



December 15, 2025

The Honorable Russell Vought
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

**Re: Small Business Lending Under the Equal Credit
Opportunity Act (Regulation B) - Proposed Rule – Docket No.
CFPB-2025-0040**

Dear Acting Director Vought:

The Consumer Bankers Association (“CBA”)¹ and the Bank Policy Institute (“BPI”)² (collectively “the Associations”) appreciate the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) Proposed Rule (“Proposal”)³ revising the 2023 Final Rule implementing Section 1071 - Small Business Data Collection - under the Equal Credit Opportunity Act

¹ The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

² The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

³ Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), *90 Fed. Reg. 50952 (November 13, 2025)*.

“ECOA”⁴ (“2023 Final Rule”).⁵ The Associations support the Bureau’s willingness to reopen the rule and propose a more calibrated data collection approach. Many of the proposed revisions directly reflect the operational and legal concerns CBA and BPI raised in comment letters to the 2023 Final Rule.⁶ These positive steps include the CFPB’s inclusion of a simplified small business definition and the elimination of many of the unnecessary data collection requirements. We believe these, and other provisions, will help ensure the success of small business data collection.

As we have maintained since the promulgation of Section 1071, the Associations strongly believe that while Section 1071 mandates this rule, it is not as simple as data collection efforts undertaken on other lending products such as residential mortgages. Business lending differs from residential mortgage lending in several material ways.⁷ Among other concerns, these differences increase the risk of the Proposal resulting in the collection of misleading data. Constructing a fair lending analysis that will yield meaningful and appropriate conclusions for business lending is likely even more challenging.

⁴ Equal Credit Opportunity Act (Regulation B), 12 C.F.R. Part 1002 (*amended 2, 2024*).

⁵ Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150 (May 31, 2023).

⁶ CBA Comment Letter to the CFPB’s 2021 Notice of Proposed Rulemaking (NPRM) - Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed. Reg. 56356 (October 8, 2021); BPI Comment Letter to the CFPB’s 2021 Notice of Proposed Rulemaking (NPRM) - Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed. Reg. 56356 (October 8, 2021).

⁷ Examples of differences between small business loans and mortgages include: 1) Residential lending shares the same type of collateral, but business lending may not be secured at all, and when secured, the type of collateral varies tremendously; 2) residential lending has (with rare exceptions) consumers as the applicants, whereas business lending involves loans to all sorts of applicants, ranging from sole proprietors to sophisticated corporate structures; 3) business loans are often renewals rather than new loans and are not akin to refinances in the residential world; 4) business loans have much shorter and varied durations; 5) the appropriate property address for a business loan to use for reporting and analysis can be debated with no easy or right answer; 6) capturing business loan applicants for reporting and analysis can be debated with no easy or right answer given the various ownership and structures; 7) residential mortgage transactions often do not result in ongoing relationships and are much more transactional; 8) residential lending generally involves creditor interactions with only the future homeowners, whereas in business lending, creditor interactions could be with a number of business representatives which may or may not include the principal owners; 9) residential mortgage applications seldom include more than two primary applicants, whereas commercial credit applications may involve many equal part business owners; and 10) residential mortgage applicants customarily apply on their own behalf whereas commercial credit applicants may involve an authorized representative with no ownership interest in the business.

The Associations emphasize the importance of a well-balanced Section 1071 rule to avoid overly burdensome data collection requirements that could stifle small business lending, greatly increase compliance costs for small business lenders, and open the door to costly litigation. Any final rule must be designed for efficiency in order to support clear and reliable data collection. This includes the streamlining of data to be collected and the ability for lenders to address Section 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act [“CRA”] reporting systems) to ensure as little disruption in the market as possible.

Finally, we respectfully request the Bureau ensure lenders have adequate compliance lead time to develop data-collection platforms that accurately capture and report Section 1071 data. Again, we thank you for your consideration and we look forward to working with the CFPB as it assesses the issues surrounding Section 1071 and small business data collection.

I. The Associations Support the CFPB’s Core Course Corrections.

The Proposal reflects several core course corrections that will better align Section 1071 implementation with statutory intent and operational realities.

