



January 6, 2022

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

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Re: Comments to the Proposed Rulemaking on Small Business Lending Data Collection under the Equal Credit Opportunity Act (Docket No. CFPB-2021-0015)

Dear Director Chopra,

On behalf of the United States Hispanic Chamber of Commerce (USHCC) and our Board of Directors, we are pleased to submit comments to the Consumer Financial Protection Bureau (CFPB) regarding the proposed rule to collect and report small business lending data under Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We commend you for your leadership in moving forward this long-awaited rule and appreciate the opportunity to provide recommendations on behalf of the Hispanic business community.

The USHCC actively promotes the economic growth, development, and interests of more than five million Hispanic-owned businesses that, combined, contribute over \$800 billion to the American economy every year. We also serve as a platform for our nationwide network of over 260 local Hispanic chambers of commerce.

The USHCC recognizes the importance of entrepreneurship to build financial security and create generational wealth. That is why we seek to bridge the existing obstacles that minority entrepreneurs face as they attempt to access the same lending opportunities that non-minority businesses have. Recent studies have found that Latinos/as start businesses at a far greater rate than the national average, it is essential that these entrepreneurs are met with an equal lending opportunity to start, grow, and scale businesses if we want the American economy to thrive.

According to a study conducted by the Aspen Institute, the sales that Latino/a firms generate, versus what they would generate if on par with the average non-Latino/a business, present a finance opportunity gap of \$1.38 trillion for the U.S. economy. This means that there is a real cost to our economy when we fail to provide equal opportunity and set a fair playing field for all. Furthermore, this cost is also paid, at a much larger scale, by the entrepreneurs who are forced to use alternative sources of funding to invest in their business; According to multiple business sources, minority-owned businesses are far more likely to rely on personal savings than all other small businesses to fund and scale their enterprise.

While we recognize that there is an existing problem in the disparity of opportunities within our country, we believe that there is a pressing need to understand the full picture of these disparities. That is why Section 1071 is so critical to understand the needs and obstacles that minorities face in accessing lending opportunities. We advocate for full transparency around small business lending so that we can identify and address all discriminatory practices around the country.

Section 1071 represents an opportunity to set a fair playing field for all of those who seek to achieve the American Dream, regardless of their race, gender, ethnicity, or background. Below, we address our recommendations for this rule.



Definition of Covered Financial Institution

The USHCC agrees with the CFPB's definition of a covered financial institution being one that has originated at least 25 covered transactions in each of the previous two years. As the CFPB itself has estimated, this threshold would mean that 70% or more of banks would be subject to reporting under Section 1071. If the threshold were raised to 50 or 100 loans, however, the percentage of covered banks would fall significantly. This would decrease the amount of lending data collected, raising the risk that the data is not representative of the actual small business lending landscape.

Inclusion of Multiple Categories of Lenders

We agree with the CFPB's decision to include credit unions, online lenders, community development financial institutions (CDFIs), minority depository institutions (MDIs), and other lenders in the proposal. Since different lenders offer credit at different terms, and some lenders historically have served a certain category of small businesses disproportionately, it is important to have data representing a broad array of lenders. Moreover, as certain lending entities-such as online lenders-become increasingly popular, their inclusion is important to have a comprehensive dataset and be able to track lending patterns over time.

Inclusion of Merchant Cash Advances

We applaud the inclusion of merchant cash advances (MCAs) as covered products. These products increasingly are used by small businesses, and their use is more frequent among businesses with owners of color compared to White-owned businesses, as the CFPB cites. Since MCAs are often high-cost products and can be predatory, it is important to be able to assess their impact on minority-owned businesses.

Reporting on the Number of Workers

We support the CFPB's decision to have financial institutions collect information about the number of workers an applicant has. As the proposal states, this is an important data point because it would provide insight into the number of jobs retained or created through access to credit and capital. It would also help reveal whether small businesses of various sizes require different levels of support when it comes to accessing credit. This data will also help determine various levels of economic development and impact across the country.

Disaggregated Racial and Ethnic Data

We are pleased with the CFPB's proposal that disaggregated racial and ethnic data be collected by financial institutions, in addition to the aggregate race and ethnicity categories. Since a main purpose of Section 1071 is to increase transparency around credit access for small business owners of color, having accurate, specific data will aid in that objective. Disaggregated data will better reveal whether certain ethnic subgroups are facing more lending discrimination than others, allowing for more targeted support. In addition, as we describe below, we also support the inclusion of other race and ethnicity categories.

While the USHCC is supportive of the proposed rule, below we offer the following recommendations to further strengthen it, make it more equitable for Latino/a businesses, and ensure that we have the adequate data to make necessary financial opportunities in lending available to all minority groups in America.

Expand the Definition of Small Business

We encourage the CFPB to expand its definition of a small business to one with revenues up to \$8 million or up to 500 employees (depending on the type of business), instead of the proposed threshold of revenues up to \$5 million. This would allow for a broader coverage of the



small business landscape, while still being simple enough to implement, as industry representatives noted.

Include Additional Data Points to Make the Data More Insightful

Credit Scores: We recommend that credit scores be included in the data that financial institutions collect from small business applicants. The CFPB stated that it would be too complex to do so. However, credit scores play an outsized role in whether an applicant is extended credit, so having this information could provide a more complete picture of why applications are accepted or denied.

