
Helping Lenders Navigate the Maze of 1071 Compliance

California Bankers Association
2023 Bankers Summit

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Steph has to Give this Quick Disclaimer (Sorry!)

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Compliance Dates – Show of Hands

Tier	Threshold	Compliance Date	First Reporting Deadline	Voluntary Collection Date
1	2,500 or more covered loans in 2022 and 2023	October 1, 2024	June 1, 2025	October 1, 2023
2	500 – 2,499 covered loans in 2022 and 2023	April 1, 2025	June 1, 2026	April 1, 2024
3	100 – 499 covered loans in 2022 and 2023	January 1, 2026	June 1, 2027	January 1, 2025

Compliance Dates

- You're looking at how many covered small business loans (SBLs) you made in each of the two immediately preceding calendar years
- For purposes of counting originated loans
 - Don't count HMDA-covered loans, purchases of covered loans, or extensions, renewals or other loan modifications
 - DO count refinancings
- Once you're covered, you don't report a renewal unless the small business requests additional credit amount or a line increase

Small Business

- In short, small business is:
 - A business that is organized for profit with a place of business in the U.S.
 - That had gross annual revenue of \$5 million or less in its preceding fiscal year
- You may rely on applicant's representations regarding its GAR (which may or may not include any affiliates' revenue) for purposes of determining small business status
- If applicant provides updated GAR info or you verify GAR info, you must use updated/verified info

Small Business & Affiliates

- Example:
 - Applicant states that its and its affiliates' combined GAR > \$5 million
 - FI does not verify GAR
 - Business ≠ small business
 - However, if FI updates/verifies GAR (which may include affiliates' GAR), FI must determine small business status based on updated/verified info

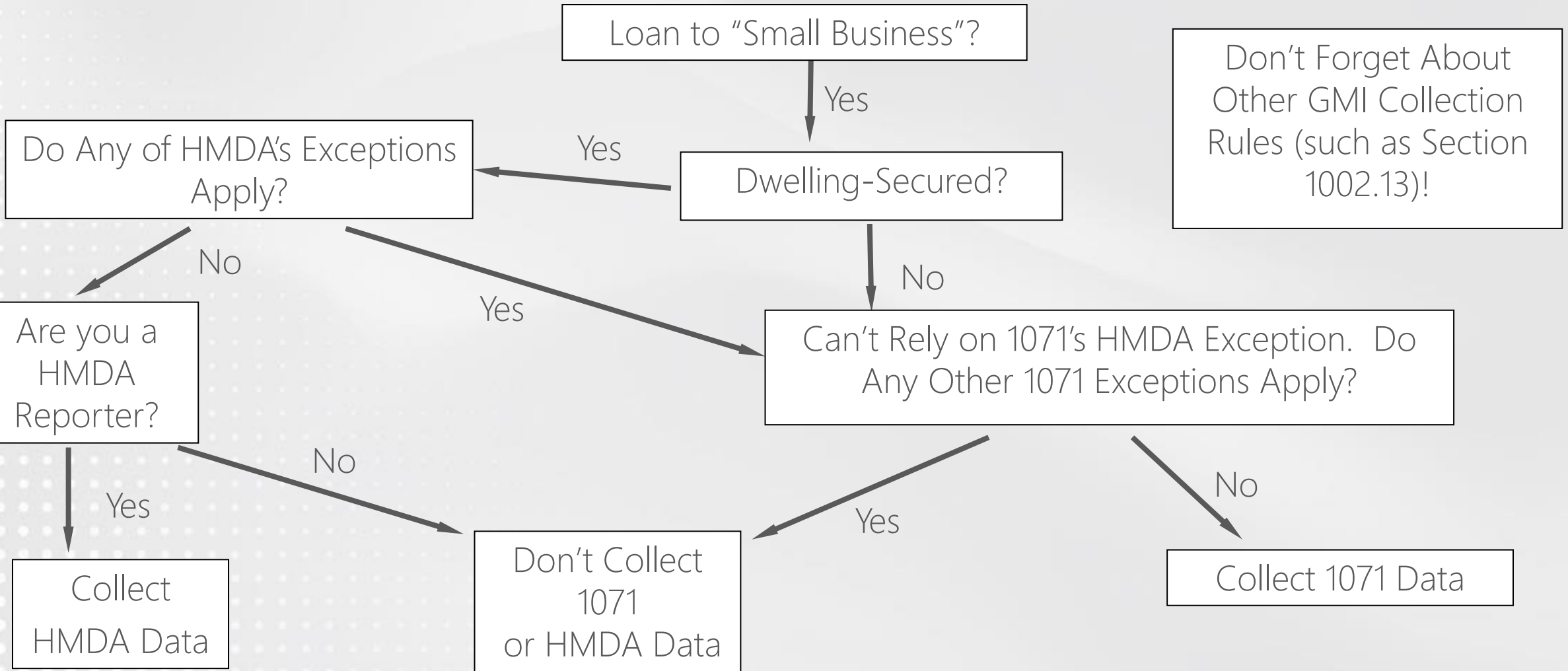
Small Business & Affiliates

- If FI would rely on the affiliates' combined GAR and that combined GAR exceeds \$5 million
 - The application would not be a reportable application because there is no small business applicant
- Potential Challenges
 - What if it's a real estate venture and ownership hasn't yet been determined?

