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Section 1071: Small Business Lending Data Collection and Reporting

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SUMMARY

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Section 1071: Small Business Lending Data Collection and Reporting

Small businesses are owned by and employ a wide variety of entrepreneurs—skilled trade technicians, farmers, medical professionals, financial consultants, technology innovators, and restauranteurs, among many others. As do large corporations, many small businesses rely on credit for a variety of reasons, including to purchase inventory, to cover cash flow shortages, and to expand operations. Access to credit may be one factor that impacts the success and growth of these businesses. Some small firms may be able to access the credit they need, others may face credit constraints, and still others may be discouraged from applying for credit.

Congress has demonstrated an ongoing interest in credit availability for small businesses and small farms, viewing them as a medium for stimulating the economy and creating jobs. In general, Congress's interest in the small business credit market focuses on (1) whether small business entities can reasonably obtain loans from private lenders; (2) whether the prices (lending rates and fees) of such credit are fair and competitive; and (3) whether discrimination by certain factors (e.g., race, gender) may disproportionately reduce credit access for some small businesses.

Congress has passed legislation to facilitate lending to small businesses and small farmers that are likely to face hurdles in obtaining credit. Examples include the Small Business Act of 1953 (P.L. 83-163), which established the Small Business Administration; the Community Reinvestment Act (CRA; P.L. 95-128), which encourages banks to address persistent unmet small business credit demands in low- and moderate-income communities; the Farm Credit Act of 1971 (P.L. 96-592), which was amended in 1980, requiring the Farm Credit System to consider the credit needs of young, beginning, and small farmers and ranchers; and the Riegle Community Development Regulatory Improvement Act of 1994 (P.L. 103-325), which established the Community Development Financial Institutions Fund, which, after certifying lenders with a primary mission of community development, provides them with financial awards to support lending to small businesses and small farms, among other financial community needs. These and other laws encourage increased credit supplied to businesses that are starting up or small.

Determining whether the supply of credit to these market segments is sufficient, including the impact of congressional efforts, is difficult without knowledge about the demand for small business credit (e.g., information regarding their required loan amounts, where they applied, and whether they were approved or rejected). Therefore, federal agencies may insure and subsequently collect data about small business *loans*, which may be informative. In addition, Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203) requires the Consumer Financial Protection Bureau (CFPB) to collect data from lenders concerning loan *applications* made by small businesses with the goals of better understanding the financing needs of those owned by women and minorities and identifying possible discrimination.

On March 30, 2023, the CFPB finalized the Section 1071 rule regarding data collection and reporting requirements for certain information contained in applications by women-owned, minority-owned, and other small businesses, including small farms. A financial institution covered by Section 1071 is one that has originated at least 100 covered small business loans in each of the two preceding calendar years. Lenders that originate at least 2,500 small business loans annually must 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. This approach for implementing Section 1071 attempts to minimize the costs for covered entities that must comply with multiple sets of data collection regulations. Consequently, loans that do not get reported—either because some small lenders do not meet the minimum loan origination thresholds to report or because some borrowers choose not to provide the requested demographic information—could arguably contain useful insights that policymakers would be unable to observe.

On July 31, 2023, the U.S. District Court for the Southern District of Texas ordered stays on all compliance deadlines for the Section 1071 final rule for the plaintiffs in the case and their members. Following a U.S. Supreme Court decision issued on May 16, 2024, the revised compliance dates for these institutions are July 18, 2025, for tier 1 highest volume lenders; January 16, 2026, for tier 2 moderate volume lenders; and October 18, 2026, for tier 3 smallest volume lenders.

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Introduction

Small businesses are owned by and employ a wide variety of entrepreneurs—skilled trade technicians, medical professionals, financial consultants, technology innovators, and restaurateurs, among many others. Similarly, small family farms are important to the U.S. agriculture industry because they operate nearly half of America's farmland.[1] As do large corporations, many small businesses and small farms rely on loans (credit) to purchase inventory, to cover cash flow shortages (which may arise from unexpected expenses or periods of inadequate income), or to expand operations, among other things. Congress has demonstrated an ongoing interest in lending to small entities, viewing them as mechanisms for stimulating the economy and creating jobs. Congress's interest in small business credit access generally focuses on (1) whether small businesses can secure credit from private lenders and (2) whether small businesses can obtain such credit at fair and competitive lending rates. In addition, Congress is interested in *fair lending* issues, which are matters concerning illegal discrimination against certain demographic groups (e.g., race, religion, gender).

Congress has passed various legislation to address credit access for small business and small farms as well as to promote equal credit access. For example, the Small Business Act of 1953 (P.L. 83-163) established the Small Business Administration (SBA), which supports capital access for small businesses that are unable to obtain credit at reasonable terms and conditions from private sector lenders.[2] The Community Reinvestment Act (CRA; P.L. 95-128) encouraged banks to address persistent unmet small business credit demands in low- and moderate-income (LMI) communities.[3] The Farm Credit Act of 1971 (P.L. 96-592) was amended in 1980 to consider the credit needs of young, beginning, and small farmers and ranchers.[4] The Riegle Community Development Regulatory Improvement Act of 1994 (P.L. 103-325) established the Community Development Financial Institutions (CDFI) Fund, which certifies and provides financial awards for lenders with a primary mission of community development to support local credit needs.[5]

Past legislative actions have focused predominantly on making credit available in underserved communities that consist of LMI individuals rather than on certain demographic characteristics of individual applicants requesting credit. Furthermore, the Equal Credit Opportunity Act of 1974 (ECOA; P.L. 94-239) generally prohibits creditors from discriminating against applicants on the basis of race, color, religion, national origin, sex, marital status, or age or because the applicant receives public assistance. For these reasons, collecting these demographic characteristics about loan applicants is generally prohibited except under certain circumstances. For example, the Home Mortgage Disclosure Act of 1975 (P.L. 94-200) allows for the collection and reporting of demographic characteristics of mortgage applicants to increase credit access to creditworthy individuals and discourage discriminatory loan-markup pricing practices.[6] Thus, statutory

[1] See U.S. Department of Agriculture, "Diverse Family Farms Are Important to U.S. Agriculture," July 20, 2017, https://www.usda.gov/media/blog/2017/07/20/diverse-family-farms-are-important-us-agriculture.

[2] See CRS Report RL33243, *Small Business Administration: A Primer on Programs and Funding*, by Robert Jay Dilger, R. Corinne Blackford, and Anthony A. Cilluffo.

[3] See CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

[4] See CRS Report R46768, *Agricultural Credit: Institutions and Issues*, by Jim Monke.

[5] See CRS Report R47217, *Community Development Financial Institutions (CDFIs): Overview and Selected Issues*, by Darryl E. Getter.

[6] P.L. 94-200, 12 U.S.C. §§2801-2809. For more information about the act, see CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

authority was necessary before the gathering of demographic information about small business loan applicants could occur.

Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203) amended ECOA to give the Consumer Financial Protection Bureau (CFPB) the authority to compile data from small business lenders to identify the financing needs of small businesses, particularly those owned by women and minorities.[7] The focus on lending gaps as they pertain specifically to women- and minority-owned firms is to facilitate the enforcement of fair lending laws, which are typically designed to protect consumers (as opposed to commercial businesses) from unfair and discriminatory practices.[8]

On March 30, 2023, the CFPB finalized the Section 1071 data collection requirements, and it will implement the law via Regulation B.[9] Regulation B specifically requires financial institutions to collect and report certain data regarding the credit applications of women-owned, minority-owned, and other small businesses, which includes small farms. The data must be reported annually to the CFPB.

This report discusses the Section 1071 final rule. It first explains various challenges and considerations encountered by the CFPB while promulgating the rule. Next, it provides an overview of the data collection and reporting requirement for covered lenders under the final rule. Following a discussion of issues related to certain other data collection requirements and other collection matters, the last section highlights some observations regarding the SBA collecting of data on various SBA program borrowers that may arise with the collection of data under Section 1071. Specifically, SBA loan applicants may choose not to provide race and ethnicity, gender, and veteran status information. Loans that do not get reported—because either some small lenders will not meet the minimum loan origination thresholds to report or some borrowers choose not to provide the requested demographic information—could arguably contain useful insights that would be unobservable to policymakers.

Challenges and Considerations Promulgating the Final Rule

The CFPB took more than a decade before promulgating the final Section 1071 rule. Evaluating the extent of lending gaps—and specifically fair lending risks—in small business credit markets has complications. Dodd-Frank directed the definition of *small business*, discussed in the section of this report entitled "Summary of the Section 1071 Final Rule." Nevertheless, the CFPB's challenge was to design a dataset with the ability to conduct meaningful comparisons across loan products and over time given the various differences in small business types and models.

[7] See CFPB, "CFPB Explores Ways to Assess the Availability of Credit for Small Business," press release, May 10, 2017, https://www.consumerfinance.gov/about-us/newsroom/cfpb-explores-ways-assess-availability-credit-small-business/.

[8] For more information, see Federal Financial Institutions Examination Council, *Interagency Fair Lending Examination Procedures*, August 2009, https://www.ffiec.gov/pdf/fairlend.pdf.

