

1071 IMPLEMENTATION PLAN

*For Those Subject to the Small Business Data Collection and Reporting
Requirements of Subpart B of Regulation B*



COMPLIANCE COHORT

Copyright 2023 by Compliance Cohort, LLC
We Are Not Attorneys. Seek Legal Counsel.
Unauthorized Duplication Prohibited
All Rights Reserved

www.compliancecohort.com

1071 Implementation Plan

The following is a sample implementation plan that can be used to assist financial institutions with implementing the requirements of section 1071 of the Dodd-Frank Act, that were released by the CFPB on March 30, 2023 as a final rule to add a Subpart B to Regulation B. This new rule requires those subject to it to collect and report certain information related to the loans they originate to small businesses, including those that are minority-owned or women-owned.

The following implementation plan is a sample only, and should not be viewed as everything a financial institution needs to do in order to comply with the requirements of the CFPB's final rule. Each financial institution will need to determine the appropriate steps that apply to their unique organization. The steps outlined below are for consideration only, and not considered legal advice. We are not attorneys and this is not legal advice - seek legal counsel.

STEP 1: Determine if You Are A Covered Institution

The first thing your financial institution will want to do is to determine whether or not you are a covered institution. If you are not a covered institution, you will not be subject to Subpart B of Regulation B. However, if you are a covered institution, you will then be subject to Subpart B of Regulation B.

Check When Complete: _____

Target Date: _____

Person(s) Responsible: _____

Notes: _____

STEP 2: Determine When You Will Be Required to Report

While the final rule is effective 90 days after publication in the Federal Register, the CFPB has provided three different compliance dates based on the number of covered originations by a financial institution. This means that the largest reporters must start collecting data sooner than the smallest reporters. Specifically, those institutions with at least 2,500 covered originations in both 2022 and 2023 must begin collecting data on October 1, 2024. Institutions with at least 500 covered originations in both 2022 and 2023 but not 2,500 or more covered originations in both 2022 and 2023, must start collecting data on April 1, 2025. The smallest institutions that have at least 100 covered originations in both 2022 and 2023 but not 500 or more covered originations in both 2022 and 2023, must begin collecting data on January 1, 2026. To determine when your financial institution must report, you will have to count the number of covered originations you had during the calendar years of 2022 and 2023.

Check When Complete: _____

Target Date: _____

Person(s) Responsible: _____

Notes: _____

STEP 3: Establish an Implementation Timeline

To assist with the massive project of rolling out the 1071 final rule, each financial institution should consider creating an implementation timeline to assist with the management of this project. The timeline should end with the mandatory compliance date for the financial institution, which will vary based on the number of covered originations by the financial institution. The implementation timeline should include target dates and deadlines for all applicable steps in rolling out this project.

Check When Complete: _____

Target Date: _____

Person(s) Responsible: _____

Notes: _____

STEP 4: Update Your Board & Senior Management Team

With any significant change in a financial institution, it is important to keep the Board of Directors and Senior Management informed. Therefore, financial institutions should provide regular updates to the Board and Senior Management team. At a minimum, it will be important to provide an update early on in the process so that everybody understands the changes that are being worked on. In addition, it will be important to provide a final update to the Board when all changes have been implemented. While the Board does not need to know every detail of the final rule, it is important for them to have a general understanding of the regulatory requirements.

Check When Complete: _____

Target Date: _____

Person(s) Responsible: _____

Notes: _____

STEP 5: Consider Adding/Updating IT Systems

One consideration each financial institution should think about early on in the process is whether or not they want to utilize an IT system to assist with the 1071 reporting requirements. For those financial institutions who are HMDA reporters and use software to assist with HMDA reporting, it would make sense to utilize the same vendor, if such software is available. Regardless of whether your financial institution currently uses HMDA software, it would be prudent to have a discussion early on in the process to determine if a software solution would be beneficial for the 1071 data collection of reporting requirements. As purchasing and implementing software can take a significant amount of time, it would be best to have these discussions very early on in the process.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 6: Create a Collection Process & Create Procedures

Each financial institution must create a collection process that ensures all applicable data is collected and reported in a compliant manner. This, of course, will be a significant challenge as the massive rule has hundreds of details that must be followed. Therefore, financial institutions must be diligent in learning and understanding the rules so that they can establish procedures to ensure compliance when collecting and reporting applicable data. Effective procedures will be imperative to having compliant submissions and avoiding regulatory scrutiny and resubmission requirements.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 7: Choose Between a Firewall and an Exception Notice

The final rule states that employees and officers of a covered financial institution are prohibited from accessing an applicant's demographic information that is recorded during the application process. The challenge with this, of course, is that some financial institutions will need certain employees and officers to access such information. For this reason, financial institutions are permitted an exception to this firewall requirement by providing a notice to applicants whose responses will be accessed or to a broader group of applicants, up to and including all applicants. Therefore, financial institutions must determine whether they will establish a true firewall requirement, or if an exception will be used.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 8: Start Requiring Applications

