IOWA BANKERS ASSOCIATION

8901 Northpark Drive
PO Box 6200
Johnston, Iowa 50131-6200
515-286-4300 • 800-532-1423
515-280-4140 FAX
www.iowabankers.com

January 5, 2022

Comment Intake – Section 1071 Small Business Lending Data Collection
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

Re: Small Business Lending Data Collection under the Equal Credit Opportunity Act
Docket No. CFPB-2021-0015
RIN 3170-AA09

Dear Madam or Sir:

The Iowa Bankers Association (IBA) is a trade association representing 98 percent of the almost 300 state- and national-chartered banks and federal thrifts operating in the state of Iowa. The IBA submits this letter to the Bureau of Consumer Financial Protection (Bureau) in response to a request for comments on its proposed rule to amend Regulation B to implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Consistent with section 1071, the Bureau is proposing to require covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities.

RECOGNITION OF MONUMENTAL TASK ENTRUSTED TO THE BUREAU

IBA members acknowledge the monumental task assigned to the Bureau by Congress in section 1071 of the Dodd-Frank Act. The Bureau's proposed rule will create the first comprehensive database of small business and agricultural credit applications in the United States, used by regulators to identify and address fair lending concerns as well as a range of stakeholders to better identify business and community development needs and opportunities for small businesses. The Bureau is also required by Congress to consider the potential benefits, costs and impacts of its proposal. It is this task that is especially critical as the Bureau weighs the benefits of the data gained from the collection and reporting against the burden and cost placed on those entities subject to the rule and the resulting impacts on their small business and agricultural customers.

We also wish to preface our comments with an acknowledgement that we believe our comments are incomplete. The 90-day comment period provided in the rule simply did not provide adequate time for IBA staff or their member banks to thoroughly review and analyze a proposal that was nearly 10 years in the making and 900 plus pages long. Our members were hopeful the Bureau would take to heart the industry's plea for additional time to review the proposal and extend the comment deadline. However we understand the time constraints under which the Bureau must operate due to litigation.

Please note our comments below reflect input from nearly 100 IBA member banks that responded to an IBA survey used to gather information related to their business and agricultural lending activity as well as available resources to facilitate the data collection and reporting covered by the Bureau's proposal.

COMMENTS RELATED TO BUSINESS LENDING

As stated above, the task before the Bureau is monumental. While Congress' intent may have been to create a HMDA-like mechanism to collect data on business and agricultural lending activities that could be utilized to detect early warning signs of disparate treatment of business and agricultural credit applicants, the reality is that small business and agricultural lending is vastly different from lending typically reported on a HMDA Loan Application Register. Where HMDA data can be more easily compared to look for anomalies for borrowers seeking 15 or 30-year fixed rate products, such comparisons are not possible for business and agricultural customers because their credit requests are not for standard credit products.

Small business and agricultural lending is generally not automated and is highly individualized. Business and agricultural lenders do not typically offer a "menu" of loan products with a standard set terms and pricing structures. Product offerings vary greatly from borrower to borrower and are based on individual borrower needs, their income sources and cash flow, financial strength, ability to access additional funding mechanisms, other relationships with the creditor, collateral, and much more. The credit extensions made to business and agricultural borrowers are as diverse and unique as the borrowers themselves. Thus, an objective assessment of fair lending performance in the context of business and agricultural lending will still require careful study of the complete loan file to understand the complexity of the relationship and resulting credit extensions intended to meet each individual credit customer's needs. Disparities in lending practices will be more difficult to identify based on raw data – again, because the financial needs of business and agricultural borrowers vary so greatly.

COMMENTS RELATED TO DEFINITIONS

COVERED FINANCIAL INSTITUTIONS - §1002.105(b)

IBA members appreciate the Bureau's recognition of the wide variety of entities that engage in business and agricultural lending by defining "covered financial institution" in a manner that encompasses more than federally-insured depository institutions in the definition. It is vital to define covered financial institution in a way that includes all participants in the business and agricultural lending market as one cannot get a true picture of small business and agricultural lending activity unless the lending activity of entities such as online lenders, platform lenders, CDFIs, lenders involved in equipment and vehicle financing, commercial finance companies, government lending entities and nonprofit, non-depository lenders are also considered as their participation in the small business lending market continues to grow each year.

The Bureau proposes that a covered financial institution is one that originated at least 25 "covered credit transactions" to "small businesses" in each of the two preceding calendar years. IBA members agree the activity-based threshold should be based on originations and not applications. However, IBA members urge the Bureau to increase the origination threshold from 25 to at least 250 originations in each of the two preceding calendar years. Of the nearly 100 respondents to our survey, only six indicated they would likely be under the 25 origination threshold based on pre-COVID origination numbers in 2019[1]. An additional 12 institutions would be exempt if the origination threshold were raised to 100 with 28 more institutions reporting less than 250 originations.

We understand the Bureaus' concern over "lost data" if the number of covered financial institutions is decreased due to an increase in the 25 origination threshold. However, it is important to remember the relationship aspect of business and agricultural lending; while an institution's number of originations can quickly exceed 25, the number of covered borrowers will be far fewer. Unlike HMDA, where a borrower is likely to pursue a mortgage loan once every five-to-ten years, it is common for a business/agricultural borrower to make multiple credit requests in the same calendar year. For example, an agricultural borrower that engages in crop farming as well as livestock production typically has credit needs related to purchasing crop inputs (seed, fertilizer, etc.), purchasing livestock, purchasing feed and other supplies for livestock, equipment purchase, equipment repairs, and salary expense if the borrower has employees, etc. It is not unusual for a lender to fund these various requests as separate credit transactions as the requests are made periodically throughout the year and the borrower often uses different sources for repayment (such as sale of crop, sale of livestock, receipt of cash rent payments or government subsidies, etc.). It is also important to note that many of these credit requests are short term requests, covering "income gaps" until the agricultural borrower sells crops or livestock. As a result, a lender could quickly surpass the 25 origination threshold but provide credit extensions to far fewer than 25 small businesses.

Our survey results indicate the institutions with lower origination volume are typically very small institutions with more limited resources to implement a small business data collection program. Of the 12 survey respondents indicating they typically originate more than 25 but fewer than 100 covered transactions per year, half had assets of $100 million or less and an additional four respondents had assets under $250 million. Survey respondents reporting they typically originate more than 100 but fewer than 250 covered credit transaction originations on an annual basis are also primarily small institutions with 61 percent of the respondents in this origination volume category having assets of $250 million or less.

