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Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

January 6, 2022

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

To Whom It May Concern:

Please find below the comments of HOPE (Hope Enterprise Corporation, Hope Credit Union and Hope Policy Institute) in response to the Consumer Financial Protection Bureau's proposed rule to implement small business lending data collection requirements. HOPE appreciated the opportunity to participate as a Small Entity Representative (SER) as part of the process required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), and is pleased to see much of the SERs' input incorporated into the proposal. The proposed rule, if strengthened in key places, has the potential to create a more level playing field for small businesses, limit discriminatory lending practices, and help close the racial wealth gap here in the Deep South.

HOPE exists to mitigate the extent to which factors such as race, gender, birthplace and wealth limit one's ability to prosper. The family of HOPE organizations is comprised of a credit union, a loan fund and a policy institute that provide financial services; leverage private and public resources; engage in policy advocacy; and otherwise act as a catalyst to fulfill its mission of strengthening communities, building assets, and improving lives throughout Alabama, Arkansas, Louisiana, Mississippi and Tennessee. Since 1994, HOPE has generated more than $3 billion in financing that has benefitted nearly two million people in the Deep South, while shaping policies and practices that have improved conditions in opportunity-starved communities nationwide.

Hope Enterprise Corporation, the primary sponsor for Hope Credit Union, began operations in 1994 as Enterprise Corporation of the Delta, a loan fund and business development organization established to expand access to support jobs in 55 economically distressed river counties and parishes in Arkansas, Louisiana and Mississippi. Since its first small business loan to a cabinet manufacturer in the Arkansas Delta, HOPE has made roughly 6,500 business loans totaling nearly $777 million. Throughout its history, the organization has excelled in bridging capital gaps for women and people of color. As recent as 2020, two-thirds of HOPE's business loans were made to women and people of color. HOPE achieves these outcomes by deploying financial products and services designed to address the needs of diverse entrepreneurs and by leveraging a range of private and public resources, such as the U.S. Small Business Administration's (SBA) Paycheck Protection Program (PPP).

In response to the COVID-19 pandemic, HOPE and other CDFIs, utilized PPP to respond to the disproportionate challenges facing very small and diverse businesses. Between April 2020 and April 2021, HOPE funded 5,216 PPP forgivable loans, deploying over $141 million that supported more than 17,700 jobs. Eighty-nine percent (89%) of HOPE PPP loans were made to

businesses owned by people of color (81% Black-owned), and 50% went to women-owned businesses. HOPE's median loan size was $14,063, and 68% of loans were to sole proprietors. One-third of HOPE's PPP loans flowed to persistent poverty counties.

Informed by this track-record, HOPE urges the Bureau to incorporate the following into its rulemaking:

1. Expansive coverage of lenders, credit products, and small businesses, with few exceptions, to ensure small businesses are receiving fair access to capital;

2. Collection of the right data points, including credit scores and business structure, to accurately reflect the realities small businesses experience in the Deep South; and

3. Robust, meaningful, and accessible publication of the collected data.

These recommendations are explained below in more detail. They are rooted in the small business lending disparities faced by people of color and women in the Deep South and in HOPE's lending practices and data. Further, HOPE's experience demonstrates that key data can be obtained in a reasonable manner and that the benefits of data collection far outweigh any related costs. Robust data collection levels the playing field for both lenders and borrowers, resulting in a more robust marketplace and stronger economy.

Existing Disparities

In the Deep South states of Alabama, Arkansas, Mississippi, Louisiana, and Tennessee, one in three businesses are owned by people of color and nearly 40% are owned by women.[1] In Mississippi and Louisiana, more than 20% of businesses in each state are Black-owned.[2] They are integral to the fabric of our communities and economies, but yet do not receive equal access to capital as other businesses. Ensuring fair lending for these businesses is necessary for the economic prosperity of our region.

In Arkansas, for example, from 2017 to 2020, just 1.5% of SBA 7(a) loans went to Black businesses, even though Black-owned businesses comprise 9% of businesses in the state.[3] Notably, over 60% of Black-owned businesses in Arkansas are owned by women, and are primarily located in lower-income areas.[4] A 2019 survey of Arkansas entrepreneurs illuminates disparities in their experiences in access to capital.[5] See Table 1. Among the findings: between 2017 to 2019, 45% of female entrepreneurs of color were denied a loan, compared to 11% of white female entrepreneurs.[6] These businesses reported severe related consequences, most frequently citing the inability to compete on a higher scale, expand products or services, purchase needed equipment, grow their workforce as needed and insufficient operating capital. These consequences ripple beyond individual businesses into the communities and economies in which they operate.

