

**SMALL BUSINESS ADVISORY REVIEW PANEL FOR  
CONSUMER FINANCIAL PROTECTION BUREAU  
SMALL BUSINESS LENDING DATA COLLECTION  
RULEMAKING**

**DISCUSSION GUIDE FOR SMALL ENTITY REPRESENTATIVES**

**September 15, 2020**

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To help frame discussion of issues and cost of credit matters in the upcoming Small Business Review Panel (Panel) meetings with small entity representatives (SERs) for the small business lending data collection rulemaking, we are providing this list of questions on which the Consumer Financial Protection Bureau (Bureau) seeks your advice, input, and recommendations. As you think about these questions, it would be helpful to refer to the “Outline of Proposals Under Consideration and Alternatives Considered” (Outline) provided with this document.

The questions are designed to identify the type of information that may help you to participate effectively in the discussion with the Panel and other small entity representatives. Some questions may not apply to you or your business. When a topic is relevant to you, please be

prepared to discuss it based on your experience or knowledge of the experience of other small entities as well as other financial institutions engaged in your line(s) of business. It would also be useful to the discussion to provide specific examples of issues that have arisen in your business operations.

The Panel would like to understand the potential economic impacts of the proposals under consideration discussed in the Outline. As you prepare for the general discussion, some of the questions suggest ways in which you might want to consider addressing the costs for the proposals under consideration. The Bureau welcomes any quantitative information you may choose to provide in response to these questions, but these questions should not be treated as data requests. While information specific to your institution can help the discussion, we understand that you may wish to frame your response in a manner that protects your company's proprietary information, as your responses may be included in a public report. Please note that when we ask about costs or other quantitative information, we are only looking for approximations, to the best of your knowledge; we do not need you to send us documentation.

## **I. Proposals Under Consideration to Implement Section 1071 of the Dodd-Frank Act Regarding Small Business Lending Data Collection, and Alternatives Considered**

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was enacted “[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system,” Congress directed the Bureau to adopt regulations governing the collection of small business lending data. Section 1071 of the Dodd-Frank Act (section 1071) amended the Equal Credit Opportunity Act (ECOA) to require financial institutions (FIs) to compile, maintain, and submit to the Bureau certain data on applications for credit for women-owned, minority-owned, and small businesses.<sup>1</sup> Congress enacted section 1071 for the purpose of (1) facilitating enforcement of fair lending laws and (2) enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

The Bureau is implementing the section 1071 mandate. In this SBREFA process, the Bureau is fulfilling its obligations to assess the impact on small entities that would be directly affected by the proposals under consideration prior to issuing a proposed rule regarding section 1071.

The proposals under consideration include whether and how to:

- (1) limit the scope of the rule to applications for credit from small businesses, including women-owned and minority-owned businesses, and excluding applications from and

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1071, 124 Stat. 1376, 2056 (2010) (section 704B of ECOA was added by section 1071 of the Dodd-Frank Act) (codified at 15 U.S.C. 1691c-2). For ease of reading, this document refers to the provisions of 704B in a shorthand expressed in terms of section 1071. For example, when this document refers to “section 1071(a),” it is employing this shorthand to refer to section 704B(a) of ECOA, which is codified at 15 U.S.C. 1691c-2(a).

- loans to *non-small* businesses that are women-owned and minority-owned;
- (2) identify entities that engage in small business lending covered by the data collection and reporting requirements of the rule by defining the term “financial institution”;
  - (3) clarify terms central to the rule, including “small business,” “women-owned business,” and “minority-owned business,” and “minority individual”;
  - (4) identify the “credit” products for which covered FIs would be required to collect and report data to the Bureau;
  - (5) define the term “application,” which would trigger a covered FI’s obligation to collect and report data to the Bureau;
  - (6) clarify the meaning of certain mandatory data points and identify additional discretionary data points associated with an application for credit that a covered FI would be required to collect and report to the Bureau, and explain how the data would be reported;
  - (7) clarify the limitations on the ability of underwriters and certain other employees and officers of covered FIs and their affiliates to access certain information provided by applicants, and clarify when a notice must to be given to applicants if underwriters and certain other employees and officers should have access to this information;
  - (8) clarify the right of credit applicants to refuse to provide certain information;
  - (9) specify how covered FIs would have to compile and maintain data collected under section 1071 and report it to the Bureau;
  - (10) explain how the Bureau would balance privacy interests with the benefits of publicly disclosing data collected from covered FIs, and how the Bureau would mitigate privacy risks; and
  - (11) establish an implementation period for FIs to come into compliance with the Bureau’s eventual rule implementing section 1071.

Throughout this Discussion Guide, the Bureau lists questions it would like SERs to answer regarding its proposals under consideration and potential alternatives. These questions are numbered sequentially throughout this Outline for ease of reference, and begin here:

- Q1. Are there any relevant Federal laws or rules which may duplicate, overlap, or conflict with the Bureau’s proposals under consideration beyond those discussed in Appendix C of the Outline? How might the Bureau’s proposals under consideration for implementing section 1071 impact other aspects of ECOA/Regulation B compliance?

## **A. Scope of proposed rule**

Section 1071(b) states that “in the case of any application to a financial institution for credit for [a] women-owned, minority-owned, or small business, the financial institution shall—(1) inquire whether the business is a women-owned, minority-owned, or small business.” That is, the text of section 1071 can be read to include data collection for credit applications for all small businesses as well as for women-owned and minority-owned businesses that are not small. The Bureau is considering proposing that the data collection and reporting requirements of its eventual 1071 rule would apply to any application to an FI for credit only for small businesses. Under this approach, FIs would not be required to collect and report 1071 data for women-owned and minority-owned businesses that are not “small.”

- Q2. Please provide feedback and information on the approach the Bureau is considering regarding the scope of its section 1071 rulemaking, particularly the proposal to limit reporting to applicants that satisfy the Bureau’s definition of a “small business.” Are there any alternative approaches the Bureau should consider?
- Q3. How often does your FI make loans to businesses that are not “small”? Would you anticipate any specific complexities or costs in identifying women-owned and/or minority-owned applicants that are not small businesses, and collecting 1071 data about their applications for credit?
- Q4. Does the credit process at your FI for non-small business applicants differ materially from the process for small business applicants? If so, how does it differ? Are there any other aspects of lending to large businesses that the Bureau should be aware of as it is determining the overall scope of its eventual 1071 rule?

## **B. Definition of “financial institution” (lender coverage)**

Section 1071 imposes data collection and reporting requirements on FIs with respect to “any application to a financial institution for credit for [a] women-owned, minority-owned, or small business.” This part addresses a general definition for the term “financial institution” before addressing the possibility of exemptions based on asset size (for DIs) and/or small business lending activity, and issues specific to FIs that are not the lender of record.

### **1. General definition of “financial institution”**

Section 1071(h)(1) defines the term “financial institution” as “any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.” The Bureau is considering proposing a general definition of “financial institution” consistent with the section 1071 definition.

Under this definition, the rule’s data collection and reporting requirements may apply to a variety of entities that engage in small business lending—including, potentially, DIs (*i.e.*, banks, savings associations, and credit unions), online lenders/platform lenders, CDFIs (both DI and non-DI), lenders involved in equipment and vehicle financing (captive financing companies and

independent financing companies), commercial finance companies, governmental lending entities, and non-profit non-DI lenders.

- Q5. Please provide feedback and information on the approach the Bureau is considering regarding the general definition of “financial institution,” along with any alternative approaches the Bureau should consider.

## **2. Possible exemptions**

In light of the regulation’s potentially broad application to FIs, the Bureau is considering whether either or both a size-based or activity-based test might be appropriate to determine when an FI must collect and report 1071 data or should be exempt, given section 1071’s statutory purposes.

- Q6. Please provide feedback and information on the approach the Bureau is considering regarding the possible exemptions for FIs based on size and/or activity, along with any alternative approaches the Bureau should consider.
- Q7. How does your FI currently track applications and/or originations (by number of loans and/or dollars)? Does this differ between DIs and non-DIs? What do you anticipate the potential costs would be to track whether your FI qualifies under an activity-based exemption metric?
- Q8. What compliance costs would cause your FI to stop or decrease your small business lending?
- Q9. Are there certain types of FIs, such as governmental lending entities or non-profit non-DI lenders, that the Bureau should consider not including within 1071’s data collection and reporting requirements? If so, why?

