



December 17, 2021

Comment Intake—Section 1071 Small Business Lending Data Collection
Bureau of Consumer Financial Protection
1700 G Street NW,
Washington, DC 20552
Via email: 2021-NPRM-1071@cfpb.gov

RE: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection

To Whom it May Concern:

The California Reinvestment Coalition (CRC), its members, and allies submit these comments in response to the Consumer Financial Protection Bureau (CFPB or Bureau)'s Section 1071 Small Business Data Collection Notice of Proposed Rule Making (NPRM), mandated by the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010. We applaud the CFPB's proposal, acknowledge the extensive research and analysis conducted by the Bureau to thoughtfully develop the proposed rule, and believe the proposal provides a strong framework for a data collection regime that will meet the Congressional purposes underlying Section 1071.

The groups endorsing these comments represent Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), small business technical assistance providers, legal service offices, civil rights groups, and other community-based organizations. We are deeply concerned about historic redlining, lack of access to bank loans, and the resulting proliferation of high cost credit, which have devastated and damaged business owners who are women, people of color and those operating their small businesses in neighborhoods of color.

CRC builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. CRC, our member organizations, and our allies have been fighting predatory financial practices, supporting small businesses, and fighting redlining for over 30 years. CRC and its member organizations have been advocating for small business data collection and transparency within the small business market for decades. CRC and its members use data extensively to advocate for increased reinvestment in California communities and to help for-profit and non-profit lenders better serve small businesses owned by women and people of color.

The stakes are high. Lending discrimination harms not only impacted small businesses, but also our larger economy. More than 6 million jobs per year might have been added and \$13 trillion in cumulative revenue gained if Black-owned firms had equitable access to credit over a 20-year period.¹

¹ Dana M. Peterson and Catherine L. Mann, "Closing the Racial Inequality Gaps," Citi Global Perspectives and Solutions available at: <https://www.citivelocity.com/citigps/closing-the-racial-inequality-gaps/>



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Robust small business data collection through the Section 1071 rule will result in enhanced transparency, more responsible lending practices, targeted enforcement of fair lending laws, informed policymaking, healthier markets, and reduced racial and gender wealth gaps. CRC and co-plaintiffs were pleased to have settled our case against the CFPB,² resulting in a definitive timeline for CFPB to develop the 1071 rule. We appreciate the CFPB's diligent efforts to put forth a thoughtful and strong proposed rule in this context.

In finalizing the rule, we urge the CFPB to adhere to the following principles:

1. **Honor the statutory purpose.** In all decisions – what data fields to require, what to make public, how to implement, etc. - focus on furthering the Rule's statutory purpose of “facilitat[ing] enforcement of fair lending laws” and “enabl[ing] communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”³
2. **Provide for broad coverage.** To be effective, provide for broad coverage of loans, lenders, businesses and applications. The threshold for lenders that must report data should remain at 25 loan originations to ensure that the benefits of the rule will extend to bank deserts, rural communities and redlined neighborhoods. Sales based financing must be included.
3. **Capture key underwriting criteria.** Capture detailed and disaggregated data for factors such as credit score (FICO), loan pricing (APR), and actions taken (Reasons for Denial) to allow analysis to establish whether and how discrimination in small business lending is occurring. Robust data collection will allow policymakers and the public to better understand gaps in lending and unmet community needs.
4. **Collect disaggregated race, ethnicity and other demographic data.** We applaud the Bureau's continuing efforts to ensure that data collection unmask discrimination that occurs across and within racial, ethnic and other demographic groupings. It is critical for data collection to include disaggregated data for race/ethnicity data, sex/gender identity, and sexual orientation.
5. **Recognize that the benefits of a robust data collection regime outweigh any costs.** Society's interest in eradicating discrimination and closing the over \$10.4 trillion racial wealth gap⁴ far exceeds any negligible risk of privacy violations or regulatory burden on financial institutions that already collect much or all of the relevant data. Nonprofit CDFIs and mission-driven lenders who will need to comply with the regulation view the regulatory costs as reasonable and well worth the benefits of transparency to small businesses.
6. **Make the data accessible to the public.** Data should be made available to the public in a user-friendly format. All community members, in addition to regulators and policy makers, should be able to access key data points and summary tables in order to understand where there are credit gaps and lending disparities in their communities.
7. **Finalize the rule carefully and quickly.** We thank the CFPB for proceeding in a deliberate and thoughtful manner, and relying on extensive research and analysis. And yet, time is of the essence. The failure to collect and publish the data continues to harm women and minority owned small businesses and their

² For plaintiffs' press release announcing the settlement, see: <https://calreinvest.org/press-release/breaking-lawsuit-compels-trump-administration-to-commit-to-finalizing-protections-against-lending-discrimination/>

³ 15 U.S.C. § 1691c-2(a).

⁴ Vanessa Williamson, “Closing the racial wealth gap requires heavy, progressive taxation of wealth,” Brookings, December 9, 2020 (estimating the racial wealth gap between white and Black Americans), at: <https://www.brookings.edu/research/closing-the-racial-wealth-gap-requires-heavy-progressive-taxation-of-wealth/>



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communities, and frustrates the undersigned nonprofit organizations in our ability to best serve our missions.