Table 1. Access to Capital for Small Businesses in Arkansas

	Entrepreneurs of Color	White Entrepreneurs
Denied for a Loan in the Past 3 Years	78%	45%
Felt Supported by Lending Institutions	50%	80%
Good to Outstanding Overall Loan Experience	37%	57%

Source: Precise Data Consulting, LLC, 2019, Arkansas Small Business Access to Capital Report

The Paycheck Protection Program underscores the necessity of Section 1071. PPP's inequitable distribution was facilitated not just by program design, but also preexisting racial inequities within the financial system. Notably, the experiences of many businesses served by HOPE and other mission-based lenders reflect the realities of large swaths of small businesses that are neglected or underserved by traditional financial institutions.

Several Black-owned HOPE PPP borrowers expressed frustration with mainstream financial institutions offering PPP loans, including those with whom they already had a banking relationship. For example, a Black dentist reached out to a bank with whom she had an existing relationship, but the bank never called to check on the application and the PPP request was never originated, much less funded. The dentist applied with HOPE who approved her $12,000 PPP loan. HOPE also approved a $7,200 loan for a 27-year-old Black-owned barbershop in New Orleans after the owner received no help from his bank of 31 years. Notably, the bank is one of the largest in the country and has major obligations under the Community Reinvestment Act. A Black female entrepreneur in Memphis, Tennessee recounted, "I'm sitting in my own bank's drive-through and the employee working the window told me to go to Hope Credit Union because he'd heard HOPE would make it easy for me to apply."[7] Such stories were constant throughout the PPP lending process — an unfortunate reflection of a banking system that has historically failed people of color and low-income communities.

In 2020 and 2021, HOPE partnered with 60decibels, an impact evaluation firm, to survey a representative sample of HOPE's Round 1 PPP borrowers and non-PPP borrowers, to understand their experiences and future capital needs. The survey of HOPE PPP borrowers revealed that 36 % decided to take a HOPE PPP loan because they lacked another option or were declined by another bank. As one person described, "I'm a member [of a bank], and initially they weren't gonna do it and then my account management app said they gave me PPP. Then they changed their mind. HOPE was the only community institution that really embraced PPP. I attempted, but [the bank] is the fourth-largest bank in the world, so that didn't fit their corporate mission." Another person said, "We tried to get it through other avenues and other banks, but they didn't give us the time of day. HOPE was the only one to assist us with the matter. I didn't even know how to fill it out; they just had an online form, and I uploaded the tax form and then we just winged it, but HOPE called after and fixed it." Importantly, 86% of PPP loan recipients in 2020 were new to HOPE, reflecting a significant population of small businesses unserved or underserved by other financial institutions.

Understanding small businesses' need for future capital amidst the pandemic further underscores the importance of Section 1071 in ensuring that financial institutions are doing their part to close racial gaps in small business lending. For example, in our September 2020 survey of PPP borrowers, 66% of Black-owned businesses reported they would need additional capital in the

next six to 12 months, as compared to 39% of white-owned businesses. In our March 2021 survey of small businesses who did not receive a PPP loan in 2020, similar disparities persisted showing 65% of Black-owned businesses needed additional capital in the next six to 12 months, compared to 55% of white-owned businesses.

Going forward, the exclusionary legacy of PPP should inform policies to ensure that small businesses, particularly those owned by people of color, can survive and prosper in the post-COVID economic recovery.[8] To this end, the CFPB must take into account the historical and current challenges of businesses owned by people of color and women, and address, not ignore, these disparities in crafting a final rule for Section 1071.

Recommendations are provided in detail below.

1. Expansive coverage, of lenders, credit products, and small businesses, with few exceptions, is critical to ensure small businesses are receiving fair access to capital.

a. <u>What financial institutions are covered</u>

The CFPB correctly proposes to cover all lenders except for those making fewer than 25 loans each year for over the course of two years. As noted in HOPE's input during the SBREFA panel, this exemption should not be expanded and should not be based on asset size.[9]

A key reason for not using a trigger larger than 25 loans over two years is that Deep South communities, particularly in rural areas, are more likely to be served by smaller banks that individually may have smaller loan volumes but may account for a disproportionately significant amount of lending in their local community. To understand the potential impact of increasing this threshold beyond what the CFPB proposed, HOPE examined data for banks headquartered in the Deep South. Specially, we looked at their 2019 reporting under the Community Reinvestment Act for loans under $1 million.[10] While the data is just for one year, rather than two as the CFPB proposes, and only analyzes banks rather than all lenders, it provides important insights regarding the potentially detrimental impact of increasing the threshold that triggers reporting under 1071. See Table 2.

Raising the exemption based on 50 loans, rather than 25, may potentially exempt small business loan capital in excess of seven times what would be covered under the proposed rule in the Deep South from the accountability and transparency of Section 1071. If the exemption is raised to 100 loans, nearly half a billion of loan capital in a single year would remain obscured in our region.