The final rule requires financial institutions to collect and report certain data points that will need to be collected from an applicant. Data points such as the application date, application method, application recipient and demographic information fields all appear to justify a financial institution utilizing an application form, even though written applications oftentimes have not been required for commercial loans. In addition, an application would be a great place to collect other required data points such as the purpose of credit, the amount applied for, the NAICS code, the number of workers at the business applying for the loan, and the time in business. While some financial institutions already utilize an application form, others who do not should consider using a formal application form to help collect certain data points from applicants. In developing an application form, financial institutions may be able to rely on a forms vendor (i.e. loan operating system) to provide a compliant application document.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 9: Evaluate Underwriting Practices

While the new final rule is really just a data collection and reporting requirement rule, this rule will have significant impacts as it relates to Fair Lending for commercial loans. In other words, regulators will utilize this data to evaluate and look for discrimination within financial institutions' commercial lending departments. For this reason, lenders may find it prudent to evaluate their current underwriting, pricing, and origination practices to ensure their practices continue to align with Fair Lending laws as, once reported, this data will be evaluated for fair lending risk in a way that it has never before been evaluated.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 10: Update Job Descriptions

As financial institutions begin to collect and report data under the new final rule, it will be important to update applicable job descriptions. For example, those employees responsible for collecting and compiling this new data should have applicable functions included in their job description. Likewise, those responsible for organizing and submitting the financial institutions data, should also have updates to their job descriptions. Roles like lenders, processors, managers, compliance professionals, and small business lending data collection specialists, should each have an updated job description so that their performance can be evaluated based on their updated roles. In addition, financial institutions should consider working with their human resources department to ensure that compliance with the new final rule directly relates to their overall performance evaluation, raises, promotions, and any incentive compensation such as bonuses.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 11: Conduct Lender Training

Each financial institution must ensure that every commercial lender understands their requirements and relationship to the new rule. As this will be a significant change for many commercial lenders, it is imperative that financial institutions conduct effective training to ensure that lenders both understand the regulatory requirements as well as understand the importance of properly collecting and reporting required data. Lender training will likely not be completed in a single session, so financial institutions should consider implementing a training plan for their lenders that align with the required compliance state for their financial institution, based on the number of covered originations by the lender.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 12: Update Policies (Regulation B Policy)

Financial institutions will need to update applicable policies to align with the practices that are needed to implement the final rule. Specifically, some financial institutions who maintain a Regulation B Policy will need to implement a policy for the new Subpart B to Regulation B. Other financial institutions may choose to implement a standalone policy for the small business data collection and reporting requirements. Either way, it will be important for financial institutions to create a policy to outline the requirements of the final rule. This policy, of course, should be approved by the board of directors prior to the compliance date for each financial institution.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 13: Implement a Monitoring Program

A strong compliance management system in a financial institution includes a process to monitor internal procedures to ensure compliance. As most financial institutions have established monitoring programs, a new monitoring program will need to be implemented for the small business data collection and reporting requirements. Implementing a monitoring program early on in the data collection process will help financial institutions to quickly identify and correct any errors in the program rather than trying to correct errors later in the process, right before submission is required.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 14: Update Audit Scope to Include Reg B Subpart B

Once a financial institution starts its collection and reporting requirements for the new final rule, it will be important to include this area within the financial institution's audit scope. This way, independent auditors will be able to test the financial institution's implementation of the final rule against the actual requirements and determine whether any shortcomings are identified and corrections to the program are needed.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 15: Update Audit Scope to Include a Fair Lending Review of Commercial Loans

As the data collected for the new final rule will be used by regulators to evaluate fair lending risk in a financial institution, it will be important for financial institutions to start conducting their own reviews of fair lending in their commercial loan departments. Financial institutions will have data from their commercial loan departments that have never been collected before, and therefore, it will be important for financial institutions to review this data and identify any risks or concerns before the regulators do so. Therefore, financial institutions should consider including a Fair Lending audit or review of commercial loans as soon as applicable data is available to be reviewed.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 16: Update Your Website

1002.110(c) of the final rule states that a covered financial institution must make available to the public on its website, or otherwise upon request, a statement that the covered financial institution's small business lending application register, as modified by the Bureau, is or will be available from the Bureau. A financial institution must use language provided by the Bureau, or substantially similar language, to satisfy the requirement to provide a statement. A covered financial institution shall make the required notice available to the public on its website when it submits a small business lending application register to the Bureau, and shall maintain the notice for as long as it has an obligation to retain its small business lending application registers.

Check When Complete: _____

Target Date:: _____

Person(s) Responsible: _____

Notes: _____

STEP 17: Update Record Retention Policies

Each financial institution will need to update their record retention policies to reflect that it must keep data related to the small business lending application register for at least 3 years after the required submission. The final rule also requires that a financial institution shall maintain, separately from the rest of the application and accompanying information, an applicant's responses to the financial institution's inquiries pursuant to this subpart regarding whether an applicant for a covered credit transaction is a minority-owned business, a women-owned business, and/or an LGBTQI+-owned business, and regarding the ethnicity, race, and sex of the applicant's principal owners.

Check When Complete: _____

Target Date: _____

Person(s) Responsible: _____

Notes: _____