### **i. Size-based exemption**

The Bureau is considering whether to exempt DIs with assets under a given asset threshold from section 1071’s data collection and reporting requirements. The Bureau is considering the following possible asset-based exemption threshold levels:

- Option A Exemption Level: \$100 million in assets
- Option B Exemption Level: \$200 million in assets

For purposes of this exemption, a DI’s asset size as of the end of the last calendar year, or the end of both of the last two calendar years, might be proposed.

- Q10. Please provide feedback and information on the approach the Bureau is considering regarding a size-based exemption, along with any alternative approaches the Bureau should consider. For example, would a different asset size be more appropriate for a size-based exemption and, if so, why? Should the exemption be triggered upon meeting the threshold in one or two consecutive calendar years?

## ii. Activity-based exemption

The Bureau is considering whether only FIs that engage in a certain amount of small business lending activity should be required to collect and report 1071 data. The Bureau is considering several possible activity-based threshold levels, each defined by an FI's annual number of small business loans originated or the FI's annual total dollar value of small business loans originated. (That is, if either measurement is exceeded, then the FI must collect and report 1071 data.) In particular, the Bureau is considering the following three possible activity-based thresholds:

- Option 1 Exemption Threshold: originations of at least 25 loans or \$2.5 million
- Option 2 Exemption Threshold: originations of at least 50 loans or \$5 million
- Option 3 Exemption Threshold: originations of at least 100 loans or \$10 million

These possible activity-based thresholds could be based on the FI's lending as of the end of the last calendar year, or the end of both of the last two calendar years. Unlike the potential size-based exemption, an activity-based exemption could apply to DIs and non-DIs alike.

- Q11. Please provide feedback and information on the approach the Bureau is considering regarding an activity-based exemption, along with any alternative approaches the Bureau should consider. For example, would a different number and/or volume of loans be more appropriate for an activity-based exemption and, if so, why? Should the exemption be triggered on meeting the threshold in one or two consecutive calendar years?

## iii. Combined size- and activity-based exemptions

The Bureau is exploring whether to combine the size- and activity-based approaches to possible collection and reporting exemptions for FIs. Under a combined approach, an FI would be required to collect and report 1071 data if it exceeds either a given annual number of small business loans originated or annual total dollar value of small business loans originated during the relevant time period. However, DIs with assets under a given asset threshold would be exempt from reporting, regardless of the number or dollar value of small business loans they originated during the relevant time period.

- Q12. Please provide feedback and information on the approach the Bureau is considering regarding a combined size- and activity-based exemption, along with any alternative approaches the Bureau should consider. For example, would different asset sizes or number and/or volume of loans be more appropriate for a combined size- and activity-based exemption and, if so, why?

## 3. Financial institutions that are not the lender of record

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.

The Bureau is considering proposing that in the situation where more than one party is involved on the lender 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. If there was an origination, then the FI making the credit decision approving the application would be responsible for reporting (even if the FI used credit standards set by another party). If more than one FI approved a loan, and the loan was purchased after closing by one of the FIs approving the loan, the purchaser (such as an assignee) would report the loan. If there was no origination and multiple FIs received the same application, then any FI that made a credit decision would be responsible for reporting (even if other FIs also reported on the same potential non-originated application).<sup>2</sup>

Q13. Please provide feedback and information on the approach the Bureau is considering regarding treatment of FIs that are not the lender of record, along with any alternative approaches the Bureau should consider.

### **C. Definition of “small business” applicants**

This part addresses what is a “small business” applicant for which FIs must collect and report information. Section 1071(h)(2) defines the term “small business” as having the same meaning as “small business concern” in section 3 of the SB Act (15 U.S.C. 632). The SB Act provides a general definition of a “small business concern,” authorizes SBA to establish detailed size standards for use by all agencies, and permits an agency to request SBA approval for a size standard specific to an agency's program. As a general matter, the Bureau is considering proposing to define “small business” by cross-referencing the SBA's general definition of “small business concern,” but adopting a simplified size standard for purposes of its section 1071 rule. Consistent with the statutory requirements, the Bureau will seek SBA approval for a simplified size standard if it ultimately decides to take this approach. The Bureau understands that implementing this approach will necessitate close coordination with, and approval from, the SBA.

The SBA's regulations define a “business concern” as “a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” The SB Act defines a *small* business concern as a business that is “independently owned and operated and which is not dominant in its field of operation” and empowers the Small Business Administrator (Administrator) to prescribe detailed size standards by which a business concern may be categorized as a small business. For the most part, the industry-specific size standards adopted by the SBA, classified by six-digit North American Industry Classification System (NAICS) codes, are expressed in terms of the average annual receipts or the average number of employees of a business concern.

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<sup>2</sup> The Bureau's rules, including any eventual 1071 rule, generally do not apply to motor vehicle dealers, as defined in section 1029(f)(2) of the Dodd-Frank Act, that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

The SB Act provides that Federal agencies other than the SBA may prescribe a size standard for categorizing a business as a small business concern only where certain specific criteria are met. Among other things, the proposed size standard must provide for determining size based on (1) a manufacturing concern's average employment over the preceding 12 months; (2) a service business's annual average gross receipts over at least 5 years; (3) the size of other business concerns on the basis of data over at least 3 years; or (4) other appropriate factors. In addition, the proposed size standard must be approved by the Administrator. Additional procedural requirements are set out in the SB Act and SBA's regulations.

As a general matter, the Bureau believes that the better approach is to use a simpler, more straightforward approach to the size standard aspect of the "small business" definition for purposes of its 1071 rule. The Bureau is considering three alternative approaches for a simpler size standard.

Under the first alternative, the Bureau is considering proposing a size standard using the gross annual revenue of the applicant business in the prior year, with a potential "small" threshold of \$1 million or \$5 million.

Under the second alternative, the Bureau is considering proposing a size standard of a maximum of 500 employees for manufacturing and wholesale industries and a maximum of \$8 million in gross annual revenue for all other industries.

Under the third alternative, the Bureau is considering proposing a size standard using gross annual revenue or the number of employees based on a size standard in each of 13 two-digit NAICS code categories that applies to the largest number of firms within each two-digit NAICS code category. Applying the SBA's 2019 size standards, the third alternative would result in eight different size standards across the 13 categories. The list of two-digit NAICS codes, industry descriptions, and associated size standards is provided at table 1 in the Outline.

- Q14. Please provide feedback and information on the approach the Bureau is considering regarding the definition of "small business," along with any alternative approaches the Bureau should consider. For example, should the Bureau include or exclude applications from particular types of borrowers from the scope of its eventual 1071 rule in addition to or different than as described herein?
- Q15. What would the costs be to implement a small business definition based on each of the three alternatives above? (If these potential costs are difficult to quantify, you are invited to describe these costs qualitatively, such as small, medium, or large.) Are there any particular complexities you anticipate under any of the alternatives presented?
- Q16. Are you familiar with the SBA's six-digit NAICS code-based size standards, and does your FI currently use them for any purpose? What would the cost be to implement a small business definition based on the SBA's size standards?



## **D. Definitions of “women-owned business,” “minority-owned business,” and “minority individual”**

Section 1071 imposes data collection and reporting requirements on FIs with respect to “any application to a financial institution for credit for [a] women-owned, minority-owned, or small business.” Section 1071(h)(6) defines a business as a “women-owned business” if (A) more than 50 percent of the ownership or control is held by one or more women; and (B) more than 50 percent of the net profit or loss accrues to one or more women. Similarly, section 1071(h)(5) defines a business as a “minority-owned business” if (A) more than 50 percent of the ownership or control is held by one or more minority individuals; and (B) more than 50 percent of the net profit or loss accrues to one or more minority individuals.

Section 1071 does not define the term “minority individual.” The Bureau is considering proposing guidance that would clarify that a minority individual is a natural person who is Black or African American, Asian, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or Hispanic or Latino.

The Bureau also is considering proposing clarifications for the definition of “women-owned business” and “minority-owned business” by using simpler language that mirrors the concepts of ownership and control that are set forth in the Financial Crimes Enforcement Network’s customer due diligence (CDD) rule.<sup>3</sup> The Bureau is also considering proposing simplified applicant-facing materials to aid industry in collecting this information. Specifically, for these applicant-facing materials and industry clarifications, the Bureau is considering proposing the following definitions: (1) “ownership” to mean directly or indirectly having an equity interest in a business (*i.e.*, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owning an equity interest in the business); (2) “control” of a business to mirror the CDD rule, where it means having significant responsibility to control, manage, or direct a business; and (3) the “accrual of net profit or loss” with reference to generally accepted accounting practices and any applicable Internal Revenue Service standards.

