CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

STATEMENT OF THE U.S CHAMBER OF COMMERCE

ON: Small Business Data Collection
Dodd-Frank Act 1071

AT: The Consumer Financial Protection Bureau
Field Hearing, Los Angeles, CA

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The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom

First I would like to thank the Bureau for holding the hearing on this important issue; issuing the Request for Information and Study; being deliberative about the job Congress tasked them with; and engaging stakeholders.

As previously mentioned, I am a director at the U.S. Chamber of Commerce (the "Chamber"), which is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. We represent both small businesses and lenders so we can offer a unique perspective by seeing the whole picture of the small business market and intimately understanding how availability of credit impacts main street businesses. In fact, more than 96 percent of Chamber member companies have fewer than 100 employees.

Small business is the Lifeblood of the American Economy

It goes without saying that small businesses are the lifeblood of our economy, not only to produce the goods and services that we depend on, but also to create jobs and provide financial stability for millions of Americans. Remarkably, 28 million main street institutions account for *over half* of all sales in the United States,[1] provide 55% of all the jobs in this country, and are responsible for 65% of all new job creation.[2] Moreover, 3.7 million microbusinesses—categorized by the Small Business Administration as companies with one to nine employees—alone provide 10.8% of all private-sector jobs.[3] Indeed, it is hard to overstate the importance of credit to American small businesses that allows them to support their inventory, open additional locations, hire more employees, manage seasonal downturns, and otherwise push our economy and our nation forward.

This is why we ask the Bureau to conduct a comprehensive, sound report on the potential barriers to small business lending including regulatory hurdles in the United States so it may:

1. Fully understand the credit products used by small businesses
2. Inform forthcoming rulemaking to ensure it promotes, not constrains, these products

[1] *See, e.g.*, SBA, Small Business Trends: Small Business, Big Impact!, https://www.sba.gov/content/small-business-trendsimpact (providing small-business statistics).
[2] See id.
[3] See Brian Headd, SBA, The Role of Microbusinesses in the Economy (Feb. 2015), https://www.sba.gov/sites/default/files/Microbusinesses_in_the_Economy.pdf.

3. Propose a narrowly tailored rule to include only the necessary businesses and products, while still fulfilling the well-meaning purpose of the statute.

Although Congress gave the Bureau the authority to oversee the rulemaking, we hope the Bureau to work in conjunction with the Small Business Administration ("SBA") on the study and rulemaking to learn from their expertise in this area.

Small Business Lending has not Fully Recovered from the Recession

The Small Business Credit Survey jointly conducted by the Federal Reserve Banks found:

- cash flow remains a challenge for small firms
- only half of applicants received the financing they applied for, and 18% received none at all.
- 32% of firms said they had to delay expansion as a result of the financing shortfall
- 21% said they were forced to use personal finances to meet their needs.

The Third Way – a non-partisan think tank – indicated:[4]

- Since 2008, the number of small businesses has faced a 15% decrease.
- New businesses accounted for 13% of businesses in 1980, but only 8% in 2013
- In 2011, the average new business hired 7.3 employees in the 1990s, but only 4.4 in 2011

Clearly, credit is still too tight for new businesses

This can be attributed to: the post-crisis regulatory overhaul; and increasingly risk adverse financial institutions due to regulations.

- <u>Post-crisis regulatory overhaul</u>: In the past six years, institutions have already spent billions of dollars implementing thousands of pages of regulations, while in an environment of eight years of near zero interest rates
- <u>Increasingly risk adverse financial institutions</u>: Increased regulatory scrutiny has made institutions more risk adverse and a new startup company with no financials is quite risky.

[4] Third Way "To Grow New Businesses, Improve Access to Credit" September 2016

As the Bureau begins the fact finding process, we hope it will consider:

1. **The true spirit of the statute**

By passing section 1071 of the Dodd-Frank Act, Congress intended to gain a greater understanding of compliance with fair lending statutes with respect to credit offerings to small businesses. The Bureau's actions should be tailored to ONLY include those businesses. The definition should be tailored to ONLY include the businesses, not middle market companies or larger institutions. This is why the Small Business Administration definition of small business is too broad to be used for the purposes of 1071 collection. Further, the number of employees metric is not helpful. For example, two females in Silicon Valley might have a tech company raking in $5 million in revenue per year. While it's a small company, they are sophisticated businesswomen, which is not who Congress intended.

