LISC
LOCAL INITIATIVES
SUPPORT CORPORATION

14 December 2020

Director Kathy Kraninger
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Small Business Advisory Review Panel for Consumer Financial Protection Bureau Small Business Lending Data Collection Rulemaking (Section 1071)

Dear Director Kraninger:

The Local Initiatives Support Corporation (LISC) thanks the Consumer Financial Protection Bureau (the Bureau) for the opportunity to provide feedback on the Outline of Proposals under Consideration and Alternatives Considered as part of the Bureau's Small Business Lending Data Collection Rulemaking. We appreciate the Bureau's ongoing efforts to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and continued engagement with small business stakeholders as the development of rules and guidance occurs.

Background on LISC

LISC is a nonprofit housing and community organization and certified community development financial institution (CDFI) with offices in 36 cities throughout the country and a rural network encompassing 92 partners serving 45 different states. 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 an essential instrument in LISC's community development toolkit. Our inclusive economic development framework expands people, places, and businesses' ability to achieve shared prosperity so that all can thrive. As one of the largest CDFIs in the nation, we work in partnership with local grassroots groups, community-based financial institutions, and government agencies to finance programs and projects that leave a positive long-term impact. Our affiliate immito specializes in SBA 7(a) lending and provides direct financing to small businesses throughout the country. 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.

Equitable access to capital is critical to supporting small businesses. Implemented strategically, Section 1071 promises to 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. Affordable financing for entrepreneurs expands employment and wealth-building opportunities while strengthening local economies. Yet, a pervasive gap in financing regularly limits business growth in low- and moderate-income communities and businesses owned by veterans, women, and minority entrepreneurs. Section 1071 is a critical tool in addressing these barriers. As outlined, the proposals will lead to a significant increase in public data available on small business lending practices and afford greater lender accountability.

Specific Comments

We are pleased to offer comments to several questions posed in the Outline of Proposals under Consideration and Alternatives Considered. We offer these comments 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 is broadly supportive of the proposals under consideration and appreciates the Bureau's attention to the need to balance robust data collection with undue administrative and compliance burdens which may have the unintended effect of restricting access to small business credit.

1. Are there any relevant Federal laws or rules which may duplicate, overlap, or conflict with the Bureau's proposals under consideration beyond those discussed in Appendix C? How might the Bureau's proposals under consideration for implementing section 1071 impact other aspects of ECOA/Regulation B compliance?

LISC appreciates the Bureau's consideration of other Federal statutes, regulations, and rules that may lead to duplications or conflict in the implementation of Section 1071. Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect data on applications for business credit for women-owned and minority-owned enterprises, and small businesses to "facilitate the enforcement of fair lending laws, and to enable communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses," and implementation of the rule will provide the financial industry and other stakeholders with greater transparency. Successful implementation of Section 1071 necessitates broad agency coordination of data collection and reporting requirements.

LISC encourages the Bureau to specifically consider 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 rules must 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 the Bureau work with the U.S. Department of Treasury's CDFI Fund to ensure Section 1071 and CDFI Fund reporting requirements are aligned. The CDFI Fund was established by Congress in 1994 to "promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions."[1] The CDFI Fund provides financial assistance to eligible CDFIs who, in turn, provide capital, credit, and financial services in distressed communities and to underserved individuals throughout the country. There are over 1,100 certified CDFIs across the country, ranging from credit unions to small nonprofit loan funds to large national organizations. CDFIs serve borrowers and geographic areas that are not readily served by mainstream financial institutions, and in many cases, provide small business financing.

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.[2] CDFI Fund regulations state that certified CDFIs receiving assistance:

"Shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program."[3]

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. The CDFI Fund is also proposing that all certified CDFIs will have to submit TLR reports in the near future, regardless of whether they are an award recipient. 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.

Recommendation: LISC encourages continued interagency cooperation with the CRA regulatory agencies and the CDFI Fund to develop shared definitions, streamlined reporting requirements, and alignment of reporting timelines.

