Comment Intake
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Comments on the CFPB Outline of Proposals Under Consideration and Alternatives Considered for Section 1071

Dear Director Kraninger:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau's (the Bureau) outline of proposals under consideration and alternatives considered for Section 1071.

In October, the Bureau released an outline of proposals under consideration for the implementation of Section 1071 of the Dodd-Frank Act. This section amends the Equal Credit Opportunity Act (ECOA) to expressly permit and require lenders to collect information on the race, ethnicity and gender of a small business owner during the application for small business credit and to publicly report on the action taken on the application.

These proposals are the result of over ten years of deliberation, debate, research and policy analysis. They also arrive during a global economic and public crisis that has dramatically and negatively impacted small businesses and overwhelmingly harmed the financial stability and the solvency of Black businesses, Latino businesses, businesses owned by people of color, and women-owned businesses. The effects of this crisis will impact wealth creation opportunities for years to come, and coordinated federal and state action is necessary to both protect small businesses that remain open and to invest in the communities and the entrepreneurs whose wealth and livelihoods have been impacted. Data transparency alone will not achieve these goals, but it is a critical step among many to ensure that the recovery and future investment are equitable.

We believe that in many aspects, the Bureau has taken the correct approach in evaluating the efficacy of the data collection options available. However, the Bureau has also considered a number of options that will result in data collection gaps that, if adopted, will result in an incomplete picture of the small business market, limit the ability to conduct fair lending testing, and make it more difficult to ensure that lenders are meeting the credit needs of small businesses.

The following comments in response to the questions proposed in the Small Business Regulatory Enforcement Fairness Act (SBREFA) outline provide an overview of how these limitations can be addressed. To this end, we urge the Bureau to:

1) **Provide a market-wide view of small business lending activity.** Only a broad rule that applies to all small business lenders covers all forms of small business credit and includes all forms of small businesses can provide the necessary market-wide view of the small business lending activity necessary to identify lending trends and harmful practices before they become widespread.

a) **Broadly define financial institution and ensure that all market participants are required to report.** The statutory language of Section 1071 was rightfully designed to ensure market-wide coverage and reporting from the wide variety of institutions that provide credit to small businesses, including banks, credit unions, online lenders and other lenders. Section 1071 defines a lender as "any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization or other entity that engages in any financial activity." This definition would include depository institutions like banks and credit unions and non-depository institutions such as financial technology companies.

b) **Require lenders making 25 loans or more annually to report.** We urge the Bureau to provide an activity exemption of less than 25 loans annually, consistent with the 2015 HMDA final rule amending Regulation C.[1] We do not support a dollar size threshold separately or in conjunction with a loan count threshold. A dollar size threshold, including the $2.5 million threshold the Bureau offers as one of the options, would be too high.

c) **Report lending to small businesses with 499 or fewer employees and up to $8 million in revenue.** We urge the Bureau to adopt a definition of small business as a business with fewer than 500 employees, similar to the size standard alternative under consideration. We urge the Bureau, for the sake of consistency with the Annual Business Survey, to consider revising this to fewer than 500 employees (499 employees or fewer).

d) **Factoring agreements and merchant cash advances must be covered products under Section 1071.** The Bureau is proposing to exclude merchant cash advances (MCAs) from coverage in 1071. We disagree with this proposal and urge that MCAs and factoring agreements be considered covered products. MCAs are widely used by small businesses and have a rapidly growing market share, often cause businesses to incur substantial repayment liabilities, and have other harmful terms that warrant market-wide monitoring. We also urge the Bureau to define these products as credit for the purpose of this rule, rather than rely on the current interpretation of ECOA, which would exclude them.

2) **Improve fair lending supervision and enforcement in the small business lending market.**

a) **The definition of application should be consistent with the definition of application under Regulation B implementing the Equal Credit Opportunity Act.** This definition is consistent with the definition of application under Regulation C implementing the Home Mortgage Disclosure Act (HMDA), and is preferable to the Bureau's alternative proposal, which would consider an application complete when all required information is completed. The CFPB must not implement this definition because, in some cases, an incomplete application occurs when the lender discriminates and indirectly or explicitly discourages an applicant from completing an application.

[1] 12 CFR Part 1003 (as amended October 15, 2015)

b) **The proposed mandatory data points adequately implement Section 1071, with some modification.** Lenders must be required to report applications and denials, as well as the reason for denial, and the race and ethnicity of the borrower or borrowers consistent with the disaggregated race and ethnicity information currently required under Regulation C.

c) **Additional discretionary data points should be added to improve fair lending efforts.** We urge the Bureau to collect and disclose additional data on loan pricing, time in business, number of owners and employees, and the use of personal or business credit profiles in a credit decision.

3) **Allow regulators, lenders, and the public to benchmark a lender's affirmative obligation to meet the credit needs of the small businesses in the communities they serve.** The Bureau has an unprecedented opportunity to improve the transparency of the small business market, identify lending patterns and trends, and enhance the ability of lenders to serve low-wealth communities and communities of color. To this end, we urge the Bureau to consider following the parameters in existing public datasets on the universe of small businesses, such as the Annual Business Survey, and collecting 1071 data consistently to provide a direct measure of small business loans per business. On an interagency basis, the agencies should determine if Section 1071 scope can become comprehensive enough to replace or be collected concurrently with CRA, CDFI and Small Business Administration (SBA) data collection efforts.

These improvements can ensure that data collected under Section 1071 can achieve ECOA's statutory objectives of preventing discrimination in credit transactions by providing publicly available data on race, gender and other demographics of small business applicants for credit. We urge the Bureau to move forward with a proposed and final rule in 2021 and an implementation of no more than 12 months. For more information, please do not hesitate to contact Tom Feltner, Director of Policy at tfeltner@ncrc.org or Josh Silver, Senior Policy Advisor at jsilver@ncrc.org.

Sincerely,

National Community Reinvestment Coalition
Affordable Homeownership Foundation, Inc.
Association for Neighborhood and Housing Development
Birmingham Business Resource Center
Building Alabama Reinvestment
California Reinvestment Coalition
CASA of Oregon
CFORM/Covenant Community Development Corporation
Chester Community Improvement Project
Clarifi
Coastal Enterprises, Inc.
Columbus Empowerment Corporation
Community Action Partnership of North Alabama, Inc.

Community First Fund
Community Reinvestment Alliance of South Florida
Consumer Action
County Corp
Fair Finance Watch
Foundation Capital
Georgia Advancing Communities Together, Inc.
Home Repair Resource Center (HRRC)
Housing Acton Illinois
Housing education and economic development
Housing Options & Planning Enterprises, Inc
Lewis Associates
Local Initiatives Support Corporation (LISC)
Metropolitan Milwaukee Fair Housing Council
Metropolitan St. Louis Equal Housing and Opportunity Council
Mississippi Housing Partnership
National Development Council
National NeighborWorks Association
NID San Diego
Northwest Indiana Reinvestment Alliance
Olive Hill Community Economic Development Corporation, Inc
Opportunity Finance Network
PathStone Enterprise Center
Prosperity Indiana
Reinvestment Partners
REVA Development Corporation
Rural Community Assistance Corporation
Self Help Enterprises
South Dallas Fair Park ICDC
Southern Dallas Progress Community Development Corporation
Southwest CDC
The Greenlining Institute
The Pride Through Empowerment Foundation, Inc
The Twenty
Vermont Slauson EDC
Veterans Center
Working In Neighborhoods