December 11, 2020

Kathleen Kraninger, Director
Consumer Financial Protection Bureau
Submitted electronically to 2020-SBREFA-1071@cpba.gov

Re: Comments on Outline of Proposals Under Consideration and Alternatives Considered for Section 1071 of the Dodd Frank Act

Dear Director Kraninger,

We appreciate the opportunity to comment on section 1071 of the Dodd-Frank Act regarding demographic data collection and reporting. Beneficial State seeks to support an equitable society in which ownership of businesses, homes and assets in society is diverse and distributed. We collect demographic data about our customers to help determine and improve upon how well we are meeting our goal of supporting community members rising above system barriers to power, wealth, and economic opportunity. Data collection is a necessary step for financial institutions to remedy disinvestment and harm caused to communities of color and other groups. The lack of fairness when it comes to accessing credit is not an issue of personal responsibility or individual fault, it is a systemic problem that is persistent in the financial industry and it is therefore incumbent upon the industry and its associations, including the public sector and federal regulators, to devise solutions that address root causes of the problem.

We look forward to working with our partners in community and with our regulators to build a data collection framework that addresses ongoing disparities in fair lending and access to credit.

About Beneficial State Bank

Beneficial State Bank is a triple-bottom-line, values-based community development bank with branches in California, Oregon, and Washington. As a B Corporation, we operate with a triple-bottom-line, which means we equally prioritize people, planet, and profit. Our goal is to optimize positive outcomes for people (customers, employees, and communities in which we operate) and our shared planet, instead of maximizing profits at their expense.

We were established at the nadir of the financial crisis in 2008, recognizing the outsized role banks play in determining outcomes in our economy and society, and the need for financial institutions to be truly aligned with the interests and financial wellbeing of their customers. For over a decade, we have provided fair and transparent banking services to help people, businesses, and nonprofits align their money with their values. We believe that the banking industry should work for everyone, regardless of wealth, income, race, gender, nationality, age, religion, or marital status. Alongside partners, we advocate for a fair, inclusive, and just banking system. We believe community banks and community development financial institutions (CDFIs) are an essential part of this picture, and we work in concert with other CDFI banks and values-based banks to ever-strengthen our impact measurement and evaluation so that we can help hold the entire industry to higher standards.

Beneficial State Bank commits at least 75% of our loan portfolio to those that have a positive social or environmental impact, such as affordable housing, economic development, women-owned businesses, social justice nonprofits, environmental sustainability, and employee-owned businesses. The remaining 25% of our loans cannot work against our mission and includes projects like non-harmful commercial real estate loans. We aspire to 'do no harm,' and we ask for the same (in words and in action) from other banks. Beneficial State Bank is wholly owned by not-for-profit organizations. Its primary owner is Beneficial State Foundation whose mission is to change the banking system for good. Our ownership structure ensures we have no private shareholders seeking to maximize profits at the expense of our communities or our natural environment. We believe banks must be transparent about our social and environmental impact. We publish the impact of our lending so depositors can see what their deposits are funding, and we share detailed explanations of our financials so that a lay reader can understand them.

Regulatory guidance is needed to benchmark progress toward the purpose of the statute and to clarify ambiguity

1. Demographic data collection as prescribed in section 1071 of the Dodd-Frank Act is an imperative for all financial institutions (FIs) and non-depository lenders. If we can't measure our work, banks can't know how we are doing in terms of racial and gender equity, set any goals, or know if we are improving. We need to know where we fall short and what kinds of progress improvement goals to set. Data will help to create benchmarks that banks and the financial industry overall can use to set goals.

