Credit Union National Association
CUNA

WASHINGTON, D.C.

99 M Street SE
Suite 300
Washington, D.C. 20003-3799

Phone: 202-638-5777
Fax: 202-638-7734

February 18, 2020

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

Re: Information Collection titled, "Small Business Compliance Cost Survey under the Generic Information Collection Plan"; Docket No.: CFPB-2020-0008

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. On behalf of our members, we are writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) notice seeking comment on its "Small Business Compliance Cost Survey under the Generic Information Collection Plan."

Background

Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require financial institutions, subject to a regulation to be issued by the CFPB, to compile, maintain, and report information about applications for credit made by women-owned, minority-owned, and small businesses. The Dodd-Frank Act prescribed no timeline for the CFPB to issue its rulemaking. Meanwhile, data collection – through this survey and other research – is expected to inform a future rulemaking.

The objective of the compliance cost survey is to solicit information from financial institutions offering small business credit products on the potential *one-time costs* to implement the 1071 data collection, and on potential responses to increased compliance costs. The current cost survey does not cover potential *on-going costs* from collecting and reporting data.

CUNA's Comment on the Data Collection Plan

CUNA has long asserted the CFPB should conduct a robust cost/benefit analysis prior to issuing any rulemaking that could impact credit union operations. The planned compliance cost survey of one-time costs associated with a small business data collection rulemaking should provide the Bureau with a useful data point to conduct such an analysis. However, as with any rulemaking-related data collection, CUNA believes it is critical for the Bureau to seek out and consider credit union-specific data and feedback. Credit unions are unique in the financial services industry as not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Despite this unique structure and mission, the Bureau has at times unjustifiably applied the data, feedback and trends of bank entities to credit unions. Treating all financial services entities as the same often results in outsized compliance burden for

community-based financial institutions. As a result, we strongly encourage the Bureau to seek feedback from credit unions on their compliance costs to ensure an accurate picture of the impact any new regulation would have on their specific operations.

As the Bureau has acknowledged, the pending compliance cost survey does not cover the on-going costs associated with a small business data collection. We strongly encourage the Bureau to conduct a survey of the potential on-going costs associated with compliance prior to issuing any proposed small business data collection rule. The on-going costs of compliance should be fully considered in order to reduce the likelihood of the Bureau needing to substantially revise or withdraw its rulemaking after final action due to unanticipated effects on the market.

Credit Unions Should Be Exempt from a Small Business Data Collection Rulemaking

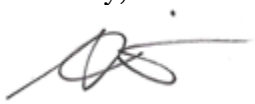
While CUNA does not object to the Bureau's plans to gather information on the compliance costs associated with a small business data collection, we would like to reiterate our position that the CFPB should use its authority to exempt credit unions from a small business data collection rulemaking. The high costs associated with Section 1071 compliance, particularly for smaller credit unions, would ultimately harm the ability of small business owners to obtain loans from their local credit union. This is particularly crucial since credit unions are already highly regulated in this market and subject to strict statutory limitations specific to them, such as caps on member business lending.

As the 1071 rulemaking moves forward, we caution the Bureau against adopting a rulemaking that would harm credit unions' ability to provide safe and affordable loans to small businesses. When rulemakings result in increased resources dedicated to regulatory compliance and in turn reduce the availability of affordable products and services from credit unions, consumers ultimately pay the price. The small business data collection is a clear example of when the CFPB should use its exemption authority in a broad and meaningful way to protect the financial well-being of consumers. Credit unions have shown no pattern or history of discriminatory lending that caused Congress to demand the study of the small business lending market in the first place. Instead, credit unions are often seeking ways to *increase* access to credit for small businesses, especially minority or women-owned businesses, not ways to decrease such access.

Conclusion

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views on the Bureau's pending small business data collection compliance cost survey. If you have questions or need additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,



Alexander Monterrubio
Senior Director of Advocacy & Counsel

ICBA
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Via electronic submission

February 18, 2020

Comment Intake
Bureau of Consumer Financial Protection
(Attention: PRA Office)
1700 G Street, NW
Washington, DC 20552

RE: ICBA Comments on CFPB Information Collection Request, "Small Business Compliance Cost Survey" [OMB Control Number: 3170-0032] [Docket No. CFPB-2020-0008]

Dear Sir or Madam:

The Independent Community Bankers of America ("ICBA")[1] is writing in response to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") request to the Office of Management and Budget ("OMB") to approve the collection of information related to the "Small Business Compliance Cost Survey under the Generic Information Collection Plan" (the "Survey").

