Congress of the United States
Washington, DC 20515

February 16, 2022

Rohit Chopra
Director
Consumer Financial Protection Bureau
1275 1st St NE
Washington D.C. 20002

Director Chopra,

We write concerning the rulemaking of section 1071 of Dodd-Frank. Since the CFPB issued the proposed rule, we have heard numerous concerns from industry stakeholders, including financial institutions of various sizes, and categories, and a wide range of small businesses regarding the specific makeup of the rule. In addition, the CFPB received more than 2,000 comment letters in response to the rulemaking highlighting specific issues regarding implementation, over burdensome requirements, privacy concerns, the rulemaking process, and small business access to credit. We urge you to take action to remedy these issues within the final rulemaking and would highlight the following issues of particular concern.

First, the Small Business Advisory Review Panel for the CFPB's 1071 rulemaking[1] outlined many concerns about the impact this rule could have on small financial institutions, including how increasing costs and burdens associated with small business loans can negatively impact access to credit for small businesses.[2] In order to alleviate this burden on small financial institutions, the CFPB should strive to exclude as many small financial firms as possible. Currently the proposed rule has an activity-based threshold level whereby financial institutions that originate at least 25 covered credit transactions in each of the last two years must collect and report 1071 data. Furthermore, the CFPB proposes to define a small business as one with gross annual revenues of $5 million or less for its preceding fiscal year. Those proposed threshold levels for the rule are far too stringent; this would drastically impact the ability of small institutions to make loans to small businesses and decrease access to credit for minority- owned, women-owned, and small businesses.

Second, the proposed rule includes an 18-month implementation period following the issuance of a final rule. However, a rule this significant that will impact nearly every financial institution and require additional reporting on all small business lending should give financial institutions additional time to adjust and implement these changes. Financial institutions will have to train staff and develop the appropriate systems to carry out this complex rulemaking which will cover multiple credit products. The CFPB should extend the implementation period of the rule to ensure it is properly executed, both by the federal government and financial institutions.

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[1] https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration_2020-09.pdf
[2] https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf

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Third, according to the statute of section 1071, loan applicants maintain a right to refuse submitting any information on race, gender, or ethnicity. Specifically, "Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit."[3] However, the proposed rule contradicts the statute by forcing financial institutions to guess the race of applicants that choose to not provide their information. Specifically, the proposed rule states "the financial institution must collect at least one principal owner's race and ethnicity (but not sex) via visual observation or surname".[4] This provision of the rule directly violates the statute by eliminating the loan applicants right to not submit information if they so choose.

Any information collected by the Bureau under this provision relies on racial stereotypes and generalizations and would render all 1071 information tainted and inaccurate. Loan officers at financial institutions have no expertise to determine the race or ethnicity of individuals, nor should they. Loan officers should be focused on the credit worthiness of borrowers when examining loan applications, not determining if their last name indicates they are a minority. Furthermore, the proposed rule recommends a "firewall" to separate race, ethnicity and gender information from financial institution personnel involved in making any determination related to the application.[5] However, forcing loan officers to guess the race or ethnicity of applicants is a clear violation of this separation. The Bureau should remove this requirement to protect the right of borrowers to keep their race and ethnicity confidential.

Lastly, Section 1071 of Dodd-Frank requires the information collected by the CFPB to be published and gives the CFPB the authority to "delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest."[6] In the proposed rule, the CFPB stated they would conduct a "balancing test" to assess the risks and benefits of public disclosure of information, specifically as it relates to the privacy interests of institutions and loan applicants. However, the CFPB stated they will receive at least one full year of 1071 data after the compliance date of the rule before they issue a policy statement outlining what modifications and deletions will be made to the data.[7]

Announcing what information you will be making public well after you collect initial 1071 information is a backwards approach to rulemaking. Financial institutions and business owners deserve to know what information regarding their loan application will become public before the information is turned over to the CFPB. Furthermore, announcing the modifications and deletions via "policy statement" does not give institutions and consumers a chance to weigh in regarding what information becomes public. It is yet another example of the Bureau choosing to conduct major rulemakings through guidance. Section 1071 clearly outlines what information institutions are required to collect and turn over to the CFPB.[8] Therefore, the CFPB must fully

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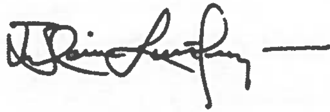
[3] 15 U.S. Code § 1691c-2
[4] https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf, p.9
[5] Id. at p.10
[6] 15 U.S. Code § 1691c-2
[7] https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf, p.11-12
[8] 15 U.S. Code § 1691c-2

disclose what information will become public before the final rule is issued and must conduct a separate rulemaking process, including notice and comment, related to this provision of the law.

This letter highlights only a small amount of the numerous concerns that have been outlined by industry stakeholders in the more than 2,000 letters issued during the comment period. Both the specific issues mentioned in this letter and those outlined in comment letters to the CFPB need to be addressed to limit the burden on small businesses and ensure financial institutions can comply with this regulation.

Sincerely,



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