

January 6, 2022

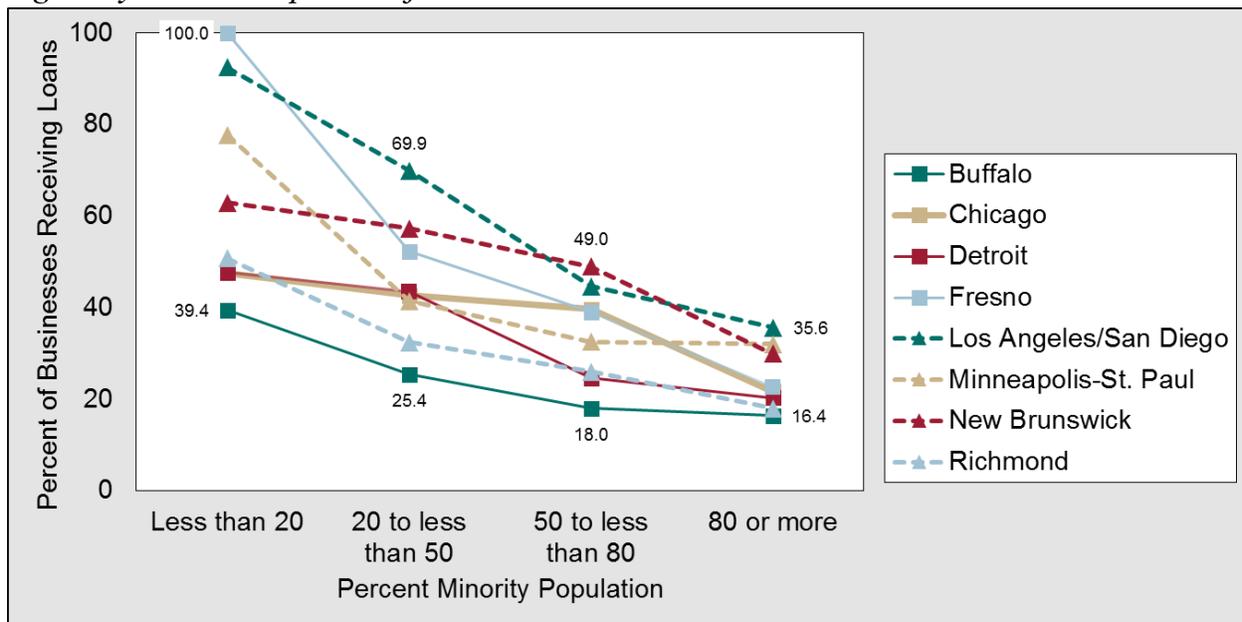
Director Rohit Chopra
Consumer Financial Protection Bureau
Washington, DC 20552

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

Dear Director Chopra:

The proposed rules for collecting small business loan data required by Section 1071 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 (Section 1071 rules) have been one of Woodstock Institute’s top policy priorities for several years. The importance of these rules became abundantly clear to us after we published five research reports showing racial, ethnic, and economic disparities in small loans made by banks to businesses.¹ As shown in the chart below, businesses in communities of color are significantly less served by banks. As the proportion of people of color in a census tract goes up, the bank lending to businesses goes down.

Figure 1: Percentage of Businesses Receiving Bank Loans in 2012-2015 Under \$100,000 in Eight Regions by Racial Composition of Census Tract²



¹ Find all five *Patterns of Disparity* reports at <https://woodstockinst.org/tag/patterns-of-disparity-series/>.

² Spencer Cowan, *Patterns of Disparity: Small Business Lending in Fresno and Minneapolis-St. Paul Regions*, at 32 (Nov. 2017) (citing various sources).

Before these reports, in 2016, Woodstock published a two-page fact sheet summarizing the terms of 13 small business loans.³ On the high end was a loan from [In Advance Capital](#) charging an annualized rate of 367.7%.⁴ On the low end was a loan from Direct Capital, which is now [CIT Bank](#), charging an annualized rate of 26.3%. These wildly varying rates are reminiscent of the wildly varying rates in the consumer loan market in Illinois before the state adopted a 36% rate cap on loans to individuals.⁵ The usurious rates charged by some non-bank lenders, coupled with the disparities depicted in Figure 1, led us to develop a working hypothesis that in the small business loan market – similar to the consumer loan market – predatory, non-bank lenders target communities of color. Triple-digit interest rate loans to small businesses are analogous to triple-digit interest rate payday and title loans to individuals.

