



January 6, 2022

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

RE: Section 1071 Small Business Lending Data Collection (RIN: 3170-AA09)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU) and the Credit Union National Association (CUNA), we write to you in response to the Consumer Financial Protection Bureau's (Bureau) Section 1071 Small Business Lending Data Collection Proposed Rule (Proposed Rule). NAFCU and CUNA represent America's not-for-profit credit unions and their nearly 130 million members.

Our two organizations appreciate the Bureau's engagement with credit unions during its effort to implement section 1071 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Credit unions support the goals of section 1071 and seek to provide all members with fair and equitable financial opportunities. That said, it remains important for the Bureau to "get it right", and there is widespread concern that the Proposed Rule's complexity and significant costs will weigh disproportionately on credit unions in ways that ultimately lead to fewer and less favorable outcomes for all small business borrowers.

NAFCU and CUNA urge the Bureau to adopt common sense definitions, appropriate coverage thresholds, and a reasonable, phased mandatory compliance schedule to ensure that section 1071 compliance burdens do not hinder credit unions' efforts to support their small business members.

Covered Financial Institutions

The Bureau has proposed to define the term "covered financial institution" as a financial institution that originated at least 25 covered credit transactions for small businesses, as defined in the rule, in each of the two preceding calendar years. Financial institutions that meet this loan-volume threshold would be required to collect and report small business lending data to the Bureau. While we support the Bureau establishing a clear threshold for exempting smaller lenders from the rule, the proposed 25 covered credit transactions threshold is far too low and would unjustifiably impact many smaller participants in the commercial lending market.

By the Bureau's own estimates, increasing this loan-volume threshold four-fold would not only substantially reduce the costs of compliance but still permit the Bureau to capture data on nearly all small business loans made by depository institutions – not to mention the loans made by non-depository lenders that are also covered in the rule. We believe it is critical for the rule to be properly scoped to focus on lenders with the size and complexity necessary to better absorb the

rule's compliance challenges. As a result, NAFCU and CUNA recommend the Bureau establish a loan-volume threshold of at least 500 covered credit transactions in each of the preceding two calendar years. Our individual comment letters expand on this recommendation and detail other recommendations related to the Proposed Rule's definition of a covered financial institution.

Small Business Definition

The Proposed Rule would define a small business as any business with prior-year gross annual revenue of \$5 million or less. While NAFCU and CUNA support a uniform threshold, the Bureau must remain cognizant that section 1071's significant compliance costs will ultimately raise the cost of small business borrowing and avoid requiring covered financial institutions to collect section 1071 data related to businesses that are not truly small. Setting an artificially high gross annual revenue would not only unnecessarily raise the cost of small business borrowing but will make it more difficult for small business stakeholders to draw statistically significant conclusions about the health and financial needs of truly small businesses.

Based on the underwriting experiences of our members, NAFCU and CUNA recommend that the Bureau adopt a small business definition based on a prior-year gross annual revenue threshold not higher than \$1 million.

Covered Credit Transactions

We generally support the intent behind the Bureau's using Regulation B as a guide for defining covered credit transactions in the Proposed Rule. For entities required to comply with the *Equal Credit Opportunity Act*, a covered credit transaction definition aligned with Regulation B would be both familiar and represent the most common business credit products aimed at small business borrowers. However, in the interest of furthering the mission of section 1071, we recommend the Bureau exempt several classes of credit transactions from the definition of covered credit transactions, including loans under \$50,000. For nearly three decades, the National Credit Union Administration (NCUA) has interpreted loans of less than \$50,000 not to be member business loans (MBLs) and does not require such loans to be reported as MBLs, even if they may be business-purpose loans.

NAFCU and CUNA believe this is an important issue for three reasons. First, subjecting credit unions' non-MBL loans to section 1071 coverage could potentially affect the availability of these smaller size loans due to the increased costs associated with section 1071 regulatory compliance. Second, subjecting these non-MBL loans to section 1071 coverage would create a material inconsistency with NCUA's treatment of these loans – an inconsistency that should be avoided. And lastly, the Bureau's failure to fully exempt these *de minimis* loans could compound the negative impact of the Proposed Rule's extremely low covered financial institution loan-volume threshold. As a result, we recommend the Bureau establish an exemption for loans under \$50,000 from the definition of covered credit transactions with an option for financial institutions to *voluntarily* report these loans to the Bureau in their section 1071 filings.

Mandatory Compliance Schedule

Lengthy conversations with our members and the leading information technology (IT) vendors with whom they partner make clear the Proposed Rule's uniform 18-month mandatory compliance

schedule would be aggressive even for the largest, most technologically savvy credit unions. Additionally, experiences with the 2015 Home Mortgage Disclosure Act Final Rule's implementation suggests that the Bureau is likely underestimating the time required for IT vendors to adapt their products to comply with major rulemakings. The vast majority of credit unions likely to be covered financial institutions under the Proposed Rule will be forced to wait for one or more IT vendors to update, redeploy, and cross-test section 1071-compliant small business lending programs and tools.

NAFCU and CUNA strongly encourage the Bureau to adopt a phased mandatory compliance schedule that begins *no sooner* than three years following the Bureau's adoption of a section 1071 final rulemaking.

Conclusion

By adopting these recommendations, the Bureau could both collect the section 1071 data necessary for small business stakeholders to draw statistically significant conclusions about the health and needs of small businesses and avoid unnecessarily undermining the existing, in-community support credit unions provide small businesses. We appreciate the Bureau's continued engagement with the credit union industry and respectfully request an opportunity to meet with Bureau staff to more fully discuss these and other salient issues facing credit unions under the Bureau's Proposed Rule.

Sincerely,



B. Dan Berger
President and CEO, NAFCU



Jim Nussle,
President and CEO, CUNA