January 5, 2022

Bureau of Consumer Financial Protection ("CFPB")
Comment Intake
1700 G Street NW
Washington, DC 20552

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

To Whom It May Concern:

On behalf of our 120 commercial, cooperative, federal savings banks and savings and loan associations with more than 72,000 employees located throughout the Commonwealth and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the proposed rule implementing Section 1071 of the Dodd-Frank Act. The proposal is of significant interest to the MBA membership as we have many community and regional bank members that will now be required to collect and report data on small business credit applications to the Bureau. The proposed changes will impact every single one of our members, which includes some of the largest financial institutions in the country. Our comments focus on the impact to regional and community banks but the concerns expressed within this letter take into consideration those of the entire membership of the Association.

MBA supports the need for a prudent system of regulatory enforcement of fair lending laws and community development efforts. However, we have serious concerns that this proposed rule may not accomplish either objective while also increasing the cost of small business lending by placing a significant operational burden on the banking industry. Attempting to standardize a line of business long acknowledged for its business creativity and flexibility through routine forms, applications, and loan underwriting criteria will likely stunt commercial pipelines here in the Commonwealth. With these added costs and constraints, data collection as proposed in the rule which exceeds the Congressional mandates in the Dodd-Frank Act (DFA), will reduce the availability of or increase the costs of credit to small business customers. We believe this impact will be especially acute at community banks, which provide a significant amount of financing for small businesses throughout Massachusetts.

Massachusetts Banks are Committed to Small Business Lending

The community banking industry in the Commonwealth of Massachusetts has been a vital source of financing and support for small businesses of all sizes and varieties for decades. Most of our members are approved Small Business Administration (SBA) lenders and Massachusetts banks played a critical role in supporting regional and local economies during the pandemic through the Paycheck Protection Program (PPP). Publicly available data through the SBA and FederalPay.org[1] suggest over 200,000 PPP loans were provided to small businesses operating in Massachusetts during the onset of the coronavirus pandemic, totaling approximately $21B in loan balances. As you know, compliance with business protocols for PPP loans was work-intensive and community banks made significant investments in staff hours and underwriting policies to ensure their small business customers could both survive and thrive during an incredibly difficult 24 months.

Due to this commitment to proper business practices, we urge the CFPB to only require the collection and reporting of the 13 data points mandated by the DFA. The additional eight data points the CFPB is

[1] https://www.federalpay.org/paycheck-protection-program/ma

considering would be added under the Bureau's discretionary authority. While banks may already track some of these discretionary items, many of the data points – particularly loan pricing and certain descriptors of the businesses themselves such as "number of workers" – are subject to change throughout the application and underwriting process. These fluctuating data points could create tracking issues and lead to errors in the submission process, an area that is already fraught with concern for banks given the staff hours and resources devoted to proper filing and submission of Home Mortgage Disclosure Act (HMDA) data.

Not only is it possible for these factors to change throughout the underwriting process for a specific loan, but the pricing sub-items can change for two similarly situated applicants based on unique attributes for each borrower – i.e., differing credit scores or business history. Without access to individual loan files, underwriting and pricing policies, our members may be subject to unfair allegations of disparities in loan pricing by prudential regulators. We have seen repeatedly that inherent risks in fair lending removes individualized underwriting and may lead to reduced access to credit for small business or increased costs passed on to potential borrowers.

Definitions, Reporting, Business Process, and Implementation

Within the proposal, we favorably note the activity-based definition of a "covered financial institution." The Association along with our partner state and national trade associations have always advocated for specific thresholds and definitions in the areas of Community Reinvestment, Fair Lending and HMDA. The definition is a welcome inclusion within the proposal.

However, we strongly urge the CFPB to increase the threshold for reporting from the proposed 25 covered loans in each of the proceeding two years. MBA believes the 25-loan threshold is far too low and will have the effect of requiring nearly all community bank lenders to report their loans. The compliance burden for our smallest community lenders will be significant. Many of our member banks may have to consider limiting products and services or setting minimum loan amounts to cover the added cost of overhead required to collect, analyze, and report their portfolio of small business loans. Additionally, to ensure consistency with CRA data, we would also advocate that the Bureau consider applying a threshold of $1 million Gross Annual Revenues (GAR) in its simple definition for a small business as the proposed $5 million or less GAR threshold would capture loans to businesses that are not small.

