

Advocacy Comments on the CFPB’s Proposed Rule on Small Business Lending Data Collection

On October 8, 2021, the Bureau of Consumer Financial Protection (CFPB) published a notice of proposed rulemaking in the Federal Register entitled *Small Business Lending Data Collection under the Equal Credit Opportunity Act*. The CFPB’s proposal would require financial institutions to collect and report data regarding applications for credit for small businesses, including those that are owned by women and minorities but not women-owned and minority-owned businesses that are not small.

- The CFPB estimated that the overall market impact of one-time costs would be between \$143 million and \$153 million for small depository institutions and \$63 million for small non-depository institutions. For ongoing costs CFPB estimated the overall market impact would be between \$112 million and \$126 million per year for small institutions. Advocacy asserted that these costs may be underestimated.
- A financial institution that originated at least 25 credit transactions that would be “covered credit transactions” to “small businesses” would fall within the scope of the proposed rule. Advocacy encouraged the CFPB to do further analysis to determine if there is a higher threshold that would produce a meaningful amount of data, yet limit the number of small entities subject to the rule.
- The rule proposes to define as “small” any businesses that had \$5 million or less in gross annual revenue for its preceding fiscal year. Advocacy encouraged the CFPB to analyze whether setting the definition at a lower level would still garner a sufficient amount of data; smaller institutions could well decide not to make business loans if it is too burdensome.
- The proposal would require a covered financial institution to collect and report certain data regarding covered applications from small businesses. Section 1071 also allows for discretionary data points which are determined by the CFPB. The discretionary data points may be costly. Advocacy encouraged the CFPB to disregard the discretionary data points.
- Financial institutions must inquire about whether a business is women-owned, minority-owned or a small business. An applicant may refuse to provide the information to the financial institution. However, if the applicant does not provide the information, the financial institution must provide it based on visual observation or surname. The data collected in this way could be corrupted by bias. Advocacy encouraged the CFPB to delete that requirement.

A complete copy of Advocacy’s [letter to the CFPB](#) is available. For more information, please contact Jennifer A. Smith, Assistant Chief Counsel, at Jennifer.Smith@sba.gov.