Our “working hypothesis” is not a stunning revelation, of course, given the widespread inequities in the financial services marketplace, but it has not been proven by a loan level analysis. The same was true, until recently, in the case of consumer loans. Most research relied on surveys or store locations to form conclusions on the correlation between high-cost lending and communities of color. The data that Woodstock obtained in 2020-2021 from the statewide payday loan database overseen by the Illinois Department of Financial & Professional Regulation enabled us to do an analysis based on every payday loan made in Chicago in 2019 and 2020. While the conclusion was not surprising it was “statistical significance on steroids.”⁶ The Chicago zip code with the largest portion of Black residents (96% Black and 2% White) was also the Chicago zip code with the highest amount of payday lending per capita (17 payday loans per 100 people). We expect similar disparities in small business lending with respect to race, ethnicity, and gender. Hopefully, the Section 1071 data will allow us and others to prove it.

1. Covered Entities & Products

We support the proposed rules’ definitions of financial institutions and small business. As for covered products, the Section 1071 rules need to be as comprehensive as possible to prevent loopholes that would have the unintended effect of encouraging the industry to tweak their products to avoid regulatory scrutiny. We have first-hand experience in Illinois of lenders

³ Woodstock Institute, “Analysis of Business Loan Terms” (July 12, 2016).

<https://woodstockinst.org/research/fact-sheets/analysis-business-loan-terms/>

⁴ The annualized rates in the fact sheet are not necessarily equal to annual percentage rates as defined by Regulation Z of the Truth In Lending Act.

⁵ Predatory Loan Prevention Act, 815 ILCS 123.

⁶ Stephanie Zimmerman, *Chicago Sun-Times*, “High-interest loans in Chicago target Black neighborhoods” (Nov. 26, 2021).

<https://chicago.suntimes.com/consumer-affairs/2021/11/26/22799745/payday-title-installment-rate-cap-illinois-predatory-loan-prevention-act-woodstock-institute>

gravitating to the least regulated space. When our payday loan law was passed in 2005 covering loans of 120 days or less,⁷ the industry created a 121-day product. With this concern in mind, we support a broad definition of covered products.

When money changes hands, one of two things happens – either (1) the money is transmitted to a recipient as a gift or in exchange for something of present value⁸ such that the money then belongs to the recipient, or (2) the money is transmitted to a recipient but the money still effectively belongs to the transmitter and is to be repaid according to certain terms. Under this formulation, a promise to pay is not, by itself, something of present value. Given the rapid evolution of financial transactions and the historical failure of consumer protection laws and regulations to be forward-looking, Woodstock considers transactions that fall under the second scenario to be credit transactions. This formulation, we believe, provides a proactive and preemptive conceptualization that will ensure adequate coverage for products yet to be created.

Factoring is a significant source of financing for many small businesses. In a factoring transaction, the creditor is, in essence, transmitting funds in exchange for a promise to pay by the *customer* of the small business. Thus, it is a credit transaction. Importantly, factoring is identified in Federal Reserve research as a “potentially higher-cost and less transparent credit product” that has a disproportionate impact on minority-owned businesses, and Black-owned businesses in particular.⁹ We are confident that leaving out factoring would cause this form of financing to grow at a faster pace and to encourage bad actors to gravitate towards it.

We support the Notice of Proposed Rulemaking’s (NPR’s) inclusion of merchant cash advances (MCAs) as a covered product. From a policy standpoint, the MCA industry needs more oversight. Certain MCA companies have made headlines by charging quadruple-digit interest rates and engaging in abusive collection activities.¹⁰ According to the most recent Federal Reserve Small

⁷ Payday Loan Reform Act, 815 ILCS 122.

⁸ “Present value” is used here to exclude collateralized transactions. Collateral has *future* value, i.e., its value is realized if and when the borrower defaults.

