SMALL BUSINESSES, BIG IMPACT: ENSURING SMALL AND MINORITY-OWNED BUSINESSES SHARE IN THE ECONOMIC RECOVERY

VIRTUAL HEARING

BEFORE THE

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SMALL BUSINESSES, BIG IMPACT: ENSURING SMALL AND MINORITY-OWNED BUSINESSES SHARE IN THE ECONOMIC RECOVERY

Thursday, February 17, 2022

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:08 p.m., via Webex, Hon. Ed Perlmutter [chairman of the subcommittee] presiding.

Members present: Representatives Perlmutter, Scott, Foster, Vargas, Lawson, Casten, Pressley; Luetkemeyer, Posey, Williams of Texas, Loudermilk, Budd, Kustoff, and Rose.

Ex officio present: Representative Waters.

Chairman PERLMUTTER. The Subcommittee on Consumer Protection and Financial Institutions will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "Small Businesses, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery."

Legislation noticed with today's hearing includes: H.R. 2540, the Small Business Lending Fairness Act, by Representative Velazquez; H.R. 6054, the Small Business Lending Disclosure Act, by Representative Velazquez; a discussion draft entitled, "the Small Business Fair Debt Collection Protection Act," by Representative Lawson; a discussion draft entitled, "the Promoting Fair Lending to Small Businesses Act"; and a discussion draft entitled, "the Small Business Lender Registry."

I now recognize myself 4 minutes to give an opening statement.

As the pandemic and economic recovery continue to evolve, so do the challenges facing small, minority- and women-owned businesses.

First, let's remember how far we have come. In April of 2020, there was a panic in the stock market, businesses were laying off millions of employees, and Congress, Treasury, and the Small Business Administration (SBA) were working tirelessly to get money out the door to stabilize the economy and save jobs.

In the initial wave of support through the CARES Act, businesses who had the best relationships with financial institutions were the first to receive assistance like the Paycheck Protection Program (PPP), while in many cases, the smallest businesses, including many minority- and women-owned businesses, were the last to receive support, and some were left out entirely.

In subsequent aid, Congress targeted harder-to-reach communities through policies like set-asides for Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs). The American Rescue Plan replenished funding for targeted economic injury disaster loan advancement payments, and reauthorized the State Small Business Credit Initiative (SSBCI), which is still in its early stages and will enable State Governments to support lending and investments to small businesses as the recovery continues.

While the CARES Act kept many businesses alive, the American Rescue Plan is helping businesses and communities recover and grow. The unemployment rate fell from a high of 14.7 percent in April 2020, to 4 percent in January 2022. Gross domestic product (GDP) grew 6.9 percent last quarter, and new business formation hit a new record of 5.4 million in 2021. At the same time, businesses face ongoing challenges due to supply chain disruptions, workforce shortages, inflation, and new COVID mutations.

One group of small businesses that continues to be left behind in Federal support is State legal cannabis businesses. States and Territories continue to legalize medical and adult-use cannabis. Mississippi just passed legislation establishing a medical cannabis program this month.

Yet, we will not have even resolved the conflict between Federal and State banking laws. Not only must these businesses contend with the ongoing pandemic and other economic uncertainties without being eligible for any Federal small business aid, but they must do so while being shut out of the banking system.

The public safety threat of forcing this industry to do business in all cash is turning into a public safety nightmare. The recent rash of robberies and attacks in California, Oregon, and Washington are evidence of the dire need to enact legislation regarding this public safety issue.

Access to capital and other financial services is critical for all small businesses to share in the continued economic recovery. Whether it is getting a loan to start a new business, accessing credit to cover expenses while supply chains catch up, or just having basic business bank accounts, access to fair, transparent, and affordable financial services is important to ensuring an equitable and far-reaching recovery.

Today's hearing will examine the availability of credit and financial services as well as potential gaps in legal protections for small business owners. Additionally, the hearing will review market transparency, including demographic data reporting and financial challenges that small businesses face as the pandemic persists.

With that, I would normally yield to the ranking member of the subcommittee, Mr. Luetkemeyer, for his opening statement, but he is not on yet.

So, Madam Chairwoman, I would like for you to speak if you are prepared to give your 1-minute opening statement.

The Chair now yields 1 minute to the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters.

Chairwoman WATERS. Thank you very much, Chairman Perlmutter, for holding this important hearing on small businesses and the challenges they face when applying for loans. I think you know, and everybody knows by now that our committee has it as a high priority to see to it that we correct some of the wrongs and the discriminatory practices that have been employed by the banks.

