

Will the DFA Section 1071 small business lending rule apply to me?

Finastra has created this worksheet to assist you in estimating if (and when) your financial institution may be impacted the Section 1071 small business lending rule. This worksheet requires you to do three things:

1. Understand some important definitions.
 2. Estimate your earliest potential compliance date based on the applicable loan volume tier.
 3. Apply the general coverage test.
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Important Definitions

In order to determine if the 1071 small business lending rule will apply to your financial institution, you will need to estimate the number of covered originations you have to small businesses in both 2022 and 2023.

- **Covered Originations:** This is an extension of business credit under Regulation B that resulted in an origination, and can include loans, lines of credit, credit cards, merchant cash advances, and credit products used for agricultural purposes. This excludes the following types of transactions:
 - Trade credit
 - HMDA-reportable transactions
 - Insurance premium financing
 - Public utilities credit
 - Securities credit
 - Incidental credit
 - Factoring
 - Leases
 - Consumer-designated credit
 - Credit transaction purchases, purchases of an interest in a pool of credit transactions, and purchases of a partial interest in a credit transaction.
 - Extensions, renewals, and other amendments of existing transactions (even if they increase the credit line or credit amount of the existing transaction)
- **Small Businesses:** Business applicants with gross annual revenue of \$5 million or less for the preceding fiscal year. The following general criteria relating to the definition of small business must also be met:
 - Organized for profit
 - Independently owned and operated and not dominant in its field of operation
 - Has a place of business in the United States
 - Operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

Earliest potential compliance

Please note: as a result of ongoing litigation, all deadlines for compliance with the small business lending rule currently are stayed for all covered financial institutions.

The Consumer Financial Protection Bureau (CFPB) has created phased initial collection and reporting compliance dates based on loan volume tiers where you look to estimated covered originations for the years of 2022 and 2023. Review the following tiers to determine your earliest potential compliance date.

- **Tier 1:** Do you estimate that you will have at least 2,500 covered originations to small businesses in both calendar years 2022 and 2023?
 - **Yes:** Stop here! It appears that you are in Tier 1 and may need to collect data starting as early as October 1, 2024 and report that 2024 calendar year data to the CFPB by June 1, 2025.
 - **No:** Proceed to Tier 2
- **Tier 2:** Do you estimate that you will have at least 500 covered originations to small businesses in both calendar years 2022 and 2023?
 - **Yes:** Stop here! It appears that you are in Tier 2 and may need to collect data starting as early as April 1, 2025 and report that 2025 calendar year data to the CFPB by June 1, 2026.
 - **No:** Proceed to Tier 3
- **Tier 3:** Do you estimate that you will have at least 100 covered originations to small businesses in both calendar years 2022 and 2023?
 - **Yes:** It appears that you are in Tier 3 and may need to collect data starting as early as January 1, 2026 and report that 2026 calendar year data to the CFPB by June 1, 2027.
 - **No:** Review the general coverage test below to understand general applicability.

General coverage test

Please note: as a result of ongoing litigation, all deadlines for compliance with the small business lending rule currently are stayed for all covered financial institutions.

No matter which of the above compliance dates you estimated may apply to you, you will not be required to collect and report small business lending data if you do not meet the general institutional coverage test. To be covered by the rule, a financial institution must have originated at least 100 covered credit transactions to small businesses in each of the two preceding calendar years. This means:

- If you are in Tier 1, you've likely met the general coverage test based on calendar years 2022 and 2023.
- If you are in Tier 2, your estimate for calendar year 2023 is already at least 100 covered originations to small businesses so the general coverage test means you must also originate at least 100 covered originations to small businesses in calendar year 2024 before you are required to collect data starting April 1, 2025.
- If you are in Tier 3, the general coverage test means you must also originate at least 100 covered originations to small businesses in both calendar years 2024 and 2025 before you are required to collect data starting January 1, 2026.

Starting January 1, 2026, the phased compliance dates cease to apply and any financial institution that meets the general coverage test based on 2024 and 2025 covered originations to small businesses must collect data beginning January 1, 2026 and report that 2026 calendar year data to the CFPB by June 1, 2027.