

**The Center for Responsible Lending
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)
Legal Defense Fund
National CAPACD - National Coalition for Asian Pacific American Community
Development**

**Comment to the Consumer Financial Protection Bureau
on the
Notice of Proposed Rulemaking Small Business Lending Data Collection
Under the Equal Credit Opportunity Act
(Regulation B)**

Docket No. CFPB-2025-0040

December 15, 2025

Via [Regulations.gov](https://www.regulations.gov)

December 15, 2025

Acting Director Russell Vought
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**Re: “Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)” —
Comment Opposing Proposed Rule to Delay, Narrow, and Rescind Portions of the 2023 Section
1071 Rule, Docket No. CFPB-2025-0040**

Dear Acting Director Vought:

The Center for Responsible Lending¹, The Leadership Conference on Civil and Human Rights,² the League of United Latin American Citizens (LULAC),³ Legal Defense Fund,⁴ and National CAPACD - National Coalition for Asian Pacific American Community Development,⁵ appreciate the opportunity to comment on the Bureau’s Notice of Proposed Rulemaking (“NPRM”) issued November 13, 2025, proposing to delay implementation and significantly narrow the scope of the final rule adopted in 2023 under Section 1071 of the Dodd-Frank Act. We submit this comment on behalf of the undersigned civil rights and economic justice organizations dedicated to ensuring that all entrepreneurs—especially women, those from Asian American and Pacific Islander, Black, Latino/Hispanic, Native American, and other historically marginalized communities—can access fair and transparent credit.

Our coalition is deeply concerned that the Bureau’s proposed revisions would undermine Section 1071’s promise of bringing transparency to small-business lending. The 2023 final rule represented one of the most significant civil-rights advancements in business lending since the passage of the Equal Credit Opportunity Act (ECOA).

The Bureau is required under Section 1071 to collect a robust dataset that illuminates the experiences of women, minority, and small-business owners. As we discuss below, rolling back that framework would be

¹The Center for Responsible Lending (CRL) is a non-partisan, nonprofit research and policy advocacy organization working to promote financial fairness and economic opportunity for all and to end predatory lending. CRL, an affiliate of Self-Help, brings relevant expertise in consumer protection and discrimination in the lending context, and we work extensively on policy issues that affect small businesses, lenders, and communities impacted by the proposed rule. CRL’s work focuses on those who may be marginalized or underserved by the existing financial marketplace -- people who often are targeted for unfair and abusive financial products that leave them worse off.

² The Leadership Conference on Civil and Human Rights is the nation’s oldest and largest civil rights coalition, with a diverse membership of more than 240 national organizations working to build an America as good as its ideals. Since its founding in 1950, The Leadership Conference has helped to secure the passage of every major civil rights law, from the Civil Rights Acts of 1957 and 1964, to the Americans with Disabilities Act, and many more.

³ The League of United Latin American Citizens (LULAC) is the largest and oldest Hispanic organization in the United States. LULAC advances the economic condition, educational attainment, political influence, housing, health, and civil rights of Hispanic Americans through community-based programs operating at more than 535 local LULAC councils nationwide. The organization involves and serves all Hispanic nationality groups.

⁴ Founded in 1940 under the leadership of Thurgood Marshall, the Legal Defense Fund (LDF) is the country’s oldest civil rights law organization. LDF was launched at a time when the nation’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society.

⁵ The National Coalition for Asian Pacific American Community Development (National CAPACD) is a coalition, intermediary, and the nation’s leading organization in advancing community development and advocating against gentrification and displacement of Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. We represent and support more than 160 community-based organizations in driving their local strategies, and we back their efforts by advancing progressive national policies.”

inconsistent with the CFPB authority, statutory text, contrary to congressional intent, unsupported by empirical analysis, and harmful to civil rights enforcement and economic mobility.

CRL and the undersigned organizations are in general agreement with the detailed, section-by-section comment on the NPRM submitted by the National Community Reinvestment Coalition.⁶ We begin our separate comment with a discussion of the limitations of CFPB’s rulemaking authority under 1071 and the clear Congressional intent within 1071 to address a historical pattern of discrimination in small business lending. We focus on the elements of the proposed rule that, in our view, are most important and most problematic: the proposals to (i) increase the reporting threshold; (ii) exclude coverage of merchant cash advances (MCAs); and (iii) eliminate the reporting requirement with respect to pricing variables.

I. Section 1071 Was Enacted to Bring Transparency to the Small Business Lending Market and Better Enable Businesses Underserved By That Market to Obtain the Financing They Need to Thrive

It is a truism, but one worth repeating, that, as the CFPB stated in its 2023 Small Business Lending Rule, “Small businesses are an important, dynamic, and widely diverse part of the U.S. economy. They are critical to employment, innovation, and economic growth and stability, both overall and specifically for minority, women, and LGBTQI+ entrepreneurs.” 88 FR 35150, 35155. May 31, 2023) (“2023 Rule”). It is equally true that “financing plays an important role in enabling small businesses to grow and contribute to the economy. When it is available, financing not only provides resources for small businesses to smooth cash flow for current operations, but also affords business owners the opportunity to invest in business growth.” *Id.* at 35158.

