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April 25, 2023

Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G St NW  
Washington, DC 20552

**Re: Targeted Exemption for Community Banks with Strong Community Reinvestment Act (CRA) Performance from Section 1071 Data Collection and Reporting**

Dear Director Chopra,

On behalf of the nation’s community banks, the Independent Community Bankers of America (ICBA)<sup>1</sup> respectfully requests that the Consumer Financial Protection Bureau (CFPB) reconsider the scope of covered financial institutions in its small business lending data collection regulation implementing Section 1071 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Section 1071 Rule).<sup>2</sup> We are deeply concerned that a failure to exempt community banks from this burdensome data collection requirement will result in a decrease in access to credit for small businesses, particularly with respect to small dollar loans.

In our comment letter responding to the CFPB’s Section 1071 Notice of Proposed Rulemaking, we recommended that the Bureau should exempt all banks defined as “intermediate-small

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<sup>1</sup> The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.8 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

<sup>2</sup> CFPB, “Small Business Lending under the Equal Credit Opportunity Act (Regulation B),” (March 30, 2023), available at: <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

banks” for purposes of the Community Reinvestment Act.<sup>3</sup> At the time, that threshold was \$1.322 billion in assets, while today inflation adjustments would set the threshold at \$1.384 billion in assets. We continue to believe that the CFPB should exempt all banks below this threshold.

Despite our recommendation, the CFPB has decided to exempt only financial institutions that make fewer than 100 loans to small businesses with less than \$5 million in gross annual revenue. While this is an improvement compared to the proposal – which would have set the exemption threshold at 25 covered loans, therefore covering virtually every community bank in America – this threshold is still far too low. At 100 loans, this rule would apply to very small community banks – banks which have only a handful of branches, and even some unit banks (banks with a single location). Compliance costs for these banks will likely be in the 100’s of thousands of dollars, meaningfully limiting their ability to extend credit to small business borrowers in the rural and underserved urban communities where they do business.

If the Bureau determines that asset threshold is not feasible, we recommend that the CFPB exempt all banks that receive an “outstanding” or “satisfactory” CRA rating and are considered to be “small” or “intermediate” banks as those terms are ultimately defined in the final CRA rule currently being considered by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.<sup>4</sup> These banks have a demonstrated a record of serving the needs of low- and moderate- income customers and census tracts and of lending to small businesses. In addition, to attain high CRA ratings, banks must be in compliance with fair lending laws.

At a minimum, banks that receive “outstanding” or “satisfactory” CRA ratings should be given additional time to comply with Section 1071. Granting these banks, regardless of their small business loan origination volume, additional time to comply is appropriate because the federal prudential regulators are currently in the process of finalizing a new CRA rule. At many banks, the same personnel that are responsible for compliance with CRA will be responsible for compliance with Section 1071. Requiring them to bring their banks into compliance with two new and highly complex regulations simultaneously is an undue burden.

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<sup>3</sup> See ICBA, “Comment Letter Re: Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B) (Jan. 6, 2022), available at: <https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/comments-on-1071-small-business-lending-data-collection>.

<sup>4</sup> 87 Fed. Reg. 33884, available at: <https://www.occ.treas.gov/news-issuances/federal-register/2022/87fr33884.pdf/>.

The statutory purpose of Section 1071 is to ensure that the needs of women-owned small businesses, minority-owned small businesses, and LGBTQI+-owned small business are being served. Community banks that have “outstanding” or “satisfactory” ratings are already serving the needs of these businesses and being evaluated on how well they meet the financial needs of the communities they serve. Subjecting them to an additional regulation to measure their small business lending will only increase the cost and complexity of small business lending, ultimately reducing the amount of loans that they are able to make.

The CFPB has broad statutory authority to exempt small community banks from Section 1071 if it concludes that doing so would further the purposes of the law.<sup>5</sup> Failure to exercise this authority now to exempt small and intermediate banks with “outstanding” or “satisfactory” ratings will harm community banks that have a proven record of serving small businesses, including women-owned small businesses, minority-owned small businesses, and LGBTQI+-owned small business.

We understand the CFPB’s interest, as well as the public interest generally, of having additional data regarding the small business lending market in order to identify opportunities to better meet the needs of historically underserved groups. However, exempting the smallest community banks will not meaningfully impair the Bureau’s ability to collect this data. Based on the Bureau’s own estimates, requiring banks that make 100-500 small business loans per year to comply with Section 1071 will only result in collection of data on 4-5% of small business loan applications made to banks. Limiting data collection to only banks that make over 2,500 small business loans per year would result in the collection of data on 90-92% of small business loan applications made to banks.<sup>6</sup>

It is not a reasonable trade-off to require thousands of community banks to comply with this highly complex and costly regulation to collect data on less than 10% of small business loan applications. These banks are already subject to fair lending laws and are already evaluated under CRA for lending to small businesses in low- and moderate- income areas. Requiring community banks to comply with this rule will result in higher costs for borrowers and a decreased ability to lend to small businesses in the communities these banks serve without providing meaningfully more insight into the small business lending market.

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<sup>5</sup> See 12 USC 5512(b)(3), which gives the CFPB authority to “unconditionally exempt any class of covered persons ... from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title.” This provision unambiguously gives the CFPB the authority to exempt community banks below a designated asset threshold if the Bureau conducts a cost-benefit analysis and concludes that the cost to community banks and their customers outweigh the benefits of requiring community banks to comply.

<sup>6</sup> *Supra* note 2 at p. 728.

Therefore, in the strongest possible terms, we urge you not to make the mistake of subjecting small and intermediate banks with “outstanding” or “satisfactory” CRA ratings from compliance with this rule.

Sincerely,

Rebeca Romero Rainey  
President and CEO

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