

Cooperative Credit Union Association

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Creating Cooperative Power

January 6, 2022

Comment Intake
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Small Business Lending Data Collection Under the Equal Credit Opportunity Act
RIN 3170-AA09

BY EMAIL ONLY: 2021-NPRM-1071@cfbp.gov

Dear Sir or Madam:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to the request for comments issued by the Consumer Financial Protection Bureau (“Bureau”) requesting public comment on its proposed rule to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“proposed rule”)¹ relative to small business lending data collection. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members.

1) Preliminary Comments

In the proposed rule, the Association appreciates that the Bureau recognizes the ongoing transformation of the small business lending landscape, including the increasing role that fintech companies, among others, are playing in providing financing to small businesses in the proposed

¹ Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require that certain financial institutions collect and report to the Bureau certain data regarding applications for credit made by small businesses, including women-owned businesses and minority-owned businesses,¹ among other requirements. Section 1071 has two stated purposes: “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.” As proposed, the rule would not require financial institutions to collect and report women-owned business status and minority-owned business status for businesses that are not small.

The proposed rule spans 913 pages and seeks feedback on a broad range of complex and interrelated definitions, data points, sample forms, and requirements for collecting and reporting the data. [2021-19274.pdf \(govinfo.gov\)](#)

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rule. If finalized, then the proposed rule would amend Regulation B to implement Section 1071's requirements. The proposed rule would also apply to a range of entities that engage in small business lending and create the first comprehensive database of small business credit applications in the United States.

The Association welcomes the opportunity to weigh in with the Bureau on this important issue within the financial services industry. The Association has actively engaged with the Bureau since its inception at every opportunity, urging the agency to take actions which would provide meaningful relief to credit unions and their members.² This letter addresses issues raised by our members relative to the proposed rule in their responses to a recent survey conducted by the Association on small business lending data collection.

2) Executive Summary

Association members are strong small business lenders³ and unequivocally do not support this proposal because it would significantly and excessively increase data collection burdens on not-for-profit credit unions, especially small credit unions. Furthermore, concern is expressed over possible unintended consequences, particularly in the areas of compliance costs, as well as the distinct regulatory classification of credit union member business loans which may skew the Bureau's objectives and make legitimate comparisons of small business lending excessively difficult, if not impossible.⁴ Accordingly, the Bureau is strongly urged to utilize its full statutory authority to exempt credit unions from the proposed rule.⁵

² Most recently, the Association submitted comments to the Bureau on Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act and the Truth-in-Lending Act, January 21, 2020.

³ From the period of 2019 to 2021, small business lending at member credit unions remained material and continued to rise, even during the health pandemic. For 2019, the number of loans made by Association members totaled 9,573 for an aggregate of approximately \$3.8 billion. In 2021, 10,105 small business loans were made for an approximate aggregate of \$4.9 billion.

⁴ The National Credit Union Administration ("NCUA"), under its definition of a member business loan ("MBL"), exempts certain loans the total of which to an individual fall under a specified dollar amount. Specifically, under §701.21(h)(1)(i)(C), a loan, otherwise meeting the definition of a member business loan, is not considered a business loan if the loan amount, when added to other business loans of a borrower, is less than \$50,000. The NCUA has not interpreted such loans as member business loans, even if they may be business-purpose loans, for nearly three decades, and does not require credit unions to report them in a separate category on the call report. Because of this longstanding interpretation, many credit unions do not maintain readily identifiable loan files on business purpose loans falling outside of the definition of an MBL.

⁵ Section 1022(b)(3)(A) of the Dodd-Frank Act provides the CFPB with broad authority to grant exemptions on a rule-by-rule basis.

3) The Bureau Should Use its Statutory Authority to Exempt Credit Unions, Particularly Small Credit Unions, from the Proposed Rule

The Association unequivocally urges the Bureau to exempt small credit unions and small community banks, currently defined as institutions with less than \$600 million in total assets⁶, from the small business data collection mandate because these small depository institutions are themselves small businesses.

