September 14, 2017

Via Electronic Mail
The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First Street N.E.
Washington, D.C. 20002

Re: CFPB-2017-0011 Request for Information on the Small Business Lending Market

Dear Director Cordray:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the CFPB-2017-0011, the Consumer Financial Protection Bureau (CFPB) Request for Information on the small business lending market. OFN is a national network of more than 230 community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under-resourced communities across America. Our members offer responsible financial products and services in all types of communities—urban, rural, and Native—across the U.S, connecting communities to capital that creates jobs, supports small businesses, builds affordable housing, cultivates healthy food and energy efficiency, and promotes safe borrowing and lending.

For mission-driven lenders like CDFIs, increasing access to affordable, responsible capital for underserved businesses is a key component of their strategy. CDFIs provide affordable, responsible capital to businesses that cannot access traditional financing and still maintain strong balance sheets and minimal losses because by employing sound and prudent lending practices, policies, and procedures.

OFN commends the CFPB for its efforts to understand and regulate the small business lending market, and to identify the challenges accessing credit faced by small businesses. The rule's enforcement of fair lending laws is also critically important and will enable communities, governmental entities, and creditors to identify business and community development needs. Although lending conditions have been relatively stable for the past several years, credit standards for loans have remained tight since the Great Recession. Women-owned and minority-owned small business owners continue to face significant challenges accessing capital to start or grow their businesses.

The information collection will also bring much needed transparency to the small business lending market. As access to traditional credit remains difficult for small businesses to secure, new lenders have entered the small business marketplace, some using business models that provide high-cost loans targeting the most vulnerable small businesses with little to no oversight. The implementation of Section 1071 will provide the first comprehensive dataset on the small business lending industry, allowing for analysis of trends, 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.

The data collection will have an impact on CDFIs in our network. Many CDFIs already collect much of the statutorily required information, and most collect far more detailed data for reporting to the U.S. Department of Treasury's CDFI Fund and the Small Business Administration (SBA). Our industry is supportive of the intent of the data collection and welcomes the opportunity to make information on lending to small businesses, especially minority-owned small businesses, publicly available. At the same time, CDFIs in our network voiced concerns about the potential for new, duplicative burdensome reporting requirements for CDFIs.

To that end, OFN would like to provide the following comments on the Request for Information:

Small Business Definition

1. **What potential challenges and burdens would financial institutions or applicants encounter if a business lending data collection rule defined a "small business" applicant using the SBA's NAICS-specific size regulations?**

   CDFIs in our network noted that while many already collect six-digit North American Industry Classification System (NAICS) codes for each loan, not all CDFIs have systems in place to support collection of NAICS codes. CDFIs that are current grantees under the Community Development Financial Institution Fund's (CDFI Fund) Financial Assistance program are required to report NAICS codes for all loans originated after 12/31/2010.[1] Although for those CDFIs that currently collect data, this would not impose an undue burden, it is worth noting that not all CDFIs collecting NAICS codes are using them to qualify a business as small.

   For CDFIs not currently collecting NAICS codes, defining small business using NAICS-specific size standards would impose a burden. One organization noted that their customers are unlikely to independently know their NAICS codes and collecting this information would add an administrative burden. The

[1] CDFI Fund, "FY2016 Transaction Level Reporting (TLR) Guidance," https://www.cdfifund.gov/Documents/14%200%20CDFI%20TLR%20Instructions%20FINAL.pdf.

requirement might result in individual CDFIs that develop their own definition of small business that better suits the profile of their borrowers having to use more than multiple definitions: one for internal purposes and others for reporting to funders.

2. What definitions of "small business" do financial institutions currently use internally or for external reporting purposes?

CDFIs in our network report to numerous public and private sector funders. Many of the CDFIs in our network are past or current awardees of the CDFI Fund's Financial Assistance program, and all OFN members are required to complete a comprehensive annual survey as a condition of membership in the network.

Both the OFN survey and the CDFI Fund reporting use the same definition of small business and microenterprise loans, which is also used by OFN in our survey. The CDFI Fund defines Non-Real Estate Business loans as:

> "Financing to for-profit and nonprofit businesses with more than five employees or in an amount greater than $50,000 for a purpose that is not connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate."[2]

The CDFI Fund defines Non-Real Estate Microenterprise loans as:

> "Financing to a for-profit or non-profit enterprise that has five or fewer employees (including the proprietor) with an amount no more than $50,000 for a purpose that is not connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate."[3]

It is worth noting that the CDFI Fund separates real estate transactions from business loans, as those loans are typically reported as housing loans to individuals, housing loans to organizations, commercial real estate loans, or community services loans. Loans to nonprofits for non-real estate related transactions are considered small business loans as well.

