



December 14, 2020

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Via Electronic Mail To: 2020-SBREFA-1071@cfpb.gov

RE: Small Business Advisory Review Panel for the Consumer Financial Protection Bureau's
Small Business Lending Data Collection Rulemaking
Outline of Proposals Under Consideration and Alternatives Considered

Dear Director Kraninger,

PayPal, Inc. ("PayPal") is pleased to offer comments in response to the Outline of Proposals Under Consideration and Alternatives Considered that the Consumer Financial Protection Bureau ("CFPB" or "Bureau") has set forth for implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Section 1071"). Section 1071 requires financial institutions ("FIs") to compile, maintain, and submit to the Bureau certain data on applications for credit by women-owned, minority-owned, and small businesses. PayPal recognizes the important purposes Section 1071 serves in both facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses. PayPal also appreciates the Bureau's thoughtful approach to the implementation of Section 1071. As outlined below, PayPal respectfully requests that the Bureau revise and clarify certain aspects of its Section 1071 proposal before publishing proposed rules.

I. BACKGROUND

PayPal is a leading online payments company, with over 361 million active user accounts globally. PayPal is also a services provider, through an arrangement with WebBank, an FDIC insured state-chartered industrial bank, for three small business lending products: PayPal Working Capital (PPWC), PayPal Business Loan (PPBL), and LoanBuilder (LB). In 2019 alone, these three products provided over \$4.5 Billion in financing to more than 125,000 small businesses in the United States. Additionally, PayPal, in conjunction with WebBank, participated in the SBA's Paycheck Protection Program (PPP), nationally facilitating approximately \$2.1 billion in loans for approximately 76,000 small businesses.

These business financing products, serviced by PayPal, are unique and transparent products that provide fast, flexible, and fair access to credit for small businesses that otherwise may not receive loan funding. The PPWC loan product is primarily based on a business' PayPal account history and is structured to be repaid through a chosen percentage of the business' PayPal sales, with a minimum payment required every 90 days. The PPWC application process is simple and transparent, and funding can take just minutes. The PPBL and LB product offerings are short, fixed-term loans, ranging from 13-52 weeks, with fixed weekly payments. For PPBL and LB, small businesses will typically receive funding within 24-48 hours of approval. The cost for all these loan products is currently structured as a single, fixed fee that the borrower knows in advance, without any periodic interest charges, late fees, or prepayment fees. These products are designed with transparency and ease of use in mind, which helps facilitate loans for borrowers who are traditionally underserved.

PayPal has done extensive research on these lending products and the benefits they provide to small businesses, particularly those in underserved and minority communities. In our recent report, "Alternative SMB Financing: Fueling Underserved Entrepreneurs",¹ among the key findings were the following:

- 70% of PPWC loans were made to borrowers in the 10% of U.S. counties that lost 10 or more bank branches since the 2008 financial crisis. Also, the share of total PPWC being distributed to borrowers in so called "Banking Deserts" is 2x the share of traditional SMB loans.
- 26% of PPWC loans were made to borrowers in low-moderate income census tracts, compared to 22% for traditional SMB loans. These same low-moderate income census tract businesses exhibited better growth rates with PPWC. For example, in 2017, the year-over-year growth rate for these borrowers was 22% vs. the average SMB growth rate of 9%.
- The percentage of total PPWC loans made to female-owned businesses is 33%, while only 16% of conventional small business loan recipients are female.

Additionally, PayPal regularly conducts surveys of our small business borrowers to ensure we continue to offer services that meet their needs. From data gathered in 2019, overall, the level of satisfaction with processes and products for PPWC and PPBL is favorable – more than 85% of respondents in almost all satisfaction categories selected a positive or very positive rating.

According to borrowers surveyed in October 2019, 95% of PPBL borrowers surveyed gave a positive or very positive rating to the loan's ease of application, and 94% gave a positive or very

¹ The study is based on PayPal data analyzing PPWC, PPBL and LB loans disbursed to businesses in the U.S. between October 2014 to September 2018. See https://publicpolicy.paypal-corp.com/sites/default/files/policy/Alternative_SMB_Financing_Fueling_Underserved_Entrepreneurs.pdf.

positive rating to the time it takes to apply and receive funding. For borrowers surveyed about PPWC in April 2019, 99% of PPWC borrowers surveyed gave a positive or very positive rating to the time it takes to apply and receive funding, and 85% gave a positive or very positive rating to the loan’s repayment terms. These results demonstrate that the business financing products serviced by PayPal are unique and serve an important role in the market.

While PayPal fully supports the intent of Congress in enacting Section 1071, it cautions against prescribing regulations that may unintendedly impede the ease of application, or otherwise discourage applicants, and thus be counter to the goals of facilitating credit for underserved small businesses.

