from all interested members of the public, including:

- Individual consumers;
- Individual businesses;
- Consumer civil rights and privacy advocates;
- Small business advocates;
- Business development and community development organizations;
- Lenders, including depository and non-depository institutions;
- Business trade associations;
- Data software vendors and developers who may provide services to lenders for regulatory compliance and data submission;

- Consultants, attorneys, or other professionals who advise market participants on these issues;
- Federal, State, and municipal regulators;
- State, local, and tribal government entities;
- Researchers or members of academia; and
- Any other interested parties.

The Bureau is interested in all input from commenters, including knowledge of standard practices, understanding of the market as a whole, and views on the questions included in this RFI.

PART A: CONGRESSIONAL MANDATE TO ENACT SECTION 1071

Section 1071 of the Dodd-Frank Act (section 1071) amends ECOA to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The purpose of this data collection, as stated by Congress in section 1071, is to “facilitate enforcement of fair lending laws” and to “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”¹ In order to achieve this statutory purpose, the Bureau believes the section 1071 data should cover an extensive share of the market and contain enough flexibility to analyze different market segments. However, there are costs associated with any data collection which have to be weighed against the benefits. Please consider this context in responding to this RFI.

Small businesses, including those owned by women and minorities, are critical engines for economic growth, and access to credit is a crucial component of their success. The Bureau

¹ 15 U.S.C. 1691c-2(a).

believes that data collected under the business lending data collection rule as mandated by section 1071 would fill existing gaps in the general understanding of the small business lending environment. Further, data would be helpful in fulfilling Congress's purposes in enacting section 1071 by identifying potential fair lending concerns regarding small businesses, including women-owned and minority-owned small businesses, as well as the needs and opportunities for both business and community development. At the same time, the Bureau recognizes that certain financial institutions may not be collecting and reporting information regarding small business lending in connection with other regulatory requirements and that therefore a new data collection requirement could pose implementation and operational challenges.

The Bureau is in its early stages with respect to implementing section 1071, and is currently focused on outreach and research to further develop its understanding of the small business lending market, including the institutions, credit products, recording systems, underwriting approaches, distribution channels, and types of applicants in that market. In furtherance of that outreach and research, the Bureau is issuing this RFI. The Bureau is interested in exploring potential ways to implement section 1071 in a balanced manner with a goal of providing timely data with the highest potential for achieving the statutory objectives, while minimizing burden to both industry and the Bureau.

PART B: QUESTIONS RELATED TO THE SMALL BUSINESS LENDING

MARKET The Bureau is seeking comment to enhance our understanding of the small business lending market in order to prioritize and guide research and policy development work for implementation of section 1071.

The Bureau recognizes that some commenters may feel that answering the questions below raises concerns about revealing proprietary information. We encourage commenters to

share as much detail as possible in this public forum. We also welcome comments from representatives, such as attorneys, consultants, or trade associations, which need not identify their clients or members by name. The Bureau also welcomes any relevant empirical research or studies on these topics.

The questions below are separated into five categories: 1) Small Business Definition, 2) Data Points, 3) Financial Institutions Engaged in Business Lending, 4) Access to Credit and Financial Products Offered to Businesses, and 5) Privacy.

Small Business Definition

Section 1071 defines “small business” as having “the same meaning as the term ‘small business concern’ in section 3 of the Small Business Act (15 U.S.C. 632).”² This section of the Small Business Act sets forth a multi-part definition of “small business concern” that includes a provision authorizing the Small Business Administration (SBA) to establish detailed size standards that meet certain criteria set forth within the statute.³ The most commonly used size standards developed by the SBA are industry-specific size standards organized by the six-digit North American Industry Classification System (NAICS-specific size standards).⁴ These NAICS-specific size standards are primarily used by the SBA and other Federal agencies to determine eligibility for Federal contract and loan assistance programs.⁵

Section 632 also permits the SBA to approve size standards developed by other Federal agencies that meet certain requirements.⁶ As an alternative to the NAICS-specific size standards, the Bureau is exploring developing an alternative definition of small business that meets the

² 15 U.S.C. 1691c-2(h)(2).

³ 15 U.S.C. 632(a)(2).

⁴ 13 CFR 121.201 (NAICS-specific size standards promulgated by the SBA).

⁵ See 13 CFR 121.101(a) (“SBA’s size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ‘small business’ concerns.”)

⁶ 15 U.S.C. 632(a)(2)(C).

criteria outlined in section 632 of the Small Business Act and is tailored to the needs of section 1071, a business lending data collection rule. Specifically, the Bureau is exploring size standard approaches that potentially may not require a determination of a six-digit NAICS code for each applicant while remaining consistent with the SBA's policy and regulatory requirements and that are aligned with the common practices of financial institutions extending credit to small businesses.