A. The Adoption of a \$1 Million Small Business Revenue Threshold Will Better Reflect the Intent of Section 1071.

The Associations strongly support the Bureau’s proposed threshold revision of its small business definition from \$5 million to \$1 million in gross annual revenue. We believe the previously finalized \$5 million gross annual revenue threshold is too high and would undermine the intent of Section 1071 – the collection and analysis of data on the nation’s truly small businesses.

Companies that fall above a \$1 million threshold often offer different structures, are more sophisticated, and data collection would bleed into separate commercial banking operations with different systems, processes, and platforms, increasing the cost of collection, while offering little insight into actual small business lending.

At a \$5 million threshold, lenders start to get into commercial lending and often run into more complex ownership scenarios which become more cumbersome. Lenders also have different underwriting processes (e.g., scored loans vs. full documentation loans) for larger dollar loans. This may include other technological components which can double a lender’s efforts in this space. Requiring institutions to collect Section 1071 information for revenue as high as \$5 million would mean that lenders would have to build processes to collect Section 1071 data for their commercial-based lending products even though a substantial majority of those applications would fall outside the \$5 million revenue threshold. This would lead to additional expenses and regulatory burden

to oversee a process where the result will lead to a very low volume of reportable information under Section 1071. Complexity is increased by the fact that while small business lending applications often come via self-serviced online applications, commercial card applications have a much higher rate of being submitted through sales-assisted or phone channels.

Additionally, the Associations recommend the CFPB clarify that businesses with more than \$1 million in nontraditional revenue are similarly not considered “small businesses” under Section 1071. As drafted, the Proposal could subject large commercial entities to data collection, contrary to the CFPB’s intent to align the “small business” threshold with metrics in CRA regulations, achieve greater consistency with Regulation B, subpart A, and more closely align with internal institution thresholds while “still cover[ing] a supermajority of small businesses that the 2023 final rule covers.”⁸

For example, an asset management company with \$1 billion in assets or a large commercial entity seeking a commercial real estate construction loan that is not HMDA reportable and is based on projected income of \$500 million for a development not yet built are not generally considered to be small businesses. Nonetheless, these would technically qualify as applications from a “small business” under the Proposal. Because these scenarios are inconsistent with the Proposal and the statutory intent of Section 1071, The Associations respectfully request the CFPB clarify a large commercial entity is not a “small business” if they have nontraditional revenue that exceeds the \$1 million threshold.

Lastly, a \$5 million threshold does not allow banks to leverage CRA reporting for Section 1071 data and would force the creation of independent reporting systems.⁹ CRA has been a critical resource that facilitates private capital flow into underinvested communities and businesses. Section 1071 rules should align with CRA regulations as much as possible to ensure that financial institutions covered by the CRA continue to meet the credit and community development needs of small businesses, particularly women-owned and minority-owned enterprises. Different thresholds will force many financial institutions to report substantially the same data to the regulators but based on different revenue sizes and platforms, not allowing them to leverage the requirements currently in place. If the threshold were set at \$1 million in previous year’s gross annual revenues, much of the data could be gathered and generated quicker as it is already required for CRA reporting.

⁸ 90 Fed. Reg. 50952 at 50960.

⁹ Community Reinvestment Act, 12 C.F.R. Part 25, 12 C.F.R. Part 228 (Regulation BB), 12 C.F.R. Part 345.

B. Removal of Discretionary Data Points Will Relieve Operational, Accuracy, Privacy, and Legal Concerns.

The Associations support the Bureau's decision to remove many of the 2023 Final Rule's discretionary data points that presented serious concerns about operational burden, data accuracy, privacy, and legal liability.

As CBA explained in its 2022 comment, reporting "application method" or "application recipient" would require institutions to track and classify internal workflow details that differ among digital platforms, relationship-managed channels, and call-center engagements.¹⁰ These distinctions are operational in nature and not meaningful for fair-lending analysis. The inclusion of reasons for denial would have created inconsistencies with existing Regulation B adverse-action requirements and increased litigation exposure for lenders. Similarly, pricing information in small business lending is heavily negotiated and influenced by a broad range of business-specific factors, which make cross-lender comparisons inherently unreliable and prone to misinterpretation.

