



Testimony of

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On behalf of the

Independent Community Bankers of America

Before the

United States House of Representatives

Committee on Small Business

Subcommittee on Economic Growth, Tax, and Capital Access

Hearing on

“The End of Relationship Banking? Examining the CFPB’s Small Business
Lending Data Collection Rule”

March 28, 2023

Washington, D.C.

Chairman Meuser, Ranking Member Landsman, and members of the Subcommittee, I am Lucas White, President of The Fountain Trust Company, a \$700 million asset community bank in Covington, Indiana. I testify today on behalf of the Independent Community Bankers of America where I am Chairman-elect. Thank you for the opportunity to testify at today's hearing, "The End of Relationship Banking? Examining the CFPB's Small Business Lending Data Collection Rule."

Community banks are committed to meeting the credit needs of all small businesses in compliance with fair lending laws. ICBA strongly supports the intent of Section 1071 of the Dodd-Frank Act to expand access to credit for minority-owned, women-owned, and small businesses. However, we believe the Consumer Financial Protection Bureau's (CFPB's) forthcoming rule under Section 1071 will have serious unintended consequences. If finalized without significant changes, the rule will have a chilling effect on customized lending, compromise borrower privacy in the rural and small-town markets I serve, and reduce access to credit for certain borrowers. ICBA's comment letter on the proposal provides a more detailed assessment of the impact of the proposal.

Because of the high stakes of this rule for America's small businesses, ICBA is urging Director Chopra to stay the effective date until the Supreme Court has ruled on the constitutionality of the agency. As you know, in October 2022 the U.S. Court of Appeals for the Fifth Circuit ruled that the Bureau's funding structure violates the Appropriations Clause of the U.S. Constitution. The U.S. Supreme Court subsequently agreed to review the Fifth Circuit's decision. A stay of the small business data collection rule would preserve the *status quo* until the Supreme Court can provide small businesses and community banks with more certainty as to the final disposition and validity of the Section 1071 rule before they incur the significant expense and business disruption of compliance.

Is the small business lending data collection rule "the end of relationship banking," as the hearing title suggests? I absolutely believe that it puts relationship banking at risk and should be amended by the Bureau or by Congress at the earliest opportunity. Relationship banking is the key value proposition that community banks like mine offer and our competitive advantage against larger institutions and non-bank lenders.

The Fountain Trust Company has served markets in west-central Indiana since 1903 and has been in my family since 1937. I am a fourth-generation community banker. We have 16 locations and 130 employees, serving rural areas as well as small and mid-sized towns. Our loan portfolio of \$328 million consists of commercial, agricultural, and consumer loans, 85 percent of our loans would be subject to the small business lending data collection rule. Relationship banking is the foundation of our success and explains our resilience through numerous economic and agricultural crises.

The CFPB Proposal

Section 1071 of the Dodd Frank Act requires financial institutions to collect certain data regarding applications for credit from women-owned, minority-owned, and small businesses, and to report that data to the Bureau on an annual basis. In September 2021, the Bureau issued a proposed rule to implement Section 1071. Absent a stay, as we have requested, we expect the final rule to be published this week.

While the governing statute requires the collection and reporting of 13 pieces of data in connection with credit applications made by small businesses, the CFPB is using its discretionary authority granted by statute to propose the collection of an additional eight data points not required by statute. These discretionary data points have little to do with a borrower's credit risk but will increase the costs of originating loans and pose a privacy risk to small business applicants.

The Bureau has the authority to exempt community banks from compliance with this rule but has proposed only to exempt lenders that originate fewer than 25 qualifying small business loans per year. A small business is defined as a business with less than \$5 million in gross annual revenues. The 25-loan threshold is far too low, and the borrower gross annual revenue threshold is too high, meaning that the data collection requirements would apply to a majority of community banks. My bank, for example, originated 771 commercial and agricultural loans in 2022. Virtually all of these borrowers had less than \$5 million in gross annual revenues.

If the Bureau fails to exempt more community banks and business borrowers, the result will be increased compliance costs for community banks and a higher cost of credit for small business borrowers.

The Proposal Would Jeopardize Customized Small Business Lending

Perhaps the most troubling impact of the proposal is the chilling effect it would have on customized lending. Small business lending is not and should not be a commodity. Underwriting is based on numerous borrower characteristics and market variables. Loans are typically customized to suit borrowers' needs and preferences and give them the best chance at success. Because the data collected under 1071 will not reflect the full scope of the underwriting, it may indicate discrimination where none exists.

Fortunately, bank examiners are best positioned to determine whether a loan is discriminatory in application of fair lending laws. Section 1071 is simply the wrong tool for this job. Lenders will respond by standardizing loan features to protect themselves from charges of discrimination. As a result, small business customers will not have access to credit that is customized to their needs. Importantly, minority and women borrowers often benefit from customized lending.

This was the outcome of the Qualified Mortgage rule, also a provision of the Dodd-Frank Act, which effectively forced residential mortgages into a box. Before the QM rule took effect in 2013, our residential mortgage lending was \$40 million and constituted nearly one third of our portfolio. Today, residential mortgage lending remains at \$40 million, which is about 12 percent of our total loan portfolio of \$328 million. QM effectively undermined our in-house mortgage lending by raising regulatory hurdles to loans that do not qualify for the secondary market that were common in the rural markets I serve. I can assure you that the impact has been felt among rural mortgage borrowers. Section 1071, without needed accommodations, threatens to do the same to our small business lending.