Despite the importance of small businesses to the macroeconomy and of financing to small businesses, there is a dearth of data on small business lending. Those data that exist are “fragmented, incomplete, and not standardized, making it difficult to conduct meaningful comparisons across products over time. This lack of data hinders attempts by policymakers and other stakeholders to understand the size, shape, and dynamics of the small business lending marketplace. Including the interaction of supply and demand, as well as potentially problematic lending practices, gaps in the market, or trends in funding that may be holding back some communities.” *Id.* at 35156-35157.

It was against this background that Congress, in 2010, amended the Equal Credit Opportunity Act—the core civil rights statute governing lending—to bring transparency to the small business lending market. Congress did so for two reasons expressed in the statute: first, “to facilitate enforcement of fair lending laws”; and second, to “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.” Section 1071 (a), 15 U.S.C. § 1691c-2(a).

The transparency that § 1071 was enacted to achieve is especially important for minority-owned small businesses. Survey research conducted annually by a consortium of Federal Reserve Banks has consistently found that, among small businesses in need of financing, a smaller share of some minority-owned firms (i.e., owned by members of Asian American and Pacific Islander, Black, and/or

⁶ National Community Reinvestment Coalition (2025, December 12). *NCRC’s comment on the CFPB’s proposed rule to strip Section 1071 data collection*. NCRC. Retrieved December 15, 2025, from <https://ncrc.org/ncrcs-comment-on-the-cfpbs-proposed-rule-to-strip-section-1071-data-collection/>

Latino/Hispanic communities) apply for credit and of those that do apply, a larger share are either rejected or receive less financing than they applied for.⁷ But such survey research cannot identify why this is occurring, nor can such research identify particular types of businesses or geographic markets where minority-owned businesses are located. Only a comprehensive application-level dataset, capturing information regarding the applicants and the outcomes of their applications, can identify where there are unmet needs and opportunities not just for minority-owned businesses but for small businesses generally.

II. The Limitations on the CFPB’s Rulemaking Authority Under Section 1071

Because this is a rulemaking to implement—or more precisely to modify the Rule previously promulgated by the CFPB in 2023, implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, it is important to be clear at the outset as to the limitations of the Bureau’s rulemaking authority under that section.

Section 1071(h)(1) defines in terms the entities that are required to collect and report small business lending data. It defines the products with respect to which data must be collected by incorporating by reference the Equal Credit Opportunity Act’s broad definition of “credit,” 15 U.S.C. § 1691a(d). And, § 1071(g)(2) authorizes the CFPB to “adopt exceptions to any requirement of this section” and to “exempt any ...class of financial institutions from the requirements of this section” if, but only if, the Bureau deems such exception or exemption “necessary or appropriate to carry out the purposes of this section.”

It follows, then, that insofar as the Bureau is proposing to create exceptions or exemptions, the North Star for this rulemaking is the statutory purposes, previously quoted, as set forth in subsection (a) of § 1071. It is against those purposes that the proposal to exempt substantially all depository institutions from § 1071’s requirement and the proposal to relieve those non-depositories that make MCAs from any reporting obligation with respect to such loans must be judged. In other words, those proposals are permissible under § 1071 only if they are “necessary or appropriate” either to “facilitate enforcement of fair lending” or to “enable communities, governmental entities and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”

Much the same is true with respect to the Bureau’s proposal to eliminate from the existing § 1071 Rule the obligation of covered lenders to report certain data points regarding the pricing of the loans they make. Although pricing data is not one of the data elements specified in § 1071(e)(2), that subsection authorizes the Bureau to “add any additional data that the Bureau determines would aid in fulfilling the purposes of this section.” The CFPB exercised that authority in the 2023 Rule, explaining at length why collecting pricing data would aid in fulfilling § 1071’s purposes. *See III.c. infra*. To justify reversing course, then, as the Bureau has proposed, the Bureau must have a reasoned basis to believe that, contrary to its earlier finding, including these data points will not aid in furthering the statutory purposes.

Importantly, despite the NPRM’s repeated invocation of Executive Orders 14192 and 14219, *see* 90 Fed. Reg. at 50959, 50960, 50961, 50964, those Orders cannot override statutory mandates or Congressional intent and are simply not relevant to the issues raised by this rulemaking. The stated purposes of those

⁷ *See, e.g.*, Federal Reserve Banks, [2025 Report on Employer Firms: Findings from the 2024 Small Business Credit Survey](#); Federal Reserve Banks, [2023 Report on Startup Firms Owned by People of Color: Findings from the 2022 Small Business Credit Survey](#); Federal Reserve Banks, [2022 Report on Firms Owned by People of Color: Based on the 2021 Small Business Credit Survey](#)

Orders are to “significantly reduce the private expenditures required to comply with Federal regulations,” and “commence the deconstruction of the overbearing and burdensome administrative state.”⁸ But § 1071 only authorizes the CFPB to create exemptions that are “necessary or appropriate” to carry out the purposes of the statute—not the quite different purposes of these Executive Orders, which conflict with those statutory purposes. Section 1071 likewise authorizes the CFPB to define data points that “would aid in fulfilling the purposes” of the statute—not the purposes of the Executive Orders. Thus, the determinative issue here is whether the exemptions and data point modifications the Bureau has proposed further the goals of enhancing fair lending enforcement and identifying business and community development needs and opportunities—not whether those proposals further the goals of reducing regulatory burden or dismantling the so-called regulatory state.

