233 South 13th Street, Suite 700
Lincoln, Nebraska 68508
Phone: (402) 474-1555
Fax: (402) 474-2946
www.nebankers.org

NBA Nebraska Bankers Association

January 5, 2022

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

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

On behalf of the Nebraska Bankers Association ("NBA"), I appreciate the opportunity to comment on the Bureau of Consumer Financial Protection ("Bureau") proposed guidelines for Dodd-Frank Act Section 1071 (Small Business Lending Data Collection) request for comment. The NBA is a trade association representing 163 of the 172 commercial banks and savings institutions in the state of Nebraska.

NBA member banks routinely express their commitment to small business lending and to the statutory objectives of Section 1071. This commitment was illustrated by the efforts undertaken by Nebraska banks in issuing and administering Paycheck Protection Program loans that were vitally important to the viability of Nebraska small businesses and their ability to retain employees throughout the pandemic.

We would encourage the Bureau to stay within the confines of the Dodd-Frank Act provisions and only require collection and reporting of the 13-data points mandated by Congress and to refrain from imposing the additional eight-data points that have been proposed. We do not believe that many Nebraska banks collect or utilize particular data points for underwriting purposes and requiring collection and reporting of the data would impose significant burdens on our member banks.

While we appreciate the proposed activity-based definition of a "covered financial institution," we believe that the threshold for reporting should be increased considerably from 25 covered loans in each of the preceding two years. Even our smallest member institutions make more than 25 covered loans per year.

The compliance burden involved with the reporting requirement, particularly for our smaller member banks, will be significant and may very well result in many banks considering the curtailment of loan products, setting minimum loan amounts, potentially exiting the small business lending arena or increasing the likelihood of their consolidating with another institution.

The NBA supports the simplicity of the proposed definition of a "small business" which is currently suggested as "a for-profit entity with Gross Annual Revenues (GAR) of $5 million or less." This will allow lenders to avoid having to consult the Small Business Administration's NAICS codes and size standards. However, we would highly recommend that the Bureau revise the definition of "small business" in the final rule "as a small business that has GAR of $1 million or less."

In support of this recommendation, we would suggest that applying a $5 million GAR will capture loans to businesses that are not small by Nebraska standards. In addition, application of a $1 million GAR will provide consistency with existing CRA data reporting requirements.

We would encourage the CFPB to avoid duplicate and inconsistent reporting of HMDA and CRA data in order to reduce compliance burden and the potential for inaccurate data reporting. Lenders will be challenged by having to collect and report different data for the same transaction. For example, HMDA requires a lender to collect and report the census tract where the property is located, while the Section 1071 proposal would require a different census tract to be reported for the same transaction. The Bureau should exclude from HMDA those transactions that must be reported in Section 1071, such as a loan to a small business to purchase, improve or refinance an apartment building. We would also encourage the Bureau to coordinate with the prudential regulators to eliminate inconsistencies and duplication with CRA data reporting.

We support the Bureau's decision to not require identification of the sex of the principal owners and would encourage the Bureau to eliminate the requirement for lenders to identify the race and ethnicity of principal owners based on visual observation or surname.

We also believe that the requirement to give borrowers a notice regarding the infeasibility of the "firewall" places small banks at a competitive disadvantage to larger lenders. Nebraska has more than seventy banks that less than $100 million in deposits, with typically less than 10 employees. Implementing a "firewall" within these institutions is not feasible. Requiring the notice "Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the [demographic] information provided on this form" may result in applicants seeking credit from a lender that doesn't have to provide the notice because it is able to create a "firewall." We would encourage the Bureau to not finalize this aspect of the proposal. Implementing this provision is just one more challenge to the community banking model in the United States.

The proposed implementation period of 18 months is much too short to allow for the building of a new data collection regime in an area of the lending business that is generally not automated and implicates many different types of products. As a result, we would encourage the Bureau to extend the implementation period from 18 months to three years.

Given the magnitude of the changes being made and the requirements being established, we would also encourage the Bureau to increase the error tolerances for bona fide errors. In addition, we believe that the banking agency should provide a "grace period" for the initial year of collection, to ensure that lenders are not penalized for errors made in that year. This approach would be consistent with the agencies' treatment under the Bureaus 2015 HMDA rule.

We appreciate the opportunity to comment on this proposal and thank you for your consideration of our comments.

Very Truly Yours,

Richard J. Baier
President &CEO
richard.baier@nebankers.org