Table 2. Amount of Small Business Bank Loans and Loan Volume, Based on 2019 Small Business Loans Under $1 Million by Banks Headquartered in the Deep South

Under 100 Loans		Under 50 Loans		Under 25 Loans	
Number	Volume	Number	Volume	Number	Volume
2,405	$428,475,000	322	$40,758,000	141	$5,692,518

Source: Hope Policy Institute Analysis of reports published by the SBA Office of Advocacy

The CFPB also correctly ensures that credit unions, online lenders, government-lending entities, community development financial institutions, and others are required to report their small business lending activities. An examination of Home Mortgage Disclosure Data (HMDA) in the Deep South underscores concern about potential disparities in small business lending patterns, thus confirming the importance of Section 1071's proposed coverage of these financial institutions. Stark examples are evident in Mississippi, where so much of the state qualifies geographically as low-income, and nearly 40% of Mississippi's population is Black.

- Using 2018-2020 HMDA mortgage lending data, HOPE found that among the 10 Mississippi credit unions engaged in mortgage lending, 73% of their mortgage loans in Mississippi went to white borrowers while only 15% went to Black borrowers.

- Among the 27 CDFI banks in Mississippi engaged in mortgage lending in the state from 2018-2020, 68% of mortgage loans went to white borrowers while only 13% went to Black borrowers.

- Both are lower than the statewide rate of all HMDA reported mortgage originations from 2018-2020 to Black borrowers at 17%.

- By contrast, from 2018-2020, Hope Credit Union, an MDI and CDFI, made 81% of its mortgage loans to Black borrowers.

Similar patterns persist in Louisiana as well, where 32.8% of the population is Black. Using 2018-2020 HMDA mortgage lending data, HOPE found that among the 30 Louisiana credit unions engaged in mortgage lending, 69% of their mortgage loans in Louisiana went to white borrowers while only 15% went to Black borrowers. (Race was not available for 16% of reported loans.) Statewide, among all lenders engaged in mortgage lending in the state, 14% of mortgage loans went to Black borrowers and 73% to white borrowers, with data missing for 13% of loans. For CDFI banks in 2019 in Louisiana, of the 14 CDFI banks reporting HMDA information, 15% of mortgage loans went to Black borrowers. However, when Liberty Bank, a minority depository institution that made 76% of its mortgage loans to Black borrowers, is excluded from the analysis, the percentage of mortgage loans to Black borrowers by CDFI Banks in Louisiana dropped to 9% in 2019.

Clearly, the inclusion of credit unions and CDFIs is critical to understanding disparate lending practices, and will highlight the value and reach of lenders with demonstrated records of fair lending to small businesses owned by people of color and women, underscoring the importance of investing in these vital institutions and building on their strategies.

Ensuring governmental-lending entities are covered is particularly important in the Deep South. CARES Act-funded programs administered by state agencies bring this into sharp focus. In Tennessee's Small Business Relief Program, which provided direct payments to designated businesses, 90% of the relief funds went to white-owned businesses in the state. This is attributable to a racially discriminatory formula used in determining the payment amount.[11] In Mississippi, despite allocation by the state legislature of $40 million (out of a larger $240 million program) for a 60-day priority set-aside for businesses owned by women and people of color, the state only deployed $2 million to these businesses during the designated time frame.[12] While Mississippi has disclosed how much of the funds went to certified Minority and Women Owned

Businesses (MWBEs), it has neither fully released the amount flowing to self-identifying MWBEs, nor the demographics of application and denial rates.[13] In contrast, Louisiana's deployment of CARES Act funds to small businesses demonstrated that it is possible for state government lending entities to gather and report this data. Louisiana published a public interactive dashboard of the program results including data on race, gender, industry sector, and Parish location.[14] The report shows that Louisiana's Treasury Department deployed over $262 million in CARES Act funding in the form of small business grants, with 42% ($111 million) reaching businesses owned by people of color.[15]

State-level governmental lending entities will play an outsized role in deploying small business capital over the next ten years. Congressional re-authorization of the State Small Business Credit Initiative (SSBCI) authorizes $10 billion to be deployed by states to leverage additional private capital to support small businesses.[16] The program requires states to achieve a ten to one leverage ratio meaning it has the potential to move $100 billion over the next ten years in small business capital through financial institutions participating in the state-established SSBCI programs. The history of state-administered small business financing programs in the Deep South highlights the importance of Section 1071 in aiding the fair distribution of SSBCI funds. Notably, in the original SSBCI program administered between 2010-17, the U.S. Treasury Department did not require that states report on the race, ethnicity, or gender of the business owners who benefited from the program. In its guidelines for the re-authorized SSBCI, Treasury has not yet determined whether these data points will be gathered. It is vital that Section 1071's rulemaking require that demographics of SSBCI supported lending to small businesses are captured, by the participating financial institution or by the state, to ensure that these federal funds close, rather than widen racial and gender capital gaps.