2. The collection of demographic data is a necessary step to advancing an equitable society with diverse and distributed ownership. An FI's short- and long-term sustainability and society as a whole stand to benefit from increased lending to groups that have been ignored, excluded, or disinvested from, which is the ultimate goal of data collection. Rulemaking is essential to fit the purpose of the statute to address fair lending and discrimination in lending. We emphasize that Congress enacted section 1071 for the purpose of:
    a. Facilitating enforcement of fair lending laws;
    b. Enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.[1]

3. Present ambiguities and conflicts between data collection prohibitions and mandates in the name of fair lending leave banks and FIs paralyzed and fearful of regulatory violations. FIs err on the side of not collecting the additional data needed, leaving the industry unequipped to develop solutions to persistent lending discrimination. Mandating data collection and clarifying corresponding rules are critical to address these concerns.

4. Much of the data collection under consideration already occurs within FIs and/or is already built into an FI's application process and therefore would not be overly burdensome.

Collecting demographic data is critical to remedying inequities and to building economic prosperity

We now understand that the COVID-19 pandemic has fundamentally altered our lives. The health crisis exposed preexisting racial and economic disparities that we already knew to be true, and exacerbated them so that our societal and economic fabric is more precarious than ever. The intimate connection between economic wellbeing and health is no longer obscured to us. Not only do Black Americans appear to account for a larger share of COVID-19 hospitalizations nationally than their share of the population, but Black and Hispanic people also have some of the highest death rates.[2] New research shows that job and wage losses due to COVID-19 have hit Hispanic and Black adults the hardest. Most do not have financial reserves, or "rainy day" funds, to cover an

[1] CFPB: https://www.consumerfinance.gov/1071-rule/
[2] Pew Research Center: https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/

emergency like a job loss. Nearly half of Black adults (48%) and of Hispanic adults (44%) say they cannot pay some bills or can only make partial payments, according to an April survey from this year.[3] This is compared to 26% of white adults.[4]

The system of racial capitalism,[5] one that stratifies economic value based on socially constructed hierarchies of desirability and worthiness, that has allowed communities of color to suffer on these personal levels extends to the small business sphere. The Paycheck Protection Program, by initially relying on mainstream banks to deliver loans, favored existing customers, thereby ignoring under- and unbanked populations (Black- and Latino- or Hispanic-owned businesses tend to be under and unbanked), as well as microbusinesses.[6]

Minority-owned small businesses are facing higher rates of closures and sharper declines in cash balances as compared to nonminority-owned small businesses.[7] Black-owned businesses are closing at twice the rate of white-owned firms.[8]

This reality is not surprising when we consider the structural barriers people of color owned businesses face, pre-pandemic. It is well-documented that business ownership is a key pathway to build wealth, yet although 12.6% of the overall United States population is Black, only 2.1% of small businesses with employees are Black-owned.[9] Hispanics are 16.9% of the overall US population yet own only 5.6% of businesses.[10] When we consider that women of color hold the lowest levels of wealth, the barriers to accessing capital are compounded.[11] It should be emphasized too in this context that Black women are starting businesses at the fastest rate of any racial group.[12]

[3] Pew Research Center: https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/
[4] Pew Research Center: https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/
[5] With gratitude to Terri Friedline for this working definition of "racial capitalism."
[6] Brookings Institute: https://www.brookings.edu/research/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/
[7] Federal Reserve Bank of Cleveland: https://www.clevelandfed.org/en/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx
[8] Federal Reserve Bank of Cleveland: https://www.clevelandfed.org/en/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx
[9] NCRC: https://ncrc.org/disinvestment/
[10] Asset Funders Network: https://assetfunders.org/wp-content/uploads/Women_Wealth_-Insights_Grantmakers_brief_15.pdf
[11] Prosperity Now: https://prosperitynow.org/blog/racial-wealth-divide-snapshot-women-and-racial-wealth-divide
[12] CNBC: https://www.cnbc.com/2020/02/25/underfunded-female-demographic-is-launching-the-most-start-ups-in-us.html

There are countless data and studies that demonstrate racial discrimination and disparities in small business lending:

- Research drawing on SBA 7(a) data shows that from 2008 to 2016, loans to Black small business owners decreased from 8% to 3% – a decline that has yet to recover.[13]
- A 2017 Federal Reserve study found that more than half of companies with Black owners were rejected for a loan, a denial rate twice as high as their white counterparts.[14] Less than 47% of bank loan applications from Black business owners were fully funded.[15]
- Unfair lending practices have consequences on the racial wealth gap: An SBA study from 2018 shows that Black and Hispanic business owners are more likely to rely on personal credit cards carrying balances, a more expensive option than a traditional bank loan, than other groups.[16] Relying more heavily on personal debt negatively affects personal wealth and the ability to build and pass on wealth.
- The same SBA study found that although Black and Hispanic business owners are more likely to demonstrate unmet credit needs than other groups, over half (53%) of Black business owners report not receiving the full amount requested from banks and other financial institutions, as compared to a quarter (24.5%) of white business owners.[17]
- An Aspen report from 2017 reveals that not only do Black and Hispanic borrowers start with lower levels of financial capital, but they also pay higher prices for that capital.[18]
- "Mystery shopping" tests where Black, Latino, and white borrowers with similar characteristics in terms of age, gender, net worth, and loan requests consistently reveal that Black and Latino testers receive worse treatment. Black and Latino testers are more likely than white applicants to be asked to provide more financial documents such as personal income tax statements and less likely to be offered assistance or given information (for instance, about fees) when completing an application.[19]

[13] NCRC: https://ncrc.org/disinvestment/
[14] The Guardian: https://www.theguardian.com/business/2020/jan/16/black-owned-firms-are-twice-as-likely-to-be-rejected-for-loans-is-this-discrimination; Federal Reserve: https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm
[15] The Guardian: https://www.theguardian.com/business/2020/jan/16/black-owned-firms-are-twice-as-likely-to-be-rejected-for-loans-is-this-discrimination
[16] Minority Business Development Agency: https://www.mbda.gov/sites/default/files/rs440_financing_patterns_report_1.pdf
[17] Minority Business Development Agency: https://www.mbda.gov/sites/default/files/rs440_financing_patterns_report_1.pdf
[18] Aspen Institute: https://www.aspeninstitute.org/publications/bridging-divide-business-ownership-can-help-close-racial-wealth-gap/
[19] NCRC: https://ncrc.org/disinvestment/

The fact that many borrowers of color don't even try to apply for bank loans because they don't believe they will be approved speaks volumes about the ways in which entire communities are excluded from the banking system, and about the ways we as society have allowed entire groups of people to be seen as undeserving through no fault of their own.

Similar patterns of discrimination exist for female-identified small business borrowers:

- Findings from the Senate Small Business and Entrepreneurship Committee in 2014 reveal that female business owners account for less than 5% of all the capital loaned to small companies. Although businesses owned by women account for 30% of small companies, in terms of numbers of loans, they receive only 16% of conventional small-business loans and 17% of loans backed by the SBA.[20]
- Fundera's most recent quarterly report found that women entrepreneurs are offered smaller loans across every product and they are more likely to pay higher rates than men do.[21]

Despite persistent disparities in lending, Black, Latino, and women-owned entrepreneurship and small business creation are on the rise, at rates that now exceed that of white people and of men. Barriers to accessing credit are not an individual issue – they are major hindrances to our nation's economic growth and prosperity. Collecting demographic data to better understand disparities in access to capital is a crucial tool to address root causes of racial and gender wealth gaps, and to enable these groups to build wealth through business creation and growth.

Comments on discussion guide for small business lending data collection rulemaking

1. **Scope of proposed rule**

We believe that section 1071 data collection should apply to all commercial businesses. This includes small businesses, women-owned businesses, and minority-owned businesses, in addition to commercial businesses that fit none of those categories.

We are concerned with fair lending across all businesses, regardless of size. If we only gather information from a subset of borrowers, we miss telling the full story. That said, and

[20] CBS News: https://www.cbsnews.com/news/report-looks-at-small-business-and-the-gender-gap/
[21] Fundera: https://www.fundera.com/blog/the-state-of-online-small-business-lending-q2-2016

notwithstanding that most businesses in the US are small businesses, small business creation plays a particular role in the context of the racial wealth gap, as a pathway to generate wealth. We also have a baseline for disparities in small business lending by race and gender because of available data from government programs such as the SBA.