[9] See CFPB, "Small Business Lending under the Equal Credit Opportunity Act (Regulation B)," March 30, 2023, https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

Multiple *Small Business* Definitions

No consensus definition of *small business* exists among the federal government and industry participants. Consequently, establishing a universal dataset to evaluate the performance of small business lending markets is challenging. Definitions of *small business* include the following:

- The SBA defines *small business* primarily by using a size standards table it compiles and updates periodically. The table lists size thresholds for various industries by either average annual receipts or number of employees.[10] The SBA also defines *small business* differently for different SBA programs. For example, the SBA's 7(a), Certified Development Company/504, and Small Business Investment Company (SBIC) programs have alternative size standards based on tangible net worth and average net income.[11]
- Academic research frequently uses a firm that has 500 employees or fewer (but does not monopolize an industry) as a proxy measure for a small business. Various federal agencies—such as the U.S. Census Bureau, the Bureau of Labor Statistics, and the Federal Reserve—have relied upon this definition.[12] In addition, some researchers view microbusinesses as a subset of small businesses. A common academic definition of *microbusiness* is a firm with only one owner, five employees or fewer, and annual sales and assets under $250,000.[13]
- Definitions of *small business* also vary in statute. For example, eligibility thresholds for "small business" tax incentives vary under tax law. Certain firms with average annual gross receipts of $25 million or less are able to use cash-based accounting for tax purposes. The tax credit for employee health insurance costs is available to employers with 25 or fewer employees whose average annual compensation is below a certain wage threshold.[14]
- According to a Federal Deposit Insurance Corporation survey, small and large banks have their own definitions of *small business*.[15] Small banks (defined as banks with $10 billion or less in assets) often view a small business as one in which the owner "wears many hats," referring to an owner who performs multiple tasks, perhaps because the firm is starting up or still in its early growth stage. Large banks define *small business* more formally in terms of annual revenues and sales.
- Likewise, the definition of *small farm* varies. For example, the Farm Credit System and parts of the U.S. Department of Agriculture (USDA) each define *small farm or ranch* as one with gross annual sales of less than $250,000. The USDA Economic Research Service, for statistical purposes, defines *small farm* as one having less than $350,000 of gross cash farm income. SBA defines *small farms* as those having less than $5 million in annual sales. The CRA definition of *small farm loan* is $500,000 or less.

The Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121) also requires the CFPB to address issues that could potentially have significant economic impacts on small entities subject to the Section 1071 rule.[16] The CFPB had to consider, for example, key

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[10] For the current size standards, see SBA, "Table of Size Standards," https://www.sba.gov/document/support-table-size-standards. For a historical analysis of the size standards, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger, R. Corinne Blackford, and Anthony A. Cilluffo.

[11] See SBA, "Lender and Development Company Loan Programs," SOP 50 10 6, October 1, 2020, pp. 118-119.

[12] See Karen Gordon Mills and Brayden McCarthy, *The State of Small Business Lending: Innovation and Technology and the Implications for Regulation*, Harvard Business School Entrepreneurial Management Working Paper no. 17-042, November 29, 2016.

[13] See Tammie Hoy, Jessie Romero, and Kimberly Zeuli, *Microenterprise and the Small-Dollar Loan Market*, Federal Reserve Bank of Richmond, May 2012, https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2012/pdf/eb_12-05.pdf.

[14] See CRS Report RL32254, *Small Business Tax Benefits: Current Law*, by Gary Guenther.

[15] See Federal Deposit Insurance Corporation (FDIC), *2018 FDIC Small Business Lending Survey*, revised December 20, 2018, https://www.fdic.gov/bank/historical/sbls/full-survey.pdf.

[16] See CFPB, Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking, December 14, 2020, https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf.

differences in the lending models of large and small lenders, which affect the type and cost of data that would be collected.[17]

First, large and small lenders often collect different types of data. Large lenders typically engage in lending to borrowers who possess more conventional financial metrics and documentation (e.g., sales fluctuations, costs of inputs, specific industry factors), which is considered *hard information* that can be used in automated and statistical underwriting methodologies to price loans.[18] By contrast, small lenders typically engage in relationship lending, meaning that they must develop close familiarity with their customers to gather *soft information*, which contains circumstantial details about factors such as non-standardized business risks, insufficient collateral, or weak or thin (business) credit histories. Because of soft information, the loan underwriting process to determine more customized loan products and loan pricing is generally less algorithmic and more labor intensive.[19]

Second, the type of information collected, which varies among lenders, would also be expected to influence their reporting costs. For example, because hard information is already quite uniform, large lenders may already have adopted automated technological systems that can handle large volumes of standardized and digitized financial data. In these cases, reporting is likely to be less expensive per applicant. By contrast, soft information is more unique to applicant circumstances, infrequent, and localized such that standardization of the data for electronic collection and reporting purposes is challenging. The reporting cost per applicant is also likely to be more expensive for small lenders that lack the volume of applications to justify the costs to convert soft information to digital and secure formats. Therefore, data likely to be informative about lending gaps in the small business and farm credit markets may be more difficult to standardize and more costly to collect, especially if small lenders predominantly serve these markets.

The CFPB also had to consider how Section 1071 implementation requirements might affect the supply of small business loans. For example, some institutions might decide to offer more standardized, less tailored financial products to reduce their reporting costs. Some lenders might require minimum principal loan amounts (e.g., $100,000) to ensure that the loans generate enough revenue to cover the costs to fund and report data, thereby leaving gaps in credit markets for many businesses that are starting up or small. In short, Section 1071 implementation, which is designed to identify any lending gaps, could potentially exacerbate lending gaps in various credit market segments without careful consideration of the potential impact of its requirements.

Summary of the Section 1071 Final Rule

The CFPB finalized Regulation B after years of surveying stakeholders to determine what data collection efforts were already in place, for what purposes, and how to minimize redundancy in data collection while factoring in the collection costs on the smallest institutions. Highlights of the final rule appear below.[20]

[17] See CRS In Focus IF11742, *Too Small to Collect Big Data: Financial Inclusion Implications*, by Darryl E. Getter.

[18] For more information on the use of quantifiable metrics by large banks and automated underwriting, see FDIC, *2018 FDIC Small Business Lending Survey*, https://www.fdic.gov/bank/historical/sbls/full-survey.pdf; and American Bankers Association, "The State of Digital Lending: Results of an American Bankers Association Research Study," 2018, https://www.aba.com/Products/Endorsed/Documents/ABADigitalLending-Report.pdf.

[19] For more information on relationship lending, see Allen N. Berger and Gregory F. Udell, "Relationship Lending and Lines of Credit in Small Firm Finance," *Journal of Business*, vol. 68, no. 3 (July 1995), pp. 351-381.

[20] See CPPB, *Executive Summary of the Small Business Lending Rule*, March 30, 2023, https://files.consumerfinance.gov/f/documents/cfpb_sbl_executive-summary.pdf; and CFPB, *Small Business Lending* (continued...)

Definition of *Small Business*. The final Section 1071 rule generally incorporates the meaning of *business concern* and *small business concern* under the Small Business Act and SBA regulations.[21] However, instead of relying upon the SBA's size standards, the final rule defines *small business concern* as a business that had $5 million or less in gross annual revenue for its preceding fiscal year.[22]

Covered Lenders. A financial institution covered by Section 1071, by the time all compliance dates have passed, is one that originates at least 100 covered small business loans in each of the two preceding calendar years. (The final rule increased the minimum loan volume threshold of 25 in the proposed rule to 100 loan originations, which could potentially reduce reporting requirements for some small lenders.[23]) These entities include, but are not limited to, depository institutions (i.e., banks, savings associations, and credit unions); online lenders; platform lenders; community development financial institutions (CDFIs); lenders involved in equipment and vehicle financing; Farm Credit System lenders; commercial finance companies; merchant cash advance providers; governmental lending entities; and nonprofit lenders that satisfy the minimum origination thresholds. Lenders must determine annually whether they are covered by Regulation B. Any financial institution, however, may voluntarily collect and report data. Small CDFIs and mission-oriented community banks, for example, which may fall below the loan volume thresholds, expressed a willingness to collect and report small business lending data.[24]

Covered (Reportable) Applications. A covered application from a small business is an oral or written request for a covered loan (defined in the next paragraph). The CFPB, however, will not treat a reevaluation, extension, or renewal request on an existing business loan as a covered application. To reduce excessive reporting and data inaccuracies, business inquiries regarding the likelihood of qualification will not be considered formal applications. Similarly, solicitations, firm offers of credit, or other evaluations initiated by a lender will not be treated as a covered application until a business pursues the credit offer.

Covered Loan. A covered loan or covered credit transaction is a formal extension of business credit that can include loans, lines of credit, credit cards, merchant cash advances, and credit products used for agricultural purposes. The CFPB also lists various transactions that would not be considered covered transactions (e.g., mortgage loans that are reportable under a different set of requirements; a reevaluation, extension, or renewal request on an existing business loan).

Key Data Variables for Collection. The data variables below will be collected from covered applications:[25]

Under the Equal Credit Opportunity Act (Regulation B), Final Rule, March 30, 2023, https://files.consumerfinance.gov/f/documents/cfpb_1071-final-rule.pdf.

[21] 15 U.S.C. §631 et seq.

[22] The CFPB updates the $5 million size standard not more than every five years to account for inflation.

[23] For the proposed rule, see CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56356-56606, October 8, 2021.

[24] According to the final rule, small entity representatives expressed an intent to report data out of belief in the importance and utility of these data. See CFPB, *Small Business Lending under the Equal Credit Opportunity Act (Regulation B)*, Final Rule, p. 92. For more information about CDFIs, see CRS Report R47217, *Community Development Financial Institutions (CDFIs): Overview and Selected Issues*, by Darryl E. Getter.

[25] The variables and specific options that can be selected for the variables may also be found in the code book chart that was released during the notice of proposed rulemaking. See CFPB, *Proposed Data Points for Small Business Lending Data Collection*, September 1, 2021, https://files.consumerfinance.gov/f/documents/cfpb_section-1071-nprm_data-points-chart_2021-09.pdf.

