



September 14, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First Street NE
Washington, DC 20552

Dear Director Cordray:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Consumer Financial Protection Bureau (CFPB or the Bureau) Request for Information (RFI) Regarding the Small Business Lending Market.¹ Advocacy encourages the CFPB to develop a workable size standard, conduct additional small entity outreach and publish an Advance Notice of Proposed Rulemaking (ANPRM) prior to going forward with a Small Business Regulatory Enforcement Fairness Act panel.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to

¹ 82 Federal Register 22319, May 15, 2017.

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank).⁶ Section 1011 of the Act establishes the CFPB to supervise certain activities of financial institutions. Section 1100G, entitled “Small Business Fairness and Regulatory Transparency,” amends 5 U.S.C. § 609, to include the CFPB with its coverage.

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held roundtables on this issue on June 26, 2017 and August 4, 2017.

Background

Section 1071 of the Dodd-Frank Act (section 1071) amends Equal Credit Opportunity Act to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses.⁷ The purpose of this data collection, as stated by Congress in section 1071, is to “facilitate enforcement of fair lending laws” and to “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”⁸ In order to achieve this statutory purpose, the CFPB asserts that section 1071 data should cover an extensive share of the market and contain enough flexibility to analyze different market segments.⁹

Small businesses, including those owned by women and minorities, are critical engines for economic growth, and access to credit is a crucial component of their success. The CFPB believes that data collected under the business lending data collection rule as mandated by section 1071 would fill existing gaps in the general understanding of the small business lending environment.¹⁰ Further, data would be helpful in fulfilling Congress’s purposes in enacting section 1071 by identifying potential fair lending issues for small businesses, including women-owned and minority owned small businesses, as well as the needs and opportunities for both business and community development.¹¹

SBA’s Small Business Definition May Be Problematic

In the RFI, the CFPB states that Section 1071 defines small business as having the same meaning as the term “small business concern” in section 3 of the Small Business Act (15 U.S.C. 632).¹²

⁵ Id.

⁶ Pub. L. 111-203.

⁷ 82 Federal Register at 22319.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

SBA establishes detailed size standards to meet the criteria of section 3 of the Small Business Act.¹³ At Advocacy's roundtable, the participants stated that the SBA size standards are complex and confusing. Advocacy encourages the CFPB to perform outreach with small entities and to work with Advocacy and SBA's Office of Size Standards to develop a workable solution.

Financial Institutions Believe that Implementing Section 1071 Will Be Costly-Additional Outreach May Be Helpful

Advocacy appreciates the fact that the CFPB published a Notice and Request for Information for section 1071 and that the CFPB extended the comment deadline by sixty days. However, this is a complicated issue that will be costly for small entities. Section 1071 specifies particular data points that financial institutions must compile and maintain, submit annually to the CFPB, and make available to members of the public upon request unless the CFPB permits the deletion or modification of certain data to advance a privacy interest.¹⁴

At Advocacy's roundtables, the participants stated that it will be costly to develop a computer system to collect the information that is required. According to the participants, it will be far more costly than the Home Mortgage Disclosure Act (HMDA) rulemaking. In HMDA, small entities added to an existing system. To comply with the requirements of section 1071, small entities will need to build an entirely new system.

The CFPB convened a SBREFA panel for the HMDA rulemaking because of the anticipated economic impact. Advocacy encourages the CFPB to convene a SBREFA panel for the rulemaking on section 1071. Prior to convening the SBREFA panel, Advocacy encourages the CFPB to have several pre-panel meetings/conference calls with the small entity representatives (SERs) in order to obtain information about the possible economic impact. Prior outreach will help make the SERs' input at the SBREFA panel more meaningful.

In addition, Advocacy asserts that an Advanced Notice of Proposed Rulemaking (ANPRM) may be helpful. At Advocacy's August 4th roundtable, the small business representatives alluded to the differences between consumer and commercial lending. Moreover, when asked about less costly alternatives, they stated that they were not ready to have a meaningful discussion on alternatives. The consideration of meaningful alternatives is a crucial part of the RFA. An ANPRM could assist the CFPB in learning more about the challenges associated with commercial lending and in ascertaining less costly alternatives.

Conclusion

Advocacy believes that the implementation of section 1071 of the Dodd-Frank Act will be costly for small financial institutions. Additional outreach prior to convening the SBREFA panel for the rulemaking will assist the CFPB in developing a workable size standard, determining the economic impact on small entities and identifying less costly alternatives for the SERs to consider. It will also provide information to the CFPB that will assist the CFPB in developing a meaningful RFA analysis for the rulemaking.

¹³ https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf

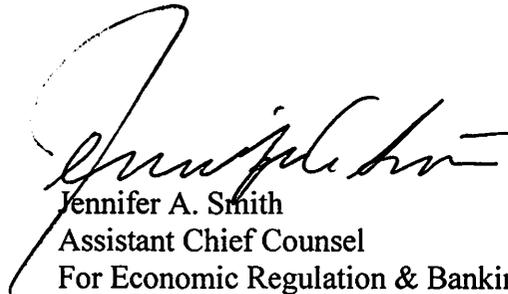
¹⁴82 Federal Register at 22320.

Thank you for the opportunity to comment on this important RFI and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,



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