Similarly, the Bureau’s stated policy preference to “approach the section 1071 data collection regime as a longer term project akin to” what the NPRM terms the “gradual development of data collection under the Home Mortgage Disclosure Act (HMDA),” 90 FR at 50953, cannot provide a basis for the exemptions and data deletions that the Bureau has proposed. It is, of course, true, as the NPRM states, that HMDA data collection began 50 years ago by “requiring the collection of relatively few data points from relatively few lenders,” *id.*; indeed, at the outset covered lenders submitted only aggregated data which did not include any demographic information on their borrowers. But the reason that HMDA data collection began so modestly is because that is what the statute that Congress enacted in 1975 provided.⁹ As the NPRM acknowledges, the changes that have occurred in HMDA data collection are largely attributable to “HMDA amendments passed by Congress [which] among other things, expanded the breadth of financial institutions covered, as well as the number of data points collected from those reporting institutions.” 90 FR at 50953.

In contrast, when Congress enacted § 1071 in 2010, it had the benefit of 45 years of experience under HMDA. Based on that experience, Congress elected to jump into small business lending data collection with both feet, establishing a regime akin to what HMDA had become rather than the regime at HMDA’s inception. Indeed, as discussed further in Part III, in certain respects, Congress went beyond the then-current state of coverage, providing for coverage of “each financial institution” engaged in small business lending rather than creating a carve out for smaller lenders as HMDA does.¹⁰

It follows, then, that contrary to the assertion of the NPRM, HMDA does *not* provide “precedent for an incremental approach” to implementing § 1071. 90 FR at 50953. Congress made the determination to break with that precedent and, *ab initio*, to cover all lenders and lending products under § 1071. The Bureau is not authorized to override that determination based on its policy preference for an “incremental approach” that “start[s] with more modest requirements, focusing on core lending products, lenders, and data.” *Id.* Rather, the Bureau can exempt lenders and lending products from § 1071’s requirement only if doing so is “necessary or appropriate” to further § 1071’s purposes, and can delete data fields required by the 2023 Rule only if those fields will not “aid in fulfilling the purposes” of the section.

The Bureau has failed to make the required showing with respect to coverage thresholds, MCAs, or pricing data points, as further discussed in part III.

⁸ E.O. 14192 § 1, 90 FR 9065 (Feb. 6, 2025); E.O. 14219 § 1, 90 FR 10583 (Feb. 25, 2025).

⁹ Public Law 94-200, §§ 301 *et seq.*

¹⁰ Compare § 1071(e)(1), (h)(1), 15 U.S.C. § 1691c-2(e)(1), (h)(1) with HMDA § 304(a)(1), (i)(3), 12 U.S.C. § 2803(a)(1), (i)(3).

III. Proposed Changes to 1071

a. The Reporting Threshold

Section 1071 leaves no doubt as to the scope of its institutional coverage. “*Each financial institution shall compile and maintain...a record of the information provided by any loan applicant.*” § 1071(e)(1), 15 U.S.C. § 1691c(e)(1). The term “financial institution” is, in terms, defined to mean “any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity,” § 1071(b)(1), 15 U.S.C. § 1691c(b)(1). As noted above, in this regard § 1071 goes beyond the coverage of HMDA, which contains express exclusions for lenders operating only outside of metropolitan areas or below a certain asset threshold, 12 U.S.C. § 2803(a)(1),(i)(3).

Notwithstanding the breadth of the statutory definition, the 2023 Small Business Lending Rule, 88 Fed. Reg. 35150 (May 31, 2023) (“2023 Rule”), created an exemption for financial institutions that make under 100 small business loans per year. The Bureau explained that it sought to “minimize impact on the financial institutions *with the lowest volume of small business lending* due to fixed costs of coming into compliance with this final rule,” which, the Bureau feared, “would significantly increase the cost of small business credit” and thereby undermine the statutory purposes. 88 FR at 35257 (emphasis added). The Bureau estimated that with this exemption, the rule would apply to between 33% and 37% of banks making small business loans and 8% of credit unions making such loans, but would still capture data on approximately 95% of small business loans made by depository institutions and over 80% of the dollar value of such loans. *Id.*

The Bureau now proposes to increase this threshold tenfold, from 100 to 1,000 loans. According to the NPRM, expanding the exemption in this way would exempt roughly 90% of the depository institutions covered by the 2023 Rule, leaving under 200 depository institutions—less than 2% of all depositories—covered. 90 FR at 50970-50971. And while the Bureau estimates that this change would reduce the share of reportable loans made by depositories by just 5 percentage points, it also estimates that the expanded exemption would cut the total dollar value of reportable loans by roughly 25 percentage points, leaving only about 60% of the market covered. *Id.*

