December 14, 2020

Hon. Kathy Kraninger
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Outline of Proposals Under Consideration to Implement Small Business Lending Data Collection Requirements

Dear Director Kraninger:

The American Financial Services Association (AFSA)[1] appreciates the opportunity to comment on the Outline of Proposals Under Consideration and Alternatives Considered for Section 1071 of the Dodd-Frank Act (Outline)[2] governing small business lending data collection and reporting.

AFSA appreciates the thoughtful, deliberate approach that the Consumer Financial Protection Bureau (CFPB) is taking with this rulemaking. As the CFPB has recognized, the stakes are high. Small businesses are crucial to the American economy and to the millions of Americans who run them, are employed by them, and who patronize them. Credit availability, in turn, is critical to the well-being of small businesses. Without credit, many small businesses would close.

Below, our letter answers many of the questions posed by the CFPB in the Outline and is organized in more or less the same subsections. In short, though, our overarching point is this—because financial institutions (FIs) do not have mechanisms in place to collect the information contemplated for collection in the Outline, FIs support rulemaking that would satisfy Section 1071 in ways that are not overly burdensome or onerous.

Requirements in this rulemaking that increase the complexity and cost are likely to decrease the number of small business loans. If each loan takes longer to make and is more expensive, fewer loans may be made. FIs will have to make cost-effective decisions about the size of loans to fund based on profitability (potentially leading to only larger loans that generate more revenue being made.) In a worst-case scenario, FIs may decide to exit the market if the regulations make it too difficult and costly for them to continue to make small business loans. Of course, this is exactly the opposite of the goal of Section 1071, but it could be the result nonetheless.

Therefore, it is imperative that the CFPB continue to work with FIs to minimize the burden this rulemaking will inevitably have. Below, we point out some areas, such as retail installment sale financing, that the burden is potentially more acute and suggested some alternatives to address those areas. We appreciate the time and effort

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[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.
[2] Consumer Financial Protection Bureau, "Small Business Advisory Review Panel for Consumer Financial Protection Bureau; Small Business Lending Data Collection Rulemaking; Outline of Proposals Under Consideration and Alternatives Considered." Sept. 15, 2020. Available at: https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration_2020-09.pdf

the CFPB has spent reaching out to stakeholders so far and hope that it will incorporate the feedback from the Small Business Regulatory Review panel into the rulemaking.

I. Small Business Lending Database

Before responding to the questions in the Outline, we emphasize that the creation of a small business lending database would make it easier for small businesses to provide data, as well as simplifying the collecting and reporting requirements for FIs. We strongly encourage the CFPB to create such a database.

Instead of having each small business provide data every time it applies for credit, a small business database would allow for a two-step process.

- The first step would entail an applicant (likely the owner or the CFO of the company) filing its demographic and financial information with the CFPB. Once in receipt of a completed filing, the CFPB would provide the small business applicant with an identification number. This number would be similar to an employer identification number (EIN) used for tax filing purposes, but specifically this would be a unique identifier used only for these purposes (*i.e.,* not an EIN, to avoid privacy and tax information access matters).
- In the second step, small businesses would provide FIs with this number when they applies for credit.

In fact, the Small Business Administration (SBA) already has a similar database. Perhaps the CFPB could consider using or duplicating the SBA's Dynamic Small Business Search database (DSBS).[3] The DSBS is a free portal sponsored by the SBA, used for entering and searching small business sources that want to do business with the federal government. When a small business registers in the DSBS, there is already an opportunity to fill out a small business profile.

The benefits to the database are as follows:

- Small businesses would not have to submit the same data multiple times to different creditors, but could easily update their information in the database as needed;
- The person from the small business that actually applies for credit would not have to know information such as the ownership structure, gross revenue, *etc*., but merely a number;
- As is the process today, race and ethnicity information would be completely separate from an FI's underwriting process;
- The application process would remain streamlined and efficient, ensuring that small businesses can quickly get the credit they need;
- Small businesses may feel more comfortable providing Section 1071 information to the Bureau rather than to an FI, and so it is possible that more data might be collected; and
- FIs would be able to use the number to facilitate its reporting obligation ensuring consistency and integrity of the data about the small business.

In short, the data that will be collected under Section 1071 could provide important insight into small business lending. FIs understand the benefit of that information. However, FIs want to keep race and ethnicity completely separate from underwriting. Including such information on an application makes that separation difficult. A CFPB-run database would allow for the information to be collected, but would keep it clearly separate from the underwriting process.

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[3] The SBA and CFPB have similar budgets. The SBA's 2020 budget was $272.2 million and the CFPB's was $695.9 million.

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Use of the database by FIs and registrants would be voluntary. At the same time, though, FIs would need to able to rely on the information in the database for collecting and reporting the demographic information about the applicant.

Creating such a database would save time, effort, and money for small businesses seeking credit and for FIs offering that credit. The CFPB could charge FIs a reasonable fee based on whether a loan is actually made to an applicant, reducing the expense to the CFPB of setting up such a database.

II. Interaction with Other Federal Laws and with State Laws
(Question #1)

There are at least two relevant federal laws which may duplicate, overlap, or conflict with the Bureau's proposed Outline—the Home Mortgage Disclosure Act (HMDA) and the Equal Credit Opportunity Act/Regulation B. There are also state privacy laws that could conflict with Section 1071.

While the Outline overlaps with HMDA in that it requires FIs to collect certain data points from applicants, it is not possible to simply build on a HMDA-compliance system, or duplicate one, to comply with Section 1071. Section 1071 compliance is separate and distinct, and so FIs will need to build a compliance system from scratch.

Section 1071 also conflicts with Regulation B. Section 1002.5 of Regulation B, which limits the collection of information about race, color, religion, national origin, or sex. Regulation B contains an exemption for collecting HMDA data. If a database as described above is not adopted, we ask that the Bureau add a similar exemption for collection of such data under Section 1071.

Some states, most notably California, have passed laws protecting their citizens' data. These laws could potentially come into conflict with a Section 1071 rulemaking. While these state laws aim to reduce access to certain information, the goal of Section 1071 is to expand the collection and reporting of certain information. If the collection of Section 1071 data is completely voluntary, there would likely be no conflict between a state law and the rulemaking. However, the CFPB is proposing that the collection of information regarding small business status (which could be a business' gross annual revenue) be mandatory. We suggest that the CFPB make the collection of *all* information under Section 1071 voluntary. If applicants can choose whether or not to provide this information, they are in control of their data and any privacy concern is significantly reduced.