2. Please provide feedback and information on the approach the Bureau is considering regarding the scope of its section 1071 rulemaking, particularly the proposal to limit reporting to applicants that satisfy the Bureau's definition of a "small business." Are there any alternative approaches the Bureau should consider?

LISC appreciates the Bureau’s consideration of limiting reporting to applicants that meet the definition of a small business, which is to be determined by the Section 1071 rulemaking process. We agree with the Bureau's proposed scope that would require financial institutions to report on applications for credit by a small business, but not for women- and minority-owned businesses that are not small. LISC also

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[1] Riegle Community Development and Regulatory Improvement Act of 1994

[2] Ibid.

[3] 12 C.F.R. § 1805.803(b).

agrees that the proposed scope aligns with Dodd-Frank's intent as it would capture all small-business and nearly all women- and minority-owned businesses.

Recommendation: LISC recommends the Bureau adopt the proposed scope to limit Section 1071 data collection and reporting requirements for small business credit applications at covered financial institutions.

4. Please provide feedback and information on the approach the Bureau is considering regarding the general definition of "financial institution," along with any alternative approaches the Bureau should consider.

LISC encourages the Bureau to adopt an expansive and broad definition of a financial institution to include a wide range of lenders that are regularly accessed by small business owners. Section 1071 defines the term "financial institution" as "any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity." The legislative intent mandates a broad application.

The Bureau, small businesses, and other stakeholders would be best served by adopting a financial institution's definition consistent with Section 1071. This definition would enable a comprehensive application of the rule's data collection and reporting requirements, including depository institutions (DIs) (i.e., banks, savings associations, and credit unions), online lenders/platform lenders, community development financial institutions (both DIs and non-DIs), lenders involved in equipment and vehicle financing (captive financing companies and independent financing companies), commercial finance companies, governmental lending entities, and nonprofit, non-DI lenders.

Recommendation: LISC recommends the Bureau adopt the proposed definition of financial institution to maintain consistency with Section 1071 to facilitate robust data-collection and further equitable access to small business capital.

5. Please provide feedback and information on the approach the Bureau is considering regarding the possible exemptions for financial institutions (FI) based on size and/or activity, along with any alternative approaches the Bureau should consider.

The general statutory allowances of Section 1071 provide the Bureau with the ability to exempt certain financial institutions from reporting and data collection requirements. LISC appreciates the Bureau's consideration in adopting a workable threshold while remaining consistent with the legislative intent. While we agree that an exemption for smaller lenders is necessary, LISC is concerned with making exemptions on asset size. An asset-based approach would exempt a large segment of the financial industry as the Bureau would not apply an asset threshold to non-depository institutions. This approach may also have the unintended effect of exempting small community-based banks that primarily engage in small business lending and reduce the collection of meaningful data.

LISC encourages the Bureau to adopt an activity-based exemption that would limit reporting and data collection requirements to financial institutions that regularly engage in small business lending. An activity-based approach is a clear threshold that would more equally apply to depository and non-depository institutions. Similarly, the Bureau should strive for minimal exemptions to support the fair lending and community development goals of Section 1071.

Recommendation: LISC encourages the Bureau to adopt the lowest exemption activity-based threshold proposed by establishing an exemption only for financial institutions originating less than 25 small business loans annually.

14. Please provide feedback and information on the approach the Bureau is considering regarding the definition of "small business," along with any alternative approaches the Bureau should consider. For example, should the Bureau include or exclude applications from particular types of borrowers from the scope of its eventual 1071 rule in addition to or differently than as described herein?

LISC appreciates the Bureau's consideration of alternatives for how best to define a small business in accordance with Section 1071. Section 1071 defines a small business in reference to the Small Business Act's definition of "a business entity organized for profit, with a place of business located and primarily operates in the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."[4]

A clear and commonly understood definition best serves the Bureau, small business lenders, and entrepreneurs. LISC encourages the Bureau to adopt the second proposal regarding the definition of small business, which aligns with the Small Business Administration's (SBA) definition. This proposal would define a small business based on the number of employees or average annual revenue depending on whether the company is engaged in manufacturing or services. Specifically, it would define a small business within manufacturing and wholesale industries as those with less than 500 employees and those with less than $8 million in gross annual revenue for all other industries. LISC also encourages the Bureau to utilize the proposed method of self-identification of small business status to streamline compliance requirements and remove undue administrative burdens on entrepreneurs and financial institutions.

