

It's Here: CFPB Issues Final Rule Under Section 1071

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As promised (and discussed [here](#)), the Consumer Financial Protection Bureau (CFPB) issued its final rule under Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Final Rule). Section 1071 amended the Equal Credit Opportunity Act (ECOA) to impose significant data collection requirements on small business creditors. According to the [press release](#) announcing the Final Rule's issuance, "[l]enders will collect and report information about the small business credit applications they receive, including geographic and demographic data, lending decisions, and the price of credit." Positive developments in the Final Rule include:

- The CFPB's decision to increase the number of small business loans that lenders need to make each year to be covered under the Final Rule from 25 to 100 in each of the preceding two years.
- The CFPB's phased approach to compliance. The Final Rule requires lenders that originate at least 2,500 small business loans annually to 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.
- The CFPB eliminated the requirement in the proposed rule that, for in-person applications, the lender make a "guess" as to principal owners' race/ethnicity based on visual appearance and last name.

In the [enforcement policy statement](#) issued concurrently with the Final Rule, the CFPB stated it "intends to use its enforcement and supervisory authorities to focus on covered lenders' compliance with these requirements relating to the [Final Rule's] prohibition against discouraging applicants from submitting responsive information." Specifically, the CFPB "intends to pay attention to covered lenders' response rates for data requested from applicants." This will be an important element for lenders to keep in mind as they design both their information gathering process and in their compliance monitoring, once data collection begins. Troutman Pepper's Consumer Financial Services team will be digesting the 888-page Final Rule and issuing further analysis through its blog and podcast over the coming weeks.

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