III. Scope of Proposed Rule
(Questions #2 - #4)

AFSA strongly supports the CFPB's focus on small businesses. As the Bureau acknowledges in the Outline, most existing businesses, including almost all women-owned and minority-owned businesses, are "small business concerns" as that term is currently defined by the SBA. It is, therefore, likely that reporting applications for all small businesses would also result in reporting applications for nearly all women-owned and minority-owned businesses.[4]

Collecting and reporting the data points specified in the Outline for small businesses alone will be a significant undertaking for FIs, requiring extensive system and process changes. Requiring FIs to collect and report the required data points for all women-owned and minority-owned businesses, separate from and in addition to the

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[4] *Outline*, p. 9

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obligation to report such information on small businesses, would impose increased burdens on FIs without adding value.

Therefore, it is appropriate for the CFPB to focus on small business data collection, as opposed to imposing the considerable additional obligations that would be necessary if FIs were required to report information concerning credit applications made by all women-owned and minority-owned businesses, including large and possibly even publicly-held businesses, as well as small businesses. It is also consistent with what Congress intended.

Congress also intended, in Section 1071(c), for a business to have the right to refuse to provide any information requested pursuant to Section 1071(b) in connection with any application for credit. Section 1071(b) requires FIs to "inquire whether the business is a women-owned, minority-owned, or small business…" Section 1071(e)(2) allows for the itemization of collected information, but such collection and itemization is specifically limited to Section 1071(b) information by Section 1071(e)(1). Thus, the CFPB should be clear that a business has the right, under the statute, to refuse to provide Section 1071(b) information including its status as a small business (or women- or minority-owned business) and the itemization of such information under Section 1071(e)(2).

In this section of the Outline, the CFPB inquires as to whether the credit process at FIs for non-small business applicants differs materially from the process for small business applicants. We believe that it does, mainly because the amounts borrowed by small and larger business differ. Small businesses tend to apply for less credit than larger businesses. Because the amount of credit applied for is smaller, the application process and the approval process may be faster for small businesses. Larger businesses applying for larger amounts of credit pose a greater risk to FIs. To appropriately assess that risk, the application process is more complex, as is the approval process. It is likely that absent a careful approach by the CFPB under this rulemaking, the application process for small businesses will become more complex. It would become similar to the process for larger businesses, with an increase in the application processing time, a delay in the distribution of funds, and a decrease in the number of loans made.

IV. Definition of "Financial Institution"
(Question #8)

In this section of the Outline, the CFPB asks what compliance costs would cause an FI to stop or decrease lending to small businesses. Whether a rule would cause an FI to stop or decrease lending is, of course, up to that FI. As a trade association that was founded over a hundred years ago, though, we can say that we have seen that increased regulation leads to increased costs, which in turn, leads to a decrease in credit availability.

As one small entity representative (SER) said in its response to the CFPB, "Non-bank financial institutions neither collect nor report data on small business financing. Many small non-bank financial institutions have very few employees, each who wear several hats throughout the day. Many of these small lenders focus on relationship lending rather than statistical reports to determine loan eligibility. Often these small lenders have customers for many years who have revolving lines of credit, agricultural loans, inventory financing to name a few."

The SER continued, "Many of these non-bank financial institutions do not understand the myriad of acronyms used in the daily communications of regulated financial institutions and government agencies like the CFPB. While this may seem laughable at first it is an example of momentous challenge in implementing Section 1071. CFPB must be prepared to allocate adequate resources for education and training."

V. Financial Institutions that are not the Lender of Record
(Question #13)

Section 1071's requirement to collect and report certain data for any "application to a financial institution for credit" could be read as applying to more than one FI when an intermediary provides the application to another institution that takes final action on the application. As the Bureau acknowledges, this broad reading may generate duplicative compliance costs for FIs and potentially detract from the quality of reported Section 1071 data, increasing the risk that certain applications are reported multiple times.

To address that complication, the Bureau is considering proposing that in the situation where more than one party is involved on the FI side of a single small business loan or application, Section 1071's data collection and reporting requirements would be limited in the same manner as in Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). Under the Regulation C approach, reporting responsibility depends on which institution made the final credit decision.

In a proposed rule, AFSA believes that the CFPB should outline more explicitly how it envisions this process working in the indirect vehicle finance, equipment leasing, and private label credit markets. For example, in some situations, there are multiple parties involved in the extension of credit where one party sells a product on credit and then assigns the resulting contract to another party. In the appendix, we explain how these and other markets work. In the section on Product Coverage below, we offer suggestions as to how these different products could be treated in a proposed rule.

VI. Definition of "Small Business" Applications
(Questions #14 - #16)

AFSA strongly supports the Bureau's proposal that the collection and reporting of whether an applicant for credit is a small business be based on voluntary, applicant-reported information.

AFSA also agrees with the Bureau that the correct approach to defining "small business" is to use a simpler, more straightforward approach than the industry-specific size standards adopted by the SBA, classified by six-digit North American Industry Classification System (NAICS) codes. Such an approach would assist both FIs and applicants seeking to quickly understand whether a business is "small" and to employ a workable size standard without navigating the potential complexities of determining the appropriate six-digit NAICS code, and then the relevant size standard based on that NAICS code, for each applicant.

The Bureau is considering three alternative approaches for a simpler size standard: (1) gross annual revenue, (2) either the number of employees or average annual receipts/gross annual revenue, depending on the business, and (3) size standards across 13 industry groups that correspond to two-digit NAICS code industry groupings.

AFSA prefers the first alternative—gross annual revenue—because many, though definitely not all, FIs already ask for revenue information during the credit application process.[5] The threshold for defining a small business should be simple. If an applicant reports to the applicable FI that it has under $1 million in gross revenue, only then should it be defined as a small business. This threshold is sufficient to capture true small business lending.

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[5] Some AFSA members collect the gross annual revenue of the business in the last fiscal year, others do not. In particular for smaller, asset-backed loans, FIs (*e.g.* floorplan lenders) do not generally collect this information. FIs may just ask for net income, depending on the type of account or creditor.

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It also aligns with the delineation of the notice requirements for business credit applicants under Section 1002.9(a)(3) of Regulation B and also aligns with the Community Reinvestment Act definition of small business.

VII. Definitions of "women-owned business," "minority-owned business," and "minority individual" *(Question #17)*

The Bureau is considering proposing additional guidance to clarify the definitions of "women-owned" and "minority-owned." AFSA does not believe that the clarification is necessary. In fact, we are concerned that the proposed clarification will have the effect of making the clear definitions in Section 1071(h) more difficult to implement. We suggest that the Bureau keep the statutory definitions in the rule without additional clarification.

