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**BANKERS**  
ASSOCIATION

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# The CFPB's Section 1071 Rule is Back in the Spotlight – Are You Ready?

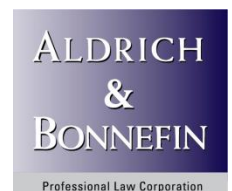
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# OVERVIEW OF THE SMALL BUSINESS LENDING DATA COLLECTION RULE



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# Background

- Dodd-Frank Act Section 1071 added small business loan data collection requirements to ECOA
- Requires lenders to compile, report and maintain specific information regarding certain credit applications made by:
  - Women-owned small businesses, minority-owned small businesses, and other small businesses



# Background

- Stated purpose of Section 1071 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”*



# Background

- New Final Rule
  - Issued on March 30, 2023, published in the Federal Register on May 31, 2023 (the “SBLR”)
  - Amends Regulation B to implement changes to ECOA made by Section 1071



# Recent Developments re Compliance Dates

- *Tex. Bankers Ass'n, et al. v. CFPB, et al.* (S.D. Tex. July 31, 2023)
  - Preliminary injunction prohibiting CFPB from enforcing the SBLR against the plaintiffs and their members, pending the U.S. Supreme Court's decision in the *Cmty. Fin. Servs. Ass'n of Am* case
- *The Monticello Banking Company et al. v. CFPB et al.* (E.D. Ky. filed Sept. 14, 2023)
  - Issued the same kind of preliminary injunction but prohibits the CFPB from enforcing the SBLR against any financial institution
  - Pending decision in the *Cmty. Fin. Servs. Ass'n of Am* case



# Recent Developments re Compliance Dates

- *CFPB v. Cmty. Fin. Servs. Ass'n of Am. LTD, et al.* (U.S. May 16, 2024)
  - On May 16, 2024, the U.S. Supreme Court held that the CFPB's funding structure is constitutional



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# Recent Developments re Compliance Dates

- On June 25, 2024, the CFPB issued the interim final rule officially extending the compliance dates for the SBLR (SBLR IFR)
  - Clarifies which calendar years institutions can use to measure the amount of covered credit transactions they originated to determine their compliance tiers
  - That is, either (i) 2022 and 2023, or (ii) 2023 and 2024)
- SBLR, as amended by the SBLR IFR, is codified in Subpart B of 12 CFR Part 1002



# Overall Impact on Institutions

- Fair lending issues will become more visible



- Reputation and impact on businesses



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# Overall Impact on Institutions

- Data collection efforts
- Formalized application process
- Training staff
- Resources will need to be expended to developing policies and procedures, updating systems, training staff, etc.



# Is your Institution a “Covered Financial Institution”?

- A financial institution is a “covered financial institution” if it meets the below conditions
  - Institution meets the definition of a “financial institution” (which includes banks and credit unions) under the SBLR; and
  - Originated at least 100 “covered credit transactions” in each of the two preceding calendar years



# What is Your Institution's Compliance Date?

- The initial compliance dates are based on the number of “covered credit transactions” made to “small businesses” during 2022 and 2023



- Under the SBLR IFR, the CFPB amended this requirement by giving financial institutions the option to use: (i) 2022 and 2023; or (ii) 2023 and 2024
- The SBLR IFR also extended the compliance dates



# What is Your Institution's Compliance Date?

- **Tier 1 lenders (July 18, 2025)**
  - Covered financial institutions that originated at least 2,500 covered credit transactions for small businesses in either (i) 2022 and 2023, or (ii) 2023 and 2024
  - Required to comply by July 18, 2025
  - Begin collecting data for covered applications during the period from July 18 to December 31, 2025, and report the information collected during that period to the CFPB by June 1, 2026



# What is Your Institution's Compliance Date?

- **Tier 2 lenders (January 16, 2026)**
  - Covered financial institutions that originated at least 500 covered credit transactions (but less than 2,500) for small businesses in either (i) 2022 and 2023 or (ii) 2023 and 2024
  - Required to comply by January 16, 2026
  - Begin collecting data on covered applications during the period from January 16 to December 31, 2026, and the information collected during that period must be reported to the CFPB by June 1, 2027



# What is Your Institution's Compliance Date?

- **Tier 3 lenders (October 18, 2026)**
  - Covered financial institutions that originated at least 100 covered credit transactions (but less than 500) for small businesses in either (i) 2022 and 2023, or (ii) 2023 and 2024
  - Required to comply by October 18, 2026
  - Begin collecting data for covered applications during the period from October 18 to December 31, 2026, and the information collected during that period must be reported to the CFPB by June 1, 2027

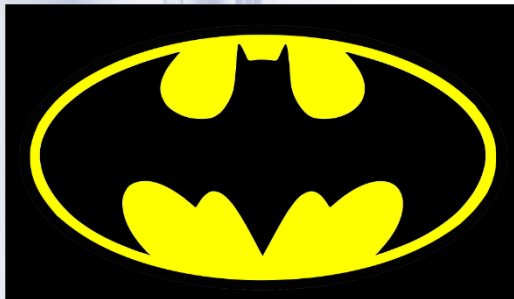




# Compliance Dates

- Example:

- Bank of Gotham originated 550 covered credit transactions in 2022 and 550 covered transactions in 2023. However, in 2024 the Bank originated 450.
- If the Bank chose to use 2022 and 2023 as the period to determine its initial compliance dates, then due to originating over 500 covered credit transactions in each of 2022 and 2023, it would fall under Tier 2 and be required to comply by *January 16, 2026*
- However, if the Bank chooses 2023 and 2024 as the period to determine its initial compliance dates, the Bank would not have originated at least 500, and would fall under Tier 3 and be required to comply by *October 18, 2026*



# Compliance Dates

- **After October 18, 2026**
  - A covered financial institution that did not originate at least 100 covered credit transactions for small businesses in each of calendar years (i) 2022 and 2023, or (ii) 2023 and 2024, but that subsequently originates at least 100 such transactions in two consecutive calendar years
  - Will still need to comply with the rule, but in any case no earlier than October 18, 2026



# Compliance Dates

- If there's a lack of information to determine small business status and estimations
  - Institutions are permitted to use any reasonable method
  - Such as from October 1 through December 31 of either (i) 2022 and 2023, or (ii) 2023 and 2024, ask every applicant, prior to the closing of approved transactions, to self-report whether it had gross annual revenue for its preceding fiscal year of \$5 million or less
    - Then annualize the number of covered credit transactions originated to small businesses from October 1 through December 31 for either (i) 2022 and 2023, or (ii) 2023 and 2024
  - Assume that every covered credit transaction it originates for business customers in calendar years (i) 2022 and 2023, or (ii) 2023 and 2024, is to a small business
  - Use another methodology provided that such methodology is reasonable and documented in writing



# COVERED CREDIT TRANSACTIONS



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# Covered Credit Transactions vs. Covered Applications

- To determine when an institution is subject to the SBLR
  - Requires determining the number of “covered credit transactions” originated to “small businesses” during the two preceding calendar years
- The SBLR requires compiling and reporting data with regard to “covered applications” which are applications for “covered credit transactions” received from “small businesses”



# What Credit Transactions are Covered?

- What is a “covered credit transaction”?
  - An extension of “business credit” that is not an excluded transaction
  - This includes all business credit, including loans, lines of credit, credit cards, and merchant cash advances unless otherwise excluded



# Covered Credit Transactions

- The following examples are covered credit transactions if used primarily for a business, commercial, or agricultural purpose (*unless otherwise excluded*):
  - A term loan
  - Line of credit
  - Temporary, bridge, or other short-term loan
  - Construction loan
  - Credit card (don't miss this one!)
  - Other extensions of that meet the definition of a covered credit transaction
- Primary purpose test



# Covered Credit Transactions

- Excluded transactions:
  - Trade credit
  - Home Mortgage Disclosure Act (HMDA)-reportable transactions
  - Insurance premium financing
  - Public utilities credit
  - Incidental credit





# Covered Credit Transactions

- Other transactions that do not qualify as “covered credit transactions”
  - Loan participations
  - Loan purchases
  - Letters of credit
  - Extensions of credit that occur outside the U.S.



# Covered Credit Transactions

- Revaluations, extensions, renewal requests, or line increases on existing accounts
  - Requests to extend, renew, or otherwise modify a transaction are not counted as “covered credit transactions”
    - For purposes of determining the origination threshold for compliance date purposes or for purposes of determining “covered applications”
  - However, a request for additional credit amounts on an existing account constitutes a “covered application”



# Covered Credit Transactions

- **Example:**
  - If Nevermore FCU originates 50 term loans and 30 lines of credit for small businesses in each of the preceding two calendar years, along with 25 line increases for small businesses in each of those years, Nevermore FCU is not a covered financial institution because it has not originated at least 100 covered credit transactions in each of the two preceding calendar years
  - This is because the institution does not count the 25 line increases towards the number of originations



# Covered Credit Transactions

- But, refinancings of “business credit” do qualify as “covered credit transactions”



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# What Qualifies as a “Small Business”

- A business is a “small business” if it meets the SBA’s definition of certain similar terms
  - However, the Final Rule looks to whether the business had \$5 million or less in gross annual revenues in its preceding fiscal year

