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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA REINVESTMENT
COALITION,

Plaintiff,

v.

KATHLEEN L. KRANINGER, Director,
Consumer Financial Protection Bureau,
In Her Official Capacity and CONSUMER
FINANCIAL PROTECTION BUREAU,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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1 Plaintiff the California Reinvestment Coalition (“CRC”) brings this action for declaratory and
2 injunctive relief against Kathleen L. Kraninger, in her official capacity as Director of the Consumer
3 Financial Protection Bureau, and the Consumer Financial Protection Bureau (collectively, “CFPB”
4 or “Bureau”), and alleges as follows:

5 **I. INTRODUCTION**

6 1. This lawsuit, brought under the Administrative Procedure Act (“APA”), 5 U.S.C.
7 § 706, challenges the CFPB’s unlawful failure to follow Congress’s commands in Section 1071 of
8 the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (codified at 15 U.S.C.
9 § 1691c–2), which was enacted to identify community development needs and opportunities for
10 women-owned, minority-owned, and small businesses and to reduce discrimination against such
11 businesses.

12 2. As CFPB has recognized, data on lending practices is critical to identifying “credit
13 deserts” where businesses and communities have difficulty accessing credit, and to allow financial
14 institutions, community development organizations, and governmental agencies to identify areas of
15 need and potential solutions.¹ Such data does not currently exist, making it “[im]possible to
16 confidently answer basic questions regarding the state of small business lending.”²

17 3. Section 1071 was designed to fill this gap by requiring financial institutions to
18 maintain records of their actions on loan applications by women-owned, minority-owned, and small
19 businesses. In Section 1071, Congress required the CFPB to collect and publish this data annually,
20 and to issue rules and guidance to carry out Section 1071’s requirements.

21 4. Despite Section 1071’s clear and mandatory terms, CFPB has entirely failed to collect
22 and publish the lending data required by Section 1071, or to issue any implementing regulations, in
23 the nearly nine years since its passage. By failing to implement Congress’s explicit, mandatory
24 directive, CFPB has unlawfully withheld and unreasonably delayed agency action, violating the APA.

25
26 ¹ See CFPB, *Key Dimensions of the Small Business Lending Landscape* 40 (May 2017),
27 [https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-
Lending-Landscape.pdf](https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf) [hereinafter *Key Dimensions*].

28 ² *Id.*

1 financial crisis and to protect consumers from harmful and predatory practices by financial
2 institutions.

3 17. The Act established the CFPB with the purpose of “ensuring that all consumers have
4 access to markets for consumer financial products and services and that markets for consumer
5 financial products and services are fair, transparent, and competitive.” 12 U.S.C. § 5511(a). The Act
6 gave the CFPB broad regulatory authority with which to accomplish this mission, and also
7 established several mandatory duties consistent with its mission.

8 18. Among these, in order to address an identified problem with the inability of women-
9 owned, minority-owned, and small businesses to access credit on the same terms and conditions as
10 other loan applicants, Congress established requirements for CFPB to collect and publish data
11 regarding lending to these communities.

12 19. These requirements are codified in Section 1071 of the Dodd-Frank Act. *See* 15
13 U.S.C. § 1691c–2.

14 20. Section 1071’s purpose is “to facilitate enforcement of fair lending laws and enable
15 communities, governmental entities, and creditors to identify business and community development
16 needs and opportunities of women-owned, minority-owned, and small businesses.” 15 U.S.C.
17 § 1691c–2(a).

18 21. In furtherance of this purpose, Section 1071 provides that “[e]ach financial institution
19 shall compile and maintain, in accordance with regulations of the Bureau,” data describing loan
20 applications submitted by women-owned, minority-owned, and small businesses, and the action
21 taken on those applications. *See* 15 U.S.C. § 1691c–2(e).

22 22. Such data “shall be submitted annually to the Bureau,” and “shall be ... annually
23 made available to the public by the Bureau, in such form and in such manner as is determined by the
24 Bureau, by regulation.” 15 U.S.C. 1691c–2(f). CFPB must also make it “available to any member of
25 the public, upon request, in the form required under regulations prescribed by the Bureau.” *Id.*

26 **B. CFPB’s Years of “Preliminary” Steps**

27 23. Despite the clear and mandatory duty imposed by the Act, CFPB has never published
28 regulations prescribing requirements for financial institutions’ collections, nor for CFPB’s

1 publication of data regarding lending to women-owned, minority-owned, and small businesses. To
2 the contrary, the only substantive action CFPB has taken is to issue guidance instructing financial
3 institutions not to collect or submit data, the mandatory nature of Section 1071 notwithstanding.³

