



POINT OF VIEW

Dodd-Frank 1071

Implications for Small
Business Lenders



This point of view by nCino explores why Dodd-Frank 1071 is critical for implementation at this time in financial services history and how technology partnerships can support the adoption of new regulatory requirements.

March 30, 2023 was a pivotal day in financial services history: the Consumer Financial Protection Bureau (CFPB) provided a finalized rule around a regulation over ten years in the making. The final rule, part of the 2008 Dodd-Frank Act, specifically section 1071, requires financial institutions (FIs) to collect and report data for their women, minority and small business applicants.¹ The data requirement focuses on demographic information, in order to bolster fair lending practices and ensure equitable access to credit.

History

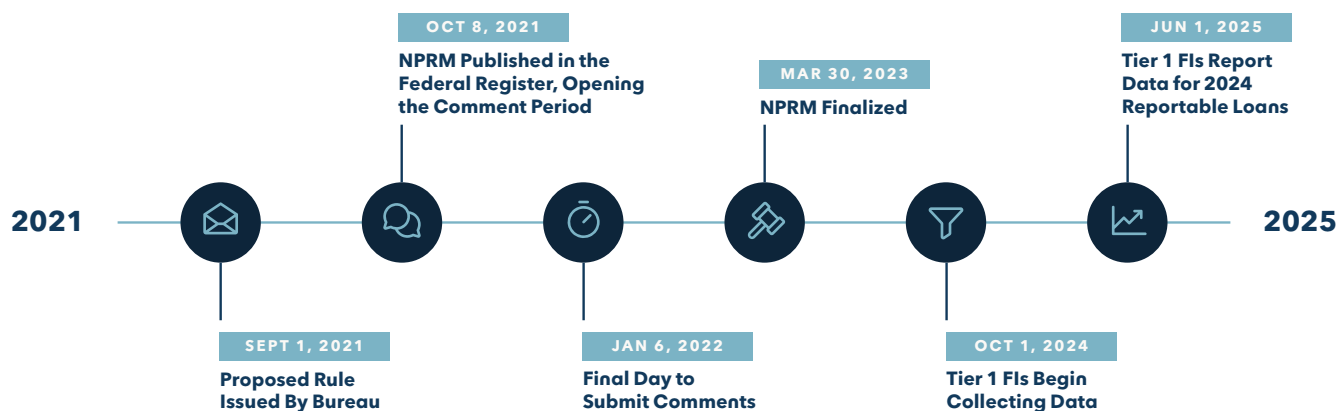
The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") was created in response to the financial crisis of 2008, in which the entire world felt the repercussions of risky investment decisions and lax credit standards: the housing bubble burst, leaving millions of Americans stuck with negative equity on mortgages they already could not afford. As a result, subprime lenders filed for bankruptcy one after another and investment banks collapsed as Congress, the Fed, and Washington struggled to stop the economic hemorrhage.²

Dodd-Frank's goal is to provide increased governmental oversight of banking activity, restrict risky and predatory lending activities, and ensure FIs have sufficient cash reserves on hand in order to prevent history from repeating³. Section 1071 of Dodd-Frank amends Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) and provides stipulations for FIs to compile, maintain and submit credit application data to the CFPB for woman-owned, minority-owned and LGBTQI+ owned small businesses.⁴

Specifically, the CFPB will require more than 20 data points to be collected, including if a business is minority-, woman-,

or LGBTQI+-owned, as well as the race, ethnicity and sex of the principal owners.⁵ The CFPB is expected to publish this data to identify areas for greater community development and to enforce fair lending practices. Although the regulation was first approved in July 2010, the rulemaking was not yet enforceable.