⁹ Federal Reserve Bank of Atlanta, *Small Business Credit Survey: Report on Minority-Owned Firms* (Dec. 2019). <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>

¹⁰ Federal Trade Commission, Press Release, *Merchant Cash Advance Providers Banned from Industry, Ordered to Redress Small Businesses* (Jan. 5, 2022) https://www.ftc.gov/news-events/press-releases/2022/01/merchant-cash-advance-providers-banned-industry-ordered-to-redress?utm_source=govdelivery; New York Attorney General Letitia James, Press Release, *Attorney General James Sues Predatory Lender That Threatened Violence and Kidnapping, and Illegally Collected Millions from Small Businesses* (June 10, 2020). <https://ag.ny.gov/press-release/2020/attorney-general-james-sues-predatory-lender-threatened-violence-and-kidnapping>

Business Credit Survey, nearly 10% of applications for credit/financing are through MCAs.¹¹ Excluding MCAs from the scope of 1071 would be a major loophole, so we were glad to see the CFPB include them.

2. Mandatory Data Points & Related Questions

Generally, Woodstock supports making the Section 1071 rules the same as the Home Mortgage Disclosure Act (HMDA) where possible, e.g., racial and ethnic categories and sub-categories. Creating consistency of this type will reduce regulatory burden, which will increase the completeness and accuracy of the data collected.

We have major suggested changes to the mechanism for collecting the information about the race, ethnicity, and sex of the applicant. For the sake of simplicity, we will refer to the CFPB's sample data collection form in Appendix E to the NPR to suggest these changes (attached hereto as Appendix A). Below, we will use the term "applicant" to refer to the natural person completing the application, and "small business" to refer to the small business that is applying for credit. We recommend that the Section 1071 rules collect data about both. A Black person applying for a loan on behalf of a white-owned small business is certainly at-risk for discriminatory treatment by a lender. The National Community Reinvestment Coalition (NCRC) conducted recent research showing that loan applicants were subject to differential treatment on the basis of their race.¹² The same holds true for a female applicant. Thus, collecting demographic data about loan applicants would further the fair lending purposes of Section 1071.

Question Regarding Sex

We applaud the CFPB's effort to be sex- and gender-inclusive in the example provided in the sample form. We support enabling the applicant to "Check one or more" and to self-identify, but we recommend adding the following categories: "Non-binary," "Transgender Male," and "Transgender Female." The LGBTQ community has embraced these terms.¹³ Including them among them available options would provide additional data and is more inclusive.

¹¹ Federal Reserve Banks, *2020 Report on Employer Firms: Small Business Credit Survey* (2020).

<https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report>

¹² National Community Reinvestment Coalition (NCRC), *Racial and Gender Mystery Shopping for Entrepreneurial Loans: Preliminary Overview* (2020).

<https://ncrc.org/wp-content/uploads/2020/02/NCRC-Mytery-Shopping-Race-and-Gender-v8.pdf>

¹³ I base this assertion on my personal experience as a member of the LGBTQ community.

Question Regarding Minority-Owned/Women-Owned Business

At the outset, we want to note that Woodstock Institute generally avoids using the term “minority” in its communications. In the small business context, we refer to small businesses in communities of color or businesses owned by people of color. As many have observed, when referring to race, “minority” derives its meaning only when compared to white people as the majority, or the standard, to which all others are compared. It is only in comparison to white people in specific areas that people of color are characterized as the minority, a term which is often viewed pejoratively. “Minority” is thus in many cases not only imprecise but inappropriate. Nevertheless, because Section 1071 and the proposed rules center around the term “minority,” we use the term in this instance to enable us to comment clearly on these rules.

Woodstock believes the CFPB can fulfill its statutory mission under Section 1071 without relying heavily on the applicant to, in essence, make a legal conclusion as to whether the small business is “minority-owned” or “women-owned.” There will be applicants who don’t know the answer to the question, so “I don’t know” should be added to the list of possible answers. There will also be applicants who are unsure of the answer to the question but who do know that the business maintains an MBE- or WBE-certification, so we suggest two questions be added: “Is the small business certified as a Minority and/or Women-Owned Business (M/WBE) by a governmental entity? If yes, by whom (list all certifying entities)?”

The applicant’s subjective view as to whether the small business is “minority-owned” or “women-owned” is relevant data, but equally, if not more, important is the data regarding the principal owners. We support the collection of data regarding the number of principal owners, but we suggest the question about the “demographic information about principal owners” to include a question about the principal owner’s ownership percentage. Including this data would enable the CFPB to refine the data as to whether a business is white-owned, minority-owned, or 50/50 owned. It would also reveal disparities, if any, in lending to businesses that are 100% Black-owned as compared to businesses that are 50% Black-50% white.