But in addition to that, we saw, when we responded to the pandemic, how the big banks who were handling the PPP program took care of their concierge clients and left our small businesses and our minority businesses basically hanging. And we had to come up with $60 billion more—I worked with Ms. Velazquez to do that—so that we could put money into our MDIs, our CDFIs, our credit unions, and our community banks. And they got that money out to our small businesses very quickly.

In addition to that, we have $12 billion that we have put together. I worked with Mr. Warner to do that, and of that $12 billion, $1.25 billion has been given out already, and the rest will go through the Treasury Department.

So, Mr. Perlmutter and most of our members on this committee are poised at working to do everything that they can to support our small businesses.

I thank you so very much, Mr. Perlmutter, for this hearing, and I yield back.

Chairman PERLMUTTER. Thank you, Madam Chairwoman.

We still don't have Mr. Luetkemeyer. So, I would ask Mr. Williams, Mr. Posey, or any of the Republicans if they would like to do an opening statement.

We will allow Mr. Luetkemeyer, when he gets onto the platform, to do his 5 minutes when he arrives. I am not exactly sure what the technical difficulty is. Unless we have a volunteer, why don't we go forward. Let me introduce our witnesses, and maybe he will be on by then.

I am pleased to welcome each of our witnesses, and I want to introduce our panel.

Marla Bilonick is the president and CEO of the National Association for Latino Community Asset Builders, the hub of a national network of more than 130 mission-driven organizations. Prior to her current role, she served as the executive director of the Latino Economic Development Center, leading regional efforts on the economic and social advancement of low- to moderate-income Latinos in the Washington, D.C., and Baltimore areas.

Stephanie DeVane is the vice president for entrepreneurship and business development at the National Urban League. Ms. DeVane oversees management, oversight, and advocacy on behalf of 12 entrepreneurship centers, which provide capacity-building and programming subgrants and technical assistance.

Amber Littlejohn is the executive director of the Minority Cannabis Business Association (MCBA). Ms. Littlejohn is an attorney and an advocate with more than 15 years of experience in embattled industries. Prior to her current role, she developed and implemented MCBA's Federal Advocacy Program as the organization's senior adviser.

Dr. Alicia Robb is the founder and CEO of Next Wave Impact. Dr. Robb manages an investment portfolio that funds women- and minority-owned businesses. She is also the research director and a research fellow at the University of Colorado Boulder.

Dane Stangler is the director of strategic initiatives at the Bipartisan Policy Center. Prior to his current position, Mr. Stangler was president and chief policy officer at Startup Genome, the Visiting Vorzimer Professor at the Long Island University, and vice president of research & policy at the Kauffman Foundation.

Witnesses are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer on your screen that will indicate how much time you have left. I would ask that you be mindful of the timer, and quickly wrap up your testimony when your time has expired, so that we can be respectful of both the witnesses' and the subcommittee members' time.

When Mr. Luetkemeyer arrives, we will not interrupt a particular person's testimony, but we will insert his opening statement between the panelists' testimony.

And without objection, your written statements will be made a part of the record.

Ms. Bilonick, you are now recognized for 5 minutes for your testimony. You will see the timer on the screen. We ordinarily would have a chime when your 5 minutes is up. We don't have that, so I will have to kind of enforce the time today with my hammer, and we will let you know when your 5 minutes is up.

So, Ms. Bilonick, you are now recognized for 5 minutes for an oral presentation of your testimony.

STATEMENT OF MARLA BILONICK, PRESIDENT AND CEO, NATIONAL ASSOCIATION FOR LATINO COMMUNITY ASSET BUILDERS (NALCAB)

Ms. BILONICK. Thank you very much.

Good afternoon, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee. It is my honor to be addressing you today for this discussion on ensuring that small and minority-owned businesses have an equal share in our nation's economic recovery.

I am speaking as a former practitioner and current president and CEO of the National Association for Latino Community Asset Builders (NALCAB), whereby I represent our member network of over 150 nonprofits nationwide that support small Latino-owned and other underserved businesses that continue to weather the adverse economic effects of the COVID-19 pandemic.

NALCAB's mission is to dramatically scale the flow of public and private-sector capital through community-based organizations to advance economic mobility of Latinos in the United States. As a grant maker and CDFI lender, NALCAB strengthens and coordinates the capacity of our network to deploy capital. This year, we will launch our National Alliance of Hispanic CDFI Executives, NAHCE, convening the largest group of Latino-led and Latino-serving CDFIs in the United States.

