



**America's
Credit Unions**

Regulatory Comment: Section 1071 - Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)

THE ISSUE:

On November 13, 2025, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule and a request for public comment on certain provisions of Section 1071 of the Dodd-Frank Act that would require that financial institutions collect and report to the CFPB certain data regarding applications for credit for women-owned, minority-owned, and small businesses. This rule is a re-proposal of a final rule issued in 2023.

IMPACT TO CREDIT UNIONS:

Credit unions will generally benefit from a narrower scope of reporting requirements, which will reduce the immediate burden on medium-sized and small credit unions and those that originate fewer small business loans. However, large lenders, or those who originate greater than 1,000 small business credit transactions, would remain covered and must prepare for compliance by January 1, 2028. Covered credit unions will likely need to revise their systems to report fewer data points, adjust their definitions of covered loans and small businesses, and monitor developments in applicability over time.

KEY POINTS:

- The proposed rule would raise the origination threshold for covered financial institutions from 100 covered credit transactions to 1,000 over two consecutive years. It would also lower the gross annual revenue threshold defining a small business from \$5 million to \$1 million.
- The proposed rule is seeking to limit data collection to the statutory 1071 data points and remove many discretionary data points, thereby reducing complexity and focusing on essential data to ease compliance. Specifically, the proposed rule is seeking to remove from its data collection process: application method; application recipient; denial reasons; pricing; number of workers; LGBTQI+-owned business status.
- The proposed rule would eliminate the previous system of tiered compliance dates in favor of a single, uniform compliance date. The compliance date for all covered financial institutions would be January 1, 2028.

ACTION NEEDED: Deadlines and contacts

Please use the comment link below to respond to America's Credit Unions' survey. This will help shape the discussion and better address your needs in our comment letters.

- Comments due to America's Credit Unions: December 8, 2025 — **Submit here**.
- Comments due to the CFPB: December 15, 2025
- Questions? Contact John Vatian, Regulatory Advocacy Counsel, Innovation and Technology, America's Credit Unions
- Agency contact: Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>.

QUESTIONS TO CONSIDER:

1. Within the last two years, how many covered small business loan originations did your credit union offer? Under the proposed new threshold ($\geq 1,000$ covered small business credit transactions), would your credit union still be considered a "covered financial institution"?
2. Does the increase from 100 loan originations to 1,000 significantly reduce the regulatory burden for your credit union?
3. Approximately what percentage of your small business members have $\leq \$1M$ in gross annual revenue? Would the lower threshold reduce or increase the number of applications subject to data collection for your CU?
4. The proposed rule eliminates many discretionary data points. From a data collection standpoint, does the narrower dataset meaningfully reduce your anticipated compliance burden?
5. Regarding the compliance timeline of January 1, 2028, for covered lenders, is this date adequate for your institution? Would your credit union prefer to see a staggered compliance approach based on asset size or loan volume?
6. How do you expect the proposed rule to change your compliance costs? Will smaller credit unions benefit from the narrower rule or do burdens remain disproportionate?

BACKGROUND:

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to authorize the CFPB to collect data from small business lenders to better understand the financing needs of small businesses, particularly those owned by women and minorities. The CFPB issued the first proposed Section 1071 rule in September 2021 and finalized it on March 30, 2023. The 2023 final rule established wide-ranging data collection, reporting, and recordkeeping requirements, including numerous discretionary data points beyond those required by statute. It also applied the rule to a broad set of financial institutions with a tiered compliance schedule based on origination volume.

America's Credit Unions, the Cornerstone League, and Rally Credit Union joined a lawsuit (*Texas Bankers Association v. CFPB*) against the rule in the U.S. District Court of the Southern District of Texas.¹ After a denial of a motion for summary judgment, the case was appealed to the Fifth Circuit. The Fifth Circuit granted plaintiff's motion for a stay pending the appeal.² The granted stay only applies to plaintiffs and intervenors (parties of this lawsuit). As America's Credit Unions is an intervenor, the stay applies to all members of America's Credit Unions.