On its face, it is clear that expanding an exemption created for those “with the lowest volume of small business lending” to cover a much broader swath of financial institutions does a disservice to the purposes of Section 1071. By definition, under this exemption it would no longer be possible to “facilitate enforcement of fair lending law” with respect to any of the roughly 1,500 depository institutions that would no longer be covered by the rule since there would be a data vacuum with respect to those institutions. Moreover, exempting these institutions from reporting will seriously diminish the value of the data that is collected from those entities that still would be covered in achieving 1071’s second purpose, i.e., in identifying “business and community development needs and opportunities for minority-owned, women-owned, and small businesses.” How could any observer use the data for this purpose when there would be no visibility into roughly 40% of the market in terms of the actual dollars being made available in small business credit?

Moreover, the Bureau’s estimate of coverage is at the national level, whereas, as FDIC research has established, small business lending “is largely local.”¹¹ Although the NPRM baldly asserts that “The CFPB believes that larger volume lenders are core to small business lending,” 90 Fed. Reg. at 50959, the

¹¹ Federal Deposit Insurance Corporation. (2024). *2024 FDIC Small Business Lending Survey* (SBLS) [PDF]. <https://www.fdic.gov/system/files/2024-09/small-business-lending-survey-2024-full.pdf>

reality is that community banks have long been recognized to play an outsized role in small business lending in their local communities.¹² Indeed, the NPRM’s analysis of the potential costs, benefits, and impacts of the proposed rule developed pursuant to § 1022(b)(2) of the Consumer Financial Protection Act of 2010 (“cost-benefit analysis”) makes clear that, as would naturally be expected of a proposal of this nature, the impact would be especially severe in rural areas. Lacking sufficient data to estimate the location of small business borrowers, the Bureau used as a proxy the location of depository institutions’ branch locations to provide geographical estimates of institutional coverage.” 90 FR at 50984. Using that proxy, the Bureau estimates that in rural areas coverage would drop by over 60% (covering only about 25% of rural depository institution branches compared to about 65% under the 2023 Rule) whereas in non-rural areas the loss of coverage would be approximately 25% (covering about 63% of non-rural branches compared to about 85% under the 2023 Rule).

Importantly, the cost-benefit analysis acknowledges the negative impact that the proposed change in coverage would have on achieving the purposes of § 1071 in general and in rural areas in particular. In the NPRM’s words, “The Bureau...expects that having fewer covered institutions and transactions would reduce the ability of the public to use the data for transparency purposes and to conduct their own analyses of lending by financial institutions” and the Bureau “also expects that having fewer covered institutions and transactions would result in a reduction in the community development benefits that the Bureau would expect to accrue to small businesses under the baseline [i.e., under the 2023 Rule].” 90 FR at 50981. Indeed, the NPRM even acknowledges that under the 2023 Rule “Financial institutions might use the public data...to better understand the demand for small business credit products and the conditions under which they are being supplied by other financial institutions” and that “Collecting data on fewer applications from fear financial institutions and for fewer types of loans under the proposed rule could impose costs on financial institutions by reducing this benefit.” *Id.* at 50980.

In an attempt to overcome all this, the NPRM asserts that “the complexity of compliance may pose difficulties for smaller lenders, many of which have no previous experience at all with data collection rules such as HMDA or CRA [Community Reinvestment Act]” and could result in “decreased data quality for those institutions which would not advance the statutory purposes of section 1071.” 90 FR at 50959. This is the sole basis offered to explain why the “CFPB believes increasing the threshold is necessary or appropriate to carry out the purposes of section 1071.” *Id.*¹³ This argument fails on multiple grounds:

To begin with, the NPRM offers no evidence for its assertion that most of the institutions that would be exempted from reporting under the proposed rule lack experience with other reporting regimes. HMDA covers all mortgage lenders who make 25 or more residential mortgages per year unless the lender has

¹² *E.g.*, Beiseitov, [Small Banks, Big Impact: Community Banks' Role in Small Business Lending](#) (St. Louis Federal Reserve Bank 2023); Jagtiani & Maingi, [How Important Are Local Community Banks to Small Business Lending](#) (Philadelphia Federal Reserve Bank Working Paper, 2019); Dunkelberg & Scott, [Community Banks and Small Business Lending](#); FDIC, [The Importance of Community Banks in Paycheck Protection Lending](#)