- a unique *loan identifier*;[26]
- the *application date* (month, day, and year);
- the *application method* (whether the borrower applied in person, by telephone, by mail, or online);
- the *application recipient* (whether the application was submitted directly to lender, a lender's affiliate, or an unaffiliated third party);
- the *action taken* by the covered financial institution on the application (whether the loan was originated, approved but not accepted, denied, withdrawn by the applicant, or incomplete);
- the *action taken date* (month, day, year);
- for denied applications, *up to four denial reasons* (from 10 choices);[27]
- for applications (i) originated or (ii) approved but the borrower chose not to accept, *pricing information* that may include interest rate(s), total origination charges, charges by third parties, broker fees, initial annual charges, the difference between the amount advanced and the amount to be repaid for merchant cash advances and similar products, and prepayment penalties;
- the *credit type* (one credit type must be chosen from either nine credit products or 12 loan guarantee products, or the number of months for a loan product that does not conform to any of the credit or guarantee products must be provided);[28]
- up to three options pertaining to the *credit purpose* from a list of 15 options;[29]
- the *amount applied for* in the form of a range of numbers;[30]

[26] The legal entity identifier (LEI), which is used to uniquely identify a legally distinct entity that engages in a financial transaction, can identify the parties involved in financial transactions such as when loans are transferred from one institution to another. (An LEI can be embedded into the Universal Loan Identifier.) For more information, see CRS In Focus IF11341, *Could the Global Legal Entity Identifier Be Useful for Financial Transparency Legislation in the 116th Congress?*, by Rena S. Miller; and LEI Register, "What Is an LEI Number?," https://www.lei-identifier.com/what-is-an-lei-number/.

[27] The 10 choices are (1) a business's credit characteristics such as its credit score, history of bankruptcy, or history of delinquency; (2) the credit characteristics of the principal owners(s) or guarantors(s) in terms of the ability to meet current or future debt obligations; (3) the use of loan proceeds for certain types of high-risk activities; (4) insufficient or inconsistent cash flow; (5) unacceptable or insufficient collateral to back the loan; (6) insufficient time or experience in a line of business; (7) failure of the applicant to meet certain government loan program criteria; (8) whether total debt of the applicant(s) exceeds certain debt thresholds; (9) unverifiable information; and (10) an "other" category that would require the financial institution to provide a reason in text.

[28] For the list of 9 credit products and 12 loan guarantees provided in the proposed rule, see CFPB, "Proposed Data Points for Small Business Lending Data Collection," September 1, 2021, p. 2, https://files.consumerfinance.gov/f/documents/cfpb_section-1071-nprm_data-points-chart_2021-09.pdf.

[29] For the list of 15 reasons provided in the proposed rule, see CFPB, "Proposed Data Points for Small Business Lending Data Collection," September 1, 2021, p. 3, https://files.consumerfinance.gov/f/documents/cfpb_section-1071-nprm_data-points-chart_2021-09.pdf.

[30] For business lending, the application amount may change throughout the lending process, and therefore, making the initial amount requested a challenge to collect and report. For this reason, the CFPB is allowing the initial amount requested to be reported in the form of a range, and it is allowing the amount requested to be chosen at the formal application or underwriting stage (and not before). The covered entity may report either (1) the dollar amount of the applicant's initial request, (2) the dollar amount in response to a solicitation or offer of a specified amount, (3) the dollar amount underwritten if an applicant does not request a specific amount, or (4) "not applicable" if the loan does not involve a specific amount. Although the choice "not provided by the applicant and otherwise undetermined" was included in the proposed rule, the CFPB noted that large differences between amounts applied for and originated could indicate fair lending concerns. Therefore, CFPB prefers to limit the risk of collecting inaccurate or incomplete data.

- the *census tract* based on an address or location provided by the applicant using a "waterfall" approach;[31]
- the *gross annual revenue* for the applicant's business for the preceding fiscal year;[32]
- a *three-digit North American Industry Classification System code* for the applicant;[33]
- the *number of people working for the applicant* in the form of ranges (rather than a specific number of workers);[34]
- the applicant's *time in business* (i.e., less than two years, two or more years);
- the *number of principal owners*;[35]
- self-identification as a *women-owned business status*, *minority-owned business status*, or *LGBTQI+-owned business status* if one or more individuals (in each category respectively) holds more than 50% of ownership or control and if more than 50% of the net profits or losses accrue to one or more such individuals—and respondents may elect to answer "I do not wish to provide this information," particularly for any business that cannot reach a legal conclusion;[36] and
- the *ethnicity, race, and sex of the principal owner(s)* applying for credit.[37]

[31] The covered lender would report, using a waterfall approach (i.e., in the order of availability), (1) the census tract in which the location where the proceeds of the loan will be or would have been principally applied, (2) the address of the applicant's main office or headquarters, or (3) another address associated with the applicant. The geocoding tool for determining the proper census tract will be provided by the CFPB or the Federal Financial Institutions Examination Council.

[32] Although gross annual revenues may be important for understanding credit access for small firms (e.g., sole proprietorships) and particularly those operating in underrepresented communities, business loan underwriting typically depends upon different revenue streams—for example, the expected revenue generated by the business project. For this reason, many lenders may not collect gross annual income, and the CFPB will not require verification of the income that the business reports. The CFPB is also considering ways to modify the data for publication, such as sorting into range categories, particularly to protect the privacy for the smallest firms.

[33] The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS groups businesses into industries based upon the similarity of their production processes, consisting of 20 sectors and 1,012 industries in the 2022 NAICS United States manual. For more information, see U.S. Census Bureau, "North American Industry Classification System," https://www.census.gov/naics/; and U.S. Census Bureau, *North American Industry Classification System, United States, 2022*, https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf.

[34] A range was selected because the number of employees may vary over a year. In addition, this data point typically is not a significant underwriting factor used for making credit decisions.

[35] Rather than report the type of business entity structure (e.g., sole proprietorship, C-corporation, limited liability company, partnership), the CFPB decided that the number of principal owners would provide greater insight into the ethnicity, race, and sex data, which arguably better satisfies the statutory intent of the Section 1071. Inferring the entity structure of small businesses may be possible if the variables—number of principal owners and number of people working for the applicant—can be jointly observed.

[36] LGBTQI+ individuals will be defined as those who identify as lesbian, gay, bisexual, transgender, queer, or intersex. Loan officers will not be required to make their own determinations of applicants' race, ethnicity, or any other demographic information.

[37] The CFPB defines *minority individuals* as any American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino American individuals. Although the Office of Management and Budget, which establishes the race and ethnicity definitions used throughout the federal government, includes additional disaggregated ethnicity and race subcategories, the CFPB chose not to collect more granular information that would increase the difficulty to aggregate and analyze the data. See CFPB, "Small Business Lending Under the Equal Credit Opportunity Act," 88 *Federal Register* 35358, May 31, 2023.

No Requirement to Collect Information via Visual Observation or Surname. Should applicants choose not to provide demographic information, the final rule does not require financial institutions to use visual observation, surname analysis, or any other basis to determine principal owners' ethnicity and race.[38] Instead, the questions are to be reported as unanswered.

Compliance Dates. Final rule compliance is based on a tiered compliance date schedule. Lenders that originate at least 2,500 small business loans annually must report data starting October 1, 2024. Lenders that originate at least 500 loans annually must report data starting April 1, 2025. Lenders that originate at least 100 loans annually must report data starting January 1, 2026.

Lawsuits and Legislative Actions Pertaining to CFPB's Section 1071 Rule

The CFPB has faced lawsuits regarding Section 1071. One lawsuit was filed to expedite the promulgation of Section 1071. By contrast, a second complaint resulted in a stay implementing Section 1071.[39]

- On May 14, 2019, the California Reinvestment Coalition sued the CFPB.[40] The plaintiffs argued, among other things, that the rulemaking process had been unlawfully halted without any explanation.[41] The lawsuit led to a court order requiring the CFPB to finalize the Section 1071 rule by March 31, 2023.[42]
- On April 26, 2023, the Texas Bankers Association and Rio Bank filed a complaint challenging the Section 1071 final rule. The plaintiffs argue, among other things, that the rule will impose significant data collection and reporting requirements on small business lenders.[43] On July 31, 2023, the U.S. District Court for the Southern District of Texas ordered the CFPB not to implement or enforce the small business lending rule against plaintiffs and their members.[44] On July 31, 2023, the U.S. District Court for the Southern District of Texas ordered stays on all compliance deadlines for the Section 1071 final rule for the plaintiffs in the case and their members. Following a U.S. Supreme Court decision issued on May 16, 2024, the revised compliance dates for these institutions are July 18, 2025, for tier 1 highest volume lenders; January 16, 2026, for tier 2 moderate volume lenders; and October 18, 2026, for tier 3 smallest volume lenders.[45]

In addition, Congress attempted to overturn the final rule under the Congressional Review Act.[46] S.J.Res. 32, a joint resolution providing for congressional disapproval of the Section 1071 final rule, passed the Senate on October 18, 2023, and passed the House on December 1, 2023; however, it was vetoed by the President on December 19, 2023. The Senate was unable to override the veto when it was reconsidered on January 10, 2024.

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[38] See CFPB, "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)," 88 *Federal Register* 35383, May 31, 2023.

[39] See CFPB, "Small Business Lending Rulemaking," https://www.consumerfinance.gov/1071-rule/.

[40] See *California Reinvestment Coalition v. CFPB,* No. 3:19-cv-02572, https://democracyforward.org/wp-content/uploads/2019/05/2019-05-14-Complaint-for-Declatory-and-Injunctive-Relief-No.-19-cv-02572.pdf.

[41] See Rise Economy (formerly California Reinvestment Coalition), "California Coalition Sues the Trump Administration for Pulling Back on Data Collection to Protect Women-Owned, Minority-Owned and Small Businesses Against Discriminatory Lending Practices," press release, May 14, 2019, https://rise-economy.org/press-release/california-coalition-sues-the-trump-administration-for-pulling-back-on-data-collection-to-protect-women-owned-minority-owned-and-small-businesses-against-discriminatory-lending-practices/.

[42] See CFPB, "CFPB Finalizes Rule to Create a New Data Set on Small Business Lending in America," March 30, 2023, https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/.