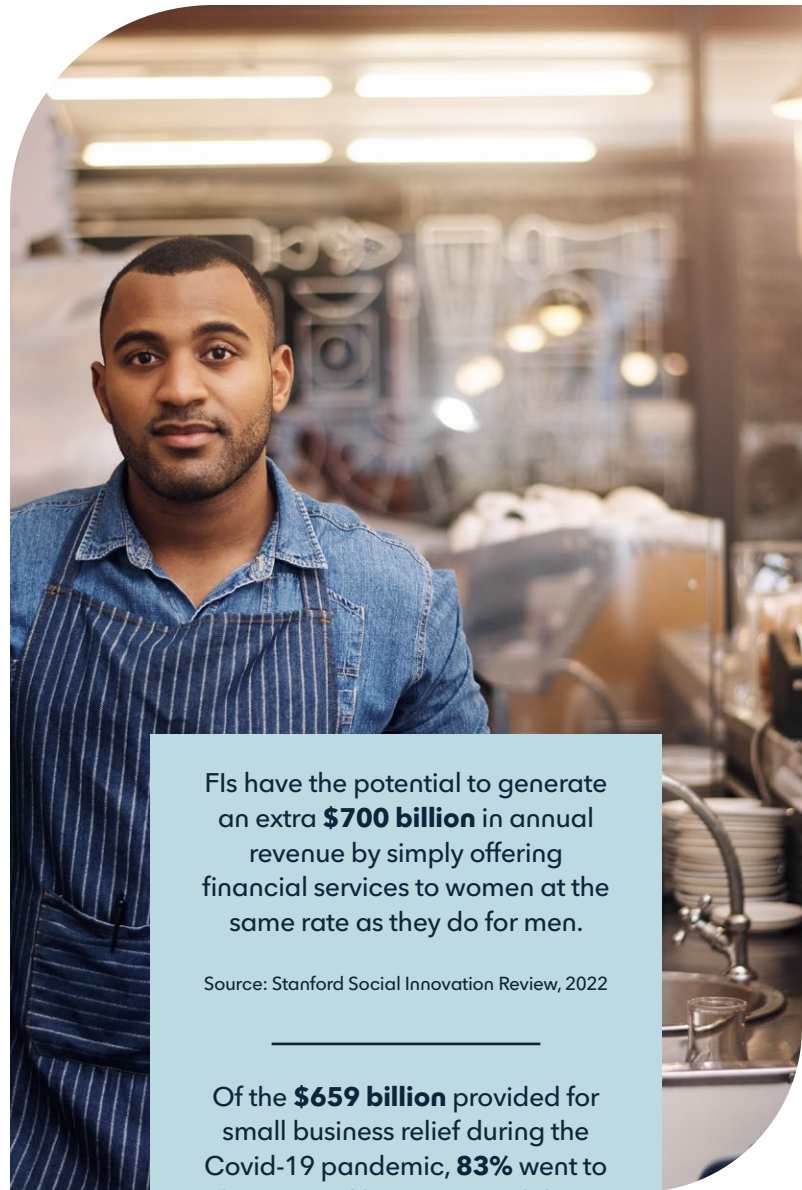
In 2019, the California Reinvestment Coalition filed a lawsuit against the CFPB for failing to uphold 1071, claiming it was avoiding identifying "credit deserts" that impede women and minorities' equal access to credit.⁶ In response to the lawsuit, the CFPB agreed to provide their notice of proposed rulemaking (NPRM) by September 30, 2021.⁷ The CFPB issued their NPRM on September 1, 2021, 29 days prior to the deadline. 575 days later, after receiving over 2,100 comments, the CFPB issued a final rule to implement section 1071 on March 30, 2023.⁸ Although the ruling has been finalized, on July 31st, U.S. District Court Judge Randy Crane granted a preliminary injunction in favor of two trade groups and a private bank that filed a lawsuit against the CFPB to prevent the implementation of Dodd-Frank 1071. A federal judge agreed to halt the Consumer Financial Protection Bureau's small-business data collection rule until after the Supreme Court decides next year on whether the bureau's funding is constitutional.⁹



Small Business Challenges

The rollout of this final rule comes at a critical time in financial services history when both small business survival and racial disparity in lending are top of mind for FIs worldwide.

On a macroeconomic scale, the impact of COVID-19 to the prosperity of small businesses cannot be overstated. Ninety-nine percent of businesses in the United States are small businesses, employing 47.1 percent of U.S. laborers.¹⁰ However, the COVID-19 pandemic disproportionately affected women- and minority-owned businesses. Between February and April 2020, the number of Black business owners dropped by 41 percent; white owners dropped by 17 percent.¹¹ Research suggests that PPP funds were accessed more quickly by business owners in majority-white neighborhoods than majority-Black or majority-Latinx neighborhoods.¹² In 2020, PPP loan eligibility stipulations determined business profitability via net income instead of gross income, thereby creating barriers in accessing PPP funds for contractors, freelancers and sole proprietors.¹³ The majority of businesses without employees—sole proprietors, independent contractors and the self-employed—are owned by women and minorities.¹⁴



FIs have the potential to generate an extra **\$700 billion** in annual revenue by simply offering financial services to women at the same rate as they do for men.