As ICBA communicated to Director Kraninger in an April 23, 2019 letter, we appreciate the Bureau's efforts to identify potential benefits and burdens before rules are promulgated. This would be a welcome shift from the previous practice of issuing broad rules applicable to a wide-scope of products or persons, then only later acknowledging the burden and further tailoring the rule in subsequent iterations. Although many community banks often benefit from further

[1] *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.*

tailoring that excludes them from subsequent coverage, they have already incurred the costs of complying with the overly-broad initial version. A better approach would be to first carefully evaluate a potential rule's effects, then tailor it before an initial rulemaking.

When reviewing the responses to the Survey, ICBA urges the Bureau to acknowledge the fact that new data collection and reporting requirements under Section 1071 on community bank small business lenders would negatively impact small business lending and lead to unfortunate, unintended consequences for small business owners seeking credit. In particular, ICBA requests that the Survey analysis attend to the following concerns:

- Staffing issues unique to community banks
- Adoption of new IT systems and forms
- Potential elimination of "high-touch," relationship underwriting
- Consumer re-identification risk

ICBA strongly urges the Bureau to continue collecting information about the small business lending market and the impact Section 1071 will have on community bank small business lenders before initiating any rulemaking. It is clear that this market is complex, and it is important to understand the market dynamics before potentially increasing small business borrowing costs and reducing access to small business loans.

ICBA still contends that the only comprehensive solution would be Congressional recognition of these problems and a full legislative repeal. However, short of legislative action, ICBA recommends that the Bureau use all the resources at its disposal to closely study the impact of a 1071 rulemaking and plot a course that would have the smallest disruption to the marketplace. After further exploration, ICBA is confident that the Bureau will recognize the inordinate burden that this rule would place on community banks and will use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any regulation to data points required by statute, and prioritize protecting customer privacy as it considers new data reporting requirements.

If you have any questions or would like additional information, please do not hesitate to contact me, Michael Emancipator, ICBA's Vice President and Regulatory Counsel, at (202) 659-8111 or michael.emancipator@icba.org.

Sincerely,

/s/

Michael Emancipator
Vice President & Regulatory Counsel

American Bankers Association
Building Success. Together.

Kathleen C. Ryan
Vice President & Senior Counsel
Regulatory Compliance and Policy
202 663 5478
kryan@aba.com

February 18, 2020

Darrin King
PRA Officer
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Docket No. CFPB–2020–0008, Agency Information Collection Activities: Comment Request

Dear Mr. King:

The American Bankers Association (ABA)[1] appreciates the opportunity to provide feedback on the survey questionnaire intended to gather information about potential one-time costs to prepare to collect and report data on small business lending as required by section 1071 of the Dodd-Frank Act (Survey). Accurately estimating these substantial one-time costs is critical to understanding the implications of the small business lending data collection as well as conducting the cost-benefit analysis required for all rules promulgated by the Consumer Financial Protection Bureau (CFPB or Bureau). Therefore, we appreciate the opportunity to provide feedback on the Survey as part of the Paperwork Reduction Act review.

We understand that the Survey is limited to gathering information about the one-time costs of preparing to collect and report the 1071 data, and that no policy decisions have been made regarding the institutions and products to be covered and the data points to be reported. As this process proceeds, we encourage the Bureau to conduct additional surveys to gather information to better inform policymaking not only on one-time implementation costs but also on anticipated annual ongoing costs of compliance—which is likely to result in small business borrowers experiencing increased cost of credit. We also encourage the Bureau to consider surveying third-party vendors – for example, HMDA data collection software developers and loan operating system providers – as they may be able to estimate of the costs of third-party products and services that many financial institutions would use to comply with any small business lending data rule.

