



3138 10th Street North
Arlington, VA 22201-2149
703.842.2215 | 800.336.4644
f: 703.522.2734
dberger@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

October 18, 2021

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

RE: Small Business Lending Data Collection and SBA Direct Lending Authority

Dear Director Chopra:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (the Bureau) proposed rule regarding Small Business Lending Data Collection under the *Equal Credit Opportunity Act*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 127 million consumers with personal and small business financial service products. This letter addresses the Bureau's proposed rule and its likely effects only as they relate to a legislative proposal contained in the *Build Back Better Act* to authorize the Small Business Administration (the SBA) to establish a direct 7(a) lending program. NAFCU will respond more fully to the Bureau's proposed rule within the comment period. However, given the *Build Back Better Act*'s time-sensitive nature, I must make clear now certain material, if not obvious, risks posed to credit unions and small businesses by the interplay of the proposed rule and the legislative proposal.

Stated simply, the legislative proposal lacks the statutory guardrails necessary to prevent credit unions' disintermediation in the increasingly important small dollar segment of the business lending market. Credit unions leverage their demonstrated expertise in small dollar lending to provide significant support to their communities' small businesses. Not only does the legislative proposal risk the SBA becoming credit unions' direct lending competitor, but the legislative proposal also risks fintechs, who have never been permitted to originate 7(a) loans, driving credit unions entirely out of 7(a) lending. And the proposed rule, if adopted as written, would cause many credit unions to exit the business lending market altogether. Operating alongside one another, the legislative proposal and the proposed rule risk greatly damaging the vibrant, robust business lending market without which continued and broader small business successes are impossible.

As the Bureau rightly and often points out, small businesses are a cornerstone of the American economy. Roughly half of all private sector employees work for small businesses, and small businesses have generated nearly two-thirds of net new jobs for decades. Small businesses, particularly in their infancy, find financial strength most often in credit unions and other community-based financial institutions, not through for-profit megabanks or non-depository

fintechs. For minority- and women-owned businesses whose founders often lack access to private funding and substantial collateral, tailored, in-community financial support is all the more important.

Under the *Build Back Better Act*, legislators would authorize the SBA to originate and disburse certain small dollar 7(a) loans with or without the involvement of third parties, such as participating SBA credit union lenders. The legislative proposal would also permit fintechs to become participating SBA lenders, a designation that has always been limited to lenders supervised by a Federal financial institution regulator, a state banking regulator, or the SBA.

The legislative proposal ignores credit unions' incredible contributions to the successes of the Paycheck Protection Program (PPP), a clear example of the value of public-private financial services partnerships. Credit unions stepped up for their communities when times were hardest, as they always do. While navigating myriad disruptions to their own operations, credit unions across the country became participating SBA lenders to ensure that small businesses turned away by for-profit banks and fintechs had timely access to PPP funds. During these uniquely challenging times, the SBA was not always able to provide clear direction, but credit unions always ensured their small business borrowers had the support they needed to navigate often uncertain PPP deadlines, limitations, and procedures. The PPP data make clear that credit unions play a significant role in the financial health and resiliency of their communities' small businesses.

The legislative proposal's net effect of increasing private-sector competition for ever fewer SBA lending opportunities will be a rapid consolidation of 7(a) lending to the detriment of small businesses. Neither the SBA nor fintechs can reasonably be expected to provide the tailored, in-community long term support small businesses require to succeed and grow. If credit unions are forced out of this segment of the business lending market, the attendant threat to credit unions' abilities to timely recognize and meet small businesses' needs and, more broadly, the threat to small businesses' long-term financial stability are clear.

As Small Business Advisory Review Panelists indicated, the proposed rule, if adopted, would impose significant one-time and ongoing annual compliance costs that paradoxically risk speeding the consolidation of the business lending market and compounding fair lending issues and concerns. Far from fulfilling section 1071 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act's* laudable dual purposes, a consolidated business lending market would provide all small businesses ever less access to affordable, high-quality credit.

Faced with overwhelming one-time section 1071 compliance costs, some subject credit unions could immediately be forced to abandon their dutiful support of small business members. Other subject credit unions, those more capable of shouldering the initial burden, will certainly face insurmountable competitive pressures. For-profit megabanks and fintechs with greater transactional efficiencies and lower per transaction costs may ultimately drive all but the largest credit unions and other community-based financial institutions from the business lending market. To provide some perspective – in NAFCU's 2021 Federal Reserve Survey, nearly one-third of respondents said they would be somewhat likely or very likely to reconsider their participation in

The Honorable Rohit Chopra

October 18, 2021

Page 3 of 3

the business lending market if section 1071's small business lending data collection requirements were implemented.

NAFCU supports the enforcement of fair lending laws and appreciates the Bureau's dedication to better supporting small businesses, particularly minority- and women-owned businesses. That the legislative proposal may result in the SBA and fintechs establishing and growing 7(a) lending market share to the detriment of credit unions and small businesses, however, complicates the Bureau's task of balancing its need for data and the health of the overall business lending market. In light of the legislative proposal, NAFCU encourages the Bureau to further consider its own projections that the Bureau could capture nearly all small business loan data by establishing a loan-volume threshold and other parameters that would require only two percent or fewer of credit unions to shoulder the significant one-time and ongoing compliance costs likely to be incurred under the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized with a large initial "B" and a long, sweeping underline.

B. Dan Berger
President & CEO