Source: Stanford Social Innovation Review, 2022

Of the **\$659 billion** provided for small business relief during the Covid-19 pandemic, **83%** went to white-owned businesses, while **2%** went to Black-owned businesses.

Source: Quartz, 2021

The Long-Term Strategy

While many FIs are hesitant about the regulation and its impact to their institution, those who see this as an opportunity to take a proactive role in their fair lending reviews are in the best position to succeed in this increasingly turbulent regulatory environment.

Instead of viewing regulations like a burden, FIs can take steps now to assess how they will partner with their customers who come from a variety of gender, racial and ethnic backgrounds to ensure that everyone has equal access to the funds that would allow them to start or manage their small businesses. There are many ways to get involved. For example, TD Bank has proven its commitment to support minority-owned businesses through its creation of a \$100 million USD equity fund, which enables Specialized Small Business Investment Companies (SSBICs) and Community Development Financial Institutions (CDFIs) to provide technical expertise and loan assistance to Black and Latinx small businesses.¹⁵ Similarly, Truist announced a \$120 million commitment to strengthening small businesses.¹⁶ Investing in or partnering with CDFIs is one long-term way to approach regulations like the amendment to Dodd-Frank 1071.

Additionally, the right technology partnership can make it less cumbersome and time-consuming to adjust to regulatory changes. Technology partners should challenge the FI's pre-existing notions about replicating their existing workflows into a technology platform, and instead innovate on their processes, including best practices around data

that will be used for regulatory compliance purposes. Furthermore, FIs who haven't thought about the advantages of digitizing their manual processes should consider solutions that not only capture data but reuse it across their organization in other lines of business and to generate reports. Digital banking has a variety of benefits for the FI, from reducing reliance on paper processes, to keeping loan documentation all in one place, to increasing transparency and collaboration on a deal across departments.

While 64% of financial institutions cited the global pandemic as a positive fuel for innovation in their organizations,¹⁷ these innovations must be ongoing, incremental and forward-looking for maximum sustainability. FIs considering technology partnerships that will help them be successful in all areas of banking—from digital innovation to agility in regulatory compliance changes—in addition to reaching historically disadvantaged groups, are ultimately best equipped to meet the end goal of any regulation that arises.

The latest information around Dodd-Frank 1071 and how nCino is optimizing automation and the small business lending experience is available from [nCino's Dodd-Frank 1071 Resource webpage](#).



Endnotes

- 1 "Executive Summary of the Small Business Lending Rule," Consumer Financial Protection Bureau, April 2023.
- 2 ["The 2007-2008 Financial Crisis in Review,"](#) Investopedia.
- 3 Ibid.
- 4 ["CFPB Announces Implementation Timeline for Dodd-Frank Section 1071 Reporting Rule, Days after Hosting Small Business Lending Symposium,"](#) JDsupra, December 24, 2019.
- 5 ["CFPB proposes rule to boost data collection on small business loans,"](#) September 7, 2021.
- 6 ["CFPB sued for not collecting data on business lending to women, minorities,"](#) Reuters, May 14, 2019.
- 7 ["CFPB stipulates to Sept. 30 deadline for issuing Section 1071 NPRM,"](#) Consumer Finance Monitor, July 19, 2021.
- 8 ["Small business lending rulemaking,"](#) consumerfinance.gov. March 30, 2023.
- 9 ["Federal judge halts CFPB's small-business data collection rule,"](#) americanbanker.com, July 31, 2023.
- 10 ["Small business trends,"](#) smallbizstatistics.com, July 9, 2021.
- 11 ["Why some black-owned U.S. businesses are hardest hit by coronavirus shutdowns,"](#) Reuters, June 16, 2020.
- 12 ["New data shows small businesses in communities of color had unequal access to federal COVID-19 relief,"](#) Brookings, September 17, 2020.
- 13 ["Sole proprietors, contractors, and freelancers now qualify for bigger PPP loans,"](#) Quartz, March 4, 2021.
- 14 ["Women-owned businesses are driving pandemic growth, but many miss out on PPP loans,"](#) PBS, April 26, 2021.
- 15 ["TD Bank Announces \\$100 Million Equity Fund to Support Minority-Owned Small Businesses,"](#) stories.td.com, June 2, 2021.
- 16 ["Truist Announces \\$120 Million Commitment to Strengthening Small Businesses,"](#) June, 27 2022.
- 17 ["Propelled by the Pandemic, Bank Innovation Surges,"](#) The Financial Brand, September 8, 2021.