We offer a few broad comments here, followed by more targeted comments below. As an initial matter, we believe the Bureau's estimate of 30 minutes to fill out the survey is too low. Several members have noted that the nature of small business financing will make it more difficult for them to answer survey questions. For example, many institutions do not track applications for

[1] The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional and large banks. Together, America's banks employ more than 2 million men and women, safeguard $14 trillion in deposits and extend more than $10 trillion in loans.

small business credit and may have difficulty arriving at the number of applications received over a given time period. Similarly, because small business financing tends to be fragmented across different lines of business and system within a bank, one of our members said it would take 30 minutes to answer just the question about the number and dollar amount of originations for small business credit for each product type, e.g., loans and lines of credit, commercial real estate, etc. In addition, the instrument seems internally inconsistent on the type of products upon which the Bureau is seeking cost information. On one hand, the survey anticipates that some respondents will be focused offering "non-loan" products, including the purchase of accounts receivable (factoring), merchant cash advance, and "equipment financing." On the other hand, the background section of the survey instructs respondents to answer all questions assuming that institutions would have to collect and report data on "small business loans (secured and unsecured), lines of credit and credit cards . . . ." We understand that the Bureau has not yet determined the products and financial institutions that will be subject to the data collection; however, the Bureau will get better information if the questionnaire is clear about the products respondents should consider when answering questions.

Specific Comments

Respondent Information

Question 1: Which best describes your institution type?

We support the attempt to understand the type of institution responding to the survey. We recommend that the Survey request a brief explanation of the institution's structure from an institution that selects any one of the following categories:

e. "Institution focused on offering merchant cash advance"
g. "Institution focused on offering factoring"
*****
j. "Other"

Second, the choices are not designed to be mutually exclusive, e.g., the first choice is "bank" and another choice is "Equipment financing: Financing operation of bank." If this is the Bureau's intent, the Survey instructions should state that a respondent should select all choices that apply. In addition, the selections may need to be broadened, e.g., banks not only have equipment financing departments, but they may also have factoring and/or asset-based lending departments.

Question 2: **How does your institution define a small business for purposes of determining whether an application from a business is considered for a small business lending product? If the definition varies by line of business or entity, base the response on the area with the highest small business lending production in terms of count not dollars. See Appendix at the end of the survey for definitions of terms.**

First, we strongly recommend the Bureau include as a definition of small business, "businesses with revenues under $ 1 million in the preceding year." This annual revenue threshold is easy to apply, and financial institutions are familiar with it. Regulation B uses this revenue threshold to

differentiate between business applicants for purposes of adverse action notice requirements. *See* 12 CFR § 1002.9(a)(3)(i). Because the section 1071 rules will become part of Regulation B, it makes sense to offer Regulation B's annual revenue threshold as a choice here.

Second, for respondents that do not have a formal definition of a "small business" for the purposes of determining eligibility for small business financing, we are pleased that the Bureau has offered the CRA definition for these institutions to use and has included the CRA definition in an appendix. However, we are concerned that permitting institutions to answer using "any other single definition that would allow you to respond" will make survey results less useful. If the final survey permits a respondent to use such a definition, the survey should expressly direct the respondent to select the "other" choice offered.

Regarding the option "other," we are pleased that respondents may select all factors that apply. Some institutions may use multiple factors when defining small businesses (e.g., revenue and loan amount). We believe the survey's definition of "total exposure" is helpful, but it would be more useful if the survey directs respondents to the appendix, e.g., "total exposure-see appendix."

Question 3: What were your institution's total assets at the end of the last year? For larger institutions with multiple entities or subsidiaries, please report total assets for the primary entities or subsidiaries that originate small business loans.

We are pleased that the Bureau has offered the different tranches for institutions with more than $10 billion in assets. We note that if the Bureau intends that institutions include information on factoring, merchant cash advance and similar products, we suggest that the Bureau revise the question to replace the phrase "originate small business loans" to something like, "that provide small business financing."