Most CDFI business lending transactions would likely be covered under any definition of small business that the CFPB is planning to consider. OFN encourages the CFPB to adopt the simplest possible definition of small

[2] Id. at 1.
[3] Id.

business, with a focus on either: number of employees, annual business revenue, or loan amount, or some combination of those factors. We also encourage the CFPB to clarify if real estate based transactions or loans to nonprofits will be covered under the rule.

a. What factors are used to define a "small business" (such as revenue of the business applicant)? If more than one factor is used, are those factors considered individually or in combination?

   OFN's and the CDFI Fund's definition use both employee size and loan amount to qualify a transaction as a small business loan. For individual CDFIs seeking to qualify loan applicants, the definition varies by organization. Some CDFIs look at business revenue and/or number of employees, but in general, CDFIs tend to qualify transactions as small business loans or microenterprise loans based on the loan size.

b. What minimum or maximum thresholds are used to define a "small business"?

   The Community Reinvestment Act (CRA) defines small business or small farm as a business that meets the U.S. Small Business Administration's (SBA) Small Business Development Center (SBDC) or Small Business Investment Company (SBIC) programs size standards or has gross annual revenues of $1 million or less.[4] The SBA's annual "Small Business Lending in the United States" report defines a small business as a firm with fewer than 500 employees and a small business loan as a loan of $1 million or less.[5]

   The threshold must be high enough to cover a significant portion of the small business lending market. OFN recommends using the SBA and CRA thresholds of $1 million in annual revenue for a business, and a maximum loan size of $1 million to define a small business loan, which is simple and easy to understand, and would cover a significant portion of the small business lending market.

[4] John Meeks, "An Introduction to the Community Reinvestment Act", FDIC Community Affairs, Atlanta Region, 2005, https://www.richmondfed.org/~/media/richmondfedorg/conferences_and_events/community_development/2012/cra_intro_050212.pdf

[5] Office of Advocacy, "Small Business Lending in the United States, 2014-2015" U.S. Small Business Administration, June 2017. Accessed August 29, 2017. https://www.sba.gov/sites/default/files/Banking_study_Full_Report_508_FINAL.pdf

Data Points

3. **What data standards regarding information on small business financing are financial institutions currently subject to or using?**

    a. What information is being collected, reported, or disclosed using these data standards?

    CDFIs report to a variety of funders and investors, and are required to collect a variety of data points for each investor. Many of those reports require collecting data on: the business owner's credit score at time of the loan closing; demographic data on race, ethnicity, gender; personal gross income to determine if the business owner is a low-income person; project address to determine if the business owner is in a low-income area, number of jobs created and retained, business gross profits, if the business is located in a rural area, if the business is a start-up company, the use of funds or the loan purpose, and any technical assistance provided to the borrowers.

    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) and Institutional Level Reporting (ILR) more than 100 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.[6] Some CDFIs also report on lending activity to the: SBA, CRA reporting to banks, OFN annual member survey, and credit reporting agencies.

    Some CDFIs in our network were unclear if the information collection would apply to approved loans or if lenders would be expected to report on all loan applications made regardless of the final lending decision. For many CDFIs, being required to report on all loan applications, regardless of whether the application is funded or denied, would be far more burdensome than simply providing the same data on loans approved. OFN urges the CFPB to clarify if the rule covers loan applications or loans approved.

    b. Are these data standards applicable at the loan level, on an aggregate basis, or some combination of the two?

    For CDFI Fund reporting, data is collected at both the loan level in the TLR report and at the institution level in the ILR reports.

[6] *Id.* at 1.

4. **What information concerning the data points specifically identified for reporting under section 1071 by Congress do financial institutions collect and maintain in the ordinary course of business concerning their small business lending?**

   In general, most CDFIs reported already collecting the statutorily mandated data points in Section 1071 but only on approved loan applications. Some organizations reported using a loan number rather than an application number, while others do not collect census tract data. There were some organizations that did report not having an existing application number routine or system. As a result, compliance with Section 1071 will be more burdensome and expensive for those organizations, especially smaller lenders with limited resources who may have to create and implement all new systems.

   a. What sources of information do financial institutions rely on in obtaining this data, including, for example, applicant self-reporting, specific documents used by financial institutions to obtain this data, or third party sources?

      CDFIs in our network obtain this data using self-reporting, credit reports, tax returns, and other external data sources such as PolicyMap.

   b. What technological or other challenges do financial institutions foresee in collecting and reporting this data (such as the manual compilation of information, the lack of an electronic system for maintaining this information, the potential for this information to be found in multiple systems within a financial institution, etc.)? What steps can the Bureau take within a business lending data collection rulemaking to minimize the challenges?