¹³ The section of the NPRM discussing the reporting threshold also invokes Executive Order 14192 as well as the Bureau’s policy preference to “focus...on core lenders,” 90 FR at 50959, but as explained in Part I neither of those are relevant in assessing whether the proposed exemption is necessary or appropriate to achieve § 1071’s purposes. Elsewhere in the NPRM, the Bureau expresses concern about potential “disruptions in small business lending markets,” 90 FR at 50953, 50954, but the Bureau does not invoke that concern in the section of the NPRM discussing the reporting threshold. In any event, the findings in the cost-benefit section of the 2023 Rule, which calculate the costs per loan and the revenue per loan for institutions of varying levels of complexity negate the possibility that the Rule would adversely affect the supply or cost of credit from institutions making at least 100 loans per year. *See* 88 FR at 35511-35512–

less than \$58 million in assets or operates solely in rural areas.¹⁴ In 2023, 4,092 banks and credit unions submitted reports under HMDA.¹⁵ In contrast, the proposed exemption, § 1071 would cover under 200 depositories. 90 FR at 50970 (Table 1). Thus, it seems highly likely that most of the roughly 1,500 banks and credit unions that the NPRM would exempt, 90 FR at 50971 (Table 2), are already HMDA reporters. Additionally, all credit unions are required to report in their Call reports on both the number and dollar volume of loans over \$50,000 for commercial purposes, and all banks are required to report on the total number and dollar volume of their outstanding commercial loans under \$1,000,000. Thus, even if it were somehow true that the institutions that would be exempt under the NPRM are not HMDA reporters, they still would have other relevant reporting experience.

Nor has the Bureau offered any evidence—or, for that matter, any reason to believe—that even if some of those financial institutions covered by the 2023 Rule would be reporting novices, those institutions would have difficulty submitting accurate reports under the 2023 Rule. For purposes of their cost-benefit analyses, the NPRM—like the 2023 Rule, 88 FR at 35497—divides depository institutions into three categories based upon the number of small business loans the institution originated. Type A institutions originate fewer than 150 loans per year. 90 FR at 50971. These are the institutions with the “least amount of complexity” and the most manual processes. *Id.* at 50973-50975. But the very point of the exemption adopted in the 2023 Rule was, as previously noted, precisely to exempt those institutions that would face the greatest difficulty in complying with the Rule. Indeed, the only Type A institutions covered by the 2023 Rule are institutions originating between 100 and 149 loans per year and the 2023 Rule provided those institutions (and larger institutions originating up to 500 loans per year) an extended compliance period. *See* 12 C.F.R. 1002.114(b).

Thus, most of the institutions that would be exempt under the current proposal are Type B institutions—those originating between 150 and 999 small business loans per year. These are institutions that, by the Bureau’s own description, enjoy “a middle level of complexity in compliance operations,” *id.* at 50988, use “more automated operations,” *id.* at 50974, and more closely resemble large, complex FIs than small FIs, *id.* at 50975 (Table 4). Even if these institutions are not accustomed to reporting under HMDA or the CRA, which seems unlikely, there still would be no reason to believe that they would be unable to report data with sufficient accuracy to further § 1071’s purposes.

Furthermore, the 2023 Rule took great pains to align the required data elements to be reported with data that lenders capture in the normal course of business. This makes it even more implausible to believe that lenders that are doing 100 or more small business loans per year—and intaking two or three times that number in applications per year—lack the ability to accurately report, e.g., the date each application was received, the action taken on each application, or the dollar volume of the loans.

In all events, at least this much is clear: given the Bureau’s own acknowledgment of the ways in which expanding the current exemption would undermine the goals of § 1071, if the Bureau nonetheless believes that all but the 180 largest small business lenders in the United States lack the capacity to provide accurate reports and that requiring additional lenders to do so would disserve the purposes of Section 1071, it is incumbent upon the Bureau to come forward with hard evidence, and not just a bald assertion, to justify this dramatic expansion of the exemption. The NPRM fails to do so.¹⁶

¹⁴ The threshold for the number of loans is found at 12 C.F.R. 1003.2(g). The asset threshold is adjusted annually for inflation; the threshold for 2025 appears at 89 Fed. Reg. 105429 (Dec. 27, 2025).

¹⁵ CFPB, [2023 Mortgage Market Activity and Trends](#) Table 5A

¹⁶ Even if, *arguendo*, the Bureau were able to show that some of the institutions covered by the 2023 Rule lack the ability to produce accurate reports, it would be incumbent upon the Bureau to consider less drastic alternatives than a tenfold increase in the coverage threshold. For example, the Bureau’s Initial Regulatory Flexibility Analysis (IRFA) suggests that an exemption for

b. Merchant Cash Advances

As noted in Part I, § 1071 requires financial institutions to collect and report data with respect to each small business application for “credit,” and in so doing incorporates ECOA’s broad definition of that term. The 2023 Rule appropriately concluded that MCAs constitute a form of credit within the meaning of ECOA and thus are covered by § 1071. 88 FR at 35223. The NPRM, while noting that there is a “dearth of case law analyzing whether MCAs meet ECOA’s definition of ‘credit,’” does not dispute the 2023 Rule’s answer to that question.