We can rely on a small business data collection framework that could be applied to all businesses, because of the immense work that has already gone into small business and other data collection and reporting, such as through the SBA and for HMDA. Financial institutions already collecting much of the data for small businesses proposed in section 1071 will be able to rely on existing systems, processes, procedures, and reporting mechanisms when adopting section 1071 data collection rules.

2. Definition of "financial institution"

The Bureau must clarify the definition of "financial institutions" as it is unclear whether or not the term as presently defined in section 1071 includes non-depository institutions. The Bureau should make explicit that "financial institutions" includes online/platform lenders, non-depository institutions, including non-depository CDFIs and non-profit lenders, equipment leasing lenders, vehicle financing companies, commercial finance companies, and governmental lending entities.

FIs making fewer than 25 small business loans may be exempt from 1071 reporting requirements, given the Bureau's estimation that even with such an exemption, 99% of loans from depository institutions (DIs) would still be covered. Broadly, if there are to be exemptions, they should be based on lending activity by number of loans. There should be no exemptions based on size of the FI.

3. Definition of "small business"

We support the Bureau's proposed "third alternative" to define small business, which is consistent with the SBA's definition. FIs participating in SBA programs are already equipped to collect these data, which includes NAICS codes. NAICS codes also help us to understand the story of who is receiving loans.

The SBA's framework for defining small business establishes meaning in size of business by industry, and therefore we want to understand how ownership breaks down within those categories (as opposed to a single threshold which may not be appropriate for certain industries).

The National Community Reinvestment Coalition (NCRC) has noted that adopting the SBA definition may result in an omission of just 63,000 small businesses, as compared to an exclusion of 23% of small businesses under the $1 million threshold. The majority of small businesses and align with existing data collection efforts.

4. **Definition of "women-owned business," "minority-owned business," and "minority individual"**

We propose that the Bureau maintain definitions for "women-owned business" and "minority-owned business" that are consistent with SBA:

- Women owned business: More than 50% of the ownership or control is held by one or more women.
- Minority-owned business: More than 50% of the ownership or control is held by one or more minority individuals.

The Bureau could use an existing framework for the categories of race and ethnicity as well as for the definition of "minority individual," rather than proposing a new one. For instance, the Bureau's definition could match the categories presented in HMDA[22] or those that the SBA uses under its "socially disadvantaged" designated groups framework.[23] Either of these could stand in for the Bureau's proposal to use "a natural person who is Black or African American, Asian, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or Hispanic or Latino."

Using HMDA's framework, the categories would be as follows:

- Ethnicity: Hispanic or Latino, disaggregated by Mexican, Puerto Rican, Cuban, Other Hispanic or Latino;
- Race: American Indian or Alaska Native; Asian, disaggregated by Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian; Black or African American; Native

[22] CFPB: https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf
[23] Legal Information Institute: https://www.law.cornell.edu/cfr/text/13/124.103

Hawaiian or Other Pacific Islander, disaggregated by Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander; White

Under SBA's Socially and Economically Disadvantaged Individuals framework, a "minority individual" would be anyone who meets the following:

- Members of designated groups: Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal);
- And members of other groups designated from time to time by SBA.

We agree with the Bureau's proposal to use definitions of ownership that are consistent with Fincen's customer due diligence (CDD) rule. The Bureau should explore offering additional guidance for cooperatively-owned and employee-owned business models.

If terms are consistent across regulations and agencies, FIs in particular will have an easier time collecting, maintaining, and reporting on this information. In most cases they are already doing so.