- Q17. Please provide feedback and information on the approach the Bureau is considering regarding the definitions of “women-owned business,” “minority-owned business,” and “minority individual,” along with any alternative approaches the Bureau should consider.
- Q18. What are the legal or ownership structures of the businesses that typically apply for small business loans from your FI (*i.e.*, sole proprietorship, partnership, limited liability company, “S” corporation, etc.)? Do those businesses typically have an indirect ownership structure (*i.e.*, ownership interests are held by other entities)? What persons or group of persons are typically responsible for the operations of such

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<sup>3</sup> 31 CFR 1010.230. The CDD rule requires covered financial institutions to establish and maintain policies and procedures that are reasonably designed to identify and verify the identity of beneficial owners of legal entities that open accounts. Currently, many applicants must respond to questions about who “owns” and who “controls” a business when completing forms or otherwise responding to a covered financial institution’s inquiries related to the CDD rule. The Bureau is considering mirroring the concepts of “ownership” and “control” that are set forth in the CDD rule because most financial institutions and many applicants are likely to be familiar with such concepts.

business (*i.e.*, whether a managing member, two or more partners, a CEO, or some other person or group of persons)?

- Q19. Do you foresee any difficulties in using the CDD standards for purposes of 1071 data collection? Do your FI and/or your small business applicants routinely apply the concepts of “ownership” or “control” in a manner that does not align with the CDD rule? If so, what concepts do they use?

## **E. Product coverage**

### **1. Covered products**

Section 1071 requires FIs to collect and report information regarding any application for “credit” made by women-owned, minority-owned, and small businesses. The Bureau is considering proposing that a covered product under section 1071 is one that meets the definition of “credit” under ECOA and is not otherwise excluded from collection and reporting requirements.

Specifically, the Bureau is considering proposing that covered products under section 1071 include term loans, lines of credit, and business credit cards. The Bureau is considering proposing that the following products not be covered by the 1071 rule: consumer credit used for business purposes, leases, trade credit, factoring, and merchant cash advances (MCAs).

- Q20. Please provide feedback and information on the approach the Bureau is considering regarding covered products and use of the ECOA definition of “credit” for purposes of defining covered products under section 1071, along with any alternative approaches the Bureau should consider. Are there any products that should or should not be covered by the Bureau’s eventual 1071 rule, and if so why?
- Q21. What challenges would you anticipate if leases, trade credit, factoring, or MCAs or some subset(s) thereof, were included as covered products under the 1071 rule? Do you have suggestions on how to mitigate or resolve those challenges? If a subset of any of these products were included, do you have suggestions on how to define such a subset, what to include, and why (for example, including only capital leases as a covered product or only including a subset of MCAs)?
- Q22. Would the costs to collect, check, and report 1071 data differ across products? If so, why? Would these differences impact one-time costs to set up 1071 reporting, ongoing costs each year, or both?

## 2. Products not covered

The Bureau is considering proposing that the following products not be covered products under the 1071 rule: consumer credit used for business purposes, leases,<sup>4</sup> trade credit, factoring, and MCAs.

### F. Definition of an “application”

Section 1071(b) requires that FIs collect and report to the Bureau certain information regarding “any application to a financial institution for credit.” 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.”

The Bureau is also considering proposing to clarify certain circumstances that would not be reportable under section 1071, even if certain of these circumstances are considered an “application” under Regulation B. These include:

- Inquiries/prequalifications: The Bureau is considering not covering inquiry or prequalification requests in the 1071 data collection and reporting requirements, including inquiry and prequalification requests that may constitute an “application” under Regulation B for purposes of its notification requirements.<sup>5</sup>
- Reevaluation, extension and renewal requests, except requests for additional credit amounts: The Bureau is considering proposing that 1071 data collection and reporting requirements not cover borrower requests to modify the terms and/or duration of an existing extension of credit. Similarly, creditor-initiated reviews of existing credit extensions also would not be reportable. However, the Bureau is considering proposing to require collection and reporting of requests for additional credit amounts (line increases or new money on existing facilities) as these events go directly to the purposes of section 1071.
- Solicitations and firm offers of credit: The Bureau is considering proposing that FIs would not be required to collect and report 1071 data for FI prescreened solicitations or firm offers of credit unless the applicant responds in a manner that triggers an “application.”

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<sup>4</sup> More specifically, the Bureau is considering proposing that leases not be a covered product under section 1071 unless the product is a credit sale. For purposes of section 1071, the Bureau is considering proposing a definition of a “credit sale” similar to the Regulation Z definition of that term.

<sup>5</sup> See Regulation B comments 2(f)-3 and 9-5. A request for credit that meets the “application” definition considered here would be reportable, even if that application had been preceded at some point in time by an inquiry or prequalification.

- Q23. Please provide feedback and information on the approach the Bureau is considering regarding the definition of “application,” along with any alternative approaches the Bureau should consider.
- Q24. What is your FI’s practice for defining applications for credit for small businesses? Is the Regulation B definition of “application” compatible with your FI’s existing practices? What challenges do you anticipate if the Bureau were to adopt a largely consistent definition, and do you have any suggestions on how to mitigate or resolve those challenges?

## **G. Data points**

### **1. Mandatory data points**

Section 1071(b) requires FIs to inquire whether an applicant for credit is a women-owned, minority-owned, or small business, and to maintain a record of the responses to that inquiry separate from the application and accompanying information. Section 1071(e)(1) requires each FI to compile and maintain a record of the information provided by any loan applicant pursuant to a request under section 1071(b). The Bureau refers to these particular items, together with the response to the inquiry under section 1071(b), as “mandatory data points.”

In addition to specific questions identified for particular data points below, the Bureau seeks feedback from SERs on the following questions for all the mandatory data points:

- Q25. Please provide feedback and information on the approach the Bureau is considering for each mandatory data point, along with any alternative approaches the Bureau should consider.
- Q26. What would the costs be for collecting, checking, and reporting each data point? Do these costs differ by data point and if so, what data points would impose higher costs and why?
- Q27. For each data point, how should the Bureau address reporting multiple products applied for via a single application? Should such requests be considered one “application” or multiple “applications”? If the Bureau required reporting of each product separately, how would that affect your FI’s costs to collect and report 1071 data?

#### **i. Whether the applicant is a women-owned business, a minority-owned business, and/or a small business**

Section 1071 requires FIs to inquire whether an applicant for credit is a women-owned, minority-owned, or small business, and to maintain a record of the responses to that inquiry separate from the application and accompanying information. The Bureau is considering proposing clarifications for some of the terms used in the statutory definitions of women-owned business and minority-owned business as well as simplified applicant-facing materials to aid industry in collecting this information.

The Bureau is considering proposing that collection and reporting of women-owned and minority-owned business status be based solely on applicant self-reporting.

The Bureau is not considering proposing that FIs determine whether an applicant is a women-owned or minority-owned business based on the race, sex, and ethnicity of the applicant's principal owners, but rather that this data point be self-reported by the applicant only.

With respect to small business status, the Bureau is considering proposing that collection and reporting of whether an applicant for credit is a small business be based on applicant-reported information. If the FI verified the information, it would be required to use the verified information in reporting this data point; if the FI does not verify the information, it would report based on the information as provided by the applicant.

The nature of this inquiry regarding small business status, and the related data point, would depend on the ultimate definition of a small business in the Bureau's eventual 1071 rule. The approaches the Bureau is considering for that definition are discussed above. In general, this data would consist of whether an applicant is a small business, and the reason for that determination (*e.g.*, applicant is a small business because it is engaged in manufacturing or wholesale and has fewer than 500 employees).

- Q28. In the normal course of processing an application for small business credit, does your FI determine who owns and controls the entity applying for the financing (including the percentage of ownership and degree of control)? If so, at what point in the application process and for what purposes? Does your FI determine to whom an entity's profit and loss accrues or do they rely on ownership percentage? Does an employee of your FI routinely meet with all of the individuals who own and control a small business applying for credit?