We appreciate the Bureau's clarity that adopting this definition would include over 99% of minority and women-owned businesses. LISC encourages the Bureau to ensure that final descriptions are also inclusive of owner-operated companies as many minority and women-owned businesses fall within this category.

Recommendation: LISC recommends that the Bureau adopt an expansive and simplified definition of a small business and maintain consistency with the SBA size standards.

[4] https://www.govinfo.gov/app/details/CFR-2011-title13-vol1/CFR-2011-title13-vol1-sec121-105

17. Please provide feedback and information on the approach the Bureau is considering regarding the definitions of "women-owned business," "minority-owned business," and "minority individual," along with any alternative approaches the Bureau should consider.

The Bureau's proposal to adopt guidance that defines a minority individual in line with the Home Mortgage Disclosure Act's (HMDA) aggregate categories is welcomed. This proposal defines a minority individual as a natural person who is Black or African American, Asian, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or Hispanic or Latino. It also clarifies that a multiracial person could be considered a minority individual. Adopting this definition would benefit the financial industry as it would build upon existing reports and reporting systems.

LISC also encourages the Bureau to adopt the definition of minority- or woman-owned status as determined by ownership or control of more than 50% of the enterprise. Adopting this definition is consistent with CDFI Fund definitions and would build upon existing definitions and reporting systems. We believe that the collected data should be disaggregated upon collection and reporting to allow for public dissemination of lending practices and help identify racial discrepancies.

Recommendation: LISC recommends that the Bureau utilize existing HMDA and CDFI Fund definitions of women-owned business, minority-owned, business, and minority individual.

23. Please provide feedback and information on the approach the Bureau is considering regarding the definition of "application," along with any alternative approaches the Bureau should consider.

LISC appreciates the Bureau's considerations on defining an application in line with the Section 1071 requirement for financial institutions to collect, maintain, and report on specific information upon an application for small business credit. LISC is concerned with the alternative proposal to limit data collection and reporting to completed applications, defined in Regulation B as the creditor having received "all the information that the creditor regularly obtains and considers." This proposal could exclude applicants that may have experienced lender discrimination and were dissuaded from completing their application. In turn, this would lessen the amount of meaningful data and undermine our ability to further fair lending laws.[5]

Recommendation: LISC encourages the Bureau to adopt the proposed definition 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."[6]

[5] https://www.consumerfinance.gov/rules-policy/regulations/1002/2/

[6] Ibid.

48. Please provide feedback and information on the approach the Bureau is considering for each discretionary data point, along with any alternative approaches the Bureau should consider.

The Bureau's proposals on discretionary data points are welcomed, and LISC agrees that the suggested information would further fulfill Section 1071 goals of fair lending enforcement and provide stakeholders with access to the data needed to identify needs and opportunities for small businesses. LISC supports the four discretionary data points considered, 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. The number of employees would help provide a greater understanding of microbusinesses' needs and accessibility, typically defined in terms ranging from less than 5 to 10 employees, one or more of whom is the owner. Time in business and pricing data are especially critical to fostering equitable access to affordable loan capital. LISC supports the inclusion of pricing data to collect and report the Annual Percentage Rate or APR of a small business loan. LISC also encourages the Bureau to consider collecting data on creditworthiness to expand the ability to determine discrepancies amongst applicants, approvals, and pricing.

Recommendation: LISC recommends that the Bureau adopt the proposed discretionary data points and explore requiring data on credit profiles.

Thank you for considering these responses on how the Bureau can best implement Section 1071 to support small businesses, particularly minority-owned and women-owned businesses. Please contact Michelle Harati (mharati@lisc.org), LISC Policy Officer, if you need additional clarification on the letter's recommendations.

Sincerely,

Matt Josephs

Senior Vice President for Policy