II. PAYPAL’S COMMENTS TO THE OUTLINE OF PROPOSED REGULATIONS

As set forth in detail below, PayPal respectfully requests that the Bureau provide additional clarity and guidance for certain of the Bureau’s proposals.

A. Definition of “Small Business” Applicant

In Part III.C of the Bureau’s outline of proposed regulations, the Bureau addresses what constitutes a “small business” applicant for which FIs must collect and report information. PayPal agrees with the Bureau that a simpler, more straightforward approach to the size standard for what constitutes a “small” business is preferred. Consistent with that desired result, PayPal recommends adopting the first of the three alternatives the Bureau set forth to determine if a business is a “small business.” Specifically, the Bureau should use a size standard using gross annual revenue of the applicant business in the prior year, with a threshold of either \$1 million or \$5 million. This is the simplest and most straightforward approach for both FIs and businesses to understand and effectively implement.

PayPal has significant concerns with the third alternative, which proposes “a size standard using gross annual revenue or the number of employees based on a size standard in each of 13 two-digit NAICS code categories that applies to the largest number of firms within each two-digit NAICS code category.” As the Bureau notes, using the SBA’s 2019 size standards, this third alternative would result in eight different size standards across 13 categories. This alternative introduces an unnecessary level of complexity and would be much more difficult to implement.

Finally, PayPal agrees with and supports the Bureau’s proposal that an FI would generally report the information as provided by the applicant, unless the FI verifies such information for its own purposes, in which case it would report the verified information.

B. Product Coverage: MCAs

The Bureau should include merchant cash advance products (MCAs) as a form of credit which triggers Section 1071 reporting. MCAs are a form of financing used by many small businesses.

The Bureau’s rationale for excluding MCAs is that including them “may add additional complexity or reporting burden given the unique structure of the transactions.” However, excluding MCAs for this reason is problematic for two reasons. *First*, this rationale can be extended to other forms of financing which also do not fit within the traditional structure of SMB financing – including PayPal Working Capital, which has sales-based repayments. Unless the Bureau intends to exclude all other forms of financing with “unique structures,” it should include MCAs in the Section 1071 reporting. *Second*, excluding MCAs may have the unintended consequence of driving more lenders to provide MCAs. MCAs typically have less regulatory oversight, higher fees, and more complex terms. Incentivizing lenders to provide MCAs may be to the detriment of the small businesses that Congress and the Bureau are seeking to protect.

C. Definition of “Application”

PayPal agrees and supports the Bureau’s proposal regarding the definition of “Application.” The exclusions suggested are appropriate given the purposes of Section 1071 and should be incorporated into the Bureau’s final rule.

D. Mandatory Data Points

Section 1071(e)(2) enumerates six mandatory data points for FIs to compile. Below, PayPal provides comments on the Bureau’s proposals for the following mandatory data points: (1) loan purpose, (2) amount approved, (3) census tract, and (4) gross annual revenue.

1. Loan Purpose

The Bureau has proposed FIs report loan purpose by choosing one or more purposes from a specified list, which includes “other” or “unknown” to facilitate compliance:

- Commercial real estate—owner occupied
- Commercial real estate—non-owner occupied (includes investors)
- Motor vehicle (including light and heavy trucks)
- Equipment
- Working capital (includes inventory or floor planning)
- Business start-up
- Business expansion
- Business acquisition
- Refinance existing debt
- Line increase
- Other
- Unknown or unreported by the applicant

While PayPal supports the concept of a specified list and including options of “other” or “unknown,” PayPal recommends revising the categories on the proposed list. First, the list does not include certain purposes for which PayPal has found many SMBs seek funding, including marketing and debt consolidation. Additionally, several of the purposes, such as “working capital,” are vague and overbroad.

Accordingly, PayPal recommends the Bureau modify its list as follows, with new categories noted in bold:

- ~~Commercial real estate—owner occupied~~
- ~~Commercial real estate—non-owner occupied (includes investors)~~
- **Purchase / Lease real estate for business operations**
- **Business real estate improvements**
- **Open new location**
- **Purchase / Lease** Motor vehicle (including light and heavy trucks)
- Purchase / Lease Equipment
- **Purchase Inventory**
- **Maintenance for Equipment / Inventory / Vehicles**
- ~~Working capital (includes inventory or floor planning)~~
- Existing Operations (day-to-day expenses, including payroll, vendor payments).
- Business start-up
- ~~Business expansion~~
- Business acquisition
- **Expand Business Operations or Products**
- **Marketing / Advertising**
- **Payoff / Consolidate** / Refinance existing **business** debt
- ~~Line increase~~
- Other
- Unknown or unreported by the applicant

Additionally, PayPal requests the Bureau clarify that (1) FIs do not have to present this entire list to applicants where a loan product’s terms do not allow the loan to be used for one or more of the specified purposes, and (2) FIs can include additional purposes not on the Bureau’s specified list, and in the instance an applicant selects an additional purpose, the FI would include it as “other” unless the selected purpose squarely fits within, or is a subset of, a purpose specified on the Bureau’s list.

