Online Lenders Alliance

January 06, 2022

By electronic submission to regs.comments@federalreserve.gov

Comment Intake
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) Docket No. CFPB 2021-0015

Dear Sirs and Madams:

The Online Lenders Alliance (OLA) welcomes the opportunity to respond to the request for comments regarding ***"Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)"***

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors and online marketing firms. Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent, and mitigate fraud, manage credit risk, and service loans.

Much of the innovation undertaken by OLA members has given consumers greater control over their financial future. This is especially the case when it comes to access to capital. Whether purchasing a home, starting a business, financing an education, or even paying for auto repairs, the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

Introduction

According to the US Small Business Administration (SBA), small businesses account for 99 percent of all businesses making them a critical component of the economy. Although small businesses play an important role in this nation's economy, this sector has historically struggled to access capital. Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Equal Credit Opportunity Act (ECOA) requiring the CFPB to collect and compile lending data concerning small businesses including those that are women-owned and minority-owned small businesses.

Small Business Definition

Defining what constitutes as a "small business" is an initial gating issue. The two data points most often used to define a "small business" are revenue and number of employees. Utilizing a singular standard to designate small businesses such as – be it revenue or employees - might be simpler for the CFPB, however it would not be a true reflection of the small business market. Still, the Bureau should not create a definition for the purpose of Section 1071 that is overly complicated or overly subjective. Finding the right small business definition is key to making data reporting efficient and useful.

One tool to utilize is the North American Industry Classification System (NAICS) small business categories for purposes of Section 1071's disclosure obligations. The SBA designed the NAICS categories primarily to determine eligibility for certain federal procurement preferences and programs. Under NAICS, qualification as a small business can be triggered either by employee count or revenue, and the threshold for qualification varies by industry. In that context, discerning the difference between a 150-employee restaurant and a 150-employee manufacturer makes sense. However, very few, if any, agencies use NAICS codes for data collection purposes because the categories are complex making them extremely difficult and expensive to administer. They require extensive programming to determine whether a particular business meets one of the two criteria to qualify as a small business under a specific industry code. This complexity adds substantial cost while yielding little added benefit to the quality of the data obtained, which is why most agencies develop their own definitions.

For purposes of implementing Section 1071 of the Dodd-Frank Act, this level of industry differentiation is not meaningful. Employing the first 4 digits of the NAICS codes will provide measurements that differentiates broadly by industry, but provides a standard that gives lenders flexibility, allowing them to use data supplied by the borrower without having to undertake a costly and time-consuming verification process of the data provided.

The Bureau also should also develop a clear standard as to what "small" means. Businesses grow and change, this evolution can even occur during the origination of a single loan. It is not unusual for newly formed businesses to have wide swings in revenue and number of employees. Without a clear reference point, lenders would need to constantly monitor fluctuations in a borrowers' revenue and employee counts to determine if they at any time qualify as a small business during the reporting period. Having one standard will avoid this confusion. We recommend that this determination is made at the time of the application for the loan.

Having the proper balance in a small business definition is a critical factor in the ability of lenders to collect and report data. A clear and easy-to-administer definition will make implementing Section 1071 more efficient, and ultimately more beneficial to small businesses.

Data Points

The importance of good data is amplified in industries that revolve around numbers such as finance. One of the keys to the growth of the fintech community is the ability to track and analyze large volumes of data. This growth has been possible because the industry developed and maintained its data points based on the model that works best for them as opposed to a standardized approach dictated industry-wide by an outside entity.

For many fintech firms, implementation of the data collection and disclosure requirements could result in adding additional elements currently not tracked. These additions to application processes will require system overhauls to accommodate the additional items as well as back-end engineering of systems to properly track these new data points.

This will be one of the greatest challenges towards implementing Section 1071 – creating a data point collection that meets the statutory policy goals without stifling the innovation that has allowed fintech to support so many small businesses. One solution is for the Bureau to first make use of the many outside data points that already exist in both the government and private sector. These data points shed considerable light on the state of small business lending. The SBA through its portfolio of lending programs has a treasure trove of information on small business lending. In addition to SBA, the Minority Business Development Agency and the U.S. Treasury Department have collected reams of data on loans to women and minorities. These entities can help the CFPB learn about the small business finance market without negatively impacting those providing capital to entrepreneurs.

