



December 15, 2025

Comment Intake
Section 1071 Small Business Lending Data Collection
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments on Proposed Rule —Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), Docket No. CFPB-2025-0040; RIN 3170-AB40

To whom it may concern,

On behalf of the American Fintech Council (AFC),¹ I am submitting this comment letter in response to the Consumer Financial Protection Bureau's (CFPB or "the Bureau") Notice of Proposed Rulemaking to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Proposed Rule). We are delighted to use this correspondence as a mechanism to enrich the CFPB's insights into pertinent industry information that will both guide its efforts in this regulatory sphere and across the financial services ecosystem.

The cornerstone of AFC's mission persists as a salient effort to embolden an innovative, transparent, inclusive, and customer-centric financial system by promoting responsible innovation and supporting sound, evidence-based public policy. AFC members have long contributed to greater competition and inclusion across financial services, and they also serve an essential role in expanding access to small business credit. Our members employ sophisticated data-driven underwriting, technology-enabled product design, and modern delivery channels that strengthen the availability, quality, and efficiency of credit for small businesses, particularly those operating in underserved communities. By improving transparency and supporting the responsible growth of small business lending, these institutions help reduce costs, expand access to capital, and meet the diverse financing needs of small business owners. In this context, Section 1071's emphasis on enhancing the quality and consistency of small business lending data is vital to understanding market conditions, identifying persistent gaps in credit access, and informing policies that promote a more competitive and inclusive small business financing ecosystem.

The magnitude of Section 1071's scope and significance are of instrumental consequence to a wide array of Americans, many of whom are members of communities that have been historically underserved by the financial services industry. As the Bureau continues to refine the Section 1071 framework, its data-collection system should evolve thoughtfully to generate the reliable insights needed to support effective oversight of business lending.

¹ American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.

Data has a central role in Fintech’s ability to offer business lending services. Companies’ ability to generate, analyze, and apply richer information not only mitigates unfair lending practices but also unlocks new tools to enhance the precision and efficiency in rendering credit decisions. A 2024 collaborative report issued by the Minority Business Development Agency and think tank Third Way identified the inherent strategic advantages that Fintech has in the lending space—largely its associated cost savings from having much fewer overhead costs than brick and mortar banking institutions.² These efficiencies free resources that fintech lenders reinvest into more sophisticated data infrastructure, enabling more granular risk assessment than traditional manual underwriting environments.³ Research findings by the University of Connecticut earlier this year explored the nuanced differences between Fintech companies and traditional lenders, shedding light on the granular quantitative approach to lending that Fintech organizations utilize.⁴ Rather than simply relying on superficial credit score datasets, Fintech lenders often employ a robust dispersion of data fields in assessing the merit of an individual’s loan application. The Government Accountability Office (GAO) found that newer fintech products, particularly those aimed at underserved consumers, can lower fees, streamline service delivery, and expand access to financial tools, while highlighting that clearer regulatory guidance is needed to ensure these innovations operate safely and transparently.⁵ Engaging in such a highly rigorous methodical review effort correspondingly entails that more individuals are able to access capital whereas more antiquated processes would have filtered them out.

Fintech’s meaningful enhancements to the lending ecosystem underscores the importance of pragmatic data collection. Section 1071 remains a pivotal tool to adequately understand and capture datasets that will illuminate continuing disparities in the small business lending space. It is critical for the bureau to balance the business impact of its data collection requirements while remaining cognizant of the importance of data. Such analysis will lay out in clear fashion the datasets which should be constrained for the purpose of bolstering information quality, and subsequently the datasets which should continue to remain under the purview of regulatory supervision.

The discussion focuses on the components of the Bureau’s proposal and the implications for data integrity, regulatory coherence, and fair-lending transparency, as examined in the proceeding sections:

² Minority Business Development Agency, *FinTech and Alternative Financing for Minority Business Enterprises* (Washington, DC: U.S. Department of Commerce, 2024), accessed December 14, 2025, <https://www.mbda.gov/sites/default/files/2024-12/MBDA%20FinTech%20and%20Alternative%20Financing%20for%20Minority%20Business%20Enterprises%202024.pdf>.

³ *Ibid.*

⁴ University of Connecticut, “Fintech Lending and Credit Access” (honors thesis, University of Connecticut, n.d.), accessed December 14, 2025, https://digitalcommons.lib.uconn.edu/cgi/viewcontent.cgi?article=2115&context=srhonors_theses.

