ILLINOIS BANKERS®

January 6, 2022

By Electronic Delivery to 2021-NPRM-1071@cfpb.gov

Comment Intake — Section 1071 Small Business Lending Data Collection
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: **Docket No. CFPB-2021-0015**
86 Federal Register 56356 (October 8, 2021)

To Whom it May Concern:

The Illinois Bankers Association (IBA)[1] is writing on behalf of its members to comment on the proposed rule implementing the small business lending data collection requirements in Section 1071 of the Dodd–Frank Act. We appreciate the opportunity to comment on what will be transformational requirements for small business lending.

We strongly support the Equal Credit Opportunity Act (ECOA)'s goals, and our members work every day to meet their communities' credit needs fairly and equitably. The vast majority of our members are community banks (many of which would qualify as small businesses under the proposed rule) with significant small business lending operations. Our members' loan officers work alongside small businesses in their communities, crafting financing plans catered to the unique needs of their small business customers. Often those financing plans involve small-dollar loans to businesses that often have very low revenue, such as $50,000 per year. Our members' experienced small business loan officers intimately understand small businesses' needs and concerns.

We are very concerned that expensive regulatory burdens will significantly reduce the amount of money and resources our members currently dedicate to small business lending. Meanwhile, our members face stiff competition, as their customers are bombarded with ads on their phones and other aggressive advertising for payday and online or fintech lenders.

We strongly encourage the CFPB to consider the following comments.

Support local lenders engaging in supportive, tailored small business lending. Our members want to continue coaching, advising, and working together with their small business loan applicants. This is how our members provide value well beyond offering financing. But several aspects of the proposed rule would undercut that flexible, relationship-based approach — pushing small businesses to lightly-regulated fintech lenders, aggressive online lenders, and even shadow lenders, or resorting to personal credit.

Several aspects of the proposed rule would fundamentally alter how many of our members make small business loans. Currently, the small business loan application process at banks is extremely flexible

[1] The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate for the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 40% of IBA members are community banks with less than $150 million in assets, and over 75% of IBA members are community banks with less than $500 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 105,000 men and women in over 5,000 offices across the state.

and consultative — starting with a phone call from an existing or potential business simply looking for money, without knowing what product to apply for. Over the course of several months or more, through back-and-forth emails, phone calls, and text messages, the bank then provides guidance on crafting a business plan, providing the financial information needed for underwriting, and other hand-holding to move the business through the application process.

While the proposed rule includes a flexible definition of "application," its stringent data collection requirements will stifle any flexibility and will discourage potential small borrowers. Several of our members and their loan officers predicted that the collection of twenty-eight data points (including all data points and subpoints from the proposed rule) from small business loan applicants will make the application process cumbersome, slowing down credit decisions, frustrating customers, and interfering with their ability to serve the small business market — particularly for new businesses and small or micro businesses. With each question asked of an applicant, the likelihood of receiving a completed application drops — particularly for the smallest and unbanked applicants that need banks' support and expertise the most.

Additionally, a formalized application process and the other data collection and retention requirements of the proposed rule involve significant costs and shifting of resources away from small business lending. For example, one of our members employs only three or four loan officers but will need to purchase new loan application software that will cost the bank at least $50,000 per year — and a new application process is just one aspect of the compliance costs of the proposed rules, all of which will remove lending dollars from small businesses and our communities.

Raise the reporting threshold without losing data. We urge the CFPB to adopt a much higher reporting threshold than 25 covered transactions. Additionally, we support measuring the reporting threshold in each of the two preceding calendar years.

Based on the "Estimated depository institution coverage by loan volume" table provided in the proposed rule, minor increases in the reporting threshold would capture over 95% of the total small business loans by depository institutions. In our view, the CFPB should consider much larger increases to the reporting threshold — if the CFPB can retain data on the vast majority of total small business lending across the country, that data should more than satisfy the statutory mandates in Section 1071. Additionally, as noted in the proposed rule, setting a very low threshold for small business data collection of 25 covered transactions risks causing low-volume lenders to reduce or cease their small business lending to avoid the significant costs of compliance.

Eliminate the "firewall" and notice requirement. The "firewall" requirement in the proposed rule (under both Sections 1002.108 and 1002.111) is entirely unworkable for small lenders — they cannot see how this requirement could be implemented without hiring new staff to collect and retain protected information and adopting a second, parallel recordkeeping system. Keeping the specified information in a costly, separate filing system will slow down the underwriting process and interfere with supervisory and auditor requirements, which require examinations of complete loan files.