Also of significance, over half of the survey respondents currently are NOT HMDA reporters. When examining by asset-size, 83 percent of respondents indicating they are NOT currently HMDA reporters had assets of $250 million or less. Meaning, these institutions have NO data collection and reporting processes currently in place from which they can build a small business data collection platform. They would be starting at ground zero. These same institutions have very limited staff dedicated to the business lending function. On average, respondents with assets of $100 million or less reported 2.35 full-time employees dedicated to the business and agricultural lending function at their financial institution while respondents with assets over $100 million up to $250 million reported an average of 6.3 full-time employees dedicated to the business and agricultural lending function. These institutions do not have existing staff resources to dedicate to developing and implementing a massive data collection program. Should these institutions be forced to use existing staff to develop and implement a small business data collection program, their small business and agricultural customers will be harmed as the staff would not be as readily available to assist these customers with their credit needs. (Implementation and ongoing reporting costs are discussed in more detail later in this comment letter.)

[1] The IBA survey requested origination threshold information based on 2019 data as IBA members experienced inflated loan originations in 2020 due to participation in the CARES Act Payment Protection Program.

To reiterate, IBA members strongly support increasing the origination threshold to at least 250. However, should the Bureau reject their request to increase this threshold, our members ask the Bureau consider an asset-sized based exemption for smaller federally-regulated financial institutions. As stated above, our survey results indicate smaller institutions (those with $250 million or less in assets) are far more likely to NOT have an existing HMDA or CRA data collection program, have limited staff to develop and implement such a program and have lower loan origination volume. Thus, these institutions bear a greater burden to implement a small business data collection program with less resources to do so while contributing a minimal amount of data to the national data set. Although these institutions are smaller, they are still subject to fair lending supervision by their prudential regulator, who have full access to the institution's loan files and records.

We would emphasize however, we only support an asset-based exemption for federally-regulated financial institutions that are already subject to rigorous oversight by a federal prudential regulator (e.g., depository financial institutions). The federal regulatory exam process provides a system of checks and balances to identify potential fair lending red flags. Covered entities that make credit extensions to small businesses, but that are not subject to federal oversight, should not be exempted from the small business data collection rule as the risk of not identifying discriminatory lending practices by these entities increase exponentially when such oversight is lacking.

COVERED CREDIT TRANSACTIONS - §1002.104

The Bureau is proposing a covered financial institution must collect and report data related to applications for "covered credit transactions" that meet the definition of business credit under existing Regulation B, unless specifically excluded in the rule. A covered application means an oral or written request that is made in accordance with procedures used by a financial institution for the type of credit requested. This includes commercial and agricultural purpose loans, lines of credit, credit cards, and merchant cash advances. IBA members generally support the proposed definition as it provides for consistency within Regulation B. However, IBA members suggest modifying the definition to provide clarity to the scope of coverage for which data must be collected, compiled and reported as detailed below.

- Exclude all originations subject to Regulation Z: Section 1071's statutory purpose is to facilitate enforcement of fair lending laws and identify business and community needs and opportunities for women-owned and minority-owned small businesses. Meaning, the focus of the data collection rule is business purpose credit. Therefore, IBA members propose the Bureau add an additional exclusion to the definition of covered transaction for credit that is subject to Regulation Z coverage. Per § 1026.1(c)(1)(iv), the scope of Regulation Z is credit that is primarily for personal, family, or household purposes. Financial institutions are already familiar with determining loan purpose under this definition in their everyday lending activities. Therefore, adding this exemption will provide clarity to the definition of "covered credit transaction" and ease compliance burden for financial institutions in identifying covered applications, implementing data collection, and ensuring data integrity in a manner that meets the statutory purpose. Lastly, excluding credit covered by Regulation Z from the definition for a covered credit transaction helps alleviate confusion with the proposed exclusion for credit secured by certain investment properties that is addressed next.

- Remove the Investment Property exclusion: Proposed comment 104(b) -4 explains the term "covered credit transaction" does not include credit secured by certain investment properties;

which is credit that is secured by 1-4 individual dwelling units that the applicant or principal owners does not, or will not, occupy. The reason provided in the proposal for this exclusion is that such credit may not always be primarily for business or commercial purpose. However, the Bureau is not proposing to exclude credit secured by owner-occupied dwellings. Credit secured by owner-occupied dwellings is just as likely, if not more so, to be primarily consumer purpose as compared to credit secured by non-owner occupied credit. If the Bureau's goal is to avoid reporting of credit transactions that are primarily consumer purpose, then the exclusion of credit covered by Regulation Z would accomplish this more effectively and directly than the current investment property exclusion. Furthermore, distinguishing whether the prospective collateral property is owner-occupied by the applicant and any principal owners will take additional time and analysis by lenders early in the application process to determine if the application is even a covered application. Due to this, IBA members propose the investment property exemption be entirely removed and replaced with the exemption described above for credit subject to Regulation Z coverage.

If the exemption for credit secured by certain investment properties is left in the final rule, it will be necessary for the Bureau to further clarify the definition of "occupancy" for this exclusion. Does an applicant or principal owner have to reside in the property for a certain amount of time throughout the year to achieve occupancy status or are they considered to occupy the property if they use it as a residence for any period of time (such as Regulation Z's 14-day rule)? Does the property have to be the applicant or principal owner's primary residence or does it include any secondary residence they own? Answers to these questions are necessary for understanding and consistency in identifying when the exclusion applies if retained in the final rule.

- Add an exclusion for small or micro loans: IBA members also request the Bureau add an exclusion for small loans. When asked, most survey respondents recommend loans in the amount of $25,000 or less be excluded from the data reporting requirement. These loans are often short-term or temporary in nature and may be replaced by permanent financing. IBA members express concerns regarding the viability of continuing to offer higher-cost, less-profitable credit products such as small dollar or temporary loans. These credit products, often needed most by small business and agricultural borrowers to cover short term cash flow gaps, are costly for institutions to originate and maintain on their operating systems. If institutions have to begin to collect and report data on these credit products that are often not profitable, they are likely to make the difficult decision to eliminate the product offering rather than take on additional compliance costs. Excluding small loans from the 1071 data collection requirement will help institutions, especially smaller institutions, keep compliance costs down and ensure these credit products remain available to the borrowers who need them most – small business owners.

- Add an exclusion for special purpose, government-initiated credit programs: IBA members ask the Bureau to consider adding a provision to exclude special purpose, government-sponsored lending programs such as the Paycheck Protection Program instituted by Congress in response to the COVID-19 pandemic from the data collection and reporting requirement. The Bureau notes in the preamble to the proposed rule that with the timing of the final rule, PPP loan origination volume should not impact financial institution coverage. However, with recent resurgence of various mutations of the coronavirus, the economic future seems uncertain and the need for another similar program and as a result, an exemption may be warranted. IBA members, like institutions nationwide, experienced an unprecedented increase in loan volume in 2020 by participating in the PPP to quickly come to the aid of small businesses in their communities. The fees and interest rates for the PPP were set by Congress reducing the risk of discriminatory lending practices related to terms of the credit transaction.

