

# CFPB Supervision of Nonbank Small Business Lenders

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## Issue Update

On September 1, 2021, the CFPB issued a notice of proposed rulemaking to implement section 1071 of the Dodd Frank Act. Section 1071 is an amendment to the Equal Credit Opportunity Act, which requires lenders to collect, and report to the Consumer Financial Protection Bureau, information about lending to “women owned, minority-owned and small businesses.” Section 1071's purpose is to facilitate the enforcement of fair lending laws and community development efforts. Section 1071 applies to banks and nonbanks alike, however, nonbanks are not subject to federal supervision when it comes to section 1071 and fair lending more generally.

The Consumer Financial Protection Act (CFPA) does not authorize the CFPB to supervise nonbanks making small business loans. The CFPB has authority to enforce fair lending laws against nonbanks, with the FTC having secondary enforcement authority, but these agencies do not have supervisory authority.

## Why It Matters

The lack of supervisory oversight for nonbank lenders will significantly impede the ability to detect potential discrimination by that segment of the marketplace, create an inconsistent approach to regulatory enforcement across lenders, and expose small business owners to potentially uneven treatment depending on their loan provider.

While banks will be subject to regular exams for compliance with the Bureau's 1071 data collection rules, including data integrity standards, as well as regulatory analysis of their data to detect possible discrimination, no federal agency has authority to examine nonbank small business lenders in the same manner.

As a result, nonbanks will submit 1071 data with errors that are not detectable without a compliance/data integrity exam, making the 1071 data set less reliable for regulators and the public. Moreover, no federal regulator will examine these nonbanks for redlining or other fair lending concerns.

Approximately 14% of small businesses rely on non-depository lenders to meet their financing needs. Without federal oversight of fair lending requirements at those lenders, data reporting alone is unlikely to improve lending to minority and women-owned small businesses.

## Recommended Action Items

Ask Congress to amend the CFPA to give the CFPB authority to supervise non-bank lenders for compliance with fair lending laws, in particular, with the 1071 rules and the Equal Credit Opportunity Act's fair lending requirements. Doing so will ensure better, more reliable 1071 data and improve enforcement of fair lending laws.