      As previously mentioned, some CDFIs will have to adjust and update processes and systems to comply with the rule. This could impose a significant expense and compliance burden depending on the scope of the changes. Another potential burden is having to create multiple reports to submit to different agencies. CDFIs that are current awardees under CDFI Fund programs should be able to submit their TLR reports to the CDFI Fund to meet the compliance requirement. CDFIs that are not currently reporting to the CDFI Fund but are an OFN member should be able to submit a version of the OFN annual member survey data to reduce the compliance burden.

      In addition, 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.

c. With respect to which data points, if any, among those specifically identified by Congress in Section 1071, do financial institutions currently not collect any information?

   As stated above, some CDFIs reported using a loan number rather than an application number, while others do not collect census tract data. Many CDFIs do not have an existing application number routine or system.

5. **The Bureau understands that applications for small business financing may vary both by financial institution and by the business credit product. How do financial institutions integrate data collection into their application process?**

   a. When are different data collected in the process (such as at the time of initial application, during the application process, or near the end of the process)?

      Each CDFI has their own process for collecting data, and collect it at different points in the process. For most CDFIs, data is collected during the application process, underwriting process, at the time a loan is closed, and once a loan is on-boarded.

   b. What verification procedures are used?

      CDFIs in our network report using tax returns, IRS transcripts, and credit reporting agencies to verify information collected during the application process. One CDFI reported having a dedicated staff member who organizes, collects, and verifies all data.

   c. Are certain data not collected or more difficult to collect if the application is not originated and instead is withdrawn, denied, or involves a counteroffer?

      Many CDFIs do not collect demographic data until loan disbursal. For these lenders, demographic data would be more difficult to obtain for withdrawn and denied applications.

   d. Are different data collected for different types of credit events (such as renewals, line increases, etc.)?

      Each CDFI has their own process for collecting data.

e. What systems, whether proprietary or provided by a third-party vendor, are used by financial institutions to collect and maintain the data?

   OFN recently conducted a survey of CDFI loan funds to better assess the technology landscape. The report found that business and microenterprise loan funds use several software providers for loan management, including DownHome, TEA, Portfol, Excel, Northridge, Salesforce, and Quickbooks.[7]

f. How does data collection differ according to business credit product?

   Each CDFI has its own data collection practices. One organization uses different commercial loan applications for individual loan products, including for-profit, nonprofit, energy-related, and raingarden loans. Other CDFIs report using the *s*ame application for each business loan type.

6. Considering the data points specifically identified by Congress for reporting in section 1071:

a. What concerns, if any, do financial institutions have about the possibility of misinterpretations or incorrect conclusions being drawn by regulators from the collection of the data provided for in Section 1071 or by the public from potential release of these data in a manner protective of privacy interests?

   OFN looks forward to this data collection creating a robust public data set that creates transparency in the small business lending marketplace. At this time, we do not have any concerns about misinterpretation of the data. OFN urges the CFPB to present as much raw data to the public as possible to allow for independent assessment and analysis of trends by a wide variety of stakeholders.

7. What information about the type of business (such as NAICS code or other industry information) of a small business applicant do financial institutions currently collect? What challenges might financial institutions have in potentially collecting this information under section 1071?

As stated in Question 1, many CDFIs collect NAICS codes as part of their normal business. CDFI Fund awardees reporting under the TLR must collect and report business address, date of business establishment, the entity structure, NAICS code, demographic information about whether the borrower

[7] Opportunity Finance Network, "CDFI Loan Fund Technology Landscape: User Survey Results", June 2017, http://ofn.org/publications.

is a woman, person of color, or low-income, the number of permanent, full-time equivalent jobs in the business at the time of investment.[8]

8. **What information about the number of employees of a small business applicant do financial institutions currently collect? What challenges might financial institutions have in potentially collecting this information under section 1071?**

   CDFIs currently collect the number of full-time equivalent employees at the time the loan closes. This information would be difficult to collect if Section 1071 applies to loan applications rather than loans approved, since the CDFI collects this information at loan closing.

9. **In section 1071, Congress requires financial institutions to collect and report information on whether an applicant is a women-owned, minority-owned, or small business and the ethnicity, race, and sex of the principal owners of the business. Section 1071 provides for limitations on access to certain information, including an applicant's minority-owned or women-owned business status, by underwriters, where feasible, and provides for limited access in certain circumstances determined by the financial institution with notice to the applicant.**

   a. What challenges do financial institutions foresee in complying with these requirements with respect to applications by small businesses, including any potential challenges in identifying the principal owners of the business and reporting demographic information about them?