Required data reporting of special purpose, government-sponsored programs such as PPP could have a chilling effect on the willingness of financial institutions to participate in similar programs in the future. Participation in the PPP was labor intensive and the income available to institutions for participating in the program did not begin to cover participation costs when salaries, operational and overhead costs are considered. Institutions may be hesitant to participate in such programs if doing so will cause the institution to exceed the origination threshold when it would have otherwise been exempt from this rule. In addition, when fee income is limited by the program parameters, institutions will be forced to make cost-based, business decisions on whether or not to participate. (This was evident during the second round of PPP when many lenders opted out of participation.) As such, we request the Bureau include a mechanism in the rule which automatically excludes similar future programs from the definition of "covered credit transaction".

SMALL BUSINESS DEFINITION - §1002.106(b)

As proposed, § 1002.106(b) defines a business as a "small business" if its Gross Annual Revenue for the preceding fiscal year is $5 million or less. The Bureau requested comment on this proposed, simplified definition as compared to the Small Business Administration's definition or the Bureau's second and third alternative approaches reviewed during the SBREFA process. In the proposal, the Bureau indicated it believes it is important for a financial institution to be able to quickly determine at the beginning of the application process whether an applicant is likely a "small business" for the purposes of the 1071 rule. IBA members agree and support the use of the proposed, simplified definition of small business using Gross Annual Revenues. Moreover, IBA members acknowledge the Bureau's efforts to simplify the definition to ease the compliance burden associated with identifying businesses that are subject to the data collection requirements. It is difficult for lenders to determine the appropriate NAICS codes as small business owners typically have no knowledge of these codes and even when completed by tax professionals, NAICS codes on tax returns are often inaccurate. Additionally, the number of employees is not easily obtained early on in the application process and use of part-time or seasonal employees and contractors, along with fluctuations in these counts throughout the year, make number of employees a difficult figure for applicants to easily supply. For these reasons, IBA members do **not** support the Bureau's more complicated second or third alternative approaches to defining small business and support the Bureau in maintaining the Gross Annual Revenue basis.

IBA members however, request the Bureau consider lowering the Gross Annual Revenue threshold from $5 million to $1 million. Set at $5 million, the majority of survey respondents indicated 90% or more of their current business and agricultural loan originations were to businesses with less than $5 million in Gross Annual Revenues. Set at $5 million, the data collection rule is not capturing data related to the state of Iowa's smallest businesses; rather, it is capturing data related to nearly ALL businesses. Per the data the Bureau analyzed in its 2017 Key Dimensions of the Small Business Lending Landscape[2],

[2] https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

approximately 95 percent of all businesses had less than $1 million annual revenues. Roughly 97.7 percent of all minority-owned businesses and 98.3 percent of women-owned businesses were similarly under this $1 million in annual receipts threshold. IBA members believe the number of businesses captured by the $5 million Gross Annual Revenue threshold to be more expansive than Congress' original intent to look for discriminatory lending practices among the nation's smallest businesses, often owned and operated by women and minorities. IBA members indicate their business customers with Gross Annual Revenues of three to five million dollars are well established, have developed a relationship with a financial institution and have the ability to better negotiate their credit terms. Lowering the threshold will better reflect the original intent of the statute and facilitate compliance as the $1 million threshold is already used to define "small business" in Regulation B's adverse action notification requirements and is also consistent with Regulation BB, which implements the Community Reinvestment Act. IBA members encourage the Bureau to use consistent definitions whenever possible within and across regulations as doing so better ensures accurate capture of data.

<u>MINORITY-OWNED BUSINESS - §1002.102(m) & WOMEN-OWNED BUSINESS - §1002.102(s)</u>

The proposal defines a "minority-owned business" as a business for which more than 50 percent of its ownership or control is held by one or more minority individuals, and more than 50 percent of its net profits or losses accrue to one or more minority individuals. Similarly, the proposal defines a "women-owned business" as a business for which more than 50 percent of its ownership or control is held by one or more women, and more than 50 percent of its net profits or losses accrue to one or more women. The Bureau has essentially developed a two-prong test for determining ownership status, based on BOTH ownership (control) AND profits/losses, and indicates a business must satisfy BOTH prongs to be considered minority- or women-owned. The proposed Official Staff Commentary to both definitions goes into great detail to explain what it means to "own" or "control" the business as well as defines "accrual of net profits or losses." The Official Staff Commentary further states a covered financial institution should provide the applicant with the definition of minority-owned business and women-owned business when asking the applicant to provide its minority-owned and women-owned business status, but the financial institution is neither permitted nor required to make its own determination regarding the applicant's minority-owned or women-owned business status.

IBA members believe the definition of minority-owned and women-owned is overly complicated by incorporating the 50% of net profits or losses provision, and that many small business owners, especially minority business owners with limited English-speaking proficiency and limited experience with U.S. tax laws, will not understand the definition as provided in the regulation. Of particular concern is the reference to net profits and losses. Small business owners, especially new small business owners, are not accounting or tax law experts and often do not understand the concepts of net profits and losses. For example, it is not common for a small business owner who pays him/herself a salary to understand how their salary factors into the calculation of net profits or losses for the business.

As a result, our members believe small business owners will elect to complete the women- and minority-owned status questions on the collection form by selecting the "I do not wish to provide" option because they do not understand the context of the question, resulting in the loss of this valuable information. Our members are also concerned that small business owners will be reluctant to provide this information if a business' profits or losses is tied to the definition. Profits and losses is a sensitive subject for small business owners and our members believe the fact the definition relates not only to ownership and control but also profits and losses will have a chilling effect on the willingness of small business owners to share their determination. The Congressional intent of the entire proposal is lost if small businesses are not willing to share their minority-owned or women-owned status. For these reasons, IBA members request the Bureau remove the "more than 50 percent of net profits/loss" provisions from the definition of minority- and business-owned and instead base the determination on ownership and control of the business entity only – concepts which are more easily understood and less sensitive for small business owners to share.

IBA members also ask the Bureau to reconsider its provisions related to "ownership" and "control" which require the consideration of a natural person's **in**direct ownership or **in**direct controlling interest. The concept of "indirect" ownership or control is complex – especially given the customer must self-identify their minority- or women-owned status. Small business owners are less likely to understand the "indirect" ownership and control concept and true small businesses (those with less than $1 million in Gross Annual Revenues) are less likely to have such complex ownership structures. Also the inconsistency of indirect ownership factoring into the determination of ownership and controlling interest but not when identifying Principal Owners of the business for the purpose of collection of Race, Sex and Ethnicity, as discussed later in our comments, adds to the compliance complexities of the rule and are likely to lead to errors in data collection. For these reasons, IBA members recommend that indirect ownership **not** be considered for purposes of either determining ownership or controlling interest.

