



January 5, 2022

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

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

Dear Madam or Sir:

The California Bankers Association (CBA) writes this letter on behalf of depository financial institutions doing business in the state of California. CBA, established in 1891, is a division of Western Bankers, a professional non-profit organization for banks doing business in 13 western states and 3 U.S. territories. CBA frequently provides comments to regulatory proposals.

This letter addresses the proposed rule from the Consumer Financial Protection Bureau (Bureau) amending Regulation B to implement changes to the Equal Credit Opportunity Act made by section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

We appreciate the opportunity to provide comments on this proposal to amend the Dodd-Frank Act, which was first enacted in 2010 to require that financial institutions collect and report to the Bureau certain data regarding applications for credit for women-owned, minority-owned, and small businesses.

CBA commends the Bureau in its efforts for covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities and we support these goals. We do have some apprehension regarding some of the data requirements that we believe will increase the costs of small business lending.

Among other things, the proposed rule would (1) determine who would be considered a covered financial institution, (2) define a small business, (3) require the collection and reporting of certain data regarding covered applications from small businesses, (4) prohibits an institution's employees from having access to an applicant's demographic data unless it is infeasible, (5) provide an 18-month implementation period, and (6) provide provisions regarding enforcement of violations, bona fide errors, and safe harbors.

Covered Financial Institution Definition

As proposed, a covered financial institution would be defined as one that originated at least 25 covered transactions in each of the two preceding calendar years. While we do support an activity-based definition such as this, CBA believes that 25 is too low of a threshold and will negatively impact smaller financial institutions as a result. A 500-loan origination threshold is a more appropriate number that would still cover a significant percent of a banks' small business lending.

Small Business Definition

A small business would be defined as one that has no more than \$5 million in gross annual revenues in its most recent fiscal year. While CBA supports a straightforward definition of a small business, we believe the \$5 million threshold is too high and will capture loans to businesses that are not truly small. A \$1 million or less standard would be more appropriate and successfully capture small business loans.

Data Points

The Dodd-Frank Act mandated the collection and reporting on 13 data points. However, the proposed regulations add an additional eight data points under the Bureau's discretionary authority. These new data points include loan pricing, application method, application recipient, number of workers, time in business, denial reasons, NAICS codes, and number of principal owners, bring with them significant new burdens on financial institutions. We believe that these new discretionary data points should be omitted from the final rule until a later determination can be made on their ultimate necessity.

Firewall

While this proposal prohibits an institution's employees who are involved in decision-making on applications from having access to an applicant's demographic data, this prohibition does not apply if the institution deems the prohibition to be infeasible and in turn provides a notice to the applicant disclosing that decision makers will have access to the demographic data but cannot discriminate against applicants. This notice burden will have a significant impact on smaller banks and CBA is concerned about the potential negative impact such a disclosure may have and the competitive disadvantage this may create. We ask the Bureau to not finalize this part of the proposal.

Implementation Period

CBA appreciates the consideration for an implementation period to ensure that financial institutions can adequately prepare for the new rule. However, we believe that 18 months is too short of a time period for such a significant transition. We think that 3 years would be a more realistic implementation period that would ensure compliance with the new rule.

Bona Fide Errors and Safe Harbors

The proposed rule offers safe harbors for bona fide errors in compiling, maintaining, or reporting data with respect to a covered application. CBA supports this concept and believes that an increased error tolerance for bona fide errors, in addition to working with the banking agencies to provide a grace period during the first year of collection, would provide banks the necessary protections to implement these substantial requirements.

In closing, CBA commends the Bureau's efforts to implement the important policy goals of Section 1071 and we look forward to continued work on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Mike Webb". The signature is written in a cursive, slightly slanted style.

Mike Webb
Vice President, Assistant General Counsel