      OFN fully supports the collection of demographic data about business owners. This information is key to identifying patterns of discrimination, and is critical to the enforcement of fair lending laws and upholding the statutory intent of Section 1071. CDFIs routinely collect demographic data about business owners, but did express concerns about this aspect of Section 1071. Some CDFIs noted if the CFPB requires the collection of this information on gender and race/ethnicity at the application phase, rather than at loan approval, potential borrowers might interpret this as a factor in the underwriting decision, and may be deterred from seeking credit. This is problematic because research suggests that women and diverse business owners are more likely to avoid applying for capital than their peers due to a fear of being declined.[9] Bates and Robb, found that African Americans

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[8] *Id.* at 1.

[9] Robb, Alicia, "Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech firms" U.S. Small Business Administration, 2013. Accessed August 20, 2017. https://www.sba.gov/sites/default/files/files/rs403tot(2).pdf

are 37 percent more likely and Hispanics are 23 percent more likely than non-minorities to avoid applying for credit for fear of rejection, and that among women entrepreneurs, between 2007 and 2010 they were slightly more likely than men not to apply for credit for fear that their loan applications would be denied.[10] OFN encourages the CFPB to allow lenders to conduct additional research to understand whether moving collection of data on gender and race/ethnicity to the application phase would have unintended consequences that run counter to the spirit of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 et seq.

Other CDFIs in our network indicated that this change would require significant and costly changes to their systems. This would be especially burdensome for small organizations, where the loan originator and the underwriter are often the same person.

b. In what situations, if any, may it not be feasible to limit underwriter access to this information?

   CDFI loan funds in our network feel that would be extremely burdensome to limit their underwriters' access to this demographic information. Certified CDFIs are required to track their lending to target markets for CDFI Fund certification and reporting requirements, which can and often do include targeted populations such as black and Latino business owners and women business owners. Further, investors may require CDFIs to collect and maintain demographic data connected to certain pools of capital to adequately assess the impact of those funds on the intended borrowers. For unregulated loan funds that are currently not required to keep this information separate, requiring them to separate this lending or to limit underwriter access would make tracking and collecting data extremely burdensome.

c. What steps can the Bureau take to minimize burden on financial institutions and applicants and facilitate compliance with the requirements to identify the principal owners of the business and report demographic information about them?

   OFN supports the collection of business owner demographic data but have concerns about the implementation of this portion of Section 1071. Most CDFI small business loan funds are community based. Many are small and have limited staffing. According to our

[10] Bates, Timothy, and Alicia Robb, "Small-Business Viability in America's Urban Minority Communities," Urban Studies Journal, 2013. Accessed August 18, 2017. http://usj.sagepub.com/content/51/13/2844.full.pdf+html

2015 OFN Side-By-Side report, some small business lenders have less than 10 full time employees, of which only a portion are dedicated to lending. Thus, implementation of Section 1071 may present some unique challenges with respect to keeping credit personnel fully insulated from all demographic data or knowledge of the racial or gender characteristics of application. We welcome an opportunity to more fully explore with the CFPB how to practically manage this challenge.

Financial Institutions Engaged in Business Lending

10. Section 1071 allows the Bureau to exercise exemption authority to exempt certain classes of financial institutions from collecting and reporting pursuant to a business lending data collection rule as the Bureau deems necessary or appropriate to carry out the purposes of section 1071.

a. Should certain classes of financial institutions be exempt from a small business lending data collection rule?

OFN does not support an exemption from Section 1071 for CDFIs or other small business lenders, including community banks, credit unions, and online lenders. Exempting key players in the market will undermine the goal of transparency and understanding where credit is flowing and to whom, as well also pricing and terms to see if that credit is affordable and responsible. Broad implementation of this rule is key to ensuring the data is comprehensive and covers as much of the small business lending market as possible. Regulators, consumers, business owners and investors all need clear understanding of the overall market conditions, which is only possible by having as much robust data as possible on all the current actors in the system.

Creating exemptions could also lead to loopholes that allow non-regulated entities to avoid following regulations meant to capture their information (e.g., some institutions within the payday lending industry relocated to sovereign Native American tribal land where predatory lending protections were unenforceable), the CFPB should establish clear standards that capture all lenders – and prevent the ability for certain types of institutions within the lending industry to avoid regulation and reporting.

This is especially true of new online lenders entering the small business lending market. To an extent, marketplace lenders are filling the gap and providing access to capital for people with limited access to traditional financial services. However, not enough is known about their business models, underwriting methods, and portfolio quality. This data collection presents an opportunity to introduced 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 provide more insight into the portfolio and asset quality of marketplace lenders.

Community banks and credit unions are also critical players in the small business lending space. According to the FDIC, community banks continue to hold 43 percent of all small loans to businesses.[11] In fact, in the second quarter of 2017, small loans to businesses at community banks totaled $296.9 billion, up from $289 billion in the previous year. Exempting such a large swath of the small business lending sector would limit the usefulness of the overall data collection.