Finally, the Official Staff Commentary states a covered financial institution can rely on the applicant's statements related to minority- and women-owned business status and is **neither permitted nor required** to make its own determination regarding the applicant's minority-owned and women-owned business status. Comment 102(m)-2; comment (s)-2. IBA members agree covered financial institutions should be able to rely on the applicant's statements related to minority- and women-owned status and should not attempt to verify that status.

PRINCIPAL OWNER - §1002.102(o)

The proposal requires a covered financial institution to collect and report the Race, Sex and Ethnicity of the small business' Principal Owner(s). A Principal Owner is defined in the proposal as a natural person who **directly** owns 25 percent or more of the equity interests of the business. This ownership share aligns with the Bank Secrecy Act's Customer Due Diligence rules, and the Bureau believes is likely to be familiar to covered financial institutions and applicants. The Bureau is not requiring indirect ownership reporting because of the complexity of such a determination. IBA members agree indirect ownership is a complex concept to explain to applicants and often, an even more difficult determination to make. Therefore IBA members agree identifying only those natural persons with direct ownership will facilitate the collection of demographic data of the appropriate individuals.

DATA POINTS

IBA members concur with the Bureau that covered financial institutions should not be required to verify and may rely on applicant-provided data points, statements and information, provided the institution does not have knowledge such information is inaccurate. Members do NOT however, believe covered financial institutions should have to report, as an additional data point, whether or not information has been verified on the Loan Application Register and question the value of reporting this information.

IBA members also support the flexibility afforded in proposal allowing covered financial institutions to establish data collection procedures that best fit within an institution's existing processes and business models. IBA members believe it is NOT necessary for the rule to prescribe a specific timeframe for data collection and doing so would be difficult for covered financial institutions to implement as application processes and procedures are not highly regimented in business and agricultural lending like the mortgage lending processes which are largely established by the government-sponsored enterprises process and procedures (Fannie Mae and Freddie Mac).

DISCRETIONARY DATA POINTS ADDED TO THE PROPOSAL UNDER THE BUREAU'S RULE-WRITING AUTHORITY

As reiterated multiple times in our comments, this data collection reporting rule is a huge endeavor for covered financial institutions – particularly small covered financial institutions. Our members implore the Bureau to NOT expand the data points beyond the 13 data points mandated by Congress in the Dodd-Frank Act. Many of the additional proposed data points added by the Bureau under its rule-writing authority are currently not collected or even recorded in the loan file by financial institutions, such as application method, application recipient, number of principal owners, time in business and number of workers. In addition, IBA members are particularly concerned regarding the Bureau's proposed collection of these additional discretionary data points:

- NAICS Codes – Most small business owners do not know their appropriate NAICS code and financial institutions typically do not determine NAICS codes unless required to do so for another purpose – such as a SBA guarantee. IBA members have found that NAICS codes detailed on tax returns are often incorrect. IBA members also do not consider NAICS codes when making a credit decision and believe this information would be irrelevant and unreliable for fair lending assessment purposes.
- Application Method –This data point would be especially difficult for commercial and agricultural lenders to record and collect as "applications" often evolve over a series of meetings and phone calls. Commercial and agricultural lending is relationship driven. A borrower does not make an online application or complete an application form. Typically the borrower and lender meet multiple times to discuss anticipated needs and piece together a financial plan to meet those needs. For example, a conversation starts with a phone call to discuss a business idea, continues with site visit, and later is discussed in the financial institution during multiple visits in which the borrower and lender discuss the business plan, costs to implement the plan, borrowing needs, repayment analysis, and more. Which application method would be reported in these scenarios? IBA members also find it difficult to understand how this data point would provide value in a fair lending analysis.
- Pricing Information – IBA members are extremely concerned regarding the "deep dive" the Bureau's proposal takes regarding pricing information. It is our members' belief that if Congress' intent was for this sensitive, proprietary information to be collected and ultimately be made available to the public, the original statute would have required collection and reporting of pricing information. IBA members believe inclusion of this data point oversteps Congress' intent. As stated earlier, loan pricing is highly individualized based on the applicant's request and a myriad of underwriting and relationship factors. Consumer lending pricing is typically set forth on a rate sheet or pricing model that takes into account factors such as loan-to-value, the applicant's debt-to-income ratio and the applicant's credit score, and exceptions to the pricing model are uncommon. However, for commercial and agricultural lending, pricing depends on several non-standard factors. Rate sheets and pricing models, if available at all, are the starting point from which other criteria are taken into consideration and an individualized loan offering is developed. IBA members' main concerns with the data collection related to pricing information are:
    - Borrowers could be adversely impacted and their privacy jeopardized, especially in smaller markets where there are not as many small business borrowers (particularly

minority-owned and women-owned small businesses), and data could be reverse-engineered resulting in the applicant's identity being more easily revealed. For example, in a smaller community if a loan was made to a Hispanic local business applicant who ran the only Mexican restaurant in the census tract, it would be quite easy for persons accessing the public data to determine the identity of the borrower using the restaurant NAICS code and Hispanic ethnicity identifier. If that particular borrower received slightly higher interest rates on a particular credit extension for any one of multiple of reasons that had little to do with their overall financial strength, such as because the applicant requested unsecured credit or short term credit, other creditors or suppliers may interpret the higher credit terms to be reflective of a deficiency in business' financial strength and refuse to do business with the applicant, when in fact the rate was reflective of the fact the loan was unsecured or short term.

- IBA members are also concerned that persons that do not understand the complexity of commercial and agricultural lending will review the raw data and misinterpret it, resulting in unfair allegations of fair lending disparities in loan pricing. Again, without access to the complete loan file, as well as the institution's underwriting and pricing analysis, a determination as to fair lending implications simply cannot be made.
- Pricing information is highly confidential, proprietary information. Federal anti-trust laws prohibit institutions from sharing such information and engaging in price-fixing, yet the Bureau suggests this same information be collected, reported and possibly even made publicly available. Again this data could be mined and used for purposes of re-engineering pricing models.