Moreover, America's Credit Unions' legacy organizations previously engaged the CFPB throughout the entire rulemaking process³, arguing that the proposed rule's complexity and significant costs would weigh disproportionately on credit unions in ways that ultimately lead to fewer and less favorable outcomes for all small business borrowers.

After receiving comments from various stakeholders, and based on reactions to the 2023 final rule, the CFPB is now proposing this reconsideration to revise certain parts of the rule. The CFPB now believes the data collection requirements should start out modestly with a focus on "core" products, lenders, and statutory data points to ensure data quality and minimize burden on small lending markets. They note that the 2023 final rule covered too broad of a scope and believe it was too expansive at the outset.

EFFECTIVE DATE

Comments on this proposed rule must be received on or before December 15, 2025. America's Credit Unions welcomes input and feedback as we draft our comment letter.

¹ See, <https://cusomag.com/2023/08/14/court-grants-credit-union-motion-to-intervene-in-1071-lawsuit/>

² See, <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2025/02/5th-Cir-Order-Feb-7.pdf>.

³ See, *NAFCU, Section 1071 Comment Letter*, <https://www.regulations.gov/comment/CFPB-2021-0015-1516>; see also, *CUNA, Section 1071 Comment Letter*, https://downloads.regulations.gov/CFPB-2021-0015-1514/attachment_1.pdf; see also, *NAFCU and CUNA Joint Comment Letter*, <https://americascus.widen.net/s/tpjzlgdbrb/joint-nafcu-and-cuna-section-1071-comment-letter>.

SECTION BY SECTION ANALYSIS:

A. Section 1002.104 – Covered credit transactions and excluded transactions.

Because the CFPB believes that the data collection required by Section 1071 should focus on core lending products (i.e., loans, lines of credit, and credit cards), the CFPB is proposing to exclude merchant cash advances (MCAs), agricultural lending, and small dollar loans from the definition of covered credit transactions.

For credit unions, this means they will not have to collect or report Section 1071 data for agricultural loans, small dollar loans (amounts less than \$1,000), or MCAs, which are already rare in the credit union sector. Generally, many lenders treat transactions under \$1,000 as consumer credit, rather than business credit and the CFPB recognizes that such amounts are not material for small business lending markets. Credit unions with significant agricultural lending will see a major reduction in what they must report because those loans would be exempt.

B. 105(b) Covered financial institution – threshold change

Under the final rule from 2023, a covered financial institution is one that has made at least 100 covered credit transactions to small businesses in each of the two preceding calendar years. In the current proposed rule, the CFPB is proposing to raise that definition from 100 to 1,000 covered credit transactions. In the CFPB's view, raising this threshold will better ensure the smooth operation of the initial period of data collection. Moreover, the CFPB believes the proposed change better aligns with E.O. 14192⁴ which directs Federal agencies to review regulations for regulatory burden.

Most credit unions, especially small and mid-sized ones, do not originate 1,000+ small business loans per year. Under the proposed changes, these credit unions would no longer be covered by the rule and, as a result, would significantly reduce their compliance burden. However, a handful of large credit unions with substantial lending portfolios would likely still exceed the 1,000 originations threshold and remain subject to Section 1071.

C. Section 1002.106 - Business and small business. 106(b) Small business

Currently, § 1002.106(b)(1) defines “small business” and provides that a business is small if its gross annual revenue for its preceding fiscal year is \$5 million or less. The CFPB is now proposing to reduce the gross annual revenue threshold from \$5 million or less to \$1 million or less. As part of the CFPB's review of the 2023 final rule, and under E.O. 14192, the CFPB identified that a \$1 million threshold would help reduce regulatory burden on financial institutions because it would

⁴ 90 FR 9065 (Feb. 6, 2025), E.O. 14192, “Unleashing Prosperity Through Deregulation.”

better align with other existing financial regulatory requirements and standard financial industry practices related to small businesses.

By lowering the threshold to \$1 million, many businesses that currently qualify as “small” (those between \$1 million and \$5 million) would no longer fall within this proposed rule. As a result, credit unions would have fewer reportable transactions, which ultimately reduces the volume of data they must collect and submit to the CFPB. For credit unions that remain covered financial institutions exceeding the origination threshold, the number of applications requiring data collection would shrink, easing operational and staffing burdens.