Furthermore, requiring lenders to capture employment counts for small businesses risks adding noise to the data. Small businesses often lack precise or stable employee figures, and many rely on contractors or seasonal workers. Capturing this information would therefore contribute to inaccuracies while offering limited value for fair-lending assessments.

While the Bureau has eliminated most of the discretionary data fields provided for in the 2023 Final Rule, it proposes to continue to require the collection of three-digit NAICS industry codes.¹¹ We urge the Bureau to reconsider the retention of this data point or, in the alternative, allow businesses to identify their two-digit code only, of which there are only thirteen to choose from. The NAICS code requirements complicate the data collection processes as it is very likely that most borrowers will not know which NAICS category applies to their business. Additionally, the risk of reidentification is greater with a three-digit NAICS code, as the three-digit codes are much more specific and granular, thus contributing to the privacy concerns related to data collection under Section 1071.

The Associations strongly support the Bureau's decision to eliminate discretionary data points and urge the CFPB in all instances to avoid free-text fields that degrade data quality and create inconsistency.

¹⁰ CBA Comment [Letter](#) to the CFPB's 2022 NPRM at 18.

¹¹ 90 Fed. Reg. 50952 at 50990.

C. Amendment of Discouragement Provision

As discussed in separate comments to the CFPB’s proposed amendments to provisions related to discouragement of applicants or prospective applicants under Regulation B,¹² The Associations support the CFPB’s proposed removal of certain references to discouragement prohibitions as applicable to Section 1071.¹³ The proposed amendments to the discouragement provisions under Regulation B would hew closer to the statutory language of ECOA, while better facilitating banks’ ability to provide credit to consumers in a fair manner. Specifically, the Bureau’s separate proposal to narrow the definition of “discouragement” clarifies that the prohibition is limited to statements indicating an *intent* to discriminate in violation of ECOA.

This shift is based on the preliminary determination that the prior provision was overbroad, creating an “unnecessarily chilling effect on creditors’ business practices” and potentially constraining warranted commercial activity. By requiring that liability attach only when a creditor “knows or should know” that a statement would cause a reasonable person to believe they would be denied credit based on a prohibited characteristic, the rule facilitates compliance and results in more targeted and effective enforcement.

Relevant to Section 1071 and to ensure consistency and fairness, the Associations urge the Bureau to provide standardized scripts that lenders may rely on, clarify that a lender is only required to ask for data once per application, and confirm that non-responses are not evidence of discouragement. This clarity is essential to promote consistent customer experience and minimize unnecessary compliance risk.

II. The Associations Believe There are Areas for Further Consideration by the CFPB.

While the Associations believe the Proposal’s core corrections are more directly aligned with the core intent of Section 1071, there are several changes that can be made to further the interest and integrity of the small business data collection.

A. The Section 1071 Implementation Period Should be a Minimum of 36 Months with a 12-Month Safe Harbor.

The Bureau’s Proposal includes a more reasonable timeline than the 2023 rule; however, the Associations remain concerned that the January 1, 2028, compliance date does not reflect the full operational complexity of business-lending data collection. Implementation will require extensive system redesign,

¹² 90 Fed. Reg. 50901.

¹³ 12 C.F.R. Parts 1002.107(c)(1) and (c)(2)(iii).

vendor coordination, end-to-end integration testing, customer-facing script development, staff training across multiple lines of business, and new quality-control mechanisms. These changes must also navigate year-end technology blackouts and vendor backlog cycles that limit when institutions can deploy system upgrades.

It is important to underscore that lenders will not have a clear starting point until the implementing regulations are final. Only then can they determine what changes will be necessary in their procedures, forms, policies, and systems, and then implement those changes. System modifications require not only time for development, but also appropriate testing. Even after the rules are final, clarifications and questions will consume months before requirements can be fully understood. This means that changes to systems will not receive the full lead time, as the implementation process can only begin after clarifications are received and questions are answered.