[43] See Christine Emello et al., "Texas Bankers Challenge CFPB's Section 1071 Rule," *Consumer Financial Services Law Monitor*, 2023, https://www.consumerfinancialserviceslawmonitor.com/2023/04/texas-bankers-challenge-cfpbs-section-1071-rule/; and Evan Weinberger, "CFPB Small Business Loan Rule Partially Blocked," *Bloomberg Law*, July 31, 2023, https://news.bloomberglaw.com/banking-law/small-business-lending-rule-partially-blocked-by-texas-judge.

[44] See *Texas Bankers Ass'n, et al. v. CFPB, et al.*, No. 7:23-cv-00144, https://files.consumerfinance.gov/f/documents/cfpb_pi_order_texas_bankers.pdf.

[45] See Notice of Supreme Court Decision in *CFPB v. Community Financial Services Association, Tex. Bankers Assoc. v. CFPB* (S.D. Tex., May 17, 2024) (Doc. 97 No. 7:23-cv-00144).

[46] For more information, see CRS In Focus IF10023, *The Congressional Review Act (CRA): A Brief Overview*, by Maeve P. Carey and Christopher M. Davis.

Selected Data Collection Issues Under Section 1071

Prior to Section 1071 implementation, various types of lenders collected and reported small business data under different programs, as listed in the following examples:

- To comply with mission-based requirements, banks and CDFI-designated lenders must report data to demonstrate compliance with the CRA and CDFI Fund requirements, respectively. Both CRA and the CDFI Fund focus on lending in circumscribed geographical areas by small lenders.[47]
- The purpose for reporting credit unions' business lending activities is to demonstrate compliance with statutory requirements that differ from banks' business lending activities.[48]
- Reporting requirements in SBA lending programs are generally designed to collect data about whether the programs expand access to credit to entrepreneurs who cannot access credit elsewhere. For example, the Microloan program is statutorily targeted "to assist women, low-income, veteran … and minority entrepreneurs and business owners and other such individuals."[49]
- The USDA reporting requirements are generally designed to collect data about whether its programs benefit less developed farms.

Section 1071's intended focus, however, is on the race and gender of credit applicants. For this reason, many lenders—even those that already report data for various other purposes—are likely to incur costs to comply with Section 1071 collection requirements. Notwithstanding harmonization efforts by various federal regulators to mitigate the compliance costs—particularly for small lenders—some data issues are likely to remain. This section discusses selected small business data collection activities that currently exist, particularly some issues that federal regulators have made efforts to address and those that may still remain.

Banks: Data Reporting Under the Community Reinvestment Act

Congress passed the CRA in response to concerns that federally insured banking institutions were not making sufficient credit available in the local areas in which they were chartered and acquiring deposits.[50] The CRA requires federal banking regulatory agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency—to implement and enforce the CRA by conducting

[47] The CRA was passed before U.S. restrictions on interstate and branch banking were lifted, meaning that the banking system consisted of numerous small banks. See David L. Mengle, "The Case for Interstate Branch Banking," Federal Reserve Bank of Richmond, November/December 1990, https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_review/1990/pdf/er760601.pdf.

[48] The Credit Union Membership Access Act of 1988 (P.L. 105-219) established commercial lending restrictions due to concerns that small credit unions, which had greater expertise in consumer lending, would face greater insolvency risk by participating in excessive commercial lending activities. See additional discussions in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Credit Union Membership Access Act, report to accompany H.R. 1151, 105th Cong., 2nd sess., May 21, 1998, S.Rept. 105-193.

[49] 15 U.S.C. §636(m)(1)(A). The SBA's Microloan program provides direct loans to nonprofit intermediaries to subsequently provide loans of up to $50,000 to small businesses and nonprofit child care centers. For more information, see CRS Report R41057, *Small Business Administration Microloan Program*, by Robert Jay Dilger and Anthony A. Cilluffo.

[50] This section is adapted from CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

examinations to assess whether banks are meeting local credit needs.[51] The regulators assign CRA credits (i.e., points) where banks engage in qualifying activities in the areas where they have deposit-taking operations. Qualifying activities include mortgage, consumer, and business lending, among other activities that would benefit LMI areas and entities.[52] CRA credits are subsequently used to issue each bank a performance rating.

For purposes of the CRA, banks must adhere to the following guidelines:[53] Under current CRA regulations, *small business loan* is defined as (1) having an original loan amount of $1 million or less, and (2) reported by the institution as either "secured by nonfarm or nonresidential real estate" or "commercial and industrial" on its call report.[54] *Small farm loan* is defined as having an original amount of $500,000 or less and reported as either "loans to finance agricultural production and other loans to farmers" or "loans secured by farmland" on the call report. In addition to these definitions, banks may still rely upon SBA's size standards for small business loans to negotiate for CRA consideration, particularly for originations that occur in LMI geographical locations and are guaranteed by the SBA. For each small business or small farm loan, a bank must collect a unique loan identifier, the loan amount at origination, the geographical location, and whether the loan was for a business or farm with gross annual revenues of $1 million or less.

On May 5, 2022, the three federal banking regulators issued a proposed rule that, among other things, would harmonize the CRA definitions of *small business* and *small farm* with those proposed in the Section 1071 rule.[55] Instead of using definitions based upon original loan amounts and the definitions of *small business* and *small farm*, the CRA reporting requirements are expected to adopt the finalized Section 1071 definition of "gross annual revenues of $5 million or less." Because the federal banking regulators allow the database created for the disclosure of mortgage originations to be used for CRA examinations, the use of Section 1071 will further standardize data collection and reporting efforts in the lending (i.e., banks and non-banks) industry, arguably resulting in greater data consistency, comparability, and possibly more uniform loan pricing.[56]

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[51] The Office of the Comptroller of the Currency (OCC) conducts a CRA examination of national banks every three years. See OCC, "CRA Questions and Answers," https://www.occ.treas.gov/topics/compliance-bsa/cra/questions-and-answers.html. For banks supervised by the Federal Reserve, see "Consumer Compliance and CRA Examination Mandates," https://www.federalreserve.gov/supervisionreg/caletters/Attachment_CA_13-20_Frequency_Guidance.pdf. The Gramm-Leach-Bliley Act of 1999 (P.L. 106-102) mandated the examination for smaller banks with assets of $250 million or less. For more information, see "Consumer Compliance Examinations—Examination and Visitation Frequency," https://www.fdic.gov/regulations/compliance/manual/2/ii-12.1.pdf. P.L. 109-351, the Financial Services Regulatory Relief Act of 2006, reduced the frequency of on-site CRA examinations for smaller banking institutions.

[52] The CRA requires federal banking regulators to take those ratings into account when institutions apply for charters, branches, mergers, and acquisitions or seek to take other actions that require regulatory approval.

[53] See Federal Financial Institutions Examination Council, *A Guide to CRA Data Collection and Reporting*, January 2001, https://www.ffiec.gov/cra/pdf/cra_guide.pdf.

[54] *Call reports*, the informal name for *consolidated reports of condition and income*, are quarterly data reports on condition and income that every national bank, state member bank, insured state nonmember bank, and savings association must file with its primary regulator. For more information, see FDIC, "Bank Financial Reports," March 21, 2022, https://www.fdic.gov/resources/bankers/bank-financial-reports/index.html.

[55] See OCC, Federal Reserve System, and FDIC, "Community Reinvestment Act," 107 *Federal Register* 33899, June 3, 2022; and OCC, "Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations," press release, May 5, 2022, https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47.html.

[56] For more information about standardization efforts to promote efficient market pricing of financial products, see CRS Report R46746, *Fannie Mae and Freddie Mac: Recent Administrative Developments*, by Darryl E. Getter; and CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

Credit Unions: Definition of Member Business Loans

Although credit unions primarily engage in consumer and residential lending, some originate commercial business loans for members, which are also referred to as member business loans (MBLs). Congress established provisions in the Credit Union Membership Access Act of 1998 (P.L. 105-219) regarding MBLs, including a commercial lending cap that limits most credit unions to lending no more than 12.25% of their assets to small businesses.[57]

The National Credit Union Administration (NCUA), the primary regulator of the credit union system, updated the regulations that define business loans to facilitate compliance with the act.[58] The revised definition, which differentiates MBLs from commercial loans, excludes business loans with balances less than $50,000 from being defined as either MBLs or commercial loans.[59] Based upon NCUA call reports (which capture credit unions' total loan originations rather than applications), the CFPB estimated in its Section 1071 rulemaking that approximately 400 credit unions would have been required to report under the initially proposed threshold of 25 loan originations.[60] The CFPB final rule does not exempt MBLs with balances less than $50,000. Thus, some credit union loans that would be exempt from the MBL cap would still be eligible for Section 1071 reporting. Whether some credit unions are likely to respond by making fewer of these loans to mitigate reporting costs is uncertain.[61]

Non-Depository CDFIs: Reporting of Business Lending Data

The CDFI Fund was created by the Riegle Community Development Regulatory Improvement Act of 1994 (P.L. 103-325) to promote economic development in distressed urban and rural communities.[62] The CDFI Fund certifies financial institutions—depositories (i.e., banks, credit unions) and non-depositories such as nonprofit loan funds, microloan funds, and (for-profit and nonprofit) venture capital funds—that can demonstrate having a primary mission of promoting community development. After certification, CDFIs become eligible for financial awards and other CDFI Fund assistance that promotes community development in markets comprised of economically distressed people and places.

In 2016, the CDFI Fund required CDFIs to annually submit Annual Certification and Data Collection Reports (ACR).[63] The CDFI Fund uses ACRs to ensure that its awards are dispersed to intermediaries predominantly engaged with serving people and communities in a manner that is

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[57] For more information, see CRS Report R46360, *The Credit Union System: Developments in Lending and Prudential Risk Management*, by Darryl E. Getter.