The Association acknowledges the CFPB's expressed concern that the 1071 proposed rule's costs of compliance may result in a decrease in credit availability for small businesses. Furthermore, we join the CFPB in its belief that an exemption for small lenders is justified to avoid substantial market disruption. The Association recognizes the value of adopting a hybrid exemption as considered in the Small Business Regulatory Enforcement Fairness Act⁷ ("SBREFA") Outline of Proposals Under Consideration ("SBREFA Outline") and encourages the adoption of a volume-based exemption of at least 500 covered credit transactions in each of the preceding two calendar years, and a size-based exemption for entities of \$600 million of assets or less,⁸ the standard for a "small" credit union according to the Small Business Administration's ("SBA") Table of Size Standards. A credit union would be excluded from the rule if they fall under either of these exemption thresholds. The Association believes a hybrid approach would safeguard continued credit availability for small businesses served by community-based lenders.⁹

The compliance burdens on small credit unions increase every year and have the potential to outstrip smaller credit unions' compliance resources.¹⁰ These creeping burdens have led to a

⁶ 13 C.F.R. § 121.201.

⁷ Small Business Advisory Review Panel for Consumer Financial Protection Bureau Small Business Lending Data Collection Rulemaking, Outline of Proposals Under Consideration and Alternatives Considered ("SBREFA Outline"), available at [https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa_outline-of-proposals\[1\]under-consideration_2020-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbreffa_outline-of-proposals[1]under-consideration_2020-09.pdf) (Sept. 15, 2020).

⁸ See Small Bus. Admin., Table of Small Business Size Standards Matched to North American Industry Classification System Codes (effective Aug. 19, 2019), available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf.

⁹ For example, a community-based lender may be over \$600 million in assets but, due to a small volume of business loans originated, the cost of compliance on a per loan basis could mean an asset-based exemption alone is insufficient and could cause the lender to reduce its business credit offerings. The same may be true for a mere activity-based exemption alone, which may not properly account for a small-size lender that focuses on meeting the small business lending needs of its members.

¹⁰ The estimated cost of the regulatory burden witnessed by credit union members is \$98/household in Delaware; \$131/household in Massachusetts; \$119/household in New Hampshire; and \$153/household in Rhode Island. Credit Union National Association.

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dramatic trend of consolidation in the credit union industry over the past 50 years. The number of credit unions in the United States peaking in 1969 at 23,866 credit unions total but had declined nearly 80 percent by the end of 2020 to 5,194 credit unions in the aggregate.¹¹

The vast majority of credit unions that ceased to exist during this period merged with larger credit unions, often because increasing levels of compliance costs necessitated larger economies of scale than smaller, not-for-profit cooperatives could sustain. Although the rising costs of data collections, such as this proposal, may impose negligible costs on America's largest banks, community-based not-for-profit credit unions operate on a distinct member service orientation reflective of their cooperative structure, which should be considered by the Bureau in any rulemaking.

The Association does not believe that the material expenses our members project with respect to this data collection, if the Bureau finalizes the rule as proposed, would be justified in comparison to the burdens imposed.¹² To the extent that the Bureau proceeds ahead and finalizes this proposed rule, the Association strongly urges the Bureau to limit this rule's regulatory burdens on smaller credit unions and other community-based financial institutions by:

- a. Revising the definition of a "small business" to those with annual revenue of \$1 million or less in the prior fiscal year as an alternative standard to the Small Business Administration's size standards; and
- b. Exempting small credit unions and small community banks, currently defined by the Small Business Administration as institutions with less than \$600 million in total assets, from these small business data collection requirements to limit this rule's compliance burdens on small depository institutions.

4) Defining "Small Business" as \$1 Million or Less in Annual Gross Revenue

If the Bureau finalizes the proposed rule, then the Association strongly urges the Bureau to adopt an alternative small business size standard using the gross annual revenue of the applicant business in the prior year with a "small" threshold of \$1 million a year. This standard would be a right-sized approach to help appropriately balance the policy aims of small business data

¹¹ Credit Union National Association, "Long-Run Financial Trends: U.S. Credit Unions;" <https://www.cuna.org/advocacy/credit-union---economic-data/data---statistics/long-run-financial-trends.html> (Jan. 3, 2021).

¹² The Association believes that these costs estimated by our member credit unions are just the tip of the iceberg in terms of this data collection rule's compliance impact on community-based small business lender as well as their borrowers. As is the case in the European Union, increasing governmental mandates related to business lending are likely to drive up interest rates and fees and/or restrict access to credit for business borrowers through tougher underwriting standards and/or because smaller dollar-value credits may become bad revenue.

collection with the paperwork burdens on small credit unions and other community-based depository institutions. As noted in the rule’s preamble, the Bureau seriously considered the \$1 million a year annual revenue threshold to define “small businesses” as part of the SBREFA First Alternative Approach.

