



December 15, 2025

Comment Intake—1071 Reconsideration NPRM  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**Re: RIN 3170-AB40, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)**

The Commercial Real Estate Finance Council (CREFC) is pleased to provide comments on the Consumer Financial Protection Bureau's (CFPB) proposed rule on small business lending data collection (1071).

CREFC comprises over 400 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with over \$6 trillion of commercial real estate ("CRE") debt outstanding. CREFC members include various CRE finance industry participants, including different types of lenders (e.g., investment banks, commercial banks, debt funds, government-sponsored entities), sponsors, and underwriters of commercial mortgage-backed securities ("CMBS"), investors and purchasers of CRE loans and CMBS products, including banks, insurance companies, pension funds, specialty finance companies, real estate investment trusts ("REITs") and money managers, loan servicers, rating agencies, accounting firms, law firms, appraisers, and various due-diligence service providers.

We appreciate the vital role that small businesses play in our economy and support the statutorily required efforts to facilitate the availability of credit to small businesses, women-owned businesses, and minority-owned businesses. To that end, our comments align with the CFPB's goals of crafting a rule that collects relevant information on small business lending and does not burden lenders or borrowers.

We agree with the CFPB's stated premise that "a potentially long-term data collection regime should start with a focus on core lending products, lenders, small businesses, and data points." And we support, in particular, the following proposed changes:

- **Higher institutional loan threshold:** The CFPB proposes that the "initial iterations of data collection" should focus on larger core lenders and proposes raising the origination threshold from 100 to 1,000 covered credit transactions for each of two consecutive years.
- **Lower revenue threshold:** The CFPB, noting that 1071 should focus on "truly small businesses," proposes to change the gross annual revenue threshold in the rule's definition of small business from \$5 million or less to \$1 million or less.

- **Longer compliance period:** The CFPB proposes to extend the rule’s compliance date provisions to January 1, 2028, for all financial institutions covered by the rule.

As stated in our [2022 comment letter](#), however, CREFC continues to believe that credit secured by non-owner occupied commercial real estate should be exempt from 1071. Commercial mortgage lending is fundamentally different than small business retail lending, and the 1071 policy objectives would be better served by exempting CRE loans from the data collection via the investment property exclusion.<sup>1</sup>

### **Commercial real estate lending should be excluded from the scope of 1071 reporting**

In the preamble to the current 1071 proposal, the CFPB states that at the onset of data collection under section 1071 the rule should focus on “core, generally applicable lending products that are most likely to be foundational to small businesses’ formation and operation—loans, lines of credit, and credit cards—before determining whether to expand the scope of the rule to include more niche or specialty lending products.”

Unlike the loans, lines of credit, and credit cards that the CFPB characterizes as “foundational” to small-business formation and operations, commercial real estate loans are structured around the investment performance of the underlying property rather than the activities of an operating business. Federal law and industry practice clearly recognize that investment property lending, i.e., CRE finance, is a category of lending distinct from small business lending. As detailed below, the federal prudential regulatory agencies provide separate supervisory guidance for small business lending and investment property lending.

#### ***The CRE Property Is the Borrower***

As investment properties, CRE loans are underwritten based on the property’s cash flow (generally from rental income) and its value. In contrast, a typical small business loan is underwritten based on the cash flow from the operation of the business itself. This distinction is recognized throughout federal law, including the Small Business Administration’s (SBA) regulations that exclude real estate firms that hold real property for investment purposes from eligibility for SBA’s small business loan programs.<sup>2</sup> Other areas of financial services law also recognize this distinction, including publicly available bank Call Reports.

#### ***Federal Financial Regulatory Reporting Distinguishes CRE Lending***

The [FFIEC Call Report Instructions](#), which banks are required to file, distinguish between “loans secured by owner-occupied nonfarm nonresidential property” and similar property that is not owner-occupied. Owner-occupied property loans are treated as loans to the operating business,

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<sup>1</sup> We appreciate that the original final rule exempted multifamily lending from 1071 requirements.

<sup>2</sup> For certain SBA loan programs, “passive” real estate holding companies and investment real estate businesses are generally ineligible unless they use the Eligible Passive Company/Operating Company structure and the operating company actively occupies/uses the property (see 13 CFR 120.110 and 120.111).

which is more analogous to a small business loan. This distinction is also found in supervisory guidance.<sup>3</sup>

The source of repayment is the key distinction between these two types of property-based lending.

- **Owner-occupied** property loans, and other business loans, are repaid from the operations of the business itself (e.g., a bookstore that takes out a loan to purchase a building to sell books).
- **Non-owner occupied** CRE loans are repaid from rental income associated with the property or the proceeds of the sale of that property (e.g., a landlord takes out a loan to purchase a building and rents space to a bookstore).

The [FFIEC Call Report Instructions](#) are illustrated in the chart below:

Type of Loan	Source of Repayment	Summary
<b>Owner-Occupied CRE (nonfarm nonresidential properties)</b>	The cash flow from the ongoing operations and activities conducted by the party, or an affiliate of the party, <b><u>who owns the property.</u></b>	<ul style="list-style-type: none"> <li>• A business owns and conducts its business on the property, which has a mortgage;</li> <li>• The business does not make its money by renting the property;</li> <li>• A lender will examine the business’s cash flow to determine if it can repay its loan.</li> </ul>
<b>Non-owner occupied CRE (other nonfarm nonresidential properties)</b>	Repayment derived from <b><u>rental income</u></b> associated with the property ( <i>i.e.</i> , loans for which 50% or more of the source of repayment comes from third party, nonaffiliated, rental income) or the <b><u>proceeds of the sale, refinancing, or permanent financing of the property.</u></b>	<ul style="list-style-type: none"> <li>• A business owns a property, which has a mortgage,</li> <li>• The business makes money renting the property to third parties,</li> <li>• A lender will examine how profitable renting the property is as well as the value of the property.</li> <li>• Includes loans secured by hotels, motels, dormitories, nursing homes, assisted-living facilities, mini-storage warehouse facilities, and similar properties in this item as loans secured by other nonfarm nonresidential properties.</li> </ul>

<sup>3</sup> See [Interagency Statement on Meeting the Credit Needs of Creditworthy Small Business Borrowers](#), p. 2 (Feb. 5, 2010). See [OCC Commercial Real Estate Lending Comptroller’s Handbook](#), pp. 131 (March 2022).



## Conclusion

As reflected in both the federal regulatory framework and industry practice, CRE finance is fundamentally different from small-business lending. Bringing CRE loans within the scope of section 1071 would stretch the reporting regime beyond its intended focus on small-business credit.

We, therefore, urge the CFPB to exempt from section 1071 rulemaking credit secured by non-owner-occupied commercial real estate. Like other investment properties, these loans are underwritten based on the property's cash flow and collateral value rather than the operating revenues of a business. The 1071 framework would be more coherent and targeted if it excluded CRE investment properties.

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Please let us know if there is any additional background information on commercial real estate lending that the Bureau might find helpful as it implements Section 1071. Feel free to contact Sairah Burki, Managing Director, Regulatory Affairs, Commercial Real Estate Finance Council, at [sburki@crefc.org](mailto:sburki@crefc.org).

Sincerely,

A handwritten signature in black ink that reads "Lisa A. Pendergast".

Lisa Pendergast

President & CEO

CRE Finance Council