Should the Bureau move forward with data collection related to pricing, **for which IBA members strongly object**, several items related to these data points need clarification, including:

- Index – Related to reporting the index value used for adjustable rate loans, clarify if an institution uses an internally determined index, such as the institution's "internal prime rate", the 'OTHER' index should be reported or add "institution internal rate" to the list of index options.
- Determination of index value - The proposal indicates the institution should report the index value in effect as of the date the application was approved. IBA members suggest, if an index value must reported, to report the index value used in establishing the loan's initial interest rate – regardless of the date it was determined. The index value in effect as of the date the application was approved often has no correlation to the index value used in establishing the initial interest rate for the loan. For example, it is quite common in agricultural lending for a farmer to meet with his/her lender prior to the start of their production year, provide updated financial information, work with the lender to estimate their annual borrowing needs, which the lender then either approves if within their lending limit or takes to loan committee for approval. Thus, the credit capacity approval occurs early in the production year. Then, over the course of the production year the farmer makes requests for credit for various expenses, and those requests are funded by different means such as individual notes, a new line of credit, or draws on an existing line of credit. The rate and repayment terms are finalized for those individual requests at that time but the actual "approval" occurred months earlier.
- Origination Charges – The proposal requires institutions to report "origination charges" defined as "the total amount of all charges payable directly or indirectly by the applicant and imposed directly or indirectly by the financial institution at or before origination as

an incident to or a condition of the extension of credit." The proposed commentary then states amounts charged by third parties must be included in the total origination charges reported if the financial institution requires the use of a third party as a condition of or an incident to the extension of credit, even if the applicant can choose the third party; or retains a portion of the third-party charge, to the extent of the portion retained. IBA members concur that amounts paid to third parties but retained by the financial institution should be included in origination charges, but disagree that the amount paid to third parties that are NOT retained by the financial institution should be included. Fees paid to third parties for services such as collateral value assessment (appraisal fees) or lien perfection (title work, UCC filings, etc.) should NOT be included in the origination charge total because the need for these services can vary greatly from loan-to-loan, the costs are not set by the financial institution and can fluctuate greatly from market-to-market depending upon the collateral offered, individual borrower circumstances and available providers. These cost variations have nothing to do with discriminatory lending practices and could skew data giving a false impression of discrimination. For example, appraisal fees vary greatly depending upon the complexity of the property and location of comparable sales; title fees on a property with clean title are much less than title fees on a property with several encumbrances against it that must be cleared; environment studies may need to be done on a property based on its use or location, etc. Many of these services are required from safety and soundness perspective and variance in pricing is not determined by financial institution nor does the financial institution typically retain any portion of these fees.

Also, the Bureau's proposed definition of "origination charge" is dramatically different than the current concept of "origination charges" as described in the Official Staff Commentary to Regulation Z at 1026.37(f)(1) – comment 1, for purposes of the Loan Estimate and Closing Disclosure. "Origination Charges", as disclosed on the Loan Estimate and Closing Disclosure, are widely understood by the lending industry and focuses on amounts paid to and retained by the financial institution. It is this amount that is reported on the HMDA Loan Application Register. Implementing a different definition in this rule will add to the compliance complexity of the rule and does not further the purpose of identifying discriminatory lending practices. For these reasons, IBA members request the Bureau revise the definition of Origination Charges so that it is consistent with Origination Fees as disclosed on the Loan Estimate and Closing Disclosure and reported for HMDA purposes, if the data point is retained in the rule.

- Prepayment Penalty – IBA members advocate this data point be removed entirely. The proposal requires the financial institution to report whether it "could have included a charge to be imposed for paying all or part of the transaction's principal balance before the date on which the principal is due under policies and procedures applicable to the covered transaction." Most commercial credit policies do not outline Prepayment Penalties because most commercial loan products are not "off the shelf products" with set rates, fees and terms but are relationship-based as described multiple times in this comment letter. More often than not, if a Prepayment Penalty is included in the note terms, it is tied to a lower interest rate negotiated by borrower or the requirements of a third party guarantor such as the SBA. Thus, whether or not a financial institution *could* impose a penalty under its policies and procedures is not meaningful data. If the Bureau feels the need for Prepayment Penalty information, a simple yes/no response as to whether the credit extension includes, or would have included a Prepayment Penalty had it been originated, would be appropriate and far less complex than the exercise proposed by the Bureau.

STATUTORILY REQUIRED DATA POINTS

IBA members provide the following recommendations related to the data points required by the statute:

- Credit Type – Loan Term (§1002.107(a)(5)(iii)) – The proposal requires reporting of the Loan Term as an element of the Credit Type data point. The proposed Official Staff Commentary details the loan term is the number of months after which the legal obligation will mature or terminate and the commentary further explains how to measure the loan term. The commentary states the financial institution does not include in the loan term the time that elapses, if any, between the settlement of the transaction and the first payment period. For example, if a loan closes on April 12, but the first payment is not due until June 1 and includes the interest accrued in May (but not April), the financial institution does not include the month of April in the loan term. This statement contradicts the previous statement which defines loan term as the number of months after which the obligation will mature – indicating the measure is from origination date to maturity date. The "from first payment date" provision adds to the compliance complexity as well, particularly with multiple advance notes, because such a measure would require the covered financial institution to track and document when the first advance was taken and thus the first payment period started. Finally, it gives rise to the need for additional clarification, such as how a covered financial institution should report a single pay note, for which funds may be advanced at consummation or periodically through the loan term, that does not require payment until maturity. Such credit extensions are quite common in small business commercial and agricultural lending to cover short-term expenses and cash flow gaps. IBA members request the Bureau revise this comment and measure loan term from the origination date to maturity to reflect the industry standard of this measure, reducing compliance complexity and better facilitating data accuracy.
- Gross Annual Revenue (§1002.107(a)(14) - Proposed 1002.107(a)(14) requires reporting of Gross Annual Revenue of the applicant for its preceding fiscal year. Proposed comment 107(a)(14) -1 clarifies a financial institution need not verify Gross Annual Revenue and may rely on statements of or information provided by the applicant in collecting and reporting Gross Annual Revenue. However, if the financial institution verifies the Gross Annual Revenue provided by the applicant, the verified amount must be reported. The Bureau stated it believes that a requirement to verify Gross Annual Revenue could be operationally difficult, particularly in situations in which the financial institution does not collect Gross Annual Revenue currently, and that such a requirement is not necessary in fulfilling either of section 1071's statutory purposes. IBA members agree and support the proposal provision that an institution may rely upon Gross Annual Revenue information provided by the applicant without any requirement to verify. Our survey respondents indicated many financial institutions do not currently collect Gross Annual Revenue information with every application and even if collected, they do not always verify the amount provided by the applicant because underwriting is often based on other factors such as a cash flow analysis, debt-to-service

ratio, etc. The flexibility to use the Gross Annual Revenue provided and not have to verify allows financial institutions the ability to continue using current, proven underwriting practices and does not add to the compliance burden by requiring additional revenue verification steps.

- Race, Ethnicity and Sex of Principal Owners - (§1002.107(a)(20) - The proposed rule requires an institution ask the applicant for the Race, Ethnicity and Sex of its Principal Owners. When an application is taken in-person and the applicant declines to provide the information, the institution must identify the Principal Owners' Ethnicity and Race – but not their Sex – by visual observation or surname. IBA members appreciate the Bureau's acknowledgment regarding the sensitivity of collecting demographic information, specifically the Sex of applicant, by visual observation if the applicant declines to provide the information and asks the Bureau to expand this provision to the collection of Race and Ethnicity. It is offensive to an applicant who declines to provide their Race and Ethnicity information to be informed the lender is required by federal law to make an assessment of their Race and Ethnicity based on visual observation. As the United States becomes more diverse, it becomes increasingly difficult to attempt to identify a person's Race and Ethnicity by visual observation and surname. As a result, Race and Ethnicity data provided by visual observation is unreliable. We recommend the rule be revised in a manner that states if an applicant declines to provide their Race and Ethnicity information during an in-person application, the lender should indicate on the LAR the applicant declined to provide the information and should NOT be required to provide the information based on visual observation or surname.