Since 2008, NALCAB has provided our network members with over $25 million in grants, and, with NALCAB's support, member organizations have secured more than $450 million for affordable housing, small business, and financial capability programs.

We know that the strength of the U.S. economy relies on the fast-growing Latino community's hard work, entrepreneurial spirit, spending power, and leadership. While the Latino community is heralded for starting small businesses at rates higher than other ethnic groups, the adverse economic effects of the pandemic have disproportionately impacted Latino business owners.

Due to time constraints, I will ask that you refer to my written remarks for data on these impacts that are cited therein.

We commend the Federal Government for its swift and responsive funding and programming to offset the economic impact of the COVID-19 pandemic. As we begin another year of living with the pandemic, we wanted to provide some constructive feedback on select recovery programs.

PPP has been one of the most important sources of recovery support for businesses and their employees as they have struggled to stay afloat during the pandemic. However, the exclusion of CDFIs in the first round of PPP lending delayed relief to countless small and minority-owned businesses that looked to CDFIs as their lenders of first resort and that were turned away by commercial banks.

In the current phase of PPP forgiveness, our network reports that the majority, over 90 percent of our CDFI-member PPP loans made have been forgiven for their clients. For clients who were denied forgiveness, they cited a lack of proper documentation, language barriers, a misunderstanding of compliance with program rules, and technology barriers as some of the reasons for PPP loans not being forgiven.

These observations provide useful guidance as we move into this next stage of the small business recovery and are the basis of our recommendations.

The SBA's restaurant revitalization fund, which was cut from $60 billion to less than half of that, $28 billion, provided much-needed pandemic recovery support to the restaurant industry. These funds were expended within one month of the program's launch. It is urgent that this funding be replenished, and it is very relevant to the Latino community in terms of high Latino business ownership and employment.

The Department of the Treasury's State Small Business Credit Initiative (SSBCI), part of the American Rescue Plan Act, allocated $10 billion to fund State, Territory, and Tribal Governments' small business credit support and investment programs. The program's success will hinge on its ability to involve mission-based investors working with and for communities.

And I will go into our recommendations.

Of the small businesses surveyed by the Small Business Administration, 37 percent of respondents stated that they didn't apply for PPP because they did not feel they qualified for the loan or for forgiveness. Another 23 percent said they didn't apply because the program process was too confusing, and 13 percent responded that they could not find a PPP lender.

In developing future recovery programs in legislation, the barriers to access from the point of view of ease or lack of ease in applying should be considered seriously. In addition, efforts must be made to provide equal access to information on programs as well as clear direction on what entities are offering the program within communities.

The new SBA Community Navigator Model provides promise insofar as it aims to better connect small businesses to SBA programming through a hub and spoke model that is firmly rooted in communities. We gladly report that several NALCAB members are partners in the community navigator programs that are currently being launched nationwide. We also commend the SBA for proactively pursuing community-based organizations' input.

We are currently in bi-weekly discussions with the SBA's Office of Capital Access to provide feedback on and input into current and upcoming SBA products. The CDFI-funded Community Development Advisory Board, which I chair, is also a proactive channel for gaining input on program development from a diverse set of community-grounded stakeholders.

Small business lending activity and practices have gone without meaningful monitoring for far too long. Section 1071 of the Dodd-Frank Act mandates the collection of and dissemination of small business lending data 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.

NALCAB has been a leader in advocacy for Section 1071 of the Dodd-Frank Act to be implemented. Once implemented, Section 1071 will prove what community-based small business lenders have only been able to rely on anecdotal and self-reported evidence to justify, which is the fact that ethnic, racial, and gender biases negatively impact the ability for minority-owned small businesses to access capital.

Chairman PERLMUTTER. Ms. Bilonick?

Ms. BILONICK. Yes?

Chairman PERLMUTTER. Your 5 minutes has expired, and I would ask that—the rest of your testimony is written, I believe, and—

Ms. BILONICK. Yes.

Chairman PERLMUTTER. —you will get plenty of questions.

Ms. BILONICK. Okay.

[The prepared statement of Ms. Bilonick can be found on page 38 of the appendix.]

Chairman PERLMUTTER. Thank you for your testimony.

I now will turn to Ms. DeVane for 5 minutes for an oral presentation of her testimony.