4 24. Beginning at least as early as December 2012, CFPB reported that it had “begun the
5 planning process to promulgate rules” concerning Section 1071, and was “currently gathering
6 information from stakeholders to better understand the relevant business lending markets, and to
7 determine what data are available and how best to collect those data.”⁴

8 25. This “planning process” stretched on for years. In April 2015, for example, CFPB
9 reported again that it had “begun preliminary planning” for implementing Section 1071.⁵

10 26. In the spring of 2016, CFPB similarly said that it planned to “focus on outreach and
11 research to develop its understanding of the players, products, and practices in the small business
12 lending market and of the potential ways to implement section 1071.”⁶

13 27. By the spring of 2017, these preliminary steps finally seemed to be bearing fruit.
14 CFPB held a field hearing and roundtable on May 10, 2017, in which CRC and its members
15 participated. One week later, CRC and its members and partners convened a panel of small business
16 owners to discuss with CFPB and other banking regulators the challenges small business owners face
17 in accessing bank credit and being relegated to high-cost merchant cash advance and other online
18 lenders, and the need for small business lending data to address these problems.

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23 ³ See Letter from Leonard Kennedy, Gen. Couns., CFPB, to Chief Exec. Officers of Fin. Instits.
24 under Section 1071 of the Dodd-Frank Act (Apr. 11, 2011),
<https://files.consumerfinance.gov/f/2011/04/GC-letter-re-1071.pdf>.

25 ⁴ CFPB, *Fair Lending Report of the Consumer Financial Protection Bureau* 25-26, (Dec. 2012),
https://files.consumerfinance.gov/f/201212_cfpb_fair-lending-report.pdf.

26 ⁵ CFPB, *Fair Lending Report of the Consumer Financial Protection Bureau* 32-33 (Apr. 2015),
27 https://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf.

28 ⁶ CFPB, Spring 2016 Unified Agenda: Business Lending Data (Regulation B),
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=3170-AA09>.

1 28. CFPB thereafter published a “Request for Information” soliciting comments “to
2 enhance our understanding of the small business lending market in order to prioritize and guide
3 research and policy development work for implementation of section 1071.”⁷

4 29. The RFI sought comments regarding, among other things, (i) the definition of “small
5 business” as used in Section 1071, (ii) how to define the data points required to be provided,
6 (iii) who is a “financial institution” engaged in activity covered by the statute, and whether any
7 otherwise qualifying institutions should be exempted, (iv) the financial products offered to small
8 businesses and the challenges faced by small businesses in accessing credit, and (v) what privacy
9 related concerns exist with regard to the Section 1071 data collection, and how those concerns can
10 best be mitigated.⁸

11 30. CFPB held the comment period open for four months. Over this time, it received
12 some 2,709 comments.⁹

13 31. Many of the comments were submitted by women-owned, minority-owned, and small
14 businesses, nonprofit organizations (such as CRC) focused on ensuring access to capital, and
15 community development-oriented financial institutions, and urged CFPB to move expeditiously to
16 implement Section 1071’s commands.

17 32. Plaintiff CRC filed comments urging swift implementation and offering suggestions
18 on the content of implementing regulations. They also participated in a working group that produced
19 a 45-page white paper addressing the data collection questions asked in the RFI.

20 33. Soon after issuing the RFI, CFPB issued a May 2017 report summarizing its research
21 to date on the small business lending landscape. The report recognized that “[s]mall businesses play
22 a key role in fostering community development and fueling economic growth both nationally and in
23 their local communities,” with “[w]omen-owned and minority-owned small businesses” playing a
24

25 ⁷ Request for Information Regarding the Small Business Lending Market, 82 Fed. Reg. 22,318,
26 22,319 (May 15, 2017) [hereinafter RFI].

27 ⁸ *Id.* at 22, 319-22, 322.

28 ⁹ *See* Request for Information Regarding the Small Business Lending Market; Extension, 82 Fed.
Reg. 32,177 (July 12, 2017).

1 particularly important role in supporting local communities.¹⁰ It also concluded that “the ability to
2 access financing plays an important role in allowing small businesses to grow and contribute to the
3 economy.”¹¹ Yet, the CFPB acknowledged, “[d]ata on how small businesses engage with credit
4 markets are incomplete,” and “without more robust data it will continue to be difficult to assess how
5 well the market is meeting the needs of small businesses.”¹²

6 **C. CFPB Delays Section 1071 Implementation Even Further**

7 34. Despite taking these encouraging steps in 2017, CFPB failed to implement Section
8 1071 even at that belated time. Rather, it appears to have moved backward since CFPB’s then-
9 Director was replaced in November 2017 by Acting Director Mick Mulvaney and subsequently
10 Defendant Kraninger.