⁵ U.S. Government Accountability Office, *Financial Technology: Use of Alternative Data and Models Can Improve Credit Access* (Washington, DC: GAO, 2023), accessed December 14, 2025, <https://www.gao.gov/products/gao-23-105536>.

- I) examine the rationale for adjusting business-size and institutional thresholds and why these modifications enhance the precision and operational viability of the reporting framework;
- II) assess the importance of preserving core data elements, maintaining disaggregated demographic information, and retaining flexible NAICS code reporting, each of which plays a vital role in supporting accurate and analytically reliable datasets; and
- III) conclude by addressing the distinction between traditional credit products and short-term, no-finance-charge arrangements, and explaining how the Bureau's treatment of those arrangements appropriately aligns Section 1071 data collection with statutory intent.

Taken together, these sections provide a comprehensive and logically ordered assessment that advances the objective of ensuring that Section 1071 operates as a transparent, analytically sound, and durable regulatory framework.

I. AFC Supports the Bureau's Proposed Adjustments to Business-Size and Institutional Thresholds

In reviewing the proposed rule, AFC remains cognizant of the Bureau's objective to gather informationally sound, useful data points to inform its regulatory efforts. Understandably, AFC also remains vigilant of the somewhat protracted iterative process of promulgating required reporting metrics and ultimately adjusting later to account for changing policy needs. For the following reasons, AFC a) provides its support of the threshold adjustment from \$5 million annual gross revenue to \$1 million for identifying the small businesses who are subject to reporting requirements and b) expresses its support of the modification from 100 to 1,000 covered transactions as it relates to the two-calendar year threshold for enforcing regulatory requirements.

a. AFC Supports Reducing the Small-Business Revenue Threshold to \$1 Million

AFC supports the Bureau's proposal to refine the definition of a small business by lowering the revenue threshold from \$5 million to \$1 million. This adjustment reflects a more accurate understanding of the segment of the market that experiences the greatest difficulty accessing credit and for whom transparent data collection is most consequential. Enterprises with revenues at or below \$1 million constitute the cohort most exposed to informational asymmetries, cyclical cash flow volatility, and structural barriers in the credit marketplace. Focusing the scope of Section 1071 reporting on these firms strengthens the Bureau's ability to illuminate disparities in lending outcomes rather than diluting the underlying data with the experiences of larger and more resilient businesses that do not encounter the same impediments. The Bureau itself has emphasized that a narrower threshold will produce more reliable, interpretable, and operationally realistic datasets, and AFC agrees that regulatory transparency is best served when data collection aligns with the actual distribution of risk and need in the small business economy.

This refinement also promotes a more sustainable regulatory framework by balancing the statutory objectives of Section 1071 with the operational capacity of the institutions that must comply with it. Community banks, credit unions, and responsible fintech lenders play an indispensable role in serving very small businesses. These institutions have repeatedly noted that broad reporting obligations can impose burdens that are disproportionate to their size and can ultimately impede their ability to participate in markets that depend on speed, accuracy, and resource stewardship.⁶ By directing reporting obligations toward the firms for whom the data is most meaningful, the Bureau creates a more durable regulatory structure that improves data quality without compromising the ability of lenders to serve these businesses effectively.

A threshold of \$1 million also preserves the conceptual integrity of the term small business. A \$5 million revenue ceiling risks conflating materially different entities that do not share the same credit needs, operational risks, or vulnerability to outcomes Section 1071 seeks to remedy. Businesses operating at or near \$5 million in receipts generally possess broader banking relationships, greater operational stability, and more diversified sources of capital. By contrast, the smallest firms are those most sensitive to underwriting frictions and most likely to benefit from the clarity and accountability that Section 1071 is designed to promote. Narrowing the definition avoids these distortions and ensures that the regulatory framework remains focused on the populations that have historically lacked sufficient visibility within federal data collections.

For these reasons, AFC supports the Bureau’s proposal to adopt a \$1 million revenue threshold for small business classification. This refinement strengthens the analytic value of Section 1071 data, reduces unnecessary compliance burdens, and ensures that the rule meaningfully advances the statutory objective of improving transparency and fairness in small business lending. AFC encourages the Bureau to finalize this threshold and to continue evaluating its effectiveness in capturing the firms whose credit experiences remain most consequential to the purposes of the Equal Credit Opportunity Act.

b. AFC Supports Increasing the Institutional Coverage Threshold to 1,000 Transactions