Question 4: For each of the following product types, approximately how many total applications for small business credit (as you define small business) did you receive last year? If no formal definition of small business is utilized by your institution, use the CRA definition or any other definition that would allow you to respond to all questions

We believe the survey will be most useful to the Bureau and the public if it captures data that are generally comparable from one respondent to the next. However, the definition of an "application for credit" is not uniform across the industry. We urge the Bureau to define "application for credit" using Regulation B's definition (12 CFR § 1002.2(f)). Using Regulation B's definition – which is familiar to respondents – will help promote more reliable data.

Question 7: "In general, which of the following best describes your overall processes to process, decision and document small business lending transactions? If this varies by loan channel or line of business, base the response on the area with the highest small business lending production."

We recommend that the Survey define "highly automated," "moderately automated," and "marginally manual," or some parameters should be suggested for differentiating between these terms. It is not clear how "moderately automated" differs from "marginally manual."

We further recommend that the Bureau consider soliciting information about how many systems would be impacted by the 1071 data collection. Both highly automated and moderately automated institutions are likely to have multiple systems from which to gather the section 1071 data, and systems integration will be a significant contributor to implementation costs.

Question 10: "In preparing to collect and report the required data, please estimate the total number of hours senior-level, mid-level, and junior-level staff would spend on each of the following tasks along with non-salary expenses. If your institution would not conduct a specific task, or if a specific staff type would not be involved in a particular task, please record 0 hours."

We believe that the Survey should describe in detail what each of the specified "tasks" might encompass to ensure that respondents provide complete and accurate responses. For example:

- "Preparation/planning" should suggest that institutions report anticipated time spent reviewing the final rule, implementation guides, analyses or summaries, attending webinars or conferences, attending internal meetings, etc.
- "Training staff" should include costs associated with attending external trainings, where applicable.
- "Post Implementation review" should include fair lending review of the data.

Question 12: "If your institution anticipates purchasing or updating computer systems, please estimate the total anticipated 3rd party vendor costs related to these purchases and updates."

We support the inclusion of anticipated purchases of new software, and third-party vendor costs. The category "updating computer systems" would not otherwise capture these payments to third parties.

Costs related to restricting access to the demographic information

The Survey does not ask about the costs to design and implement a system to prevent underwriters or other decision-makers from accessing information about the race, ethnicity and sex of business owner-applicants, yet section 1071 requires such a firewall, "where feasible." See 15 USC § 1691c-2(d)(1). We urge the Bureau to seek information on the cost of establishing a system to ensure that underwriters and other decision-makers do not have access to the business owners' demographic information.

We appreciate the opportunity to comment on the Survey. Please contact Kathleen Ryan at (703) 965-5268 or kryan@aba.com if you have any questions about our comments.

Sincerely,

Kathleen C. Ryan
Vice President & Senior Counsel

EQUIPMENT LEASING AND FINANCE ASSOCIATION
1625 Eye Street NW
Suite 850
Washington, DC 20006
P 202.238.3400
F 202.238.3401
www.elfaonline.org

February 18, 2020

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

RE: Docket No. CFPB-2020-0008

To whom it may concern:

This letter provides comments from the Equipment Leasing and Finance Association (ELFA) to the Consumer Financial Protection Bureau's (CFPB) notice seeking comment on a Generic Information Collection regarding a survey designed to identify the one-time implementation costs of implementing Section 1071 of the Dodd-Frank Act.

BACKGROUND ON ELFA

ELFA is the trade association representing financial services companies and manufacturers in the nearly $1 trillion U.S. equipment finance sector. Equipment finance not only contributes to businesses' success, but to U.S. economic growth, manufacturing and jobs. Seventy-nine percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). In 2019, a projected $1.8 trillion will be invested by U.S. businesses, nonprofits, and government agencies in plant, equipment, and software. Approximately 50%, or $900 billion of that investment, will be financed through loans, leases and lines of credit. America's equipment finance companies are the source of such financing, providing access to capital.

ELFA represents more than 575 member companies, including many of the nation's largest financial services companies and manufacturers and their associated service providers, as well as regional and community banks and independent, medium, and small finance companies throughout the country. ELFA member companies finance the acquisition of all types of capital equipment and software, including agricultural equipment; IT equipment and software; aircraft; manufacturing and mining machinery; rail cars and rolling stock; vessels and containers; trucks and transportation equipment; construction and off-road equipment; business, retail, and office equipment; and medical technology and equipment. The customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and nonprofits.

