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CFPB Signals Significant Changes to Small Business Lending Rule: New Section 1071 Rulemaking Forthcoming

by Ross M. Speier

The Consumer Financial Protection Bureau (CFPB or Bureau) recently announced that it plans to revisit – and potentially revise – its controversial small business data collection rule implementing Section 1071 of the Dodd-Frank Act, a development with significant implications for financial institutions nationwide.

The Bureau disclosed its intention to issue a replacement rule in its April 3, 2025, response brief in the ongoing litigation brought by the Revenue Based Finance Coalition (RBFC) against the CFPB to challenge the existing data collection rule.

As discussed in detail below, Section 1071 of the Dodd-Frank Act mandates that financial institutions collect and report certain data regarding small business lending activity. The CFPB's decision to initiate a new rulemaking process to implement Section 1071 under its current Trump-appointed leadership suggests a likely departure from the requirements as envisioned under the Biden-appointed CFPB leadership.

This move has raised considerable interest within the financial services industry, prompting questions about the future of small business lending regulation and the extent to which the concerns of industry stakeholders will be addressed under the CFPB's new leadership.

Section 1071 Rulemaking Under the Biden Administration's CFPB

The Section 1071 data collection rule, finalized on March 30, 2023, was a significant undertaking by the CFPB under the Biden administration. The Final Rule, officially titled "Small Business Lending Under the Equal Credit Opportunity Act," required financial institutions to collect and report extensive data from credit applications received from small businesses.

The Final Rule applied broadly to financial institutions that originated at least 100 covered small business loans in each of the two preceding calendar years. This wide net was designed to capture a significant portion of the small business lending market, including not only traditional banks and credit unions but also online lenders, platform lenders, and merchant cash advance providers.

The data collection requirements under the Final Rule were comprehensive and extended beyond the data points specifically listed in the Dodd-Frank Act. Under the Final Rule, financial institutions are obligated to report up to 81 data fields, encompassing a wide array of information about the loan application, the terms of credit, and the demographics of the small business owners. This included details such as the application date and method, the action taken on the application, pricing information (including interest rates and fees), and the type, purpose, and amount of the credit sought, in addition to various other data points. Notably, the Final Rule also mandated the collection of demographic information about the principal owners, including their race, ethnicity, sex, and whether the business was minority-owned or women-owned.

Compliance with the Section 1071 Final Rule was to be phased in based on the volume of small business loans originated by the financial institution, with original compliance dates ranging from 2024 to 2026 depending on annual origination volume.

The Legal Challenge: *Revenue Based Finance Coalition v. CFPB*

The Section 1071 data collection rule, from its inception, faced significant opposition from various segments of the financial services industry. Among the most prominent of these challenges was the lawsuit filed by the Revenue Based Finance Coalition (RBFC) against the CFPB in the Southern District of Florida. The RBFC is a trade association representing providers of sales-based financing, a type of commercial funding where repayment is tied to a business's future revenues rather than a fixed schedule.

The RBFC's legal challenge rested on several key arguments, asserting that the CFPB overstepped its statutory authority in issuing the Final Rule and failed to adequately consider the unique nature of sales-based financing. A central argument opposed the CFPB classifying sales-based financing as "credit" under the Equal Credit Opportunity Act, contending that sales-based financing does not constitute "debt" in the traditional sense but rather represents the purchase of a future revenue stream. The RBFC argued that these transactions involve a simultaneous exchange of value and do not include the deferral of a debt or payment obligation, which is a defining characteristic of "credit."

Furthermore, the RBFC pointed to the frequent use of the term "loan" within Section 1071, arguing that this indicates a legislative intent to regulate "traditional" lending products, not "alternative" financing models like sales-based financing.

A Shift in Direction: CFPB's New Rulemaking Under Trump Administration Leadership

The CFPB's statement that its "new leadership has directed staff to initiate a new Section 1071 rulemaking," and that the agency "anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible," clearly indicates a change in approach to compliance with Section 1071 is forthcoming.

The Bureau also noted in its filing that “the anticipated rulemaking process may moot or otherwise resolve” the subject of the litigation with the RBFC, suggesting a willingness on the part of the new CFPB leadership to address the types of concerns raised by the RBFC.

While the CFPB has not yet provided specific details about the content of the new proposed rule, the context of its announcement within the RBFC lawsuit strongly implies that the type of arguments raised by the coalition will be considered as part of the rulemaking.

The timing and nature of this announcement demonstrates the influence of the change in presidential administration and the subsequent appointment of new leadership at the CFPB, and reflects the broader deregulation-focused policy orientation of the Trump administration.

Anticipated Changes and Scaling Back of the Data Collection Rule

The decision by the CFPB to initiate a new rulemaking for the Section 1071 data collection rule suggests that significant changes to the existing Final Rule are on the horizon.

Several areas of the Final Rule are likely candidates for modification or scaling back:

- **Covered Institutions.** One potential area of change is the scope of covered institutions. The current Final Rule applies to financial institutions originating at least 100 small business loans annually. The new rulemaking could potentially raise this threshold, exempting more community banks and credit unions, as well as non-bank lenders, from the data collection requirements. This would resolve concerns that have been raised by such institutions about the compliance burden and costs associated with the rule.
- **Covered Transactions.** Another significant area for potential revision is the definition of “covered transactions.” Given the RBFC's central argument that sales-based financing should not be treated as “credit,” it is plausible that the revised rule could explicitly exclude sales-based and other types of alternative financing from its scope.
- **Data Points.** The number of data points required to be collected and reported is also likely to be reconsidered. Critics of the current Final Rule argue that the CFPB expanded the data requirements beyond what was mandated by Congress under Section 1071, creating an unnecessarily burdensome compliance regime. The new rulemaking will likely result in a rule that focuses more narrowly on the data points specifically enumerated under Section 1071 the Dodd-Frank Act, significantly reducing the compliance burden for covered institutions.
- **Demographic Data.** Furthermore, the requirements related to the collection of demographic data on principal owners will likely be modified to address concerns raised about the intrusiveness of collecting such detailed information as well as the potential for this data to be misused or exposed. The revised rule

might reduce the level of detail required for demographic data and/or make the provision of such information voluntary.

- **Compliance Deadlines.** Finally, the compliance deadlines for the rule are likely to be further extended or revised. Given the initiation of a new rulemaking process, it is unlikely that the original compliance deadlines will remain in place for all institutions.

Looking Ahead

The CFPB's decision to initiate a new rulemaking process for the Section 1071 data collection rule marks a significant shift in the regulatory landscape for small business lending. Under the leadership appointed by the Trump administration, the Bureau appears poised to revise the 2023 Final Rule in a manner that would address concerns raised by industry stakeholders, such as those outlined in the RBFC lawsuit.

While the exact form and timeline of the new rule remain to be seen, the current trajectory suggests a less expansive approach to small business lending data collection. The anticipated changes are likely to result in a data collection rule with a narrower scope, reduced data collection requirements, and a lower compliance burden compared to the version finalized by the CFPB under the Biden administration in 2023.

Financial institutions and other impacted stakeholders should closely monitor the CFPB's upcoming actions, including the anticipated issuance of a Notice of Proposed Rulemaking on the data collection rule, to understand the specific details of the potential revisions. It is important for institutions to assess their compliance preparations for the current rule, and to work with legal counsel to identify areas that may be affected by the anticipated changes to ensure preparedness for compliance with the revised Section 1071 rule.