Credit unions, including Low Income Designated Credit Unions, must also submit their data and not be exempt from Section 1071. Many CDFI loan funds face the same staffing and resource challenges of community banks and credit unions, and on average are much smaller institutions in terms of assets, but are still willing to comply with the requirements of the data collection. Any such exemptions would undermine the intent of the statute and paint an incomplete picture of the overall small business lending market.

Although OFN is not advocating for an exemption for CDFIs, we are concerned that this data collection may be burdensome and duplicative for many of the organizations in our network. We urge the CFPB to ensure that rulemaking is flexible enough to allow lenders like CDFIs to continue to provide the affordable, responsible credit that is sorely needed for underserved businesses, and that they are not forced to retract lending due to increased compliance costs.

To minimize the cost and burden on CDFIs, who already operate with high-costs and low margins in their lending, OFN encourages the CFPB to consider providing short-term waiver for mission-driven organizations to allow additional time to comply with the rule for

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[11] FDIC Quarterly Banking Profile, "COMMUNITY BANK PERFORMANCE FOURTH QUARTER 2016", December 2016. Accessed September 7, 2017. https://www.fdic.gov/bank/analytical/qbp/2016dec/qbpcb.html

organizations that can demonstrate that this will restrict the flow of capital.

OFN also encourages the CFPB to explore the possibility of providing small technical assistance grants for CDFIs or other organizations to finance the costs of installing new systems and technology, or allowing grants from the CDFI Fund or SBA to be used to fund these upgrades. The CFPB 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.

b. Are there data or data sources available that could inform the Bureau's decision to exempt certain classes of financial institutions (such as the size, type, or lending characteristics of the financial institution or types of small business credit products offered by the financial institution)?

CDFIs have a demonstrable commitment to data collection and reporting, and are certified by and report to the CDFI Fund on a yearly basis. Much of the data CFPB has proposed requesting is already tracked and reported to the CDFI Fund. As mentioned previously, while OFN is not advocating for an exemption, we strongly suggest CDFIs be able to meet the reporting requirements by submitting the CDFI Fund's TLR and ILR data.

OFN highly encourages the CFPB to access the data already collected directly, rather than increase the time and staff burden of duplicate reporting, as well as, the expense of additional reporting platforms.

11. If the rule contains revisions to what CDFIs should report, OFN recommends that the CFPB work with the CDFI Fund to amend their reporting requirements of CDFIs. This will ensure that the data provided by CDFIs to the CDFI Fund can be used to meet the data requirements from the CFPB. What are the roles of lending marketplaces, brokers, dealers and other third parties in the small business lending application process (such as in taking an application and in making a credit decision on an application)?

CDFIs are a diverse group of lenders with broad flexibility to create lending products and services that meet the needs of their customers. Some reported that while they do not use brokers, they use third-party software as an analytical tool. Other CDFIs are developing their own CDFI referral relationships using online platforms like SPARK (an online platform created by Minnesota-based CDFI Community Reinvestment Fund), and have a small reliance on brokers, and community and industry relationships for referrals.

Other CDFIs have referral relationships directly with bank partners, who refer turned-down borrowers to local CDFIs.

Access to Credit and Financial Products Offered to Businesses

12. What business credit product types are currently offered to small businesses by financial institutions as defined in section 1071, and for which product types is data collection and reporting most important for furthering the purposes of section 1071?

a. In addition to term loans, lines of credit, and credit card products, are there other business credit products that are an important source of financing for small businesses?

CDFIs in our network have varying business practices. Many CDFIs offer working capital loans, which are often critical for small businesses but difficult to secure from traditional lenders. Some CDFIs also offer debt products with equity-like components, including convertible debt, performance-based interest rates, royalty agreements and warrants.

In addition, as online lending and marketplace lending proliferates, some CDFIs are seeing a market need to provide refinancing of merchant cash advances which can carry high interest rates and fees that negatively impact the long-term financial health of the business. This is especially true for business owners who may not fully understand the terms of the credit they receive, as 49 percent of all business owners surveyed in the Small Business Credit Survey cited lack of transparency as their primary reason for dissatisfaction with online lenders, while another third cited high interest rates.[12][13]

13. How do financial institutions define an application for business credit products? How, if at all, does a financial institution's definition of an application vary for different types of products offered to small business applicants?