#### **ii. Application/loan number**

Section 1071(e)(2)(A) requires FIs to collect and report "the number of the application and the date on which the application was received." The Bureau is considering proposing that FIs report an alphanumeric application or loan number of no more than 45 characters that is unique, within the FI, to the referenced extension (or requested extension) of credit and that remains uniform through the application and origination stages of the process. The Bureau is considering proposing a structure for the method of assigning and reporting the application/loan number under section 1071 to follow HMDA/Regulation C formatting and other requirements.

- Q29. How does your FI assign application/loan numbers for small business credit? How does your FI assign application/loan numbers when a borrower requests multiple credit products at the same time? Are there any circumstances in which you do not assign numbers for applications or originated small business credit?

#### **iii. Application date**

Section 1071(e)(2)(A) requires FIs to collect and report the "date on which the application was received." The Bureau is considering proposing that FIs report the application date using either (i) the date shown on a paper or electronic application form; or (ii) the day on which a credit

request becomes an “application.” The Bureau is considering proposing that application date be reported with a day, month, and year. Finally, the Bureau is also considering proposing that FIs have a grace period of several days on either side of the date reported.

#### **iv. Loan/credit type**

Section 1071(e)(2)(B) requires FIs to collect and report “the type and purpose of the loan or other credit being applied for.” The Bureau is considering proposing that FIs report the loan type data point via three sub-components: (1) Type of Loan Product (chosen from a specified list); (2) Type of Guarantee (chosen from a specified list); and (3) Loan Term (in months). These three sub-components would be reported as follows:

Loan Type lists:

- Loan/Credit Product:
  - Term loan—unsecured
  - Term loan—secured
  - Line of credit—unsecured
  - Line of credit—secured
  - Business credit card
  - Other
  - Unknown (for applications)
  
- Guarantee:
  - Personal guarantee—owner(s)
  - Personal guarantee—non-owner(s)
  - SBA guarantee—7(a) program
  - SBA guarantee—504 program
  - SBA guarantee—other
  - USDA guarantee
  - Other Federal guarantee
  - State or local government guarantee
  - Other guarantee
  - No guarantee
  - Unknown
  
- Loan Term: report in number of months, or Not Applicable for products that do not have a loan term (such as a business credit card) and for applications that did not specify a loan term.

#### **v. Loan/credit purpose**

Section 1071(e)(2)(B) requires FIs to collect and report “the type and purpose of the loan or other credit being applied for.” The Bureau is considering proposing that FIs report the loan purpose data point by choosing one or more purposes from a specified list. A list of loan purposes is provided below.

Loan Purpose list:

- Commercial real estate—owner occupied
- Commercial real estate—non-owner occupied (includes investors)
- Motor vehicle (including light and heavy trucks)
- Equipment
- Working capital (includes inventory or floor planning)
- Business start-up
- Business expansion
- Business acquisition
- Refinance existing debt
- Line increase
- Other
- Unknown or unreported by the applicant

Q30. How does your FI currently document information about loan/credit purpose? Is the list presented for loan/credit purpose workable? Is there anything you recommend be added or subtracted, given the statutory purposes of section 1071?

**vi. Credit amount/limit applied for**

Section 1071(e)(2)(C) requires FIs to collect and report “the amount of the credit or credit limit applied for.” The Bureau is considering proposing that FIs report the initial amount of credit or credit limit requested by the applicant at the application stage, or later in the process but prior to the FI’s evaluation of the credit request.

Q31. When in the application process for small business credit do applicants usually indicate the specific amount that they are applying for? How often does the amount applied for change between the initial application stage and when the application is considered for underwriting?

**vii. Credit amount/limit approved**

Section 1071(e)(2)(C) requires FIs to collect and report “the amount of the credit transaction or the credit limit approved for such applicant.” The Bureau is considering proposing that FIs report (1) the *amount of the originated loan* for a closed-end origination; (2) the *amount approved* for a closed-end loan application that is approved but not accepted; and (3) the *amount of the credit limit approved* for open-end products (regardless of whether the open-end product is originated or approved but not accepted). The FI would report “Not Applicable” for this data point for applications that are denied, closed for incompleteness, or withdrawn by the applicant before a credit decision is made.

Q32. For originated closed-end loans, what complexities might FIs face in reporting the amount originated or the amount approved? How often are these two amounts different? How would the costs to collect, check, and report these two measures differ?

- Q33. What complexities might FIs face in using the method described for reporting open-end credit limits? Is there some other way to report open-end credit that would be less burdensome or more accurately reflect its use in the market?

#### **viii. Type of action taken**

Section 1071(e)(2)(D) requires FIs to collect and report the “type of action taken” on an application. The Bureau is considering proposing five categories for reporting “action taken”: (1) loan originated; (2) application approved but not accepted; (3) application denied; (4) incomplete application (closed or denied); or (5) application withdrawn by applicant.

- Q34. How does your FI currently document the actions taken on applications from small businesses?
- Q35. Would FIs prefer reporting denial reasons to help explain the decision on an application? If so, should those reasons be voluntary or mandatory fields?
- Q36. Might the availability of credit be underreported if counteroffers are not separately identified in the 1071 data set? If counteroffers are separately identified, what would be the most cost-effective way to do so (*e.g.*, reported as a separate action taken category or as a counteroffer data flag)? Should multiple counteroffers on a single application be reported? How should the ultimate action taken on a counteroffer be identified (counteroffer accepted, counteroffer rejected, etc.)?

#### **ix. Action taken date**

In addition to requiring FIs to collect and report the type of action they take on an application, section 1071(e)(2)(D) requires FIs to collect and report the “date of such action.” The Bureau is considering proposing that the action taken date be reported with a day, month, and year.

- Q37. Do you foresee any potential challenges in identifying the action taken date for any of the “action taken” categories? Do you have suggestions on how to mitigate or resolve those challenges?

#### **x. Census tract (principal place of business)**

Section 1071(e)(2)(E) requires FIs to collect and report “the census tract in which is located the principal place of business of the ... applicant.” The Bureau is considering proposing that FIs report a geocoded<sup>6</sup> census tract based on an address collected in the application, or during review or origination of the loan. The FI would use the address where the loan proceeds will principally be applied, if that address is known to the FI. If the FI does not possess that information, the FI would use the location of the small business borrower’s main office or headquarters. If that, too, is unknown, the FI could use another business address associated with the application.

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<sup>6</sup> For the purposes of the 1071 rulemaking, geocoding is the process of using a particular property address to locate its geographical coordinates and the corresponding census tract.



- Q38. Does your FI currently geocode addresses for a reporting requirement, such as HMDA, and what geocoder do you use? Would that geocoder be viable for purposes of 1071 data reporting? What are the costs to geocode addresses?
- Q39. How often and in what circumstances does your FI know the address where the borrower's loan proceeds will be used? For example, does your FI have a loan proceeds address for loans other than those related to commercial real estate? How frequently are loan proceeds used at a location other than the applicant's main office? What would the costs be to obtain the loan proceeds address from the applicant, in addition to or instead of other addresses?

#### **xi. Gross annual revenue**

Section 1071(e)(2)(F) requires FIs to collect and report "the gross annual revenue of the business in the last fiscal year ... of the applicant preceding the date of the application." The Bureau is considering proposing that FIs report the gross annual revenue of the applicant during its last fiscal year.

- Q40. Does your FI collect gross annual revenue from applicants? If so, for which types of lending products? Are there any products for which your FI does not collect gross annual revenue? Does your FI verify the gross annual revenue provided by applicants? Are there any situations in which you do not verify the gross annual revenue provided by applicants?
- Q41. How does your FI collect and verify gross annual revenue from applicants? Is the revenue of affiliates included in the gross annual revenue collected, and is that information used for underwriting purposes? Does your FI ever underwrite based on only part of an applicant's revenue, or based on the revenue (or income) of an entity or individual affiliated with the applicant?

#### **xii. Race, sex, and ethnicity of principal owner(s)**

Section 1071(e)(2)(G) requires FIs to collect and report "the race, sex, and ethnicity of the principal owners of the business." The Bureau is considering proposing to define the term "principal owner" in a manner that is consistent with the CDD rule. Specifically, an individual would be a "principal owner" if the individual directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the business.

The Bureau is considering proposing that financial institutions use the HMDA aggregate race, sex, and ethnicity categories when requesting that applicants self-report race, sex, and ethnicity information.<sup>7</sup> The Bureau is also considering proposing that collection and reporting of the race, sex, and ethnicity of small businesses' principal owners be based solely on applicant self-reporting. Finally, the Bureau is considering developing a sample collection form to assist

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<sup>7</sup> For race, the categories are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. For sex, the categories are: Female and Male. For ethnicity, the categories are: Hispanic or Latino and Not Hispanic or Latino.

industry in collecting this information and to communicate an applicant's right to refuse to provide such information.