ELFA represents virtually all sectors of the equipment finance market and its members see virtually every type of equipment financing transaction conducted in the United States and

every type of funding available to providers of equipment finance. ELFA members who are service providers to the equipment finance industry (such as lawyers, accountants, trustees and vendors) have a unique vantage point of seeing scores of financial transactions from initial concept to final payout and from the perspective of both the borrower/issuer and lender/investor/funding source. ELFA truly is at the heart of equipment finance in the United States and our member companies provide lease, debt, and equity funding to companies of all sizes.

COMMENTS

In its recent notice and request for comment the CFPB is seeking to gather information regarding the one-time costs of implementing Section 1071 of the Dodd-Frank Act utilizing a survey vehicle. ELFA believes that while this is a noble effort, collecting cost information today with the information provided in the notice and accompanying survey is unlikely to yield accurate information that could inform this rulemaking process. ELFA believes that in order to estimate costs, several factors need to be clarified beyond those that are discussed in the notice. ELFA believes that the CFPB needs to provide guidance in the following areas:

The Reporting Structure

How information collected under Section 1071 is provided to the CFPB is a critical element in order to estimate the one-time costs for implementation. For example, ELFA has proposed a reporting structure that would have the financial institutions covered by this rule collecting, reporting, and maintaining only information that they would generally already collect in the normal course of business.[1] The structure recommended by ELFA would have the credit applicant provide the demographic information directly to the CFPB on a one-time basis, and then the applicant would update as necessary. The CFPB would then provide the applicant a unique identifier that could be provided to financial institutions when it applies for credit. After a credit decision has been made, the financial institution would then provide the loan or lease level information along with the associated unique identifier to the CFPB. The CFPB would be responsible for merging the demographic information and the loan or lease level information within its own systems. ELFA believes that this structure would create significant efficiencies for both the private sector credit applicants and the financial institutions at minimal additional cost to the government.

ELFA would again commend this structure to the CFPB because it eliminates many of the difficult issues that exist in Section 1071. The benefits of this structure include:

- The elimination of difficulties created when the person applying for credit is not knowledgeable about the corporate structure of the applying business, e.g., a loading dock manager applying for a fork truck lease.

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[1] *Comments Submitted by Andy Fishburn for Ralph Petta, ELFA*, https://www.regulations.gov/document?D=CFPB-2017-0011-0418

- The elimination of repeatedly needing to determine ownership structures by each finance company that an applicant may apply to. As the CFPB knows, ownership structures for small businesses can be complex. Additionally, in the small business equipment finance marketplace, one application may be made to multiple financial institutions, be approved by all of them, but only be consummated by one financial institution due to the unique characteristics of secured financing.
- The need to create firewalls between loan officers and underwriters would be eliminated because the finance company would not have access to the demographic information. Recent studies show that automated processes lead to reduced discrimination because the credit decision is based solely on what is provided on the application.[2] If demographic information is not collected during the application process, it follows that the chance for direct discrimination based on that information is eliminated or, at a minimum, reduced.
- The anticipated increase in potential for perceived discrimination would be eliminated because the application process would not solicit information about gender and race of the business owners.
- The elimination of the need for any data collection regarding applicant types that are exempted from collection because the CFPB would not provide such companies a unique identifier.

While ELFA believes that the structure recommended in our response to the CFPB's 2017 RFI is the advisable one for the CFPB to utilize, regardless of the outcome of that decision, the CFPB must provide more information about the systems that it intends to use to collect this information to enable finance companies to provide meaningful estimates of the costs of compliance. The government utilizes a variety of systems to collect information from the public ranging from fax machines to sophisticated application programming interfaces. Some of these solutions require the use of third-party providers which can add significant costs to the process. For example, the processing of 4506-T forms in the mortgage space is heavily reliant upon third-party processors who batch file forms. The cost of setting up a compliance structure will vary widely depending on the technological decisions that the CFPB makes. ELFA believes that if the CFPB wishes to collect valid information in this area, significant additional information is required for institutions to provide accurate cost estimates.