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[12] "2016 Small Business Credit Survey: Report on Employer Firms", Federal Reserve System, April 2017. Accessed August 22, 2017. The business owners surveyed in the study were also dissatisfied with the level of transparency at large banks (48 percent) and small banks (47 percent). The survey did not report on satisfaction with CDFIs or credit unions due to the small sample size.
https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-EmployerFirms-2016.pdf

[13] The business owners surveyed in the study were also dissatisfied with the level of transparency at large banks (48 percent) and small banks (47 percent). The survey did not report on satisfaction with CDFIs or credit unions due to the small sample size.

a. Does your organization use different types of applications or different application process for different loan products?

   Some CDFIs in our network indicated that they use several different loan applications to correspond with their different loan products offered. For example, one CDFI reported using different commercial loan applications for individual loan products, including for-profit, non-profit, energy-related, and raingarden loans, while other organizations use the same loan application for all loan products.

b. Under what circumstances are preapproval, prequalification, and similar assessments made and what information is typically collected and evaluated during such assessments?

   Some CDFIs use online loan application software that has automatic preapproval built in to the application process, including DownHome and TEA.

14. Under what circumstances (such as renewal, line increase, etc.) would a credit review occur on an existing credit facility?

b. For each circumstance, what information is collected as part of the credit review? How would such a credit review differ, if at all, from an application submitted on a new credit facility?

   One OFN member indicated that their organization provides credit review and renewals once a year, and requires the submission of current financials and tax returns. Another organization indicated their process is to collect updated current financial information for renewals and credit increases as well as updated credit reports.

   Another responded that for an extension or increase to an existing borrower, the CDFI asks for current financials including tax returns and an updated personal financial statement, review licensing and insurance, and pull an updated credit report. They search the Credit Alert Verification Reporting System (CAIVRS) and System for Award Management (SAM) to verify the borrower is not delinquent on federal debt.[14] This applies to original requests and renewals only, not for increases. Finally, the organization requests a copy of a non-expired state or federal issued ID and deletes the photo ID from their files

[14] CAIVRS (Credit Alert Verification Reporting System) is operated by the U.S. Department of Housing and Urban Development (HUD) and is used to determine if a loan applicant has any federal debt that is currently in default or foreclosure or has had a claim paid by the reporting agency within the last three years. This is required for SBA 7(a) lenders with delegated lending authority.

when the transaction is booked into their system or if a loan request is denied or withdrawn.

15. What challenges do small businesses face in accessing credit? What obstacles do women-owned or and minority-owned small businesses in particular face in accessing credit?

Small businesses are important driver of economic growth but face macroeconomic and microeconomic challenges when attempting to access credit, including contractions in the banking system and lending to small business; a decline in the availability of small dollar loans; and weak or limited credit history. These challenges are even more pronounced for women-owned and minority-owned businesses.

- **Bank Consolidation -** U.S. banks closed 4,821 branches between 2009 and 2014, reducing the total number of branches by about 5 percent.[15] Similarly, Mills and McCarthy found that:

  "A decades-long trend toward consolidation of banking assets in fewer institutions is eliminating a key source of capital for small firms. Community banks are being consolidated by bigger banks, with the number of community banks falling to just over 5,000 today, down from over 14,000 in the mid-1980s, while average bank assets continues to rise."[16]

  This decrease in bank lending has created banking deserts, especially in low-income communities, rural communities, and communities of color. The Federal Reserve Bank of New York found that people in low-income census tracts are more than twice as likely to live in a banking desert than their counterparts in higher income tracts.[17] As branches close, access to banking services as well as credit and loans is diminished for the areas served by the branches.

- **Contractions in lending to small businesses -** A decline in the number of bank branches and community banks impacts the availability of credit to small businesses, who typically rely on

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[15] Morgan, Donald, Maxim Pinkovskiy, and Bryan Yang, "Banking Deserts, Branch Closings, and Soft Information", Liberty Street Economics, Federal Reserve Bank of New York, March 2016.

[16] Mills, Karen Gordon and Brayden McCarthy, "The State of Small Business Lending: Innovation and Technology and the Implications for Regulation Working Paper 17-042, Harvard Business School, http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf.

[17] *Id.* at 16.

relationship lending from their local lenders. After increasing rapidly from 2001-2007, small business lending declined precipitously between 2007 and 2010, then rebounded slowly starting in 2015 according to data reported under the CRA.[18] Large bank lending, has in fact been increasing, with Loan approval rates at big banks (those with $10 billion or more in assets) improved for the seventh time in the last eight months in September 2016.[19] In spite of the increase, large banks approved only 23.4 percent of loan requests by small business owners, meaning more than three quarters of applicants were not able to receive the requested financing.[20]

For small businesses with less than $1 million in revenue, access to capital issues are even more pronounced. A report from the Woodstock Institute, Patterns of Disparity, found the number of CRA-reported loans nationally to small businesses with gross revenues under $1 million was just 15 percent higher in 2015 than in 2001, but 41 percent lower than the peak in 2007, while the total dollar amount of those loans in 2015 was down more than 41 percent from the amount in 2007 and down 21 percent since 2001.[21]