At the same time, we support the Bureau's proposal to offer simplified applicant-facing materials to aid industry in collecting this information.

VIII. Product Coverage *(Questions #21 and #22)*

This section of the Outline discusses which products are covered by the rulemaking and which are excluded. Below, we comment on several specific products and discuss whether and how they should be covered by the rulemaking.

A. Consumer Credit Used for Business Purposes

A person who obtains consumer credit, but then uses that credit in whole or in part to support a small business, is outside of the scope of Section 1071 reporting.

The Bureau should clarify that covered products (including term loans and business credit cards) are limited to products specifically designated by the applicant and the FI as business purpose products (business-designated products), and that covered products under Section 1071 do not include products designated by the FI as consumer purpose products (consumer-designated credit). Moreover, the Bureau should exclude loans or extensions of credit which (i) are approved based on an individual's credit and/or (ii) have a co-obligor or guarantor who is an individual.

As the Bureau explains in the Outline, not including consumer-designated credit as a covered product under a Section 1071 rule limits the financing proceeds reported to those be used for business purposes. AFSA agrees that this approach would greatly simplify the regulatory effort necessary to identify, and for FIs to distinguish, business uses of consumer products.[6]

B. Leases

The Bureau proposes that leases not be included as covered products. AFSA agrees with the Bureau that including leases would add unnecessary, additional complexity and reporting burdens, given the unique structure of the transactions. Leases are fundamentally different than traditional forms of credit because in a lease, the lessee does not have an ownership interest in the leased property. As such, including leasing data in credit data could lead to data integrity issues and would not be comparing apples to apples. We support excluding leases from this rulemaking.

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[6] *Outline*, pp. 20-21

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C. Trade Credit

The Bureau should propose that any exemption for trade credit apply not only to the seller of inventory and businesses facilitating the sale of inventory (collectively "Seller"), but also to affiliates of the Seller and facilitators of the sale of inventory that extends small business credit for the purpose of supporting the facilitator's and Seller's sale of equipment, supplies, or inventory to the applicant (referred to as "captive wholesale lending").

The reasons listed in the Outline that support exempting trade credit from Section 1071 are also applicable in wholesale financing as the affiliate of the Seller, generally, provides financing only for the Seller's products and not for competing or unrelated products. Moreover, collection and publication of data such as that required here, if applied to such an affiliate, could significantly impact the Seller's ability to maintain trade secrets, as this data would provide competitors a comprehensive insight into the Seller's distribution and wholesale strategies. It would also, for reasons set forth below, create a substantial risk to the applicant themselves due to privacy concerns.

D. Indirect Financing and Retail Installment Sales Contracts (RISCs)

As explained in the Appendix, indirect financing is a three-party process. In this section, we will largely focus on vehicle finance, but many of these comments also apply to other types of indirect financing, including furniture and electronics sales. It is imperative that the Bureau address how it would like this market to comply with Section 1071.

1. An Explanation of Indirect Vehicle Financing

In an indirect vehicle financing transaction, FIs purchase completed RISCs entered into between retail customers and motor vehicle dealers for the sale and financing of vehicles. When a customer purchases a vehicle from a dealer, the customer and the dealer agree on the purchase price of the vehicle and the purchase of any insurance, service contracts, and other products offered by the dealer. If the customer elects to finance the vehicle with the dealer, the dealer is the original creditor and negotiates the financing terms with the customer. The FI is the assignee of the completed RISC between the dealer and the customer.

Dealerships usually submit information about the terms of the RISC, including information about the customer and the transaction (sorted into data fields) to the FI, and the FI evaluates whether to purchase the RISC completed on those terms. The FI may approve, deny, or condition the offering. The FI will communicate its decision about whether to purchase the RISC to the dealer or may request additional information from the dealership (*e.g.,* proof of income).

2. The Complexities with Indirect Financing and Section 1071 Compliance

The difficulty with the indirect financing market and Section 1071 compliance lies in the fact that there may be many different creditors involved in the creation of a single RISC and its subsequent assignment. For instance, when a dealer completes a RISC with a customer, it often does not know which FI will purchase the RISC so it offers the RISC to multiple finance sources which may range from a few to upwards of ten or more. Absent clear direction from the CFPB to follow one of the recommendations below, each of those FIs could be required to make inquiry of the customer and then compile, maintain, and submit the data, which could greatly decrease the data integrity. Only one of the FIs will ultimately purchase the RISC, but all of them to whom it is sent by the dealer will have evaluated it for purchase.

Even the FI that is ultimately the purchaser/assignee of the RISC is often not able to gather information directly from the applicant, and this would extend to Section 1071 data. In fact, in many situations the FI does not have any interaction with the applicant and so cannot "inquire whether the business is a women-owned, minority-owned, or small business" as required ty the "information gathering" Section of 1071. The remaining FIs to whom the dealer offered the RISC for purchase, but ultimately did not purchase the RISC, will have an even more difficult time making the inquiry of the applicant. Applicants would have no incentive to cooperate and provide additional information and may even balk at the request for new information—especially that of a sensitive nature (race, sex, ethnicity)—to the FI that purchased the RISC and even less incentive to the FIs that did not.

By the time the information is submitted by the dealer to the FI, the dealer may already have extended the credit requested to the applicant. (This is a frequent occurrence where the dealer "spot delivers" the vehicle, in which case the application process is completed before the FI is involved. In that case, by the time the application information is provided to the FI, the car is sold, the financing is already extended by the dealership, and the customer is driving the car.)

Often, the first time that an indirect FI interacts with a customer is after it has purchased the RISC from the dealer. (Some FIs have credit application features on their websites that allow customers to begin the application process online. However, even in those situations, the application is ultimately directed to a dealer and the financing process is completed at the dealer.)

The dealer, on the other hand, interacts with the applicant and takes the application. The dealer, as the original creditor, is in the best position to collect the required Section 1071 data. The dealer could collect the information under Section 1071 without the involvement of the FI. However, this is further complicated by the fact that the CFPB lacks authority over motor vehicle dealers which fall under the rulemaking authority of the Federal Reserve Board.

Additionally, as it applies to indirect financing in other industries, getting sales dealers, particularly in furniture and electronic sales, and the like, who generally do not specifically sell to businesses, but to the population as a whole, are not likely to adhere to such requirements. Requiring FIs to request such data (and have the necessary systems in place to collect the data) would not only be burdensome and expensive, but would seriously interfere with the ability of the FI to do business with that dealer.

3. Recommendations

AFSA sees three different approaches that the CFPB could take regarding Section 1071 and indirect financing.