Under nearly any definition of "small business," a substantial percentage of women-owned and minority-owned businesses would be covered. For example, a definition of small businesses as businesses with annual revenue of \$1 million or less⁷ covers approximately 95% of all firms, over 97% of all minority-owned firms, and over 98% of all women-owned firms.⁸ Bureau outreach to date with industry reveals other definitions used by financial institutions as to what constitutes a "small business" for internal purposes, including for focusing marketing resources, establishing appropriate products to support the small business segment, and establishing risk management practices. Common factors that financial institutions use for defining a business as small include annual revenue, industry, loan size, aggregate credit exposure, or some combination of these factors. The threshold amounts that financial institutions apply to each of these factors also vary considerably among financial institutions.

⁷ Under the Community Reinvestment Act, certain financial institutions report information on small business loans extended to businesses with annual revenue of \$1 million or less. *See, e.g.*, 12 CFR 228.42.

⁸ U.S. Census Bureau, *Statistics for All U.S. Firms by Industry, Gender, and Receipts Size of Firm for the U.S. and States: 2012 More Information 2012 Survey of Business Owners*, American Fact Finder (last visited April 12, 2017), available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSA05&prodType=table

Through this RFI, the Bureau hopes to learn more about the various definitions of a small business that are currently utilized by lenders.

1. What potential challenges and burdens would financial institutions or applicants encounter if a business lending data collection rule defined a “small business” applicant using the SBA’s NAICS-specific size regulations?
2. What definitions of “small business” do financial institutions currently use internally or for external reporting purposes?
 - a. What factors are used to define a “small business” (such as revenue of the business applicant)? If more than one factor is used, are those factors considered individually or in combination?
 - b. What minimum or maximum thresholds are used to define a “small business”?
 - c. Are certain types of small businesses excluded or treated differently under the definitions?
 - d. Do the definitions take into account entities that are related to the small business applicant (such as parents, subsidiaries, affiliates, etc.)?

Data Points

Section 1071 specifies particular data points that financial institutions must compile and maintain, submit annually to the Bureau, and make available to members of the public upon request unless the Bureau determines to permit the deletion or modification of certain data to advance a privacy interest.⁹ These include:

- application number;

⁹ 15 U.S.C. 1691c-2(e)(2)(A)-(G), (e)(4), (f)(1), (f)(2)(A)-(B). The statute also provides that the data shall annually be made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation. *Id.* 1691c-2(f)(2)(C).

- application date;
- type and purpose of the financing;
- amount applied for;
- amount approved;
- type of action taken and action taken date;
- census tract of the principal place of business;
- gross annual revenue in the last fiscal year of the applicant preceding the date of the application; and
- information about the race, sex, and ethnicity of the business principal owners.¹⁰

Section 1071 also gives the Bureau authority to require “any additional data that the Bureau determines would aid in fulfilling the purposes of [1071]”.¹¹ The purpose of section 1071 provided in the statute is, as previously noted: (1) to facilitate enforcement of fair lending laws; and (2) to enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.¹²

As part of its research and policy development work, the Bureau will explore how to best implement the data point reporting requirements for the business lending data collection rulemaking to serve the purposes of section 1071 while minimizing burden. Through this RFI,

¹⁰ 15 U.S.C. 1691c-2(e)(2)(A)-(G). With some exceptions, section 1002.5(b) of Regulation B, which implements the ECOA, prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. Section 1002.5(a)(2) provides an exception to that prohibition for information required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B, or other Federal or State statutes or regulations. Section 1002.5(a)(3) provides another exception to that prohibition for information to determine eligibility for a special purpose credit program under 1002.8.

¹¹ 15 U.S.C. 1691c-2(e)(2)(H).

¹² 15 U.S.C. 1691c-2(a).

the Bureau seeks information on existing business lending data collection and reporting standards, how various data points are used by the business financing industry, how reporting particular data points could serve the purposes of section 1071, and other issues related to data points.

As part of a business lending data collection rulemaking, the Bureau plans to explore how to best implement the statutorily-mandated data points. The Bureau believes the reporting and potential disclosure of these data would constitute a major advancement in information on lending to small businesses, including to women-owned and minority-owned small businesses. In addition, the Bureau will consider whether supplementing the statutorily-mandated data points with a limited number of discretionary data points would serve the purposes of section 1071, improve the quality of the data for all stakeholders, and reduce the possibility of misinterpretations or incorrect conclusions that might arise from the collection or release of more limited data. The Bureau believes that responses to the RFI questions will provide helpful information for this purpose and aid the Bureau in determining whether to supplement, in a limited fashion, the statutorily-mandated data points.