- **Weak or Limited Collateral -** Tight credit markets can have an impact on small business owners who may have weak or limited credit history, lack of collateral, poor financial documentation, and modest business revenues. Many of these small business owners have to use their personal credit to finance their business. The 2016 Small Business Credit Survey found that 42 percent of small businesses rely exclusively on their owners' personal credit scores to secure debt, and another 45 percent use both the owners' personal scores and business credit scores.[22] Weak credit history makes it more difficult to secure financing from mainstream sources and makes these small business owners more vulnerable to predatory online lenders.

- **Availability of Small Dollar Loans** - There has also been a decline in the availability of smaller dollar loans. A report from the Woodstock Institute, Patterns of Disparity, stated the number of CRA-reported

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[18] "Patterns of Disparity: Small Business Lending in the Detroit and Richmond Regions", The Woodstock Institute, January 2017. Accessed August 24, 2017. http://www.woodstockinst.org/sites/default/files/attachments/Detroit%20and%20Richmond%20Report%20Website.pdf
[19] Biz2Credit Small Business Lending Index, September 2016, https://www.biz2credit.com/small-business-lending-index/september-2016
[20] *Id.* at 18.
[21] *Id.*
[22] *Id.* at 12.

> loans under $100,000 nationally in 2015 remained 58 percent lower than in 2007 and two percent lower than in 2001, while the total dollar amount of those loans decreased nearly 47 percent from its peak in 2007 but rose by 16 percent, from $67.0 billion to $77.9 billion, between 2001 and 2015.[23] At the same time, the demand for loans of less than $100,000 remains high. The Federal Reserve's Small Business Credit Survey of employer firms found that with 55 percent of applicants sought $100,000 or less in financing. For businesses with less than $1 million in revenue, 70 percent of respondents sought financing of $100,000 or less. This results in a significant access to capital gap for business owners.

Businesses Owned by People of Color - For business owners of color, many of the challenges facing small business owners are even more pronounced. In recent years, businesses owned by people of color have grown rapidly, with recent data showing that the increase in Black and Latino business ownership outpaced population growth from 2007 to 2012, where the black population increased by 6 percent but black business ownership increased by 34 percent, and the Latino population increased by 17 percent while Latino-owned businesses increased by 46 percent."[24] Further, businesses owned by people of color grow even during economic downturns. Per the SBA Office of Advocacy:

> "From 2007 to 2012, the five years enveloping the economic recession, a net 2 million minority-owned businesses were created, while a net 1 million non-minority-owned businesses closed. During that time, minorities increased their share of overall business ownership from 22% to 29%. Further minority-owned businesses represented an additional $335 billion in sales and 1.35 million in employment."[25]

Despite this growth, OFN members' experiences and a significant body of research indicate that small businesses face challenges of accessing capital that are even more pronounced for women and business owners of color, who often face structural challenges, such as lack of access to informal entrepreneurial training and networks, more difficulty securing startup capital and business loans, limited awareness of lending options, and discrimination.[26]

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[23] *Id.* at 19.
[24] McManus, Michael, "Minority Business Ownership: Data from the 2012 Survey of Business Owners", Issue Brief Number 12, September 14, 2016. https://www.sba.gov/sites/default/files/advocacy/Minority-Owned-Businesses-in-the-US.pdf
[25] *Id.* at 24.
[26] Bahn, Kate, Regina Willensky, and Annie McGrew, "A Progressive Agenda for Inclusive and Diverse Entrepreneurship", Center for American Progress, Posted on October 13, 2016,

- **Lack of access to training and informal networks –** Diverse small business owners often lack access to business and professional networks and can have a hard time accessing venture capital or other institutional capital. CDFIs address this issue by providing development services to their borrowers, including business training, technical assistance, and access to social and professional networks that can build relationships.

- **Discrimination** - Racial biases can also prevent diverse small businesses from entering mainstream lending. Studies show that diverse small businesses are less likely to apply for a loan due to fear of rejection. A 2015 Independent Business Survey conducted by the Institute for Local Self Reliance reported that of the business owners of color who applied for a bank loan in the last two years, 54 percent were rejected. The SBA's research shows minority business owners are disproportionately denied financing even when controlling for factors such as business credit scores and personal wealth.[27] The Minority Business Development Agency's (MBDA) research finds that minority business owners are denied loans at nearly three times the rate of non-minority owners.[28] Even when controlling for credit and collateral differences, when diverse small business owners do access capital, they often receive lower loan amounts and pay higher rates.