STATEMENT OF STEPHANIE DEVANE, VICE PRESIDENT, ENTREPRENEURSHIP & BUSINESS DEVELOPMENT, NATIONAL URBAN LEAGUE (NUL)

Ms. DEVANE. Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you for the opportunity to testify. I am Stephanie DeVane, vice president of entrepreneurship & business development at the National Urban

League (NUL). I bring you greetings on behalf of Marc Morial, our president and CEO.

NUL is an historic, civil rights, community-based organization dedicated to economic empowerment and a guarantee of civil rights for African Americans and other underserved communities in America. As a national nonprofit intermediary, we provide direct comprehensive services for nearly 2 million people yearly through our network of 91 affiliates in 36 States and Washington, D.C.

In my role, I manage and advocate on behalf of 12 Urban League entrepreneurship centers, which provide management counseling, mentoring, and training services for entrepreneurs looking to start, grow, or scale their business.

Our centers served as the first line of defense for clients during the pandemic. In 2020 and 2021, with support from a Minority Business Development Agency CARES Act award, our center served 11,250 small minority businesses, helping them to secure $138 million in financing and contracting opportunities and save or create 1,200 full- and part-time jobs.

Last year, with the PepsiCo Foundation, we launched the Black Restaurant Accelerator Program (BRAP), a $10 million, 5-year program comprised of cash grants, coaching, and technical assistance to 500 businesses. The grants have been a lifeline for many Black food service businesses unable to obtain or qualify for PPP loans or meet the stringent requirements of certain grants.

I will share the story of De'Lish Cafe, a cajun-creole comfort food restaurant based in Dayton, Ohio. In 2018, De'Lish closed its doors after 8 years. In January 2020, owner Jasmine Brown began selling food again and opened a food truck. Because Jasmine had no business in 2019, she couldn't prove a loss, and although local and State grants were available, the business didn't qualify for them.

Jasmine said that when the BRAP grant came along, it was just a feeling like, "Okay, well, there is something out there. It is hard when you have a business. In terms of most food trucks, we have less than five employees, and for some of us, it may be only us."

She was thankful the BRAP didn't have the eliminating criteria that other grants had, and expressed hope that more such grants would be available for extra small businesses.

Jasmine represents many of our Black entrepreneurs disproportionately affected by COVID. But, unlike Jasmine, most were not as lucky. According to data on small businesses from the Federal Reserve Bank of New York, nearly half of Black-owned businesses closed between February and April 2020, compared to just 17 percent of White-owned businesses.

The COVID-19 pandemic added to the impact of systemic racism and the racial wealth gap in these communities. These businesses were already financially disadvantaged with weak capitalization, limited banking relationships, and little to no cash reserves to cushion the impact of the pandemic.

Access to capital can help bridge the gap for Black small business owners; however, they are more likely to be denied capital compared to White counterparts with similar creditworthiness.

McKinsey & Company reported that Black-owned businesses are 20 percent less likely to get a loan than businesses with White owners. While the PPP program was intended as a lifeline, it left most minority businesses behind, reaching just 20 percent of eligible firms in States with the highest density of Black-owned firms.

NUL called on Congress to enact stringent protections on PPP funds to ensure that funds would be directed to businesses with the greatest need. We advocated for dedicated PPP funding and rapid authorities to minority development institutions and community development financial institutions, which ultimately outperformed other PPP lenders by reaching financially-underserved businesses with a high proportion of their loans.

Research also showed that Black borrowers able to obtain PPP loans disproportionately received them from fintech companies. While fintech automated systems and algorithm methods tend to reduce racial disparities in lending, the popularity can be problematic. Unregulated products often lack transparency and come with unfair terms. Full disclosure of pricing and terms, reasonable underwriting, fair treatment from brokers, and fair collection practices are critical.

NUL has worked closely with the Responsible Business Lending Coalition to address the rise of irresponsible lending. This phase of the economic recovery is an opportunity to get it right. For communities of color, access to fair, stable, transparent, and flexible long-term capital is virtually the only way entrepreneurs in these communities can sustainably grow their businesses.

We offer these recommendations: Support passage of the Small Business Lending Disclosure Act of 2021; implement Section 1071 of the Dodd-Frank Act for small business disclosures; ensure strong supervisory enforcement of the Equal Credit Opportunity Act of 1974; promote and invest in supply diversity programs; and invest in community-based small business incubators.

This concludes my testimony. I look forward to your questions.