AFC understands that the data collection regime established under Section 1071 is intended to persist for a substantial period of time into the future and will require deliberate, incremental expansion as the system matures. An enduring framework of this nature benefits from a measured approach in which initial reporting is anchored in core lenders that possess the operational capacity to generate reliable, standardized data. Per the Proposed Rule, the Bureau intends to increase the threshold for covered institutions from 100 covered credit transactions to 1,000 covered credit transactions. Beginning with this concentrated cohort promotes data integrity, supports methodological consistency, and allows the reporting infrastructure to develop in a stable and orderly manner. For these reasons, AFC supports the increase in the origination threshold to 1,000 covered credit transactions, as the refinement advances a sequenced implementation strategy that aligns with the objective of building a durable and analytically

⁶ America’s Credit Unions, “Provide Feedback Re: Proposed 1071 Rule,” accessed December 14, 2025, <https://www.americascreditunions.org/news-media/news/provide-feedback-re-proposed-1071-rule>. The organization notes that adherence to overreporting requirements would require institutions to “overhaul ... application systems, retrain staff, and ensure strict firewalls between loan officers and the new data.”

sound foundation for future phases of the rule. We further encourage the Bureau to recognize that small-volume lenders face disproportionately high costs in implementing Section 1071 reporting relative to their portfolio size. Establishing a clear safe harbor or exemption for low-volume institutions would help ensure that regulatory obligations remain proportional to market participation while preserving data quality and fairness objectives.

II. Removing or Weakening Key Data Elements Could Undermine Fair-Lending Analysis and Prevent Evidence-Based Oversight.

The data elements collected under section 1071 serve as an essential empirical foundation for understanding credit allocation, identifying disparities, and informing regulatory interventions. Because market conditions, lending practices, and business models evolve over time, the data framework must remain adaptive rather than static. An iterative, evidence driven approach allows the Bureau to refine, augment, or recalibrate data fields as emerging risks or policy priorities warrant. This section therefore examines four core areas in which thoughtful preservation of data elements is critical: a) the discussion considers why the proposed elimination of several fields requires a measured and iterative evaluative approach b) the section explains why disaggregated demographic information is indispensable for detecting and understanding disparities in small business credit outcomes and c) the section addresses the continued importance of flexible NAICS code reporting, supported by safe harbor protections, to ensure accurate industry classification and analytically reliable datasets.

a. AFC supports an iterative evaluation of core data elements which remain aligned with market conditions.

The Bureau's proposal to eliminate several data fields, including application method, loan pricing information, denial reasons, number of workers, Merchant Cash Advance (MCA) data, and Farm Credit System Lending data warrants careful reconsideration. These fields provide essential insight into the ways small businesses engage with the credit process and how lenders respond to those applications. When key data points are removed or narrowed, early patterns that may indicate differential treatment can become difficult to discern. This reduction in visibility limits the ability to understand how credit decisions form across borrower groups and makes it harder to identify whether emerging disparities reflect underlying risk or something more structural. Maintaining these elements therefore preserves visibility into patterns that could otherwise be obscured.

Small business credit markets evolve as underwriting practices shift, new technologies emerge, and broader economic conditions change. For this reason, the relevance of these data points cannot be evaluated through a static or one time review. Periodic reassessment is necessary to determine whether each field continues to advance fair lending objectives and remains responsive to emerging risks. A dynamic, iterative framework allows data collection to remain both analytically strong and adaptable, ensuring that reporting obligations can be recalibrated when new insights or policy priorities arise.

b. Maintaining Disaggregated Demographic Data Supports Accurate Fair-Lending Assessments and Prevents Misclassification in Regulatory Reporting.

Accurate fair-lending evaluation depends on visibility into the distinct experiences of different demographic groups. When demographic information is aggregated into broad categories, meaningful variation in credit access, pricing, and application outcomes can be obscured. Aggregation introduces a risk of statistical averaging that masks subgroup-level differences and can lead to misleading interpretations of market conditions. Disaggregated data, by contrast, enables analysts to identify patterns that would otherwise remain concealed and to assess whether observed differences in outcomes reflect borrower risk, product characteristics, or broader structural factors.

From a regulatory and statistical perspective, aggregation also increases the likelihood of misclassification and analytic error. Combining heterogeneous populations into a single reporting category can distort benchmarking, reduce comparability across datasets, and impede longitudinal analysis. These distortions undermine the ability of regulators and researchers to draw reliable inferences from the data and may result in either under-identification or over-identification of potential issues in lending markets. Maintaining demographic granularity therefore serves a core data-quality function that is independent of any particular enforcement or policy outcome.