- Q42. How many owners do small business applicants usually have? What portion of small business applicants are likely to be sole proprietorships or have only one owner?
- Q43. How likely is it that a small business applicant would be owned or controlled by one or more minority individuals or women (*i.e.*, would be a minority-owned business or a women-owned business) but would not have at least one minority owner or woman owner, respectively, who owned 25 percent or more of the equity interest of the business (*i.e.*, would not have a principal owner who was a minority individual or a woman)?
- Q44. What are the potential challenges, costs, and benefits of defining principal owners in a manner that is consistent with the CDD rule?
- Q45. To what extent could your FI leverage existing programs, systems, or personnel (including those used for HMDA) when collecting and reporting the race, sex, and ethnicity information of principal owners?
- Q46. What are the potential challenges, costs, and benefits of collecting and reporting the race, sex, and ethnicity of principal owners using aggregate categories? Although the Bureau is not considering proposing that FIs use disaggregated race and ethnicity categories when collecting and reporting the race and ethnicity of principal owners, what would be the potential challenges, costs, and benefits of such a requirement?
- Q47. Although the Bureau is not considering proposing that FIs report a principal owner's race, sex, or ethnicity based on visual observation or surname, what would be the potential challenges, costs, and benefits of implementing such a requirement for applicants who do not self-report the information? How would those potential challenges and costs change if reporting based on visual observation or surname was required only if the applicant is a sole proprietor but not if the applicant is an entity?

## **2. Discretionary data points**

In addition to the list of mandatory data points in sections 1071(b) and 1071(e)(2)(A) through (G) discussed above, section 1071(e)(2)(H) requires FIs to collect and report "any additional data that the Bureau determines would aid in fulfilling the purposes of [section 1071]." The Bureau refers to these as "discretionary data points." The Bureau is considering proposing to require that FIs report discretionary data points regarding pricing, time in business, NAICS code, and number of employees. Each of these data points is addressed in turn below.

- Q48. Please provide feedback and information on the approach the Bureau is considering for each discretionary data point, along with any alternative approaches the Bureau should consider.
- Q49. What would the potential challenges and costs be for collecting, checking, and reporting each discretionary data point?

### **i. Pricing**

The Bureau is considering proposing to include pricing of originated credit and credit that is approved but not accepted as a discretionary data point. A pricing data point could be reported on the basis of annual percentage rate (APR), total cost of credit (TCC), interest rate and total fees, or some other pricing metric. (Regarding these pricing metrics, the Bureau is interested in discussing the underlying concepts and potential costs of these different methods, not the legal or technical aspects of defining such terms.)

- Q50. How does your FI calculate pricing for different credit products (*e.g.*, term loans, lines of credit, business credit cards)? If an eventual 1071 rule were to require reporting of pricing information, what pricing metric or metrics would be easiest to report given your FI's pricing methods?
- Q51. What are the potential costs and benefits associated with collecting and reporting pricing using each of these metrics (*i.e.*, APR, TCC, interest rate and total fees)? Could the costs and benefits vary depending on the type of small business credit product about which pricing is being reported? Is there another metric that would be preferable in order to lower reporting burden?
- Q52. Would a requirement to report pricing data impose costs on your FI or on your FI's borrowers besides reporting costs? Would you expect a pricing data point to affect how examiners examine FIs for fair lending compliance? How? Would a pricing data point affect the reputation of your FI? If so, how? How would your FI respond?

### **ii. Time in business**

The Bureau is considering proposing to include as a discretionary data point the time in business of the applicant (as of the date of application), expressed in years, or months if less than one year.

- Q53. Does your FI currently collect information about the time in business of small business credit applicants? In what format (years / months / years and months / date established) does your FI request that applicants provide the information? Does your FI obtain or verify this information from a third party such as a business credit bureau? Does your FI separate small businesses by time in business for determining risk in underwriting or eligibility? If so, what time parameters are used? Would including a time in business data point help avoid misinterpretation of the 1071 dataset, when a denied application might be explained by relative lack of experience in the business?

### **iii. NAICS code and number of employees**

The SBA's size standards for small businesses are generally based on average annual receipts or number of employees for each industry based on NAICS code. The Bureau is considering proposing that FIs collect and report NAICS code and number of employees.

- Q54. Does your FI currently collect NAICS code information from any small business applicants? Do you collect six-digit NAICS codes, or two-, three-, or four-digit codes instead? Does your FI determine what NAICS code is appropriate for a particular applicant or obtain it from an alternative source such as a credit report, or does your FI ask applicants to provide their NAICS codes? What do you anticipate the potential costs and burdens would be if your FI was required to collect NAICS codes for small business applicants?
- Q55. Does your FI currently collect number of employees from any small business applicants? Does your FI take any steps to verify this information? What do you anticipate the potential costs and burdens would be if your FI was required to collect number of employees from small business applicants?

### 3. Timing considerations for collection of certain 1071 data

The language and structure of section 1071—which applies to “applications” from “applicants”—indicates that the data must be collected sometime during the application process.<sup>8</sup> The statute does not, however, provide further direction on when during the application process information should be collected. The Bureau is not currently considering specifying a particular time period in which FIs must seek to collect 1071 data from applicants.

- Q56. Please provide feedback and information on the approach the Bureau is considering with respect to the timing for collection of data points provided by applicants, along with any alternative approaches the Bureau should consider.
- Q57. How do you anticipate your FI seeking applicant-provided data (particularly race, sex, and ethnicity information about principal owners) required by section 1071, including the manner (*i.e.*, how information is requested) and timing of the request? How would you anticipate seeking such applicant-provided data if the application is withdrawn, incomplete, or denied before the data is requested?
- Q58. If the Bureau does not specify a time period for the collection of applicant-provided data, how frequently are FIs likely to delay gathering such demographic information required by 1071? Could there be issues with data quality? What steps might the Bureau and FIs take to control for those concerns or to otherwise encourage applicants to voluntarily provide 1071 data that is within their control?

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<sup>8</sup> See, e.g., section 1071(b) (requiring an inquiry “in the case of any *application* to a financial institution”) and section 1071(c) (“[a]ny *applicant* ... may refuse to provide any information requested.”) (emphasis added).

## **H. Shielding data from underwriters and other persons (firewall)**

### **1. Underwriter access to women-owned and minority-owned business status, and race, sex, and ethnicity information for principal owners**

Section 1071(d) includes two provisions that limit access to certain information collected under section 1071. First, under section 1071(d)(1), where feasible, loan underwriters or other officers or employees of an FI or its affiliates “involved in making any determination concerning an application for credit” cannot have access to “any information provided by the applicant pursuant to a request under subsection (b).” Second, under section 1071(d)(2), if the FI “determines” that an underwriter, employee, or officer involved in making a determination “should have access” to “any information provided by the applicant pursuant to a request under subsection (b),” the FI must provide a statutorily required notice.

The Bureau is considering proposing that FIs need only limit access under section 1071(d) to an applicant’s responses to the FI’s specific inquiries regarding women-owned and minority-owned business status and the race, sex, and ethnicity of principal owners. The Bureau also is considering proposing that an applicant’s response to the 1071(b) inquiry regarding small business status need not be firewalled off from underwriters and others pursuant to 1071(d)(1).

Section 1071(d)(1) indicates an FI would not be required to limit underwriters’ and other persons’ access to applicants’ responses regarding women-owned/minority-owned business status, and the race, sex, and ethnicity of principal owners, if it is not feasible to do so. The Bureau is considering how it might apply this feasibility standard. Additionally, the Bureau is considering proposing to interpret section 1071(d)(2) to permit FIs to give underwriters, employees, and officers access to the responses when the FI determines that such access is needed for the underwriter, employee, or officer to perform his or her usual and regularly assigned job duties. In such circumstances, the FI would need to comply with the requirement to provide a notice.