[The prepared statement of Ms. DeVane can be found on page 44 of the appendix.]

Chairman PERLMUTTER. Thank you. You hit it right on 5 minutes. Thank you very much. I appreciate your testimony, Ms. DeVane.

The Chair now recognizes Ms. Amber Littlejohn for 5 minutes for an oral presentation of her testimony.

STATEMENT OF AMBER LITTLEJOHN, EXECUTIVE DIRECTOR, MINORITY CANNABIS BUSINESS ASSOCIATION (MCBA)

Ms. LITTLEJOHN. Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you for the opportunity to testify at today's hearing.

My name is Amber Littlejohn. I am the executive director of the Minority Cannabis Business Association (MCBA). The MCBA is the largest national trade association dedicated to serving the needs of minority cannabis businesses and our communities. We represent minority and allied cannabis businesses, aspiring entrepreneurs, and advocates who share a vision of an equitable, just, and responsible cannabis industry.

I am pleased to appear before you on behalf of MCBA to discuss the challenges shared by small businesses as we continue to grapple with the global pandemic. For many minority businesses, including minority cannabis businesses, the outlook is dire. As the nascent cannabis industry takes shape, we see a common tale of small businesses seeking to shake the economic consequences of systemic inequities only to suffer at the hands of predatory investors and partners who seek to profit from injustice.

In my verbal testimony, I will touch on four issues, how the pandemic has exacerbated them, and some of the potential solutions. I offer myself and the MCBA as an ongoing resource on these issues.

First, the pandemic has been particularly difficult for small businesses, but especially for minority cannabis businesses that were shut out of Federal relief. Despite many States deeming cannabis businesses essential during the early stages of the pandemic, all cannabis businesses were deprived of access to these lifelines.

Second, the financial challenges minority cannabis businesses face have been exacerbated by the pandemic, but they were not created by it. Despite accounting for 12.4 percent of the U.S. population, African Americans constitute just 2 percent of the owners of the nation's 30,000 plant-touching businesses. This low representation is due to the staggering cost to enter and operate, where an application process alone can exceed $1 million.

Third, State social equity programs intended to promote ownership among the individuals most impacted by cannabis prohibition are critical to the success of minority cannabis businesses. However, these programs, to date, are failing to adequately support minority businesses. Currently, only 15 of the 37 States where cannabis is legal have implemented social equity programs. And of that 15, only 6 provide direct funding to social equity applicants and operators.

For a glimpse into the financial barriers to entry, consider Connecticut, where cultivation applicants must pay $3 million or try their luck at securing one of 56 licenses available in the lottery, only half of which are reserved for social equity. Applicants seeking a cultivation or processing license in Pennsylvania's medical market must prove they have $2 million in capital and pay a $210,000 application fee. By and large, these programs provide too little, too late, to minority entrepreneurs to participate.

Fourth, small and minority-owned cannabis businesses cannot access the traditional financial services they need to survive, let alone thrive. Many small minority cannabis businesses cannot access core banking services such as deposit accounts, loans, and electronic payments simply because they are in the cannabis industry.

As of June 2021, only 700 of the approximately 10,000 federally-insured banks and credit unions in the U.S. actively provide some type of banking service to the cannabis industry. Until small and minority-owned cannabis businesses can access financial services on a fair and competitive basis, they will continue to be left behind as other sectors of our economy recover.

To address these issues, I encourage Congress to consider a wide range of options including: enacting the SAFE Banking Act this session; collecting demographic data about the availability of financial services to small and minority-owned businesses; ensuring protections for CDFIs and other institutions more likely to lend to small cannabis businesses; calling for updated guidance for financial institutions doing business with cannabis firms; and conducting a disparity study to ensure that any comprehensive legislation efforts address the disparate impact of Federal cannabis laws.

Supporting small minority cannabis businesses is not just a moral imperative; it makes good economic sense. Despite their struggles, cannabis social equity businesses contribute $1.20 in social good for every $1 invested in social equity programs. But without relief from Congress, minority businesses will not make it to the end of Federal prohibition. Some did not make it to the end of this week.

Thank you.

[The prepared statement of Ms. Littlejohn can be found on page 50 of the appendix.]

Chairman PERLMUTTER. Thank you, Ms. Littlejohn.

My colleagues have been hearing me talk about this issue for several years, so I appreciate your testimony.

Dr. Alicia Robb, you are now recognized for 5 minutes for an oral presentation of your testimony.