In developing those specific data points that lenders will collect and report, it is important the data points connect to the policy goals. Collecting items such as applied-for loan size, while seemingly useful on the surface, fails to reflect the true dynamic of the small business lending process. It is not uncommon during the application process to see the actual loan amount fluctuate as the entrepreneur further refines their capital needs, which makes tracking this type of information not particularly relevant or reflective of the process. The other challenge will be the collection of data regarding the "race, sex, and ethnicity" of applicants. Collecting this data will require system changes unique to online lenders that will be different than traditional lenders. To mitigate against some of these challenges, allowing lenders to aggregate data would aid in reducing the regulatory burden.

Financial Institutions Engaged in Business Lending

The financial entities involved in small business lending are as diverse as the entrepreneurs that they serve. In implementing Section 1071, it is important to maintain this broad focus to have a full view of the lending landscape. To accomplish this, the CFPB should create clear, minimally burdensome, but widely applicable standards on all lenders. The CFPB should not develop a standard that exempts portions of the financial service sector. These requirements should apply equally to all entities lending to small businesses. The underlying goals of Section 1071 will only be accomplished if they encompass the entire small business lending sector. Exempting certain categories of lenders risks distorting any conclusions reached from the data and creates an incomplete or inaccurate assessment of the small business lending market.

These standards should reflect the true dynamics of the lending market to ensure participants are not duplicating reporting. An important dynamic of the online lending sector has been the development of relationships with federally insured depository institutions. Many fintech firms are working with banks to supplement, enhance or expedite lending services. Recognizing the existence of these relationships and that they are not siloed activities taking place separately, is an important distinction to ensure multiple parties within these relationships are not reporting the same findings. Duplicative reporting does not aid in providing a true picture of the small business lending market. The CFPB should communicate clearly who in these relationships is responsible for reporting. Based on historical practice and the construction of these partnerships the entity that makes the most sense is the loan originator, which has the clearest path to collecting the necessary data. This will ensure the most complete and accurate reporting of data. It is important to note that in these relationships the loan originator is always the bank

Access to Credit and Financial Products Offered to Businesses

As outlined previously, the strength of small business lending is the diversity that exists in the market. For our nation's entrepreneurs to continue to grow and prosper they must have access to a full complement of products and services. The fintech community has developed a diverse range of financial products to meet the nation's small business needs, that address every aspect of financing including working capital, inventory, and expansion. These services are delivered through a broad array of products. Because of the varied products and the differing needs, they meet, applying the typical "one size fits all" standard should not be the approach for Section 1071. Although applications for all financial products are similar and completed through an online process, the information requested varies based on the type of product. In implementing Section 1071, the Bureau should provide clear guidance as to which events trigger data collection and disclosure. We believe that the application offers the most uniform event across financial products and institutions. For example, triggering data collection based on credit check would be unworkable for the industry and lead to potentially misleading results and over-counting. Lenders often conduct a soft pull of credit outside of the application process and collecting data for each such credit check would impose unnecessary and complicated reporting obligations. For that reason, we encourage the Bureau to identify a completed credit application as the trigger for data disclosure.

Privacy

Often, a lack of security and the potential liability exposure is cited as a concern by online borrowers. Recognizing this, fintech firms place a high priority on protecting data. It is why many in the industry have established standards above and beyond current regulatory and statutory requirements. It is also important to recognize that much of the technology that has allowed fintech firms to develop new products has also been key in the development of strong security protocols that both the online and traditional financial services sector use to safeguard data.

In looking at privacy as it relates to the small business lending market, it is not uncommon as a part of the credit application process to include a check of the owner's personal credit. Section 1071 would add to the application inquiries regarding the owner's ethnicity and sex, potentially exposing the owners and other potential guarantors to privacy risks. To mitigate the potential exposure CFPB should collect and report composite data. This would be consistent with the practices of other agencies and limits the potential exposure of an individual's Personal Identifiable Information.

As with any online transaction, privacy, and the ability to protect consumers is always paramount. In looking to ensure that the data points provided by the Bureau do not expose a business owner to a potential data security breach, allowing the reporting of aggregate data rather than loans at the individual level should be considered.

Conclusion

Small businesses need cutting-edge financial products, which play an important role in driving market development. OLA supports policies that help lead to greater access to capital for the nation's entrepreneurs. OLA values the opportunity to share our views and we look forward to working in a collaborative manner to reduce barriers and enhance small business financial options.

We appreciate the opportunity to provide input on this important and constructive initiative. If you have question or need additional information, please feel free to contact me at mday@OLADC.org.

Respectfully submitted,

Michael Day
Policy Director
Online Lenders Alliance