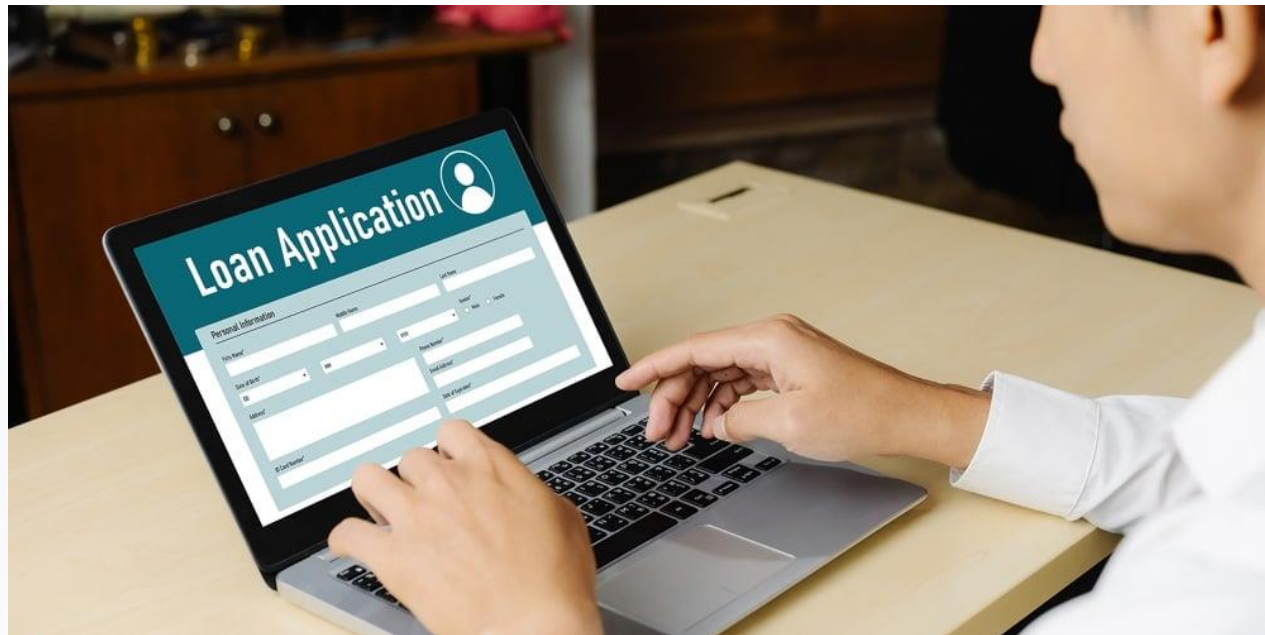


# What Qualifies as a “Small Business”

- Sole proprietor’s income
  - FAQs provide that a financial institution does not include the sole proprietor’s personal income when calculating a sole proprietorship’s GAR
  - When it is not revenue earned by the for-profit business applying for a covered credit transaction



# What are Covered Applications?



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# Covered Applications

- Why is it important to know what qualifies as a “covered application”?
  - Covered financial institutions will be reporting data collected on “covered applications”
  - So it is important to be able to identify what qualifies as a “covered application”





# Covered Applications

- Also, there are limitations under Reg B
- Regulation B Section 1002.5(b) provides that a
  - *“creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction”*
  - Unless an exception applies



# Covered Applications

- Definition of a “covered application”
  - “Covered application” is an oral or written request for a covered credit transaction that is made in accordance with the procedures used by a financial institution for the type of credit requested



# Covered Applications

- Each institution has the latitude to establish its own application process and procedures
  - Including designating the type and amount of information it will require from applicants
  - “Procedures” refers to the actual practices followed by an institution as well as its stated application procedures



# Covered Applications

- **Example:**
  - Bank of Last Resort's stated policy is to require all applications to be in writing on the Bank's application form, but the Bank also makes credit decisions based on oral requests
  - In this case, Bank of Last Resort's application procedures would be viewed as accepting both oral and written applications



# Covered Applications

- Does not include the following:
  - Reevaluation, extension or renewal requests on an existing business credit account
    - Unless the request seeks additional credit amounts
  - Inquiries and prequalification requests



# OVERVIEW OF REPORTING REQUIREMENTS



# 20 Data Points

- The SBLR will require covered financial institutions to collect the following 20 data points related to “covered applications”



# 20 Data Points

- Unique identifier of the lender
- Application date
- Application method
- Application recipient
- Credit type
- Credit purpose
- Amount applied for
- Amount approved or originated
- Action taken & the date





# 20 Data Points

- Denial reasons
- Pricing information
- Census track
- Gross annual revenue
- NAICS code or information about the business such that the financial institution can collect the NAICS code
- Number of workers
- Time in business
- **Minority-owned** business status
- **Women-owned**, and **LGBTQI+-owned** business status
- Number of principal owners and their: **ethnicity**, **race** and **sex**



# Reporting Data to the CFPB

- The SBLR requires covered financial institutions to annually report to the CFPB the data points they collect during a calendar year
- The reporting deadline requires institutions to report the information on or before June 1 following the calendar year in which the institution compiled the data
- CFPB will make available to the public the reported data points #1 to #20, subject to deletions or modifications that the CFPB may make at its discretion in the interest of privacy



# Firewalls and Recordkeeping Requirements

- Firewall requirements
- Must keep specified records for at least three years after submission to the CFPB



# Questions?





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# We're adjourned!

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