Tragically, lending discrimination remains a fact of life for small business owners of color. There can be no doubt that lending discrimination has existed in the small business market for years. CRC member organizations have long reported on and lamented the failure of banks to lend to qualified small business owners, particularly women and people of color. CRC and ally analysis of the limited data sets that have existed has found disparities in small business lending to minority-owned businesses and in minority neighborhoods.⁵ As with the subprime mortgage crisis, lightly regulated high-cost lenders have filled the void left by banks that fail to provide credit access, leaving small business owners of color and women-owned businesses burdened with Merchant Cash Advances, factoring capital, and other products that wreak havoc on business and personal finances.

Research and mystery shopping by the National Community Reinvestment Coalition has shown that women and people of color receive unequal treatment when seeking a small business loan.⁶ A Federal Reserve-sponsored paper made similar findings, revealing that even after controlling for firm characteristics such as profitability and creditworthiness, firms owned by people of color are still more likely to be denied loans than white-owned firms.⁷

The U.S. Small Business Administration Paycheck Protection Program (PPP), part of the nation's COVID response, reflected these disparities and reinforced redlining dynamics by funneling small business relief primarily through the very banking institutions that have failed to serve the small businesses meant to benefit from the 1071 Rule. CRC surveys of bank COVID responses found that nearly all bank respondents acknowledged prioritizing existing clients over businesses that did not have a prior banking relationship, especially during the first round of PPP funding.⁸ Further, the limited data available showed that only 2% of PPP loans were made in support of Black-owned businesses and only 6% of the recipients were Latine-owned businesses,⁹ while over 18% of small businesses are owned by people of color.¹⁰

⁵ See Alan Fisher, "Small Business Access to Credit The Little Engine that Could: If Banks Helped," California Reinvestment Coalition, December 2013, available at: <https://community-wealth.org/content/small-business-access-credit-little-engine-could-if-banks-helped>; and Spencer M. Cowan, "Patterns of Disparity: Small Business Lending in the Chicago and Los Angeles-San Diego Regions," Woodstock Institute et al, January 2017, available at: <https://woodstockinst.org/wp-content/uploads/2017/07/Chicago-and-LASD-Report-CC-License-Update.pdf>

⁶ Amber Lee, Bruce Mitchell, PhD, Anneliese Lederer, in cooperation with: Jerome Williams, Rutgers University; Sterling Bone, Utah State University; Glenn Christensen, Brigham Young University, "Disinvestment, Discouragement and Inequity in Small Business Lending," available at: <https://ncrc.org/disinvestment/>

⁷ Mels de Zeeuw, Federal Reserve Bank of Atlanta Community and Economic Development Department, and Brett Barkley, Federal Reserve Bank of Cleveland Supervision and Regulation Department (November 2019). Mind the Gap: Minority-Owned Small Businesses' Financing Experiences in 2018. Consumer and Community Context, a Federal Reserve System publication, Vol. 1, No. 2, p. 16. <https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm>

⁸ California Reinvestment Coalition and San Francisco Office of Financial Empowerment, "Pre-Existing Conditions: Assessing the Financial Services Response to Racism, Inequality, and COVID-19," August 2020, available at: https://calreinvest.org/wp-content/uploads/2020/08/CRC-Banking-Relief-Report_Final.pdf

⁹ Press Release, "The California Reinvestment Coalition And San Francisco Treasurer José Cisneros Call for Banks to Take Bold Action to Invest in Communities of Color During the Covid-19 Pandemic," California Reinvestment Coalition, August 5, 2020, available at: <https://calreinvest.org/press-release/the-california-reinvestment-coalition-and-san-francisco-treasurer-jose-cisneros-call-for-banks-to-take-bold-action-to-invest-in-communities-of-color-during-the-covid-19-pandemic/>

¹⁰ See <https://www.census.gov/newsroom/press-releases/2021/annual-business-survey.html>



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The reported data do not reveal information about applications denied or discouraged, which limits the ability of communities, governmental entities, and creditors to identify and redress the sources of these disparities.

The Center for Responsible Lending identified a number of structural barriers built into the PPP that disadvantaged small and self-employed businesses, especially those owned by people of color.¹¹ A disturbing study of the PPP conducted by the National Community Reinvestment Coalition found that Black and White matched-pair testers experienced different levels of encouragement to apply for loans, different products offered and different information provided by bank representatives.¹²

The rulemaking is crucial in light of historic and continuing discrimination, unequal credit needs in communities, a lack of sufficient data to aid fair lending enforcement and sound policymaking, and Congressional action. Thank you for this opportunity to comment on the proposal. While the proposal is necessarily lengthy, we appreciate that the Bureau provided a full 90 days to comment and that it released the proposed rule on September 1, 2021,¹³ over 4 months before comments are due. In finalizing the rule, we urge the Bureau to consider the following principles and recommendations:

1. Honor the statutory purpose of the Rule: Further fair lending and identification of community need

Congress enacted section 1071 for the purpose of¹⁴:

- Facilitating enforcement of fair lending laws; and
- Enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses

The statutory purposes of Section 1071 must be honored and vigorously pursued. In developing the rule, the CFPB must hew closely and always return to the Congressionally stated purpose of the rule. Both aspects of this stated purpose – to further fair lending enforcement and to help the public identify community development needs – argue in favor of detailed data collection and full public disclosure.