An issue that would probably have to be addressed through a statutory change, which we recognize would be a tall order, is the definition of “minority-owned” and “women-owned” business. These are overly generalized and white-centric concepts. A business that is 50% white-owned and 50% minority-owned is substantially different than a business that is 100% white-owned, but they are legally the same under Section 1071 as well as under other laws governing minority ownership.

This overgeneralization is inconsistent with the goals of President Biden’s executive order on “Advancing Racial Equity and Support for Underserved Communities.”¹⁴

Question Regarding Financial Institution Type

The CFPB proposes to include a data point categorizing lenders by type. The proposed list includes: (i) bank or savings association, (ii) minority depository institution (MDI), (iii) credit union, (iv) non-depository institution, (v) community development financial institution (CDFI), (vi) other nonprofit financial institution, (vii) Farm Credit System institution, (viii) government lender, (ix) commercial finance company, (x) equipment finance company, (xi) industrial loan company, (xii) fintech, and (xiii) other. This list is useful in comparing and contrasting the fair lending and community development performance of various types of lenders. This data provides insights to stakeholders about which lending model(s) are effective in reaching underserved populations.

The term “fintech” is vague. “Online lender” is a less vague alternative or additional option but is imprecise as to how much online lending would be necessary to qualify as an “online lender.” We recognize that a lender’s subjective view as to whether it is a fintech is relevant, but we are flagging the issue for your consideration. Regardless of how the CFPB lands on this issue, we recommend the preamble to the final rule state that the categories of this data field are intended to assess how effective different types of lenders are in furthering community development and fair lending. The categories should not be construed to justify exemptions for any type of lenders from consumer protection laws at the federal or state level.

Visual Observations

Collecting race/ethnicity/gender data based on visual observations is a minefield. As our population becomes more diverse, relying on visual observations to determine a person’s race, ethnicity, or sex is increasingly unreliable. This method also raises fair lending concerns. Consider, for example, a loan officer who perceives a non-binary person to be a man, or a loan officer who perceives a person of Mediterranean descent to be Latino. Moreover, if an applicant selected “do not wish to answer” for a race/ethnicity/gender question, but then the lender made an assumption and essentially answered for the applicant, that is taking away the agency of the applicant and overriding their reasons for declining to answer.

¹⁴ White House, *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Jan. 20, 2021).
<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

Regardless of whether the CFPB includes visual observation in the Section 1071 rules, we would expect a lender's lawyers to advise the lender to answer, "I don't know," to the question. In terms of litigation risk, that would be the lender's safest course. The more we consider visual observations as a data collection methodology, the more we are troubled by its problematic implications. We recommend the CFPB entirely abandon the concept.

3. Discretionary Data Points

Credit Score Data

Section 1071 data should capture all variables that go into an underwriting decision. Failing to capture a variable as significant as credit score would undermine the value of the data. We know, because of our experience with HMDA, that lenders hide behind the veil of secrecy that covers credit score data. This has made it difficult to hold lenders accountable to racial, ethnic, and gender disparities in mortgage lending. In all instances where a lender collects a credit score, Section 1071 rules should require them to report on it. There are several ways to collect and disclose credit score data that would protect consumer privacy while, at the same time, providing robust and valuable information to external stakeholders.

Some recent research by The Markup illustrates the concern with omitting credit score. An August 2021 article relied on HMDA data to publish *Dozens of Mortgage Lenders Showed Significant Disparities. Here Are the Worst*.¹⁵ The 4th worst lender, according to the article, is Movement Mortgage. A spokesperson for the company disputed the ranking, stating:

HMDA data does not account for borrower credit scores, which is among the most significant factors in credit decisions by mortgage lenders. Without that information, it is impossible for a third party to determine that a lender is disproportionately denying a protected class of borrowers.

The same industry defense was raised in another article published the same day. In *The Secret Bias Hidden in Mortgage-Approval Algorithms*, the authors, relying on HMDA data, conducted an analysis of more than two million mortgage applications and found that lenders were significantly

¹⁵ Emmanuel Martinez and Malena Carollo, *The Markup*, "Dozens of Mortgage Lenders Showed Significant Disparities. Here Are the Worst," (Aug. 25, 2021). <https://themarkup.org/denied/2021/08/25/dozens-of-mortgage-lenders-showed-significant-disparities-here-are-the-worst>

more likely to deny applicants of color than similar white applicants.¹⁶ For example, lenders were 80% more likely to reject Black applicants.

