LISC
LOCAL INITIATIVES SUPPORT CORPORATION

January 6, 2022

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

RE: Small Business Lending Data Collection under the Equal Credit Opportunity Act (CFPB-2021-0015)

Dear Director Chopra:

The Local Initiatives Support Corporation (LISC) thanks the Consumer Financial Protection Bureau (the Bureau) for the opportunity to provide comments on the Notice of Proposed Rule Making to collect small business lending data as mandated by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. LISC applauds the Bureau's ongoing efforts to draft regulations to implement Section 1071 amendments to the Equal Credit Opportunity Act (ECOA) requiring that financial institutions collect and report data on certain business credit applications to the Bureau. Implemented strategically, we believe the proposed rule will further the enforcement of fair lending laws and equip stakeholders with access to critical data in alignment with the statutory obligation to "facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses."

Background on LISC

LISC is a nonprofit housing and community organization and certified Community Development Financial Institution (CDFI) with offices in 38 cities throughout the country and a rural network encompassing 95 partners serving 45 different states and Puerto Rico. LISC's work supports a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, community safety, and community health. LISC mobilizes corporate, government, and philanthropic support to provide local community development organizations with loans, grants, equity investments, technical assistance, and policy support.

Small business lending is essential in LISC's community and economic development toolkit. Our inclusive economic development framework enhances the ability of people, places, and businesses to achieve shared prosperity. As one of the largest CDFIs in the nation, we work in partnership with local grassroots groups, community-based organizations, financial institutions, and government agencies to finance programs and projects that leave a positive long-term impact. LISC also supports the development of more extensive coordinated assistance networks for enterprises overlooked by conventional financing channels such as businesses in low- and moderate-income communities and businesses owned by veterans, women, and minority entrepreneurs.

LISC supports job growth in underserved communities in urban and rural areas by helping equip local businesses with the resources they need to grow. A LISC affiliate, immito, specializes in SBA 7a lending and provided over $50 million of Paycheck Protection Program (PPP) loans to 366 small businesses and nonprofits during the pandemic. LISC Strategic Investments, LISC's national fund management business group, leads our managed impact investment funds, community investment accelerators, and equity investments focused on supporting underserved businesses. LISC and its affiliates collectively provided $400 million in loans, grants, and technical assistance funding to over 26,000 small businesses in 2020, the vast majority of which supported minority-owned businesses.

With four decades of experience investing in communities' social and economic infrastructure, LISC recognizes the promise of the proposed rule to help close discriminatory financing gaps and meet the needs of historically underserved entrepreneurs and communities.

Specific Comments

We are pleased to offer comments to the Notice of Proposed Rule Making (NPRM), informed by our experience as a small business lender and through our work dedicated to expanding the capacity of smaller community-based financial institutions across the nation.

LISC believes that the Bureau's comprehensive proposal will help close longstanding access to capital gaps, particularly for entrepreneurs of color. Specifically, the proposed NPRM requirements will provide communities, governmental entities, and other stakeholders with the data needed to strengthen fair lending laws, address structural challenges, and advance access to capital opportunities for underserved entrepreneurs. The Bureau's leadership in significantly increasing the public data on small business lending practices will afford greater lender accountability and expand entrepreneurial opportunities while strengthening local economies. We agree with the Bureau that the NPRM provides a strong foundation to build a comprehensive and annual database on lending to remove barriers to fair borrowing for women-owned, minority-owned, and other underserved small businesses.

LISC is broadly supportive of the proposed rule and appreciates the Bureau's attention to the need to balance robust data collection with undue administrative burdens that may have the unintended effect of restricting access to small business credit.

Definition of a Financial Institution

LISC commends the Bureau's decision to adopt a broad definition of a financial institution to include a wide range of lenders that small business owners regularly access. The Bureau, small businesses, and other stakeholders are best served by ensuring that the Section 1071 rule applies to banks and credit unions, online financial technology companies, other non-depository institutions, community development financial institutions, and public sector-based lenders.

We believe that the proposed definition of a covered financial institution will facilitate robust data collection by implementing a clear threshold that would equally apply to depository and non-depository institutions.

Covered Financial Institutions

The general statutory allowances of Section 1071 allow the Bureau to exempt certain financial institutions from reporting and data collection requirements. LISC appreciates the NPRM efforts to adopt a workable threshold while remaining consistent with the legislative intent. We believe that the Bureau's proposal to adopt an exemption activity-based threshold for financial institutions originating less than 25 small business loans in each of the two preceding calendar years meets this goal. LISC agrees with the Bureau that this proposal will ensure minimal exemptions to reporting and data collection requirements for financial institutions that regularly engage in small business lending, supporting the fair lending and community development goals of Section 1071.