- **Limited awareness of lending options** – Often diverse small business owners are not aware that they may have affordable options to finance their businesses, or that responsible lending alternatives like CDFIs are available.

Women-owned businesses also face access to capital challenges. Women account for only 16 percent of conventional small business loans and 17 percent of SBA loans even though they represent 30 percent of all small companies.[29] Of conventional small business loans, just $1 of every $23 in

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Accessed August 22, 2017.
https://www.americanprogress.org/issues/economy/reports/2016/10/13/146019/a-progressive-agenda-for-inclusive-and-diverse-entrepreneurship/

[27] Kymn, Christine, "Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables By Advocacy", Issue Brief 3: Access to Capital, Small Business Administration, Office of Advocacy January 2014. Accessed January 11, 2017.
https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf.

[28] Fairlie, Robert, Ph. D. and Alicia M. Robb, Ph.D., "Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs", U.S. Department of Commerce, Minority Business Development Agency, January 2010. Accessed January 11, 2017.
http://www.mbda.gov/sites/default/files/DisparitiesinCapitalAccessReport.pdf.

[29] "21st Century Barriers to Women's Entrepreneurship", US Senate Small Business Committee, July 23, 2014, Accessed August 29, 2017. https://www.sbc.senate.gov/public/_cache/files/3/f/3f954386-f16b-48d2-

conventional small business loans goes to a woman-owned business. These access to capital gaps start from the startup of the business. On average, men start their businesses with nearly twice as much capital as women ($135,000 vs. $75,000).[30] Similar to business owners of color, women are more likely to be turned down for loans or receive loans with less favorable terms than their male counterparts.[31]

Along with businesses owned by women and people of color, small businesses in rural communities also face challenges accessing capital. In some cases, these problems can be due to limitations on commercial bank lending to all rural small businesses regardless of assets and income. Often, CDFIs partners with other lenders in order to provide financing for a business. Many mainstream local financial institutions would not finance these loans without CDFI participation because small businesses often are low-equity with marginal profits serving a need in their low population communities. Local banks cannot always lend to these businesses because of banking restrictions. For all these business types that face limited options for accessing capital: women owned, businesses owed by people of color, startup firms with limited revenue and less than perfect credit, CDFIs across the country are able to provide affordable, responsible lending products to meet the needs of these underserved communities

Privacy

16. What privacy-related concerns for applicants and confidentiality-related concerns of financial institutions are implicated by the statutorily-mandated data points in section 1071? For example, are there particular statutorily-mandated data points or a combination of data points that, if released to the public, may be harmful to applicant privacy or financial institution confidentiality? Are there particular statutorily-mandated data points or a combination of data points that may pose a risk of re-identification if released to the public?

CDFIs in our network expressed concern about the collection of borrower addresses that, if disclosed, could reveal the identity of the borrower.

86ad-698a75e33cc4/F74C2CA266014842F8A3D86C3AB619BA.21st-century-barriers-to-women-s-entrepreneurship-revised-ed.-v.1.pdf

30 Coleman, Susan, and Alicia Robb, Ph.D., "Access to Capital by High-Growth Women-Owned Businesses SBAHQ-13-Q-0A63," National Women's Business Council, April 3rd, 2014. Accessed August 27, 2017. https://www.nwbc.gov/research/high-growth-women-owned-businesses-access-capital

31 Economics and Statistics Administration, "Women-Owned Businesses in the 21st Century," U.S. Department of Commerce for White House Council on Women and Girls, Issued October 2010. Accessed August 22, 2017. http://www.dol.gov/wb/media/Women-Owned_Businesses_in_The_21st_Century.pdf.

17. What steps can the Bureau take to mitigate such privacy or confidentiality-related concerns consistent with the purposes of section 1071?

For CDFI Fund reporting, the CDFI provides the borrower's address which the CDFI Fund then geocodes to identify the census tract so that the addresses of the borrowers are not used in any public reporting on the data. OFN urges the CFPB to conduct further research on ways to minimize privacy concerns associated with the data collected under Section 1071.

Conclusion

This Request for Information is an important first step in bringing much-needed transparency to the small business lending marketplace. OFN supports this information collection and the statutory intent of Section 1071 to address gaps in capital access among small business owners – particularly women entrepreneurs and entrepreneurs of color. OFN appreciates the CFPB's thoughtful approach to the implementation of Section 1071, and we encourage the CFPB to continue to ensure people in all communities have access to affordable, responsible financial products and services.

We appreciate your consideration of these comments and look forward to continuing to work with you. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email: dwilliams@ofn.org or phone at 215.320.4318.

Thank you,

Dafina Williams

Dafina Williams
Vice President, Public Policy

cc: Liz Lopez, Executive Vice President, Public Policy