To complicate things further, lenders are already well into the process of making 2026 technology build decisions, adding to already long queues of technology priorities. As a result, they will be unable to initiate development upon promulgation of a final rule, causing significant delays. This time allotment will be further compounded by existing lender technology “blackout” periods, which halt all technology builds for approximately eight weeks at the end of the calendar year and, depending on the promulgation of a final rule, could add nearly four months of lost time to any Section 1071 implementation timeline.

Accordingly, the Associations believe that due to the complexity of this newly created reporting requirement and the importance of getting Section 1071 data collection right, lenders will need at least three calendar years for implementation following the Bureau’s issuance of a final Section 1071 rule. We also recommend that the Bureau continue to provide a one-year safe harbor from penalties following implementation, as it provided for the 2017 HMDA final rule.

Lastly, the Proposal provides that financial institutions (both depository and non-depository) that meet all the other criteria for a “financial institution” in proposed § 1002.105(a) would only be required to collect and report Section 1071 data if they originated at least 1,000 covered credit transactions in each of the two preceding calendar years prior to the January 1, 2028 compliance date, which at first instance would be calendar years 2026 and 2027.¹⁴ Banks may not have the ability to determine if they have met the criteria of a covered financial institution over the past two years when facing an immediate compliance date of the 1st of the next year. The Associations recommend the Bureau extend the lookback period to the two years prior to the year of compliance. For example, for January 1, 2028, the lookback period would include 2025/26, not 2026/27.

¹⁴ 90 Fed. Reg. 50952 at 50994.

B. The Associations Urge the Bureau to Reassess Coverage Thresholds, Product Exclusions, and Level-Playing-Field Concerns.

The Associations support tailored reporting thresholds but remain concerned that the Proposal’s activity threshold of 1,000 originations and certain product exclusions—specifically merchant cash advances—may distort the dataset in ways that ultimately disadvantage small-business borrowers by obscuring risks and reducing transparency across bank and non-bank lenders. Nonbank lenders now originate a significant share of small-business financing, yet many operate without the same supervisory oversight as banks. These proposed exemptions therefore create regulatory incentives for market migration toward unregulated channels and reduce the completeness of the data.

i. The CFPB Should Lower the Origination Threshold.

The Associations urge the CFPB to include a lower threshold for exclusion of lenders from Section 1071 reporting requirements (e.g., 250 or 500). The Proposal sets a threshold for exclusion for those lenders making 1,000 or less covered loans in a calendar year.¹⁵ However, excluding these lenders from reporting requirements would significantly reduce the availability of comprehensive data and could hinder effective fair lending enforcement and the identification of community development needs. According to the Bureau’s data presented in the 2023 Final Rule, setting a threshold as low as 100 originations will exclude roughly 82% of the small depository market.¹⁶ Setting a threshold as high as 1,000 originations would exclude all but large lenders.

Including small-volume lenders ensures a more complete picture of the entire small business lending ecosystem, especially considering the significant volume of small business credit offered by non-bank lenders (such as online lenders), which may fall under the lower threshold. A broad dataset that includes smaller institutions facilitates robust enforcement of fair lending laws by allowing regulators and the public to identify potential discrimination across a wider range of the market.

ii. The CFPB Should Include Merchant Cash Advances

The CFPB proposes to exclude merchant cash advances (“MCAs”) from the data collection and reporting requirements.¹⁷ This is a reversal from the original 2023 final rule. MCAs are a prevalent and growing form of alternative financing,

¹⁵ *Id.* at 50954.

¹⁶ 88 Fed. Reg. 35150 at 35257.

¹⁷ 90 Fed. Reg. 50952 at 50954.

with the global market valued at over \$17 billion in 2023 and projected to continue expanding.¹⁸ A 2024 Federal Reserve survey found that 10% of small businesses that sought financing applied for an MCA, a significant increase from previous years.¹⁹ It is important to note that high risk small business borrowers are more likely to seek out MCAs, heightening the need for MCA inclusion in a final rule. It is also worth noting that the Bureau's proposed removal of the pricing data fields would substantially reduce the challenges faced with MCA and sales-based financing data collection.

Accordingly, MCAs should remain covered under any Section 1071 rule to facilitate enforcement of fair lending laws and identify underserved communities by providing greater transparency into this growing market. Including MCAs allows the CFPB to gather data on a financing source that has become more popular with the shift away from traditional banks, providing a more complete picture of the small business lending landscape.