LISC further notes that, by incorporating a threshold of 25 or more covered credit transactions annually, nearly 70 percent of all banks would be covered. LISC shares the concern of the National Community Reinvestment Coalition (NCRC) that if the Bureau increased the exemption threshold to 50 loans, coverage would drop to just 52 percent of all banks. Accurately measuring access to credit and pursuing fair lending enforcement requires robust data collection. We believe that raising the threshold would substantially diminish insights gained as many lenders and loans would lack oversight, particularly within smaller cities and rural areas, and would undermine the fair lending and community development goals of Section 1071.

Covered Applications

LISC appreciates the Bureau's proposed definition of a covered application that is consistent with Regulation B's definition of an application as "an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested." We believe that this definition aligns with Section 1071 requirements for financial institutions to collect, maintain, and report on specific information upon an application for small business credit. We agree with the comments made by the Opportunity Finance Network that this proposal strikes the right balance by requiring data collection only after an actual request for credit has occurred. LISC appreciates the distinctions made by the Bureau to allow for data collection amongst five distinct categories: originated; approved but not accepted; denied; withdrawn by the applicant; and incomplete.

The Bureau's proposal to include data on incomplete and withdrawn applications will expand the amount of meaningful data and assist in identifying patterns of discrimination. LISC agrees with Accion Opportunity Fund's (AOF) comments that the Bureau's determination to report denials due to incompleteness as incomplete applications instead of denied is in line with Section 1071 intent. This determination will further accurate data collection by reserving denials for creditworthiness determinations. LISC also supports the Bureau's proposal to report applicant rejections of counteroffers as denied to prevent incentivizing financial institutions to offer unfavorable terms to avoid reporting denials.

Covered Credit Transactions

LISC commends the Bureau's decision to include merchant cash advance (MCA) transactions, provided by companies that advance funds to small businesses and then receive a daily or periodic percentage of those small businesses' receipts, as covered transactions. LISC agrees with the Responsible Business Lending Coalition that these products disproportionately impact small and minority-owned businesses and can be high cost and abusive. We agree with AOF that the CFPB should similarly consider including factors as covered transactions and require data reporting to monitor this higher-cost and opaque credit product.

Covered Small Businesses

A clear and commonly understood definition best serves the Bureau, small business lenders, and entrepreneurs. LISC encourages the Bureau to reconsider its proposed definition of a small business. We share NCRC and AOF's concerns that the current proposal includes only those businesses with $5 million or less in gross annual revenue for its preceding fiscal year falls short of affording the comprehensive data necessary.

LISC appreciates the need to adopt an expansive and simplified definition of a small business and maintain consistency with the SBA size standards. We urge the Bureau to adopt the threshold set forth in the Small Business Regulatory Enforcement Fairness Act (SBREFA) Outline and define small businesses as those with less than 500 employees and less than $8 million in gross annual revenue for all industries. The Bureau's data demonstrates that adopting this definition would include over 99% of minority and women-owned businesses.

Proposed Requirements to Collect and Report Data

LISC commends the Bureau's proposals on reporting data points, and we agree that the proposed discretionary information would further fulfill Section 1071 goals. As the NPRM recognizes, it is necessary to collect key underwriting variables to allow analysts to assess if women-owned and minority-owned businesses are receiving a fair share of credit when compared to similarly qualified male-owned or White-owned companies.

LISC appreciates the four discretionary data points proposed within the NPRM, which include (1) pricing, (2) time in business, (3) North American Industry Classification System (NAICS) code, and (4) number of employees. It is particularly necessary to collect information on the number of employees, time in business, and pricing to further the insights gained from the dataset. We are encouraged by the Bureau's decision to include the number of employees as it will help provide a greater understanding of owner-operated and microbusiness needs and accessibility to affordable credit. Although, we urge the Bureau to expand the NPRM's proposal to include collecting data on credit scores, similar to the Home Mortgage Disclosure Act (HMDA). By doing so, the Bureau would further the ability of stakeholders to better compare approval and pricing discrepancies amongst similarly qualified applicants.