2. Provide broad coverage of transactions

To be effective, the rule must provide for broad coverage of loans, lenders, businesses and applications. Without broad coverage, the usefulness of the data to researchers, lenders and small business technical assistance providers would be reduced, and unscrupulous lenders could use exemptions to avoid reporting.

¹¹ Center for Responsible Lending, “The Paycheck Protection Program Continues to be Disadvantageous to Smaller Businesses, Especially Businesses Owned by People of Color and the Self-Employed,” April 6, 2020 (updated May 27, 2020), available at: https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-cares-act2-smallbusiness-apr2020.pdf?mod=article_inline

¹² Anneliese Lederer and Sara Oros (In collaboration with: Dr. Sterling Bone, Dr. Glenn Christensen, Dr. Jerome Williams), “Lending Discrimination within the Paycheck Protection Program,” National Community Reinvestment Coalition. For more on the NCRC test of PPP, see: <https://ncrc.org/despite-gaping-holes-in-government-data-tests-show-ppp-borrowers-faced-discrimination/>

¹³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-shine-new-light-on-small-businesses-access-to-credit/>

¹⁴ 15 USC 1691c-2



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The 25-loan threshold is key. One of the most important aspects of the rule is the extent of coverage of lenders. It is impossible to meet the statutory purposes of the rule unless the vast majority of the market is covered and all lenders of significance are required to report data. We strongly support the Bureau's inclination to cover all categories of institutions, including: banks, credit card lenders, credit unions, non-banks, commercial finance providers, online lenders, nonprofits, and government lenders. We further support the Bureau's proposal to provide an exemption only for financial institutions that make fewer than 25 loans in either of the last 2 years. A similar threshold had been established in the 2015 HMDA rule. The Bureau estimates that raising the threshold to 50 loans would result in a decrease in coverage of bank lenders - from 70% to 73% of banks reporting under a 25-loan threshold, down to a mere 52% to 56% of banks reporting under a 50-loan threshold (and down to only a third of banks reporting under a 100-loan threshold).¹⁵ Increasing the lending volume threshold will disproportionately harm many small business owners, rural communities, banking deserts and redlined areas that may find that "small" lenders makes up a significant portion of the local lending market.¹⁶ It will also frustrate effective oversight and enforcement of the Community Reinvestment Act.

Small business applicants should include businesses with under \$8 million in revenue. The Bureau is proposing to define small businesses for these purposes to cover businesses with under \$5 million in gross revenue. We believe that establishing the threshold at \$8 million in revenue will provide needed simplicity while hewing more closely to the goals of Section 1071. A lower threshold will lead to significantly less data against which to compare lending patterns and to identify lending trends and gaps. Please note that whatever the definition ultimately established by CFPB, it is critically important that data fields be created to allow for analysis looking at smaller buckets of small businesses based on gross revenue. Because smaller businesses have the most difficulty accessing credit and understanding requirements for loans and reasons for denial, public reporting that does not sufficiently allow for disaggregation of data by revenue size will limit the usefulness of the data to all stakeholders, including technical assistance providers who can help small businesses apply for loans, community banks and CDFIs looking to lend to underserved businesses, and public and private parties seeking to identify and respond to discriminatory lending patterns.

All forms of credit should be captured, including sales based financing such as Merchant Cash Advance and Factors. We believe strongly that all forms of credit should be covered by the rule and subject to fair lending and credit need analysis, including Merchant Cash Advance, factoring, and leases, in addition to term loans, credit card loans and other more traditional forms of credit. In its comments on the CFPB's SBREFA Outline, Opportunity Fund noted that, "According to a white paper, 'Key dimensions of the small business lending landscape,' published by the Bureau in 2017, the estimated number of accounts for factoring products was estimated to be at eight million, MCAs with one million, and equipment financing at nearly nine million. Additionally, leasing products make up 13% of the small business financing market share in dollar terms, further indicating that those products should also be included."¹⁷ Each of these

¹⁵ See 86 FR No. 193, October 8, 2021, p. 56421, Table 1: Estimated depository institution coverage by loan volume as of 2019.

¹⁶ See, for example, Rebel A. Cole, "Bank Lending to Rural vs Urban Firms in the United States Before, During, and After the Great Financial Crisis," for the U.S. Small Business Administration Office of Advocacy, April 2020, available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/05/05112919/RESEARCH-SUMMARY-Cole-Rural-and-Urban-Lending-Report1.pdf> noting, "Banks are especially important in rural areas where small community banks may be the only source of credit available to small firms."

¹⁷ "Written Feedback by SER Luz Urrutia following the Section 1071 SBREFA Panel." Letter from Luz Urrutia, CEO of Opportunity Fund to Grady Hedgespeth, Assistant Director Office of Small Business Lending Markets, CFPB, November 9, 2020, citing "Key



products occupies a substantial portion of the credit market for small businesses, and excluding any of them would allow potentially detrimental lending practices to flourish in the shadows.

*MCA*s. We applaud the Bureau’s proposal to include Merchant Cash Advance loans as covered transactions. These high-cost products are increasingly targeted to borrowers who have, or perceive they have, little chance to obtain more fairly priced credit. The Bureau notes that *MCA*s may constitute a \$19 billion market,¹⁸ and the “frequency of *MCA* use among minority-owned businesses coupled with reports of problematic provider practices lends credence to many stakeholders’ claims that *MCA*s may raise fair lending concerns.”¹⁹ CRC members have been particularly concerned about the harmful impacts of expensive and confusing *MCA* products on businesses owned by women and people of color.²⁰ Including *MCA*’s in the data collection regime is a major advance in the NPRM and will greatly contribute to meeting the rule’s statutory purpose.

