

January 6, 2022

Mr. Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection

To Whom it May Concern:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the Notice for Proposed Rulemaking (NPRM) public comment on amending Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Congressional intent of Section 1071 is to ensure that the agency could successfully facilitate enforcement of fair lending laws; and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

The proposed data collection rule will bring much-needed transparency to the small business lending market. The implementation of Section 1071 would provide the first comprehensive dataset on the small business lending industry, allowing for analysis of trends, a greater understanding of how financial institutions provide credit to small businesses; and the overall financial health of our nation's small businesses, especially women-owned and minority-owned businesses.

Mission lenders provide affordable, responsible capital to businesses that cannot access traditional financing. CDFIs do this while still maintaining strong balance sheets and minimal losses by employing sound and prudent lending practices and working closely with their borrowers to provide training and technical assistance. In fiscal year (FY) 2019, certified CDFIs had more than \$24 billion of small business and microloans in their portfolios. With cumulative net charge off rates of less than 1 percent, these institutions lend productively in markets underestimated by mainstream banks.¹

Section 1071 will support this effort by determining which lenders are truly meeting the credit needs of small businesses by highlighting the financial products and

¹ Opportunity Finance Network, "Testimony of Lisa Mensah Provided to the Senate Committee on Small Business and Entrepreneurship", Accessed December 16, 2021.



business models best designed to reach underserved entrepreneurs. The CFPB's proposal will be critical to identifying patterns of discrimination for small businesses seeking access to credit.

OFN strongly supports the following aspects of the proposed rule:

Definition of Financial Institution

OFN commends the CFPB for putting forth a proposed definition of a financial institution that will ensure broad coverage of the small business lending market by including depository institutions, online lenders/platform lenders, CDFIs, lenders involved in equipment and vehicle financing (captive financing companies and independent financing companies), commercial finance companies, governmental lending entities, and nonprofit non-depository lenders.

Of particular importance is the inclusion of online and platform lenders as this is a growing segment of the market, and many minority-owned small businesses are turning to online products to finance their business needs. Not enough is known about their business models, underwriting methods, and portfolio quality. This data collection presents an opportunity to introduce more transparency in a market that has limited oversight. The current lack of regulation in the market and transparency about loan pricing and terms limits the ability of business owners to make informed decisions. The CFPB's implementation of Section 1071 provides an opportunity to collect and analyze data on the market that is currently unavailable to the public and will provide more insight into the portfolio and asset quality of these lenders.

It is also of critical importance that traditional, regulated lenders are required to report on their small business lending. Mainstream banks still make the majority of small business loans and understanding more about the reach and scope of the financing provided will provide invaluable information about access to credit for small businesses.

Definition of Application

Furthermore, OFN is pleased to see the adoption of the "application" definition as proposed using Regulation B's term.² This proposed approach would commence the 1071 data collection requirement only after there is an actual request for credit based on the individual financial institution's policies and procedures, but still early enough in the process to capture incomplete, withdrawn, and denied applications. Such provisions will help capture businesses that do not make it through to submitting a completed application and help identify barriers to credit that may

² 2021-19274.pdf (govinfo.gov). Accessed December 16, 2021.



emerge early in the process, making the reported data more in line with Section 1071's statutory purposes.

Lenders in OFN's network did express concerns that collecting this demographic data early in the application process could discourage potential applicants. Some CDFIs note that collecting this data early in the application stage, even where demographic questions were clearly noted as being optional and having no bearing on underwriting, resulted in negative feedback from applicants that providing this information at application was intrusive. Borrowers believed that the information would negatively impact the loan request despite assurances that it would not be considered in the credit decision process. OFN strongly urges the CFPB to share best practices or recommendations for which types of disclosures or assurances lenders can provide to allay borrower concerns about how this data will be utilized.

Exemptions

OFN commends the CFPB for adopting an activity-based exemption for lenders making fewer than 25 small business loans per year. As noted above, for the rule to be effective, as many lenders as possible must be covered. Exempting key players in the market will undermine the goal of transparency, understanding where credit is flowing and to whom, as well as pricing and terms. Collecting this data is necessary to determine if credit is affordable and responsible. An activity-based exemption is preferable to an asset-based exemption because it will capture information from lenders that may be small by asset size but make a high volume of small, high-cost loans. Such products may not be in the best interest of the borrower.

In general, OFN strongly supports many of the provisions put forth in the proposed rule. There are several aspects of the rule where there is room for improvement:

Annual Percentage Rate and Pricing Data

OFN strongly supports the CFPB's proposal to include pricing data points including interest rate, origination charges, broker fees, non-interest charges, and any prepayment penalties be collected and reported, as it is essential in providing the Bureau with adequate tools to efficiently enforce fair lending laws. However, OFN agrees with the Responsible Business Lending Coalition (RBLC) that the Bureau should also collect and report the actual or estimated annual percentage rate (APR) as a key pricing datapoint for all covered products, as prescribed by Regulation Z in the Truth and Lending Act and adopted by both New York and California as part of its commercial financing disclosure laws.



As National Community Reinvestment Coalition (NCRC) notes in its comments, access to loans is not meaningful if they are disproportionately high-priced with onerous terms and conditions for traditionally underserved small businesses. Pricing information is needed to monitor the affordability of loans and to allow stakeholders to take action if lending is not sustainable in underserved communities.