The Association believes that adoption of this threshold would be an easy approach to apply in practice that is already consistent with the Small Business Administration’s (“SBA”) definitions for some types of small businesses including most agricultural small businesses which are similar in nature to financial cooperatives such as credit unions. A New England cranberry farm or dairy farm, for example, would only be considered a “small business” under existing SBA size standards if it had annual gross revenue of \$1 million or less.

The Association strongly urges the Bureau to work with the SBA to define “small business” for purposes of this data collection as businesses with \$1 million or less in annual gross revenue for the prior fiscal year. Such action is consistent with the legal requirements for an alternative size standard and would be good public policy that balances the benefits of data collection against the compliance burdens of such collections.

5) Avoid Duplicative Data Collection

The Association urges the Bureau to exclude all HMDA-reportable transactions from the definition of covered credit transactions under the 1071 rule, to avoid establishing an obviously duplicative reporting requirement. There is no benefit in requiring financial institutions to collect and report data on the same transaction for two separate regulatory data collections.

The Association strongly advocates that the CFPB ensure that upon the finalization of any rule, no additional data recording beyond that which is statutorily required by the Dodd-Frank Wall Street Reform and Consumer Protection Act be required. Most importantly, no additional data points should be included in any rulemaking without documented evidence of their necessity.¹³ Credit unions are increasingly at a disadvantage under current and proposed regulatory schemes that do not take into account their diverse nature, and this limitation would further ease the regulatory burden.

6) Reporting of Data by Loan Participants and Reporting Guides

The Bureau’s proposed rule addresses the collection and reporting of data in instances where multiple parties are involved in a transaction. Under the proposed rule, a partial purchase of a loan does not, in itself, generate an obligation for a covered financial institution to report small business lending data. Rather, the financial institution that receives the covered application is the entity that originates a covered credit transaction and, therefore, the responsible reporting party

¹³ The Association has previously made this request to the CFPB in its comment letter on HMDA Reportable Transactions. May 24, 2017.

for purposes of the rule.¹⁴ The Association strongly supports this approach to loan participations, as the originating lender is in the best position to obtain the required information from the borrower. This approach also avoids duplicative reporting from the originating and participating lenders.

The Bureau also proposes to address technical instructions for the submission of data to the Bureau, including information about the Filing Instructions Guide. The Association strongly believes in the importance of a filing guide, and encourages the Bureau to prepare such a technical specifications guide for the purposes of, and any other guides which may assist in, timely and accurate compliance.

7) Compliance Burdens Associated with the Proposed Data Collection

A number of the Association's member credit unions have projected the compliance burdens associated with this regulation if the Bureau finalizes it as proposed. Members also expressed concern about the compliance burdens of free-form response fields, as well as the fact that free-form responses are open to interpretation. In addition, many small credit unions may not have sufficient staffing levels necessary to create a "firewall" system for limiting the staffs' access to small business data collection information such as data concerning applicants' race, ethnicity, and gender.

Specific compliance burdens associated with this proposal projected by the Association's member survey respondents include:

- a) A credit union with 80 full-time-employees ("FTE"), including 5 FTEs dedicated to business lending, which originated 79 loans to small businesses in 2019 and has approximately 16 percent of its loan portfolio invested in small business loans, indicated that it would need to expand the job duties of 3 FTEs in order to comply with this data collection requirement. This credit union noted that the most impactful result of this regulation in terms of its business borrowers would be an increase in interest rates and/or fees imposed on loans to small businesses.
- b) A credit union with approximately 120 FTEs, including 3 dedicated to small business lending, which originated 40 small business loans in 2019 and has 5 percent of its loan portfolio composed of small business loans, believes that all of its small business lending staff would have to have their duties expanded, as would other employees' job duties although the exact impact is not yet quantifiable. This credit union indicated that the biggest impact of this regulation on its business borrowers would likely be tighter

¹⁴ For example, Financial Institution A receives an application for a covered credit transaction and approves the loan, and then Financial Institution A elects to organize a loan participation agreement where Financial Institutions B and C agree to purchase a partial interest. The proposal suggests that this will be considered a covered credit transaction for Financial Institution A, but it is not a covered credit transaction for Financial Institutions B and C.

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underwriting standards and that the second biggest impact would likely be higher interest rates and fees on loans to small businesses.