FIREWALL PROVISIONS - §1002.108

As required by the statute, the proposal includes a "firewall provision" which prohibits an employee or officer of a covered financial institution or a covered financial institution's affiliate from having access to an applicant's responses to inquiries regarding minority-owned or women-owned business status as well as inquiries regarding the Ethnicity, Race, and Sex of the applicant's principal owners if that employee or officer is involved in making any determination concerning the applicant's covered application. The proposal also includes an exception to the general prohibition if the financial institution determines it is not feasible to limit that employee's or officer's access to an applicant's responses to the inquiries if the financial institution provides a notice included in the proposed rule.

IBA members appreciate the Bureau's recognition that prohibiting access to such information is simply not feasible for smaller institutions. Per the FDIC website, the State of Iowa has 61 insured financial institutions with assets under $100 million and an additional 98 insured financial institutions with assets over $100 million but less than $250 million. According to the IBA's 1071 survey, respondents with under $100 million in assets have on average, 2.35 fulltime employees dedicated to commercial and agricultural lending while institutions over $100 million in assets but under $250 million in assets, have on average 6.3 fulltime employees dedicated to commercial and agricultural lending. As a result, the same employees that take the application, will most likely make the inquiries, collect the data and be involved in the credit determination. These smaller financial institutions simply do not have enough staff to implement a "firewall". However, these institutions have processes in place that meet the complexity of their organization and are reflective of their available resources to reduce the risk of discriminatory lending practices such as second review process for adherence loan policy, detailed exception tracking, use of loan committees to make credit decisions, etc. Therefore, IBA members appreciate the alternative notice approach as most, if not all, have no way to comply with the firewall provision.

Our members do, however, have concerns the notice language provided in proposed Appendix E's sample collection form may result in an unwarranted perception that a covered financial institution providing the notice should be carefully scrutinized by applicants for discriminatory lending practices because they are required by law to provide this "warning" for which their larger counterparts, who are able to maintain a firewall, are not required to provide. IBA members also believe the notice language may have a chilling effect on the applicant's willingness to provide their minority-owned and women-owned status and demographic information for principal owners as the notice gives the perception this information could likely be used to discriminate against them. IBA members suggest the Bureau remove the statement "Employees and officers making determinations concerning an application, such as loan officers and underwriters, may have access to the information provided on this form" from the sample notice as well as the oral notification requirement described in the Official Staff Commentary. The applicant will know the loan officer has access to this information because the loan officer will quite likely be the person making the inquiry for the demographic information on behalf of the covered financial institution.

Other than this statement, the proposed notice language in Appendix E largely duplicates the existing disclosure requirement found in §1002.13(c) for collection of demographic information related to mortgage loan applications. This notice language is easily recognized by loan applicants and discloses the purpose of the demographic collection as well as the fact the institution cannot discriminate based on this information. In addition, use of the standard language in §1002.13(c) will not have the chilling effect of the proposed language on data collection efforts and will not place those institution who are unable to maintain a firewall at a competitive disadvantage. Our suggested modifications to the proposed notice content, as seen at the beginning of the sample form in proposed Appendix E for collecting certain applicant-provided data, would result in the following notice language:

> *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. However, we cannot discriminate on the basis of minority-owned business status, women-owned business status, or a principal owners' ethnicity, race or sex. Additionally we cannot discriminate on the basis of whether or not an applicant provides this information.*

RECORD KEEPING - § 1002.111

The proposal requires institutions to maintain records evidencing compliance with the data collection rule for a period of three years after the register on which the data is reported is submitted to the Bureau. In addition, the proposal includes a provision that institutions "maintain, separately from the rest of the application and accompanying information," the applicant's statements whether it is minority- and women-owned, and the Race, Ethnicity and Sex of the principal owners.

IBA members believe the requirement to separately maintain this information will significantly increase the compliance complexities and costs related to record retention and will also be counterproductive for purposes of conducting internal fair lending audits as well as regulatory exams because the information may not be as readily accessible. Regulation B and Regulation C have similar recordkeeping provisions but do not require "separate" retention of these records. History and experience with Regulation B and C's record retention rules does not evidence discrimination occurring due to maintenance of this information with application and accompanying information; thus IBA members do not believe the additional requirement is warranted. As a result, IBA members request the Bureau use its rule-writing authority and remove the separate maintenance provisions related to demographic and minority-owned and business-owned status.

BONA FIDE ERRORS – § 1002.112(B) AND APPENDIX H

The Bureau is proposing to provide that a bona fide error in compiling, maintaining, or reporting data with respect to a covered application is an error that was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. Such an error is presumed not to be a violation of ECOA or proposed subpart B if the number of such errors does not exceed the thresholds set forth in proposed Appendix H. IBA members appreciate the Bureau recognizing bona fide errors will occur despite the maintenance of procedures reasonably designed to avoid errors – especially when implementing an entirely new program. However, IBA members believe the proposed tolerance thresholds are too low. While the tolerances are very similar to HMDA thresholds, we remind the Bureau the HMDA reporting requirement has been in place for decades. Reporters have had time to fine tune their process and procedures to meet the error thresholds. We ask that the Bureau increase these tolerance thresholds in recognition of the substantial implementation efforts that financial institutions will undertake and the time needed to test and adjust processes to reduce errors. Additionally, we ask the Bureau provide a two-year grace period for errors in the compiling, maintaining and reporting of 1071 data provided the institution is making a good faith effort to implement the rule.

COSTS TO IMPLEMENT & MAINTAIN DATA COLLECTION PROGRAMS

Congress has also charged the Bureau with the responsibility of balancing the benefit gained from the data and serving the general goals of 1071 as compared to the cost and burden placed on those entities required to collect and report small business and agricultural lending data. Of course, a key factor in completing this assessment is the cost analysis of implementation and on-going costs. In its proposal, the Bureau categorizes costs required to comply with proposed rule as “one-time” and “on-going” costs. “One-time” costs refer to expenses the financial institution would incur initially and only once to implement changes required to comply with the rule. “Ongoing” costs are expenses incurred as a result of the ongoing reporting requirements that an institution would incur on an annual basis.

The Bureau also recognizes in doing its analysis that costs directly correlate with the complexity of the institution’s data reporting program and the number of applications and originations. The Bureau categorizes institutions based on application and origination numbers:

- Type A FI receives 100 small business applications per year and originates 50 covered credit transactions;
- Type B FI receives 400 small business applications per year and originates 200 covered credit transactions;
- Type C FI receives 6,000 small business applications per year and originates 3,000 covered credit transactions.