Even under the assumptions in the draft survey, the costs could vary significantly. For example, if the reporting is similar to HMDA reporting, where reporting is accomplished through a free platform, technological costs in that case could be lower for a low-volume financial institution but might be higher for a high-volume institution due to data entry requirements. If, however, a lower-volume financial institution needed to invest in additional systems in order to format the data in a certain prescribed manner and upload it to the CFPB, this would increase the costs significantly, potentially by several orders of magnitude.

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[2] *Consumer-Lending Discrimination in the FinTech Era*, November 2019, Bartlett, Morse, Stanton, & Wallace, https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

Firewalls

As mentioned above, the statute requires that firewalls between loan officers and underwriters be created if feasible. The one-time costs of compliance are significantly different, especially for small and mid-size equipment finance companies, if they need to create firewalls between two employees who may sit next to each other and share the same computer systems. Additional information in this area is required to produce accurate cost estimates.

The Reporting Universe

Many market participants have long assumed that the CFPB would require the collection of information only from small businesses under Section 1071. The statute clearly provides the authority to collect at least some information regarding all commercial lending. Put differently, there is a compliance obligation to ask the applicant whether they are a small business, a woman-owned business, or a minority-owned business. One assumes that compliance-focused institutions will feel the need to have some form of data collection and record retention requirements even if the answer to that question is in the negative. Additionally, determining ownership of large publicly traded companies is difficult. For example, how would one determine whether a large publicly traded company had more than 50 percent female ownership.

The difference in one-time costs between building systems to collect some information about all commercial lending versus solely collecting information about an institution's small business lending is significant. This clarification is critical for any compliance cost estimates to be valid. It should be noted that in our response to the CFPB's 2017 request for information (RFI), ELFA indicated that it believes that collecting only from small businesses is prudent. Lastly, as alluded to above, it should also be noted that if the CFPB adopted ELFA's recommended collection structure, only applicants about which the CFPB required information to be collected would be eligible to receive the unique identifiers, so this issue would also be eliminated.

Conclusion

ELFA believes that additional clarity in the areas above is necessary to allow survey respondents to help the CFPB obtain an accurate estimate for compliance with Section 1071. ELFA stands ready to assist the CFPB in any way it can in the collection of estimates for the costs of compliance.

Respectfully Submitted,

Ralph Petta

3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

February 18, 2020

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

RE: Small Business Compliance Cost Survey under the Generic Information Collection Plan (Docket No. CFPB-2020-0008)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share comments on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed information collection related to small business data collection. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. As proposed, the information collection would seek to assess future compliance costs incurred under section 1071 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). If this information collection is meant to be the last before the Bureau convenes a panel of small business representatives pursuant to the *Small Business Regulatory Enforcement Fairness Act* (SBREFA), then NAFCU recommends that the Bureau modify its survey to balance questions about future costs with additional questions regarding future benefits. Furthermore, the Bureau should consider administering additional surveys to test other pre-rulemaking assumptions that may exist *before* developing an outline of proposals or convening a SBREFA panel.

NAFCU remains concerned that future implementation of section 1071 may yield misleading information about credit unions and negatively influence future small business lending. Credit unions serve distinct fields of membership and are subject to an aggregate limit on member business loans (MBLs). Given the unique characteristics of credit unions and their limited capacity to absorb additional regulatory costs, the CFPB should seek to exempt credit unions from any future rulemaking that compels disclosure of small business lending information. Doing so would be the best way to preserve credit unions' strong relationships with women-owned, minority-owned, and small businesses that seek access to affordable credit.

General Comments

Section 1071 of the Dodd-Frank Act assigns the CFPB the responsibility to issue implementing regulations for collection of "small business loan data." In general, section 1071 aims to facilitate enforcement of fair lending laws and enable communities, businesses and other entities to better identify the needs of women-owned, minority-owned, and small businesses. Section 1071 requires

financial institutions (broadly defined as anyone who engages in a "financial activity") to inquire of any business applying for credit, whether the business is a small business, women-owned or minority-owned. Additionally, the Bureau would collect information about the borrower and action taken on the credit application — similar to what is required under the *Home Mortgage Disclosure Act* (HMDA).