OFN also urges the CFPB to strengthen its rule by requiring lenders to report the credit scores of their clients. The collection of credit score data will allow 'apples to apples' comparisons and help determine if businesses that have historically struggled to access responsible loans receive credit on identical terms to similar white-owned businesses. This information can be collected with minimal additional burden - many CDFIs are already required to collect and report credit scores as part of their reporting obligations for CDFI Fund awards.

Product Coverage

OFN is pleased to see the proposed rule include Merchant Cash Advances (MCAs) and similar sales-based financing that have become major components of the small business financing landscape. As the RBLC notes in its comments, the Bureau's inclusion of MCAs, and their pricing, is especially crucial to meet the statutory purposes of 1071 because the higher costs of these products is having a disproportionate impact in smaller and minority-owned businesses.

A 2018 report by the Federal Reserve Bank of New York and the Stanford Graduate School of Business found that, "Latino business owners are more likely than non-Latino white business owners to use merchant cash advances---products that require less collateral and are associated with higher average interest rates."³ We are disappointed that the proposed rule does not include factors as a covered product and urge the CFPB to reverse its decision on factors and require them to submit data in order to monitor their financing and ensure it is not abusive.

Collecting of Certain Demographic Data

OFN is pleased to see the CFPB is proposing to require the collection of disaggregated racial and ethnic categories to help determine the extent to which racial and ethnic subgroups have different experiences in the small business lending market. While this is welcome news, OFN is concerned about requiring lenders to collect at least one principal owner's race and ethnicity via visual observation or surname if the financial institution meets with any principal owners in person or via electronic media with an enabled video component.

³ Report-on-Latino-Owned-Small-Businesses.pdf (newyorkfed.org)



This proposal will likely result in inaccurate assessments of applicants racial and ethnic identity and does not account for things such as surnames that have been changed by marriage or individuals that have multiple racial or ethnic identities. Requiring lenders to make such an assessment, even with detailed guidelines, is deeply problematic. OFN urges the CFPB to require applicants to self-report this information rather than relying on lenders to make judgment calls.

Improvements could also be made in the proposed collection of data on gender identity and sexual orientation. OFN agrees with NCRC that the current proposal would make it difficult to assess if small businesses owned by people with intersectional identities and orientations experience discrimination. Likewise, the CFPB did not propose to collect information on whether the small business is owned by people with disabilities--this would be critical information to judge the experiences of this population that often faces unfair treatment.

Aligning Section 1071 Reporting with CDFI Fund Reporting

The CFPB should coordinate data collection and reporting requirements to ensure Section 1071 reporting aligns with CDFI Fund reporting. CDFIs receiving awards through the CDFI Fund Financial Assistance program are required to report for a three-year period through the CDFI Fund's Transaction Level Reporting (TLR) data points well beyond the scope of Section 1071, including interest rates, origination, points and fees, amortization type, the term of the loan, and payment dates. Some CDFIs also report on lending activity to the: SBA, CRA reporting to banks, OFN's annual member survey, and credit reporting agencies.

Furthermore, new requirements from the CDFI Fund will likely expand transaction level reporting requirements to all certified CDFIs. To the extent possible, the CFPB should standardize data formats to match those used in reporting to the Treasury Department's CDFI Fund. There should be interagency coordination to streamline data collection and reporting requirements across agencies to minimize the burden on CDFIs as new requirements are implemented.

Some CDFIs will have to adjust and update processes and systems to comply with Section 1071. The CDFI industry uses several different loan software products. Existing software providers continually modify their systems to comply with the CDFI Fund's reporting requirements. OFN urges the CFPB to work with both the CDFI Fund and loan software providers to streamline the process of integrating new data collection processes into existing systems.

Implementation Timeline for Mission Lenders



The Bureau has proposed an 18-month timeline for implementation of Section 1071 reporting. OFN agrees that there is a pressing need to commence the data collection, especially more than a decade after the passage of the Dodd–Frank statute. However, mission lenders with limited capacity like CDFIs may require additional time and resources to successfully update their systems and compliance reporting. We urge the CFPB to reconsider the implementation timeline set forth in the rulemaking extend the timeline to at least 30 months from the initial 18-month proposal. This recommendation would allow small mission lenders with limited capacity additional time to develop systems and infrastructure needed to comply with the regulation. Mission lenders that are ready to start reporting in 18-month should be able to opt-in to the existing timeline.

The CFPB should also provide training and detailed guidance and templates to help lenders navigate these new requirements. Likewise, CFPB regulators should work with other government agencies to ensure that existing reporting is leveraged where possible, and that the costs associated with the implementation of Section 1071 are not borne by those with the least ability to pay.

Conclusion

OFN commends the CFPB on putting forth a thoughtful, detailed rule that achieves the fair lending and community development statutory purposes of Section 1071. Thank you for the opportunity to comment on this significant matter. Please do not hesitate to contact me at dwilliams@ofn.org or 202.868.6922 with any questions.

Kind regards,

Dafina Williams
Senior Vice President, External Affairs

JK Phenix
Associate, Public Policy