- Q59. Please provide feedback and information on the approach the Bureau is considering regarding the firewall under section 1071(d)(1), along with any alternative approaches the Bureau should consider.
- Q60. Could your FI create and maintain 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? If not, why not? If so, how would your FI create such a firewall? What would the potential costs and challenges be to create and maintain such a firewall? What circumstances might make creating and maintaining such a firewall more costly or more difficult?
- Q61. Could your FI create and maintain a firewall that applies to an applicant’s response to a question regarding small business status? If not, why not? If so, how would your FI create such a firewall? What would the potential costs and challenges be to create and maintain such a firewall? What circumstances might make creating and maintaining such a firewall more costly or more difficult?

- Q62. Could your FI create and maintain a firewall that applies to an applicant's responses to all information and data requested pursuant to section 1071? If not, why not? If so, how would your FI create such a firewall? What would the potential costs and challenges be to create and maintain such a firewall? What circumstances might make creating and maintaining such a firewall more costly or more difficult?
- Q63. What types of employees and officers are involved in making determinations regarding small business credit applications (as noted above, the statutory firewall applies to certain people involved in making any determination regarding an application for credit)? Are these employees and officers likely to be involved in the collection or reporting of information pursuant to section 1071?
- Q64. What are the potential challenges, costs, and benefits of implementing a standard that allows access to information when needed to perform usual and regularly assigned job duties, but restricting access otherwise? For example, is your FI likely to know in advance that one or more underwriters, employees, or officers will be involved in making determinations regarding credit applications from small businesses and will need access to the section 1071(b) responses regarding women-owned or minority-owned business status or the principal owners' race, sex, and ethnicity information to perform usual and regularly assigned job duties?

## **2. Notification regarding access to information by underwriters and other persons**

Under section 1071(d)(2), if an FI determines that an underwriter, employee, or officer involved in making a determination "should have access" to "any information provided by the applicant pursuant to a request under [1071(b)]," the FI must provide a notice of "the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information." The Bureau is considering developing model disclosures that FIs could use when providing this notice. The Bureau is considering proposing that this notice would not need to include language regarding small business status.

- Q65. Please provide feedback and information on the approach the Bureau is considering regarding the notice requirement under section 1071(d)(2), along with any alternative approaches the Bureau should consider.
- Q66. What are the potential challenges and costs associated with providing the notice pursuant to section 1071(d)(2) to particular applicants if your FI determines that an underwriter or other person involved in making any determination concerning an application for credit should have access to information regarding the applicant's 1071(b) responses?
- Q67. Would your FI prefer to provide the 1071(d)(2) notice regarding anti-discrimination to all applicants, even if not required to do so?

## **I. Applicants' right to refuse to provide certain information**

Section 1071(c) states that any applicant may refuse to provide “any information requested pursuant to subsection (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 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 1071(b).

## **J. Compiling, maintaining, and reporting 1071 data to the Bureau**

Section 1071(f)(1) provides that “[t]he data required to be compiled and maintained under [1071] by any financial institution shall be submitted annually to the Bureau.” The Bureau is considering proposing that 1071 data collection be done on a calendar year basis, and submitted to the Bureau by a specified date following the end of each calendar year.

Section 1071(e)(3) provides that, “[i]n compiling and maintaining any record of information under [section 1071], a financial institution may not include in such record the name, specific address (other than the census tract), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the ... loan applicant.” The Bureau is considering proposing a prohibition on including certain personally identifiable information about any individuals associated with small business applicants or borrowers in the data that an FI is required to compile, maintain, and report to the Bureau (*i.e.*, other than the information specifically required to be collected and reported pursuant to the Bureau’s eventual 1071 rule, such as the race, sex, and ethnicity of principal owners).

Section 1071(f)(2)(A) requires that information compiled and maintained under section 1071 be “retained for not less than 3 years after the date of preparation.” The Bureau is considering proposing that FIs retain their 1071 data for at least three years after it is submitted to the Bureau.

- Q68. Please provide feedback and information on the approach the Bureau is considering regarding these data retention and reporting aspects of section 1071, along with any alternative approaches the Bureau should consider.

## **K. Privacy considerations involving Bureau publication of 1071 data**

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. At the same time, publication of 1071 data under consideration in an unedited, loan-level format potentially could be used to re-identify small business applicants or borrowers and related individuals or potentially harm their privacy interests. Accordingly, the Bureau is examining the privacy implications of FIs’ collection, reporting, and disclosure of information pursuant to 1071 and the Bureau’s public release of the data. Congress provided, in section 1071(e)(4), that “[t]he Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.”

## 1. Balancing test

For purposes of determining whether and how to exercise its discretion to modify or delete 1071 data prior to publication, the Bureau is considering proposing to use a “balancing test” that weighs the risks and benefits of public disclosure. Under this approach, data would be modified or deleted if its disclosure in unmodified form would pose risks to privacy interests that are not justified by the benefits of public disclosure in light of the statutory purposes of section 1071.

- Q69. Please provide feedback and information on the approach the Bureau is considering regarding use of a balancing test, along with any alternative approaches the Bureau should consider.
- Q70. What are the benefits of public disclosure to FIs of each of the data points under consideration?

## 2. Privacy interests considered under the balancing test

Section 1071 provides that the Bureau may, at its discretion, delete or modify data if the Bureau determines that doing so “would advance a privacy interest.”<sup>9</sup> The Bureau is considering proposing to apply the balancing test discussed above to the privacy interests of non-natural persons (*e.g.*, small business entity applicants or borrowers, or FIs) with respect to protecting sensitive commercial information, as well as the privacy interests of natural persons (*e.g.*, individual business owners) with respect to protecting sensitive personal information.

- Q71. Please provide feedback and information on the approach the Bureau is considering regarding the nature and scope of privacy interests of non-natural and natural persons the agency should consider under a balancing test, along with any alternative approaches the Bureau should consider.
- Q72. If the data reported to the Bureau are disclosed to the public, how would that affect the privacy interests of FIs, small business applicants and borrowers, and related individuals, and what costs would they incur to eliminate or mitigate these requirements? What types of sensitive commercial information of business entities, including FIs, could be exposed by publishing the data points (individually or in combination) under consideration?
- Q73. Are there data points, individually or in combination, that could create significant risk of re-identification of individuals or small business entities if publicly disclosed by linking them to third-party data sources, such as public records, and/or expose particularly sensitive personal or commercial information? Are there ways to mitigate these concerns?

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<sup>9</sup> 15 U.S.C. 1691c-2(e)(4).



### **3. Bureau publication of 1071 data**

Section 1071(f)(2)(B) and (C) provides that information compiled and maintained under the statute shall be “made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau,” and “annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation.” The Bureau is considering proposing an approach in which FIs could satisfy the requirement to make 1071 data available to the public upon request by referring the public to the Bureau’s website where 1071 data would be available.

- Q74. Please provide feedback and information on the approach the Bureau is considering regarding public disclosure of 1071 data by the Bureau on behalf of FIs, along with any alternative approaches the Bureau should consider.
- Q75. Please provide feedback and information on the potential costs and benefits of FIs referring the public to the Bureau’s website to access 1071 data.

#### **L. Implementation period**

Section 1071 does not specify an implementation period, though pursuant to section 1071(f)(1) FIs must submit 1071 data to the Bureau on an annual basis. The Bureau is considering proposing that 1071 data collection be done on a calendar year basis, and submitted to the Bureau by a specified date following the end of each calendar year. The Bureau is considering proposing that FIs have approximately two calendar years for implementation following the Bureau’s issuance of its eventual 1071 rule.

- Q76. Please provide feedback and information on the approach the Bureau is considering regarding an implementation period, along with any alternative approaches the Bureau should consider.
- Q77. How much time do you estimate your FI would need to prepare for compliance with the Bureau’s eventual 1071 rule? Are there any particular aspects of the Bureau’s proposals under consideration that could be particularly time consuming or costly for your FI to implement? Are there any factors outside your FI’s control that would affect its ability to prepare for compliance?

## **II. Potential Impacts on Small Entities**

### **A. Overview**

Part IV of the Outline summarizes the Bureau’s preliminary assessment of the impacts of the regulatory and operational proposals under consideration on directly affected small entities and the methods used to derive them. The Bureau believes that this information will make it easier for SERs and others to offer the Bureau additional data and information regarding potential impacts. The Bureau encourages contributions of data and other factual information to inform its assessment of potential compliance costs and other impacts on small entities.