Instead, the NPRM invokes the CFPB’s exemption authority under § 1071 to propose an MCA exemption, one that the 2023 Rule expressly declined to create and that would relieve all lenders of any reporting obligation with respect to such loans. But on its face, this proposed exemption—like the proposal to raise the coverage threshold—runs directly contrary to the purposes of 1071 and thus outside of the Bureau’s authority to create an exemption. Exempting MCAs necessarily means that there will be no data to shed light on whether the providers of those loans are complying with fair lending laws. Moreover, excluding MCAs would create a blind spot in the 1071 data, one that would diminish the value of the data that is collected in identifying “business and community development needs and opportunities” since data users would lack visibility into segments of the small business market being served by MCAs. Whether MCAs serve, or disserve, the needs of those using them, the § 1071 data cannot serve to identify business and community development needs if it does not include data on those applying for and obtaining MCAs.

The blind spot that the proposed MCA exemption would create is especially problematic given the increasing role that MCAs appear to be playing in the small business credit market and the dearth of data regarding this corner of the market. As the 2023 Rule observed, while data with regard to MCAs “are even more scarce than for other segments of the small business lending market,” the available evidence suggests that MCAs are “of particular significance for smaller and traditionally underserved businesses that may not qualify for other types of credit,” and noted “their increasingly prevalent use among minority business owners.” 88 FR at 35163, 35224.¹⁷ Thus, the MCA exemption the NPRM proposes would result in the 1071 dataset being systematically incomplete precisely where transparency is most needed. And, to the extent that occurred, the exemption would create an opportunity for regulatory arbitrage by allowing lenders to avoid data reporting by structuring their loans as sales-based financing.

The NPRM does not take issue with any of these observations, nor does the NPRM explain how excluding data regarding MCAs can be thought to further the statutory purposes. Indeed, the NPRM’s cost-benefit analysis that we previously quoted acknowledges, albeit cursorily, that reducing transactional coverage—like reducing lender coverage—would actually diminish the benefits of the 2023 Rule with respect to both fair lending enforcement and the identification of business and community development needs and opportunities.

institutions doing fewer than 200 small business loans per year would cover between 75% and 90% of small depository institutions under the SBA’s definition, i.e., institutions with under \$850 million in assets. *See* 90 FR at 50990. Alternatively, if the Bureau had evidence indicating that certain data points would be difficult for smaller institutions to report accurately, the Bureau could follow HMDA’s model and relieve smaller institutions of the obligation to report certain data points.

¹⁷ Adding to the picture—and further highlighting the gap that the proposed MCA exemption would create, the results of the 2024 Small Business Credit Survey conducted by the Federal Reserve Banks indicate that 9% of small businesses with employees applied for an MCA in the prior 12 months and that the share of applicants “fully approved” (i.e., approved for the amount applied for) is lower than for most other small business credit products while the partially approved rate is higher. [2025 Report on Employer Firms: Findings From the 2024 Small Business Credit Survey](#)

Rather than attempting to come to terms with these statutory purposes, the NPRM instead points to the “relative novelty and evolving landscape of the MCA industry,” the fact that “MCAs differ in kind from traditional lending products such that collecting data on MCA transactions under Section 1071 may not produce information that is comparable to data collected on other types of transactions,” and to the fact that at the state level the regulatory landscape with respect to MCAs is evolving as factors that somehow mean that “excluding MCA transactions from coverage under the rule at this time is necessary and appropriate to carry out the purposes of section 1071. 90 FR at 50955-50956. But the fact that MCAs are a new and evolving product category whose pricing mechanism differs from traditional loans and whose

¹⁸(b)(3).

The only other justification the NPRM posits for excluding MCAs—other than its policy preference for a go-slow approach to § 1071 focused on “core” products, 90 FR at 50966— is a professed concern as to the ability of “smaller MCA providers” to “manage compliance,” *id.* at 50956. But that rationale is belied by the NPRM’s own cost-benefit analysis, which “assumes that . . . merchant cash advance providers are Type C FIs”—that is, FIs that originate at least 1,000 loans per year and which “generally have more automated systems.” 90 FR at 50976. Indeed, since MCA providers specialize in making MCA loans, it is difficult to understand how a provider could be viable if it made fewer than 1,000 loans per year. And even if it were true that there were some smaller MCA providers who would be covered by the 2023 Rule and would produce lower quality data—a proposition for which the Bureau fails to provide any evidence—that would hardly mean that the purposes of 1071 would better be served by excluding reporting by all MCA lenders with respect to all MCAs.

In short, the NPRM fails to provide a reasoned, evidence-based rationale for exempting MCAs from coverage under § 1071.

c. Pricing Data Points

As discussed in Part II, § 1071(e)(2) lists a set of data points that lenders must collect and report and authorizes the CFPB to require “any additional data that the Bureau determines would aid in fulfilling the purposes of this section.” In the 2023 Rule, the Bureau exercised this authority to require reporting of a set of data points regarding the pricing of small business loans, concluding that “pricing data will further both the fair lending purpose and the business and community development purpose of section 1071.” 88 FR at 35309.

The 2023 Rule’s reasons for reaching this conclusion are as compelling as they are self-evident. From a fair lending perspective, “Heightened risks to fair lending and small business development may arise from differential pricing for the same products.” *Id.* Indeed, the CFPB pointed to multiple studies, including research by the Department of Commerce, suggesting that “minority-owned businesses tend to pay higher interest rates on business loans than those that are not minority owned.” *Id.* And, as the Bureau noted, “Data collection without pricing information could have the unintended consequence of incentivizing irresponsible lending, as providers seeking to increase representation of underserved groups could be encouraged to adopt high-cost models of lending.” *Id.* at 55309-55310.