3. What data standards regarding information on small business financing are financial institutions currently subject to or using? Data standards are rules by which data is described and recorded using standardized formats and meanings for purposes such as sharing, exchanging and analyzing data. Examples could include governmental reporting or recordkeeping requirements, as well as standards associated with credit bureaus, data repositories, trade associations, accounting standards, or securitization or guarantee programs.

- a. What information is being collected, reported, or disclosed using these data standards?
 - b. Are these data standards applicable at the loan level, on an aggregate basis, or some combination of the two?
4. What information concerning the data points specifically identified for reporting under section 1071 by Congress do financial institutions collect and maintain in the ordinary course of business concerning their small business lending?
- a. What sources of information do financial institutions rely on in obtaining this data, including, for example, applicant self-reporting, specific documents used by financial institutions to obtain this data, or third party sources?
 - b. What technological or other challenges do financial institutions foresee in collecting and reporting this data (such as the manual compilation of information, the lack of an electronic system for maintaining this information, the potential for this information to be found in multiple systems within a financial institution, etc.)? What steps can the Bureau take within a business lending data collection rulemaking to minimize the challenges?
 - c. With respect to which data points, if any, among those specifically identified by Congress in Section 1071, do financial institutions currently not collect any information?
5. The Bureau understands that applications for small business financing may vary both by financial institution and by the business credit product. How do financial institutions integrate data collection into their application process?

- a. When are different data collected in the process (such as at the time of initial application, during the application process, or near the end of the process)?
 - b. What verification procedures are used?
 - c. Are certain data not collected or more difficult to collect if the application is not originated and instead is withdrawn, denied, or involves a counteroffer?
 - d. Are different data collected for different types of credit events (such as renewals, line increases, etc.)?
 - e. What systems, whether proprietary or provided by a third party vendor, are used by financial institutions to collect and maintain the data?
 - f. How does data collection differ according to business credit product?
6. Considering the data points specifically identified by Congress for reporting in section 1071:
- a. What concerns, if any, do financial institutions have about the possibility of misinterpretations or incorrect conclusions being drawn by regulators from the collection of the data provided for in Section 1071 or by the public from potential release of these data in a manner protective of privacy interests?
 - b. Are there limited additional data points that could be readily reported and potentially disclosed that would mitigate these concerns and reduce the risk of misinterpretation or help reduce incorrect conclusions?
7. What information about the type of business (such as NAICS code or other industry information) of a small business applicant do financial institutions currently collect? What challenges might financial institutions have in potentially collecting this information under section 1071?

8. What information about the number of employees of a small business applicant do financial institutions currently collect? What challenges might financial institutions have in potentially collecting this information under section 1071?
9. In section 1071, Congress requires financial institutions to collect and report information on whether an applicant is a women-owned, minority-owned, or small business and the ethnicity, race, and sex of the principal owners of the business. Section 1071 provides for limitations on access to certain information, including an applicant's minority-owned or women-owned business status, by underwriters, where feasible, and provides for limited access in certain circumstances determined by the financial institution with notice to the applicant.
 - a. What challenges do financial institutions foresee in complying with these requirements with respect to applications by small businesses, including any potential challenges in identifying the principal owners of the business and reporting demographic information about them?
 - b. In what situations, if any, may it not be feasible to limit underwriter access to this information?
 - c. What steps can the Bureau take to minimize burden on financial institutions and applicants and facilitate compliance with the requirements to identify the principal owners of the business and report demographic information about them?

Financial Institutions Engaged in Business Lending

Section 1071 of the Dodd-Frank Act requires financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. Financial institution is defined in section 1071 to mean “any partnership, company, corporation,

association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.”¹³ The Bureau understands small businesses, including women-owned and minority-owned small businesses, may secure non-equity financing from many sources, including, but not limited to, depository and non-depository financial institutions such as banks and credit unions, community development financial institutions, governmental entities, commercial finance firms, and alternative online lenders.

This Bureau seeks comment to enhance its understanding of the various financial institutions and other parties engaged in small business lending as well as initial feedback from stakeholders on appropriate institutional coverage the Bureau may consider for the business lending data collection rule.

10. Section 1071 allows the Bureau to exercise exemption authority to exempt certain classes of financial institutions from collecting and reporting pursuant to a business lending data collection rule as the Bureau deems necessary or appropriate to carry out the purposes of section 1071.