- c) A credit union with 137 FTEs, including 2 focused on small business lending, which originated 60 small business loans in 2019, indicated that at least 3 FTE would have their job duties expanded if this rule is finalized as proposed. This credit union indicated that the biggest impact of this regulation on its business borrowers would be that it would no longer make smaller credits to small businesses because business loans below an as-yet-undetermined dollar threshold would result in revenue earned at the expense of the relationship with the member.
- d) A credit union with 263 FTEs, including 15 dedicated to small business lending, which originated 177 loans to small businesses in 2019, indicated that at least 6 FTEs would have to have their job duties expanded. This credit union projects approximately \$30,000 in one-time software upgrade expenses as well as ongoing costs that cannot currently be reliably quantified.
- e) A credit union with more than 350 FTEs, including more than 15 dedicated to small business lending, which originated 211 loans to small businesses in 2019 and has 95 percent of its commercial loan portfolio invested in loans to small businesses, indicated that it would likely need to hire 2 or 3 additional FTEs to comply with this regulation if it is finalized as proposed. In addition, this credit union projects that all its business lending staff would have their job duties changed or expanded. This credit union further noted that the biggest impact of this regulation on its small business borrowers would likely be higher interest rates and/or fees. In addition, this credit union projects more than \$250,000 in one-time compliance costs related to software upgrades if this rule is finalized as proposed. It also further projects ongoing compliance costs that are difficult to quantify.

The Association believes that costs anticipated by member credit unions are just the tip of the iceberg in terms of the proposed rule's compliance impact on community-based small business lenders as well as their borrowers. Increasing governmental mandates related to business lending are likely to drive up interest rates and fees and/or restrict access to credit for business borrowers through tougher underwriting standards and/or because smaller dollar-value credits are overpriced taking advantage of member needs.

The likely paperwork burdens associated with this proposal are material based on the result of the Association's survey of its member credit unions regarding this proposal. Survey results indicate that all the credit unions would need to reassign personnel to comply with this data collection and that approximately 40 percent of the credit unions responding believe that they would need to hire one or more additional full-time employees in order to comply if the proposed rule is finalized.

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Finally, survey respondents also indicated that they would need to incur significant costs upgrading their computer systems if this rule is finalized with “small business” defined as a business with \$5 million or less in annual turnover. The majority of respondents indicated that these costs would be material expenses for their credit union.

The material expenses of using the Small Business Administration’s definitions of “small business” using its North American Industry Classification System Codes would typically be even more burdensome for Association member credit unions in the aggregate, although many types of small businesses, such as most small businesses engaged in agriculture, are only considered small under SBA rules if their annual revenue is \$1 million or less.

8) Implementation Period

The Bureau proposes an effective date of 90 days after publication in the Federal Register, with compliance required approximately 18 months after publication.¹⁵ In addition, the Bureau also proposes to permit covered financial institutions to begin collecting protected applicants' demographic information beginning 12 months prior to the compliance date and would permit financial institutions to use a different time period to determine whether they will be covered by the rule as of the compliance date.

The Association expressly rejects the proposed 18-month compliance timeline as too short and strongly urges the Bureau to adopt a tiered compliance period, no earlier than at least three years following the adoption of the rulemaking due to the complexity and scope of the rule. The Bureau should observe the recent experience witnessed by the Financial Standards Accounting Board in launching its widespread, broad reaching Current Expected Credit Losses (“CECL”) rule.¹⁶ A compliance timeframe of no less than three years after publication in the Federal Register is recommended by the Association to avoid incremental action, implementation confusion, and permit sufficient time to revise operating systems for the required data collection, staff training, and member security/privacy data protection upgrades.

9) Conclusion

The Association urges the Bureau not to finalize this proposal or, if it is finalized, to reduce the definition of a “small business” to one with \$1 million or less in annual revenue as well as exempt small credit unions with less than \$600 million in assets from any data collection mandate.

The Association appreciates the opportunity to comment on the Bureau’s proposed rule on the small business lending data collection. If you have any questions about our comments or require

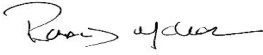
¹⁵ § 1002.114

¹⁶ FASB pushed back the effective date of CECL incrementally from January 2021 to January 2023 for smaller reporters and from January 2022 to 2023 for nonpublic companies.

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further information, then please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

RM/KB/MAC