These definitions are a starting place and should be considered a work-in-progress. Broadly, these categories require an update and especially disaggregation to further break down groups of people and communities to better understand fair lending. The need to update categories applies not only to race and ethnicity, but also to gender. The term "minority" also needs to be changed, since it is or will no longer be accurate to describe many of the groups as a minority in the population. The descriptive terms used for the purposes of this section should reference problems of systemic barriers and divestment that need to be solved.

We recommend an interagency working group to explore these terms and options for self-reporting race, ethnicity, and gender. The group could determine a set of principles, for instance, that the data collection should provide easy-to-use, pre-set choices based on guidance from representatives/advocates of race, ethnic, and gender groups. The group might examine proxy sources, such as the US census, and explore state efforts for racial and ethnic identification inclusivity (for instance, in California, which requires state agencies to collect data for each major Asian and Pacific Islander group). It could also determine guidelines for how an applicant might input information into open-ended "Other" categories and indicate multiple choices.

5. Product coverage

Merchant cash advances should be included under covered products.

6. Definition of an application

We agree that the Bureau's definition of "application" should remain consistent with that of Regulation B, which is that an application is a "an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested."

We need more information or further exploration of the purpose of data collection regarding the proposed exemptions for inquiries. An inquiry is a broad category which could include someone asking for general information. It will be extremely difficult to collect this data in a consistent way, because an inquiry is a broad category that includes countless informal interactions.

As for renewals and/or extensions when there is no increase in credit amount, the FI should already have the data for these borrowers. Should FIs be required to report on these types of requests, they may be reporting on the same loan several times each year. Presumably, the data has already been collected. If the Bureau is suggesting that FIs treat renewals and extensions with no increased credit amount as new loans, still they should have already obtained the data at the time of the original application. An exemption for renewals and extensions is consistent with HMDA's approach. We believe the most important information to collect is who is receiving a loan when the FI makes the initial decision, not subsequent renewals/extensions of existing credit. We agree with the Bureau's proposal that data collection must be required for requests for additional credit amounts. That said, should there be a triggering event such as a material ownership change, an FI should have to capture that information. A question on ownership could be included in the renewal or extension process, and if there is a change, the FI would then collect the 1071 data.

Lastly, on the proposed exemption for solicitations, we agree that FIs do not need to collect 1071 data for solicitations or firm offers of credit unless the applicant's response triggers an "application."

7. Data points

7.1 Mandatory data points

We support the Bureau's proposal that the determination for whether an applicant is a women- or minority-owned business and/or small business (based on the definitions outlined above in #4) be self-reported by the applicant. We also support the self-reporting approach to race, sex, and ethnicity data. In the case that an applicant does not provide this information and does not explicitly say they do not want to provide the information, the bank should be required to report the information based on observation. How the data is collected should also be captured, that is, "Reported," "Observed," or "Declined."

Type of action taken

Reporting of denial reasons can be challenging, especially for data consistency across institutions, but we recognize that this data could be helpful in assessing fair lending implications. It might be helpful for FIs to be presented with a pre-filled list of options (including an "Other" category) so that the data can be more easily analyzed across many institutions.

The process of originating a commercial loan can be complex, and often requires several rounds of back-and-forth communication with the applicant. Reporting data on counteroffers would add an unnecessary level of complexity to data reporting. Practically, this information is captured in the ultimate outcome of the loan decision (counteroffer accepted would show in the difference between loan amount requested and loan amount approved, and counteroffers not accepted would still ultimately be a decline of the original loan amount).

Race, sex, and ethnicity of principal owner(s)

We are supportive of the principal owner definition being the same as the CDD definition as businesses already have to determine ownership in this manner for BSA/KYC purposes.

7.2 Discretionary data points

Pricing

We support including pricing data since this will be valuable from a fair lending perspective; however, we encourage the Bureau to identify one consistent pricing metric that financial institutions must report on. As indicated in the proposal, there are a number of data points associated with price and interest rates on commercial loans are frequently based on some spread above an index (I.e. Prime + 1%). This can create reporting challenges, especially for smaller institutions and the Bureau should ensure there is clear guidance and consistency on the pricing data point.