b. <u>What products are covered</u>

The CFPB is correct to include coverage of a broad range of credit products that reflects the variety of ways in which small businesses seek credit. We agree the CFPB should ensure traditional forms of credit such as small business loans, credit cards, and lines of credit be documented under the rule, as well as non-traditional forms that tend to be higher cost and predatory, such as merchant cash advances. We are pleased to see the CFPB incorporated feedback from HOPE and other SERs related to including merchant cash advances in the rule making.[17]

Of particular importance to the Deep South, the CFPB correctly decided to include farm loans in the scope of reporting. Over one-third (36%) of Black-owned farm land in the United States is located in HOPE's five-state service area.[18] Access to capital is a determining factor in a farmers' ability to keep or expand their landholding. It is well-documented that Black farmers have faced decades of discrimination from private and governmental lending entities.[19] In February 2021, HOPE convened a group of Black farmers to share their lending experiences with the CFPB. In that discussion, farmers noted persistent challenges to accessing credit. Rooted in their voices as they shared them, examples include the following:

- Lack of access to fair, affordable credit is a barrier for attracting and keeping new farmers. For example, getting access to equipment and dealing with barriers such as high cost-share amounts may cause them to be in substantial debt from the outset.

- The process farmers encounters feels like redlining in the way there are so many ways lenders and local USDA offices seek to frustrate Black farmers out of the process by making things more complicated, and causing lengthy delays, that white farmers do not encounter.
- Many Black Farmers do not have relationship with banks. The lack of relationships means banks are less willing to work with the farmers and provide the support needed to understand and complete the loan application process.
- There are differences in the way Black farmers are treated based on the crops they grow. Agricultural loan underwriting criteria favor beef, cattle and grain production, which are often the enterprises of large-scale white farmers. These programs are not structured to deal with vegetables or greens, which becomes a problem both in underwriting and access to grant relief programs which disproportionately impacts Black farmers.
- Even in the instance where farmers may get access to alternative financing from a private lender, this is no substitute for getting fair access to government lending programs with 1% interest and 40 year terms.
- Black farmers are often left with no choice but to sell their land to white farmers, because Black farmers are unable to secure financing. In one instance, a Black farmer wanted to sell to another Black farmer, but the purchasing farmer was not able to get the loan under $50,000. Later, a white farmer was able to get that same loan and eventually bought the land. This phenomenon is particularly demoralizing given the amount of work that has gone into the land for so many years.

c. <u>What small businesses are covered</u>

HOPE is pleased to see the CFPB incorporate SERs' recommendation of adopting a bright line approach to the definition of small business. However, as stated in its comment during the SBREFA process, HOPE urges the CFPB to adopt the thresholds of businesses with less than 500 employees and under $8 million in revenue.[20] The CFPB's own data notes that the $5 million threshold will exclude 270,000 businesses.

Having an expansive definition of small business is particularly important given that the CFPB proposes to collect only the data for lending to businesses that meet the definition of small businesses, but not businesses owned by women or people of color that fall outside of this definition. Disparities in mortgage lending show that income does not ameliorate racial discrimination. In Mississippi, data over a 10-year period show that Black mortgage loan applicants earning over $150,000 face higher denial rates than white applicants earning between $30,000 and $50,000.[21]

Ensuring that high-revenue businesses are treated fairly in the lending marketplace is vital to closing the racial wealth gap, particularly as borrowers of color encounter challenges in securing the capital they need to grow and sustain their business. As noted in a recent study examining the disparities in life cycles between Black and white-owned businesses, "the continued health of an entrepreneur's business is vital to wealth creation. When a business ends, the wealth gains that business produced can be washed away, and even leave the entrepreneur worse off than they started."[22]

Examining the reasons behind the report's findings shows that Black-owned businesses, on average, have shorter lifespans of white-owned businesses, particularly if interrupted by an economic shock. Another was access to capital after the start-up phase. The report noted:

> [A]nother common issue is that business owners have difficulty securing loans to either get them through hard times or to grow their business after the start-up phase. This lack of access to capital turned what may have been temporary downturns into catastrophes for some of the small business owners in our sample. An advocate described this problem, stating, "This whole [lending] eco system is not really supportive of growth and expansion. It can stimulate the startup piece because cost for startup in the service sector is small," but ongoing investment is needed to allow companies to grow and thrive.[23]

The CFPB's arbitrary threshold of $5 million in gross revenue may unnecessarily deprive fair lending protections to small businesses owned by women and people of color and inhibit their growth trajectories. Ensuring these businesses have access to the capital they need is strongly aligned with the community development purpose of Section 1071, and with HOPE's efforts to ensure greater participation of diverse businesses in the development of affordable housing, community facilities, and state and federal contracting. In each of these areas, diverse businesses and developers are woefully underrepresented. Access to credit will be necessary to ensure they are equipped to participate in these community-stabilizing, wealth-building opportunities.