Alas, the analysis could not account for credit scores, and the American Bankers Association and the Mortgage Bankers Association criticized the analysis for not including them. The analysis didn't include credit score because, of course, the researchers didn't have access to the data. As the article notes, both trade groups have opposed the collection and disclosure of credit score data.

Fortunately, in the HMDA context, the CFPB does have access to the data, and it has found loan approval disparities even when accounting for credit score.¹⁷ The CFPB presented these findings in a graph, which is attached hereto as Appendix B.¹⁸ The CFPB observed

[A]mong the applicants for conventional conforming 30-year fixed-rate mortgages for home purchase, secured by principal residences and first liens, Black and Hispanic White applicants are on average denied at a higher rate than non-Hispanic White applicants, *even if they are within the same credit score range* (emphasis added).

There are two objections commonly raised to reporting and disclosing credit score data: consumer privacy and the complexity of the credit scoring system – different providers, different metrics, and so on. The consumer privacy concern is a red herring. Credit bureaus and financial institutions have proven to be far less capable of protecting consumer privacy than the federal government.¹⁹ There are no known violations of a consumer's privacy in relation to HMDA data.

As far as complexity, the CFPB already developed a method for normalizing the different credit score types in order to develop an apples-to-apples comparison in HMDA data. Using percentiles or ranges in Section 1071 data would enable third-party researchers to conduct more meaningful

¹⁶ Emmanuel Martinez and Lauren Kirchner, *The Markup*, “The Secret Bias Hidden in Mortgage-Approval Algorithms” (Aug. 25, 2021).

<https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>

¹⁷ Consumer Financial Protection Bureau, *An Updated Review of the New and Revised Data Points in HMDA: Further Observations using the 2019 HMDA Data* (Aug. 2020) (cited in *The Markup*, *Ibid.*).

https://files.consumerfinance.gov/f/documents/cfpb_data_points_updated-review-hmda_report.pdf

¹⁸ *Ibid.* FIGURE 6.4.5 at page 263; *see also* Martinez and Kirchner, “The Secret Bias”

<https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms#mortgage-3-denial-rate-credit>.

¹⁹ Richard Console, *JD Supra*, “Consumer Data Breach Alert: Primary Residential Mortgage, Inc.” (Dec. 24, 2021).

<https://www.jdsupra.com/legalnews/consumer-data-breach-alert-primary-8471011/>

analyses of lending disparities and to promote corrective action by lenders and data-driven solutions for policymakers.

Annual Percentage Rate (APR)

We recommend that the CFPB collect APR in addition to the other pricing metrics proposed. APR is the only pricing metric that enables apples-to-apples price comparison between financing of different term lengths, amounts, or product types. While many financial disclosures provide little value to consumers, we have found that most consumers have a general understanding of APR in terms of what is affordable and what is expensive. We believe the New York Truth in Lending Act (TILA) for small businesses can serve as a model for an APR calculation framework.²⁰ The Responsible Business Lending Coalition (RBLC), which Woodstock has long supported, also recommends this approach.

Prepayment Penalties & Charges

Woodstock provided significant input in the creation of the RBLC's Small Business Borrowers' Bill of Rights (BBOR).²¹ Among the significant protections in the BBOR is the following:

No Hidden Prepayment Charges – If, in the event of prepayment, the borrower will be required to pay financing charges other than interest accrued since the last payment, disclose these charges as “prepayment charges.”²²

The BBOR is only a set of recommendations, of course, and it has become common for some small business closed-end term loans, as well as nearly all MCAs, to collect a finance charge at prepayment that is not considered a “penalty.” Instead, the borrower is required to repay the finance charge associated with the full term of the transaction, including if the financing is paid off early, resulting in a balloon finance charge.

Federal Reserve research, mirroring our experience in this area, shows that small business owners often do not expect this balloon finance charge and mistakenly believe they will obtain cost savings if they pay early, just as they would in a traditional loan or credit card.²³ New York's small business

²⁰ NY Small Business Truth in Lending Act, NY Fin. Serv. Law § 807.

²¹ Responsible Business Lending Coalition, *Small Business Borrowers' Bill of Rights*.
<http://www.borrowersbillofrights.org/>

²² Ibid.