C. The CFPB should Exclude Indirect Lending Products and Include a Full Exemption for Trade Credit and Loans Made to Unknown Owners.

i. General Indirect Lending

The Associations urge the CFPB to make clear that all forms of indirect lending are excluded from the final rule. Although some forms of indirect lending, such as indirect vehicle finance transactions,²⁰ are well understood as outside the scope of Section 1071 requirements, the applicability of Section 1071 to other forms of indirect lending remains less clear. As noted in our discussion below on store-brand credit and equipment finance transactions, Indirect lending arrangements lack a direct relationship between the lender and the small business applicant, making data collection by the financial institution impractical and burdensome. The party interfacing with the applicant is best positioned to collect demographic and financial data. Without an exception, indirect lenders would be forced to initiate contact with customers solely for data collection—an unprecedented requirement that is unlikely to yield meaningful participation and could harm customer experience. Indirect sources, such as vendors, dealers, etc.,

¹⁸ Allied Market Research - "Merchant Cash Advance Market by Repayment Method [MCA Split, Automated Clearing House (ACH), MCA Lockbox], and Application (IT and Telecom, Healthcare, Manufacturing, Retail and E-commerce, Travel and Hospitality, Energy and Utilities, Others): Global Opportunity Analysis and Industry Forecast, 2024-2032 (April 2024).

¹⁹ Federal Reserve Banks - 2025 Report on Employer Firms: Findings from the 2024 Small Business Credit Survey (March 2025).

²⁰ 90 Fed. Reg. 50952 at 50998.

often seek financing terms from multiple indirect lenders, which under the current rule, would result in data submissions from numerous financial institutions on the same potential transaction. The simultaneous applications to multiple indirect lenders would lead to duplicative compliance costs for financial institutions and increase the risk that certain applications are reported multiple times with potential inconsistencies, leading to poor data quality.

Given the lack of a direct relationship and industry practice of indirect sources to reach out to multiple indirect lenders, The Associations respectfully request that the CFPB exempt indirect lending from its final rule, which will align interpretations with current industry practices

a. Store-Brand Credit

The Associations urge the Bureau to reconsider the application of the Proposal to credit offered to small business customers in the form of private label or cobranded credit cards (“store-brand credit”), or other types of credit originated at or facilitated through retailers, such as revolving lines of credit, installment loans, etc. Federal regulators have historically recognized the unique nature of certain store-brand credit products (e.g., point of sale credit) by excluding them from general requirements of other regulations (e.g., FinCEN’s beneficial owner rule²¹ and the Bureau’s own Regulation P data sharing opt-out requirements²²).

The requirements of the Proposal would create significant disincentives for retailers, merchants, and other vendors to offer store-brand small business credit, unnecessarily inhibiting small business lending at point of sale. Not only would the Proposal make merchants less likely to offer (or actively promote) store-brand credit, but the lengthy and awkward application process would discourage applicants from applying as part of their retail experience. As we discuss below, the impact of the Proposal on the availability of small business store-brand credit would not be outweighed by the value of any information gleaned from lenders.

Retailers partner with financial institutions to offer store-brand credit because it facilitates sales and meets the needs of and reinforces the relationship with their customers. However, retailers are also interested in swift point-of-sale interactions and efficient store operations. Lenders partner with retailers to offer store-brand credit in a manner that meets all these objectives. As the Bureau is likely aware, it is relatively simple to apply for store-brand credit at retail locations, even as part of a point-of-sale check out process. This is due to the hard

²¹ 31 C.F.R. Part 1010.380.

²² 12 C.F.R. Part 1016.

work of retailers and lenders to streamline the application process through the use of automation and the elimination of extraneous questions and data fields. In fact, retailers continue to push lenders to reduce friction in the application process to encourage more applications and reduce the time and effort required for the application process.

