February 9, 2022

Via Electronic Mail

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

Re: Supervision of Nonbank Small Business Lenders

Director Chopra:

The Consumer Bankers Association[1] (CBA) writes to urge the Consumer Financial Protection Bureau (Bureau) to supervise nonbank small business lenders. While banks are typically the first place that small businesses consider when seeking a loan, the landscape for business lending has changed substantially in recent years, with alternative banking options offered by financial technology companies (fintechs) gaining significant market share. However, the activities of fintechs engaged in small business lending are not supervised by the Bureau, leaving these small businesses vulnerable. Fintechs offering products similar to those offered by the nation's leading banks must be held to the same standards. It is imperative that the Bureau evaluate all possible avenues for supervising these nonbank small business lenders, including adding nonbank small business lending to the larger participant rule.

A failure to examine fintechs does not just contribute to an uneven playing field between fintechs and supervised entities, but more importantly, results in a continuous and growing threat of harm to small businesses, which are best protected when entities offering similar financial products and services are subject to the same oversight. Nonbank alternatives for small business lending come in a variety of forms, including peer-to-peer lenders like Prosper and Lending Tree, business-to-business lenders like Fundera or OnDeck, rewards-based crowdfunding like KickStarter, and equity-based crowdfunding such as OfferBoard. Most of these funding options are used for their convenience and speed in obtaining funds, and often fail to implement the appropriate consumer protections. While estimates vary in range, CBA believes that approximately 30% of the current market is serviced through these nonbank providers, yet these nonbank providers are not subject to supervision by the Bureau. The attendant risks of non-supervised fintech activities became clear during the distribution of Paycheck Protection Program (PPP) funds. A recent study found nonbank fintech PPP lenders were nearly five times more likely than traditional lenders to be

[1] CBA is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

involved with suspicious loans, and nine out of the top ten lenders with the highest rates of suspicious PPP loans were fintech firms.[2]

Moreover, the Bureau's lack of supervisory authority over these nonbank small business lenders threatens to undermine the Bureau's other regulatory efforts, such as identifying and addressing fair lending concerns through a final rule for small business lending data collection pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. CBA has urged the Bureau to ensure all lenders are covered by any Section 1071 final rule. However, the Bureau lacks the supervision authority necessary for ensuring nonbank small business lenders' compliance with Federal consumer financial laws. This absence of supervision will also negatively impact the accuracy and utility of any data the Bureau receives under a Section 1071 final rule. It is imperative that the Bureau evaluate available options for expanding its supervisory authority over fintechs operating in the small business lending market, including, but not limited to, evaluating whether the small business lending market should be added to the larger participant rule.

During such evaluation, the Bureau should consider use of its ability under 12 U.S.C. § 5514 to extend its authority over larger participants in the small business lending market. The statute expressly grants the Bureau supervisory authority in the residential mortgage, private education lending, and payday lending markets.[3] The Bureau can also extend its supervisory authority to the larger participants of markets for other consumer financial products or services if the Bureau first defines by rule what constitutes a larger participant in that specific market in consultation with the Federal Trade Commission.[4] The Bureau has previously used this authority in other important markets, including the consumer reporting,[5] consumer debt collection,[6] student loan servicing,[7] international money transfer,[8] and automobile financing markets[9] (the larger participant rule). Much like these markets, the Bureau should conduct a larger participant analysis of nonbank small business lenders[10] and promulgate a rule adding these nonbank small business lenders to the larger participant rule to ensure these entities continue to comply with all relevant law.

The CBA stands ready to assist the Bureau in this effort or with any other work undertaken by the Bureau to level the playing field for all financial product and service providers.

Sincerely,

[2] Griffin, John M. et al., *Did FinTech Lenders Facilitate PPP Fraud?* 34 (Aug. 17, 2021), *available at* https://ssrn.com/abstract=3906395 or http://dx.doi.org/10.2139/ssrn.3906395
[3] 12 U.S.C. § 5514(a)(1)(A), (D)-(E).
[4] 12 U.S.C. § 5514(a)(1)(B), (a)(2).
[5] 12 C.F.R. § 1090.104.
[6] 12 C.F.R. § 1090.105.
[7] 12 C.F.R. § 1090.106.
[8] 12 C.F.R. § 1090.107.
[9] 12 C.F.R. § 1090.108.
[10] The Bureau has the authority to extend its supervisory authority over larger participants in markets "for other consumer financial products or services." 12 U.S.C. § 5514(a)(1)(B). The Bureau will need to determine that nonbank small business lenders operate in a "market for other consumer financial products or services" before adding this market to the larger participant rule.

Richard Hunt
President and CEO
Consumer Bankers Association