The smaller the bank, the more difficult and expensive the implementation of a firewall. Consequently, many of our smaller members predict that they will be forced to provide notices to applicants stating that the loan officers will have access to the business owners' ethnicity, race, sex, and other protected information — a notice that is sure to alarm small business applicants (including women and minority business owners, who are keenly aware of the historic effects of discrimination), placing our members at a competitive disadvantage without serving the purposes of the ECOA.

Eliminate the requirement to estimate a business owner's race and ethnicity. We urge the CFPB to remove the requirement to estimate a business owner's race or ethnicity based on visual observation and surname, particularly as this requirement would apply only to business owners who have expressly determined that they do not wish to provide this information to the lender. Data based on visual observation and surnames will be unreliable, the collection will create confusion (requiring training on estimating a business owner's race and ethnicity while assiduously avoiding any observation of their sex) — serving only to discourage loan officers from meeting with applicants in-person or by video calls to avoid

the requirement altogether. Also, this provision serves as another example of a requirement that will place local, relationship-based lenders at a disadvantage to lightly-regulated competitors operating in a fully virtual space.

Adopt commonsense thresholds and clear definitions that are harmonized with existing reporting regimes. Creating new data collection and reporting requirements inevitably will be an expensive, burdensome process, but there are many opportunities to at least lessen some of the costs and burden of the proposed rule by harmonizing requirements with existing data collection and reporting regimes under the Community Reinvestment Act (CRA), Home Mortgage Disclosure Act (HMDA), and supervisory Call Report process. Additionally, banks already identify beneficial owners of business customers under FinCEN's customer due diligence regulations, and layering on a new definition of "primary owners" will introduce unneeded complexity to the loan origination process.

Remove unnecessary data points. The proposed rule takes Section 1071's seven required data points in 15 USC 1691c-2(e) and adds more than twenty additional points (twenty-eight in total with all subpoints). We strongly urge the CFPB to limit its data collection to the statutorily-required data points.

Additionally, our members have identified several problems with information collected under the proposed rule. Several data points incorporate many layers of complexity, including reporting on a census tract, gross annual revenue, time in business, and other data points regarding a business. Many small businesses have multiple properties or are in the process of moving (complicating the address and census tract reporting), have loan guarantors and co-borrowers (complicating the gross annual revenue calculation and other data points), and cannot provide an exact amount of time in business (due to name changes, mergers and acquisitions, and other routine events that complicate this calculation). Other data points, such as the number of workers, also may vary significantly throughout the year.

While we urge that the final rule allow banks to wholly rely on customer-reported information for most if not all data points, it is equally important to consider the chilling effect that will result simply from asking customers to provide such voluminous and detailed information about their businesses — especially for small and micro businesses, which may be seeking a loan for as little as $1,000 or less.

Avoid unrealistic error rate thresholds in Appendix H. We view the proposed tolerance thresholds for bona fide errors in Appendix H of the proposed rule to be unrealistically low. Small business loan data collection is entirely unprecedented and will require banks to adopt entirely new third party software solutions for loan applications and data collection and reporting, systems upgrades, employee training, multiple layers of review from different departments and business lines, and more. Requiring 90–97.5% data accuracy is out of reach for most of our members, particularly for the first year of data reported under the rule.

Additionally, our members have experienced first-hand how costly the stringent data accuracy requirements are under the HMDA, with community institutions forced to pay six figures to third party consultants to correct data errors, no matter the impact on the final data. Banks already find themselves spending inordinate staff time and resources collecting and maintaining data under the CRA and HMDA, as well as for Call Report and BSA/AML reporting purposes. The time and expense spent in such data collection and paperwork instead should be deployed in our banks' communities, through lending and investments, by marketing to low- and moderate-income communities, and in promoting financial literacy and other worthy causes.

Adopt a reasonable implementation period. Our members will need more than eighteen months to implement the proposed rule's reporting regime and ensure appropriate levels of data integrity.

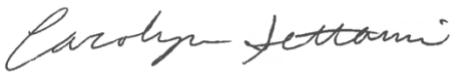
Unfortunately, most of our members are dependent on third party software vendors (none of which are currently poised to provide a comprehensive Section 1071 reporting solution) and intransigent core vendors (an extremely uncompetitive market dominated by just three major providers with little incentive to innovate or jump on new regulatory requirements). Once those software changes and upgrades have been

developed, our members must conduct appropriate due diligence, make purchases, update and test systems, hire and train employees, develop processes, test and monitor data results, and more.

In addition to the implementation time needed, some of our members wish to conduct test runs to ensure they can collect and report data accurately. Under an eighteen-month implementation period, a bank would have just six months to begin collecting data to ensure it could conduct a trial run with a year's worth of data before the rule's effective date. We strongly urge the CFPB to adopt a significantly longer implementation period, considering the enormous resources required to stand up new data collection and reporting systems that can comply with the proposed rule's extremely stringent data integrity requirements.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,



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