2. Amount Approved

Section 1071(e)(2)(C) requires FIs to collect and report “the amount of the credit transaction or the credit limit approved for such applicant.” For closed-end credit applications that are approved but not accepted, the Bureau is considering proposing that FIs report the amount approved. However, this proposal does not consider a product like PPWC, where an applicant

is presented with multiple offers with varying loan amounts. The Bureau should clarify that, in the instance where multiple offers are presented and none are accepted, the FI should report the highest approved offer amount.

3. Census Tract

Section 1071(e)(2)(E) requires an FI to report “the census tract in which is located the principal place of business of the ... applicant.” The Bureau is considering proposing that FIs use the address where the loan proceeds will principally be applied, if that address is known to the FI; if unknown, the FI would use the address of the small business’s main office or headquarters, and if that is unknown, the address associated with the application. PayPal requests the Bureau clarify that (1) an FI is not required to modify its loan application to request this information, e.g., to ask for the address where the funds will be used, and (2) that an FI is not required to verify this information. Moreover, to the extent an FI does not request the location where the funds will be used or the headquarters of the business as part of the loan application, an FI should not be required to create a new process to separately document and report that information.

4. Gross Annual Revenue of the Business During Last Fiscal Year

The Bureau is considering proposing that FIs report the gross annual revenue of the applicant during its last fiscal year. However, for SMB financing that is not based on gross annual revenue, for example, PPWC which is primarily based on an applicant’s PayPal account history, requiring a specific gross annual revenue dollar amount may discourage some applicants, and thus be counter to the goals of facilitating credit to small businesses. To account for this, PayPal recommends the Bureau allow FIs to request and report a gross annual revenue range, which would allow applicants to select a range instead of providing a specific number.

E. Discretionary Data Points

In its outline, the Bureau set out four proposed discretionary data points: (1) Pricing, (2) Time in Business, (3) NAICS Code, and (4) Number of Employees. As set forth below, PayPal seeks clarification related to the pricing data point. PayPal also has concerns with collection of NAICS codes and recommends the Bureau remove NAICS codes as a data point.

1. Pricing

The Bureau is considering including the pricing of originated credit, and of credit that is approved but not accepted, as a discretionary data point. This pricing could be annual percentage rate (APR), total cost of credit (TCC), interest rate and total fees, or “some other pricing metric.” PayPal requests the Bureau (1) add “single fixed fee (SFF)” to the list of pricing metrics, and (2) revise “some other pricing metric” to clarify that this includes any other pricing metric used by an FI that does not otherwise fit within the enumerated pricing descriptions. As

noted above, PPWC, PPBL, and LB do not have an interest rate or APR, but rather a single, fixed fee.

Additionally, PayPal recommends the Bureau consider products where pricing may vary depending on the offer selected. For example, as part of the loan application, a PPWC applicant is presented with different loan options, with varying loan amounts and repayment percentages for which the pricing may vary. PayPal recommends the Bureau clarify that, in the instance where multiple offers are presented and pricing varies, an FI use the pricing associated with the “Amount Approved” mandatory data point.

2. NAICS Codes

The Bureau is considering proposing that FIs collect and report NAICS code. PayPal has concerns with this additional data point for several reasons. First, there are more than 1000 NAICS codes, and a business can have more than one NAICS code. Second, there is no way to verify or certify the applicability of a NAICS code to a particular business. There also is no central government agency with the role of assigning, monitoring, or approving NAICS codes for business.² Rather, businesses sometimes self-select NAICS codes or, in other instances, are assigned NAICS codes by various agencies for various purposes using a variety of methods.³ Practically, it is difficult, if not impossible, for an FI to obtain this information with any level of confidence. Asking an applicant to self-select from 1000+ codes is burdensome to both FIs and applicants and is rife with potential for inaccuracy. As such, the Bureau should not require FIs to report NAICS codes.

To the extent the Bureau determines industry information is an important data point, PayPal recommends the collection of two-digit “Sector” codes or the three-digit “Subsector” codes for NAICS. Using Sector or subsector codes would significantly reduce the number of potential choices, but still allow for a meaningful industry designation. Additionally, the Bureau should clarify that an FI can rely upon an applicant’s self-selected code for reporting purposes.