²³ Barbara Lipman and Ann Marie Wiersch, Board of Governors of the Federal Reserve System, *Browsing to Borrow: “Mom & Pop” Small Business Owners' Perspectives on Online Lenders and Products* (June 2018).
<https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf>

TILA law requires the lender to disclose “whether the [borrower] would be required to pay any finance charges other than the interest accrued since their last payment.”²⁴ Woodstock believes prepayment charges such as these should be prohibited because they are inherently deceptive. In lieu of that, we suggest the CFPB, analogous to the New York law, require lenders to report these prepayment charges as part of the Section 1071 rules.

Term Length for MCAs

We recommend the CFPB collect the term length of MCAs in addition to the term length data collected for other forms of financing. As the CFPB notes in its discussion of “term” in the NPR, without term length data, it will not be possible for data users to effectively compare the costs of different financing transactions. This is especially true if APR data, which incorporates term length, is also unavailable to data users. We support the recommendation of the RBLC on this issue.

The actual or estimated term length for these products can be readily ascertained. Many MCAs will be fully paid off within a reporting period, so the actual repayment term will be fully known by the lender reporting the data. For MCAs only partially paid off, a term can be estimated by projecting forward the observed repayment within the term. For example, if an MCA is 25% repaid within the final 2 months of the reporting period, the projected term would be 8 months. Alternative methods of estimating term length for MCAs not fully repaid will be discussed in RBLC’s comment.

As discussed on page 3, MCAs require special attention because of bad behavior within that segment of the industry and because the products have a disproportionate impact on minority-owned businesses.²⁵

4. Accessibility

One crucial factor for maximizing the utility and impact of the 1071 data, regardless of the specific variable collected, is to make access to the data as easy as possible for the public, including advocates, community groups, and any other interested parties. Problems with data access have plagued the HMDA data for years and impeded the ability of outside groups and advocates to use the data to see what is happening in their communities and point out possible fair lending violations that regulators may have overlooked.

²⁴ NY Fin. Serv. Law § 807(i).

²⁵ See *supra* notes 10 and 11.

For example, advocates have long complained about the fact that the HMDA data does not contain the name of the responding entity and the agency responsible for regulating the lender. Instead, the lender is identified only by its Legal Entity Identifier (LEI). In order to find out the name of the lender and, if applicable, its parent organization, the user must download a separate file and link the LEI with the lender and parent company names. The second file showing the LEI, however, contains only the identifier for the agency responsible for supervising the lender, not its regulator for purposes of the Community Reinvestment Act (“prudential regulator”). In order to find out the lender’s prudential regulator, the user must also download a third file from the CFPB that contains the lender ID and the name of the corresponding prudential regulator. Those data are contained on two separate spreadsheets, one for the lender and one for subsidiaries. The user must join the two spreadsheets and then go back to the second file and link the lender ID with the name of the prudential regulator.

Only after that complex, multi-step process can a user access the information they need to identify lending disparities and report potential fair lending violations that regulators may have overlooked. Separating the lender and prudential regulator names from the data serves no purpose other than to make the data harder to use and less informative.

The CFPB should avoid creating a similar issue with the Section 1071 data. Woodstock’s experience with the HMDA data shows that the regulatory agencies under-utilize the data to spot potential fair lending violations. Woodstock has identified over a dozen financial institutions that have received satisfactory or better Community Reinvestment Act (CRA) ratings from their regulators only to have shortly thereafter been found to have violated fair lending laws. Making the data easy to use will enable outside groups to look for potential violations that escape the notice of the regulatory agencies.

We also recommend that the CFPB publish the Section 1071 data with both the lender LEI (or equivalent that allows the user to find the name of the lender) and the census tract of the location of the business receiving the loan. This is more complicated than with HMDA because many businesses have multiple locations. We support how the CFPB addresses this issue in the NPR. The lender reports the census tract of the address where the small business will apply the loan proceeds; if that address is unknown, then the lender reports the address of the main office, and if that is unknown, the lender reports another address associated with the small business. This is similar to how the CRA requires covered financial institutions to report the loan proceeds’ address of small business loans.