- The most straight-forward approach for the CFPB would be to exempt RISCs from the rulemaking. More specifically, the Bureau should exclude credit that was initially applied for and granted at a business entity that sells and finances its own products when such business entity and FI are not affiliates.

In addition to the complexity described above, including RISCs in the Section 1071 rulemaking will result in at least a double-counting of data by the dealer as the original creditor and the FI that purchases the RISC (in addition to potentially many other FIs to whom the dealer offered the RISC but who were not ultimately selected to purchase it, as described above), making the data unreliable. It will also significantly slow down what is now an efficient credit process. And, it could quickly become too expensive and too burdensome and result in eliminating credit options for small businesses.

- If the CFPB ultimately decides against exempting RISCs from the rulemaking, it could specifically address indirect financing in its rule.

  If the CFPB takes this approach, it should split the Section 1071 compliance obligation into two parts. The dealers, who interact with the customer and take the application, would be responsible for making the inquiry of the applicants and the data collection obligation of Section 1071(b) and the FIs would have the obligation of compiling, maintaining, and submitting the data under Section 1071(e) and (f). Of course, the difficulty with this approach is that the FI would only be able to compile, maintain, and submit the data received from the dealer. This still could result in multiple FIs being required to compile, maintain, and submit the data if the dealer submitted the RISC to them, unless the CFPB only requires that the FI that ultimately purchases the RISC to comply. Regardless of the approach with the FIs, because the CFPB does not have the authority to require the dealers to comply with Section 1071, it would also require coordinated rulemaking with the Federal Reserve Board.

  If the CFPB does allow for this bifurcation, it must allow the FIs to rely on the data that is collected by the dealer. This has some parallels with the way the Fair Credit Reporting Act (FCRA) excludes certain third-party communication of credit decisions from the definition of a "consumer report." The FCRA recognizes the need for information to flow between the dealer and the FI to facilitate an indirect credit transaction. It creates a similar bifurcation of responsibilities between the dealer and the FI and as long as the FI complies with its obligations, the exclusion applies for the FI regardless of whether the dealer actually performs its part of the process.

  In other words, the FI (assignee) is provided a safe harbor from liability if it meets certain requirements even if the retail seller (dealer) fails to do its part (inform the customer to whom it is providing the application). A similar structure could be put in place for compliance with the requirements of Section 1071 that allows the FI to rely on the dealer to make appropriate inquiry of the applicants and communicate the data to the FI. The FI's obligation would then be to compile, maintain, and submit what it receives. The FI should have the safe harbor for only the data it receives because it typically has no interaction with the customer until the financing is in place.

- The third possibility would be for the CFPB to exempt RISCs as it relates to FIs as assignees and allow the Federal Reserve, with its Section 1071 rulemaking authority, to require dealers as the original creditors to comply with Section 1071, similar to how compliance is handled under the

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Risk-Based Pricing Rule. This approach has the benefit of ensuring the integrity of the data by reporting each application only one time by the dealer rather than by the dealer, the purchasing/assignee FI, and potentially other FIs to whom the RISC was offered but who did not purchase it. However, for reasons outlined in the National Automobile Dealers Association's letter on Section 1071 being submitted in response to the Outline, this solution also poses a number of difficulties.

It is unclear, based on what is in the outline, whether the dealers who originate those sales finance contracts and later assign them to creditors could get the following information from the person who walks into the dealership: an NAICS code, gross annual income for the business, number of employees, who the owners are and what percentage of the business they own, *etc.*

E. Private Label Credit

Many of the same considerations that apply to RISCs also apply to private label transactions, which are also completed by a retailer who is not the FI in the credit agreement. As outlined in the Appendix, AFSA urges the Bureau to consider the unique aspects of private label credit and act to ensure that the data collection requirements for Section 1071 do not unintentionally impede access to credit.

We believe there are a variety of ways the Bureau could address these concerns without sacrificing the integrity of its Section 1071 data collection, ranging from exempting the transactions to permitting FIs to solicit the Section 1071 information outside of the retail store environment (for example, solicit optional response data in a follow up communication within a reasonable temporal proximity to the submission of the application).

F. Credit Line Increases[7]

We applaud the Bureau's exclusion of proactive credit line increases (PCLIs). As stated in the Outline, the Bureau plans to define an "application" largely consistent with the Regulation B definition of that term ("an oral or written request for an extension of credit…"). As PCLIs do not meet that definition, we agree it is appropriate that they should be excluded from the requirements of Section 1071.

The Section 1071 rulemaking should focus only on originations, not line modifications, term changes, or temporary increases, whether they are applied at the direction of the FI or sought by the applicant. Traditionally, requesting credit line increases has not been a cumbersome process. Card issuers have worked to make it efficient because small businesses sometimes need to quickly access additional credit when time is of the essence.

If, after implementing the Section 1071 rulemaking without collecting data on credit line increases, the Bureau determines that such data collection is necessary, it could then expand the rule to include customer-initiated credit line increases (CICLIs). If the CFPB choses to include CICLIs at a later date, it should consider ways to minimize the burden on applicants making such requests, such as: (a) for open-end accounts opened before the implementation date, permit issuers to rely upon the data on file; (b) for open-end accounts opened after the implementation date, not requiring issuers to collect and report Section 1071 data for credit line increase requests made within a specified time period from original account opening, and (c) only require FIs to collect information about the line increase itself, not information about the business that was already collected.

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[7] Credit line increases are covered by Section F, the Definition of an "Application" in the Outline, but we are including them in the Products Covered section of our letter.

G. Merchant Cash Advance (MCA)

The Outline does not provide a specific definition of MCA in its discussion of exempting such transactions from the new reporting requirements. Instead, the Outline provides only the following information:

> "MCAs are a form of short-term financing for small businesses that vary in form and substance. Under a typical MCA, a merchant receives a cash advance and promises to repay it (plus some additional amount) by either pledging a percentage of its future revenue (such as its daily credit and debit card receipts) or agreeing to pay a fixed daily withdrawal amount to the MCA provider until the agreed upon payment amount is satisfied. The Bureau is considering proposing that MCAs not be a covered product under section 1071 since including them may add additional complexity or reporting burden given the unique structure of the transactions."[8]

Assuming the final rules include a formal definition for MCAs based on the CFPB's current Outline, we would support the following definition options:

> "MCAs are a form of short-term financing for small businesses that vary in form and substance. Under a typical MCA, a merchant receives a cash advance and promises to repay it (plus some additional amount) by either pledging a percentage of its future revenue (such as its daily credit and debit card receipts) or agreeing to pay a fixed payment ~~daily withdrawal~~ amount to the MCA provider until the agreed upon payment amount is satisfied."
>
> or
>
> "MCAs are a form of short-term financing for small businesses that vary in form and substance. Under a typical MCA, a merchant receives a cash advance and promises to repay it (plus some additional amount) by, primarily, either pledging a percentage of its future revenue (such as its daily credit and debit card receipts) or agreeing to pay a fixed daily withdrawal amount to the MCA provider until the agreed upon payment amount is satisfied."

