



Rooftop Hopping & Dodd-Frank

regulatory

Summary: New Equal Credit Opportunity Act reporting requirement for loans to small businesses owned by minorities and/or women. What should you include?

Did you hear that an 83Y old grandfather climbed onto the roof of his home and shoved a man off it into the waiting arms of the police? It seems the man had been jumping on roofs in grandpa's neighborhood and he just got sick of it so he got a ladder and pushed the man off to end the police standoff. And you thought banking was weird - try being a roofer.

Speaking of tough things in banking, let's look at changes to lending operations. Specifically, the new data collection and reporting requirements under the Equal Credit Opportunity Act (ECOA) for loans and loan applications for small businesses and firms owned by minorities and/or women.

The new requirement will probably impact new loan applications, where banks will need to register for business loan data collection and submission. The requirement will be entirely separate from the data collection and reporting requirements of both the HMDA and the Community Reinvestment Act (CRA) and apply to financial institutions as the ECOA defines them. This includes banks, though it's not clear whether any banks will be exempt based on asset size or loan volume.

Lenders will have to collect and report data for any credit application made by a small business or one owned by women and/or minority members, with "application" defined as an oral or written request for defined or open-ended credit, secured or not. "Minority" members include African Americans, Native Americans, Hispanic Americans, and Asian Americans. "Ownership" means that the person in question owns more than 50% of the business, or receives more than 50% of the profit or loss.

According to the law, a "small business" is the same as a "small business concern" in the Small Business Act (SBA). However, as anyone who regularly deals with the SBA can tell you, this is not always a particularly helpful definition. Banks have asked the Bureau to either follow the definition in the CRA or permit flexibility based on bank practices. In any case, the ECOA will have to clearly indicate what constitutes a small business, and banks will need to identify the businesses, applications, and loans that qualify for reporting.

All commercial loan officers will need to develop procedures for asking loan applicants about their status, as well as for making sure underwriters have no access to the answers. In an instance where that isn't possible or practical, banks will have to tell applicants that underwriters will know their demographic information, but that this will not affect the decision to grant or withhold credit.

The statute requires that banks collect and submit a list of information including the census tract of the applicant's principal place of business, the business's gross annual revenue during the fiscal year before application, the primary owner's or owners' race, sex, and ethnicity; and any other information the ECOA ultimately deems necessary.

The bank's record of that required information may not include any information that could personally identify the applicant: name, phone number, email address, or any specific address beyond census tract information. Again, this means keeping the records separate from the application.

Once the bank has the information, it will have to report that data to the ECOA and make it available to the public on request, deleting or modifying anything private. Banks can also aggregate data for their own use and must make that data publicly available.

Aggregated data is the overall point, after all. This rule's purpose is to facilitate the enforcement of fair lending laws. Ultimately, this national data will help all banks analyze small business lending. Although nothing has been set in stone yet, it may be in your bank's interest to start planning to meet such requirements as you continue to monitor things.

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