The Bureau seeks feedback and information from SERs on the following:

- Q78. The Bureau’s overall methodological approach to measuring one-time and ongoing costs of the eventual 1071 rule, along with any alternative approaches the Bureau should consider.
- Q79. Are there additional one-time or ongoing cost activities that should be considered in the Bureau’s analysis of potential impacts on small entities? Should the structure the Bureau is using to estimate ongoing costs, or the actual magnitude of estimates, differ across institution type or product type, and if so, how?
- Q80. Is the Bureau’s categorization of the “complexity” of an FI’s application data processing appropriate and accurate? Are the descriptions of representative FIs consistent with market experience? Is the Bureau appropriately describing the volume of applications processed by example FIs, particularly among small FIs?
- Q81. What kinds of computer systems are currently used that could be used to collect and report data to comply with a future regulation? What kinds of systems could be developed to collect and report data to comply with a future regulation? How much would it cost to purchase or update these systems in order to comply with a future regulation? How do FIs expect the regulation to alter their existing methods for collecting and processing application and origination data?
- Q82. How do the Bureau’s estimates of ongoing costs by activity and FI complexity compare to your own? Are there specific activities where the Bureau is over- or underestimating the annual ongoing costs?
- Q83. Do FIs expect one-time or ongoing costs to affect the rates/fees offered for credit products, the credit product mix offered, the underwriting standards for credit products, or participation in the small business credit market?
- Q84. How does your FI anticipate training staff to comply with an eventual 1071 rule? For example, do you anticipate purchasing training from an external source, developing training in-house, or a combination of both? Other than staff time to attend training, do you anticipate any ongoing costs associated with providing 1071 compliance training to employees on an annual or other periodic basis?

## **B. Small entities covered by the proposals under consideration**

The Bureau identified certain types of small entities that may be FIs subject to the Bureau’s eventual 1071 rule for purposes of the Regulatory Flexibility Act (RFA). Any small entity that falls within the statute’s definition of “financial institution” and offers covered credit could potentially be affected. There are two broad categories of entities that may be covered: DIs and non-DIs.

Table 2 below presents the number of DIs that the Bureau estimates may be covered by the eventual 1071 rule based on the coverage metrics and thresholds under consideration, based on data on small loans to businesses of all sizes in 2018.

**Table 2: Small entity depository institutions covered under metrics & thresholds considered**

Threshold considered	# of small DIs covered	% of small DIs covered
Originations of 25 loans or \$2.5 million	3,500-4,000	40%-45%
Originations of 50 loans or \$5 million	3,000-3,500	35%-40%
Originations of 100 loans or \$10 million	2,000-2,500	25%-30%
\$100 million in assets	4,000	44%
\$200 million in assets	2,250	25%

Types of non-DIs that may be covered under the eventual 1071 rule include the following:

- Lenders involved in equipment and vehicle financing (captive financing companies and independent financing companies)
- Commercial finance companies
- Online lenders/platform lenders
- Non-DI CDFIs
- Governmental lending entities
- Non-profit lenders

### **C. Using HMDA as a basis for potential impacts of the eventual 1071 rule**

The Bureau used previous HMDA rulemaking estimates as a basis for its review of tasks that would impose one-time and ongoing costs associated with 1071 data collection and reporting. The Bureau expects that the tasks required for data collection, checking for accuracy, and reporting under the eventual 1071 rule would be similar to those under HMDA. To analyze the potential impacts of the eventual 1071 rule, the Bureau plans to adapt and build on its methodology from its HMDA rulemaking activities to the small business lending market.

### **D. Types and numbers of 1071 reporters**

During the HMDA rulemaking process, the Bureau identified seven key aspects or dimensions of compliance costs with a data collection and reporting rule: (1) the reporting system used; (2) the degree of system integration; (3) the degree of system automation; (4) the tools for geocoding, (5) the tools for performing completeness checks, (6) the tools for performing edits; and (7) the compliance program. Table 3 below summarizes the typical approach to those seven key aspects or dimensions of compliance costs across three representative types of FIs based on level of complexity in compliance operations. FIs that are Type A have the lowest level of complexity in compliance operations, while Type B and Type C have the middle and highest level of complexity, respectively.

**Table 3: Typical approach to certain aspects/dimensions of compliance costs based on level of complexity for types of 1071 reporters**

Aspect/dimension of compliance costs	Typical approach by low complexity FIs (Type A FIs)	Typical approach by medium complexity FIs (Type B FIs)	Typical approach by high complexity FIs (Type C FIs)
<b>Data storage system used</b>	Store data in Excel	Use LOS and SBL DMS	Use multiple LOS, central SoR, SBL DMS
<b>Degree of system integration</b>	(None)	Have forward integration (LOS to SBL DMS)	Have backward and forward integration
<b>Degree of system automation</b>	Highly manual process for entering and checking data	Use manual edit checks	Have high automation (only verifying edits manually)
<b>Tools for geocoding</b>	Use FFIEC tool (manual)	Use batch processing	Use batch processing with multiple sources
<b>Tools for completeness checks</b>	Conduct manual checks and rely on CFPB quality/validity checks	Use LOS, which includes completeness checks	Use multiple stages of checks
<b>Tools for edits</b>	Use CFPB edits only	Use CFPB and customized edits	Use CFPB and customized edits run multiple times
<b>Compliance program</b>	Have a joint compliance and audit office	Have basic internal and external accuracy audit	Have in-depth accuracy and fair lending audit

Notes: LOS is “Loan Origination System”; SoR is “System of Record”; SBL DMS is “Small Business Lending Data Management System.”<sup>10</sup>

The Bureau also found that, for HMDA, the number of loan applications received was largely correlated with overall FI complexity. The Bureau assumes that, on average, Type A FIs receive 75 small business credit applications per year, Type B receive 300 applications per year, and Type C receive 6,000 applications per year. For the analysis, the Bureau assumes that one out of three small business applications will result in an origination, and thus the originations for an FI that is Type A, Type B, and Type C are 25, 100, and 2,000, respectively. The Bureau estimates that almost no small DIs as defined by the SBA (*i.e.*, under \$600 million in assets) receives more than 6,000 applications per year. As a result, the Bureau focuses on FIs of Types A and B in the Outline and in this document.

<sup>10</sup> The Bureau expects the development of a market for small business data management systems similar to HMDA management systems that FIs will license or purchase from third parties.

## E. Bureau review of compliance processes and costs

The Bureau categorizes costs required to comply with an eventual rule implementing section 1071 into “one-time” and “ongoing” costs. “One-time” costs refer to expenses that the FI would incur initially and only once as it implements changes required to business operations in order to prepare to comply with the requirements of the new rule. “Ongoing” costs are expenses incurred as a result of the ongoing reporting requirements of the rule, accrued on an annual basis.

The Bureau has identified the following eight categories of one-time costs that would be incurred by FIs to develop the infrastructure to collect and report data required by the regulation implementing section 1071:

1. Preparation/planning
2. Updating computer systems
3. Testing/validating systems
4. Developing forms/applications
5. Training staff and third parties (such as dealers and brokers)
6. Developing policies/procedures
7. Legal/compliance review
8. Post-implementation review of compliance policies and procedures

The Bureau has also identified 15 specific data collection and reporting activities that would impose ongoing costs. Table 4 presents the full list of 15 activities.

**Table 4: 1071 data collection and reporting activities imposing ongoing costs**

No.	Activity
1	Transcribing data
2	Resolving reportability questions
3	Transferring to Data Entry System, Loan Origination System, or other data storage system
4	Geocoding data
5	Standard annual edit and internal checks
6	Researching questions
7	Resolving question responses
8	Checking post-submission edits
9	Filing post-submission documents
10	Small business data reporting/geocoding software

No.	Activity
11	Training
12	Internal audit
13	External audit
14	Exam preparation
15	Exam assistance

## F. Impacts of the proposals under consideration

### 1. Overview

This part illustrates the methodology the Bureau intends to use to estimate one-time and ongoing costs for FIs reporting small business loan application data under the eventual 1071 rule. Through the SBREFA process, the Bureau hopes to receive feedback about potential changes to this methodology that would improve its accuracy. Costs of compliance with collecting and reporting data under section 1071 are broken down into one-time costs and ongoing costs.

### 2. One-time costs

The Bureau is conducting a survey regarding one-time implementation costs for section 1071 compliance targeted at FIs who extend small business credit.<sup>11</sup> Estimates from survey respondents of the one-time costs of complying with a 1071 rule will form much of the basis of the Bureau’s estimates for one-time costs in assessing the impact of a proposed 1071 regulation.