Time in business

We support including "years in business" as a discretionary data point since as a successful track record can be a key decision factor. This information can also help to disaggregate data to allow for better understanding of patterns of declines to minority and women-owned businesses that may be based on years of business (due to longstanding historic discrimination; that is, minority and women applicants start off already behind their white male counterparts) versus current discrimination by the FI. It is worth looking at the principal owner's time in business as although a business entity may be new, the owner may have been in the industry for a long time.

NAICS codes and number of employees

We support reporting the NAICS code since FIs already collect this data and it will help provide data on which industries are receiving financing and which areas need additional assistance.

We are open to the idea of reporting the number of employees; however, it appears that this information is already captured within the definition of a small business and/or gross annual revenues are a sufficient proxy for this data. The Bureau should explore whether or not number of employees is a strong enough indicator on its own to provide meaningful analysis regarding disparities in small business lending.

8. Timing of data collection

Data should be collected when and where it is easiest to obtain the data. We recommend collecting this data at the time the application is submitted. The Bureau should specify timing in the rule. Without such specification, it may be too easy for FIs to delay data collection, and FIs are likely to continue their current state of paralysis around when to collect it, due to fear of regulatory violation. It is feasible for an FI to build in a government monitoring information section, or similar, into the application process itself.

9. Firewalls

The flexibility around firewalls that the Bureau proposes – that their information need not be shielded from underwriters and others -- is in line with what we believe is feasible for an FI and appropriate for an applicant. Beneficial State Bank's business is in relationship banking, and so the typical applicant and/or borrower's experience is to have a very high-touch relationship with our bank's team members. Through phone calls and meetings, team members are likely to draw conclusions about race, gender, and ability. It may be that a firewall has never truly existed in this type of business. In the context of the rulemaking, although a firewall may be technically possible, the nature of relationship banking is not conducive to that level of privacy/separation.

A firewall may be technically possible, for instance, by automatically sending the section of the application that includes 1071 information to one part of the back-end system to which only certain employees with certain credentials have access. We suspect that vendors providing FIs with loan application software will determine a way to collect and, if necessary, to separate (i.e. firewall) information should FIs be required to do so. Maintaining a firewall would be a cumbersome process: it would require new systems of guardrails and restrictions, in addition to retraining employees connected to loan sales, processing, and underwriting.

On the matter of providing a notice regarding access to information by underwriters or other persons, we are not certain this is necessary. In fact, a notice like this may make a customer concerned that something has gone wrong. If a firewall is not required, there could be a disclaimer on the application explaining who might have access to this information and/or how the information is or is not to be used. The HMDA form, for instance, states that information garnered therein can't and won't be used as part of the credit decision.

Alternatively, the Bureau could maintain an online system where an applicant can submit their section 1071 data, which the Bureau would collect, independent of the lender. The applicant would receive an electronic receipt or code that they share with the lender as a part of their application, allowing the lender to pull the applicant's information from the Bureau. The lenders would submit application data including action taken to report the outcome of the loan application. A system like this would shield data from the FI and could help to standardize how data is collected.

10. Privacy

We are confident that FIs can be accountable to 1071 reporting requirements while maintaining privacy of applicants and borrowers. We take privacy considerations very seriously because we understand the concerns that borrowers have about the privacy of their information. From that perspective, we do not recommend that the Bureau make loan-level data available to the public. We are concerned about this aspect of the proposal.

There are many ways to report on data in a way that protects privacy, starting with reporting and publishing data at the bank level. Data can be reported by geographic tracts that are large enough for anonymity. We already report data using this logic for other reporting requirements. Another example from NCRC, which we echo, is to publish data points in buckets or intervals instead of precise values.

We look forward to continued engagement with the Bureau to finalize the rulemaking and implementation of section 1071.

Randell Leach
CEO, Beneficial State Bank

Erin Kilmer Neel
Executive Director, Beneficial State Foundation