¹⁸ The NPRM’s expressed concern over the comparability of MCA pricing data with pricing data regarding other small business loans is especially misplaced given that the NPRM proposes, unwisely in our view, the deletion of all pricing data from 1071 data collection.

Pricing data is equally central to further § 1071's second purpose—that is, “identify[ing] business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” As the 2023 Rule put it, “pricing information data points will allow various entities to monitor the tightness of the small business credit market and identify areas where...it is being provided only at high cost.” *Id.* at 35505. This, in turn, “will...help demonstrate to lenders where business opportunities exist to offer sustainable credit to underserved markets.” *Id.* at 35310.

Once again, the NPRM does not dispute any of these determinations or the evidence on which they rest. Indeed, the NPRM's cost-benefit analysis acknowledges that “Pricing is one dimension by which a lender could potentially discriminate against a credit applicant” and that “[r]emoving this information could reduce the efficiency of fair lending examinations or transparency that would have resulted from its inclusion.” 90 FR at 50982. Similarly, the cost-benefit analysis acknowledges that “pricing information would benefit community development through communities using pricing information to identify gaps in credit access or creditors better understanding small business lending conditions” and that “eliminating the pricing data would reduce”—in truth, eliminate—“these benefits.” *Id.*

Against this background, in an attempt to justify the proposal to delete the pricing data points, the NPRM asserts that even if a data point included in the 2023 Rule “would aid in fulfilling the purposes of section 1071,” the Bureau nonetheless would be justified in deleting such data point from the Rule if it “now believes that the relative utility of the data is not strong enough to justify the additional operational complexity for financial institutions.” *Id.* at 50961. And, the Bureau asserts that “subsequent to the publication of the 2023 final rule and through the implementation process, the Bureau received additional feedback about the number of data points total and the logistical challenges associated with implementing some or all of the discretionary data points”—feedback that has led the Bureau to “believe[] that the 2023 final rule did not adequately consider the extent to which the value of the data point justifies the additional operational complexity in obtaining it.”

As a threshold matter, it is difficult to understand what new information the Bureau could have received since 2023 regarding “logistical challenges” or “operational complexity” associated with collecting and reporting pricing information. After all, the Bureau's “Outline of Proposals Under Consideration and Alternatives Considered,” which the Bureau issued as part of the SBREFA process in which it engaged stated that the Bureau was considering proposing to include in the § 1071 rule pricing data points and the Bureau received extensive feedback on that proposal both from the Small Entities Representatives and from other commentators.¹⁹ Further, the notice of proposed rulemaking that the Bureau issued in 2021 included each of the pricing points incorporated in the final rule²⁰ and, as noted in the 2023 final rule, the Bureau received 650 detailed comments on that proposal, a large share of which came from financial institutions. 88 FR at 35173. At a minimum, if the Bureau is to do a complete U-turn based on “additional feedback,” it is incumbent upon the Bureau to explain what feedback it received that differed from all of the information the Bureau gathered throughout the rulemaking process and how that information supports a belief that the 2023 Rule misjudged “operational complexity.”

In any event, after asserting the authority to reweigh the value of a data point against “the additional operational complexity in obtaining it,” the NPRM makes no attempt to claim that there would be significant operational complexity for lenders in reporting pricing data with respect to applications that

¹⁹ [Small Business Data Collection Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered](#) (Sept. 15, 2020).

²⁰ 86 FR 56356 ,56577 (Oct, 8, 2021).

are approved and loans that are made. That omission is hardly surprising because any lender that makes a loan, or loan offer, most assuredly knows and records the interest rate for the loan, the total origination charges payable by the applicant, and the initial annual charges. Thus, to the extent operational complexity is a relevant or determinative factor in assessing whether particular data points “would aid in fulfilling the purposes” of § 1071, that factor would cut in favor of—rather than against—the collection and reporting of pricing information.

Perhaps recognizing this, the NPRM invokes an entirely different consideration to justify the proposed deletion of pricing data: a concern “that the publication of pricing information absent certain other information may be incomplete and give rise to incorrect inferences,” leading to “the misuse of pricing data.” 90 FR at 50962. Of course, this same argument could be made about any of the data to be collected pursuant to § 1071: absent comprehensive data on all of the factors on which a lender might decide whether to approve an application or on what terms, there is always a risk of an “incorrect inference” that a decision was made on a discriminatory basis. In enacting the statute, Congress made the judgment that any such risk is outweighed by the value of the data both in facilitating enforcement of fair lending laws and in identifying business and community development opportunities. The NPRM makes no attempt to explain why the balance should be struck differently when it comes to pricing data given the acknowledged value of that data to the statutory purposes.