11 35. Since Acting Director Mulvaney took over, CFPB has actively disengaged from
12 constructive discussions about the importance of Section 1071 implementation.

13 36. In June 2018, Acting Director Mulvaney fired all 25 members of the CFPB’s
14 Consumer Advisory Board, many of whom, including the Executive Director of CRC, had advocated
15 in the Consumer Advisory Board and to CFPB for implementation of Section 1071. In particular, the
16 Executive Director of CRC had, prior to being fired, presented on small business needs, and in
17 particular the need for implementation of Section 1071, at a meeting of the Consumer Advisory
18 Board.

19 37. As of the Fall 2017 Unified Agenda, CFPB intended to take its next “Prerule
20 Activities” in May 2018. Without explanation, its Spring 2018 Unified Agenda pushed this date back
21 by nearly a year, to March 2019. The Fall 2018 Unified Agenda then delayed implementation of
22 Section 1071 even further, moving it to the “Long-Term Agenda” for rules on which they did not
23 expect near-term activity.

26 ¹⁰ *Key Dimensions* at 3.

27 ¹¹ *Id.* at 17.

28 ¹² *Id.* at 3, 39.

1 38. Defendants justified pushing back Section 1071 implementation even further because
2 of a desire to “focus additional resources on various HMDA [Home Mortgage Disclosure Act]
3 initiatives.”¹³

4 39. Unlike Section 1071, CFPB’s current HMDA activities were not mandated by
5 Congress. The Dodd-Frank Act amended HMDA, necessitating amendments to CFPB’s
6 implementing regulation—and CFPB issued a final rule making those amendments in 2015.¹⁴
7 CFPB’s current activities are directed at discretionary amendments to the 2015 final rule. Moreover,
8 any claim by CFPB that it lacks resources to implement Section 1071 is inconsistent with Acting
9 Director Mulvaney’s statement that CFPB has all the resources it needs when he requested \$0 in
10 funding.¹⁵

11 40. In other words, CFPB has chosen to prioritize its discretionary policy preferences
12 over an explicit congressional mandate that it has now failed to implement for more than eight years.

13 **D. Harm to Plaintiff**

14 41. CFPB’s nearly decade-long failure has harmed and continues to harm Plaintiff, as
15 well as the small businesses and communities that it serves. It inhibits Plaintiff’s ability to advocate,
16 educate, and issue reports about access to credit; to advise economic development organizations
17 working with women-owned, minority-owned, and small businesses on getting loans; and to work
18 with lenders to arrange investment in low-income communities and communities of color.

19 42. For example, CRC regularly publishes analyses of access to credit for women-owned,
20 minority-owned, and small businesses. Its previous reports have been based on data collected from
21 the Federal Financial Institutions Examinations Council (“FFIEC”), the Small Business
22 Administration, and similar sources. But as CFPB has recognized, the FFIEC’s datasets “are limited
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25 ¹³ Kelly Cochran, *Fall 2018 Rulemaking Agenda*, CFPB (Oct. 17, 2018),
<https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/>.

26 ¹⁴ See Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66,128 (Oct. 28, 2015).

27 ¹⁵ Jim Puzzanghera, *Mulvaney Requests Zero Funding for the Consumer Financial Protection*
28 *Bureau*, L.A. Times, Jan. 18, 2018, <https://www.latimes.com/business/la-fi-cfpb-mulvaney-funding-20180118-story.html>.

1 in their ability to appropriately convey the full extent of lending to small businesses.”¹⁶ As a result,
2 “with current data it is not possible to confidently answer basic questions regarding the state of small
3 business lending.”¹⁷

4 43. A 2017 survey of CRC’s members who work with small businesses on lending found
5 that 95 percent believed that implementing Section 1071 was critical to ensuring equal access to
6 capital.¹⁸

7 44. This is the exact reason Congress enacted Section 1071: to “enable communities,
8 governmental entities, and creditors to identify business and community development needs and
9 opportunities of women-owned, minority-owned, and small businesses.” 15 U.S.C. § 1691c–2(a).
10 With the data mandated by Section 1071, CRC would produce targeted, data-driven analyses and
11 reports about the credit needs of communities and, in particular, women-owned, minority-owned,
12 and small businesses. CFPB’s failure renders this impossible, limiting CRC’s ability to produce
13 informed analyses and increasing the costs of obtaining necessary information.