The goal of Section 1071 is to be able to accurately assess the state of small business lending in the United States and ensure that credit is being extended fairly across all demographics. That goal will be mired with bad data if store-brand credit continues to be included in this rulemaking. For this reason, we believe store-brand credit should be fully exempted from Section 1071 rulemaking. However, if the CFPB insists on its inclusion in the final rule, we believe that for credit lines below \$50,000, there should be an exception from the requirement to obtain principal owners' ethnicity, race, and sex information, as suggested in the Proposal. This would still enable data collection from some in-store applications but help mitigate the risk of application abandonment due to the lengthy in-store application process.

b. Equipment Finance Transactions

The Associations also urge the Bureau to reconsider the application of Section 1071 to equipment finance transactions as such transactions are significantly different from traditional small business lending and create unique challenges for compliance with Section 1071. Like store-brand credit, these transactions typically involve a vendor acting as an intermediary between the client and the financier. Here, an equipment vendor is acting as an intermediary between the client who is purchasing the equipment and the financial institution providing the credit. The equipment vendor collects the credit application from the client and then submits it to the financial institution. The financial institution evaluates the application and makes a credit decision, which is then communicated to the client by the equipment vendor. In this process, the financial institution (who is tasked with collecting and reporting the required data points) does not directly interact with the client and the equipment vendor may work with multiple financial institutions. Furthermore, credit decisions for equipment finance transactions primarily focus on the value of the equipment being purchased, rather than borrower characteristics.

Given the unique structure of equipment finance transactions (including their focus on equipment value rather than borrower characteristics), we recommend that the CFPB consider a targeted exemption for equipment finance transactions that involve a client submitting a credit application through an equipment vendor who is unaffiliated with the financial institution that is ultimately making the credit decision on the credit application.

ii. Trade Credit

The Associations recommend the CFPB exclude all trade credit from data collection and reporting requirements because bifurcating the treatment of trade credit creates regulatory inconsistency, limits the utility of data collection, and will result in less options for small businesses to obtain trade credit.

Like the 2023 Final Rule, the Proposal generally excludes trade credit from the definition of a covered credit transaction. The CFPB defines trade credit as a “financing arrangement wherein a business acquires goods or services from another business without making immediate payment to the business providing the goods or services.”²³ However, “an extension of business credit by a financial institution other than the supplier for the financing of such items is not trade credit.”²⁴

All forms of trade credit, not just in-house trade credit, should be exempt from the Proposal’s data collection and reporting requirements. Trade credit extended by financial institutions facilitates the very same agreements between the very same businesses. Trade credit offered by financial institutions allows more suppliers to offer trade credit programs, and as a result provides more opportunities for credit access to small businesses. Both forms of trade credit deserve consistent regulatory treatment. This will prevent the creation of an unlevel regulatory playing field that discourages competitive services to develop around the issuance of trade credit.

Uneven regulatory treatment will likely force suppliers to move toward “in-house” solutions in order to accommodate the preference of purchasers who are not accustomed to or amenable to providing this type of information for trade credit. By drawing an arbitrary line between these two forms of trade credit, the Proposal forces more business transactions to a less regulated environment without the oversight offered by financial institutions. Not all suppliers, however, will be able to create an in-house program. After all, suppliers are not experts in trade credit and provide these programs as a service for their customers. Additionally, an in-house trade credit program can impact a supplier’s cash flow, tying up funds it might otherwise need. When in-house solutions prove too challenging to develop and trade credit offered by financial institutions (accompanied by Section 1071 data reporting) proves unattractive to would-be purchasers, suppliers will find themselves out of options and the result will likely be a reduction in trade credit access to small businesses. This result is in direct conflict with the CFPB’s intent to “limit, as much as possible, any disturbance of the provision of credit to small businesses.”²⁵

²³ 86 Fed. Reg. 56356 at 56415.

²⁴ *Id.*

²⁵ 90 Fed. Reg. 50952 at 50993.

