

December 15, 2025

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)(Docket No. CFPB-2025-0040)

Dear Acting Director Vought:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to provide comments on the Consumer Financial Protection Bureau’s (CFPB) proposed rule amending provisions of Regulation B in connection with Section 1071 of the Dodd-Frank Act, establishing a data collection regime for small business lending (1071 Rule). AFSA members serve consumer and business clients and are therefore significantly affected by this proposal.

In general, AFSA welcomes the thoughtful analysis by the CFPB into the various elements of the 1071 Rule and the evident efforts to simplify, clarify, and reduce burdens on lenders who will be subject to the rule. AFSA supports the CFPB’s approach to proposed revisions to the 1071 Rule intended “to ensure its quality and to limit, as much as possible, any disturbance to the provision of credit to small businesses”² and the approach to “start with core lending products, core providers, and core data points.”³ We are pleased to offer the following thoughts on the proposal and welcome the opportunity to discuss them further with your team.

I. Core Lending Products

Clarification of Treatment of Indirect Vehicle Finance Transactions

When the CFPB first proposed the 1071 Rule in late 2021, AFSA provided comments on that proposal. We described how indirect vehicle finance (and similar) transactions work⁴ and explained that the proposed rulemaking could not amend Regulation B to permit or require vehicle dealers to inquire about protected class status in connection with credit applications due to the CFPB’s lack of rulemaking authority over vehicle dealers.⁵

¹ Founded in 1916, the American Financial Services Association (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 90 Fed. Reg. 50952.

³ *Id.* at 50953.

⁴ See Appendix 1 “Indirect Vehicle Financing.”

⁵ 12 U.S.C. § 5519.

It was broadly interpreted that the 1071 Rule was not applicable to indirect vehicle finance transactions, even while litigation caused uncertainty for the industry. In addition to the limitation on CFPB authority over vehicle dealers, the language in this proposal and the original 1071 Rule demonstrate that among the participants in an indirect vehicle finance transaction, the dealer would be the most suitable entity to collect 1071 Rule data from credit applicants. The provided Official Interpretations state “in a situation where multiple financial institutions are involved in originating a single covered credit transaction, only the last financial institution with authority to set the material terms of the covered credit transaction is required to count the origination.”⁶ We understand that in a circumstance where a dealer and a finance company each have involvement in the origination of a vehicle finance contract, the last entity with authority to set the material terms of the transaction would be the dealer, upon whom the 1071 Rule has no power.

While the 1071 Rule did not include indirect vehicle finance transactions, AFSA respectfully requests the CFPB include a clear, unambiguous statement that covered credit transactions do not include indirect vehicle finance transactions. This would ensure certainty and consistency with compliance obligations and be extremely helpful to stakeholders.

Covered Credit Transactions

In this proposal, the CFPB intends to exclude from coverage merchant cash advance, agricultural lending, and small dollar loan transactions. AFSA members are concerned that eliminating merchant cash advance credit from coverage of the 1071 Rule will lead to data gaps. Narrowing covered products and lenders will limit market transparency, especially with regard to alternative financing often relied upon by small businesses.

AFSA supports the CFPB’s focus on core lending products and recommends the exclusion of products that are inherently at odds with data collection under the 1071 Rule. For instance, the inclusion of merchant-initiated applications would disturb the provision of credit to small businesses due to the unique characteristics of these products, namely that (1) the application process is inherently designed to be expedient and the delay caused by data collection would result in fewer small businesses obtaining the credit, and (2) merchants are not well-suited to facilitate 1071 data collection as compared to financial institutions, which in the case of merchant-initiated applications, may not engage with the customer until the time of application decision.

For example, in-store applications for co-branded small business credit cards are often completed at the time of check-out and are necessarily designed as expedient processes to avoid disruption of the small business’s acquisition of goods or services. The addition of a long questionnaire to this application process would lead to significant application abandonment due to the amount of time required in the check-out line. AFSA therefore recommends in-store applications be exempt from 1071 data collection, or, at a minimum, the CFPB clarify that financial institutions can send the data request to in-store credit applicants post-application without running afoul of time and manner of collection provisions.

⁶ 90 Fed.Reg. 50952, 50999 November 13, 2025.

In addition, AFSA recommends that the CFPB clarify that trade credit is not a “covered credit transaction” by excluding the entire lending product from 1071 data collection requirements. Although the CFPB proposal ostensibly retains the exclusion of “trade credit,” the Bureau’s unnecessarily narrow definition of “trade credit”⁷ creates a functional loophole that will disrupt credit access for small businesses. As currently drafted, the regulation creates two distinct standards for the same core product: applications where small businesses are exempt from providing 1071 data and a subset of applications where they are not.

Accordingly, AFSA respectfully requests that the CFPB modify the definition of “trade credit” as follows: (1) Trade credit. A financing arrangement wherein a business acquires goods or services from another business or its agent without making immediate payment to the business providing the goods or services. In addition, AFSA recommends the CFPB remove the associated commentary that unnecessarily limits this exemption.⁸ At a minimum, all trade credit should be treated uniformly for purposes of the 1071 Rule.

Clarification of Trade Credit to Include Particular Commercial Finance Transactions

Some AFSA members extend credit to businesses to finance real estate acquisitions, business expansion, inventory, or other purposes. In connection with these sectors, AFSA requests additional clarity regarding the application of the 1071 Rule.