The purpose of this clarification would be to ensure that MCAs remain exempt from the CFPB''s reporting requirement, even if the MCAs contain terms requiring repayment of the cash advance if future revenues prove insufficient.

IX. Definition of an "Application"
(Questions #23 and #24)

The Bureau is considering proposing to define an "application" largely consistent with the Regulation B definition of that term. That is, as "an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested." AFSA supports this approach. Furthermore, to be included under this rulemaking, the application should specifically indicate that it is for a business purpose.

AFSA also supports the Bureau's proposal that FIs would not be required to collect and report Section 1071 data for prescreened solicitations or firm offers of credit unless the applicant responds in a manner that triggers an "application."

X. Data Points

In this section of the Outline, the Bureau discusses the data points enumerated in Section 1071, as well as a number of discretionary data points the Bureau is considering proposing. FIs should not be required to validate Section 1071 data points as this would impose a near impossible burden due to the nature of small businesses and the regulatory environment regarding privacy concerns.

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[8] *Outline*, p. 22

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FIs, particularly non-banks, currently collect very few of the data points required by Section 1071 in the ordinary course of business. Collecting, maintaining, limiting access to, and reporting this information will require development of new systems and significant changes to existing systems and processes.

In order for the effort and expense to be worthwhile, a significant portion of small businesses would have to be willing to provide this data. Has the CFPB or SBA examined whether small business would be willing to provide this data? Some AFSA members have spoken with their small business clients and many of them say that would not want to provide this information.

AFSA strongly believes that if small businesses had the option to fill out this information once, in a database, and then provided that number every time the applied for credit, more data could be collected. This would be more reliable, and it would certainly be more cost-efficient.

Furthermore, it is important to note that the CFPB and others should not draw conclusions from the pricing data because a wide variety of factors have an effect on the pricing. For example, in vehicle finance the following factors are all part of the pricing: whether the vehicle is new or used, the make and model of the vehicle, the applicant's credit score, the down payment, *etc.*

A. *Mandatory Data Points (Questions #25, #26, #28, #33, #38, #40, #45, #46, and #47)*

Section 1071(b) requires FIs to compile and maintain a record of certain collected data points. As pointed out above, Section 1071(c) provides that applicants may refuse to provide Section 1071(b) information. Below we list each data point and our comments regarding the collection of that data. One comment, though, applies to all the mandatory data points. While AFSA members may collect several of the data points below, the vast majority of AFSA's members do not currently report any of the information in this section. While banks and non-bank mortgage companies are familiar with Home Mortgage Disclosure Act (HMDA) data reporting, many non-depository FIs are not. As such, they cannot piggy-back on existing platforms, but must create an entire collecting and reporting process from scratch. The simpler the process, the easier it will be for these companies to implement and the better to continue to serve their small business customers. Those that do HMDA data reporting have said that the data collection and reporting requirements are different enough from HMDA that they could not use the same system.

1. *Whether the Applicant is a Women-owned, Minority-owned, and/or Small Business*: AFSA members do not currently gather or report this information, except the few who do so for HMDA purposes. We agree with the Bureau's proposal that the collection and reporting of women-owned and minority-owned business status be based solely on applicant self-reporting. It should also be clear that applicants have no obligation to provide this information.

2. *Application or Loan Number*: AFSA members generally do assign application or loan numbers to new credit applications, but not necessarily to credit line increases.

3. *Application Date*: AFSA members usually do record application dates. We appreciate the Bureau's proposal of a grace period to reduce the compliance burden of pinpointing an exact date on which an application was received.

4. *Loan/Credit Type*: AFSA appreciates the inclusion of the categories, “other,” “unknown,” and “other/unknown” to facilitate compliance.

5. *Loan/credit Purpose*: As with the previous data point, we appreciate the flexibility of being able to select “other” and “unknown or unreported by the applicant.” FIs receive limited information on the type and purpose of financing from the applicant. For example, indirect automotive finance companies know from the credit offering whether an applicant is seeking to finance a purchase or a lease and for what vehicle, but not necessarily much else. For other credit products—revolving credit lines, for example—there is no specific purpose. Different FIs collect different information about the “purpose” of the credit. Some FIs may only ask the applicant to designate whether the credit requested is for “personal, family, or household use” or “business, commercial, or agricultural use.” The purpose is a factor in determining whether the applicant is eligible for special programs of the FI and determines the scoring model that is used for the applicant. In some cases, the “purpose” is a field on the credit application and/or the contract but may not be tracked as a unique field in the FI’s system of record.

6. *Credit Amount/Limit Applied For*: As the CFPB recognizes, applicants do not always request a particular amount. Thus, the ability to report “not applicable” is necessary.

7. *Credit Amount/Limit Approved*: In light of the potential meaning of the statutory language, it is appropriate that the CFPB is considering proposing different standards for closed-end and open-end products. FIs maintain information on whether the financing was approved or denied; whether a counter offer was extended (*e.g.,* the applicant wanted to put 10% down and the FI required 25%; or the applicant wanted a term of 3 years, but the FI countered with 5 years; or the applicant requested $10,000 but the FI offered only $7,500); or whether the application was incomplete (either the application was incomplete or the finance company asked for more information and has not received it).

8. *Type of Action Taken*: AFSA has no comment on this data point.

9. *Action Taken Date*: AFSA has no comment on this data point.

10. *Census Tract*: AFSA members do not collect or report the census tract in which the principal place of business of the applicant is located, though they do receive the applicant’s address in the credit application.

11. *Gross Annual Revenue*: AFSA members may or may not collect the gross annual revenue of the business in the last fiscal year. In particular for smaller, asset-backed loans, FIs (*e.g.* floorplan lenders) do not generally collect this information. FIs may just ask for net income, depending on the type of account or creditor. It should also be clear that applicants have no obligation to provide this information.

12. *Race, Sex, and Ethnicity of Principal Owners*. FIs do not determine who owns and controls the entity applying for the financing, except in limited circumstances for compliance purposes as outlined by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC). The applicant may not

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have this information at the time of application. It should also be clear that applicants have no obligation to provide this information. However, if the FI could check a database, it would not matter whether the applicant had the information or not.

Gathering data and reporting on open-end credit is particularly challenging because it involves such small amounts, which increases the burden relative to the amount of credit. As noted above, a central database, to which small businesses can upload some of this information, would make collecting this information easier, potentially increasing the reliability of the information.

B. Discretionary Data Points (Questions #48, #49, #53, #54, and #55)

While the Bureau has the authority under Section 1071(e)(2)(H) to require FIs to collect and report any additional data as limited by Section 1071(b), it should refrain from doing so. The Bureau is considering proposing to require that FIs report discretionary data points regarding pricing, time in business, NAICS code, and number of employees. AFSA's comments on each of those data points is below.

1. *Pricing*: The CFPB is proposing to collect pricing data because it could further the fair lending purpose of Section 1071. In addition, the CFPB states that pricing data could add value in promoting market transparency and new product development opportunities, thus furthering the community development purpose of Section 1071. AFSA believes that as opposed to enhancing the ability to effectively and efficiently enforcing fair lending laws and promoting community development, collecting and reporting on pricing data could present a misleading picture and pose privacy concerns for FIs and applicants. Pricing information relies on several variables, as explained further in Section XV below. Without these variables, the pricing information loses any value it might have. Furthermore, while the FIs name is removed when the data is reported, it may be possible to identify the FI, depending on how the data is presented. If that is the case, then the FI's proprietary information— how it prices for risk—would be revealed.

   Additionally, as the CFPB acknowledges, reporting pricing information across various product types would be complicated to implement, add implementation costs for FIs, and impose other costs related to reputational risk.

2. *Time in Business*: FIs do not always collect this information.

3. *NAICS code*: FIs do not collect this information. To do so would be overly burdensome for applicants and very difficult to administer for FIs. Applicants would need be aware of and understand the NAICS regulations. The Table of Small Business Size Standards (the "NAICS Size Standards") is almost 50 pages long and includes hundreds of categories with varying thresholds for determining if an entity is a small business. If an entity has not had reason to review the NAICS Size Standards (*e.g.,* the entity does not bid for government contracts or receive certain government loans), trying to learn and understand them would be a daunting task.

   The large number of categories and varying thresholds in the NAICS Size Standards would likely lead to inconsistent application and, in turn, inconsistent data reporting under the rule. Under the NAICS Size Standards, there is a unique threshold for each industry used to determine if a business within the industry is a small business. This means that two businesses with the same number of employees and same average annual receipts but different NAICS categories could be classified differently—one as a small business and the other not as a small business. Also, businesses may incorrectly classify themselves. Inconsistent application is contrary to the purpose of Section 1071. The CFPB would not be able to rely on or use the reported data in the aggregate for analysis or otherwise because it would be impossible to know whether the NAICS Size Standards were applied accurately.

Number of Employees: FIs do not always collect this information and it is unclear if an applicant would be able to provide it at the time of application. For example, would part-time employees count? What if it's a family business and sometimes one of the children of the owner helps out during the summer?

XI. Shielding Data from Underwriters and Other Persons (Firewall)
(Questions #59 - #64)

Creating and maintaining a firewall for an applicant's response to questions regarding women-owned and minority-owned business status and the race, sex, and ethnicity of principal owners would be costly and cumbersome for both large and small FIs.

It would be challenging for large FIs because those systems are set up for a variety of people to have access to multiple points in the systems. Basically, to create a firewall, an FI would have to do a system inventory and then recreate how the systems work, potentially reassign employees, and retrain employees. Alternatively, FIs could create an entire, separate system to collect and report Section 1071 data. Either one of these options would clearly be a large expense.

From a small FI's perspective, it would be nearly impossible to create a firewall. In a small FI, the employee who gathers the information for the application is often involved in the underwriting and loan approval process. Therefore, it would be nearly impossible to wall off the application process from the underwriting process without hiring additional employees, greatly increasing cost.

In some instances related to wholesale inventory finance, the "application" may be a joint application to both the franchisor/licensor/distributor and the captive finance company. A firewall may be unworkable in this scenario and would require the applicant to complete an additional or separate application for the finance company.

One way to shield data from underwriters and other persons would be for the CFPB to develop a small business database where that information is stored. Then, the only additional information underwriters would need would be the small business' database code.

XII. Timing Considerations for Collection of Certain Section 1071 Data

Although the definition of "application" triggers an FI's duty to collect and report Section 1071 data, the application definition does not necessarily govern when during the application process Section 1071 data must be collected. The Bureau is not currently considering specifying a particular time period in which FIs must seek to collect Section 1071 data from applicants.

AFSA strongly supports the Bureau's decision to allow for flexibility in when the Section 1071 data must be collected from applicants. The difficulty in determining the timing regarding RISCs and private label transactions demonstrate why these credit transactions should be excluded from the rule.

XIII. Applicants' Right to Refuse to Provide Certain Information

Applicants have the right under Section 1071(c) to refuse to provide any and all information under Section 1071. AFSA members have heard from their small business customers and many of those customers strongly oppose a requirement to provide information under Section 1071 about their businesses.

Section 1071(c) states that any applicant may refuse to provide "any information requested pursuant to subsection (b)." FIs can ask, but cannot require, applicants to provide any information requested pursuant to subsection (b). Both the right to refuse under Section 1071(c) and the limited access provisions under Section 1071(d) refer to information requested or provided under Section 1071(b). The Bureau is considering proposing that the right to refuse under Section 1071(c) applies to the FI's specific inquiries regarding women-owned and minority-owned business status in Section 1071(b), as well as the race, sex, and ethnicity of principal owners, but not to the FI's specific inquiry regarding small business status in Section 1071(b). AFSA disagrees, as Section 1071(c) is clear. Section 1071(e)(2) is undoubtably limited by Section 1071(e)(1) and Section 1071(e)(1) is clearly limited to Section 1071(b) information.

The Bureau writes that it is considering using its exception authority in Section 1071(g)(2) in order remove an applicant's right to refuse to provide information as to whether they are a small business or not. However, the Bureau does not have authority under Section 1071(g)(2) to require that businesses provide their size information.

Section 1071(g)(2) states, "The Bureau by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section." Thus, the Bureau may exempt a FI from having to comply with Section 1071. Or, the Bureau may adopt an exception to a requirement—allowing an FI to forgo collecting a data point, for example.

However, this exemption authority does not give the Bureau the authority undue an applicant's right to refuse, as laid out in Section 1071(c). In other words, Section 1071(g)(2) does not give the CFPB the authority to remove Section 1071(c). If the Bureau could simply remove Section 1071(c) using its authority under Section 1071(g)(2), there would be no reason for Congress to include Section 1071(c) at all.

