

Consumer Law Regulatory Insights: Third of CFPB Symposia Series Debates the Data Collection Rule of Section 1701 of the Dodd-Frank Act

Hinshaw Alert | 3 min read

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On November 6, 2019, the Consumer Financial Protection Bureau (Bureau) hosted the third installment of its symposia series, addressing Dodd-Frank Section 1701 which, when implemented, will require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. At the event, two panels discussed this data collection rule, including experts from traditional and fintech lenders, academic and policy researchers, advocacy groups, and regulators.

The first panel provided perspectives on the current state of small business lending and the second panel provided thoughts on how the rule can be implemented most efficiently to meet its stated purpose: “to facilitate enforcement of fair lending laws and enable communities, governmental entities and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”

While the benefits of data collection for learning and identifying gaps must be balanced with the costs and burdens on small business lenders and borrowers in terms of complexity, privacy, and expense, most of the panelists agreed that additional research, data and analysis is paramount to understand the needs and health of the small business sector and also to design better products and services to serve them.

Panel observations about the current state of small business lending included:

- Small business is critical to the U.S. economy and jobs: The small business lending marketplace is \$1.4 trillion in size. According to the Bureau, 95 percent of all businesses in the United States have annual receipts below

\$999,999. It is estimated that women-owned firms number almost 10 million and employ 8.4 million people and minority-owned firms total about 8 million businesses, and employ 7.1 million people.

- Small business owners need protection: Research on small business owners seeking financing from traditional lenders demonstrates that they approach the financial marketplace more like retail consumers than sophisticated, corporate customers and that customer service is consistently poor, and treatment of minority- and women-owned small business owners is significantly inferior.
- Online lenders are filling the void: Small business borrowers have raised concerns about the transparency of terms and rates of many online credit products. Some online lenders have addressed unconscious bias and expanded small business access to capital—areas where concerns raised by the panels may be instructive to traditional lenders.

Panel suggestions on how the Bureau should implement the rule:

From tailoring the rule’s definitions, to use of exemptive authority, to harmonizing definitions with analogous regulations, panelists suggested various approaches to how the Bureau might implement the rule to best meet the goals of measuring small business lending and collecting the data necessary for effective measurement. These included:

- When defining the term “small business” consider using the size of the loan and/or the revenue of the business. Harmonize the definition with size and revenue thresholds used in other regulations to avoid similar but different reporting standards.
- Define “financial institution” to capture the vast majority of institutions that have a credible share of the small business lending marketplace.
- Define types and purposes of small business loans in such a manner to ensure data collection covers the entire small business lending marketplace.
- Ensure that the data points to be collected include pricing and collateral information, framed in proper context for analysis, so that credit quality (not only credit access) is considered.
- Clarify guidance on what constitutes a minority- or women-owned business by defining a “principal owner” subject to race, sex and gender data collection as one with a 25% or higher ownership interest.

Hinshaw’s Consumer Financial Services practice has issued advisories on the [Bureau’s first symposium](#) on June 25, 2019, which explored Dodd-Frank’s prohibition on abusive acts or practices, and the [second symposium](#) held September 19, 2019, which discussed how behavioral law and economics can inform regulatory action.

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