Some financial institutions offer floor plan financing, which generally allows merchants to stock inventory available for sale without advance payment to the manufacturer or distributor. Such financing programs feature very flexible timing and pricing terms, as merchants’ inventory needs are dynamic with shifting and sometimes seasonal demand for goods. Also, floor plan finance companies may be affiliated with the manufacturer or distributor of goods, and therefore have an aligned interest in supporting the merchants’ maintaining some level of inventory that necessitates frequent adjustments to the financing and payment terms. The CFPB itself has stated that it believes that a better, longer-term approach to advance the statutory purposes of Section 1071 would be to commence the collection of data with a narrower scope to ensure its quality, and to limit, as much as possible, any disturbance of the provision of credit to small businesses. With these considerations in mind, AFSA requests clarification that floor plan or other inventory finance products can be considered “trade credit” that is outside the scope of the 1071 Rule.

II. Core Providers

Covered Financial Institution Threshold Change

This proposal would increase the threshold for lenders from at least 100 covered credit transactions in the prior two years to 1,000 covered credit transactions. This would focus the data collection

⁷ “Trade credit” is defined narrowly as “a financing arrangement wherein a business acquires goods or services from another business without making immediate payment in full to the business providing the goods or services.” 12 CFR § 1002.104(b)(1).

⁸ See Comments 1-2 104(b)(1). (“However, an extension of business credit by a financial institution other than the supplier for the financing of such items is not trade credit. Also credit extended by a business providing goods or services to another business is not trade credit for the purposes of this subpart where the supplying business intends to sell or transfer its rights as a creditor to a third party.”)

effort on larger lenders who are relatively more active in small business lending markets and provide relief from compliance burdens for smaller lenders. AFSA supports this change.

III. Core Data Points

Discretionary Data Points

In our earlier comment letter regarding the original 1071 Rule, we asked the CFPB to limit the number of discretionary data points it would ask lenders to collect. Collection of data introduces friction into the transaction between borrower and lender, and limiting the data fields collected simplifies data storage, protection, and reporting obligations. This proposal contemplates eliminating the following discretionary data points: (1) application method, (2) application recipient, (3) denial reasons, (4) pricing, and (5) number of workers. AFSA agrees with the CFPB's conclusion that the 1071 Rule data collection regime will launch more efficiently if the number of data points is kept to a minimum. AFSA supports eliminating these discretionary data points, and AFSA requests the CFPB give additional consideration to eliminating all the discretionary data points in the rule.

Collection of Disaggregated Ethnicity and Race Categories

The proposed 1071 Rule requires collection of disaggregated race and ethnicity information on principal owners of small business credit applicants. As the CFPB points out, the underlying statute does not require collection of disaggregated categories of ethnicity and race. AFSA urges the CFPB to eliminate collection of disaggregated ethnicity and race categories. Collecting that information increases complexity, error rates, and compliance costs. Any list of disaggregated ethnicity and race categories will be incomplete, causing confusion among credit applicants. Also, disaggregated data will likely be less useful for fair lending analysis due to small subgroup sizes. With these considerations in mind, collecting only aggregated race and ethnicity data will be best. Furthermore, AFSA members consistently report that longer applications lead to more application abandonment, which ultimately results in fewer small businesses applying for and obtaining credit. With these considerations in mind, collecting only aggregated race and ethnicity data will be best.

Free-Form Text Fields

This proposal contemplates revising questions about sex and gender to streamline the available responses. The CFPB acknowledges that free-form text fields “would inhibit robust data analysis, contrary to the purposes of the rule” and furthermore are likely to “result in poor data quality, given the variety of possible responses.”⁹ These changes seem well aligned with the design of a robust data collection regime and the Administration's recent executive orders, and AFSA agrees with changes to simplify and clarify the data collection effort.

In addition, AFSA encourages the CFPB to remove all free-form text fields from the 1071 Rule, including the five remaining free-form text fields in the sample data collection form. As the CFPB recognizes, free-form text fields can negatively impact data analysis. In addition to the infinite number of potential responses, free-form text fields also impose significant burdens on financial institutions and risk corrupting data submission. For instance, free-form text fields require often

⁹ 90 Fed. Reg. 50952, 50963.

manual processes to confirm the submission is appropriate (non-identifying and non-explicit) and in recognizable text that conforms with both third-party submission software and the CFPB's submission platform. Because free-form text fields inhibit robust data analysis and are likely to result in poor data quality, AFSA recommends the CFPB not require their use in 1071 data collection.

IV. General Provisions

Small Business Definition

This proposal contemplates retaining a definition of small business based on gross annual revenue. AFSA agrees that use of a simple definitional metric is favorable. This proposal also contemplates lowering the annual revenue threshold that defines a small business from \$5 million or less to \$1 million or less. AFSA supports this change.

Compliance Date

AFSA agrees with the CFPB's proposal to simplify the compliance date by establishing one date for all covered entities and to move that date to January 1, 2028. Without this change, the 1071 Rule compliance dates are currently set at July 1, 2026, January 1, 2027, and October 1, 2027 depending on volume of loan originations. AFSA is concerned that these dates are too immediate, and AFSA requests that the CFPB ensure that simplifying and extending the 1071 Rule compliance dates as set out in the proposed final rule is prioritized by CFPB staff in light of current funding and staffing constraints.

We appreciate the opportunity to provide feedback on this important rulemaking. Please let me know at 202-466-8605 or pbohi@afsamail.org if you have any questions.

Philip Bohi
General Counsel
American Financial Services Association

APPENDICES

1. Indirect Vehicle Financing

Financial institutions 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 a financial institution purchase the retail contract, the dealer submits the information from the credit application electronically to the financial institutions 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 financial institution 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 financial institutions 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 financial institutions 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 financial institutions. 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 financial institutions 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 financial institution, 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 financial institution 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 financial institution's originations and receivables systems and assigned a unique account number for their duration.