XIV. Compiling, Maintaining, and Reporting 1071 Data to the Bureau
(Question #68)

Depending on the size of the FI, it will likely cost between a couple hundred thousand dollars and half a million to set up the system to collect, maintain, and report the required data. Reporting should be done annually by the FI who would pull a list of applicants from a small business database by referencing the small business identification number.

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XV. Considerations Involving Bureau Publication of Section 1071 Data

(Questions #72 - #74)

There are significant considerations involving publication of Section 1071 data.

A. Privacy Considerations

In furtherance of Section 1071's fair lending and community development purposes, Section 1071(f)(2) generally requires that the information compiled and maintained by FIs, and submitted annually to the Bureau, be made available to the public. However, if combined or if released to the public, the data may be harmful to applicant privacy as well as FI confidentiality. Of particular concern is the combination of "census tract of the principal place of business" and the "type and purpose of financing." With those two data points, it could be possible to tie the data to a specific small business. Also, if the "type of action taken" is made public, FIs may be able to figure out competitors' credit scoring models, and identify which entities were denied credit. For reputation and business purposes, applicants would not want information on FIs denying them credit made public.

In addition, customers of captive wholesale finance companies with applicant bases limited to franchises or licensees of a particular distributor or manufacturer would face obvious privacy implications. In many instances, these applicants may even be the FI's only customer in a particular state, or one of only a very small number of customers in the state, heightening the privacy concerns for publication of data tied to these FIs. As mentioned above, publication of this data would also raise significant competitive concerns by disclosing very specific information about the distributor or manufacturer's inventory and supply management trade secrets, as well as potentially the applicant's own business strategies and condition.

B. Other Considerations

The Bureau, and others, should be cautious about drawing conclusions from the data. We ask that the Bureau include a disclaimer when it publishes the data about the accuracy and the ability to draw conclusions from the data. For example, the cost of the collateral is not, and should not be, a data point. Nonetheless, the cost of the collateral would likely affect the cost of credit.

In addition, certain industries are not representative of demographics of the country as a whole. For example, the data is highly likely to show a large percentage of financing for agricultural equipment is made to white men because census data shows that most farming in this country is done primarily by white men. According to the U.S. Department of Agriculture, in 2012 of the 2.1 million principal operators in the United States, 288,264 were women, 67,000 were Hispanic, 37,851 were American Indian, 33,371 were Black, and 13,669 were Asian.[9] Eighty percent were white men.

In another example, a private label lender's application demographics will reflect the demographics and geographic footprint of the private label retail partner, not the lender's outreach (or lack thereof) to any particular demographic. With regard to the retail partner, the Bureau should ensure that when publishing the Section 1071 data, one should not make partial conclusions about customer demographics, as the data will not include all patrons of the retailer and could lead to incorrect assumptions.

[9] U.S. Department of Agriculture. *2012 Census Highlights: Farm Demographics - U.S. Farmers by Gender, Age, Race, Ethnicity, and More.* May 2014. Available at: https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/

A similar concern arises with respect to captive wholesale lenders who provide inventory financing or other financing primarily to franchisees, licensees, or authorized dealers of a particular distributor or manufacturer. Again, the application demographics will solely reflect the demographics and geographic footprint of the distributor or manufacturer, rather than the lender's outreach (or lack thereof) to those demographics. As importantly, it should be noted that the application demographics may also present a misleading picture of the small businesses contracted with the distributor or manufacturer, as the makeup of these networks will be heavily influenced by state franchise and motor vehicle laws.

AFSA has not identified any additional data points that could be readily reported and potentially disclosed that would mitigate these concerns, reduce the risk of misinterpretation, or help avoid incorrect conclusions.

XVI. Implementation Period
(Questions #76 and #77)

AFSA appreciates that the CFPB has proposed a two-year compliance period. It would be difficult, if not impossible, to implement this rule in any time period shorter than that. We encourage the Bureau to allow for at least two calendar years from the date the final rule is released.

XVII. Conclusion

AFSA appreciates the careful consideration that the CFPB has given this rulemaking. We commend the CFPB for aiming to make the data collection and reporting under Section 1071 work for small businesses and FIs. We agree with a number of proposals in the Outline, including a clear focus on business credit, an exemption for credit line increases, no requirement to verify data provided by applicants, and a two-year compliance period. At the same time, we believe that there are a number of changes that the Bureau could make to the Outline to improve the rulemaking. For example, we support the creation of a small business database. We also believe that the CFPB should address the complexities presented by indirect financing and private label credit. In addition, the CFPB should only require the mandatory data points and should remove the discretionary ones.

This rule will affect small businesses throughout the country, and it is crucial that it improve their credit availability, not limit it. We look forward to continuing to work with the CFPB on this rulemaking. Please contact me by phone, 202-776-7300, or email, cwinslow@afsamail.org, with any questions.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

APPENDIX

I. Indirect Vehicle Financing

FIs purchase completed retail installment sale contracts entered into between retail customers and motor vehicle dealers for the sale and financing of vehicles. When a customer purchases a vehicle from a dealer, the customer and the dealer agree on the purchase price of the vehicle and the purchase of any insurance, service contracts and other products offered by the dealer. If the customer elects to finance the vehicle with the dealer, the dealer is the original creditor and negotiates the terms of the retail contract with the customer.

Each customer that elects to finance the purchase of a vehicle with the dealer completes a credit application. If the dealer is requesting that an FI purchase the retail contract, the dealer submits the information from the credit application electronically to the FIs it would like to consider purchasing the retail contract. When a dealer completes a retail contract with a customer, the dealer often does not know which FI will purchase it, so the dealer offers it to multiple finance sources which may range from a few to upwards of ten or more. Only one of the FIs will ultimately purchase the retail contract, but all of them to whom it is sent by the dealer will have evaluated it for purchase.

The information from the credit application is typically sent to FIs through online systems, together with information about the terms of the retail contract. It is important to note that it is not the credit application itself completed by the customer that is submitted, but information from the credit application that the dealer provides to the FIs. This information may be submitted by the dealer while completing the retail contract with the customer or it may be submitted after the retail contract has already been completed and the customer has the vehicle.

After the information is obtained, the FIs evaluate it to determine whether to purchase the retail contract from the dealer. The decision process is based on an evaluation of the customer, the credit application information, the proposed terms of the retail contract, the credit bureau information, and other information. The evaluation emphasizes the customer's ability to pay and creditworthiness, focusing on payment, affordability, credit history and stability as key considerations. The creditworthiness of any co-buyer or guarantor is evaluated in a similar manner to the customer and is also considered when determining whether to approve the purchase of the retail contract.