Further, the NPRM offers no evidence to support, or even any reason to believe, its speculation that those using the pricing data would not understand the potential relevance of factors such as credit scores in explaining any pricing disparities and would reach “incorrect inferences.” This same risk exists with respect to the public HMDA data—which includes pricing information but not key underwriting factors such as credit score or an applicant’s debt-to-income ratio—yet the NPRM does not point to any evidence that the HMDA data has been misinterpreted, let alone evidence that it has been “misused.”²¹ Nor does the NPRM explain how the data could be misused or by whom. (The NPRM acknowledges that the 2023 Rule “assumed that community groups would use data responsibly” but suggests that other, unspecified “members of the public with access to the data might use it” irresponsibly. 90 FR at 50962.)

Most importantly, even if there were some grounded basis to believe that the data would be misinterpreted or misused by some members of the public, that still would not, in and of itself, provide a sufficient basis to justify deleting pricing data from the 2023 Rule. The statutory question, once again, is whether these data points “would aid in fulfilling the purposes of this section.” The NPRM’s own cost-benefit analysis concedes that they would. Thus, absent compelling evidence that the potential misuse would dwarf the benefits that these data points would provide in achieving the statutory purposes there is no basis for deleting them from the Rule.

V. The NPRM’s Analysis of Costs and Benefits

In addition to failing to justify the proposed exemptions and data deletions, the NPRM falls short of meeting the Bureau’s obligation to analyze the costs and benefits of the proposal.

Section 1022(b)(2) of the Dodd-Frank Act, 12 U.S.C. § 5512(b)(2), requires the Bureau, in any rulemaking proceeding, to “consider the potential benefits and costs to consumers and covered persons.” The NPRM admittedly contains a section reviewing the costs and benefits of the proposed rule that, as

²¹ Credit scores and DTI ratios are part of the data that lenders provide to the CFPB, but the CFPB has elected to redact that data from the public dataset to protect borrower privacy. *See* Disclosure of Loan-Level Data Policy Guidance, 84 FR 649 (Jan. 31, 2019).

previously noted, acknowledges the detrimental impact that the proposal would have in achieving the purposes of § 1071. The NPRM relies on this section to assert that “In developing this proposal, the CFPB has considered the potential benefits, costs, and impacts as required by section 1022(b)(2).” 90 FR at 50966.

However, as the United States District Court for the District of Columbia concluded in overturning a rule promulgated by the CFPB to increase HMDA’s reporting threshold, to consider means “[t]o view or contemplate attentively, to survey, examine, inspect, scrutinize.”²² Given that definition, “Mere reference to an identified cost does not qualify as an effort to ‘consider’ when that effort lacks discussion or analysis of possible avenues to develop assessment tools for measuring or surveying the costs. . . . When the impact of a cost or benefit is ‘both evident and massively significant,’ that cost or benefit ‘cannot be dismissed without further inquiry,’ even if its value is ‘unquantified.’”²³

It is thus debatable, at best, whether the Bureau has, in fact, considered the costs of the proposed rule as required by § 1022(b)(2), notwithstanding that the NPRM “repeatedly acknowledg[s]” the cost of the data loss.²⁴ But it is not necessary to pursue that question further because as a result of Executive Order 14125 issued by President Trump in February, 2025, 90 FR 10447 (Feb. 24, 2025), the CFPB’s obligations with respect to cost-benefit analysis now go much further than those set forth in the Dodd-Frank Act. Under that Executive Order, the CFPB is now obligated to conduct a formal cost-benefit analysis in accordance with Executive Order 12866 which previously had not applied to independent regulatory agencies, including the CFPB.

The NPRM at issue here makes no attempt to comply with E.O. 12866 and with OMB Circular A-4 issued pursuant to that Executive Order, and provides concrete and specific requirements for complying with the Executive Order. It does not, for example, include the standard, required table listing benefits and costs that can be monetized, those that can be quantified but not monetized, and those that cannot be quantified. It does not calculate the net benefits or net costs.

Accordingly, if the Bureau were to decide to proceed with a rulemaking to modify the 2023 Rule, the Bureau should withdraw the NPRM and reissue a new proposal with a cost-benefit analysis that complies with both the Dodd-Frank Act and with Executive Order 12866.

VI. Conclusion

Simply stated, Congress intended broad, functional coverage sufficient to reveal patterns and support enforcement. The NPRM would replace that mandate with a narrower, less informative regime. That is inconsistent with Section 1071’s plain language and would predictably frustrate the civil-rights and community development objectives Congress enacted the statute to achieve. Further, the changes can not be justified as proper exemptions. To improve capital access for minority-owned businesses, which will strengthen the nation’s economy, create jobs, and build a robust middle class, the Bureau should not proceed with the addressed changes.

²² *National Community Reinvestment Coalition v. Consumer Financial Protection Bureau*, Civ. Action No. 20-2074, op. at 61 (D.D.C. Sept. 23, 2022), quoting Oxford English Dictionary.

²³ *Id.* at 61-62, quoting *Md. People’s Couns. v. FERC*, 761 F.2d 768, 776 (D.C. Cir. 1985).

²⁴ *Id.* at 62.