Additionally, the uneven treatment of trade credit will competitively disadvantage trade credit programs offered by financial institutions. It will allow in-house trade credit providers to offer a lower friction experience for purchasers that will not require Section 1071 data reporting. Meanwhile, trade credit programs offered by financial institutions that provide the very same service will need to implement changes required by this Proposal that purchasers will find unfamiliar and unwelcome, thereby restricting competition and potentially reducing available options for small businesses to obtain trade credit. As the CFPB recognizes, the statutory purposes of Section 1071 “are not well served by an expansive rule that could create disruptions in small business lending markets.”²⁶

Finally, the data gathered from only the trade credit programs offered by financial institutions will be less valuable to the Bureau, given that most trade credit is extended “in-house” and will not be subject to the Proposal’s data collection and reporting requirements. The partial and incomplete data gathered on trade credit will not offer meaningful insights into that market and will not advance the statutory purposes that underline Section 1071. In other words, evaluating only a small segment of the trade credit market will do little to advance the purpose to “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”²⁷

iii. Loans Made to Unknown Owners

The 2023 Final Rule notes that “commenters specifically requested the Bureau exclude any not-for-profit organizations, which might include non-operating entities, holding companies, trusts, special purpose vehicles, pass-through entities, holding companies that are not organized for profit, and limited liability companies that are not formed for business purposes.”²⁸ However, the Bureau does not now propose to adopt such exclusions stating that it believed that covering applications from passive businesses and non-operating entities was important for advancing both of Section 1071’s statutory purposes, but did not explain why including these advances the purpose of the statute.²

Many small business loans are made to organizations where ascertaining the identity of an “owner” difficult or impossible because there is not an owner. For purposes of Section 1071, we recommend the CFPB create a list of exemptions for these organizations. Some considerations include:

²⁶ *Id.*

²⁷ 15 U.S.C. 1691c–2(a).

²⁸ 88 Fed. Reg. 35150 at 35159.

- Commercial loans are sometimes made to trusts. The trust may be a single purpose trust, such as a land trust that is established only to hold specific real estate, a traditional estate planning vehicle or, though more infrequently, a business trust. We recommend that loan applications by trusts be excluded from the coverage under Section 1071. Including trusts within the Section 1071 regulations could raise difficult issues regarding who should be considered for data collection purposes - the settlors, beneficiaries, trustees or some combination thereof, what is the “net profit or loss” of the trust, as well as who is entitled to that net profit or loss. Under these circumstances, the burdens associated with involving trusts within Section 1071 coverage would not be justified by the minimal information that would be generated with respect to loans to trusts.
- Nonprofit organizations also appear to require special treatment, at a minimum, under the final regulations. By definition, a non-profit does not have “net profit or loss” that accrues to individuals and generally does not have owners. Consequently, it would be difficult, if not impossible, to determine if a nonprofit is a minority-owned or women-owned business. Depending on the ultimate definition of a small business, it may also be difficult to apply that definition to a nonprofit. For these reasons, we recommend that loan applications from nonprofit organizations also be exempted from the coverage of Section 1071.
- Non-operating entities, such as special purpose vehicles, pass-through entities, and other non-operating entities established as wealth management vehicles, in addition to holding companies that are not organized for profit, should be out of scope of Section 1071 data collection. These vehicles are primarily, if not exclusively, investment vehicles and therefore not appropriately in scope for Section 1071.
- Public agencies would rarely be considered a small business. Additionally, they have no identifiable individual owners.
- Foreign owned entities may have privacy laws that may conflict with 1071’s requirements.

D. The CFPB Should Not Publicly Release Section 1071 Data and Should Address Privacy Protections.

i. Data Privacy

The Associations urge the Bureau to avoid premature or overly broad public release of Section 1071 data. Small-business loan data is uniquely vulnerable to re-identification because businesses often operate in niche markets. The Bureau’s intent to rely on a post-hoc balancing test raises significant concerns. The Associations strongly encourage the Bureau to commit to

withholding public release of Section 1071 data until a separate rulemaking establishes a robust privacy framework.

ii. Free-Form Text Fields and Data Integrity

The Associations recommend the Bureau eliminate free-form text fields from data collection requirements and the sample data collection form as free-form text would significantly increase operational cost and regulatory complexity without providing a commensurate benefit to fair lending data analysis. The Associations appreciate the CFPB's elimination of a free-form text field for a principal owner's sex and agrees that a "free-form text field would inhibit robust data analysis, contrary to the purposes of the rule."²⁹ However, the requirement that banks include free-form text fields elsewhere, including for other demographic data, similarly inhibits data analysis.