F. Timing

PayPal believes the Bureau should adopt its proposal to allow FIs discretion to determine when during the application process the data is collected. PayPal agrees that this approach allows FIs

² See U.S. Census Bureau, North American Industry Classification System, Frequently Asked Questions. <https://www.census.gov/eos/www/naics/faqs/faqs.html>. (“There is no central government agency with the role of assigning, monitoring, or approving NAICS codes for establishments. Individual establishments are assigned NAICS codes by various agencies for various purposes using a variety of methods. The U.S. Census Bureau has no formal role as an arbitrator of NAICS classification. The U.S. Census Bureau assigns one NAICS code to each establishment based on its primary activity (generally the activity that generates the most revenue for the establishment) to collect, tabulate, analyze, and disseminate statistical data describing the economy of the United States. Generally, the U.S. Census Bureau’s NAICS classification codes are derived from information that the business establishment provided on surveys, census forms, or administrative records. Various other government agencies, trade associations, and regulation boards adopted the NAICS classification system to assign codes to their own lists of establishments for their own programmatic needs.”)

³ See *Id.*

the necessary flexibility to collect requisite data at a time in the process that works best for the FI's processes and applicants. As the Bureau acknowledges, this avoids unnecessary costs, while still fulfilling Section 1071's purposes.

G. Applicant's Right to Refuse to Provide Certain Information

Section 1071(c) provides that "[a]ny applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit." Subsection (b) sets forth the requirement for an FI to inquire whether a business is women-owned, minority-owned or a small business. The Bureau, invoking its exception authority under Section 1071(g)(2)⁴, states that it is considering proposing that the right to refuse under Section 1071(c) apply to the FI's specific inquiries regarding women-owned and minority-owned business status in Section 1071(b), as well as the race, sex, and ethnicity of principal owners, but not to the FI's specific inquiry regarding small business status in Section 1071(b).

PayPal respectfully requests that, in addition to the above items, the Bureau allow an application to proceed if an applicant fails to provide other data elements, such as the business's gross annual revenue in the last year. PayPal is concerned that for a product like PPWC, which does not require many of the Section 1071 data points to be collected, requiring an applicant to provide the information in order to proceed with the application may unintentionally impede the ease of application or otherwise discourage applicants, and thus be counter to the goals of facilitating credit for underserved small businesses. To the extent the Bureau determines all applicants must provide information regarding small business status, PayPal recommends requiring a question that asks if the business meets the criteria for a small business (e.g., did your business have gross annual revenue of more than \$5M in the last year) and not the actual data point of the amount of gross annual revenue.

H. Sample Collection Form

The Bureau states that it is considering a sample collection form to assist with the collection of race, sex and ethnicity of the principal owner, which would include the right to refuse to provide that information, include the definition of principal owner and clarify that it is possible there is no principal owner. PayPal agrees and supports this proposal, as it will provide uniformity and consistency across FIs.

PayPal also agrees that the Bureau should provide plain language compliance guides and aids to assist FIs with the successful implementation of Section 1071.

⁴ Section 1071(g)(2) states "The Bureau, by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section."

I. Bureau Publication of Section 1071 Data

PayPal agrees with the Bureau's suggested approach to allow an FI to satisfy the requirement to make Section 1071 data available to the public upon request by referring the public to the Bureau's website.

J. Bona Fide Errors

Throughout the Outline, the Bureau draws parallels to HMDA reporting required under Regulation C. HMDA contains important protections for bona fide errors. As such, consistent with the Bureau's approach, PayPal requests that the Bureau mirror Regulation C's protections for bona fide errors and provide that (1) an error in compiling or recording data for a covered loan or application is not a violation of Section 1071 or its implementing regulations if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error, and (2) an incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of Section 1071 or its implementing regulations, provided that the FI maintains procedures reasonably adapted to avoid such an error. See 12 CFR § 1003.6(b). The Bureau should also consider including the HMDA protections provided in Subsection (c) with respect to good-faith efforts to record and report data.

K. Implementation Timeframe and One-Year Safe Harbor

The Bureau states that it is considering proposing that FIs have approximately two calendar years for implementation following the Bureau's issuance of its eventual Section 1071 rule. PayPal agrees with this proposed timeframe, which is also consistent with the timeframe adopted for HMDA reporting.

Consistent with the approach the Bureau took for HMDA reporting,⁵ the Bureau should not require data resubmission(s) unless data errors are material. Additionally, the Bureau should not impose penalties with respect to errors in data reported in the first reporting year.

Sincerely,

/s/

Bernardo Martinez

Vice President, Global Merchant Lending

⁵ See "Statement with respect to HMDA implementation" (Dec. 17, 2017) https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf