Wisconsin Bankers ASSOCIATION

January 6, 2021

Submitted Electronically

Comment Intake—Section 1071 Small Business Lending Data Collection,
Bureau of Consumer Financial Protection,
1700 G Street NW,
Washington, DC 20552

Re: Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B); RIN 3170–AA09

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing over 200 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed rule 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).

Introduction

The statutory purpose of section 1071 of the Dodd-Frank Act is to facilitate enforcement of fair lending laws, and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. Wisconsin banks are committed to these principles and supporting small businesses. WBA is aware of numerous examples of Wisconsin banks working closely with small businesses, and often going above and beyond. Wisconsin banks also became leaders in offering loans to affected small business customers through the paycheck protection program (PPP).

Wisconsin possesses a richly diverse banking atmosphere, with strong representation in rural areas as well as larger, more diverse communities. These institutions have a strong ability to adapt to suit the needs of their communities, and their desire and willingness to do so is well known to WBA. Be it through the pandemic, or as other needs arise within their communities, Wisconsin banks continue to aid and serve their communities in every way possible and have demonstrated a commitment to small businesses.

Section 1071 specifies a number of data points that financial institutions are required to collect and report. It also provides authority for CFPB to require additional data. As discussed in more detail below, the proposal will require significant time and resources to implement, as well as present ongoing burdens associated with maintaining new procedures. Furthermore, WBA anticipates that most commercial customers will be opposed to providing the requested information. Wisconsin banks have reported that commercial customers are generally resistant toward providing any more information than is necessary. This has been seen, for example, in reluctance to provide the information required to be certified by the Customer Due Diligence rule. Thus, in order for Wisconsin banks to continue to provide the exceptional service they have always strived for, to meet the needs of their business customers, and continue to uphold the statutory objectives of section 1071, we urge CFPB to adopt a final rule which minimizes burden to the greatest extent possible.

Discussion

The proposal would create data collection requirements for small business credit applications. As the first of its kind, the proposal presents a massive undertaking for covered institutions. As discussed above, Wisconsin banks are already wholly committed to the statutory objectives of section 1071. Thus, WBA is concerned that if the proposal is not finalized in a way designed to minimize burden, then the rule will only serve to harm those small businesses Congress intended to support as banks will be forced to reduce credit products and availability to instead focus on creating and implementing policies and procedures necessary to collect, report, and create and maintain records as required under the proposal. As such, we offer the following comments to assist CFPB in creation of a final rule designed to avoid any unintended harm to our small business customers.

Discretionary Data Points

WBA strongly recommends CFPB ~~to~~ require only the collection and reporting of the 13 data points mandated by Congress in the Dodd-Frank Act and eliminate the additional 8 data points included in the proposal (discretionary data points). The discretionary data points are unnecessary to meet the purposes of section 1071, and would only serve to create further burden, in a rule which will already massively tax bank resources. Because of the variance in this data, as discussed further below, there would be no way to interpret the discretionary data points in any meaningful way.

The discretionary data points represent an additional cost of collection for data which is not required by law. If CFPB finalizes additional, unnecessary burdens, it will create a rule for which some banks will no longer be able to afford the cost of regulation and will no longer be able to serve their small businesses. For example, CFPB has proposed to require certain pricing data including interest rate, origination fee, broker fee, total non-interest fees for the first year, and whether the financial institution imposed a pre-payment penalty. Even if this data is collected, WBA does not see how it could be interpreted in any meaningful way. Commercial lending is not a homogenized process like mortgage lending, and so, interpretation of this data will inevitably lead to wrong conclusions. Furthermore, this data will not be representative of fair lending, or other purposes of 1071. Rather, it will only represent how third-parties charge different fees as a matter of business. This data would only reflect the fact that business decisions are involved, resulting in inconsistent, unusable data, that serves only as a burden. It is even possible that this data would be used against banks as a competitive advantage for credit unions and other, non-traditional lenders. Competition within this space is already fierce in Wisconsin, and WBA fears that this data would be used in inappropriate ways.

In summary, WBA is concerned that if banks are required to collect the discretionary data points, it would only add additional burden to a rule which will already require a significant amount of resources, for data that does not further the Congressional intent of section 1071.

Covered Financial Institution

While WBA supports an activity-based definition of covered financial institution, we recommend CFPB consider a significantly higher threshold. The current threshold of 25 covered loans in the preceding two years is too low. WBA supports CFPB's intent to create a threshold to assist banks that might not have the resources to collect, however, WBA is not aware of any Wisconsin bank which would meet the threshold at its current level. For the threshold to be of any use, WBA recommends CFPB re-evaluate the threshold level. If CFPB finalizes the threshold at 25, WBA is concerned that the rule will damage smaller institutions' ability to remain competitive. For example, a small institution in Wisconsin's Northeast is currently not a reporter of mortgage-related data under Regulation C, the Home Mortgage Disclosure Act (HMDA); this institution does originate a modest number of commercial loans to support the credit needs of the local and regional business

customers. As a result of the incredibly low proposed exemption threshold, this intuition will need purchase new technology, train staff, and create numerous policies and procedures to accurately collect and report the business data as proposed. The cost to implement the proposal for the institution is crushing as it is not just a cost to add a new component onto existing data collector and reporting systems, or just increase the current number of currently trained data collecting, reporting staff, the proposal will require the institution to create system, policies and procedures from scratch. Respectively, CFPB need understand implementation costs of this proposal are expensive and smaller community institutions do not have the economic means to absorb the costs to implement the rule as proposed.

Overall Costs and Burden

WBA requests that CFPB issue a final rule which is designed to reduce burden as much as possible. We are concerned that if CFPB does not significantly reduce the burdens associated with the proposal, any final rule will only increase the cost of credit for those customers Congress intended to protect.

