

December 14, 2020

Ms. Kathleen Kraninger  
Director, Consumer Financial Protection Bureau  
1700 G St. NW Washington, DC 20552

Submitted via email to [2020-SBREFA-1071@cfpb.gov](mailto:2020-SBREFA-1071@cfpb.gov)

**RE: SBREFA Process for Section 1071 Small Business Lending Data Collection Rulemaking**

Dear Director Kraninger:

Thank you for the opportunity to provide comment on the implementation of Section 1071 of the Dodd-Frank Act. Please note that these comments have not been submitted to or approved by NeighborWorks America's board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 local and regional nonprofit affiliated NeighborWorks organizations.

For over 40 years, Neighborhood Reinvestment Corp. (d/b/a NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing. Our collective network experience provides the basis for recommendations to ensure transparency around small business lending through the implementation of Section 1071 of the Dodd-Frank Act.

While legislation such as the Home Mortgage Disclosure Act has long provided transparency into the mortgage sector, small business lending has remained in the shadows with no large-scale data collection. While it is well known that minority- and women-owned businesses are severely hampered by their access to capital, the scale and scope of the problem is not clearly defined, hindering efforts to address these issues. With robust data, stakeholders and policymakers will be better positioned to understand the reasons behind these limitations, devise solutions to increase systemic access, and identify discrimination where it occurs.

Based on pre-pandemic information from the [Small Business Administration](#), the United States has 29.6 million small businesses. These small business are a key component of the national economy, making up over half of GDP and employing nearly half of all private sector employees in 2014. They will be a critical force in our economic recovery post COVID-19. However, a [study](#) conducted by the National Community Reinvestment Coalition (NCRC) identified large gaps in entrepreneurship by race, with lending to black and Hispanic borrowers trailing significantly behind white and Asian business owners. Without access to capital, business owners are severely hampered in establishing, maintaining, and growing their enterprises.

The pandemic has only further challenged these businesses, and the experience of the Paycheck Protection Program (PPP) illustrates the uneven footing on which these businesses operate. PPP was designed as a federal response to aid small businesses struggling as a result of the economic stresses attendant to the pandemic. However, an NCRC [analysis](#) of data from the program shows that PPP loans were four times more likely to go to businesses in upper-income census tracts than low-income neighborhoods. Furthermore, loans in low-income areas were about 1/3 of the size, averaging only \$36,481. Similarly, areas with higher populations of color received significantly fewer loans and in smaller amounts. Were it not for the data collection accompanying the PPP, these discrepancies would have gone unseen. This recent history serves as a poignant illustration of the importance of shining light on the larger universe of small business lending.

NeighborWorks strongly encourages the CFPB to craft its Section 1071 information collection to be expansive in its coverage of both lenders and credit products. Robust data is the only way to be able to meaningfully achieve the goals of this effort, and the benefits of this data far outweigh the costs of the attendant administrative burdens.

### **Who should report?**

NeighborWorks supports requiring all financial institutions that make 25 or more loans per year to report their data. This de minimus exception would reduce burdens on institutions that do only minimal small business lending without meaningfully diminishing the overall dataset. According to the CFPB's data, this exception would apply to half of depository institutions, but would still capture 99% of the small business loans made by this sector. It may even be appropriate to set a higher threshold, but the CFPB did not provide data to assess the impacts of such an increase. NeighborWorks opposes using asset size as a threshold for triggering reporting requirements as there is no direct link between asset size and small business lending volume. An asset size threshold would have dramatically different implications in different regions of the country, potentially creating large "blind spots" in certain areas where small banks provide a substantial portion of small business loans.

### **When is a reporting requirement triggered?**

Section 1071 requires reporting "in the case of any application." NeighborWorks supports the CFPB's proposal to use the Regulation B definition as "an oral or written request for an extension of credit." This definition is familiar to lenders and sufficiently flexible, without requiring that an application be fully completed. Research has clearly demonstrated that minorities and women are frequently given less information or even discouraged from applying for credit. The definition of "application" must be broad enough to encompass applications that are not completed as a result of these practices.

### **Which products should be covered?**

NeighborWorks encourages the CFPB to define "credit" broadly. While term loans, lines of credit, and business credit cards represent the bulk of the loan products extended to small businesses, there are additional instruments that have historically been used and should be included in this data collection. In particular, merchant cash advances have been disproportionately extended to minority businesses, and often with predatory terms.

Reporting on MCAs may be more burdensome than other types of products because they are more complex and often carry different terms, but it is exactly these features that make transparency into this lending so critical. A potential unintended consequence of excluding these types of products from the scrutiny of this reporting is that unscrupulous lenders might actually be incentivized to “double down” on their use rather than offering more consumer-friendly products.

#### **When should covered FIs collect the data?**

Financial institutions should collect these data at the time an application is initiated in order to increase the likelihood of successfully receiving this information. While NeighborWorks appreciates the CFPB’s efforts to be sensitive to the existing processes of FIs, the benefits of increasing the probability of being able to capture this data outweigh the potential costs.

#### **What safeguards need to be in place?**

Section 1071’s requirement that these data be shielded from underwriters is a critical protection, though NeighborWorks agrees with the CFPB’s proposal not to extend this firewall to an applicant’s status as a small business.

#### **What data should be collected?**

Section 1071 requires the CFPB to collect information on the race, sex, and ethnicity of the principal owner(s). Like HMDA data, these data must be disaggregated to show disparities between and among racial and ethnic groups. In addition to the mandatory data required by statute, NeighborWorks encourages the CFPB to collect information on pricing, length of time in business, NAICS code, and number of employees. These data points provide critical context to assess differences between loan applications and can be critical to illuminating discriminatory practices.

In conclusion, NeighborWorks urges the CFPB to recognize the value of this data collection and move expediently towards implementation. For NeighborWorks and others seeking to address market failures, a data-based understanding of the \$1.4 trillion small business lending market is essential. Notwithstanding the importance of protecting the privacy of individuals, it is imperative that these data be made accessible to the public. The CFPB’s proposal to apply a balancing test to devise a balancing test to weigh the risks of disclosing unmodified data against the benefits is reasonable, but that great care should be exercised to preserve the underlying utility of the data if modifications are made.

Sincerely,



Kirsten T. Johnson-Obey  
Senior Vice President, Public Policy and Legislative Affairs  
NeighborWorks America