Annual Percentage Rates (APRs): We support the CFPB's proposal to collect pricing data points, such as interest rates and fees, to determine the cost of credit being offered to small businesses. As the CFPB cites, research has shown that minority- owned businesses rely on higher-cost credit products and are charged higher interest rates than White- owned businesses, so pricing information is critical in assessing whether credit is being fairly distributed. However, we encourage the CFPB to also require the reporting of Annual Percentage Rates (APRs), in addition to the other pricing data points. As a single, consistent measure across different credit products, the APR would be better understood by the public and allow for easier cost comparisons among products. Alternatively, if the CFPB does not require financial institutions to report APRs, it could determine and publish APRs as part of its analysis of the data.

Overdraft Line of Credit: In response to the CFPB's question on whether to include "overdraft line of credit" as an option in the list of credit purposes, we encourage the CFPB to do so. Overdraft protection can contain hidden costs, so having a way to monitor lenders who offer these types of products could be useful from a consumer protection standpoint.

Exercise Caution When Visually Determining Applicants' Race and Ethnicity

While the USHCC appreciates the effort to collect data on the race and ethnicity of applicants' principal owners, we urge the CFPB to proceed with caution on its decision to allow lenders to determine race or ethnicity via visual observation or surname. While we recognize that this process is followed for Home Mortgage Disclosure Act (HMDA) data, there are many situations in which this could lead to inaccurate reporting. For one, loan officers or other employees of financial institutions do not necessarily have the appropriate training to make a judgment about someone's race or ethnicity by visually observing them. In addition, an applicant could be adopted, be multi-racial or multi-ethnic, or have taken their spouse's surname, among other scenarios.

If the CFPB proceeds with this, we strongly recommend that racial and ethnic data collected in this fashion be reported separately from data based on applicants' self-identification. For example, it could be useful to have some identifying marker that differentiates this data, so the overall racial and ethnic data is not compromised by inaccuracies. Also, as the rule already states, data collected via visual observation or surname should only be reported using the aggregate race and ethnicity categories, not disaggregated ones.

On a related note, the proposal states that if an applicant refuses to provide information on their principal owners' race, ethnicity, or sex, such as by selecting "I do not wish to provide this information" on the data collection form, the financial institution can use this response in any future applications. We encourage the CFPB to reconsider this guidance. If an applicant subsequently applies for additional loan products, they should be asked about their race or ethnicity again in the same calendar year, even if they initially say they do not wish to provide this information.



People's opinions can shift and change for any number of reasons, making them more or less open to supplying information on any given day. If the applicant still does not wish to provide this information, they can refuse once more, and it would not be a big burden on financial institutions to make this request again. This would provide another opportunity to gather information on applicants' race and ethnicity, which is one of the main purposes of Section 1071.

Ensure that the Data Collected is Accurate and Complete

To facilitate data collection and ensure accuracy, the CFPB may want to consider creating a sample application form with all the data required to be collected under Section 1071. This could help financial institutions gather more accurate data by giving them a template to work from, especially since some of the questions, such as credit purpose, have lengthy answer choices. Collecting accurate data is paramount, so any steps that can be taken towards this goal are encouraged.

When a financial institution assesses whether its procedures for gathering applicant data are "reasonably designed to obtain a response," the proposal mentions that the financial institution can compare its response rate with similarly situated financial institutions. We encourage the CFPB to reconsider this guidance, as there is no guarantee that peer institutions themselves are making a reasonable effort to collect data. It would be better if response rates could be compared against a concrete metric (perhaps other data collection efforts with good response rates) rather than against peer institutions' response rates.

Make the Published Data Easily Accessible to the Public

Once the small business lending data is made accessible to the public, we recommend that the CFPB publish its own analyses of the data on a routine basis (e.g., annually), in addition to the raw data. The raw data is important for the sake of transparency, and researchers can use it for their own analyses. However, it is equally important for the public to be able to interpret the data and draw conclusions about Section 1071's impact on credit access and fair lending. Since a layperson cannot be expected to engage in data analysis, we encourage the CFPB to display the data in a manner that is accessible to all.

Use Section 1071 Small Business Data for CRA Exams

We recommend that Section 1071 data replaces the current small business data reported by financial institutions for their Community Reinvestment Act (CRA) exams, much like HMDA data is used in CRA exams. The current CRA exam small business data is limited, so it is not a good indication of whether financial institutions are serving the most vulnerable businesses. The more robust dataset collected under Section 1071 would be a better indicator.

Reassess the Rule to Ensure it is Fulfilling Its Purpose

Finally, we believe that the CFPB should periodically reassess Section 1071 to make sure it is achieving its intended purpose. For instance, the rule does not currently require financial institutions to report certain products and transactions. If in the future, however, research shows that these non-covered products are widely used by small businesses or entrepreneurs of color, the rule should be amended to include them. The same holds true in the case of new products that enter the market. In general, as the small business lending landscape changes, Section 1071 should adapt along with it to ensure it still fulfills its purpose of identifying small business needs and furthering fair lending.



Thank you for your service and partnership in supporting America's Hispanic and minority-owned businesses as well as the more than 63.5 million Latinos/as living in America. If you have any questions, please do not hesitate to reach out to C. LeRoy Cavazos-Reyna, Vice President of Government and International Affairs via phone at 956-844-9628 or email at LCavazos@ushcc.com.

We look forward to a positive outcome on this important policy matter as we strive to create more equity in lending and financial opportunities for small minority-owned entrepreneurs.

Respectfully,

Ramiro A. Cavazos
President and CEO
United States Hispanic Chamber of Commerce