- a. Should certain classes of financial institutions be exempt from a small business lending data collection rule?
- b. Are there data or data sources available that could inform the Bureau’s decision to exempt certain classes of financial institutions (such as the size, type, or lending characteristics of the financial institution or types of small business credit products offered by the financial institution)?

¹³ 15 U.S.C. 1691c-2(h)(1).

11. What are the roles of lending marketplaces, brokers, dealers and other third parties in the small business lending application process (such as in taking an application and in making a credit decision on an application)?

Access to Credit and Financial Products Offered to Businesses

The Bureau seeks information on the various financial products that are offered to small businesses, including women-owned and minority-owned small businesses, as well as initial feedback from stakeholders on challenges small businesses may face in accessing credit and appropriate transaction and product coverage the Bureau may consider for a business lending data collection rule.

Section 1071 requires financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. Although section 1071 does not provide a specific definition for credit, credit is a defined term under ECOA. ECOA (which section 1071 amended) defines credit as “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.”¹⁴

From its initial outreach and research, the Bureau understands that small businesses depend on a number of different non-equity financing products to establish, maintain, and grow their businesses. Although small businesses, including women-owned and minority-owned small businesses, secure non-equity financing in many forms, the Bureau understands that term loans, lines of credit, and credit cards are the principal all-purpose products used by small businesses. The Bureau estimates that these products collectively comprise about three-fourths of the non-

¹⁴ 15 U.S.C. 1691a(d).

equity financing market, when excluding supplier financing.¹⁵ Through this RFI, the Bureau seeks initial feedback on products offered by financial institutions to small business applicants and the challenges faced by small businesses, including women-owned and minority-owned small businesses, in accessing credit.

12. What business credit product types are currently offered to small businesses by financial institutions as defined in section 1071, and for which product types is data collection and reporting most important for furthering the purposes of section 1071?

a. In addition to term loans, lines of credit, and credit card products, are there other business credit products that are an important source of financing for small businesses?

13. How do financial institutions define an application for business credit products?

How, if at all, does a financial institution's definition of an application vary for different types of products offered to small business applicants?

a. Under what circumstances are preapproval, prequalification, and similar assessments made and what information is typically collected and evaluated during such assessments?

14. Under what circumstances (such as renewal, line increase, etc.) would a credit review occur on an existing credit facility?

a. In what circumstances would the credit review be initiated by the borrower?

In what circumstances is the credit review initiated by the financial institution?

¹⁵ See Consumer Financial Protection Bureau, "Lending to Women-Owned, Minority-Owned and Small Businesses: A White Paper," May 2017 (figure is based on CFPB research of available data sources exclusive of business-to-business credit), available at http://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf.

- b. For each circumstance, what information is collected as part of the credit review? How would such a credit review differ, if at all, from an application submitted on a new credit facility?
 - c. For each circumstance, what are the types of action taken?
15. What challenges do small businesses face in accessing credit? What obstacles do women-owned or and minority-owned small businesses in particular face in accessing credit?

Privacy

Section 1071 specifies particular data points that financial institutions must compile and maintain, submit annually to the Bureau, and make available to members of the public upon request in a form prescribed by the Bureau.¹⁶ Section 1071 also provides the Bureau with authority to delete or modify data available to the public to advance a privacy interest.¹⁷ The Bureau is exploring options which protect applicant and borrower privacy, as well as the confidentiality interests of financial institutions, while also fulfilling the purpose of section 1071 which, to repeat, is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. Through this RFI, the Bureau seeks initial feedback to understand privacy concerns related to the potential disclosure of the data points specifically identified for reporting under section 1071 by Congress.

16. What privacy-related concerns for applicants and confidentiality-related concerns of financial institutions are implicated by the statutorily-mandated data points in section 1071? For example, are there particular statutorily-mandated data points or a

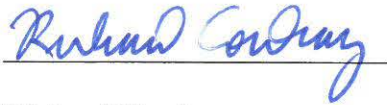
¹⁶ 15 U.S.C. 1691c-2(e)(2)(A)-(G), (f).

¹⁷ 15 U.S.C. 1691c-2(e)(4).

combination of data points that, if released to the public, may be harmful to applicant privacy or financial institution confidentiality? Are there particular statutorily-mandated data points or a combination of data points that may pose a risk of re-identification if released to the public?

17. What steps can the Bureau take to mitigate such privacy or confidentiality-related concerns consistent with the purposes of section 1071?

Dated: May 9, 2017.



Richard Cordray,

Director, Bureau of Consumer Financial Protection.