STATEMENT OF ALICIA ROBB, FOUNDER AND CEO, NEXT WAVE IMPACT

Ms. ROBB. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee. I appreciate the opportunity to provide testimony.

My comments are going to focus on the small business financing data gaps and the implementation of Section 1071 of the Dodd-Frank Act. I would first like to highlight, however, our government's own conclusions about the state of small business financing with a few quotes.

A White Paper from the Consumer Financial Protection Bureau (CFPB) states: "With current data, it is now possible to confidently answer basic questions regarding the state of small business lending."

And a report to Congress by the Federal Reserve Board of Governors notes the following: "One, fully comprehensive data that directly measures the financing activities of small businesses do not exist. And, two, up-to-date and comprehensive information about the universe of small businesses is sparse, and most evidence about financing needs and sources is derived from surveys, many of which have limited coverage or rely on nonrepresentative samples."

This last quote is particularly frustrating for me, because the Federal Reserve Board of Governors had been a source of small business financing data with their survey of small business finances conducted every 5 years. I was employed with the Federal Reserve and worked directly on the 1998 survey. However, they decided that after 2 decades of surveys, they had learned enough, and canceled the program after the fourth and final 2003 survey. Then, in 2008, when the economic crisis hit, there was no survey in place to collect data during and after the economic downturn.

In their most current report to Congress on the availability of credit to small businesses, from 2017, which I just quoted and which is due to Congress every 5 years, the Federal Reserve relied heavily on the annual survey of entrepreneurs from 2015, which was a new survey conducted by the Census Bureau with funding support from the Kauffman Foundation.

At the time, I was a senior fellow with the Kauffman Foundation, and I jointly proposed and advocated for this survey because of the need for more comprehensive and timely data on small business financing, especially data that included business owner demographics.

I have continually pushed for more timely and comprehensive data on small business financing, because we know there continues to be gender, racial, and ethnic gaps in small business financing and credit market experiences, and we do not have sufficiently robust data to perform the kinds of rigorous analyses that would provide us a better understanding of the barriers and challenges faced by small businesses in general, and those underserved groups in particular. A better understanding would allow policymakers to design a more efficient and impactful program to address existing gaps and level the playing field.

Congress mandated data collection by Section 1071 of the Dodd-Frank Act in 2010 for similar reasons. As noted in the 2017 report from the Consumer Financial Protection Bureau, these data can provide a broad range of stakeholders across the United States with an understanding of the small business credit flowing into their local communities and allow them to identify credit deserts or sectors where credit flows may be restricted. This, in turn, may support localized efforts to increase access to credit in various communities around the United States to address unmet credit needs, thereby spurring economic development.

In September 2021, more than 10 years after Congress first mandated the data collection, the CFPB released a notice of proposed rulemaking to finally implement Section 1071 of the Dodd-Frank Act, and here we are in 2022, still with no implementation of the data collection effort that was mandated by Congress.

We have spent hundreds of billions of dollars through various programs, such as the Paycheck Protection Program and the economic injury disaster loans, and yet we don't have a process in place for the collection of data that would allow us to evaluate the small business credit market landscape, let alone the effectiveness of such programs. We need to implement Section 1071 of Dodd-Frank now, not in another 10 years.

We should also ensure that the Federal Reserve System collects annual data in its small business credit survey from a representative sample of small businesses, and not from a convenience sample. These sources would provide a much richer picture of the small business credit market from both the supply and demand sides of the market. This would allow us to better identify credit market gaps and inform better policymaking.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Robb can be found on page 64 of the appendix.]

Chairman PERLMUTTER. Thank you, Dr. Robb.

And I have been told that we have Mr. Luetkemeyer joining us by phone, so I would ask for unanimous consent that he be allowed to join us by phone.

Without seeing any objections, Mr. Luetkemeyer, you can join us by phone. Can you hear us? Let's see if we can hear you.

I think he is down in the tile called, "anonymous."

Well, we will keep going with our next witness, Mr. Stangler, and then, Mr. Luetkemeyer, if you can hear me, you are welcome to do your 5-minute opening after we conclude the panel's testimony.

So, Mr. Stangler, you are now recognized for 5 minutes for an oral presentation of your testimony.

STATEMENT OF DANE STANGLER, DIRECTOR OF STRATEGIC INITIATIVES, BIPARTISAN POLICY CENTER (BPC)

Mr. STANGLER. Thank you.