[58] See NCUA, "Summary of Key Changes to NCUA's Member Business Loan Final Rule: Table 2—Comparison of Member Business Loans and Commercial Loan Definitions," https://www.ncua.gov/files/agenda-items/AG20160218Item2c.pdf.

[59] For purposes specific to the credit union industry, a *commercial loan* is any loan, line of credit, or letter of credit (including any unfunded commitments) made to an individual, sole proprietorship, partnership, corporation, or other business enterprise for commercial, industrial, agricultural, or professional purposes (but not for personal expenditure purposes). For a more detailed definition, see NCUA, "Commercial and Member Business Loans," in "Examiner's Guide," https://publishedguides.ncua.gov/examiner/Content/ExaminersGuide/Loans/Commercial&MBL/Intro.htm#Major.

[60] CFPB, *Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*, Final Rule, pp. 206, 768.

[61] See Frank Gargano, "New CFPB Rule Could Raise Costs for Credit Unions," *American Banker*, April 5, 2023, https://www.americanbanker.com/creditunions/news/new-cfpb-rule-could-raise-costs-for-credit-unions.

[62] This section is adapted from CRS Report R47217, *Community Development Financial Institutions (CDFIs): Overview and Selected Issues*, by Darryl E. Getter.

[63] See U.S. Department of the Treasury, CDFI Fund, "CDFI Certification, Step 2: Reporting," https://www.cdfifund.gov/programs-training/certification/cdfi/reporting-step.

consistent with its mission. ACR data may also facilitate better understanding of the types of financial products obtained by customers and the development of a policy map comprised of CDFI target markets. In 2020, the CDFI Fund proposed data modifications to ACR and introduced the Certification Transaction Level Report, which is designed to standardize and automate the data collection process.[64]

CDFI banks and CDFI credit unions already collect and report data for their call reports, but non-depository CDFIs may be subject only to CDFI Fund reporting requirements. The CFPB received comments from stakeholders who estimated that non-depository CDFIs may take up to three years to comply with Section 1071.[65] Using CDFI Fund ACR data from FY2019, the CFPB estimated that, of the 340 non-depository CDFIs engaged in small business lending, 240 of them would have met the original proposed reporting threshold of 25 covered loan originations in each of the two preceding calendar years.[66] In 2019, the CDFI Fund reported that a total of 934 CDFIs (or approximately 25%) would have been eligible for Section 1071 reporting under the proposed rule.[67] With the increase of the minimum threshold to 100 covered loan originations under the final rule, fewer CDFIs would be expected to report, particularly non-depository CDFIs. However, some CFDIs, including other mission-oriented community banks, indicated that they still intended to voluntarily report data, which may be more feasible, particularly for those institutions that already satisfy various data collection and reporting requirements.[68] Nevertheless, because overall CDFI lending represents a small percentage of the U.S. financial system, the potential loss of unreported CDFI commercial lending may not significantly affect what the CFPB learns about general credit access.[69]

Agricultural Lending: Data Collection Issues

USDA and the Farm Credit System (FCS), a government-sponsored enterprise, collect data related to their lending activities to farmers and ranchers. Most agricultural lending (approximately 80%) is done by either commercial banks (36%) or the FCS (44%). As a direct lender, USDA has a share of the agricultural credit market of approximately 3%. It guarantees an additional 4% of loans, which are originated by commercial lenders or the FCS.[70]

The CFPB includes agricultural lending in the scope of small business lending for implementing Section 1071 to improve the demographic data available about agricultural lending. The CFPB

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[64] See CDFI Fund, "Agency Information Collection Activities; Proposed Collect: Comment Request," 85 *Federal Register* 27274-27275, May 7, 2020; and CDFI Fund, *Annual Certification and Data Collection Report and Certification Transaction Level Report: Overview of Request for Public Comment*, May 2020, https://www.cdfifund.gov/sites/cdfi/files/documents/slides-ctlr-and-acr-may-final.pdf.

[65] See CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," September 1, 2021, https://www.consumerfinance.gov/rules-policy/rules-under-development/small-business-lending-data-collection-under-equal-credit-opportunity-act-regulation-b/; and CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56356-56606, October 8, 2021.

[66] See CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," September 1, 2021, https://www.consumerfinance.gov/rules-policy/rules-under-development/small-business-lending-data-collection-under-equal-credit-opportunity-act-regulation-b/; and CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56356-56606, October 8, 2021.

[67] See CDFI Fund, *CDFI Annual Certification and Data Collection Report (ACR): A Snapshot for Fiscal Year 2019*, October 29, 2020, p. 8, https://www.cdfifund.gov/sites/cdfi/files/2021-01/ACR-Public-Report-Final-10292020-508Compliant.pdf.

[68] See CFPB, *Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*, Final Rule, p. 92.

[69] The lack of CDFI reporting, particularly by small CDFI loan funds, may limit what policymakers can learn about lending challenges in CDFI target markets.

[70] See CRS Report R46768, *Agricultural Credit: Institutions and Issues*, by Jim Monke.

estimated, using the 2019 annual report of the Farm Credit Administration (FCA), that the FCS would have had 72 lenders eligible to report under its proposed rule (which had initially relied upon a minimum loan threshold of 25 loan originations). In addition, the CFPB noted that high fair lending risk may be present in agricultural lending.[71] This section describes the level of information available about the demographics in agricultural lending at the time the rule was finalized.

Socially Disadvantaged Farmers and Ranchers (SDFR)

The Farm Service Agency (FSA), which is part of USDA, receives federal appropriations to make direct loans to farmers and issue guarantees on loans made by other lenders to farmers who are unable to obtain credit elsewhere. USDA FY2021 data indicate that FSA made 5,200 direct loans to SDFRs (24% of the number of loans) and issued guarantees for 984 SDFRs (14% of the number of guarantees). These represented $582 million (18%) of FSA's direct loans and $558 million (16%) of guaranteed loans.[72] Given that the FSA is a federal agency, direct loans made by FSA would not be subject to the Section 1071 rule.

USDA administers various programs to SDFRs (7 U.S.C. §2003), which include individuals who belong to groups that have been subject to racial or ethnic prejudice (e.g., Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander, and women).[73] In addition to SDFR targets, the farm loan program also reserves funds for beginning farmers and ranchers (7 U.S.C. §1994(b)(2)). Target levels of lending to SDFRs are determined at the county level based on local demographic information for the population of farmers and ranchers.

From 2015 to 2017, SDFRs represented 17% of farmers but accounted for 8% of agricultural debt.[74] The observed disparity may be difficult to explain because, according to the Government Accountability Office (GAO), the data on lending to SDFRs is limited.[75] It is also difficult to ascertain the effects of FCS outreach and engagement efforts. Furthermore, different SDFR data (collected pursuant to the 2018 farm bill, which required USDA to differentiate race, ethnicity, and gender) reveals that women accounted for about 60% of SDFR direct loan borrowers and 45% of SDFR guarantees in FY2019. By race and ethnicity, borrowers also identified as Black (8%), Asian-Hawaiian-Pacific Islander (4%), Indian-Alaska Native (21%), and Hispanic (17%). However, because borrowers may identify in multiple categories (e.g., non-White Hispanic or Black female), the sum of the demographic records exceeds the number of SDFR borrowers.[76]

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[71] See CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56407, October 8, 2021.

[72] FSA, Farm Loan Program Data, "FY 2021 Funding Accomplishments," https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data/index. For analysis, see the heading "Targeting Loans" in CRS Report R46768, *Agricultural Credit: Institutions and Issues*, by Jim Monke.

[73] See CRS Report R46727, *Defining a Socially Disadvantaged Farmer or Rancher (SDFR): In Brief*, by Renée Johnson. See also USDA, "Socially Disadvantaged, Beginning, Limited Resource, and Female Farmers and Ranchers," https://www.ers.usda.gov/topics/farm-economy/socially-disadvantaged-beginning-limited-resource-and-female-farmers-and-ranchers; and FSA, "Minority and Women Farmers and Ranchers," https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/minority-and-women-farmers-and-ranchers/index.

[74] See CFPB, "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)," 88 *Federal Register* 35224, May 31, 2023.

[75] See GAO, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers is Limited*, GAO-19-539, July 11, 2019, https://www.gao.gov/assets/gao-19-539.pdf.

[76] FSA, *Section 5413 Report to Congress*, as mandated by the 2018 farm bill (P.L. 115-334), September 2020; and FSA, Farm Loan Program Data, "FY2019 Funding Accomplishments." For analysis, see the heading "Targeting Loans" in CRS Report R46768, *Agricultural Credit: Institutions and Issues*, by Jim Monke.

Given these SDFR data issues, Section 1071 data collection may facilitate identification of fair lending risks that the CFPB believes are heightened in agricultural lending.[77]

Young, Beginning, and Small (YBS) Farmers and Ranchers

The FCS is a nationwide financial cooperative consisting of four district banks and member lending institutions that collectively operate as a government-sponsored enterprise.[78] After raising funds by selling bonds to private investors, the FCS may act as a direct lender to eligible individuals and businesses to make certain agricultural and rural loans to purchase land, livestock, equipment, and other supplies as well as to construct or improve buildings. In addition, the FCS provides loans to or participates with other financial institutions (OFIs). Some Native American CDFIs, for example, participate as OFIs with the FCS to obtain the low-cost funding available to its member institutions.[79]

Credit access for start-up farms may be as challenging as it is for start-up commercial businesses, and small relationship lenders typically serve this niche market.[80] In 1980, the Farm Credit Act of 1971 (P.L. 96-592) was amended to require the FCS to focus on the credit needs of young, beginning, and small (YBS) farmers and ranchers.[81] Specifically, regulation defines *young farmers* as those age 35 or younger, *beginning farmers* as those farming for 10 years or less, and *small farmers* as those having gross annual sales below $250,000.[82] On February 14, 2019, the FCA announced its plan to improve its YBS data collection, evaluation, and reporting process.[83] The FCA is the primary regulator of the FCS.[84]

Out of a total of 313,439 loans that FCS made in 2022, about 18% were to young farmers, 25% were to beginning farmers, and 41% were to small farms or ranches. Since YBS loans are typically smaller than the average FCS loan, the percentages of the $135 billion of loans made

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[77] See CFPB, "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)," 88 *Federal Register* 35224, May 31, 2023.

