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CFPB Releases the Dodd-Frank 1071 Small Entity Compliance Guide

The Consumer Financial Protection Bureau (CFPB) recently introduced the Dodd-Frank 1071 Small Entity Compliance Guide, an important resource for financial institutions navigating the mandates of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This provision amended the Equal Credit Opportunity Act and is similar to the Home Mortgage Disclosure Act. Despite its apparent simplicity, the final rule enacting Section 1071 requires covered financial institutions to collect over 80 data point fields for small business credit applications, including an applicant's status as a minority-owned or woman-owned business. The collected data is subsequently reported to the CFPB on an annual basis. The CFPB will make certain data available to the public.

CFPB's Small Entity Compliance Guide

The CFPB's Guide is designed to provide clarity and assistance to smaller businesses on how to comply with Section 1071. While it doesn't replace the rule itself, the Guide is an essential tool for understanding and implementing the necessary steps to ensure compliance. If you are a financial institution that originates small business credit, we highly recommend that you become familiar with the Guide to prepare for the tiered compliance deadlines of the rule.

Key elements

The Guide includes nine sections that cover key elements of Section 1071 compliance and offer helpful explanations and examples. For instance:

1. Who and what is covered.

Who: Generally, financial institutions that originated more than 100 covered credit transactions to small businesses in each of the two preceding calendar

years are required to report under the rule. A small business is defined as a business with gross annual revenue of \$5 million or less in the previous fiscal year. Note the broad reach that may require compliance by some non-lending entities that provide financing, such as Merchant Cash Advance companies, if they meet this threshold.

What: A covered credit transaction is broadly defined and includes loans, lines of credit, credit cards, merchant cash advances, and other credit products used primarily for agricultural, business, or commercial purposes. Specific credit transactions are excluded and the Guide lists and describes these exclusions (e.g., factoring, trade credit, consumer-designated credit, leases, etc.). Correct identification of covered credit transactions is important because they are used to determine if (a) a financial institution is required to comply with the reporting requirements of Section 1071 and (b) an application for credit must be reported.

2. **What is required.** Financial institutions that meet the threshold for reporting must compile, maintain, and report specific data points required by the rule about applications for covered credit transactions, including the action taken, the type and purpose of the financing, and information about the small business applicant.
3. **Data collection, reporting, and disclosure requirements.** The guide provides detailed instructions on each piece of data required to be collected under the final rule, how and when to report to the CFPB, and how reportable data should be disclosed and presented.
4. **Tiered compliance dates.** The final rule has three compliance dates for financial institutions based on the number of covered credit transactions originated in 2022 and 2023. The Guide contains examples to determine the appropriate compliance date. The earliest compliance date is October 1, 2024, for financial institutions with at least 2,500 covered originations in 2022 and 2023. If the number of transactions originated cannot be determined with certainty, the Guide includes suggested approaches to make an estimate. One suggestion is to assume that every covered credit transaction originated for business customers in 2022 and 2023 was to a “small business,” as defined by the rule.

What this means to you

Although the earliest compliance date for Section 1071 is over a year away (and may be extended further due to pending litigation), covered entities should begin preparing. The Small Entity Compliance Guide is an excellent starting point for compliance efforts. This is especially true for institutions, such as Merchant Cash Advance companies, who have not had to comply with similar

regulatory regimes, such as the Home Mortgage Disclosure Act. We recommend that, at the very least, compliance officers and in-house legal staff familiarize themselves with the Guide.

Contact us

If you need assistance with any aspect of the Section 1071 rule, our team is available and experienced in advising financial service providers and their vendors on implementation of and compliance with consumer finance laws. We also have attorneys experienced in HMDA data collection to support best practices for complying with Section 1071.

If you have any questions regarding Section 1071 for your business, please contact Chris Friedman, Maureen Clark, or your Husch Blackwell attorney.