Free-form text fields not only hinder data analysis by creating inconsistency, which degrades data quality, but they also create costly operational complexities. For example, free-form text submissions require back-end controls for review and remediation of offensive language or personally identifiable information, often necessitating burdensome manual processes.

In addition, free-form text fields risk data corruption if an applicant enters a character that is not recognized by internal or third-party systems and software for data collection and submission preparation. Accordingly, the Bureau should remove free-form text fields because they hinder data analysis and are unnecessarily burdensome, contrary to the purposes of Section 1071.

iii. Disaggregated Subcategories

The Associations recommend the Bureau eliminate the requirement to collect disaggregated subcategories as they add unnecessary regulatory complexity and create barriers to small business access to credit. The Associations appreciate the CFPB's specific request for comments on whether it should require only aggregate ethnicity and race categories and supports the Bureau's revisions to the "time and manner of collection" requirements in § 1002.107(c) intended "to provide guidance to financial institutions rather than contributing unnecessary regulatory complexity in the form of additional obligations."³⁰ However, as drafted, the Proposal creates unnecessary obligations

²⁹ 90 Fed. Reg 50,952 at 50993.

³⁰ *Id.* at 50965.

related to the collection of disaggregated subcategories that will result in lower overall data collection and create an unnecessary barrier for small businesses seeking credit.

The Proposal requires financial institutions to request both the aggregated ethnicity and race categories and disaggregated ethnicity and race subcategories of small business-applicant's principal owners.³¹ In addition, the request for data must be prominently displayed and financial institutions must permit applicants to select only a disaggregated subcategory without the corresponding aggregate category.³² Although the Associations appreciate the Bureau's clarification that financial institutions should not manually select an aggregate category in this scenario, taken together, these requirements impose overly burdensome and unnecessary obligations that will reduce both data collection and data quality as well as small business access to credit.

Data consistently show that longer application experiences lead to more application drop offs. In fact, application drop off levels can even correlate directly to each additional question added to an application. As drafted, the Proposal's sample data collection form includes only three questions but thirty-four possible selections for an applicant. Given that the Associations' members report increased application drop offs with each additional selection, and the data request must be prominently displayed, thirty-four potential selections are likely to significantly deter some small business applicants from applying. This will result in lower overall data collection, thereby limiting any utility of including the disaggregated subcategories, as there will be considerably less data for analysis. In addition, the increased application abandonment will directly result in less small business applicants securing credit, contrary to the purpose behind Section 1071.

As the CFPB recognizes, there is no statutory requirement for the collection of disaggregated data on the ethnicity and race of principal owners.³³ Because the disaggregated subcategories will provide limited utility and will directly hinder data analysis as well as small business access to credit, The Associations recommend the Bureau only require aggregate ethnicity and race data collection. To the extent the Bureau believes the subcategories increase data quality and benefit data analysis, The Associations recommend the CFPB, at a

³¹ See 107(a)(19) Comment 13-ii; 14-ii.

³² *Id.*

³³ 90 Fed. Reg. 50952 at 50963.

minimum, clarify that financial institutions are not required to present all thirty-four options on a single page. As it stands, it is nearly impossible for a mobile application experience to present all thirty-four possible responses on one screen, instead requiring an applicant to scroll through multiple screens before proceeding with an application. Allowing financial institutions to, at a minimum, collapse the disaggregated subcategories unless the category is selected would help mitigate some of the application drop offs.

* * * * *

The Associations appreciate the Bureau’s reconsideration of the 2023 rule and agree with the CFPB’s shift toward a simpler and more manageable framework that aligns with the statute. The 2025 proposal includes significant improvements that reflect the Association’s long-standing recommendations. However, further adjustments are necessary to ensure a final rule that protects credit access, supports consistent and reliable data collection, and preserves competition in the small-business lending market.

The Associations remain committed to assisting the Bureau in developing a workable and effective Section 1071 rule. We welcome the opportunity to engage further and provide additional data, operational insight, or technical recommendations. Please reach out to the undersigned with any further discussion.

Sincerely,

/s/

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