14 45. CRC also devotes substantial resources to negotiating agreements with lenders to
15 support the credit needs of minority-owned and small businesses. Through these agreements, CRC
16 obtains commitments to provide loans, investments, and financial services in communities that have
17 historically faced barriers to accessing credit. CFPB’s failure impairs these efforts by making it far
18 harder for CRC to identify the communities most in need and the services that could be most
19 beneficial. This increases the difficulty and resource-intensiveness of each effort CRC undertakes,
20 reducing the number of agreements CRC can pursue; restricting CRC’s ability to address unequal
21 credit access issues in such agreements; and preventing CRC from being able to address these issues
22 adequately in meetings with financial institutions with whom they do not have formal agreements.
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25 ¹⁶ *Key Dimensions* at 28.

26 ¹⁷ *Id.* at 40.

27 ¹⁸ CRC, *Displacement, Discrimination, and Determination: Small Business Owners Struggle to*
28 *Access Affordable Credit* 3 (Sept. 2017), <http://calreinvest.org/wp-content/uploads/2018/08/CRC20Small20Business20Report.pdf>.

1 46. The absence of data transparency also disincentivizes lenders from improving their
2 lending practices. This, in turn, harms not only the affected businesses, but also the communities in
3 which they operate or would operate, as without capital access businesses are unable to hire local
4 workers and serve their communities.

5 47. CFPB’s failure to implement Section 1071 has also impaired the ability of CRC and
6 its members to work with state and local governments to enact policies to improve lending practices.
7 The failure has deprived CRC and its members of data they would use in developing and advocating
8 for effective regulatory measures on multiple fronts, such as regulation of merchant cash advance
9 lenders and high-cost online lenders.

10 48. CFPB’s failure to implement Section 1071 has similarly adversely affected the ability
11 of CRC and its members to work with CFPB to ensure appropriate enforcement of federal fair
12 lending laws and implementation of the Community Reinvestment Act. Without lending data, CRC
13 and its members’ ability to identify areas of concern and file actionable complaints with CFPB is
14 limited, as is CFPB’s ability to investigate and oversee compliance with the Equal Credit
15 Opportunity Act.

16 49. For these reasons, CRC and its members have for decades called for implementation
17 of a data collection requirement for lending to the affected communities, a call that Congress heeded
18 in enacting Section 1071. Since its enactment, CRC and its members have called on CFPB
19 repeatedly to fulfill its statutory duty to implement Section 1071. These calls have been consistently
20 ignored.

21 50. In addition, CRC’s members—which include small business lenders, community
22 development financial institutions, and organizations that work directly to ensure equal access to
23 capital—are directly harmed by Defendants’ failure to implement Section 1071. These members are
24 hindered in their efforts to provide and secure loans for members of the impacted communities
25 because without the data mandated by Section 1071, they have to expend additional organizational
26 resources—and in some respects are entirely unable—to identify particular needs and opportunities.
27 Thus, without implementation of Section 1071, CRC’s members are prevented from effectuating
28

1 their missions by focusing their efforts on the individuals and communities with the greatest need for
2 their services.

3 **V. CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

4 **COUNT ONE**
5 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,**
6 **5 U.S.C. § 706(1)**

7 51. Plaintiff re-alleges and reincorporates the paragraphs above as fully set forth herein.

8 52. The APA provides a remedy to “compel agency action unlawfully withheld or
unreasonably delayed.” 5 U.S.C. § 706(1).

9 53. Section 1071 requires Defendants to collect, maintain, and publish data about credit
10 applications by women-owned, minority-owned, and small businesses. *See* 15 U.S.C. § 1691c-2(e)-
11 (f). It further requires the Bureau to prescribe rules and guidance to carry out these requirements. *Id.*
12 § 1691c-2(g)(1).

13 54. By failing to prescribe rules and guidance or otherwise implement Section 1071 in the
14 more than eight years since Congress mandated that action, Defendants have unlawfully withheld
15 and unreasonably delayed agency action.

16 **COUNT TWO**
17 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,**
18 **5 U.S.C. § 706(2)(A), (C)**

19 55. Plaintiff re-alleges and reincorporates the paragraphs above as fully set forth herein.

20 56. The APA provides a remedy to “hold unlawful and set aside agency action, findings,
21 and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
22 accordance with law,” or “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C.
§ 706(2)(A), (C).

23 57. Section 1071 requires financial institutions to inquire whether businesses applying for
24 loans are women-owned, minority-owned, or small businesses, and maintain a record of the
25 responses. 15 U.S.C. § 1691c-2(b). It further requires financial institutions to compile and maintain
26 specifically enumerated data regarding loan applications. *Id.* § 1691c-2(e). It requires financial
27 institutions to submit this data to the CFPB, which must retain it for three years and make it public
28 annually and on request. *Id.* § 1691c-2(f)(1)-(2).

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