September 14, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding the Small Business Lending Market; Docket No.: CFPB-2017-0011

Dear Ms. Jackson:

Financial Innovation Now ("FIN")[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") request for information regarding the small business lending market ("RFI").[2]

The RFI is part of an effort by the CFPB to understand the small business lending market in order to implement section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3] The RFI states that "The Bureau is interested in exploring potential ways to implement section 1071 in a balanced manner with a goal of providing timely data with the highest potential for achieving the statutory objectives, while minimizing burden to both industry and the Bureau."[4] The members of FIN support this goal, and in this submission, we recommend ways in which section 1071 could be implemented to ensure that it does not impair the ability of small business owners to obtain credit in a timely and efficient manner. Small businesses, like individual consumers, prefer financial transactions to be fast and convenient, and section 1071 should not have the unintended consequence of slowing the application process and becoming a barrier to financing for small businesses.

[1] FIN is an alliance of technology leaders working to modernize the way consumers and businesses manage money and conduct commerce. We believe that technological transformation will make financial services more accessible, safe and affordable for everyone, and we promote policies that enable these innovations. Our member companies include Amazon, Apple, Google, Intuit, and PayPal. For more information regarding FIN's policy priorities and principles, please visit www.financialinnovationnow.org.
[2] 82 Fed. Reg. 22318, May 15, 2017.
[3] Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amends the Equal Credit Protection Act to require financial institutions to report information related to credit applications made by small businesses, women-owned businesses, and minority-owned businesses.
[4] 82 Fed. Reg. 22319, May 15, 2017.

The Payment and Lending Activities of FIN Members

The members of FIN are technology companies that offer a wide variety of small business products and services, including payments, inventory management, accounting and tax software, analytics, and eCommerce logistics. In some cases, the integration of these services into a small business operation can facilitate fast and convenient access to capital. For example, Intuit's QuickBooks Financing platform enables small businesses to share financial information from their QuickBooks accounting software with financing partners so the small businesses can easily and quickly apply for the financing they need to grow their businesses. PayPal utilizes merchant card payment information, in partnership with a commercial bank, to facilitate working capital loans for small businesses.

These payment and lending services help small businesses obtain the financing needed to grow and expand. FIN members make it easier for small businesses to focus on what they do best, while the FIN members focus on complex rules and regulations protecting sensitive financial information. They apply technology to enable small businesses to take instant payments from customers, to manage payroll and inventory, and, importantly, to obtain needed credit efficiently. Traditional small business lending processes are paper intensive, manual, and time consuming.[5] The automated underwriting systems used by some of the members of FIN dramatically reduce this burden and make financing available to small businesses when it is most needed. Intuit's QuickBooks Financing platform has helped over 10,000 small businesses gain access to over $700 million in capital;[6] and, as of late 2015, PayPal's capital loans had reached $1 billion in the US, UK and EU.[7]

As described below, FinTech companies' access to additional underwriting information through technology also facilitates access to capital by small businesses that may not be able to obtain financing from traditional lenders. A recent report on financing for startup firms found that medium and high credit risk startup applicants are much more likely to apply to online lenders than are low credit risk startup applicants.[8] Similarly, an analysis of PayPal's working capital loan program found that between October 2014 and March 2015 a significant percentage of PayPal's loans went to counties that had lost banks since the financial crisis.[9] Technology companies are also reaching small businesses that

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[5] Karen Gordon Mills and Brayden McCarthy, "The State of Small Business Lending: Innovation and Technology and the Implications for Regulation, Working Paper 17-042, Harvard Business School, 2016, p. 45, http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf.

[6] https://quickbooks.intuit.com/blog/news/500-million-reasons-use-quickbooks-financing-platform/.

[7] Usman Ahmed, Thorsten Beck, Christine McDaniel, and Simon Schropp, "Filling the Gap How Technology Enables Access to Finance for Small- and Medium-Sized Enterprises," Innovations, Vol. 10/No.3/4, MIT Press, 2015, http://www.mitpressjournals.org/doi/pdf/10.1162/inov_a_00239. ("Filling the Gap Paper")

[8] "Small Business Credit Survey: Report on Startup Firms," Federal Reserve Bank of New York, August 2017, https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-StartupFirms-2016.pdf.

[9] Filling the Gap Paper ("Online business loans seem to have stepped in to fill the SME funding gap left in the wake of the 2008 financial crisis. A high proportion of PPWC loans are disbursed in zip codes that have experienced a relatively steep decline in the number of traditional retail banks, nearly 25 percent of PPWC

have been traditionally underserved by traditional lenders. They are proving they can successfully serve businesses by incorporating technology into the process.

Responses to Questions Related to Small Business Lending

The RFI poses questions in five categories: (1) Small Business Definition; (2) Data Points; (3) Financial Institutions Engaged in Business Lending; (4) Access to Credit and Financial Products Offered to Businesses; and (5) Privacy. As noted above, the consistent theme in our responses to these questions is that section 1071 should be implemented in a manner that does not impair the ability of small business owners to obtain credit in a timely and efficient way.