A recent loan will illustrate my point. We worked with a local farmer who wanted to open a butcher shop, a vertical integration that made good business sense. We offered him two customized loan options: a fixed rate and a variable rate. I personally walked him through the benefits and drawbacks of each and how future interest rates could affect his loan payments and cashflows. This personalized customer service is what community bankers do best and what sets us apart from the competition. Unfortunately, Section 1071 would make customized, multiple-option lending infeasible. It is impossible to compare loan data across customers who have chosen different options and demonstrate that lending is not discriminatory. Thus, Section 1071 will limit the scope of loan choices available to small businesses.

Borrower Privacy

The breadth of the data required to be collected and potentially published under the CFPB's initiatives may make it possible to identify an individual borrower. Even if individual borrowers are not identified, the perception of that risk is sufficient to drive small business borrowers to larger banks, larger cities, or online lenders where the inclusion of their data in a larger pool will potentially protect their anonymity.

Above I use the example of a butcher/farmer my bank worked with. He's the only butcher in his small town. In the small communities I serve, businesses are readily identifiable. Loan offers contain critical business information and reflect the business owner's personal financial position as a guarantor of the loan.

What's more, as a lender, I consider the loan pricing and other credit terms I offer to be confidential business information. Exposure of this information to competitors would put my business at a disadvantage. Borrower and lender confidentiality are serious concerns that must be addressed in the final rule.

Compliance Expense Will Make Small Business Credit More Costly

Regulatory compliance costs disproportionately impact community banks because they do not have the resources of larger banks, such as dedicated legal and compliance teams and information technology, as well as a larger asset base over which to amortize costs.

Recent years have seen a sharp increase in regulatory burden, which we are still trying to absorb. The small business lending data collection rule, if not amended, will significantly add to the cumulative burden of compliance, and increase the cost of credit for small businesses. My bank's small business lending is carried out through a completely manual process, with all of the analysis done by hand.

Recommendations for Improving the Section 1071 Rule

The harmful impacts described above could be significantly alleviated by amendments to the rule that would exempt more banks and more borrowers and give community banks more time to comply with the rule once it is finalized. Below are ICBA's recommendations.

Replace the loan-volume exemption with an asset-based exemption

The proposal's 25 small business-loan exemption is almost wholly ineffective in providing relief for smaller lenders. An asset-based exemption would ensure that smaller community banks with fewer employees and other resources, for which compliance is disproportionately costly, are exempt. ICBA recommends that banks with assets of \$1 billion or less be exempt.

More accurately define "small business"

In defining which businesses are covered applicants, ICBA urges the Bureau to use a threshold of \$1 million of gross annual revenue or less. This is a simple, bright-line definition that will make compliance more efficient and straightforward.

A threshold of \$5 million is too high. In many regions of the country, a \$5 million business is relatively large. According to the U.S. Census Bureau, a \$1 million revenue threshold would cover 95 percent of all businesses.

Mission-based exemption

ICBA believes that mission-based banks, such as minority depository institutions (MDIs) and community development financial institutions (CDFIs), should be excluded from coverage under the rule because they have already demonstrated and received special recognition for serving the small business applicants prioritized under Section 1071.

MDIs and CDFIs play important roles in serving the needs of historically underserved communities or primarily serving low-to-moderate income consumers. For this reason, they have been granted special accommodations, such as an exemption from the Qualified Mortgage rule for CDFIs. An exemption from the Section 1071 rule for mission-based banks would help these institutions preserve resources to dedicate to their communities.

Implementation timeline

ICBA recommends a staggered implementation date for the final rule so that smaller community banks are among the last entities required to collect and report the data. In addition, any actions under the Fair Lending Act should be based on data collected under 1071 for a period of at least three years. This delay will allow community banks to refine data collection systems and procedures and will allow regulators to observe trend data.

Support for Legislation

ICBA thanks the Members of Congress who have introduced legislation to make the rule more workable.

The Small Lenders Exempt from New Data and Excessive Reporting Act, sponsored by Rep. French Hill, would:

- Define a “financial institution” as one that originates at least 500 covered credit transactions for small businesses in each of the two preceding calendar years.
- Define a “small business” as one with gross annual revenues of \$1 million or less in the most recently completed fiscal year. (The NPRM gross revenue threshold is \$5 million or less.)
- Extend the effective compliance date with the final rule to three years after publication in the Federal Register plus a 2-year grace period. (The NPRM has a compliance date of 18 months with no grace period.)

The Business Loan Privacy Act, sponsored by Rep. Blaine Luetkemeyer, would require the CFPB to conduct a rulemaking on proposed modifications and deletions to data the Bureau will publish. The purpose of the proposed modifications or deletions would be to protect the privacy of credit applicants.

Financial institutions as well as small business credit applicants should have a voice in this important determination and should understand what data will be made public before it is collected.

The Preventing Racial Profiling in Lending Act, sponsored by Rep. Roger Williams, would eliminate the proposed rule's requirement that loan officers guess the race or ethnicity of a small business credit applicant based on their last name and physical appearance. This requirement would undermine the right of a credit applicant not to disclose their race or ethnicity. A loan officer's arbitrary guess would too often be mistaken, thus compromising the collected data.

Taken individually or together, these bills would significantly ease the burden of compliance with Section 1071 for community banks and small businesses in pursuit of credit and better protect the privacy of loan applicants.

Conclusion

Thank you again for convening today's hearing and for the opportunity to offer the community bank perspective on the CFPB's small business lending data collection rule.

I'm happy to answer any questions you may have.