We support the Bureau's proposal to collect several data points for pricing, including interest rates, fees, loan terms, and the presence of prepayment penalties. However, we also recognize the outstanding need to require the collection and public reporting of the Annual Percentage Rate (APR) given its ability to summarize the loan price succinctly. The Bureau can help expand access to commonly understood information and better identify disproportionately high costs for traditionally underserved small businesses by including APR. LISC agrees with the NCRC that pricing information is needed to monitor loans' affordability and allow stakeholders to take action if lending is not sustainable in underserved communities.

LISC believes that the Bureau's proposal to require the collection of racial and ethnic categories in line with HMDA will help reveal distinct experiences within the small business lending market while affording familiar reporting standards. We also support the Bureaus' proposal to further disaggregate racial and ethnic categories into subgroups and believe that this data would more accurately capture potential patterns of discrimination. LISC shares the Opportunity Finance Network's concern on requiring lenders to collect at least one principal owner's race and ethnicity via visual observation or surname if the financial institution meets with any principal owners in person or via electronic media with an enabled video component. We believe this proposal may lead to inaccuracies that undermine data quality, and encourage the Bureau to instead require that covered institutions request that applicants self-report this information.

The Bureau has an opportunity to improve its data collection on gender identity and sexual orientation and better account for small businesses owned by people with intersectional identities and orientations prior to releasing the final rule. LISC also agrees with the National Disability Institute's comments that the Bureau should expand its proposals to include information on whether a person with a disability owns the small business.

LISC strongly supports the Bureau's proposal to collect a data point categorizing lenders by type. The proposed list includes: (i) bank or savings association, (ii) minority depository institution (MDI), (iii) credit union, (iv) non-depository institution, (v) CDFI, (vi) other nonprofit financial institution, (vii) Farm Credit System institution, (viii) government lender, (ix) commercial finance company, (x) equipment finance company, (xi) industrial loan company, (xii) fintech, and (xiii) other. We believe this essential data will help distinguish which lending model(s) are effective in reaching underserved populations. Finally, LISC agrees with the Hope Policy Institute's comments that the Bureau should reconsider the use of a "fintech" label for a lender characteristic and instead use the more accurate label of "online lender."

Proposed Requirements to Report Data to the Bureau and Provisions Regarding Availability and Publication of Data

LISC appreciates the Bureau's attention to the process by which financial institutions will report data and the necessity of undertaking "balancing tests" on the public availability of data collected. We support the NPRM goals of balancing public disclosure against the interest in protecting the privacy of small business owners who apply for credit. LISC urges the Bureau to create a strong presumption in favor of disclosure to foster broader accountability and agrees with the National Association of Latino Community Builder's (NALCAB) comments on the benefits of doing so.

Interagency Coordination

A successful implementation of Section 1071 will necessitate broad agency coordination of data collection and reporting requirements. LISC encourages the Bureau to specifically consider how Section 1071 informs and aligns with data collection obligations under the Community Reinvestment Act (CRA) and to coordinate with the CRA regulatory agencies of the Office of Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation. The CRA has been a critical resource that facilitates private capital flow into underinvested communities and businesses. Section 1071 data should align with CRA regulations to ensure that financial institutions covered by the CRA continue to meet the credit and community development needs of small businesses, particularly women-owned and minority-owned enterprises.

LISC recommends that the Bureau continue to work with the U.S. Department of Treasury's CDFI Fund to ensure Section 1071 and CDFI Fund reporting requirements are aligned. CDFIs are currently required by federal law to collect, maintain, and report specific demographic data about small businesses and consumers to ensure they serve their target communities. This information is collected annually through the CDFI Fund Transaction Level Report (TLR) and includes data on demographics, loan amounts, terms, and pricing of small business borrowers. CDFIs have long sought clear guidance from the Bureau on compliance with overlapping statutory requirements from the CDFI Fund, EOCA, and Regulation B. LISC recommends the Bureau utilize the Section 1071 rulemaking process to clarify data collection requirements in coordination with the CDFI Fund and avoid potential conflicts for certified CDFIs.

Conclusion

LISC appreciates the opportunity to provide these comments to the Bureau. We are strongly supportive of the Bureau's NPRM and commends the Bureau for its continued commitment to implement the proposed rules in a manner that will further the fair lending and community development goals of Section 1071.

Please contact Michelle Harati (mharati@lisc.org), LISC Senior Policy Officer, if you need additional clarification on the letter's recommendations.

Sincerely,

Matt Josephs

Senior Vice President for Policy