### 3. Changes in ongoing costs

Table 5 provides an example of how the Bureau is considering calculating ongoing compliance costs associated with each compliance task. The table shows the calculation for each activity and notes whether the task would be a “variable cost,” which would depend on the number of applications the institution receives, or a “fixed cost” that does not depend on the number of applications. Table 5 shows these calculations for a Type A FI, or the institution with the least amount of complexity. Table 6 below summarizes the activities whose calculation differs by institution complexity and shows the calculations for a Type B FI (where they differ from those for a Type A FI). Type B FIs use more automated procedures, which result in different cost calculations. Table 7 shows the total expected ongoing costs as well as a breakdown by the component 18 activities that comprise the ongoing costs for Type A FIs and Type B FIs. Table 7

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<sup>11</sup> This survey was released on July 22, 2020; the response period closes on October 1, 2020. Due to the COVID-19 pandemic, the Bureau was concerned that conducting the one-time cost survey in spring 2020, as it had originally planned, would have put undue burden on respondents and led to low response rates and poor data and instead opted for a later release date.

also provides the Bureau’s expected ongoing cost for Type C FIs to provide a more fulsome picture of how the Bureau expects ongoing costs to differ by institution complexity.

**Table 5: Ongoing compliance cost calculations for a Type A FI**

No.	Activity	Calculation	Type
1	Transcribing data	Hourly compensation x hours per app. x applications	Variable <sup>12</sup>
2	Resolving reportability questions	Hourly compensation x hours per app. with question x applications with questions	Variable
3	Transfer to Data Entry System	Hourly compensation x hours per app. x applications	Variable
4	Complete geocoding data	Hourly compensation x hours per app. x applications	Variable
5	Standard annual edit and internal checks	Hourly compensation x hours spent on edits and checks	Fixed <sup>13</sup>
6	Researching questions	Hourly compensation x hours per app. with question x applications with questions	Variable
7	Resolving question responses	Hourly compensation x hours per app. with question x applications with questions	Variable
8	Checking post-submission edits	Hourly compensation x hours checking post-submission edits per application	Variable
9	Filing post-submission documents	Hourly compensation x hours filing post-submission docs	Fixed
10	Small business data reporting/geocoding software	Uses free geocoding software	Fixed
11	Training	Hourly compensation x hours of training per year x number of loan officers	Fixed
12	Internal audit	No internal audit conducted by FI staff	Fixed

<sup>12</sup> In this table, the term “variable” means the compliance cost depends on the number of applications.

<sup>13</sup> In this table, the term “fixed” means the compliance cost does not depend on the number of applications (even if there are other factors upon which it may vary).

No.	Activity	Calculation	Type
13	External audit	One external audit per year	Fixed
14	Exam preparation	Hourly compensation x hours spent on examination preparation	Fixed
15	Exam assistance	Hourly compensation x hours spent on examination assistance	Fixed

**Table 6: Differences in ongoing cost calculations for a Type B FI**

No	Activity	Difference for a Type B FI
1	Transfer to Data Entry System	No employee time cost. Automatically transferred by data management software purchased/licensed
2	Complete geocoding data	Cost of time per application unable to be geocoded by software
3	Small business data reporting/geocoding software	Uses geocoding software and/or data management software that requires annual subscription
4	Internal Audit	Hourly compensation x hours spent on internal audit
5	External Audit	Yearly fixed expense on external audit

**Table 7: Estimated ongoing costs per compliance task**

No	Activity	Type A FI	Type B FI	Type C FI
1	Transcribing data	250-500	500-1,000	10,000-20,000
2	Resolving reportability questions	50-100	100-250	250-500
3	Transfer to 1071 Data Management Software	250-500	0	0
4	Complete geocoding data	50-100	250-500	250-500
5	Standard annual edit and internal checks	250-500	5,000-10,000	10,000-20,000
6	Researching questions	50-100	100-250	250-500



No	Activity	Type A FI	Type B FI	Type C FI
7	Resolving question responses	0	0	0
8	Checking post-submission edits	<50	<50	100-250
9	Filing post-submission documents	<50	<50	<50
10	1071 Data Management System / geocoding software	0	5,000-10,000	10,000-20,000
11	Training	500-1,000	1,000-5,000	20,000-50,000
12	Internal audit	0	250-500	100,000-150,000
13	External audit	500-1,000	5,000-10,000	0
14	Exam prep	<50	1,000-5,000	20,000-50,000
15	Exam assistance	100-250	500-1,000	1,000-5,000
	<b>Total</b>	<b>\$2,000-\$4,200</b>	<b>\$18,700-\$43,600</b>	<b>\$171,850-\$316,800</b>
	Per application	\$27-\$56	\$62-\$145	\$29-\$53
	Total DI Net Income Per Application	\$37,000-\$45,000	\$12,000-\$13,000	\$1,000-\$1,300

The Bureau estimates that the lowest complexity institution (*i.e.*, a Type A FI) would incur around \$2,500 in total annual ongoing costs, or about \$34 in total cost per application processed (assuming an average of 75 applications per year). The Bureau estimates that a middle complexity institution (*i.e.*, a Type B FI), which is somewhat automated, would incur approximately \$29,550 in additional ongoing costs per year, or around \$99 per application (assuming an average of 300 applications per year).

#### 4. Analysis of alternatives

This part describes how the Bureau expects ongoing costs to differ based on several significant policy alternatives to the proposals under consideration. Table 9 shows the Bureau's estimates of how the ongoing costs would differ with each policy alternative. Each row compares the alternative to the baseline scenario of the approach the Bureau is considering.

**Table 9: Ongoing costs under policy alternatives**

Alternatives	Type A FI		Type B FI	
	Total cost	Cost per application	Total cost	Cost per application
Proposals under consideration	\$2,520	\$34	\$29,550	\$99
Statutorily required data points only	\$2,280	\$30	\$28,240	\$94
Requiring a “firewall”	\$2,520	\$34	\$29,550	\$99
Requiring verification of certain data points	\$2,680	\$36	\$30,750	\$103

**5. Additional potential impacts of the eventual 1071 rule**

**i. Impacts on product offering and underwriting processes**

There are characteristics of certain small business lending products that are perhaps unique or distinct from consumer lending, such as lengthier underwriting processes that involve more lender-applicant interaction or a more diverse set of product offerings. Compliance costs could lead FIs to move away from products that require significant employee time to underwrite towards more standardized products that require less time and lower labor costs. The Bureau hopes to learn from the SBREFA process whether FIs would expect to change either the set of small business products that they offer or the underwriting practices they use in response to the implementation of the eventual 1071 rule (see Q83 above).

**ii. Impacts due to publicly available data and reputation risks**

In accordance with the balancing test discussed above, the Bureau expects to publicly release data collected under the eventual 1071 rule, potentially with certain data modified or deleted. With the publicly disclosed data, users would be able to assess fair lending risks at the institution and market level, furthering section 1071’s fair lending purpose. Depending on the extent of publicly disclosed data, the Bureau expects that some FIs could incur ongoing costs related to responding to reports of disparities in their small business lending practices. In anticipation of needing to respond to outside analysis and potential reputational risks, it is possible that some FIs may choose to change their product offerings available to small businesses, underwriting or pricing practices, or overall participation in the small business lending market. The Bureau hopes to learn more about the potential for impacts in these areas through the SBREFA process (see Q83 above).

## **G. Impact on the cost and availability of credit to small entities**

The Bureau's one-time cost survey includes questions about the expected impact of 1071 compliance costs on business operations. The Bureau anticipates using the results of this survey to refine its estimates of the impact of compliance on the costs and availability of credit for small entities. One-time costs and fixed ongoing costs affect the overall profitability of a lender's loan portfolio but do not affect the profitability of extending an additional loan. Variable ongoing costs, however, affect the profitability of each additional loan and will be relevant for the number of loans a lender provides. The Bureau expects that much of the variable cost component of ongoing costs would be passed on to small business borrowers in the form of higher interest rates or fees. While existing academic literature on small business markets is limited, research on consumer credit products suggests that borrowers are less likely to choose products or credit amounts based on interest rates, which may be due to the difficulty consumers face in shopping for a lower interest rate. Additionally, some existing research suggests that lenders to small businesses significantly adjust loan amounts in response to the cost per originated loan. In light of these two factors, the Bureau expects that the variable ongoing costs would be nearly passed on in full to small business borrowers.