Factors. However, the Bureau will undermine the goals of the rule if it exempts factoring, which comprises a substantial part of the market at \$100 Billion a year²¹ and poses serious fair lending and policy implications. According to Lending Club, “Federal Reserve research shows that minority-owned businesses are twice as affected by “potentially higher-cost and less transparent credit products” —a term the Federal Reserve uses to refer specifically to merchant cash advance and factoring financing.”²² Exempting factoring may have the unintended consequence of making factoring the go-to product for unscrupulous actors who wish to keep their lending records in the dark. Experience has shown that when one potentially exploitative product is exempted from a regulation, some companies will shift their product offerings to focus on that exempted product, to the detriment of the consumers that the regulation is intended to help—and to the detriment of regulated parties who focus on the transparent, less exploitative products. In California, restrictions on payday lending drove some payday lenders to installment lending where there were fewer restrictions.²³

Other forms of lending. *Agricultural lending*. Additionally, we support the proposed inclusion of agricultural lending. The vast majority of farms are small and family-run, and farmers are an important part of the community development landscape. Moreover, as the litigation regarding discrimination against Black farmers shows, the risk of discrimination

dimensions of the small business lending landscape,” CFPB, May 2017, available at:

https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

¹⁸ 86 FR No. 193, October 8, 2021, p. 56360.

¹⁹ 86 FR No. 193, October 8, 2021, p. 56405.

²⁰ See <https://calreinvest.org/wp-content/uploads/2018/08/CRC20Small20Business20Report.pdf>

²¹ 86 FR No. 193, October 8, 2021, p. 56368 (citing 6See Secured Fin. Found., 2019 Secured Finance: Market Sizing & Impact Study Extract Report, at 7 (June 2019), https://www.sfnet.com/docs/default-source/data-files-and-researchdocuments/sfnet_market_sizing___impact_study_extract_f.pdf?sfvrsn=72eb7333_2).

²² “Request for Information on the Equal Credit Opportunity Act,” Letter from Richard H. Neiman, Head of Public Policy, Louis Caditz-Peck, Director Public Policy, and Armen Meyer, VP of Public Policy at Lending Club, to CFPB Office of Regulations, December 1, 2020, citing Federal Reserve Bank of Atlanta, “Small Business Credit Survey: Report on Minority-Owned Firms,” Dec 2019. <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>

²³ <https://dfpi.ca.gov/2019/08/08/california-payday-loan-industry-appears-to-be-moving-toward-larger-consumer-installment-loans/>



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and unequal access is significant in the agricultural context. These data points will thus be particularly helpful in advancing the goals of Section 1071.

Consumer credit. We urge the Bureau to reconsider its exemption of consumer credit. Consumer-designated credit is often an important source of financing for small businesses, particularly for women-owned and minority-owned small businesses, and sole proprietorships. We saw the impact of Home Equity Line of Credit (HELOC) usage by small businesses during the foreclosure crisis, and we are seeing it again during the pandemic.²⁴ Lenders should be required to determine, by inquiring of the applicant, whether such credit will be used primarily for a small business purpose.

Real estate lending. Finally, we support the inclusion of mortgage lending but urge that lenders be required to inquire whether the loan and the property will be used primarily for business purposes, such as to secure rental income. It is also critical that the rule ensures reporting on the gross revenue of parent companies and beneficial owners of Limited Liability Companies (LLCs), and not the individual LLCs that are created for each property, often for the purpose of obscuring extensive property ownership. As just one example, Strategic Action for a Just Economy (SAJE) identified 170 LLCs owned by corporate landlord Abraham Stein.²⁵ CFPB must design this aspect of the rule to ensure that HMDA loans to LLCs do not distort 1071 analysis.

“Application” should be defined to include all communications where an applicant inquires about credit and seeks a credit decision. This is an important issue, for if the definition of applicant is too narrow, the data will ignore discrimination that occurs frequently when small business owners make credit inquiries. For example, businesses owned by people of color and women might be urged to develop and submit business plans instead of being offered a loan application. The work of NCRC, referenced above,²⁶ shows that discrimination is occurring in the pre-application phase. We cannot allow this data collection effort to unduly narrow the funnel so that interactions between financial institutions and small business owners seeking credit remain hidden from potential scrutiny. We support the Bureau’s inclination to consider both oral and written requests to be “applications,” but argue against any proposed exemptions for: pre-qualification, re-evaluation, extension, renewal and refinance requests. In each of these instances, the applicant has communicated an interest in obtaining credit and is requesting a decision by the creditor. Further, whenever a lender pulls a business owner’s credit or tax information, or takes any other measures to begin underwriting - as we

²⁴ Andrew F. Haughwout, Donghoon Lee, Joelle Scally, and Wilbert van der Klaauw, “Small Business Owners Turn to Personal Credit,” Federal Reserve Bank of New York, May 19, 2021, available at <https://libertystreeteconomics.newyorkfed.org/2021/05/small-business-owners-turn-to-personal-credit/> (“In addition to a high mortgage forbearance take-up rate, business owners were more likely to borrow against their home equity after the onset of the pandemic. First, small business owners are more likely to have a HELOC and also on average carry larger HELOC balances.”).