Chairman Perlmutter, Ranking Member Luetkemeyer, distinguished members of the subcommittee, I am delighted to participate in today's discussion about small businesses and economic recovery. I commend you for convening this important hearing and thank you for inviting the Bipartisan Policy Center (BPC) to participate.

I am the director of strategic initiatives at the BPC. We are a nonprofit organization dedicated to combining the best ideas of both parties to promote health, security, and opportunity for all Americans. We have had the pleasure of working with many of you. Thank you for your commitment to finding bipartisan public policies that help America's small businesses and entrepreneurs.

As part of our work at BPC, we collaborate with a variety of partners to help ensure that more businesses are started by more Americans, in more parts of the country, in more sectors of the economy. This is the key to recovery, a recovery not only shared by small businesses and entrepreneurs, but also driven by them.

There are three points I would like to highlight for you today.

First, the present landscape of small business and entrepreneurship can be broadly characterized by two trends. On one hand, many small businesses continue to struggle with the negative effects of the pandemic. In the most recent reading of the Census Bureau's Small Business Pulse Survey at the end of January, nearly 40 percent of small businesses say they don't expect full recovery of their business for at least 6 months. Many are struggling with rising costs and difficulties in hiring and retaining workers.

At the same time, new business formation is at record high levels and has been that way since the summer of 2020. The number of business applications filed by those deemed to be likely employers was 37-percent higher in 2021 than in 2019.

There are some indications that entrepreneurship has been high among women and people of color. Millions of Americans see small business ownership and entrepreneurship as their road to opportunity.

These trends tell us that small and young companies are ready for recovery. They are looking to grow. They need the support of a public policy framework.

Second, there is little question that government relief efforts, such as PPP and COVID EIDL, helped many small businesses stay afloat. Many of the small business owners we speak to praise those programs as the difference between closing and continuing their businesses. In particular, modifications that were made to those programs along the way, such as inclusion of online lenders and community development financial institutions, were essential in helping get relief to those, such as business owners of color, who otherwise confront financing disparities. This is an important lesson for future policymaking.

Third, public policy must encourage and support private-sector financing innovations with our expanding access to capital for small and young companies. There has been considerable innovation in small business financing over the last several years, including new business models, new technologies applied to underwriting, new capital structures, and many more.

Banks remain the main source of external credit for small businesses and entrepreneurs, and many banks have been investing heavily in technology. Many small and community banks have also formed productive partnerships with fintech companies. Much of this innovation is directed at closing gaps for traditionally underserved groups like women entrepreneurs and business owners of color. We encourage you to help promote these innovations, including by continuing to find ways that they can support public programs.

Additionally, we encourage policymakers to improve coordination across existing Federal programs. There are already scores of efforts across multiple Federal agencies devoted to helping small businesses and entrepreneurs. Many of them and their partners across the country do exemplary work, but there are undoubtedly areas where performance can be improved and coordination can lead to greater effectiveness and resource efficiency.

Lastly, we encourage you to continue to explore ways to balance the regulatory burden across lenders and reduce the regulatory costs, especially regarding partnerships between banks and fintechs, that in some cases can get passed along to small businesses.

Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you again for your leadership on small-business issues. I am happy to elaborate on any points, and I look forward to your questions.

[The prepared statement of Mr. Stangler can be found on page 66 of the appendix.]

Chairman PERLMUTTER. Mr. Stangler, thank you for your testimony.

I would like to reach out again to the ranking member, Mr. Luetkemeyer, otherwise known as, “anonymous,” and see if he can hear us?

Mr. LUETKEMEYER. Yes, I can. I apologize for all of the technical problems. I am in the middle of a snowstorm, ice storm, sleet storm here, and I have technical difficulties, and I am technically challenged, so we have a mess. But I apologize for the delay in getting on, and for being on a phone instead of the computer.

Thank you, Mr. Chairman.

Chairman PERLMUTTER. I am glad you joined us. If you would like to do your opening statement now, we would welcome it, or I can begin the questions, and then, you will ask questions after me, and you can do your opening. I want you to do it at your leisure.

Mr. LUETKEMEYER. Why don't we just skip my opening, and I will try and ask some questions, and if you give me a little leeway with some of the questions, a little more time, maybe I can insert some of the narrative from my opening comments, if that would be fine.

Chairman PERLMUTTER. Yes, sir. I think the subcommittee would welcome that.

I will begin with my questions, and I will begin with Ms. Littlejohn.

