



Financial Services Management

Small-Business Loan Reporting/Enforcement Risk

Cite

Bureau of Consumer Financial Protection (CFPB), Request for Information (RFI)
Regarding the Small-Business Lending Market

Recommended Distribution:

Small-Business Lending, Compliance, Risk Management, Regulatory Reporting,
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Website:

<https://www.gpo.gov/fdsys/pkg/FR-2017-05-15/pdf/2017-09732.pdf>

Impact Assessment

- Just as HMDA reporting increased legal and reputational risk in residential mortgages, new CFPB small-business reporting could increase allegations that small-business lending discriminates on the basis of gender and minority status.
- The manner in which new data are compiled will have significant burden and risk impact. For example, data that do not well differentiate risk or origination costs could be inferred as discriminatory. Conversely, new data could expose previously undisclosed discriminatory-lending patterns, expanding credit availability and related community opportunity.
- New reporting is likely to be costly and require significant system overhaul. This could, however, further efforts to consolidate customer data for better internal analytics and marketing.

Overview

The Dodd-Frank Act¹ requires the CFPB to collect information from financial institutions (not just banks) on credit applications from women- and minority-owned small businesses and other small businesses. Before proposing these data-collection requirements, the CFPB is seeking information that will inform not only any new reporting requirements, but also broader CFPB and regulatory action risks associated with small-business

¹ See **CONSUMER14**, *Financial Services Management*, July 19, 2010.

lending. Prudential and borrower-protection rules are outside the scope of the CFPB's consumer-protection jurisdiction, but this provision in law gives it considerable scope to consider the small-business market and perhaps to identify areas where the Bureau believes violations of the Equal Credit Opportunity Act (ECOA) are under its small-business purview and warrant regulatory intervention. The Bureau's approach to disparate-impact standards for indirect-auto lending² suggest it could use its power here very broadly, especially if new data backup assertions of discriminatory credit practice.

Impact

The provision in Dodd-Frank underlying this RFI mandates that the CFPB collect credit-application information designed to ensure that small-business lending does not discriminate against women- or minority-owned small businesses and identify business and community-development needs that all small businesses could meet. The RFI notes that collecting new data always involves new costs, soliciting comment on this. It does not also make clear that new data could open lenders up to significant legal and reputational risk. It is for this latter reason that prior ECOA efforts to expand data-collection were blocked at the banking agencies and that opposition to the CFPB's RFI has already surfaced.

The Bureau's new authority not only to gather data, but also enhance community development could lead it to believe it has broader power to govern small-business lending. For example, if reports led it to believe that pricing for loans offered to women- or minority-owned businesses are unduly higher than those offered to other small businesses, the Bureau might undertake enforcement actions or, at the least, make its findings public in ways that expose lenders to reputational risk and enforcement actions or litigation from other parties.

The RFI is very preliminary and thus only asks questions, making it clear in doing so that the CFPB is cognizant of technology, burden, and data-quality issues. Nonetheless, lenders are concerned due to the CFPB's final standards under the Home Mortgage Disclosure Act (HMDA). These reports are also limited to data designed to uncover potentially discriminatory pricing, underwriting, or similar actions but the CFPB's final rules go well beyond those previously required by the banking agencies to assess data elements that have proven very complex to gather. The CFPB in fact has been required to delay and revise its HMDA rules to adjust as these problems became evident following a final rule. This may result in a rule better attuned to cost-benefit considerations (also addressed in this RFI), but companies that sought to comply upon issuance of the final rule may well feel that costly efforts were a waste of time and/or exposed them to competitive and reputational risk.

² See **FAIRLEND5**, *Financial Services Management*, April 2, 2013.

However, greater credit availability to small businesses has significant macroeconomic benefit and, to the extent women- and minority-owned companies support under-served communities, these benefits are even greater. In a document accompanying the RFI, the CFPB finds that small businesses are now struggling to obtain credit, positing that this is still more likely to be true for women- and minority-owned ones. The Federal Reserve has argued that small business is instead well served by current markets.³ To the extent the CFPB's RFI leads to greater credit availability, especially for borrowers not now well served for whatever reason, employment gains and community development could well ensue.

What's Next

This CFPB RFI was released on May 10, with comments due by July 14. The RFI indicates that the CFPB is in the early stages of considering its data-collection requirements, suggesting that a proposal and then final rule would take considerable time. The CFPB's organization could change dramatically if current Director Cordray departs or when a new director is appointed following the expiration of his term on July 16, 2018. The fate of these data-collection rules is thus uncertain, statutory mandate notwithstanding.

Analysis

The Bureau states that all of its questions are designed to inform its reporting-requirement work. However, as noted, their scope also could encompass significant additional efforts. In addition to answers, the agency also encourages commenters to provide empirical and policy research. Questions on which comments are solicited include:

- the appropriate definition of small business, with the agency favoring a standard consistent with those used by financial institutions;
- reporting data points, addressing here the specific points demanded by Dodd-Frank and the privacy considerations permitted to omit certain data reporting. The law also includes many data points that will likely be burdensome to collect and the agency seeks views on how to comply with the law with the least cost to filers. The agency is also considering adding discretionary reporting points to those required by law. No such points are described in the RFI;

³ See FedFin Issue Brief: Capital vs Credit <http://www.fedfin.com/info-services/issues-in-focus?task=weblink.go&id=344>.

- current data standards;
- data-gathering/reporting impediments;
- the manner in which financial institutions aggregate small-business lending data;
- the potential for misinterpretations of data filed on the Dodd-Frank points and/or from release of these data. Comment is also solicited on the benefit of other data points;
- the challenges of obtaining consent to collect gender and minority information; and
- which institutions should be required to file these reports and any that should be exempted. Credit unions have already requested an exemption.