²⁵ Alexander Ferrer, “Beyond Wall Street Landlords: How Private Equity in the Rental Market Makes Housing Unaffordable, Unstable, and Unhealthy,” SAJE, March 2021, p. 43, available at: https://www.saje.net/wp-content/uploads/2021/03/Final_A-Just-Recovery-Series_Beyond_Wall_Street.pdf

²⁶ Amber Lee, Bruce Mitchell, PhD, Anneliese Lederer, in cooperation with: Jerome Williams, Rutgers University; Sterling Bone, Utah State University; Glenn Christensen, Brigham Young University, “Disinvestment, Discouragement and Inequity in Small Business Lending,” available at: <https://ncrc.org/disinvestment/>



believe is the case for many or all of the above referenced actions - then an application has been taken that must be subject to the 1071 data collection regime. If a lender pulls a small business owner's credit in response to an applicant communication, this will have an impact on the business owner's credit score. Such communication resulting in lender actions affecting the small business must constitute an application for credit.

3. Collect disaggregated and detailed underwriting and other data to permit robust analysis

Disaggregated data. While providing for broad coverage, the rule must also collect disaggregated and detailed data to further rigorous analysis that will help determine whether discrimination is occurring and how community development needs can be met.

As one example, while we support a broad definition of small business so that many credit transactions are covered, we are particularly concerned about the smallest of businesses that may need smaller credit amounts and that are the bedrock of local communities because they hire locally, provide local-serving products and services, and support their local neighborhoods. These businesses often need financing under \$100,000.²⁷ That is why the 1071 data must allow for analysis of the experiences of businesses with lower revenue as compared with those of higher revenue, between self-employed businesses and those with a few or many employees, etc. To that end, we strongly support the CFPB including additional discretionary data points, as is within the Bureau's authority.

We look forward to seeing detailed data relating to mandatory reporting requirements concerning loan product type (including credit card lending and lines of credit), type of guarantee (which should include any additional or personal collateral required), loan term, and loan purpose.

Credit score data must be collected. To a large extent, credit score continues to define availability of credit. The CFPB proposes not to require the reporting of credit score data even though many if not most loan decisions are made using credit score data. Inevitably, lenders will argue that any future analysis of 1071 data lacks credibility if it does not account for credit score data. We have seen this for years in the mortgage context, dating back to when credit score was not part of HMDA reporting, and continuing to the present day, when credit score data is collected but not reported publicly.²⁸ In fact, HMDA data collection²⁹ provides support for inclusion of credit score in 1071 reporting, as well as a counter to the CFPB's stated concern that such reporting will be complicated and confusing. Presumably, HMDA reporters are complying with the obligation, and CFPB can provide sufficient options for credit score reporting to ensure ease of use for lenders and clarity for end users of the data. If we want to see whether discrimination is occurring, or if

²⁷ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, "Small Business Credit Survey: 2019 Report on Employer Firms," which found that 57% of the 6,614 employer firm small business respondents to the survey sought financing of \$100,000 or less. Presumably, small-business owners with no employees, who were not surveyed for this report, might need small dollar, small-business loans to a greater extent.

²⁸ "In written statements, the ABA and MBA criticized The Markup's analysis for not including credit scores and for focusing on conventional loans only and not including government loans, such as those guaranteed by the Federal Housing Administration and Department of Veterans Affairs." Found in <https://www.usnews.com/news/us/articles/2021-08-25/the-secret-bias-hidden-in-mortgage-approval-algorithms>

²⁹ HMDA requires reporters to identify the "Credit score(s) relied on and the name and version of the credit scoring model," and provides options for lenders, at: https://files.consumerfinance.gov/f/documents/201710_cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart.pdf



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credit scoring is a barrier that is affecting some small business owners disproportionately and calling for a policy response, we need credit score data. We urge the Bureau to require collection of data reflecting credit score, method used, and whether the lender considered personal or business credit³⁰ in order to comply with the fair lending enforcement and policymaking initiatives contemplated by the rule.

APR should be provided. *The public should be able to see APR.* We applaud the CFPB for proposing to include key pricing data points, most of which inform an APR calculation. The CFPB proposes to collect a number of pricing data points including: interest rate, total origination charges, broker fees, total amount of non-interest charges over the first annual period, and whether the loan contains prepayment penalties. For an MCA or other sales-based financing transactions, data collected would include the difference between the amount advanced and the amount to be repaid. It is possible that researchers will be able to use these data points to calculate APR, but 1071 data should not be for academics and researchers alone. Similar to HMDA, 1071 should be a data source that anyone can use easily to determine trends in the lending market or in their own communities. We urge the CFPB to include APR as a data point under the final rule.

California policy reflects growing interest in APR. The state of California has instituted a policy of requiring pricing data disclosures for commercial financing though our first in the nation truth in lending law for small businesses. To implement this policy, the state Department of Financial Protection and Innovation is proposing APR data to be disclosed to small businesses and is determining how best Merchant Cash Advance and similar credit providers can calculate the APRs on their loans. New York's Small Business Truth in Lending Act, recently passed by the legislature, requires APR disclosure by statute. The 1071 data collection should reflect the drive at the state and federal levels towards more transparency of APRs for the benefit of small business owners, policymakers, and fair lending enforcement agents.

