

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) members' appreciate 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 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 U.S. 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.

This letter offers the following comments on the Request for Information:

Small Business Definition

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 business, with a focus on either: number of employees, annual business revenue, or loan amount, or some combination of those factors. The threshold must be high enough to cover a significant portion of the small business lending market. The Community Reinvestment Act (CRA) defines small business or small farm as a business that meets the SBA's Small Business Development Center (SBDC) or Small Business Investment Company (SBIC) programs size standards or has gross annual revenues of \$1 million or less.¹ 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.²

OFN recommends using the SBA and CRA thresholds of \$1 million in annual revenue, 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. We also encourage the CFPB to clarify if real estate-based transactions or loans to nonprofits will be covered under the rule.

Question 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

¹ 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

² 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

underwriters, where feasible, and provides for limited access in certain circumstances determined by the financial institution with notice to the applicant. 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. 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 borrowers and women borrowers. 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.

Although supportive of collecting demographic information, CDFIs in our network feel that it would be extremely burdensome to limit their underwriters' access to this information, and indicated this change would require significant and costly changes to their systems. Requiring CDFIs to separate this lending or to limit underwriter access would make tracking and collecting data on this lending quite onerous. Most CDFI small business loan funds are community based. Many are small and have limited staffing. According to our 2015 Side-By-Side report, some small business lenders have less than 10 full time employees, of which only a portion are dedicated to lending. Sometimes, the underwriter and loan originator are the same person.³ 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 the business owner. We welcome an opportunity to more fully explore with the CFPB how to practically manage this challenge.

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

OFN currently does not support an exemption from Section 1071 for certified 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

³ "Opportunity Finance Institutions Side by Side, Eighteenth Edition", Opportunity Finance Network, Published September 2016. Accessed August 2017.

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.

Although OFN is currently not advocating for an exemption for CDFIs, we are concerned that this information collection may be burdensome and duplicative for many of the organizations in our network. Most CDFIs already collect the statutorily mandated data points in Section 1071. CDFIs report to a variety of funders and investors, and are required to collect different data points for each investor. 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).⁴ Those reports capture 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.⁵ Some CDFIs also report on lending activity to the: SBA, CRA reporting to banks, OFN's annual member survey, which requires reporting on more than 120 data points for CDFIs in our network, and credit reporting agencies.

CDFIs that are current grantees under CDFI Fund programs should be able to submit their TLR reports to the CDFI Fund to meet the compliance requirement. For those organizations that are not currently reporting to the CDFI Fund but are an OFN member, OFN recommends these organizations be able to submit a version of the annual survey data submitted to OFN to reduce the compliance burden.

OFN highly encourages the CFPB to access the data already collected directly, rather than increase the time and staff burden of duplicate reporting and the expense of additional reporting platforms. If the rule contains revisions to what CDFIs should report in addition to current TLR and ILR reporting, OFN recommends the CFPB work with the CDFI Fund to amend their reporting requirements as well. This will ensure that the data provided by CDFIs to the CDFI Fund can be used to meet the data requirements from the CFPB.

Additional Support for CDFIs

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

⁴ CDFI Fund, "FY2016 Transaction Level Reporting (TLR) Guidance,"
<https://www.cdfifund.gov/Documents/14%2000%20CDFI%20TLR%20Instructions%20FINAL.pdf>

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 organizations that can demonstrate an actual financial burden or that the information collection will restrict the ability of the organization to provide 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.

The undersigned CDFIs appreciate the opportunity to respond to this information collection. We thank you for your consideration of our comments.

Sincerely,

ACCION East	New York	NY
California Coastal Rural Development Corporation	Salinas	CA
Carolina Small Business Development Fund	Durham	NC
CASA of Oregon	Sherwood	OR
CDC Small Business Finance	San Diego	CA
CEI Capital Management, LLC	Brunswick	ME
Chicago Community Loan Fund	Chicago	IL
Citizen Potawatomi CDC	Shawnee	OK
Colorado Enterprise Fund	Denver	CO
Common Capital	Holyoke	MA
Community First Fund	Lancaster	PA
Community Reinvestment Fund	Minneapolis	MN
Community Ventures Corporation	Lexington	KY
CommunityWorks Carolina	Greenville	SC
Craft3	Astoria	OR
Entrepreneur Works	Philadelphia	PA
Kentucky Highlands Investment Corporation	London	KY
Local Initiatives Support Corporation	New York	NY
Main Street Launch	Oakland	CA
Maryland Capital Enterprises, Inc.	Salisbury	MD
Montana & Idaho CDC	Missoula	MT
NCALL Research, Inc.	Dover	DE
New Jersey Community Capital	New Brunswick	NJ
Northern California Community Loan Fund	San Francisco	CA
Northern Initiatives	Marquette	MI
Opportunity Fund	San Jose	CA
Pacific Community Ventures	San Francisco	CA

Pathway Lending	Nashville	TN
Self-Help	Durham	NC
South Carolina Community Loan Fund	Charleston	SC
Southern Mutual Financial Services	New Iberia	LA
The Community Preservation Corporation	New York	NY
Vermont Community Loan Fund	Montpelier	VT