[78] See CRS Report RS21278, *Farm Credit System*, by Jim Monke; CRS Report R46768, *Agricultural Credit: Institutions and Issues*, by Jim Monke; CRS Report R46914, *An Overview of Rural Credit Markets*, coordinated by Andrew P. Scott; and FCA, 2020 Annual Report, https://www.fca.gov/template-fca/about/2020AnnualReport.pdf.

[79] See GAO, *Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands*, GAO-19-464, May 2019, https://www.gao.gov/assets/700/699447.pdf; and Joe Boomgaard, "Native American Agriculture Fund Spins Off New Financial Institution to Help Native Farmers," *Tribal Business News*, December 20, 2021, https://tribalbusinessnews.com/sections/food-agriculture/13742-native-american-agriculture-fund-spins-off-new-financial-institution-to-help-native-farmers.

[80] See Brent A. Gloy, Michael A. Gunderson, and Eddy L. LaDue, "The Costs and Returns of Agricultural Credit Delivery," *American Journal of Agricultural Economics*, vol. 87, no. 3 (August 2005), pp. 703-716.

[81] See FCA, "Young, Beginning, and Small Farmer Lending," https://www.fca.gov/bank-oversight/young-beginning-and-small-farmer-lending.

[82] See FCA, "Advanced Notice of Proposed Rulemaking—Young, Beginning, and Small Farmers or Ranchers," 84 *Federal Register* 5391, February 21, 2019.

[83] See FCA, "FCA Board Approves Advance Notice of Proposed Rulemaking to Review Regulations About Service to YBS Farmers," press release, February 14, 2019, https://ww3.fca.gov/news/Lists/News%20Releases/Attachments/576/NR-19-03_02-14-19.pdf. For more information about the FCA, see CRS In Focus IF10767, *Farm Credit Administration and Its Board Members*, by Jim Monke.

[84] Some have questioned CFPB imposing rulemaking on the FCS, because the FCA is the primary regulator for the FCS. The law creating CFPB has an exclusion for entities regulated by the FCA (12 U.S.C. §5517(k)), which states that the CFBP "shall have no authority to exercise any power to enforce [Title X of the Dodd-Frank Act, P.L. 111-203] with respect to a person regulated by" the FCA. However, CFPB's rulemaking to implement Section 1071 is part of ECOA, which predates CFPB (15 U.S.C. §1691c-2). CFPB's rulemaking authority for ECOA is separate (15 U.S.C. §1691b and 15 U.S.C. §1691c(d)). The FCA retains authority to enforce ECOA regulations against entities that are within the FCA's jurisdiction (15 U.S.C. §1691c(a)(6)).

were smaller than the number of loans: About 10% of the amount of loans were to young farmers, 16% to beginning farmers, and 14% to small farmers.[85]

Similar to the CRA, however, the YBS mandate does not compel the FCS to focus on any other demographic groups, meaning that its data collection and reporting is not delineated by race or ethnicity.[86] Similar to the CDFI Fund, the FCA's objective is to automate and standardize its data collection efforts while also reducing the regulatory burden for FCS member institutions.[87] Nevertheless, the CFPB does not exclude FCS lenders from the Section 1071 final rule, and it estimates that all loans made by FCS members to farmers will be covered.[88]

A provision in the House Agriculture Committee–passed farm bill, H.R. 8467, Section 5503, incorporates the text of H.R. 2423 to (1) amend ECOA to exclude entities supervised by the FCA from Regulation B; (2) add to the Farm Credit Act that the FCA is the sole regulator of the FCS and that the definition of *small farmer* is one with annual farm sales less than $250,000; and (3) add a small farmer data collection requirement for FCS lenders to collect voluntary data about borrowers' race, sex, and ethnicity and report it to the FCA—replacing the ECOA data collection requirement. (A bill in the 117th Congress, H.R. 7768, would have removed authority for CFPB and ECOA to implement policy affecting the FCS such as Section 1071.)

Reporting of SBA Lending Activities Under Section 1071

While SBA lenders would continue reporting data to the SBA for the various programs in which they participate, applications for SBA loans are generally covered for Section 1071 reporting requirements. The extent of SBA loan application data reporting, however, depends upon whether the lenders meet other final rule requirements such as the annual origination requirements. Some SBA lenders—particularly those Certified Development Companies (CDCs) that lend only through SBA's 504 loan guarantee program and those Microloan intermediaries that lend only through SBA's Microloan program—may not meet the annual origination requirements for required Section 1071 reporting. According to SBA program data, for example,190 CDCs originated at least one loan in the 504 program during FY2022, while 24 (13% of all CDCs) originated at least 100 loans in the 504 program.[89] Under the Microloan program, 137 intermediaries originated at least one microloan during FY2022, while nine (7% of all Microloan intermediaries) originated at least 100 microloans.[90]

SBA lenders, however, typically do not limit themselves exclusively to SBA lending or participation in only one SBA lending program. Some CDCs or Microloan intermediaries may lend in multiple SBA programs or have non-SBA lending operations that would count toward determining their annual origination numbers. Lenders that engage in both SBA and non-SBA lending may also have enough origination volume to meet the minimum origination threshold.

[85] FCA, "FCA Board Receives 2022 Annual Report on the Farm Credit System's Young, Beginning, and Small Farmer Lending," press release, August 10, 2023, https://ww3.fca.gov/news/Lists/News%20Releases/Attachments/693/NR-23-11-08-10-23.pdf.

[86] See GAO, *Agricultural Lending*, p. 8.

[87] See FCA, *2019 Annual Report of the Farm Credit Administration*, https://www.fca.gov/template-fca/about/2019AnnualReport.pdf.

[88] See CFPB, "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)," 88 *Federal Register* 35257, May 31, 2023.

[89] SBA, Office of Capital Access, "7(a) & 504 Lender Report," data as of August 16, 2023, https://careports.sba.gov/views/7a504LenderReport/LenderReport?%3Aembed=yes&%3Atoolbar=no.

[90] SBA Office of Capital Access, "Microloans Lender Report," data accessed August 17, 2023, https://careports.sba.gov/views/MicroloanLenderReport/Report?%3Aembed=yes&%3Atoolbar=no.

Furthermore, SBA lenders that may not meet the required reporting threshold may still choose to voluntarily report data if they support the purpose of Section 1071, as some CDFIs do.

Comparisons of data from various SBA programs and collected under Section 1071 will have challenges. For example, SBA program data are for approved loans, but Section 1071 data are for loan applications. SBA programs also have underwriting, servicing, risk grading, and loan liquidation requirements that often differ from conventional lending programs.[91] These differences arguably can be identified under Section 1071 reporting requirements, thus enhancing the ability of fair lending examiners to make like comparisons.

SBA's Experience Collecting Demographic Data

The SBA began systematically collecting data on race and ethnicity in at least some of its small business loan programs in 1964.[92] SBA's experience collecting demographic data, therefore, may preview some issues that CFPB might encounter while collecting data under Section 1071. Specifically, the next sections discuss questions that may arise when a business is asked to select its race, ethnicity, and gender and the potential prevalence of unanswered responses.

Demographic Data Categories and Definitions

The SBA currently collects demographic data from borrowers in the 7(a) and 504 programs during the SBA guarantee application process. After borrowers have completed the forms, the lenders report the information to the SBA. Specifically, SBA Form 1919 requests information about each owner's veteran status, gender, race, and ethnicity, as shown in **Figure 1**.[93] Information collection is similar for the 504 loan program.[94] As explained below, data collection in the Microloan and SBIC programs is different, and both programs have unique data challenges.

[91] See FDIC, "From the Examiner's Desk: SBA Lending: Insights for Lenders and Examiners," June 14, 2023, https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum11/sisummer2011-article02.html.

[92] During the SBA's first decade of existence (after being established in 1953), it did not collect data on the race and ethnicity of borrowers. However, estimates suggested that minority entrepreneurs were poorly represented in SBA loan programs. In January 1964, to address this funding gap, SBA created the 6 x 6 pilot program—offering loans of up to $6,000 (about $59,200 in June 2023 dollars; see U.S. Bureau of Labor Statistics, "Consumer Price Index for All Urban Consumers," https://www.bls.gov/data/inflation_calculator.htm) with a maturity of up to six years. In about a year, the SBA approved 794 of these 6 x 6 loans, with about half (393, or 49%) going to minority businesses in five cities. See Timothy Bates, *A Review of the Small Business Administration's Major Loan Programs* (Interagency Task Force on Small Business Finance, December 1981), p. 8.

[93] Currently, those data are collected in the 7(a) program on SBA Form 1919, "SBA 7(a) Borrower Information Form" under Section II, "Individual Owner Information," https://www.sba.gov/sites/sbagov/files/2022-06/Form%201919_10-21-2020-rev%20508%20r2_0.pdf (see p. 6) for each individual owner.

[94] SBA Form 1244, "Application for Section 504 Loans," revised May 2020, https://www.sba.gov/sites/default/files/2020-09/SBA%20Form%201244-508.pdf (see p. 5).

Figure 1. Business Owner Demographic Information Collection for 7(a) Borrowers

Veteran/Gender/Race/Ethnicity data is collected for program reporting purposes only.

Disclosure is voluntary and has no bearing on the credit decision.