The collection of small business lending data from credit unions will present challenges for the CFPB in terms of developing a methodology that controls for variables such as field of membership and statutory caps on MBLs.

Credit unions are bound by defined fields of membership, which means that small business lending could be limited by geographic restrictions, employer groups, or other charter-specific language that defines who the credit union may serve. In general, the *Federal Credit Union Act* (FCU Act) allows three kinds of field of membership: single common bond charters, multiple common bond charters, and community charters.[1] Community credit unions have a field of membership that is defined primarily in terms of geographic area, whereas an occupational common bond credit union might have a membership that is limited to the employees of a specific company. Women-owned, minority-owned, and small business lending activity could look substantially different for credit unions simply because of regional concentrations of businesses.

The statutory cap on MBLs is another factor that will likely frustrate analysis of business lending data collected from credit unions. In 1998, Congress codified the definition of a member business loan and limited a credit union's member business lending to the lesser of either 1.75 times the net worth of a well-capitalized credit union or 12.25 percent of total assets. This aggregate cap impairs credit unions' ability to effectively lend to small businesses and was recognized in the Bureau's recent Data Point on "Small Business Lending and the Great Recession."[2]

As a result of both MBL and field of membership restrictions, data about credit union business lending will not translate easily when compared to other lenders. If the Bureau is still at the information gathering stage, it would be prudent to consider whether this lack of comparability, weighed against the costs of greatly expanded data collection, can be overcome to facilitate efficient fair lending supervision.

In NAFCU's estimation, the costs of section 1071 implementation far outweigh the benefits for credit unions and their members. NAFCU surveys reveal that many credit unions have limited resources to devote to specialized small business lending. For example, a majority of NAFCU respondents polled in February 2019 reported that staff limitations and insufficient expertise prevented them from retaining a dedicated staff member for SBA lending. Another survey from September 2018, asking questions similar to those presented in the proposed survey, found that 54 percent of respondents characterized their overall business lending process as "marginally

[1] *See* 12 U.S.C. § 1759.
[2] See CFPB, Data Point: Small Business Lending and the Great Recession (January 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf. https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf.

manual." The same survey revealed that the median number of staff involved in the decision-making and internal reporting process for small business loans was only two.

These examples are meant to illustrate credit unions' limited capacity to absorb the costs associated with section 1071 implementation. For some credit unions, the total cost of compliance could easily reach millions of dollars. Furthermore, given credit unions' obvious resources constraints, it is doubtful that their members would appreciate the negative impact mandatory business data collection might have on access to credit—particularly at a time when credit unions are one of the few lenders acting to offset the small business lending void left by banks following the financial crisis.[3]

At a more principled level, the Bureau should consider whether credit unions' historical pattern of good conduct and compliance with fair lending law warrants treatment similar to less scrupulous lenders or nonbank financial institutions. As the Bureau's own data reveals, relatively few credit unions are able or willing to offer small business lending products—and this is mostly due to cost. For credit unions offering such products, the introduction of new reporting rules could threaten the viability of lending programs and potentially consolidate small business lending among banks and online lenders—reducing consumer choice.

Considering these risks, NAFCU appreciates the survey's attempt to measure a future rulemaking's impact on the cost of credit for smaller lenders. However, we ask that the Bureau seriously consider exercising its authority under section 1022 of the Dodd-Frank Act to exempt credit unions from a section 1071 rulemaking. At the very least, the Bureau should communicate its intentions regarding the potential use of exemptive authority as early as possible so that credit unions may present additional information to inform the Bureau's pre-rulemaking analysis.

The Bureau should ask credit unions whether they believe a rulemaking to implement section 1071 would enhance small business lending activity.