WBA has discussed the proposal with its membership and gathered some areas which Wisconsin banks have reported as demonstrating the significant burdens presented by the proposal. We have summarized this report in terms of general concepts, as well as provided a list of more specific costs to follow.

Overall burdens faced by all Wisconsin banks include:

- Obtaining and implementing new technology.
- Developing and incorporating training.
- Addressing new staffing needs.
- Customer-facing educational information needs.
- Review and likely overhaul of application process.
- Review of impacted small business products.

WBA also offers the following specific costs, as presented by a community bank with $900,000 in assets:

- Hire 2 new full-time equivalent employees (1 compliance person and 1 commercial processor).
- Purchase of a new commercial credit software that will provide the ability to collect/retain the 1071 data (the core processing companies currently do not have plans to capture/retain the data cost over $300,000).
- Purchase 1071 data submission software, estimated at $5,000.
- $50,000 in estimated one-time costs to prepare/plan, update systems, testing/validating systems, developing forms/applications, training, develop policies and procedures, legal/compliance review and post implementation review.
- $150,000 in estimated ongoing costs annually to data collection, resolve questions, input into 1071 data management software, geocoding, resolving validity and quality errors, research, check post submission edits, ongoing training, internal and external audit, exam prep and exam assistance.

Implementation

As discussed above, implementation of the rule will take significant effort, and considerable time. A period of 18 months is simply not enough. Wisconsin banks will need to overhaul their application process in addition to policies and procedures, develop and implement training, and address any

corresponding staffing needs. All of this is predicated upon implementation of new software which has not even been developed yet.

WBA recommends that CFPB consider an implementation period of 3 years. At a minimum, WBA recommends that CFPB incorporate a one-year grace period into implementation in order to provide banks with an opportunity to implement effectively, perform testing, and ensure that loan operation systems, software, and other technologies are functioning correctly. If implementation is rushed, data collected and reported will not be reliable or accurate.

Privacy

CFPB has proposed to modify, and, as appropriate, delete data from the publication requirements of 1071 data where publication would create risks to privacy interests. However, as no current such data exists, CFPB has not conducted a statistical analysis for risk, and within the proposal, has only provided a partial analysis, indicating it will issue a policy statement within the first year. As a general matter, WBA is concerned with the publication of such a large swathe of data concerning all small businesses. In this day and age of fraud, identity theft, and overall financial-data sensitivity, the release of any data presents risk.

WBA has also heard concerns from member banks regarding how certain data points are extremely sensitive for their small business customers. If re-identification were to occur for certain data points, there is a potential for harm on those businesses. For example, loan purpose, amount applied for, and amount approved/originated, action taken, denial reason, and other commercial information. More specifically, information concerning business expansion, sale, or acquisition, could be particularly sensitive and harmful if released to the public.
While WBA appreciates CFPB's attention to privacy concerns, and its intent to study risk after the first year of data, we urge CFPB to provide the public an opportunity to see and comment on the study results, similar to the process which CFPB followed for the 2015 expansion of the Home Mortgage Disclosure Act (HMDA).

Specific Aspects

In addition to the above comments, WBA has identified certain specific aspects of the rule for which it requests further clarification and consideration.

Identification by Visual Observation or Surname

WBA strongly supports CFPB's decision not to impose any visual observation or surname requirements. The collection of this data, as witnessed by HMDA reporters, is incredibly difficult and onerous, and only results in inaccurate data, at the cost of the customer's comfort who frequently exercise their right to refuse to provide this information. In order to encourage customers to self-identify, and establish applicant comfort, WBA encourages CFPB to engage in a significant and sustained educational campaign regarding the data collection process and its purpose.

Error Tolerances

In addition to the grace period discussed above, WBA urges CFPB to increase the error tolerances for bona fide errors. CFPB has proposed to provide that a bona fide error in compiling, maintaining, or reporting data with respect to a covered application is an error that was unintentional and occurred despite the maintenance and procedures reasonable adapted to avoid such an error. Such an error would be presumed not to be a violation if the number of such errors does not exceed the thresholds within proposed Appendix H (tolerance thresholds).

WBA appreciates CFPB's recognition that bona fide errors may occur despite the maintenance of procedures reasonably adapted to avoid errors. However, we are concerned that the tolerance thresholds are too low. In contemplation of its final rule, WBA requests that CFPB consider higher tolerance thresholds in recognition of the substantial implementation efforts which will need to occur based upon the above comments. Such higher thresholds would ease much of the burden and provide banks a more meaningful opportunity to effectively implement the rule.

WBA also reiterates the need for a grace period for errors in compiling, maintaining, and reporting of 1071 data. As discussed above, WBA requests a one-year grace period for implementation.

Definition of "Trustee"

Within the proposed commentary, CFPB has included a comment to Section 1002.102—Definitions. Specifically, within the sections covering ownership for purposes of determining whether a small business is minority or women-owned, CFPB provides an example where a trustee is considered the owner of a trust. In Wisconsin, while a trustee may be an owner of a trust, it is also possible, and often common, for a third-party non-owner to act as trustee of a trust. As the comment in both sections is currently written, WBA is concerned it may result in confusion whereby a trustee is always presumed to be owner of a trustee, which in turn may result in inaccurate or inapplicable data collection. WBA requests clarification of this comment to better understand whether it was CFPB's intent to always presume the trustee of a trust is the "owner."

Conclusion

WBA appreciates the opportunity to comment on CFPB's proposal to implement small business lending data collection requirements. Wisconsin banks are committed to supporting their small business customers, and WBA urges CFPB to finalize a rule designed to minimize burden in a way which would enable them to continue this purpose.

We appreciate your consideration of these comments.

Thank you,

Rose Oswald Poels
President/CEO