APR can be calculated for MCAs. We support the recommendations and positions of the Responsible Business Lending Coalition here. For many sales based financing products such as MCAs, the loans are repaid quickly so that 1071 reporters can use actual repayment data to calculate or estimate the full term and APRs. APR is the only true, tested, transparent, and comparable tool for quantifying price information, and 1071 data collection must include such data. Not every loan is a good loan. Pricing data, all-in APR more specifically, is key to identifying any lending disparities and gaps and to achieving 1071's statutory purpose. Only with a detailed 1071 data collection regime including APR data can regulators, policymakers, and the public determine if similarly situated business owners are treated and charged similarly. If, contrary to our view and recommendation, the Bureau determines that APR calculation for certain products is infeasible for 1071 purposes, this is no argument for omitting APR calculations for ALL products. APR data should be part of 1071 data collection and reporting.

Especially if the Bureau elects not to include APR in data collection at this time, it is critical that the Bureau collect the actual or estimated term length of MCAs. It is also critical that potential loopholes are closed in the proposed MCA cost collection in § 1002.107(a)(12)(v) to capture certain fees. These recommendations are discussed further in the comment of the Responsible Business Lending Coalition.

³⁰ A Federal Reserve analysis found that 86% of employer firms reported relying on their personal credit. "Small Business Credit Survey: Report on Employer Firms." (2019). Federal Reserve System.
<https://www.smefinanceforum.org/sites/default/files/blogs/SBCS-Employer-Firms-Report.pdf>



Including “Action Taken” and “Reasons for Denial” fields will help explain loan declines and lead to needed policy change. We commend the Bureau for proposing to capture in 1071 data collection all the “Action Taken” fields that are utilized in HMDA, including “Reasons for Denial.” Capturing “Reasons for Denial” can help policymakers and the public determine if there are legitimate reasons that small businesses are not deemed qualified for certain forms of credit, and if so, enable us to work towards solutions. “Reasons for Denial” must include personal credit score, which is often cited as the reason that credit is not extended. If low credit scores or other reasons for denial are highly correlated with a business owner’s race or location in an under-resourced community but are not correlated with loan performance, then it will be especially important for lenders to use alternative methods of assessing creditworthiness that do not have a disparate impact on business owners of color or under-resourced communities. Requiring credit score data reporting as well as listing credit score as a reason for denial are both independently important for achieving 1071’s statutory purpose, and both sets of data reinforce the importance of the other.

Determining where the loan was “made” is important to address redlining. As the race, ethnicity and sex/gender of small business loan applicants are important, so too is the location of the loan. The long history of redlining and the continued geographical disparities in financial investment and credit availability show that geography is a crucial component of financial inequity. Without robust data on loan locations, this key aspect of potential discrimination will be impossible to recognize, and governmental entities and communities will be unable to identify areas that are most in need of resources to meet business and community development needs, as the statute intends.

We support the CFPB’s proposed waterfall approach which would seek to identify, in descending order of importance and relevance for reporting purposes: 1) where the loan funds will be deployed; 2) the headquarters of the business; or 3) any address listed in the loan application. The intent should be to help identify if certain neighborhoods are treated differently or are less likely to receive small business loans, for enforcement and policy purposes.

Other discretionary data fields should be included. We support the inclusion of additional suggested data fields, such as: time in business, six-digit NAICS Codes, and number of employees. These data points are needed to understand underwriting decisions and ensure that analysis appropriately focuses on similarly situated businesses. The data must be accounted for so that credit providers cannot, as HMDA reporters have done for years, hide behind data NOT collected as the justification for their lending disparities.

4. Collect disaggregated race, ethnicity and other demographic data.

The use of expanded and disaggregate race and ethnicity data is an important advance, though there are areas for improvement in defining applicants. We support the proposal to consider whether more than 50% of the ownership interest and profit/loss resides with women or members of a minority group.

Disaggregated race/ethnicity data. Further, we strongly support and applaud the Bureau’s proposal to require reporting of the disaggregated race and ethnicity categories that are part of the Home Mortgage Disclosure Act (HMDA) data collection regime. CRC members advocated strongly for the inclusion of disaggregated race categories in HMDA and think such data points are equally relevant and important in the small business lending context. Bringing transparency to the experience of disaggregated race and ethnic groups will unmask any discrimination that occurs within the Asian



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American, Latine and Native Hawaiian or Other Pacific Islander communities. As we predicted, the new HMDA data, which disaggregated race and ethnicity categories, are already demonstrating home lending disparities within race groups.³¹

Add Middle Eastern/North African category. For the same reason, we strongly support the addition of a new race category of Middle Eastern/North African and of new disaggregated race/ethnicity categories for Black borrowers.³²

Require and track visual observation. We also support the proposal's requirement that lenders use visual observation and review of surnames to determine the race or ethnicity of applicants who decline to state their race or ethnicity. This process has been used successfully with HMDA for many years. We urge that the data reflect whether race and ethnicity determinations have been made by visual observation.

