



January 6, 2022

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

RE: DKT. No. CFPB-2021-0015_Small Business Lending Data Collection under the ECOA (Regulation B)

Dear Sir/Madam,

On behalf of Minnesota credit unions, please accept these comments in response to the Consumer Financial Protection Bureau's (Bureau) proposed rule for Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B). The Minnesota Credit Union Network (MnCUN) represents the interests of Minnesota's 94 credit unions and their more than 2 million members. Thank you for the opportunity to provide a response on this important matter.

Small businesses are an essential part of our nation's economy. We strongly support measures to ensure that small businesses have access to the financial products and services necessary to their growth and vitality. We also support facilitating the enforcement of fair lending laws to ensure that women-owned and minority-owned small businesses have access to the same financial resources as any small business. However, some of the measures the Bureau proposes to implement in its proposed rule will be harmful to financial institutions and ultimately small businesses themselves. Please consider our following concerns and suggestions.

Background

Section 1071 of the Dodd Frank Act amended the Equal Credit Opportunity Act (15 U.S.C. § 1691 *et seq.*) by adding requirements for financial institutions, including credit unions, to collect certain data from persons applying for small business loans. The expressed purpose of Section 1071 "is 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."¹ To facilitate that purpose, Section 1071 lists 13 data points that financial institutions, including credit unions, must collect, retain and report as part of the small business lending process. Section 1071 gives the Bureau authority to prescribe rules to carry out its requirements.² This includes authority to expand the list of data points financial institutions are required to collect.³ It also

¹ Dodd Frank Act, Section 1071(a)

² 15 U.S.C. § 1691c-2(e)(1)

³ 15 U.S.C. § 1691c-2(e)(2)(H)



includes authority to “. . . exempt any financial institution or class of financial institutions from” Section 1071’s requirements.”⁴

The Bureau proposes to use its authority to, among other things, do the following: The Bureau proposes to nearly double the number of data points a covered financial institution is required to collect during the application process by increasing that number from 13 to 23; The Bureau also proposes to define “covered financial institution” with a low threshold of 25 covered transactions in each of the two preceding years; and proposes to create no meaningful exemptions, thus treating community based financial institutions and the JP Morgan Chases of the world with the same blunt instrument. We have several concerns regarding the proposed rule.

Additional Data Points

Under the proposed rule, covered financial institutions would be required to collect and report 23 data points to the Bureau, while Section 1071 requires just 13. The Bureau proposes this increase but fails to provide sufficient support for doing so.

The Bureau has failed to sufficiently explain how the additional data points will advance the purpose of Section 1071 or benefit the Bureau or consumers. The additional data points include things such as NAICS code, application method, application recipient, Census tract, number of workers, time in business and number of principal owners. How does the NAICS code, application method or time in business help in terms of fair lending or support the purposes of Section 1071? Adding data points like these, that do not advance the purpose of Section 1071, is not only useless - it’s harmful.

The increased compliance burden will lead to increased costs and lack of access for many small businesses, including the very ones Section 1071 proposes to support (i.e., women-owned and minority-owned small businesses). The collection of the original 13 data points on its own will create a compliance burden and increased costs for covered credit unions. The costs include staffing, equipment, and software expenses. Many credit unions do not currently input many of the data points required under Section 1071 into a system for collection. This is because those data points do not provide information useful for a loan decision or the credit union does not have the systems needed to collect and report such data. Credit unions that do have existing software will have to spend money on updates to be able to capture, track and report the additional data. These are not minor costs. Many credit unions will have to either scale down or end small business lending programs or pass the costs along to the small business borrowers. Either way, small businesses are harmed. The Bureau acknowledges the potential for these unintended, yet harmful consequences.⁵

⁴ 15 U.S.C. § 1691c-2(g)(2)

⁵ *Federal Register*, Vol. 86, No. 193, Friday October 8, 2021 at p. 56538 (“The Bureau acknowledges, however, that this information could, in some circumstances, lead to reputational risks and increased costs for financial institutions, which might be passed on to their customers in the form of increased costs or decreased access to credit.”)