Small Business & Affiliates

- You may aggregate GAR for co-applicants that are affiliates
 - If combined GAR of two or more affiliated co-applicants > \$5M, they are NOT small businesses
- You may not aggregate unaffiliated co-applicants' GAR
- One business is an "affiliate" of another when
 - One controls or has the power to control the other, or
 - A third party controls or has the power to control both.
 - It does not matter whether control is exercised, so long as power to control exists.

1071 & HMDA Interplay



You've Got to Ask A Lot of Questions BEFORE You Give an Application

- GAR?
- Detailed business ownership information – 25% ownership
- NAICS?
- Number of employees?
- Dwelling-secured?
- Loan's purpose?
- What else?

Why Do You Have to Ask All Those Questions BEFORE You Give an Application?

- Unless an exception applies, Reg B prohibits creditors from collecting/asking about GMI
- Those exceptions are for self-testing or, in short, when another law/regulation requires that GMI collection
- Thus, we cannot just ask all applicants for their GMI
- We need to be sure an exception (1071, HMDA, etc.) applies first BEFORE you give them the GMI collection form

When Should We Request 1071 Data?

- Rule prohibits discouraging an applicant from responding to 1071 data requests
- You'll need to comply with procedures to:
 - Identify and respond to indicia of potential discouragement, including low response rates for applicant-provided data
 - Collect such data at a time and in a manner that are “reasonably designed” to obtain a response

When Should We Request 1071 Data?

- “Reasonably designed” includes
 - Asking prior to notifying an applicant of final action taken on a covered application;
 - Request for data is prominently displayed or presented;
 - The collection does not have the effect of discouraging an applicant from responding to a request for data; and
 - Applicants can easily respond to a request for data.
- Generally, the earlier in the application process the FI initially seeks to collect data, the more likely the timing of collection is reasonably designed to obtain a response.

When Should We Request 1071 Data?

- Thus, when to ask for GMI may be a moving target
 - What if you have sufficient info to put a loan in your “pipeline” but subsequently deny and you haven’t yet collected?
- A low response rate for data may indicate:
 - Discouragement or
 - Other failure to maintain procedures to collect applicant-provided data that are reasonably designed to obtain a response.
 - Is the information being requested?
 - Visual observation not acceptable!

Do We REALLY Need Written Applications?

- Definition of application: an oral or written request for a covered credit transaction that is made in accordance with procedures used by a financial institution for the type of credit requested.
 - **Note:** Non-profits are not considered small businesses under the rule, which may have been CRA-reportable if secured by commercial real estate
- Same as “application” for purposes of adverse action notice rules
 - For example, if your practice is to deny due to credit score(s) before receiving a complete financial package, you must report the request
 - What are your procedures for incomplete vs. “withdrawn” applications?

Do We REALLY Need Written Applications?

- Think about whether you can REALLY do both of the following without a written application?
 - Make sure you're giving the HMDA collection form only on HMDA loans & 1071 collection form only on 1071 loans
 - Have procedures that are reasonably designed to collect 1071 data (translation: loan officers must actually request the 1071 data)
- Also, 1071 may put a spotlight on the adverse action notice rules
 - Are you REALLY complying with, say, the 30-day notice timeframes in Reg B?
 - Would a written application also help with meeting those timeframes?

Practicing for 1071 Compliance

- Should we take advantage of 1071's one-year test period before our mandatory compliance date? Yes.
- Do we have to report our test data? No.
- What should we do with that data? Review it.
 - Terms: loan structures
 - Pricing: rates, fees and prepayment penalties
 - Decisions: approval rates, denial reasons

Practicing for 1071 Compliance

- Evaluating Testing Data

- Be prepared for examiners to look at that data

- Practice testing against whatever data you can (proxy data, PPP data, etc.)

- Are there disparities among applicants? Do you have minority applicants (50% or more)?

- How's your response rate? Compared to peers?

- How are individual department's/officer's response rates?

- You'll need to make program changes BEFORE your mandatory compliance date

- If you're seeing disparities in data, such as pricing or loan structure or denial reasons; or

- If you have low response rates

What Else Should We Be Thinking About (Besides Early Retirement)?

- Do you need a standardized pricing matrix for small business loans (like you did with appraisal fees b/c of TRID)?
- Can you do the firewall?
- Are your competitors giving the firewall notice?
- Will your competitors be able to identify your clients based on the info?
- Include in your implementation plan what you're going to do when CFPB makes 1071 data public
- Shorten decimals to make (accurate) reporting easier

Any Questions?



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