When asked in our survey about potential costs of implementing a data collection program (referred to as “one-time costs” by the Bureau), institutions that are currently not HMDA reporters (55% of total survey respondents; 83 percent of respondents with assets of $250 million or less) struggled to even estimate such costs as they had no basis on which to estimate the time, systems and processes required to facilitate such a program. Those institutions that are currently HMDA reporters indicate they will likely have to purchase new data collection systems as systems currently in place for HMDA data collection do not interface with the institution’s business and agricultural lending platforms. These institutions also stressed the implementation process will likely be one of trial and error, requiring varied procedures for different business units (commercial, manufacturing, agricultural, etc.) as the business units have unique application and credit extension processes intended to meet the varied needs of their customers. Survey respondents also subject to HMDA and CRA reporting expressed concern over developing and implementing programs that effectively assist lenders in deciding which applications are covered by which reporting requirement and collecting the appropriate data for that application.

IBA members believe the Bureau's estimated one-time costs by category and institution type (as detailed on Table 9 in the Bureau's proposal) and estimated staff hours and non-salary expense (as detailed on Table 10 in the Bureau's proposal) to be grossly under-estimated. Of particular concern is the Bureau's estimates related to training. Business and agricultural lenders are not accustomed to the granularity of procedures that will be required to implement a small business data collection program nor the level of documentation that will be required to support the reported data. Thus, effective implementation training efforts will be critical. Also, keep in mind a significant share of financial institutions that will be subject to the small business data collection rule, if finalized as proposed, are currently not HMDA or CRA data reporters. As a result, their staff has absolutely NO familiarity with data collection procedures, recording of data, completing edit checks and filing the data; thus, training will have to start at a very basic level and be multi-faceted depending upon the staff member's role in the business or agricultural business unit. Most survey respondents would qualify as Type A or Type B institutions per the Bureau's estimates. These IBA member banks anticipate the need for intensive training initially, with multiple subsequent follow-up training events in preparation for the start of small business data collection. When major new processes are initiated, typically institutions conduct initial training, then test procedures and systems, adjust their procedures and systems as necessary, and then repeat training on identified issues or procedures that were adjusted as a result of the testing. The Bureau's estimate of 60 to 72 hours of training for Type A and Type B financial institutions respectively, does not appear to reflect the fact most institutions will have multiple training endeavors before their data collection programs are even launched.

Related to estimated on-going costs, the Bureau recognizes 15 ongoing activities it takes into consideration when calculating on-going costs including transcribing data, resolving reportability questions, transferring data to data management software, completing geocoding, researching questions, conducting edit checks, filing data, training, internal and external audit, exam prep and more. The Bureau estimates the additional, on-going cost of compliance per application to collect and report the data included in the proposal to range from $74 per application for Type A financial institutions, $89 per application for Type B financial institutions and $41 per application for Type C financial institutions.

Again, our survey respondents found it difficult to estimate the on-going compliance cost per application but believe the Bureau's estimate to be too low based on the anticipated need to increase staff. Survey respondents with over $100 million but less than $250 million in assets report on average currently having six fulltime employees dedicated to business and agricultural lending and anticipate the need to hire at least two additional fulltime employees to support data collection and reporting requirements. These same respondents, most falling in the Type B category, estimate on-going costs to range from $120 to $300 per application. Using the Bureau's own application and origination numbers, if these institutions on average received 400 small business applications and originated 200 of those applications, the added annual cost of compliance would be $35,600 (400 applications @ $89 each). This annual amount would not begin to cover even the annual salary expense for two additional fulltime employees acting in the capacity of loan administrative/support staff, let alone the other added compliance costs outlined in the Bureau's own proposal. The IBA's 2021 Compensation and Benefits

Survey indicated Iowa financial institutions in the $150- $250 million asset size range typically offer an average salary of nearly $44,000 for loan support positions.

Survey respondents with assets under $100 million report on average two fulltime employees dedicated to business and agricultural lending and anticipate the need to hire at least one additional fulltime employees to support data collection and reporting requirements. Fifty-nine percent of these same institutions estimate origination volume under 100 covered credit transactions per year, falling under the Type A category, which the Bureau estimates will incur additional ongoing costs of approximately $74 per application. Again, our members estimate much higher on-going costs ranging from $250 to $500 per application. As stated above, before even adding the other on-going compliance costs, these institutions anticipate hiring at least one additional fulltime employee to support data collection and reporting at a cost on average of $44,000 annually for small financial institutions according to the IBA's 2021 Compensation and Benefits Survey. The cost of compliance on a per application basis is highest for these smaller institutions as data collection and reporting process will be largely manual and these institutions lack the origination volume to realize economies of scale over which to spread the costs to implement and maintain a data collection program.

UNINTENDED CONSEQUENCES OF SMALL BUSINESS DATA COLLECTION RULE

INCREASED LOAN COSTS FOR SMALL BUSINESSES

There is little doubt small business owners will experience increased loan costs as a result of the expenses covered financial institutions will incur to implement and maintain a data collection program. Seventy-two percent of survey respondents indicated the data collection program costs would be passed on to business and agricultural borrowers in the form of increased loan fees while 19 percent of respondents were unsure of the impact on loan costs to borrowers.

Survey respondents from the smallest institutions (those under $100 million in assets) that currently charge no or very low fees to originate and process business loans report the most significant increases:

- 35 percent of respondents in this asset size category anticipate increasing fees by more than 50 percent;
- 18 percent of respondents in this asset size category anticipate increasing fees by less than 25 percent; and
- 6 percent of respondents in this asset size category anticipate increasing fees by 25 to 50 percent.

Survey respondents from institutions with assets over $100 million but less than $250 million also anticipate significant fee increases to assist in covering the additional compliance costs associated with a small business data collection program:

- 47 percent of respondents in this asset size category anticipate increasing fees by 25 to 50 percent;
- 23 percent of respondents in this asset size category anticipating to increase fees by more than 50 percent; and
- 17 percent of respondents in this asset size category anticipate increasing fees by less than 25 percent.

ELIMINATION OF CREDIT PRODUCT OFFERINGS

While none of the respondents in our survey indicated they would likely exit the business or agricultural lending markets if required to comply with this rule as proposed, many did indicate they would likely reassess the viability of continuing to offer higher-cost, less-profitable credit products such as small dollar loans or short term loans. These credit products, often needed most by small business and agricultural borrowers to cover short term cash flow gaps, are costly for institutions to originate, service and maintain on their operating systems. If institutions have to begin to collect and report data on these costly credit products, they are likely to make the difficult decision to eliminate the product rather than take on additional compliance costs. As a result, in addition to incurring increased loan fees, small business and agricultural customers may find access to certain credit product offerings less available.