The Bureau's Section 1071 proposal also has several notable inconsistencies with regards to its proposed data collection and reporting methods when compared to HMDA and CRA data reporting. These inconsistencies will clearly increase compliance burden and the potential for inaccurate data across the financial services industry. Specifically, any transaction required for reporting under 1071 standards should be excluded from HMDA reporting – i.e., a loan to a small business to purchase, improve or refinance an apartment building. Regarding loan metrics, census tracts represent a clear inconsistency across HMDA and Section 1071 reporting as HMDA requires lenders to collect and report the census tract where properties are located vis-à-vis Section 1071 mandating census tracts for business operations.

From a business process standpoint, the Bureau's proposal contains requirements to identify the race and ethnicity of principal owners based on visual observation and / or surname. We would urge the CFPB to consider eliminating this requirement, as it is far too subjective and intrusive and could harm the bank-customer relationship. We also have serious concerns with the proposed "Firewall" mentioned throughout the proposed rule. The *firewall* mandate indicates that banks must separate and preclude specific information about borrower demographics from underwriters during the underwriting phase of the loan's life cycle. The Bureau recognizes that this may be impossible for certain lenders given staff constraints and the lending process, so the Bureau has produced a *firewall* notice that would be provided

to applicants and make clear that staff will have access to this information as they process and underwrite the applicant's small business loan.

We are extremely concerned that this notice puts smaller lenders at a competitive disadvantage to larger lenders. In fact, as noted on Page 73 of the Proposed Rule, the Bureau already conducted a One-Time Cost Survey across the lending industry where it was assumed that banks would only have to comply with the 13 Congressionally mandated data points while also not needing to provide a *firewall* notice. Once applicants receive the *firewall* notice at a potential lender, they may be inclined to seek out a different (and likely larger) creditor that does not provide this notice because they are able to create a firewall. We strongly urge the CFPB to consider the compliance and competitive burdens this proposed component of Section 1071 would place on community and regional bank lenders compared to the largest lenders in the country.

Finally, regarding implementation, it is our hope the Bureau will extend the implementation period from 18 months to 3 full years. Section 1071 represents the creation of an entirely new data collection and reporting regime. Small business lending has generally not been automated and there is a substantial variety in the products and services that banks leverage in these areas. It is highly likely that data in the first few years for lenders of all sizes will be flawed if banks and creditors do not have an appropriate timeframe to prepare, change and analyze this new business process. Each and every bank will be updating current lending policies and procedures. Some of our members may need to procure new or more powerful software to comply with the collection and reporting components. Staff will require training and all our members will want to test, audit, and monitor the collected data for accuracy and efficacy.

Risk Tolerance and Examinations

Once data collection and reporting start, banks will then be examined and scrutinized for the accuracy and contents of its reporting. We would encourage the Bureau and its regulatory peers to be consistent and apply the same or similar approach that was used in response to the 2015 HMDA rule changes. Error tolerances for bona fide errors should be increased and we strongly support a "grace period" for the first year of data submission, so that lenders are not penalized in the first year of reporting. The banking industry has a commitment to excellence and will invest the requisite time and money to comply with these changes, based on past performance.

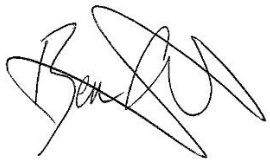
Conclusion

The mandate through Congressional action under the DFA means this proposed rule comes as no surprise to the financial services industry. MBA and its members recognize that some of this reporting may provide internal benefits for strategic planning, community development and process improvement. However, we have serious concerns with many components of the proposal, and we wish the industry had more time to review the proposed rule and deliberate on its effects to competition both in Massachusetts and the rest of the country.

It is our hope that the Bureau acknowledges the industry feedback and works to resolve conflicting priorities across CRA, HMDA and the Section 1071 reporting regimes. Additionally, compliance burdens for our membership will be high under the current proposal and we hope for reduced burden in crucial areas such as the firewall notice, reduction in data points, and implementation timeframes.

Your attention to the concerns discussed in this letter is greatly appreciated and we look forward to additional clarity in the final rule. If you have any questions, or need additional information, please contact me at (617) 523-7595 or via email.

Sincerely,



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