The CFPB should publish Section 1071 data in a form that allows users to link the prevalence of lending with individual census tracts and their demographics. Currently, the CRA small business lending data released by the Federal Financial Institutions Examination Council (FFIEC) cannot be used to identify where specific lenders are extending credit. Instead, the FFIEC only releases individual lender data aggregated at the income level of the census tracts. The data allow users to see that a given institution made x number of loans in tracts with income levels between 50 and 60% of median, for example, but users cannot determine the location of any individual tract within that aggregation. The CFPB should publish Section 1071 data in a form that is more detailed, effective and usable than the FFIEC's current method.

5. Conclusion

Robust, accurate, and accessible data better ensures that policy solutions are tuned properly to address a particular problem. The data enables all stakeholders to get past the noise of arguments and ideas that are based primarily on myth and/or self-interest. For consumer advocates, it is one of our most powerful tools and helps us level the playing field in campaigns involving rich and powerful special interests.

We appreciate the time and attention required to make the Section 1071 rules both comprehensive and fair. Thank you for the opportunity to comment on this important matter.

Very truly yours,



Brent E. Adams
SVP of Policy & Communication

Acknowledgments: Many people contributed to this comment. Woodstock Research Director Spencer Cowan contributed the section on data accessibility. Woodstock Policy & Communications Associate Jane Doyle provided substantial assistance in a variety of ways but especially by fine tuning many details. Other Woodstock staff and members of the Woodstock Board of Directors also provided helpful input. All in all, it was a group effort.

APPENDIX A: Sample Form for Collecting Certain Applicant-Provided Data under Subpart B

Source: Consumer Financial Protection Bureau, *Notice of Proposed Rulemaking: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)*, 86 Fed. Reg. 56,356 (Oct. 8, 2021), Appendix E at pages 56,580-56,582.

Sample data collection form

Federal law requires that we ask if a small business applicant is a minority-owned business or a women-owned business. Federal law also requires us to ask small business applicants for their principal owners' ethnicity, race, and sex.

Applicants are not required to provide this information, but are encouraged to do so. We collect this information to help ensure that all small business applicants are treated fairly and that communities' small business credit needs are being fulfilled.

Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the information provided on this form. However, we cannot discriminate on the basis of minority-owned business status, women-owned business status, or a principal owner's ethnicity, race, or sex. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

Minority-owned business status

For purposes of this form, an applicant is a minority-owned business if one or more minority individuals (i) directly or indirectly own or control more than 50 percent of the business and (ii) receive more than 50 percent of the net profits of the business.

A minority individual is a natural person who is Hispanic or Latino, American Indian or Alaska Native, Asian, Black or African American, or Native Hawaiian or Other Pacific Islander. A multi-racial or multi-ethnic individual is a minority individual for this purpose.

Is the applicant a minority-owned business?

- Yes
- No
- I do not wish to provide this information

Women-owned business status

For purposes of this form, an applicant is a women-owned business if one or more women (i) directly or indirectly own or control more than 50 percent of the business and (ii) receive more than 50 percent of the net profits of the business.

Is the applicant a women-owned business?

- Yes
- No
- I do not wish to provide this information

Number of principal owners

For purposes of this form, a principal owner is any natural person who owns 25 percent or more of the equity interest of a business. An applicant might not have any principal owners if, for example, it is not directly owned by any natural persons (i.e., if it is owned by another entity or entities) or if no natural person directly owns at least 25 percent of the business.

How many principal owners does the applicant have?

Demographic information about principal owners

Applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of a principal owner's ethnicity, race, or sex. Additionally, we cannot discriminate on the basis of whether an applicant provides this information.

If a small business applicant does not provide ethnicity, race, or sex information for at least one of its principal owners and we meet with a principal owner in person or via electronic media with an enabled video component, Federal law requires us to report at least one principal owner's ethnicity and race based on visual observation and/or surname.

Please fill out one sheet for each principal owner.

Ethnicity *(Check one or more)*

- Hispanic or Latino
 - Cuban
 - Mexican
 - Puerto Rican
 - Other Hispanic or Latino *(Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on):*

- Not Hispanic or Latino
- I do not wish to provide this information

Sex *(Check one or more)*

- Female
- Male
- I prefer to self-identify as:
- I do not wish to provide this information

Race *(Check one or more)*

- American Indian or Alaska Native *(Print name of enrolled or principal tribe):*
- Asian
 - Asian Indian
 - Chinese
 - Filipino
 - Japanese
 - Korean
 - Vietnamese
 - Other Asian *(Print race, for example, Cambodian, Hmong, Laotian, Pakistani, Thai, and so on):*