VIABILITY OF SMALLER INSTITUTIONS

Institutions also express concerns related to the long term impact of the on-going increases to the cost of compliance on smaller institutions with slim profit margins. Rather than exiting the business and agricultural lending markets to avoid the increased cost of compliance, smaller institutions struggling to cover profit margins are more likely to consider merger and sale options. This is particularly evident in rural areas in the recent past. In just the last five years, the state of Iowa has seen a decrease of 26[3] state-chartered banks through acquisition and mergers, with another seven additional sales scheduled to become final in early 2022. The greater share of these sales/mergers have occurred in rural areas with financial institutions lacking the loan volume needed to absorb operational and compliance costs. Mergers often negatively impacts small business borrowers as they have less financing options readily available to them in the communities in which their business operates, particularly in smaller rural communities that typically only have one or two financial institutions.

CONSEQUENCES OF DUPLICATIVE REPORTING AND DATA

IBA members call on the Bureau to avoid duplicative and inconsistent reporting of data across regulations. With the implementation of 1071 small business data collection and reporting, covered financial institutions could have data reporting requirements under 1071, the Community Reinvestment Act, and the Home Mortgage Disclosure Act in addition to their Call Report obligations. Each of the data collection rules serve different purposes but the same application, as the rules are written currently, could be covered by more than one data collection rule.

The overlap of reporting the same application under multiple rules adds to compliance complexity and cost for financial institutions and will likely lead to more mistakes in reporting and less accurate data. It is difficult for institutions to put in place processes to ensure the accuracy of data being reported under each rule. This challenge is exacerbated by the inconsistency in the reporting instructions for certain data points across regulations. It should also be noted that the general public will not understand how the same data point may be reported differently on the HMDA LAR versus the 1071 LAR, resulting in misuse of data by the general public or misperception of what the data actually means.

The Bureau has rule-writing authority for the 1071 small business data collection rule as well as Regulation C which implements the Home Mortgage Disclosure Act. With the recent announcement of the Request for Information[4] related to HMDA, the Bureau has the opportunity and more importantly, **the authority and ability** to take action to ensure the purpose of each statute is best served, while minimizing compliance complexities and ensuring data integrity by eliminating duplicative reporting of the same application on multiple Loan Application Registers. Over the years, the scope of HMDA has

[3] Data based on IBA membership and bank data.
[4] RFI HMDA Rule Assessment to Doc owner (ver 508) (consumerfinance.gov)

been expanded to include business purpose, multifamily dwellings and even entire manufactured home communities. Much of the expansion was the result of regulatory need for more data related to business-purpose transactions. The implementation of 1071 reduces that gap in data. If 1071's scope was focused on business purpose applications that are NOT covered by Regulation Z, and HMDA's scope no longer included applications that were reported under the 1071 data collection rule, there would be greater clarity in the data provided under both rules with less burden on those institutions subject to the reporting requirements of both rules.

While the Bureau does not have sole rule-writing authority for the Community Reinvestment Act, it does have an active voice in the current discussions surrounding CRA reform being held by the federal prudential regulators. The Bureau also has the ability to work collaboratively with the prudential regulators to eliminate inconsistencies and duplication in CRA reporting. IBA members believe the time is now for the federal financial regulators to work together to reduce duplicative reporting and realign the data collection rules to serve the specific purpose outlined originally in each statute.

IMPLEMENTATION PERIOD

The Bureau is proposing that its final rule to implement Section 1071 become effective 90 days after the final rule's publication in the Federal Register, with mandatory compliance occurring approximately 18 months after publication in the Federal Register. IBA members urge the Bureau to extend the implementation period from 18 months to no less than three years.

As stated multiple times in this letter, small business data collection will be a massive undertaking for every covered financial institution. The sheer size and complexity of the rule will require more than 18 months to provide for careful study of the final rule so that effective implementation strategies and procedures can be developed and adequately tested. It is also important to understand implementation processes are not developed in a vacuum but are step-by-step processes in which progress cannot be made until each progressive step is completed. For example, until a vendor establishes a data collection interface for a loan software platform, an institution cannot begin to create procedures. Procedures cannot be tested until they are developed. Training cannot occur until systems and procedures are in place. Processes and procedures cannot be tested until training has occurred. Testing can then identify issues with the loan software platform resulting in this process being repeated several times before official implementation. Each step in implementation is dependent on the previous step; an institution cannot merely "flip a switch."

Institutions that currently are not subject to HMDA reporting will be starting at ground zero. They have no existing program to build upon, no existing data collection vendor relationships, no process or procedures that can be adapted for their business lending function, no data collection programs on which they can build their training for small business data collection. Even those covered financial institutions that currently collect and report HMDA data will find their change management programs challenged because the business lending models are vastly different than mortgage lending models. The same loan platforms are not typically used, business units do not offer a "menu" of standardized credit products, and delineated application procedures typically do not exist because of the uniqueness of every business customer and their financial needs. The very nature of business and agricultural lending makes data collection of this magnitude difficult.

History has evidenced short implementation periods for complex rules are not feasible. The Bureau provided for over a two year implementation period when it released the final rule in October 2015 revising existing HMDA reporting requirements and still found it necessary to provide leniency related to data accuracy because lenders and vendors were not fully prepared for compliance on January 1, 2018. Also the Bureau found it necessary to issue multiple corrections and clarifications to the HMDA rule since 2015. One can only anticipate if the revisions to the existing HMDA requirement in 2015 required two plus years to implement, standing up an entirely new program to implement a lengthy, complex rule will take even longer.

A longer implementation period will also afford the Bureau with time to create implementation tools, seek institution feedback related to application of the rule, and if necessary make adjustments to the rule PRIOR to the mandatory compliance date. Each time a final rule is corrected or clarified, it requires a covered financial institution to review the changes, assess how the changes will impact its program, make procedural and operational adjustments, retrain staff and retest procedures. It is one thing for this process to occur prior to the mandatory compliance date but it becomes quite problematic and costly when such changes occur after a final rule becomes effective and processes must be adjusted mid-reporting year. Data integrity is also jeopardized. IBA members plead that the Bureau provide for an adequate implementation period of at least three years to ensure covered financial institutions have adequate time to develop, implement, and test programs and that reporting begin at the start of reporting year (January 1) rather than midyear.

We thank the Bureau for its thoughtful consideration of our comments. If you have any questions related to these comments, please feel free to contact Ronette Schlatter at 800-532-1423, ext. 4361 or via the email address below. Thank you for your time and consideration.

Respectfully submitted by,

Ronette Schlatter
Ronette Schlatter, CRCM
Compliance Analyst III
rschlatter@iowabankers.com

Jillian L. Swain
Jillian L. Swain, CRCM, CBAP
Compliance Analyst, II
jswain@iowabankers.com