D. Section 1002.107 – Compilation of reportable data. 107(a) Discretionary data points

Section 1071 provides for two types of data points: (1) those statutorily required under ECOA and (2) those promulgated based on the CFPB’s discretion, often called discretionary data points. In the 2023 final rule, the CFPB finalized several discretionary data points.

Covered financial institutions were required to collect and report the following data points:

- | | |
|------------------------------------|--|
| (1) a unique identifier, | (12) pricing information, |
| (2) application date, | (13) census tract, |
| (3) application method, | (14) gross annual revenue, |
| (4) application recipient, | (15) NAICS code, |
| (5) credit type, | (16) number of workers, |
| (6) credit purpose, | (17) time in business, |
| (7) amount applied for, | (18) minority-owned, women-owned, and |
| (8) amount approved or originated, | LGBTQI+-owned business status, |
| (9) action taken, | (19) ethnicity, race, and sex of principal |
| (10) action taken date, | owners, and |
| (11) denial reasons, | (20) the number of principal owners. |

The CFPB is now proposing to remove the discretionary data points. Specifically, they are seeking to remove:

- application method,
- application recipient,
- denial reasons,
- pricing,
- number of workers,
- LGBTQI+-owned business status

The CFPB believes removing these data points at the start of this potentially long-term data collection will better serve the rule’s statutory purposes.

Collection of Disaggregated Ethnicity and Race Categories

The 2023 final rule required the collection of both aggregate and disaggregated race and ethnicity information on principal owners of small business applicants. However, 15 U.S.C. 1691c-2(e)(2)(G) only requires covered lenders to collect and report the “race, sex, and ethnicity of the principal owners of the business.” These broad categories do not require the more detailed subcategories that the CFPB added in its 2023 rule.

The CFPB is requesting comments on whether the rule should be revised to remove the disaggregated categories and require only the simpler aggregate ones (e.g., “Asian,” “Black or African American,” “Hispanic or Latino,” etc.).

Sex/Gender

The 2023 final rule required financial institutions to ask a small business applicant to provide its principal owners’ ethnicity, race and sex. When requesting principal owners’ sex, the CFPB provided commentary to use the term “sex/gender” and to give applicants a free-form text field to provide a response. The CFPB then believed that this approach would allow applicants to self-identify as they see fit.

The CFPB now believes that a free-form text field would likely result in poor data quality given the variety of potential responses. Specifically, the CFPB believes that the most appropriate way to collect data on the sex of a principal owner is to ask the straightforward question of whether the owner is male or female. Moving forward, the CFPB is proposing to make these changes throughout the regulatory text and association commentary.

Impact

For credit unions, the removal of several discretionary data points means they will have fewer data fields to collect, verify, and report. This reduction simplifies the data collection process, which can significantly lower the operational and compliance burdens that credit unions face. Also, by simplifying the reporting requirements, this could decrease the likelihood of errors in data submission, which in turn reduces the risk of regulatory scrutiny, audits, or penalties. By removing several discretionary data points, the CFPB is reducing the scope and difficulty of 1071 data reporting for any credit union that is required to comply.

E. Section 1002.114 – Effective Date, Compliance date, and Special Transitional Rules.

The CFPB proposes amending § 1002.114(b) to eliminate the system of tiered compliance dates in favor of creating a single compliance date. The new rule would require that all covered financial institutions that originated at least 1,000 covered credit transactions for small businesses in each of calendar years 2026 and 2027 begin to comply with the rule starting on January 1, 2028. The CFPB received feedback from stakeholders, and financial institutions in particular, including America's Credit Unions, that complying with the rule mid-year would be difficult.

A single compliance date benefits credit unions in several ways. First, it provides covered credit unions with a clear, uniform deadline, eliminating confusion about tier placement. Second, setting the date as January 1, 2028, gives credit unions nearly three years to update systems, coordinate with vendors, revise policies, and train staff, ultimately reducing costs and operational strain.