		Enter Response
Veteran	1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not	
Gender	M=Male; F=Female; X=Not Disclosed	
Race (more than 1 may be selected)	1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed	
Ethnicity	H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed	

Source: SBA, "SBA 7(a) Borrower Information Form," Form 1919, revised September 2020, https://www.sba.gov/sites/sbagov/files/2022-06/Form%201919_10-21-2020-rev%20508%20r2_0.pdf.

Collecting and reporting data on the demographics of small businesses can be challenging. Shorthand expressions used by some observers can leave the impression that the business itself has a race, ethnicity, gender, and veteran status even if the business itself does not.[95] Instead, *small business demographics* generally refers to owners' demographics, which can be challenging to collect. While many businesses (such as sole proprietorships) have only one owner, other businesses (such as partnerships, limited liability companies, and corporations) may have multiple owners. In these cases, assigning demographics to the business requires first determining which aspect to measure—ownership, control, operation, or something else. Focusing on ownership often requires examining ownership shares.

The SBA has recognized these and other challenges and has attempted to address them. **Table 1** shows the demographic group used in reporting SBA loan program data in its online Office of Capital Access reports. As mentioned above, demographic data collection is similar for the 7(a) and 504 programs, and the Microloan program uses different demographic groups for its data collection. One example of the SBA confronting the data collection challenge of businesses potentially having multiple owners is how gender data are reported. For the gender data, a loan is reported based on the share of the business that is owned by women. This allows a clearer understanding of loans made to businesses that are majority-owned by women,[96] but it does not provide information about businesses operated or controlled by women. (For many small businesses, there is likely to be substantial overlap involving ownership, operation, and control.) The SBA does not report race and ethnicity data in the same way. For the Microloan program, SBA officials stated that the SBA's online Microloan system allows entering the race and ethnicity of all owners. Loans are classified by the race and ethnicity of the primary borrower (the first borrower listed),[97] who may or may not own a majority stake in the business.

[95] The one exception is age. In common usage, a business has an age (the time since the business was started) that, unlike the business's racial, ethnic, gender, and veteran status classifications, is almost certainly different from that of the owner.

[96] At least within the Microloan program, SBA officials stated they define *women-owned businesses* as businesses that are either 100% female owned or 51% to 99% female owned. See GAO, *SBA Microloan Program: Opportunities Exist to Strengthen Program Performance Measurement, Collaboration, and Reporting*, GAO-20-49, November 2019, https://www.gao.gov/products/gao-20-49, footnote 21, p. 9. It is not clear how *women-owned businesses* is defined in 7(a) and 504, but it is likely that it includes businesses that are more than 50% female owned.

[97] GAO, *SBA Microloan Program*, footnote 22, p. 10.

Table 1. Comparison of Demographic Groups Used in SBA Program Data, FY2022

7(a) and 504	Microloan
Race	
American Indian or Alaska Native	American Indian or Alaska Native
Asian	Asian
Black of African American	Black or African American
Hispanic	Multiracial
Unanswered	Native Hawaiian or Other Pacific Islander
White	Unanswered
	White
Ethnicity	
(Included in race data)	Hispanic or Latino
	Not Hispanic or Latino
	Unknown/Not Stated
Gender	
Female owned more than 50%	100% female owned
Female owned 50% or less	51-99% female owned
Male owned	< 51% female owned
Not Available	
Veteran Status	
Veteran	Veteran
Non-Veteran	Service-Disabled Veteran
	Non-Veteran
	Unknown/Not Stated

Sources: Table created by CRS based on demographic groups used in SBA data reports: "7(a) and 504 Summary Report," data as of July 20, 2023, https://careports.sba.gov/views/7a504Summary/Report?%3Aembed=yes&%3Atoolbar=no; "Microloans Summary Report," data accessed on July 21, 2023, https://careports.sba.gov/views/MicroloanSummaryReport/Report?%3Aembed=yes&%3Atoolbar=no.

Percentages of Unanswered Responses

Some program participants choose not to provide race, ethnicity, gender, or veteran status data to the SBA because such reporting is optional, which poses another data challenge for the SBA. During the Obama Administration, for example, the SBA informed GAO that it could not require SBICs to report demographic data on their portfolio investments.

> SBA officials told [GAO] that the Small Business Investment Act of 1958 may give [the SBA] the authority to collect demographic information on a voluntary basis but not to require SBICs to collect and report such data. The agency could require reporting of such information as a condition of retaining program benefits, [SBA] officials said, only if the agency needed it to assess program participants' compliance with statutory or regulatory criteria governing core program requirements, or to make licensing decisions. SBA officials told [GAO] their position was that demographic information was not necessary for program participation and that the agency could not require respondents to report such

> information because SBA did not have authority to assess compliance based on race, ethnicity, or gender factors.[98]

Figure 2 shows the share of loans made to borrowers who did not provide race data. The average share of SBA loan borrowers who did not report race data over the period ranged from 16% to 18%, and was similar for all three programs. Whether certain racial and ethnic groups are more or less likely to decline providing the optional information is unclear.[99] On one hand, racial and ethnic minorities may be less likely to provide race and ethnicity data due to historical concerns about racial and ethnic discrimination in lending. On the other hand, because some SBA programs are targeted toward serving underserved and disadvantaged entrepreneurs, some White entrepreneurs may be less likely to provide race data due to fear of having their credit requests denied. Consequently, determining whether the unreported data are skewed—and, if so, the demographic group most underrepresented—is challenging.

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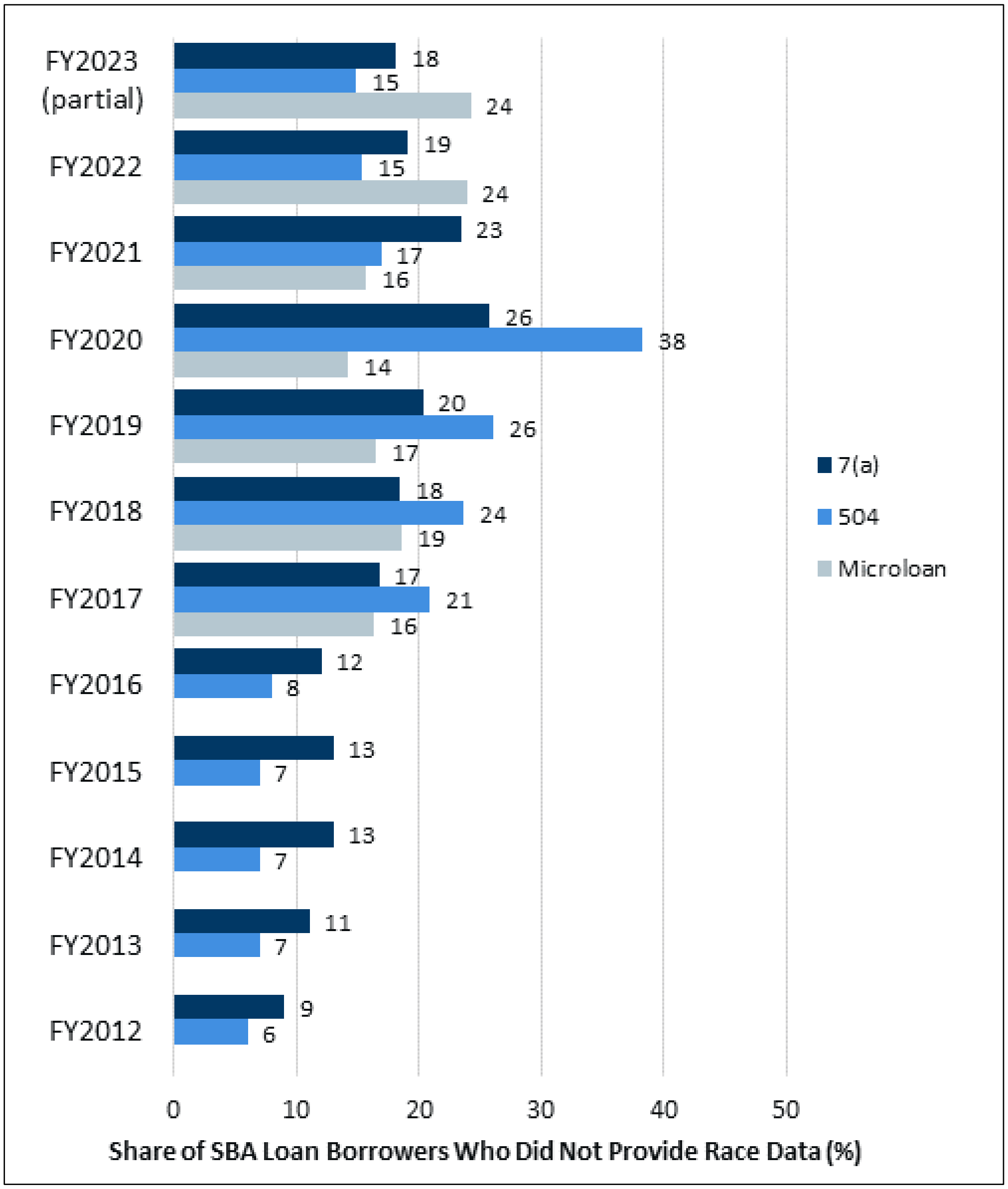
[98] GAO, Small Business Investment Companies: Characteristics and Investment Performance of Single and Multiple Licensees, GAO-16-107, January 27, 2016, https://www.gao.gov/products/gao-16-107, footnote 36, p. 23.

[99] Race data in mortgage reporting may be missing for systematic reasons, and the resulting sample selection problems may generate bias in fair lending examinations. For more information, see Jason Dietrich, "Mortgage Applications with Missing Race Data and the Implications for Monitoring Fair Lending Compliance," *Journal of Housing Research*, vol. 13, no. 1 (2002), pp. 51-84; and Liz Wagner, Jeremy Carroll, and Kevin Nious, "Online Mortgage Lending Creates Challenge for Regulators to Track Racial Discrimination," *NBC Bay Area*, June 1, 2018, https://www.nbcbayarea.com/news/local/online-mortgage-lending-creates-challenge-for-regulators-to-track-racial-discrimination/186798/.

