Congress of the United States
Washington, DC 20510

February 07, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Dear Director Chopra:

Access to credit for small businesses is critical to the growth of the American economy. These businesses employ nearly half of all private sector workers and are responsible for 62 percent of net new job creation since 1995.[1] Small businesses have spurred market competition and helped create and adopt many innovative products and services that deliver tremendous benefit to consumers. Any action to adversely affect the health of small businesses – which account for approximately 43.5 percent of our country's GDP – would have a significant negative impact on the strength of the broader US economy.

We are concerned that the Consumer Financial Protection Bureau's (CFPB) September 01, 2021 proposal to implement Section 1071 of the Dodd-Frank Act (Section 1071) and require financial institutions to compile, maintain, and submit to the CFPB data from credit applications submitted by small businesses may reduce the availability and accessibility of small business credit. By imposing overly burdensome new regulatory requirements on lenders, the proposed rule will counterproductively increase the cost of credit for the same small businesses borrowers it is intended to help.

Mandatory regulatory analysis has determined that the compliance costs associated with the CFPB's proposed rule will be passed down directly to small businesses. On September 15, 2020, consistent with its obligations under The Small Business Regulatory Enforcement Fairness Act (SBREFA), the CFPB issued a report finding: *"The Bureau expects that much of the variable cost component of ongoing costs would be passed onto small business borrowers in the form of higher interest rates or fees."*[2] These variable costs (i.e. per application), as detailed by the report, primarily relate to the transcribing and transfer of data by loan officers and other financial institution employees tasked with collecting and reporting this new credit application data.

Perhaps more concerning, though the CFPB concluded that the proposed rule will definitively increase the cost of credit for small businesses, it has failed to explain what actions were taken to prevent or mitigate this outcome. The proposed rule states, ***"Based on the Bureau's available evidence, it expects that the variable ongoing costs to comply with the proposed rule will be passed on in full to small business credit applicants in the form of higher prices or fees to small businesses."*** The CFPB, consistent with its obligations under section

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[1] https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf
[2] https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration_2020-09.pdf

603(d) makes note of the reasons for these increased costs to lenders and their small business customers but makes no effort to adequately explain why it does not attempt to mitigate them. In fact, in many cases, the proposed rule is far more onerous than what was contemplated by the SBREFA panel, and specifically disregards advice suggesting that certain proposals the CFPB is proposing to adopt would increase compliance costs.

During your confirmation hearing before the Senate Banking Committee you stated, *"I believe it is important for policymakers to take account of the potential benefits and costs to consumers and businesses of any rule, including the potential impact on access to credit. Any analysis should be rigorous, robust, and grounded in data."* We agree. And to that end, we request your response to the following questions:

1. What is the estimated total increase in the cost of credit for small businesses?

2. What are the estimated benefits to small businesses? The Bureau does not provide any clarity on this in the proposed rule. The proposed rule concludes, *"The Bureau is unable to readily quantify any of these benefits with precision, both because the Bureau does not have the data to quantify all benefits and because the Bureau is not able to assess completely how effective the implementation of section 1071 will be in achieving those benefits."*[3]

3. Are you concerned that some financial institutions may choose to no longer offer lending products designed for small businesses borrowers, including women-owned and minority-owned businesses?

4. Can you provide the CFPB's rationale for disregarding the recommendations offered by the SBREFA panel when issuing the proposed rule? For example, why has the Bureau proposed collecting discretionary data points (i.e. additional to those required by the statute)? The SBREFA report notes, *"One SER (small entity representatives) stated that the cost of collecting and reporting the discretionary data points under consideration would be significant, and another SER stated that the Bureau should include as few data points as possible to avoid unnecessary costs. Another SER stated that the Bureau should finalize a rule with just the statutorily required data points and avoid adding any discretionary data points."*[4]

We value your response to these questions by Friday, February 25, 2022. It is critical that the CFPB explain its approach for assessing how the proposed rule will impact the availability of credit to small businesses and why it has not pursued less burdensome alternative proposals.

Very Respectfully,

Trey Hollingsworth
Member of Congress

Tim Scott
United States Senator

[3] https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf (See page 690)
[4] https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf (See page 30)

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