

United States Senate

January 13, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Dodd-Frank Section 1071 Rulemaking

Dear Director Chopra:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule amending Regulation B to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We write to express our support of the proposed rule that CFPB gather and report data about small business credit applications made by small businesses, especially those owned by women or minorities.

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information regarding credit applications made by "women-owned, minority-owned, and small businesses."¹ Section 1071 mandates that the data be submitted to the CFPB annually and enables the Bureau to prescribe rules and issue guidance to carry out its statutory purposes: to facilitate the enforcement of fair lending laws and to enable the identification of business and community development needs for women-owned, minority-owned, and small businesses. For years, we have pushed the CFPB to move forward on this important rulemaking, and we are pleased that you are doing so now. It is the CFPB's responsibility to carry out this mandate by issuing a final rule as soon as practicable.

We are encouraged to see that the CFPB's proposed rule provides clarity to the scope of 1071 data collection. First, the proposed definitions for "covered financial institutions," "covered credit transactions," and "small businesses," helpfully cover the field of small business lending while limiting the scope of collection so as to not overburden certain financial institutions who may not engage in such activity, though they may opt into submitting data under 1071.² More specifically, the Bureau's proposed definition for "small business" – one that has \$5 million or less in gross annual revenue for the preceding fiscal year – makes it easier across the industry to identify covered small businesses.³ Additionally, the Bureau's decision to implement a 25-loan origination threshold will cover a broader scope of both banks and non-depository lenders that make small business loans so that the CFPB and the public can get an accurate picture of where these loans are made and to whom. Finally, the Bureau's inclusion of a sample data collection form streamlines next steps for covered financial institutions to adhere to the rule once it goes into effect.

¹ 15 U.S.C. 1691c-2.

² https://files.consumerfinance.gov/f/documents/cfpb_section-1071-nprm_summary_2021-09.pdf

³ See *id.*

We believe there are a few areas that warrant further consideration. We understand the Bureau's decision to exclude certain credit transactions from the group of "covered credit transactions" subject to the proposed rule's reporting requirements. The exclusions include factoring, leases, consumer-designated credit used for business purposes, and credit secured by certain investment properties. We are concerned that these exclusions would lead to a gap in our understanding of the small business lending marketplace and whether entities are in compliance with fair lending laws. These types of credit are often utilized by underserved borrowers because they offer easier access to capital.⁴ In order to further Section 1071's specific statutory purpose to "enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses,"⁵ we request that the CFPB reconsider its decision to exclude these types of credit from the data collection and reporting requirement.

Additionally, the CFPB's plan to propose a "balancing test" assessing the risks and benefits of public disclosure of 1071 data is concerning. We understand the Bureau's approach to consider industry concerns of reputational harm that weigh in favor of keeping some data private, but we wish to stress that there is a strong public interest in publishing as much data as practicable. Further, we appreciate that the Bureau will decide how to exercise its discretion to modify or delete data prior to publication after collecting a year's worth of 1071 data. We respectfully ask that as you analyze the data collected, you weigh institutional privacy interests and small business owners' personal privacy interests alongside the public's paramount interest in transparency and disclosure.

Ultimately, we commend the CFPB for initiating this long overdue rulemaking to fulfill a statutory mandate from Dodd-Frank. We are eager to see a final rule that will bring much-needed transparency to small business lending and facilitate enforcement of fair lending laws.

Sincerely,



Sherrod Brown
United States Senator



Cory A. Booker
United States Senator

⁴ See generally <https://www.forbes.com/advisor/business-loans/how-to-get-a-business-loan-with-bad-credit/>.

⁵ 15 U.S.C. 1691c-2(a).

Ben Cardin

Benjamin L. Cardin
United States Senator

Ron Wyden

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Dick Durbin

Richard J. Durbin
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