

Comments on CFPB NPRM on Small Business Data Collection

AGENCY: Bureau of Consumer Financial Protection.

12 CFR Part 1002 [Docket No. CFPB-2021-0015] RIN 3170-AA09

Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)

National Disability Institute (NDI) submits the following response to the NPRM issued on September 1, 2021 by the Consumer Financial Protection Bureau (CFPB) on its proposal to implement small business lending data collection requirements set forth in Section 1071 of the Dodd-Frank Act.

National Disability Institute, a 501(c)3 nonprofit corporation, is dedicated to inclusive communities and community development where people with disabilities have the same opportunities to achieve financial stability and security as people without disabilities. For the past 15 years, NDI has led the creation of new knowledge about financial behavior and banking status of individuals with disabilities and their families with the analysis of data collected by the FDIC, the U.S. Census Bureau and the FINRA Investor Education Foundation. NDI reports have brought into focus the challenges of this economically vulnerable population that, when compared to people without disabilities, is twice as likely to be living in poverty, twice as likely to use costly nonbank lending and twice as likely to be unbanked.

For a growing number of working-age adults with disabilities, the establishment of small businesses has become a viable path to participate in our country's economic growth and improve their own economic stability and security.

According to the American Community Survey (ACS), about 15 percent of the adult population in the United States has a disability, or about 40 million people. The ACS reports that 1.8 million of them own small businesses, which is about twice as high as the estimates from the Current Population Survey (CPS). Even the ACS estimate, however, is most likely an undercount as the Internal Revenue Service claims there are about 30 million small business owners (with and without disabilities), while the ACS estimates there are 18 million self-employed individuals and the CPS estimates 16 million. The discrepancies between these sources stem from how each source defines a small business.

The term "disability" describes a diverse group of individuals, in terms of the type and degree of disability, the cause and the date of onset. A person's disability can be related to vision, hearing, movement, communication, cognition and/or psychosocial issues, and can range from mild to severe and be constant or episodic. A disability can occur at

birth, old age or anytime in between. It can be congenital or can arise because of chronic illness, injury, malnutrition or aging. It can be visible such as mobility limitation or may be invisible such as a chronic condition, pain or mental health disability. The likelihood of having a disability increases with age: six percent of young adults age 18-20 have a disability, compared with 22 percent of adults near retirement age (61-65) and 35 percent of adults over age 65. Chronic medical conditions, such as diabetes, high blood pressure, back pain, anxiety or depression, can lead to functional limitations over time. In addition, the cumulative effects of inadequate nutrition and health care, stressful or unsafe working conditions and other factors increase the risk of disability over the lifespan.

As demonstrated in the table below, people with disabilities are less likely to be in the labor force; only 26 percent of adults with disabilities are in the labor force, significantly less than the 81 percent of those without disabilities. People with disabilities are also less likely to be small business owners, having a self-employment rate of four percent which is only half of those without disabilities. However, among people who participate in the labor force, those with disabilities are more likely to be self-employed rather work for wages. Almost 17 percent of employed people with disabilities are self-employed compared with 11 percent of those without disabilities.

Self-Employed as a Percentage of the Population and Labor Force by Disability Status, Age 18 and over, 2019

	Disability	No Disability
Self Employed as Percentage of Population	4%	8%
Self Employed as Percentage of Labor Force	17%	11%
Labor Force Participation Rate	26%	74%

Source: NDI analysis of American Community Survey 2019 microdata downloaded from [IPUMS USA](#), [University of Minnesota](#).

CFPB is proposing detailed instructions for financial institutions regarding how to collect and report minority-owned business status, women-owned business status and principal owners' ethnicity, race and sex pursuant to Section 1071. The NPRM also includes a sample data collection form, which includes a notice to applicants that financial institutions are not permitted to discriminate on the basis of an applicant's minority-owned business status, women-owned business status or on any principal owners' ethnicity, race or sex. Thirty-one years ago, the passage of the Americans with Disabilities Act (ADA) set out requirements of equal access to services from government and private sector places of public accommodation inclusive of financial institutions for individuals with disabilities. The comprehensive ADA requirements do not

permit financial institutions to discriminate in lending practices on the basis of an applicant's disability.

In response to Question 17, the definitions of "women-owned business," "minority-owned business," and "minority individual," should include individuals with disabilities. The rulemaking by CFPB should reflect the requirements of the ADA to protect people with disabilities from discriminatory lending practices that adversely impact entrepreneurs and small business owners with disabilities. Section 1071 does not define the term "minority individual." Guidance from the Bureau should clarify a minority individual includes individuals with disabilities, in addition to Black or African American, Asian, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander and/or Hispanic or Latino. In keeping with the spirit and intent of the ADA, the proposed CFPB rule should require financial institutions to collect information on a principal owner's disability status. Notice to loan applicants from financial institutions should indicate clearly that it is not permitted to discriminate on the basis of an applicant's minority-owned business status, inclusive of disability, in addition to ethnicity, race or sex. The financial institution should be permitted to rely on statements made by an application (in writing or orally) or information provided by an applicant, when collecting and reporting data, in terms of disability status.

Data submitted by financial institutions to CFPB should be made available to the public on an annual basis. Covered financial institutions should be required to make this data available to the public on their websites.

The absence of disability data renders people with disability invisible and creates an obstacle to understanding and analyzing potential discriminatory lending practices. The absence of robust data on the experiences of entrepreneurs with disabilities creates a challenge in advocating for and designing effective policies. Access to capital is an essential factor in the startup, maintenance and growth of small businesses for entrepreneurs and small business owners with disabilities. The additional collection and reporting by financial institutions of disaggregated lending application and loan data of minority-owned business status, inclusive of principal owners' disability status, will bring long overdue and much needed attention to challenges faced by the disability community.

NDI and other representatives of national disability organizations are ready to provide subject matter expertise on appropriate language and approaches to define disability that is culturally-sensitive and responsive to facilitate enforcement of fair lending laws and enable better identification of small business development needs for our target population.