2. Collection of the right data points, including credit scores and business structure, to accurately reflect the reality of small businesses' experiences here in the Deep South.

a. <u>HOPE supports the CFPB's proposed data points, with some modifications</u>.

The proposed rule will collect data points necessary to assess small business lending practices and outcomes. HOPE supports the proposed data points about the business (race, ethnicity, and sex of the applicant and principal owners, number of principal owners, time in business, number of workers, NAICS code, minority-owned status, women-owned status, gross annual revenue, and census tract); about the loan (application recipient, application method, application date, unique identifier, credit type, credit purpose, amount requested, and pricing); and about the application outcome, (action taken, action taken date, amount approved, and denial reasons).

The data will provide insight on the quality of the capital accessed by demographic information of the small business applicant, loan type, and business industry. In this way, it will be useful in not only identifying potentially discriminatory lending practices, but also highlight capital gaps in the market place that lenders may be able to fill. The data will show how financial institutions compare across key metrics and help determine if the institution has equitable lending. It will provide an unprecedented snapshot of the lending landscape for small businesses. HOPE supports the collection of the proposed data points.

HOPE also supports how the data will be collected. Two points of particular importance include the broad definition of application and the gathering of disaggregated data. On the definition of application, HOPE is pleased to see the feedback of HOPE and other SERs incorporated in a

broad definition of application consistent with Regulation B. As noted further in HOPE's comment to the SBREFA process, "a broad definition of applicant is not only beneficial for business purposes, but is critical to carry out the purposes of section 1071."[24]

On the collecting of disaggregated data, importantly, this will allow for comparison among different racial, ethnic, and gender categories. For marginalized businesses, this is key in identifying unique challenges and experiences for specific market segments. For example, the Federal Reserve reveals stark differences exist even within businesses owned by historically marginalized racial and ethnic groups. According to the 2021 Federal Reserve Small Business Credit Survey, just 13% of Black-owned businesses received the full amount of credit which they were seeking, a lower rate than Hispanic-owned businesses (20%) and Asian-owned businesses (31%). Each of these are lower than the experiences of White-owned businesses (40%).[25] This is just one example of the racialized differences in accessing capital and underscores the importance of disaggregated data. Without it, the rate in which Black businesses receive the capital requested would have been hidden.

Below are specific recommendations for certain proposed data points:

- *Characteristics of Lender*: There are two ways this section could be strengthened, as described below. In addition, HOPE affirms the CFPB's recommendation to propose separate categories for CDFI, Minority Depository Institutions, Banks, Credit Unions, and non-depositories, and is correct to allow a lender to choose multiple options. This is critical for understanding the lending patterns of MDI Credit Unions, non-depository CDFIs, relative to CDFI banks or non-CDFI entities

    - For governmental lenders, the CFPB should consider a way to differentiate between Tribal, federal, state, and local government lending entities. One way to accomplish this is a drop down option for each, e.g. Government Lender – Federal, Government Lender – State, Government Lender – Local. In our experience, programs closest to the communities they have serve generally have better outcomes in line with the demographics of the communities, and in many instances it will be helpful to understand how well federal versus state-run programs are reaching the communities we serve.

    - For the proposed "fintech" option, the CFPB should reconsider its proposal and not include a "fintech" label for a lender characteristic. Rather, the CFPB should utilize a more accurate label of "online lender." Fintech is not an otherwise defined term, nor has the CFPB proposed such a definition for feedback in this context.[26] Additionally, this potential option was not included in the SBREFA outline of proposed options, thus negating the opportunity for feedback. Given the widespread use of the undefined term of "fintech" across a broad set of markets, finalizing a definition within this context without the ability to receive feedback on spillover consequences into other areas, including state law, would be imprudent. Additionally, a lender that considers itself a "fintech" lender is already by definition another type of lender, e.g. bank, nondepository, primarily operating via the internet.

- *Application method*: The current choices design of application method, may not reflect HOPE's engagement with the small business community. HOPE works with numerous community-based organizations and partners, including presenting financial education and small business capacity building workshops. Through these and other relationships, partners often connect us with potential applicants by email. HOPE sends and receives applications by email on a fairly regularly basis, through which we develop a relationship with the business. This is vastly different from an experience of applying through a website with little to no personal contact. Yet, the CFPB is combining both of these methods into a single category of "online." As such, HOPE may then appear to have online application rates similar in nature to an online lender which have a vastly different business models and missions. The CFPB should allow either different categories to distinguish email from a web portal, or allow designation of a subcategory for Online, such as "Online-Email, "Online-Website," etc.

  A key finding from HOPE's survey of PPP borrowers underscores the importance of this difference. HOPE asked about borrowers' experiences with other lenders, such as online lenders. About 18% of those who applied to HOPE for PPP with another lender did so through an online lender. The majority said their experience was either "better" or "much better" with HOPE; hence, borrowers actually received their loan from HOPE rather than the PPP lender. In the words of one member, "HOPE was easier because I was actually speaking with someone in person, and [the other lender] was online and I actually didn't get to speak with somebody."

- *Credit type*: On the proposed options for guarantee type, the CFPB should separate state and local guarantee so that it is a distinct option for each, rather than a combined "state or local guarantee" as currently proposed. Differentiating between the performances of these two levels of government is critical for understanding the focus of future reforms or capital flows through these entities. In our experience, there are vastly different outcomes in terms of responsiveness to community needs from state-level programs than local-level programs. Generally, local government programs tend to have better outcomes in meeting the needs of their local community, whereas state-level programs in the Deep South have often neglected people of color and other marginalized groups.

  This will be particularly key as states prepare to deploy historic levels of loan guarantee programs through the State Small Business Credit Initiative. During the last round of SSBCI, four of the five states in our region deployed a loan guarantee program and are contemplating doing the same this round. At the same time, local governments are contemplating and establishing locally-run small business support programs using American Rescue Plan funds, which may very well take the form of loan guarantees.

  An informative parallel are the Emergency Rental Assistance (ERA) funds, which are deployed both by state-wide agencies as well as by certain local governments. In Mississippi, for example, as of the end of September, the statewide program had deployed just 17% of its funds. By contrast, Harrison County had deployed 91% and Hinds County at 30%.[27] If however, the rate of state and local programs were reported as a single outcome it would simply show that Mississippi had expended 20% of its ERA

funds, with no ability to identify how weakness and strengths differed between the levels of government administering these funds.[28]

- *Action Taken*: HOPE serves communities throughout the Deep South that have been historically locked out of mainstream financial institutions and often are not able to meet the criteria to receive the capital they have requested. Time and time again from our members that, at other financial institutions, they are met with flat denials or no response at all. By contrast, HOPE's business model is anchored in being a financial problem solver for our members. As such, the loan application is the beginning of a relationship, which may include a process of offer and counter offers to help businesses structure financing that best suits their needs. The current counter offer guidance does not penalize HOPE for assisting businesses not yet able to receive the requested capital. However, it is important to require that financial institutions report the pricing of the initial request and the counter offer to prevent exploitative lending. For this reason, we agree with National CAPACD, NALCAB, CRL and others to close the potential loophole in the CFPB's proposed structure for counteroffers: the CFPB should "modify the specifications for the actions taken field to include counteroffer accepted and counteroffer rejected as discrete options and then require reporting of pricing information with respect to either of these actions taken."

- *Pricing information*: Regarding non-interest charges, the CFPB should reconsider its proposal to report only the amount "scheduled to be imposed over the first annual period." We are concerned this will lead to subterfuge of artificially low costs in the first year and fee stacking in subsequent years. The CFPB should instead propose to collect the amount of non-interest charges projected to be collected over the life of the loan.

b. <u>To meet its intended purpose, CFPB must require additional data: credit score and business structure.</u>

The rule must be strengthened to ensure financial institutions collect and report credit score and business structure. The CFPB currently expects financial institutions to collect a range of data points on the business applicant, application decision, and nature of the lending product. These data together can reveal great insights on the outcomes for businesses at a granular level, but other critical data are missing. It will be unclear if a business applicant is denied a loan due to credit score or to challenges associated with business structure i.e. LLC, if that data is not collected.

HOPE echoes comments made by the Expanding Black Business Credit Initiative: "in support of other data the CFPB seeks to collect, the CFPB notes that it 'would help ensure that users are comparing applicants with similar profiles, thereby controlling for factors that might provide non-discriminatory explanations for disparities in credit and pricing decisions.' This goal cannot be achieved without ensuring credit score information is collected and reported."[29] Without credit score, it is unclear if business owners are getting similar rates of financing if they are similarly situated, all things else considered equal. Credit scores are a critical component in accessing capital and determining interest rates. This data can help determine disparities in pricing given that other data pricing data will be collected. For businesses of color, this is

important. Collecting credit score will show instances in which white businesses with poorer credit scores get lower interest rates when black businesses get higher interest rates with higher credit scores.

More directly, collecting and reporting business credit score clarifies how financial institutions make loan decisions. Without it, businesses owners with good credit will not only face confusion, but longer term financial consequences of not receiving fair credit on fair terms. For example, a financial institution denied a Black applicant a loan despite her high credit score. She states: "*Even though I have good credit, even the interest rate for me, I don't understand why it's so high. I mean…if you have an 800-credit score, you should be able to get a loan, not at 10 or 12 percent.*" The Black business owner was, like many, forced to use her personal savings and contributions from friends and families.[30] Similarly, another Black business owner was denied by two financial institutions despite having a high credit score. After the pandemic began, she reached out to HOPE for assistance and we were able to help her get a Paycheck Protection Program loan to keep her staff employed.[31] Credit score is a necessary data point to collect to determine why applications are denied, deter confusion, and more precisely identify instances of racial discrimination.

While the CFPB notes that financial institutions use a myriad of credit scoring systems to calculate a score for a business, this is not sufficient justification for failure to include it within the 1071 reporting. One key reason is that many lenders utilize a business owner's personal credit score, which is easily collected and reported as demonstrated by HMDA. CFPB can allow lenders to identify whether they are using the credit score of the business or the personal score of the applicant, and where the lender has in fact utilized the personal score of the borrower, then that is what they should report.

In terms of public reporting of credit score information, we suggest that, at minimum, the CFPB should collect the data and can display credit scores in ranges rather than the actual specific credit score of any particular loan transaction.

Without business structure, the CFPB will overlook critical racial dynamics of the small business market. Nationally, over 90% of Black and Latino businesses are non-employer firms and in the Deep South 96% are non-employers. [32] Non-employers can be nail techs, barbers, real estate agents, provide pet care, and supply other related work. [33] They represent a sector of business that offers ease of entry and flexibility for many Americans, but if financial institutions are not required to report on lending and applications by business structure and credit score, the data may suggest non-employers cannot access capital due to their own unpreparedness/creditworthiness and not due to the structural discrimination perpetuated by financial institutions.

Even the CFPB acknowledges with its own data that non-employer firms can take many forms and that the number of principal owners does not necessarily indicate the business structure.[34] As the CFPB notes, non-employer firms can be sole proprietors, partnerships, or corporations. Business structure can lead to differential lending experiences for a number of reasons. One may be bias from the lending institution. Financial institutions may perceive certain business structures as representing different levels of expertise or sophistication of the business owner, thus leading to different treatment. Another reason may be structural differences in underwriting

processes due to differences in treatment of profits and losses for tax purposes based on business structure. Without the information about business structure, it will not be possible to identify gaps in capital access such as whether non-employer corporations receive more or better capital than non-employer sole proprietors, the latter of which are more likely to be owned by people of color.

Another benefit to including the business structure identifier is to ensure future capital programs, whether private or public, adequately include or target business structures. The inability to account for the unique needs or experiences of different business structures was particularly palpable during the Paycheck Protection Program when non-employers were not even accounted for in the roll out of the first $340 billion allocation for the program. As states then subsequently developed their own programs with CARES Act money in the aftermath of Round 1 of PPP, they sought to repeat this mistake. In Mississippi, for example, state legislators specifically fought to ensure that sole proprietors were included their emergency business grant program, thus triggering the realization that different thresholds were needed to ensure the program was accessible to them. (For example, sole proprietors are not required to be registered with the Secretary of State, thus needed an exemption for this eligibility requirement.) Being able to differentiate between sole proprietors versus corporations are also key for philanthropic efforts that may aid the work of mission-based lenders working with specific underserved communities.

Collecting exhaustive data on small businesses is necessary to understand the complete picture. Without it, financial institutions may exploit loopholes to circumvent fair lending, the intent of Section 1071.

c. <u>HOPE's experience demonstrates such data collection is possible, not cost-prohibitive, and to the extent there is a cost, it is outweighed by the benefits.</u>

Financial institutions can comply with Section 1071 because there are a number of small business lending programs and funding opportunities that already require the data. For HOPE, we collect the majority of data for loan originations on our small business applications and through the CDFI Fund, the Wells Fargo Diverse Community Capital Program (WFDCC), the Paycheck Protection Program, and SBA 7(a) and Community Advantage Loan program.[35] See Table 3.

In addition to demonstrating the feasibility of these data, the chart below underscores a benefit of Section 1071 reporting: consolidated uniform reporting mechanism that can satisfy requirements across a number of programs, greatly reducing the administrative burden of the current piecemeal approach.

Table 3: Summary of Programs in Which HOPE Participates That Already Gather Data Points Similar to 1071 for Originated Loans

1071 Proposed Data Point	Programs that Collect Data
Unique Identifier	PPP, CDFI Fund
Application Date	PPP
Application Method	
Application Recipient	
Credit Type	CDFI Fund
Credit Purpose	CDFI Fund
Amount Applied For	PPP
Amount Approved or Originated	PPP
Action Taken	PPP
Action Taken Date	PPP, CDFI Fund
Denial Reasons	
Pricing Information	PPP, CDFI Fund
Census Tract (Principal Place of Business)	CDFI Fund
Gross Annual Revenue	SBA 7(a), WFDCC, CDFI Fund
NAICS	SBA 7(a), PPP, CDFI Fund
Number of Workers	SBA 7(a), PPP, CDFI Fund
Time in Business	SBA 7(a), PPP, CDFI Fund
Minority-Owned Business Status	SBA 7(a), PPP, WFDCC, CDFI Fund
Women-Owned Business Status	SBA 7(a), PPP, WFDCC, CDFI Fund
Ethnicity of Principal Owner(s)	SBA 7(a), PPP, WFDCC, CDFI Fund
Race of Principal Owner(s)	SBA 7(a), PPP, WFDCC, CDFI Fund
Sex of Principal Owner(s)	SBA 7(a), PPP, WFDCC, CDFI Fund
Number of Principal Owner(s)	PPP
Business Structure	SBA 7(a), PPP, CDFI Fund
Credit Score	CDFI Fund[36]
Disability Status	SBA 7(a)
Veteran Status	SBA 7(a), PPP, WFDCC
Low Income owned or controlled	CDFI Fund

As stated during the SBREFA process, HOPE does not anticipate significant costs, as systems are already in place to gather much of this data required for loans originated. Adjusting to the Section 1071 requirements will primarily entail updating software, training compliance, and updating materials. In terms of ongoing costs, HOPE anticipates that adjusting to the new requirements will be a fairly minimal burden, and also greatly beneficial. Much like HMDA is now, the gathering and reporting of this data will be considered simply as part of our necessary and normal costs of doing business and built into our cost and pricing structure. HOPE does not plan on raising fees or restricting access to credit due to this effort.

To maximize efficiencies in data collection, the CFPB should coordinate with the CDFI Fund to streamline 1071 reporting requirements with CDFI Fund Certification, Annual Reporting, and Transaction Level Reports. The CDFI Fund is currently undertaking a review and improvement to its current annual reporting process for all CDFIs. Areas of coordination could include consistency of definitions, the types of data collection, and the timing of required reporting. The CFPB and the CDFI Fund should explore options to streamline annual reporting requirements such as through data sharing.

3. Robust, meaningful and accessible publication of the data collected.

Even if all the right data is collected, it will not be meaningful if there is not a transparent and efficient way to review and analyze the data. Specifically, the CFPB is correct to propose that data will be published on its website in a downloadable and searchable fashion, much in the same way HMDA data is currently available. If the data were only available by request to individual lenders, it would essentially be unusable to us, as HOPE would not have the capacity to seek out this information from every lender in our market, and certainly not nationwide to the extent we often need to understand Deep South trends compared to those across the country.

In terms of the aggregate reporting the CFPB may also produce, we urge the CFPB to produce state-by-state level reports, not just national aggregate data trends. The state-by-state reports are critical to assessing differences within different states in our market, as well as being able to see how these trends differ from national trends. The CFPB should also consider aggregate reports that include an examination of trends by persistent poverty counties, and in particular, rural persistent poverty counties.

As with the publication of HMDA data, there are sufficient protections in place to guard against the release of individual borrower data, while providing robust information about the lending activities of specific financial institutions. By making the data accessible, the CFPB will ensure a more fair and transparent marketplace, benefitting small businesses, lenders, and our communities.

Existing research on lending disparities such as those produced by the Federal Reserve and others cited here provide important insights into capital access, as well as underscore the importance of broad, easily accessible publication of 1071 data. Existing reports on business lending, primarily rely on survey data to identify small business trends by race, business industry, and other key identifiers, where available. These surveys however, cannot describe small business lending and outcomes as thoroughly or accurately as 1071 has the potential to do. Implementing 1071 would provide greater breadth on the nature of capital access, particularly for businesses of color, since the rule collects actual lending activity and applies to most financial institutions.

Conclusion

Data collected under Section 1071 gives credence to the countless anecdotes of underserved businesses that have been denied capital or relegated to exploitative financing, while their counterparts benefit from a more responsive and supportive financial service system. The proposed rule will quantify and make transparent the extent to which financial institutions serve business owners of color and other marginalized groups. This is critical to eradicating the racial wealth gap. It is difficult to solve a problem that you do not have the language to describe. Section 1071 is the missing language. It is the missing data.

Small businesses owned by people of color are more likely to employ people of color. Consequently, their stability and growth is necessary for reversing disparate COVID-19 related employment losses. In an increasingly diverse nation, closing the small business capital gap is key to building wealth in Black communities and necessary for a robust, equitable economy.

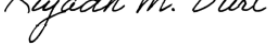
While white adults have 13 times the wealth of Black adults, the gap closes to three to one when comparing the median wealth of white business owners to Black business owners.[37] Closing the racial wealth gap has the potential to increase the national Gross Domestic Product (GDP) between $1 and $1.5 trillion by 2028.[38] When everyone does well, we all do well.

Thank you for your consideration of this feedback.

Sincerely,

William J. Bynum
Chief Executive Officer

Diane Standaert
Director, Hope Policy Institute



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