The Bureau's cost-benefit analysis must not presume that credit unions and other lenders have no insights related to the purported benefits of a section 1071 rulemaking. By seeking to measure only costs, the survey disregards the fact that credit unions are financial cooperatives and represent the interests of their member-owners. Furthermore, a survey that only measures costs suggests that the Bureau has not clearly defined what the benefits of such a rulemaking would be for credit union members. To ensure that the pre-rulemaking record adequately reflects credit unions' views regarding how section 1071 might enhance lending activity, the Bureau must ask questions about those benefits. Obtaining such views would be an essential part of an honest and thorough cost-benefit analysis, which the Bureau has committed to performing. These questions might include the following:

1. *Would collection of the statutorily defined data elements in section 1071—*
    a. *make it easier to market loans to women-owned, minority-owned, and small businesses?*

[3] *See id*. at 30.

b. make it easier to underwrite loans to women-owned, minority-owned, and small businesses?
c. lower rates or fees on small business products?
d. lower rates or fess on other credit products?
e. increase the profitability of small business lending?
f. enable the offering of more small business loan products?

In short, the answers to these questions in combination with existing question 17 would help the Bureau determine whether a future rule's benefits might be overshadowed by its costs.

The Bureau should test pre-rulemaking assumptions using additional surveys before assembling a panel of small business representatives.

The SBREFA directs the Bureau to convene a panel of "small entity representatives" (SERs) when it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities. Following the administration of the compliance cost survey, the Bureau should not rush to assemble such a panel. The statutory time limit placed on the panel's consultative process (60 days) creates enormous pressure for smaller lenders, like credit unions, to gather necessary data to assess or challenge the Bureau's assumptions.

Furthermore, depending on the number of alternatives presented in a future outline of proposals, a thorough assessment of hypothetical compliance burdens associated with section 1071 implementation might be impossible in such a short time frame. Accordingly, the Bureau should communicate its pre-rulemaking assumptions and general thinking using additional surveys, which are not bound by strict time limits. NAFCU regards the current data collection as an appropriate first step in such a process—but it should not be the last. For example, the Bureau might ask separately whether discretionary publication of section 1071 data might introduce additional costs or challenges related to protecting the privacy of small business loan applicants. The question might be posed this way:

Would publication of section 1071 data by the Bureau create additional, privacy-related compliance burdens that would not otherwise exist?

NAFCU has also urged the Bureau in previous comments to give credit unions additional time to consider proposal outlines before convening a formal SBREFA panel. Given the magnitude of a rulemaking to implement section 1071, the outline should be made available for at least 120 days before a panel is convened. The Bureau should also treat the SBREFA panel as convened when the SERs meet for the first time, which would give SERs more time to fully articulate their perspectives and concerns.

The Bureau should not convene a SBREFA panel until it has formally addressed comments received on its 2018 requests for information regarding external engagements and rulemaking processes.

Although the current information collection request does not propose a timetable for assembling a future SBREFA panel, it is generally expected that the Bureau will do so sometime this year. Before this happens, the Bureau should address the comments it received in 2018 related to its requests for information (RFIs) on rulemaking processes and external engagements. In doing so, the Bureau should formally communicate whether it intends to revise any of its pre-rulemaking policies or procedures in response to the RFI comments, since any change would be relevant to the agency's section 1071 activity. Convening a SBREFA panel before responding to suggestions offered by both consumer and financial institution stakeholders would not only be premature, but could cast doubt upon the Bureau's transparency and responsiveness to such feedback, particularly if the Bureau is already contemplating changes to the panel process.

Conclusion

NAFCU and our members ask that the Bureau exempt credit unions from data collection requirements under section 1071. Credit unions have and continue to maintain strong relationships with women-owned, minority-owned, and small businesses. An elaborate data collection regime comparable to HMDA would only increase compliance costs and frustrate ongoing efforts to expand lending opportunities for small businesses.

NAFCU also asks the Bureau to revise its survey to solicit credit union views on the apparent benefits of a section 1071 rulemaking so that such perspectives are adequately reflected in a future cost-benefit analysis. Additional surveys should be used to validate or test pre-rulemaking assumptions before the Bureau convenes a SBREFA panel. Lastly, the Bureau should formally address comments received on its 2018 RFIs before convening a SBREFA panel to ensure that stakeholder feedback regarding the SBREFA process—and other pre-rulemaking activities—is properly considered.

NAFCU appreciates the opportunity to comment on the Bureau's information collection plan. Should you have any questions or concerns, please do not hesitate to contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

Andrew Morris
Senior Counsel for Research and Policy