Figure 2. Share of SBA Loan Borrowers Who Did Not Provide Race Data, FY2012-FY2023



Sources: Figure created by CRS using data from SBA. Data for FY2017-FY2023 from SBA data reports: "7(a) and 504 Summary Report," data as of July 20, 2023, https://careports.sba.gov/views/7a504Summary/Report?%3Aembed=yes&%3Atoolbar=no; "Microloans Summary Report," data accessed on July 21, 2023, https://careports.sba.gov/views/MicroloanSummaryReport/Report?%3Aembed=yes&%3Atoolbar=no. Data for FY2012-FY2016 from SBA Weekly Lending Report for September 30, 2017, https://www.sba.gov/document/report—2017-weekly-lending-reports.

Notes: Data are not available for Microloan for FY2012-FY2016. Data for FY2023 are partial. For 7(a) and 504, it includes data through July 20, 2023. For Microloan, it includes all data reported online on July 21, 2023.

Missing data rates are following different patterns for the programs. For 7(a) and 504, the share of loans missing the borrower's race data was generally increasing from FY2012 to FY2020, when the share peaked for both programs. The share of 7(a) and 504 loans missing race data has fallen since. The partial FY2023 missing data rates for 7(a) loans are broadly similar to before the COVID-19 pandemic, while the missing data rates for 504 loans are below those of the years just before the pandemic. Conversely, the share of Microloans missing race data did not increase during the pandemic. Instead, missing data rates held broadly steady for FY2017-FY2021 and then increased in FY2022 and for part of FY2023.

Other SBA Demographic Data Issues

GAO has studied SBA data issues several times and provided recommendations regarding data collection methodology and guidance to program partners.[100] In November 2019, GAO found the existing Microloan program data on borrower characteristics (such as race, ethnicity, and gender) reliable but expressed concerns with other program data. For example, GAO noted that, at that time, SBA collected data from Microloan intermediaries about whether Microloan borrowers had "low income" but did not define that concept. GAO determined that the lack of SBA guidance on the definition of *low income* meant that "it is unclear what criteria [Microloan intermediaries] are using then they record a borrower as" low income. GAO recommended providing lenders with more information about the definitions of key data collection concepts such as low income.[101]

The SBA Office of Inspector General (OIG) also studied data issues in the Microloan program in September 2017. OIG selected a sample of 52 loans and analyzed whether the lender's documentation supported the data stored in the SBA's systems. OIG found several weaknesses. Of the 52 loans studied, 27 loans (52%) had non-matching information in the lenders' files and in the SBA's system. Additionally, OIG found that Microloan intermediaries did not have full documentation to prove that they originated and disbursed 44 of the 52 microloans (85%). OIG determined that the "deficiencies affect the reliability of the data reported to SBA by [Microloan intermediaries]" and that "SBA's ability to validate [Microloan] data … was impaired."[102]

In January 2016, GAO determined that SBIC "data on minority, women, and veteran ownership of SBIC investments are unreliable, in part because SBA does not provide guidance to SBIC licensees on how to collect and report this information." GAO recommended that the SBA provide guidance on data collection concepts and methodologies to improve the quality of program data.[103]

Paycheck Protection Program

The Paycheck Protection Program (PPP)[104] was a COVID-19 pandemic policy meant to assist small businesses with continuing to pay their employees to avoid mass unemployment due to government shutdown orders. Over the course of the program, nearly $800 billion was approved through 11.8 million loans,[105] which could be completely forgiven if the borrower used the funds for qualified uses. Although the PPP loan application asked for data on the borrower's demographics, providing that information was voluntary. Observers have noted that the vast majority

[100] For example, see GAO, *Small Business Investment Companies: Characteristics and Investment Performance of Single and Multiple Licensees*, GAO-16-107, January 2016, https://www.gao.gov/products/gao-16-107; and GAO, *SBA Microloan Program: Opportunities Exist to Strengthen Program Performance Measurement, Collaboration, and Reporting*, GAO-20-49, November 2019, https://www.gao.gov/products/gao-20-49.

[101] GAO, *SBA Microloan Program*, pp. 36-37.

[102] SBA, OIG, "Audit of SBA's Microloan Program," September 28, 2017, https://www.sba.gov/document/report-17-19-audit-sbas-microloan-program.

[103] GAO, *Small Business Investment Companies*, pp. 39-40.

[104] For more information about the Paycheck Protection Program, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Bruce R. Lindsay, Adam G. Levin, and R. Corinne Blackford.

[105] SBA, "Paycheck Protection Program (PPP) Report: Approvals through 05/31/2021," https://www.sba.gov/sites/sbagov/files/2021-06/PPP_Report_Public_210531-508.pdf.

of borrowers did not provide demographic information, thus reducing the reliability of the incomplete dataset for policy research regarding the program's impact.[106]

Lessons learned from PPP data challenges may or may not be instructive for other SBA programs or reportable lending activities under Section 1071. The PPP was a program conceived for a unique purpose, making it vastly dissimilar from traditional commercial lending activities. For example, the maximum loan amount for PPP borrowers was determined in statute, and the SBA guaranteed 100% of the PPP principal amounts. The PPP loans were also designed to be forgivable in anticipation that many borrowers would likely receive forgiveness. Furthermore, lenders' earnings were generated from payments received from the SBA for each PPP loan originated, not from earnings generated by the repayment of loans. Thus, traditional underwriting, which normally occurs when lenders share a percentage of the default risk with the SBA, was not incorporated into the PPP.

By contrast, Section 1071 data might have been useful with the initial PPP design to facilitate broader credit access. Specifically, studies suggest that access to credit was delayed for minority-owned businesses under the PPP program because (1) PPP borrowers with larger payrolls were expected to receive more funding than were those with smaller payrolls, and (2) certain minority-owned firms tend to rely on non-bank lenders. The Federal Reserve Bank of Cleveland found that minority-owned small businesses tend to be concentrated in industries such as restaurants, tourism, and personal care—all more likely to have smaller payrolls compared to small businesses with more employees.[107] Thus, independent contractors and self-employed individuals, who were not allowed to apply for PPP loans until April 10, 2020, were put at a disadvantage relative to borrowers who could apply beginning April 3, 2020.[108] In addition, the Federal Reserve Bank of New York highlights that, according to the 2020 Small Business Credit Survey conducted by the 12 regional Federal Reserve banks, 27% of Black-owned employer firms relied upon online lenders instead of having borrowing relationships with banks as of the end of 2019 (i.e., pre-pandemic period).[109] However, banks originated most PPP loans, and non-bank lenders accounted for only 8.3% of PPP loans as of August 2020, when the last PPP loans in 2020 were accepted.[110] More reliable data collection under Section 1071 pertaining to the various credit experiences of various small businesses, therefore, may enhance policymaking, particularly under exigent circumstances (assuming a sufficient amount of applicant responses is collected).

[106] Garrett Borawski and Mark E. Schweitzer, "How Well Did PPP Loans Reach Low- and Moderate-Income Communities?," Federal Reserve Bank of Cleveland, May 28, 2021, https://www.clevelandfed.org/en/publications/economic-commentary/2021/ec-202113-reach-of-ppp-loans-in-lmi-communities.

[107] Lucas Misera, "An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms," Federal Reserve Bank of Cleveland, October 8, 2020, https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx. The underlying survey data are from Alexander W. Bartik et al., *How Are Small Businesses Adjusting to COVID-19? Early Evidence from a Survey*, University of Chicago Becker Friedman Institute, Working Paper No. 2020-42, April 2020, https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202042.pdf.

[108] The PPP's initial $349 billion authorization lasted 13 days, and the loans were processed on a first-come, first-served basis. This provided larger banks with automated electronic application delivery systems and greater loan processing capacity an advantage over smaller lenders that are more likely to serve minority populations.

[109] See Claire Kramer Mills and Jessica Battisto, "Double Jeopardy: Covid-19's Concentrated Health and Wealth Effects in Black Communities," Federal Reserve Bank of New York, August 2020, https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses.

[110] See Remy Beauregard, Jose A. Lopez, and Mark M. Spiegel, "Small Business Lending during COVID-19," Federal Reserve Bank of San Francisco, November 2020, https://www.frbsf.org/economic-research/publications/economic-letter/2020/november/small-business-lending-during-covid-19/; and Lei Li, *Who Supplies PPP Loans (and Does It Matter)? Banks, Relationships and the Covid Crisis*, National Bureau of Economic Research Working Paper 28286, December 2020, p. 10, https://www.nber.org/system/files/working_papers/w28286/w28286.pdf.

Conclusion

Without reliable data, the ability to evaluate the performance of various small business lending markets—specifically whether (1) a small business credit shortage exists, (2) pricing for loans to small businesses is significantly above the lending risks and funding costs, or (3) fair lending risks are present—is extremely challenging. The CFPB's Regulation B, promulgated under Section 1071 of the Dodd-Frank Act, gives the agency the authority to compile data from small business lenders. If it is possible to identify impediments to small business credit, policymakers may subsequently be able to better address these matters. Arriving at more definitive conclusions about the availability and costs of small business lending is more likely to occur with information such as the size and financial characteristics of the businesses that apply for loans, the types of loan products they request, the types of lenders to whom they applied, and which applications were approved and rejected. Nevertheless, the benefits of data collection also have costs and challenges that have been further illuminated given the challenges to implement Section 1071. Consequently, loans that do not get reported—either because some small lenders do not meet the minimum loan origination thresholds to report or because some borrowers choose not to provide the requested demographic information—could contain useful insights that would still be unobserved by policymakers.

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