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Small Business Lenders Subject to New CFPB Data Reporting Rule



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Resulting from a lawsuit by the California Reinvestment Coalition against the Consumer Financial Protection Bureau (“CFPB”) in 2019 for its failure to promulgate a small business lending data rule in compliance with the Consumer Financial Protection Act sections of Dodd-Frank, and in order to comply with the resulting court order, the [CFPB announced](#) that it had finalized a rule regarding small business lending data. For purposes of the 888-page [Final Rule](#), small businesses are those that have a gross revenue of \$5M or less.

The Rule requires lenders that originate at least 2,500 loans annually to start collecting the data identified on October 1, 2024. Lenders that originate at least 500 loans annually must collect data starting April 1, 2025, and lenders that originate at least 100 loans must collect data starting January 1, 2026. While these compliance dates seem generous, requiring compliance by the largest lenders first puts substantial burden upon their very complex systems to be reconfigured for reporting purposes. Some changes from the proposed rule, which caused widespread concern among industry participants, eliciting 2,100 comments, include:

- Placing the burden of reporting demographic data upon the small business themselves, and similar to how consumers may choose not to report their demographic data, the small businesses will not be required to respond;
- Any loans that are reportable under existing Home Mortgage Disclosure Act requirements will not need to be reported; and
- Data submitted under the CFPB’s rule will satisfy relevant Community Reinvestment Act requirements that lender banks must comply with.

The Final Rule specifies several exceptions to the credit extensions that must be reported. While generally all credit extended to small businesses is covered, HMDA-reportable loans do not need to be reported, nor do so-called trade credit

transactions (“financing arrangements wherein a business acquires goods or services from another business without making immediate payment in full to the business providing the goods or services”), insurance premium financing, public utilities credit, securities credit, factoring, leases, consumer credit that is used for business or agricultural purposes, and purchases of a partial interest in a credit transaction. In addition, extensions, renewals and other amendments of existing transactions do not need to be reported, but refinancings do need to be reported. While small businesses have the burden to provide demographic data, regardless of whether they do so, lenders must collect and report a variety of data points.

The CFPB’s [Executive Summary of the Final Rule](#) provides a good summary of the applicable data points. The Final Rule includes a sample data collection form that lenders may use to collect the applicable demographic information, as well as to provide required fair lending notices prescribed by the rule.

Finally, the CFPB has already published a set of [Filing Instructions](#) for those lenders who must begin reporting in 2024. Such instructions are crucial for large lenders to be able to properly configure their systems for reporting.