- Black or African American
 - African American
 - Ethiopian

- Haitian
- Jamaican
- Nigerian
- Somali
- Other Black or African American *(Print race, for example, Barbadian, Ghanaian, South African, and so on):*
- Native Hawaiian or Other Pacific Islander
 - Guamanian or Chamorro
 - Native Hawaiian
 - Samoan
 - Other Pacific Islander *(Print race, for example, Fijian, Tongan, and so on):*

- White
- I do not wish to provide this information

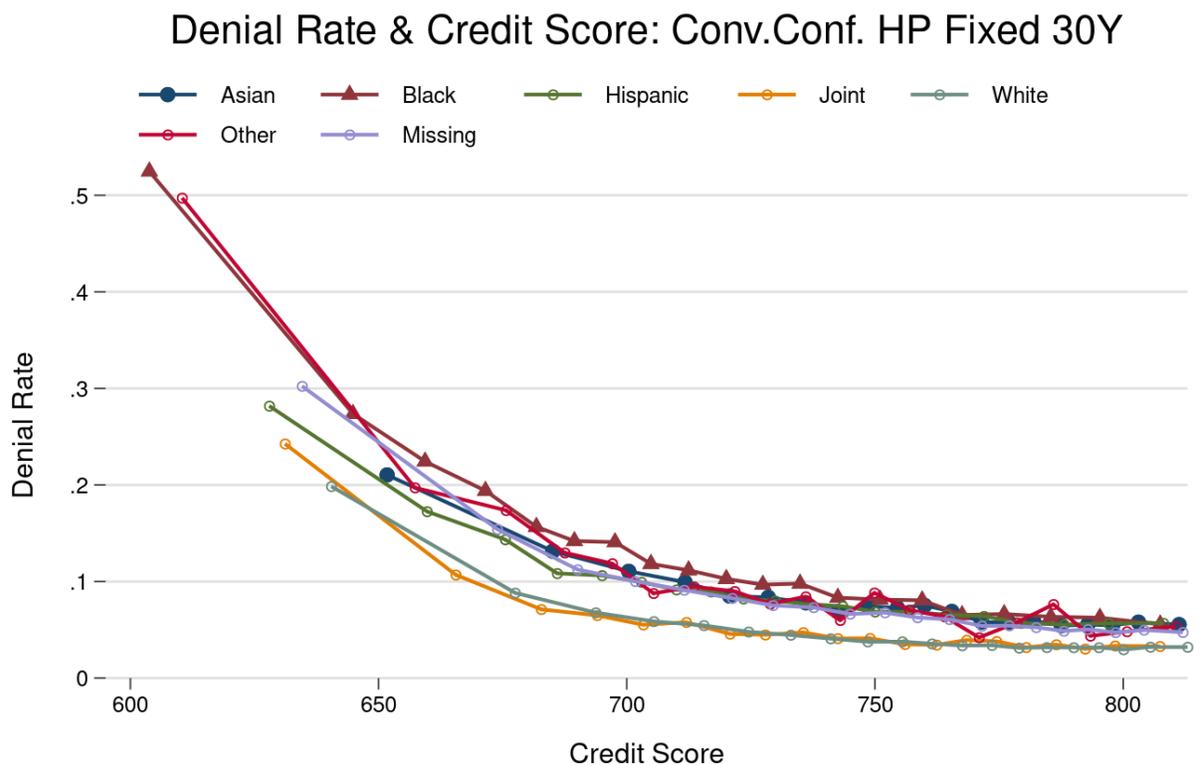
APPENDIX B: Denial Rate by Credit Score: Conventional Conforming Home-Purchase, 30-Year Fixed Rate Applications

Source: Consumer Financial Protection Bureau, *An Updated Review of the New and Revised Data Points in HMDA: Further Observations using the 2019 HMDA Data* (Aug. 2020) at page 262.

https://files.consumerfinance.gov/f/documents/cfpb_data-points_updated-review-hmda_report.pdf

Cited in Emmanuel Martinez and Lauren Kirchner, *The Markup*, “The Secret Bias Hidden in Mortgage-Approval Algorithms” (Aug. 25, 2021).

<https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>



Note: Site-built single-family, closed-end, principal residence, first-lien, 30-year term, fixed rate, conventional conforming applications (excluding applications that were withdrawn or incomplete), with CLTV<=120.