Refine sexual orientation and gender related questions. We appreciate that the Bureau requests feedback on its proposals regarding gender identity and sexual orientation and the acknowledgement that discrimination and disparities exist within these contexts. We recommend that the Bureau collect these data, not conflate the two lines of inquiry, and follow best practices for these questions established by groups such as the Williams Institute.³³

Include disability. Separately, we support suggestions to have the data capture whether small business applicants are persons with disabilities, as discrimination against disability is also prevalent in our society. The National Disability Institute³⁴ estimates that 12% of Americans have a disability and that two million people with disabilities own businesses. As NCRC points out, including a disability related data field would further enforcement and implementation of the Americans with Disabilities Act and various bank vendor procurement programs, amongst other laws and initiatives.

5. In any balancing test, recognize the strong interest in detailed, broad, and public data disclosure over dubious concerns around regulatory burden and privacy

Society's interest in eradicating discrimination and closing the racial wealth gap far exceeds any negligible risk of privacy violations. In fact, we are not aware of any evidence that HMDA data have been used to harm consumer privacy interests.

³¹ See, for example, <https://ncrc.org/mortgage-data-reveals-disparities-in-asian-american-and-pacific-islander-lending/>

³² We support the Bureau's proposal to include the following disaggregated categories: African American, Ethiopian, Haitian, Jamaican, Nigerian, Somali, Other. Where the applicant indicates a principal owner is Other Black or African American, they will be permitted to provide additional information about the principal owner's race, such as providing information that the principal owner is, for example, Barbarian, Ghanaian or South African.

³³ See, for example, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Best-Practices-SO-Surveys-Nov-2009.pdf>

³⁴ <https://www.nationaldisabilityinstitute.org/>



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Minimal risk to privacy. Privacy risks are reduced by not disclosing any personally identifiable information of loan applicants. For years, banks have advocated disingenuously for the privacy interests of their borrowers even though banks fight almost every effort to protect bank customer privacy. We are not aware of any privacy breach that resulted from HMDA data. HMDA has utilized modified approaches that might mask certain data points while allowing for helpful data analysis. If the CFPB determines that public disclosure of a data point presents a real threat to small business privacy, rather than withhold that data altogether, the Bureau should provide the mid-point between certain intervals (such as NCRC's recommendation to use the mid-point between \$10,000 increments in calculating gross revenue) if a continuous variable will not be used, or assign data points to certain bucket ranges.

Given the widespread solicitation of products based on the use of private data sources, we do not think detailed public disclosure of 1071 data will harm small business privacy interests in any meaningful way. But failure to disclose or undue aggregation of 1071 data points will certainly frustrate the statutory purposes of the data collection regime.

Reasonable costs. We also believe that costs due to regulatory burden are small and well considered by the Bureau. We thank the Bureau for its rigorous approach to estimating costs by using its experience with HMDA, noting similarities and differences between mortgage and small business lending, analyzing available data, and interviewing and surveying small business lenders. According to Bureau analysis, the estimated one-time costs of compliance for non-depository institutions would be \$89,200, and the ongoing costs per loan application would be between \$41 and \$89. The Bureau estimates that only between \$5 and \$20 of the ongoing costs of compliance might be passed on to the borrower. **In an informal CRC survey of ### of CDFIs and community lenders, X% agreed that the Bureau's assumptions around the cost of compliance are reasonable.**³⁵ If nonprofit lenders are willing to embrace this data collection rulemaking without fear of undue and excessive costs, we question the sincerity of larger for-profit financial institutions raising this concern.

Lenders already collect data. We believe that most or all of the data that might be collected under 1071 is already collected. Lenders necessarily collect this data to make informed underwriting decisions. Additionally, bank regulators, the SBA, and the CDFI Fund require participants in their programs to collect data that is reported. Recent disclosures reveal the extent to which Economic Injury Disaster Loan (EIDL) and PPP lenders were required to collect data on their loan applicants, where such data have been made publicly available, and where the sky has not fallen. This is not new, this is standardizing and enhancing what exists in incomplete and fragmented form.

Transparency benefits responsible lenders. Full transparency should protect responsible lenders from unfair scrutiny and enforcement and set them apart from those less scrupulous. Full transparency can also move problematic lenders to offer more responsible products in more responsible ways. We also acknowledge the work that the CFPB did to estimate compliance costs, suggesting that costs appear reasonable and that costs passed on to small business customers will be minimal. Experience with HMDA suggests a data collection requirement does not lead to lenders leaving the market. In

³⁵ (IF WE GET ENOUGH RESPONSES TO OUR GOOGLE FORM SURVEY, WE WILL FOOTNOTE INFO ABOUT THE SURVEY AND THE RESPONSE



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addition, a lack of detailed 1071 data will allow predators and discriminating institutions to continue to unfairly extract profits while imposing harm on small businesses owned by women and people of color and on the neighborhoods in which they operate.

Benefits of the rule. Any cost-benefit analysis should also recognize the benefits to borrowers, their employees, their customers, and local economies. As noted above, racial disparities in lending cost millions of jobs and hundreds of billions in revenue each year. The credit gap for Black-owned firms alone costs America more than 6 million jobs and approximately \$650 billion in cumulative revenue per year.³⁶ If the 1071 data collection reduces that gap by even *one percent*, the benefits - some \$6.5 billion in revenue, not even counting the benefits from increased lending to other small, women-owned, or minority-owned businesses - would dwarf the costs that the Bureau estimated for the rule.