Federal statistical standards reflect a longstanding emphasis on structuring demographic data in ways that support accurate and comparable analysis. Federal statistical agencies, including the United States Census Bureau, routinely collect and publish demographic information at levels of detail that allow analysts to examine variation in economic activity and outcomes across population groups. This approach is intended to preserve analytic clarity and to reduce the risk that meaningful differences are obscured through excessive aggregation. These practices reflect an understanding that, where demographic characteristics are relevant to the subject being examined, overly aggregated data can limit interpretability and weaken the reliability of resulting analyses.

Aligning Section 1071 with these established statistical principles ensures that small business lending data is collected and analyzed with the clarity and precision necessary to support sound oversight. Without disaggregated demographic information, regulators and researchers would lack the resolution needed to distinguish between risk-based lending decisions and broader market dynamics, limiting the usefulness of the dataset and weakening the evidentiary foundation upon which future policy evaluations may depend.

**c. Preserving Flexible NAICS Code Reporting with Safe-Harbor Protections
Supports Accurate Industry Classification and Reduces Reporting Errors**

Flexible NAICS code reporting remains necessary because lenders frequently must validate or correct borrower supplied industry codes accompanied by safe harbor protections. Industry classification accuracy often depends on the lender's ability to validate or correct borrower provided codes, particularly for small firms that may operate across multiple sectors or be unfamiliar with classification protocols. Some AFC members have observed in practice that respondents, particularly smaller firms, may misclassify their industry codes when completing federal surveys, which can require subsequent correction to maintain the accuracy of industry level data. A flexible reporting structure, combined with a safe harbor for good faith

classification adjustments, promotes more reliable data and ensures that industry level analyses under Section 1071 rest on accurate and consistent inputs.

III. Including Buy-Now-Pay-Later Loans or Products Could Distort Section 1071 Data and Misrepresent Traditional Credit Activity.

Buy Now Pay Later (BNPL) products operate fundamentally differently from the traditional small-business credit markets that Section 1071 is intended to illuminate. These products—repayable in four or fewer installments with no finance charge—facilitate discrete commercial purchases and do not include pricing, risk-based terms, or extended underwriting considerations that give rise to potential discriminatory outcomes. Their structure places them outside the analytical core of the Section 1071 regime, which is centered on monitoring disparities in higher-risk, higher-cost lending. For this reason, AFC recommends that the Bureau amend Regulation B § 1002.105(a) to exempt credit that is not subject to a finance charge and is not payable in more than four installments.

Requiring full Section 1071 data collection for short-term, interest-free transactions would impose a disproportionate operational burden while providing little corresponding regulatory insight. These products lack the pricing variables central to detecting discriminatory credit allocation, and including them would introduce substantial volumes of low-risk data that dilute the interpretive value of the initial reporting framework. Imposing such requirements may also discourage providers from offering transparent, low-cost financing tools that many small businesses rely on for routine working-capital needs.

The proposed exemption also aligns with the Bureau’s statutory mandate, the broader goal of sustaining innovation in small-business financing, and the incremental approach outlined in the NPRM. By excluding BNPL products during the initial phase of Section 1071 implementation, the Bureau would preserve the analytic integrity of the dataset, minimize unnecessary burdens on responsible lenders, and maintain regulatory consistency with the Truth in Lending Act. This approach ensures that Section 1071 remains focused on markets where the potential for discriminatory outcomes is most pronounced while supporting continued access to affordable commercial credit options.

Accordingly, the Bureau should amend Regulation B, section 1002.105(a) to expressly exempt credit that is not subject to a finance charge and is not payable by written agreement in more than four installments (not including a down payment). This approach is consistent with the Truth in Lending Act, which excludes such arrangements from the definition of credit subject to Regulation Z. See 15 U.S.C. section 1603(1). The proposed standard is clear, administrable, and aligned with federal precedent.

* * *

AFC respectfully submits that the Bureau’s continued engagement with stakeholders is essential to shaping a regulatory framework that is analytically rigorous, operationally durable, and responsive to the needs of the small business credit ecosystem. The perspectives presented throughout this letter reflect the importance of designing a data collection system that advances

transparency, accuracy, and fairness while supporting the institutions that provide critical financing to the most underserved segments of the market. We appreciate the Bureau's thoughtful consideration of these recommendations and its willingness to engage in substantive dialogue regarding the practical and policy implications of the proposed rule. AFC looks forward to continued collaboration as the Bureau refines and implements a Section 1071 framework that faithfully advances the statutory objectives of the Dodd Frank Act and strengthens equitable access to credit for all small business borrowers.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian P. Moloney", with a stylized flourish at the end.

Ian P. Moloney
Chief Policy Officer
American Fintech Council