2. **Every small business has different needs and approach credit in very different ways.**

The business' needs completely dictate what type of capital to choose. Small business lending is COMPLETELY different than mortgage and the data collection incredibly more complex than the Home Mortgage Disclosure Act (HMDA). It is a huge misnomer to call 1071 data collection "HMDA-like" as many folks do.

3. **Not only are needs different, but small business lending is a complex market with many sources of credit.**

Depending on the needs of the small business, owners may turn to friends and family, HELOCs, credit cards, SBA loans, private small business loans, or a combination of multiple sources. Larger and middle market companies get even more complicated with an underwriting process that can take months and are sometimes better suited for the venture capital, angel investors, or taking the company public. These very sophisticated companies are not what the statute intended and should not be captured in the Bureau's rulemaking.

4. **Employee training will be incredibly complicated given the countless sources of business credit.**

It will be difficult to train employees to understand when and how to document this information. The following employees may not know the credit will be used for business purposes:

a. Home equity credit officer issuing a HELOC
b. Flight attendant offering a credit card on a plane
c. Hardware store attendant issuing credit for seeds
d. Retail clerk offering branded credit cards
e. Trucking company owner leasing trucks

5. **It is difficult to create a firewall between the employee accepting the credit application and the one making the underwriting decision.**

Further difficulty arises because lenders must create a firewall between the employee taking the application and the one making the credit decision. Without the firewall, institutions would be in violation of the Equal Credit Opportunity Act (ECOA). It is very difficult to completely partition these functions, especially in small organizations. Moreover, it might be impossible if the underwriter is able to see the name the applicant. Not a lot of male "Kates" in the world.

6. **Business representatives may not have the information, which will create confusion and prolong the credit process.**

Not only will confusion be created for lending employees, but the small business representative may not have the required information readily available when applying for a loan. For instance, they may not know:

i. Gross annual revenue for the business,
ii. if the principal owner is a woman or minority if there are multiple owners,
iii. the principal place of business if there are multiple locations.

Moreover, in the age of data breaches, they may not want to provide the information and think the lender is being overly intrusive. This issue will become further complicated if the rule will apply to *every* employee using business credit.

7. **It is unfeasible that lenders will know if a business changed its status as a woman or minority owned business.**

It would be unrealistic for institutions to continually ask if there has been a change in ownership. Lenders should only be required to update their records post-application if the business representative offers the information.

8. **It would be impossible for institutions to continuously report credit transactions.**

It would be impossible for lenders to continually monitor purchases using business credit. As an example, my mother is a small business owner who regularly uses her Costco business card – will institutions have to document each transaction for paper towels or toner? How would they know that is for her business if she is also buying Goldfish crackers for my nephews?

9. **The resulting data might be skewed from the variety of factors affecting small business lending, including multiple credit applications.**

As discussed, there are countless variables that need to be considered when assessing the small business market and can have an effect on the resulting data. Further, applicants will often apply for data from multiple lenders and choose one after much deliberation.

We ask the Bureau to institute guardrails to control for the impacts of the diverse expanse of variables, including multiple applications from the same business applies for credit at different sources. Only with strict controls may an accurate portrayal of the market be uncovered.

<u>Conclusion</u>

We thank the Bureau for soliciting information, but stress the importance of the Bureau to conduct a sound, robust study of the roadblocks including regulations in the small business lending market to:

    - Understand where small businesses are getting credit where they are not
    - Ensure the rulemaking will not curtail these valuable sources

- In an environment when access to small business credit is constrained, it is imperative we energize the small business market and encourage growth.

- Our economy and our hard working citizens depend on it.

Again, I appreciate the opportunity to testify and thank the Bureau for its deliberative approach. I look forward to working with the Bureau on the forthcoming rulemaking and am happy to answer any questions.