Where are all the fair lending cases? Regulatory agencies and private parties frequently file fair housing cases, but we rarely see fair lending cases brought on behalf of small business owners. We are not aware of any reason to believe that this is because there is LESS discrimination in the small business lending market. Rather, there is likely MORE discrimination in the small business lending market and LESS enforcement, precisely because there is less transparency about which lenders are lending to which borrowers, where, and at what cost. Section 1071 data will level the playing field, reduce costs to business owners, and foster a well-functioning marketplace.

6. Make the data accessible to the public

While broad, public release of data is needed, so too the Bureau should make the data available to the public in an accessible manner so that anyone with an interest in the fair lending and community development needs of their community can understand the data. The FFIEC and the CFPB have played a pivotal role in the past in bringing that level of understanding to the public in their design of public-facing databases. However, the CFPB needs to improve on recent HMDA efforts by facilitating simple searches and providing high-level charts for public consumption and education.

7. Make the data readily available to the public as soon as possible to prevent further harm.

Data delayed results in harm. Importantly, the failure to collect these data points imposes a great societal cost. Small business owners who are members of protected classes suffer discrimination, resulting in a widening wealth gap and fewer employees hired. Neighborhoods of color receive less responsible credit and suffer from disinvestment, small business failure and job losses. And our economy suffers as we continue to deprive all small business owners the equal opportunity to thrive, increase assets, hire workers, and serve local economies. The absence of this data, more than a decade after its mandate by Congress, leaves local governments, regulators, community organizations, and socially responsible industry actors ill equipped to respond to credit deserts and other underserved communities.

COVID highlighted disparities. Discrimination and disparities that flourish in the absence of transparency have been exacerbated during the COVID pandemic. For example, in Fresno County, one CDFI lender estimated that between 35%

³⁶ Dana M. Peterson and Catherine L. Mann, "Closing the Racial Inequality Gaps," Citi Global Perspectives and Solutions available at: <https://www.citivelocity.com/citigps/closing-the-racial-inequality-gaps/>



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and 45% of the thousands of small businesses that sought relief from local COVID relief programs required technical assistance *just to complete their applications*. And yet, numerous counties in California are less populous, have less CDFI and lending capacity, and have no data, even anecdotal, to illuminate credit and fair lending needs.

1071 will strengthen CRA. Successful implementation of the Community Reinvestment Act (CRA) also is compromised by the absence of 1071 data in that regulators, policymakers, peer banks, community groups and small businesses are unable to see to what extent banks are helping to meet small business community credit needs. CRA Small Business data merely provides data on whether loans under \$1 million were originated, and whether the business borrower had more or less than \$1 million in revenue. It does not show whether the borrowers who received loans were businesses that traditionally face obstacles to community, nor does it show loan pricing data, the number of borrowers who applied but did not receive loans, any reasons for denial, the neighborhood of the business, and CRA data does not capture any lending activity for smaller lenders. The 1071 data will allow us to see what products are serving which borrowers and communities and at what cost, and will enable CRA regulators and community reinvestment organizations to encourage and track loans and investments to traditionally underserved borrowers and communities. The data will also help regulators determine how best to incorporate race, ethnicity and gender into CRA. The delay in implementing the 1071 Rule has frustrated and pushed back these efforts, to the detriment of the people and communities meant to be protected by ECOA, the Fair Housing Act, and the CRA.

Quarterly data. Data should be made available quarterly to the public, as has been the case with HMDA, despite recent rollbacks of this practice. Access to the data is important, and we want that access to be timely, for all stakeholders, so that the public is not relying on old data that may not reflect newer products, policies, and practices of lenders.

Data upon request and expedited public data release. We also believe that all credit providers subject to 1071, including banks characterized as large banks for CRA purposes, should be required to provide their data to anyone within 30 days of a request to do so. Such had been the case for HMDA. CRC had requested HMDA data from HMDA reporters several times over the years. The CFPB does not sufficiently consider and explain why it absolves lenders of the requirement to report data upon request under HMDA and 1071. If in the final Rule the CFPB will relieve lenders of any obligation to respond to individual requesters, then there is a stronger argument for quarterly public reporting of 1071 data.

Fall publication of data. We understand that the CFPB wants to create a lag between HMDA reporting's March deadline and the proposed 1071 June reporting deadline. But we are concerned that this will push back the publication of the data so that the public may not see 1071 data until after the calendar year (reflecting data that is over 1 year stale). The reporting deadline is acceptable if CFPB can ensure Fall publication of the data.

January 2024 target date. The target date for full implementation and public data disclosure should be no later than January 1, 2024. We have waited for the data for over 10 years since the passage of the Dodd Frank Act. CRC members for decades have recognized small business data collection as perhaps the most impactful tool for increasing access to responsible credit for small businesses, in particular, those owned by women and people of color.

Conclusion



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Thank you so much for your thoughtful efforts to quickly and judiciously implement this critically important rule which will help create a level playing for all small businesses, narrow the racial and gender wealth gaps, and expand our economy to meet its full potential.

Should you have any questions about this letter, please feel free to contact Kevin Stein at (415) 864-3980 or kstein@calreinvest.org.

We thank you for the opportunity to comment, and for your consideration of our views.

Very Truly Yours,

California Reinvestment Coalition
(other signatories)