



MORTGAGE BANKERS ASSOCIATION

Subject matter	CFPB DFA § 1071 <a href="#">proposed rules</a> , Oct. 2021	MBA <a href="#">recommendations</a> on 1071 proposal, Jan. 2022	CFPB DFA § 1071 <a href="#">Final Rule</a> , March 30, 2023
<b>Underlying statute</b>	Dodd-Frank Act amendment to Equal Credit Opportunity Act		
<b>Institutions covered</b>	Any financial institution in US that has made 25 or more small business loans each of the 2 preceding years	Increase threshold from 25 to 500 small business loans in each of two preceding years.	100 originations or more of qualifying small business loans in each of the two preceding calendar years.
<b>Transactions covered</b>	Loans to small businesses, not including business loans secured by 1-4-unit residential investment property. No maximum loan size.	Exclude all loans to finance investment property. Set maximum loan amount (\$1M or \$750K).	Excludes any loan which is reportable under HMDA, but does not expand the exclusion to all investment (non-owner occupied) property lending.
<b>Race, ethnicity, and gender information</b>	Business owners self-report race, gender, and ethnicity, or not. Lender to guess race and ethnicity of owners based on visual observation and surname if not provided by borrower. No guessing of gender.	Voluntary self-reporting of race, ethnicity, and gender by owners. No guessing permitted or required.	Voluntary self-reporting of race, ethnicity, and gender by owners. No guessing permitted or required.
<b>Verification of borrower information</b>	Verification not required, but if institution otherwise obtains or has validated information, it must substitute validated information for the relevant borrower-provided information.	Accept and report only borrower-provided information. No validation required and no obligation to substitute validated information for borrower-provided information.	Verification not required, but if institution otherwise obtains or has validated information, it must substitute validated information for the relevant borrower-provided information.

<b>Implementation Period</b>	<p>Compliance with the final rule would not be required until approximately 18 months after the final rule is published in the Federal Register.</p>	<p>Provide an implementation period that covers two full calendar years after the effective date of the final rule rather than the proposal of “about 18 months.”</p>	<p>The final rule creates a tiered process by which the largest small business lenders collect and report data within 18 months of the publication of the Rule, and the smallest qualifying lenders will have 33 months until they must comply.</p>
<b>Maximum “amount applied for” exclusion</b>	<p>Define a small business as having the same meaning as the term “small business concern” in 15 U.S.C. 632(a), as implemented in 13 CFR 121.101 through 121.107</p>	<p>Establish a minimum credit “amount applied for” set at the \$750,000 statutory limit for Small Business Association (SBA) loans.</p>	<p>The Bureau does not believe that it would be appropriate to define a small business based on the size of the loan applied for (i.e., by adopting a maximum “amount applied for” exclusion) such as one in the amount of \$750,000 (for SBA alignment) or \$1 million (for CRA alignment), as suggested by some commenters.</p>
<b>Small Business Definition “Newly Formed SPEs and Gross Annual Revenue”</b>	<p>Define a small business as having the same meaning as the term “small business concern” in 15 U.S.C. 632(a), as implemented in 13 CFR 121.101 through 121.107</p>	<p>For an applicant that is a newly created SPE, permit a financial institution to apply the \$5 million gross annual revenue threshold to either the gross annual revenue of the property for its most recent fiscal year under its prior owner or the SPE’s projected gross annual revenue rather than its (non-existent) prior year’s gross annual revenue.</p>	<p>The Bureau is not allowing a projection of gross annual revenue.</p>

<p><b>Small Business Definition “Affiliate Revenue”</b></p>	<p>Proposed § 1002.102(a) would define “affiliate” with respect to a business or an applicant as having the same meaning as described in 13 CFR 121.103, which is an SBA regulation titled “How does SBA determine affiliation?” This proposed definition would provide consistency with the Bureau’s proposed approach to what constitutes a small business for purposes of section 1071.</p>	<p>Provide additional guidance on what types of entities may be affiliates of an applicant, e.g., as a result of common ownership or common control.</p>	<p>Financial institutions can exclude businesses that are, in fact, middle- or large-sized applicants from data collection and reporting under this final rule by considering the gross revenue of these businesses’ affiliates.</p>
<p><b>Definition of Affiliate</b></p>	<p>Proposed § 1002.102(a) defines “affiliate” with respect to a financial institution as any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956. Proposed § 1002.102(a) defines “affiliate” with respect to a business or an applicant as having the same meaning as described in 13 CFR 121.103, which is an SBA regulation titled “How does SBA determine affiliation?” Proposed § 1002.107 (a)(14) permits, but not require, a financial institution to report the gross annual revenue for the applicant in a manner that includes the revenue of affiliates as well.</p>	<p>Define affiliate in the real estate lending context as: Gross annual revenue for real estate affiliates. If a financial institution collects a schedule of real estate which the applicant has an ownership interest in connection with a loan application, the owners of any real property listed on that schedule and the applicant are affiliates because of the common ownership.</p>	<p>The Bureau believes it is appropriate to define “affiliate” with respect to financial institutions to be consistent with the approach in the Bureau’s Regulation C. The Bureau does not believe it would be appropriate to deviate from the SBA’s definition for determining who is an affiliate with respect to a business or an applicant.</p>
<p><b>Firewall</b></p>	<p>Separate the collection of demographic information from the process of making a credit decision.</p>	<p>Clarify operational factors that a financial institution may consider when determining that an officer or employee “should have access” to</p>	<p>By increasing the loan value threshold, the CFPB believes it deals with the issues of smaller lenders with smaller staffs. The</p>

		demographic information collected under §1071.	final rule limits the firewall to employees and officers of a covered financial institution or its affiliate if that employee or officer is involved in making any determination concerning the applicant's covered application.
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