Small Business Definition

Section 1071 defines a small business by reference to section 3 of the Small Business Act (15 U.S.C. § 632), which the Small Business Administration ("SBA") has used to create detailed industry specific size standards organized by the six-digit North American Industry Classification System ("NAICS-specific size standards"). While the NAICS-specific size standards are appropriate for implementing SBA programs and for government contracting purposes, it is extremely complex. The size/shape of a small business varies widely – with some having only a handful of employees, while others are sole proprietors or self-employed. Therefore, we recommend that CFPB consider a less complex definition based on indicia such as revenue below a certain threshold, number of employees below a certain amount, and/or other relevant factors. Such an approach would be easier to implement for covered institutions and the Bureau.

Data Points

In our view, the data collection process should be effortless for potential borrowers, not a burden. Otherwise, a borrower may turn to personal credit cards or other higher cost loan alternatives. Therefore, we have several recommendations designed to ensure that the collection of data mandated by section 1071 does not impair the ability of small business owners to obtain credit in a timely and efficient way:

- Use of Pre-Existing Data – Section 1071 should not be interpreted to limit the ability of covered firms to gather a variety of data points about the financial condition of a small business. The members of FIN that operate lending and lead generation platforms for small businesses have a wide range of interfaces with potential borrowers, and loan offers are based upon pre-existing data, such as the data a small business maintains on a QuickBooks system. Use of this data gives FIN members an informed insight into small businesses and enables them to extend credit to firms that might not be able to obtain credit from traditional lenders.

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loans were disbursed in the 3 percent of counties that have lost ten or more banks since the 2008 financial crisis.").

- Qualification Requests – The regulation implementing section 1071 should clearly define an “application” for reporting purposes. Technology-based lending and lead generation platforms typically permit a small business to electronically submit financial information and learn if they meet standards for applying for a loan. Section 1071 should not apply to this preliminary stage in the loan process; it should apply to loan applications that are formally accepted by a covered institution. We would propose that an inquiry, when no credit decision has been made and which are subject to verification should not be considered an “application” for section 1071 reporting purposes.

- Self-Reporting – The reporting process under section 1071 will rely on a borrower self-identifying as women-owned or minority-owned, or refusing to provide that information (as they are permitted to do so under 15 U.S.C. § 1691c-2(c)). This self-reporting may lead to practical challenges for example when there are multiple owners with a mix of different ethnicities and sexes. We recommend CFPB consider working with secretaries of states in creating a database of this information, which could be provided on a voluntary basis by the owners of the businesses as part of registering with the state. This would allow lenders to utilize this database, subject to appropriate consent, in verifying the small business and reduce the burden on online lending companies from collecting that information and businesses from submitting it during the application process. This also would be more likely to result in accurate data.

- Timing – The section 1071 data collection requirements are triggered by an “application” to a financial institution. We recommend that the Bureau interpret this requirement to permit the collection of the data *after* the application has been accepted and acted upon by the institution. This would permit the data to be collected without imposing an extra burden on the borrower on the front end of the loan process. Additionally, we recommend CFPB give institutions flexibility in the manner in which the data is reported, either bundled on a batch basis or on a case by case basis for institutions below certain volume thresholds.

- Scope – We recommend that the scope of the data collection be limited to the items specifically listed in section 1071, and that the Bureau not exercise its authority to require the submission of additional data under 15 U.S.C. § 1691c-2(e)(2)(H). The information specifically listed in section 1071 will enable the Bureau to fulfill the statutory objective of section 1071.

Financial Institutions Engaged in Business Lending

Section 1071 defines the term “financial institution” broadly to include any company engaged in any financial activity. However, section 1071 otherwise is focused on credit applications. Therefore, we recommend that the Bureau interpret the term “financial institution” to mean institutions that underwrite credit, and not institutions that engage in ancillary financial activities, such as payments processing, lead generation, or loan brokering. Only institutions engaged in underwriting should be required to report under section 1071, as those are the only institutions that both have access to the data and make the credit decisions. This would be similar to the Home Mortgage Disclosure Act ("HMDA"), under which only mortgage originators – those making credit decisions - not mortgage brokers are required to report HMDA data on mortgage applications and loans.[10]

Access to Credit and Financial Products Offered to Businesses

As described in the introduction to this submission, the members of FIN operate payment, lending, and lead generation platforms for small businesses, through which the companies facilitate payments by customers of small businesses, enable small businesses to manage payroll and inventory, help small businesses identify potential sources of financing, and provide working capital to small businesses. It is important to note that there are many different types of financing products available for small businesses – some of which may not be classified as loans (such as merchant cash advances or invoice financing). If the CFPB were to move forward with the small business lending data reporting, the CFPB will need to clarify that this reporting applies to all financing and not simply loans.

Privacy

Small businesses expect that proprietary information shared with FIN members and lenders will remain confidential, and the members of FIN have adopted robust systems to maintain this confidence. Thus, it is important that the data collected pursuant to section 1071 not be released in a manner that could jeopardize this expectation. Otherwise, section 1071 could have the unintended consequence of harming trust and impairing credit to small businesses.

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FIN welcomes the CFPB's efforts to better understand how technology can improve small business access to credit. FIN would be pleased to meet with the Bureau to discuss these issues or any other issues related to promoting small business financial health.

Respectfully submitted,

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[10] 12 C.F.R. § 1003.2(g).