If the purchase of the retail contract is approved by the FI, the dealers must submit the completed retail contract, signed by both the customer as the buyer and the dealer as the seller/creditor. After the dealer submits a completed retail contract, the FI confirms that the terms of the retail contract are consistent with what was approved and checks for errors apparent in the disclosures made by the dealer.

All contracts purchased are entered into the FI's originations and receivables systems and assigned a unique account number for their duration.

II. Equipment Financing

Captive finance companies purchase retail and lease contracts from dealerships and make direct loans to customers. The customer selects the application for the purpose of the financing (consumer versus commercial use) and for the credit product (installment versus revolving). When the dealership submits a credit application to

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a captive finance company on behalf of an applicant, it does so electronically. The dealership submits the application in data points—it is not an image of the credit application. When the finance company is making the credit decision on the applicant, the finance company knows whether the retail installment contract or lease is primarily for personal or business purpose. The application document is retained by the dealer.

The finance company may seek additional information from the applicant to make the credit decision (financial statements, etc.). The deal is documented on the finance company's consumer or commercial credit paper provided to the dealer, with all of the required disclosures.

All leasing applicants are required on the application and the lease agreements to confirm that the leased equipment will not be used primarily for personal family or household use and consumer leases are not offered or provided.

III. Commercial-use Revolving (credit card) Financing

A captive finance company affiliate provides revolving credit (credit card) financing. The customer selects the application for the purpose of the financing (consumer versus commercial use) and for the credit product (equipment use type). When the dealer or other retailer submits a credit application to the captive finance company affiliate on behalf of an applicant, it does so electronically. The dealer or other retailer submits the application in data points—it is not an image of the credit application. When the finance company affiliate is making the credit decision on the applicant, it knows whether the requested revolving account will be primarily for personal or business purpose. The application document is retained by the dealer.

The finance company affiliate may seek additional information from the applicant to make the credit decision (financial statements, etc.). The deal is documented on a consumer or commercial revolving credit application and credit agreement provided to the dealer or other retailer, with all of the required disclosures. Once the account is created, it can be used to finance purchases of small equipment, parts, service, and other eligible goods and services, at thousands of dealers and other retailers nationwide who have signed a merchant agreement with the captive finance affiliate. The customer account is periodically reviewed to determine if the credit limit is appropriate and accounts may be closed or restricted if circumstances warrant.

IV. Private Label

Many retailers offer their small business customers the ability to obtain retail credit at the point of sale through a bank partner. The credit can be in the form of private label or cobranded credit cards, or other types of credit originated at or facilitated through retailers, such as revolving lines of credit, installment loans, *etc*. (collectively, "private label credit"). This can occur with a variety of retailers (*e.g.,* warehouse club, home improvement, general merchandise, *etc.*). For example, a small business may have a membership at a warehouse club, where the small business can obtain a private label credit card. A building contracting company may rely on private label credit from a home improvement retailer and its bank partner.

While private label credit functions the same as most other types of credit (such as credit cards and installment loans), the application process and environment for private label credit differs from other types of small business credit in a variety of ways and creates a number of policy considerations, including the following:

1. Private label credit applications typically occur at the point-of-sale of the retail partner. There is no uniformity in the operational experience from one retail partner to another. Some accept applications digitally; some do so via a pin pad; and still others continue to issue paper applications. There is also a variety of locations where these credit applications are completed: the traditional check-out line, the customer service desk, self-service kiosk or tablets, and online are typical options. Given the variance of the retail partners, applying a one-size-fits-all standard for this type of credit will be problematic.

2. In a typical small business lending transaction, such as in a retail banking environment, a bank employee is likely working directly with the owner of the business or another senior executive. The interaction between these two parties has the potential to generate reasonably accurate Section 1071 data (assuming the applicant is willing to provide it) because the applicant may be more likely to know the answer to the Section 1071 application questions and the banker would be trained to assist with any questions or nuances.

   This is not the case in a private label context.

   With private label credit, the applicant is not necessarily the owner or other senior executive, but often the person likely to be making purchases using the private label account (*e.g.*, office manager picking up office supplies at warehouse club). While applying for this type of credit at the point-of-sale, this individual may not know the answers to specific data points, such as whether the business is a small business and, if so, the demographics of the principal owners. In that instance, there are material risks that those individuals proceed to "check a box" simply to submit the application.

   Furthermore, a retail partner would not be optimally positioned to explain the Section 1071 questions or assist an applicant with questions about the requested data points.

   In short, the unique aspects of the point-of-sale retail environment are not a recipe for quality data.

3. Not only might the Section 1071 information not be accurate in connection with private label credit, but its utility from a public policy perspective might also be questionable, as explained in Section XV above.

4. The setting for point of sale private label credit applications tends to be a very public place: the retail store itself. We commend the Bureau for recognizing the importance of putting plain language questions and definitions on the application in an attempt to standardize responses and minimize confusion. Despite these clarifications, applicants will still undoubtedly ask the store associate how to answer specific questions. That will not be an informed discussion, nor will it be done privately. We submit that a retail customer service counter—with everything that goes on around it—is not the place to have a private discussion about how to think about the size of the business, or whether the principal business owners are female, or their ethnicity (assuming the applicant knows who truly owns the business).

5. Requiring new fields on the Private Label credit application will likely to lead to an increase in delayed and abandoned applications. For example, the applicant may falsely perceive that their demographic response could negatively factor into the credit decision, and therefore abandon the application at the point-of-sale. Other applicants might feel that it is important to complete all requested fields—including information around demographics—but abandon or pause the application because he or she does not have

that information at the time. These questions almost certainly will result in less small business private label credit being offered due to delayed and/or abandoned Private Label applications.

6. The provisions that restrict underwriters' access to Section 1071 data could have a disproportionate impact on private label lending. While automated underwriting plays a role in private label lending, manual reviews of application files are not uncommon. This process results in increased credit to small businesses. However, if FIs are forced to choose between rebuilding data processes or simply streamlining the application process by eliminating judgmental review, it may be that small businesses may be negatively affected.

For the reasons enumerated above, we urge the Bureau to consider the unique aspects of the products outlined above and act to ensure that the data collection requirements for Section 1071 do not unintentionally impede access to credit or discourage businesses from applying for credit. We believe there are a variety of ways the Bureau could address the aforementioned concerns without sacrificing the integrity of its Section 1071 data collection, ranging from exempting the transactions to permitting FIs to solicit the Section 1071 information outside of the retail store environment (for example, solicit optional response data in a follow up communication within a reasonable temporal proximity to the submission of the application).

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