The Bureau's proposal to increase the number of data points increases the burden and costs exponentially and does so without providing any appreciable benefit to the purposes of Section 1071. Please reconsider the additional data points.

The Bureau should Apply its Exemption Authority in a Meaningful way

The Bureau proposes to not use its exemption authority to exempt any class of financial institution. In doing so, the Bureau chooses to treat all financial institutions, from JP Morgan Chase to local community-based banks and credit unions and everyone in between, the same. We encourage the Bureau to take a more surgical approach and account for differences in structure, size, complexity, types and levels of small business lending and frankly past conduct.

Credit unions are member owned, not-for-profit financial cooperatives. They exist to serve their members and differ fundamentally from for-profit financial institutions in both core purpose and structure. Credit unions have a long history of serving the underserved and underbanked and doing so with integrity. There is no pattern of credit unions engaging in unfair lending practices. Applying the Section 1071 requirements to credit unions is a solution looking for a problem. Therefore, we ask the Bureau to use its exemption authority and exempt all credit unions from the Section 1071 requirements. At a minimum the Bureau should reconsider its proposed definition for "covered financial institution."

The Bureau proposes to define "covered financial institution" as any financial institution that had originated at least 25 covered credit transactions in each of the two preceding calendar years. The Bureau should consider increasing that threshold as it is far too low and will negatively impact many smaller credit unions, hindering their ability to provide credit to small businesses. Many of our credit unions offer small business lending simply to provide a convenience for members who wish to keep all their business at one financial institution. As an example, one of our credit unions offers business credit cards on a very small scale as a convenience to members who own small businesses. Due to the low threshold the Bureau proposes, credit unions, like the one in the example above, will be subject to Section 1071's requirements. The compliance costs will cause many of these credit unions to reduce their offerings or leave the small business lending market completely. Thus, reducing the options for small businesses.

MnCUN supports the hybrid approach proposed by the Credit Union National Association (CUNA). Specifically, the Bureau should implement both a volume-based exemption of at least 500 covered transactions in each of the two preceding calendar years and an asset size-based exemption for entities with \$600 million in assets or less. Using the approach CUNA suggests will help assure the availability of credit to small businesses being served by community based financial institutions.

Proposed Revenue Threshold for "Small Business" Too High

For the purposes of the proposed rule, the Bureau proposes to add a gross annual revenue threshold in defining "small business." MnCUN supports such a threshold but believes the one proposed is far too high and would inappropriately classify some large businesses as small. According to statistics from



census data, the average annual revenue for a small business is far below \$1 million.⁶ The Bureau should reduce the gross annual revenue standard for determining which businesses are “small businesses” to no more than \$1 million in gross annual revenue.

Conclusion

Thank you again for the opportunity to comment on this matter. We support and appreciate the Bureau’s efforts to support the small business lending market. We strongly urge the Bureau to stick to the 13 data points listed in Section 1071. We also urge the Bureau to use its exemption authority to exempt all credit unions from Section 1071. At a minimum the Bureau should apply the hybrid approach CUNA suggests for defining “covered financial institution.” Treating all financial institutions the same way for the purposes of Section 1071 will have a disparate impact on the ability of smaller financial institution to provide lending to their small business customers. That result would be very harmful to small businesses, especially those who rely upon the services of community-based financial institutions. Thank you for taking into consideration MnCUN’s commentary on this matter. If you have any questions about our comments, please do not hesitate to contact me at (651) 288-5517.

Sincerely,

A handwritten signature in blue ink that reads "Tim Tacheny". The signature is written in a cursive, slightly slanted style.

Tim Tacheny
General Counsel
Minnesota Credit Union Network

⁶ <https://www.zenbusiness.com/blog/small-business-annual-sales/>