In your testimony, you touch on four issues facing minority cannabis entrepreneurs: the pandemic; high barriers to market entry; a failure of State social equity programs; and the inability to access the traditional banking system.

In many cases, it seems these issues can create a feedback loop and amplify obstacles for people of color seeking to start or operate a cannabis business.

Can you describe how, without access to traditional credit or investors, minority cannabis business owners are being pushed into predatory loans and business arrangements?

Ms. LITTLEJOHN. Yes. Thank you, Mr. Chairman.

So, with Federal law limiting access to traditional funding, many cannabis businesses are initially funded through friends and family and personal wealth. And given the wealth disparities, especially among those most-impacted by cannabis prohibition and the war on drugs, this is not an option.

Large operators have no issue accessing capital. In fact, for many of them, the pandemic has been a boom. This unfortunately has not happened to small cannabis businesses that regularly see rates as high as 20, 25, and even 40 percent, if they can obtain a loan at all.

For those who can't secure loans, we commonly see significant undervaluation, and frequently, operators have to turn to equity partnerships, and these partnerships unfortunately are often extraordinarily predatory. We have inequitable distribution of profits where the social equity partner is living in poverty while the investor is taking 3 or 4 times as much. We have operators who are giving up a 49-percent stake, but then being forced to rent property at 4 to 7 times the going rate for real estate.

And unfortunately, again, these are really common. We see contracts that will force the social equity partner to sell—even for a minor breach of contract, to sell their license to the investor for pennies on the dollar.

And, because oftentimes the process of getting to the point of application in itself can be thousands, if not millions of dollars—one of my board members paid over $400,000 before she was awarded a license, because she was required to hold commercial property just to apply. That doesn't mean she was guaranteed, but just to apply.

So, we have people who are selling art, selling plasma, mortgaging family homes, and sleeping in cars, all trying to stay above ground and keep themselves above water and to try and participate in an industry where we sold the promise of inclusion and participation, and we are leaving people out in the cold.

Chairman PERLMUTTER. Thank you for your answer.

Dr. Robb, I have a question for you.

I want to ask you about the CFPB's 1071 proposal, which would require financial institutions to collect demographic data in small business lending. And, as you said, you worked at the Fed and for the Kauffman Foundation. Isn't somebody already collecting small business lending data, and wouldn't this be a duplication?

Ms. ROBB. Thank you, Mr. Chairman.

No, it would not be a duplication. There are very little data available on small business financing. The Small Business Credit Survey, which is now being done every year by the Federal Reserve System, is done on a convenience sample, and it is not nationally-representative, so it is limited in that way. That is also from the demand side, which was also the case for the survey of small business finances.

The Annual Survey of Economics, which is done annually by the Census Bureau, is nationally-representative. But the focus of the survey is not on financing, and so there is limited information about small business financing, sources, costs, et cetera. It is also from the demand side.

The CFPB is actually looking to create microdata on loan applications from the supply side, and that does not exist. The closest thing to that are the call data reports, and then the CRA has data. But, in both of those cases, they proxy small business lending by the size of the loan, not the size of the firm. This proxy has been shown by researchers to be inaccurate, so you have lots of large businesses getting small loans and small businesses getting large loans. It is a not a one-to-one match. So, the CFPB, in Section 1071, is really collecting unique data.

Chairman PERLMUTTER. Thank you very much for your testimony. My time has expired.

I would now like to yield to the ranking member of the subcommittee, the gentleman from Missouri—who is going through a storm—Mr. Luetkemeyer, for such time as he may use in connection with opening comments as well as questions.

Mr. Luetkemeyer, you are now recognized.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. Again, I apologize for the situation here.

But, Mr. Stangler, I would like to start with you.

Would you share your concerns that you have with the CFPB small business data collection rule implementing Section 1071 of Dodd-Frank? This is, to me, a really, really big problem. I have a lot of problems with it. My question initially here is: Would creating additional compliance and resource burdens on financial institutions, particularly smaller institutions, promote or stifle small business lending?

Mr. STANGLER. Thank you, Ranking Member Luetkemeyer. I am located in eastern Kansas, and I think I am in the same snow and ice storm as you, but we have been spared the technical challenges. I feel sorry for you.

Thank you for your question. As Chairman Perlmutter noted, I used to work at the Kauffman Foundation. I worked with Dr. Robb at Kauffman and helped create that annual survey of entrepreneurs to which she referred. So, I don't think anyone would ever accuse me of advocating for less data on small businesses or on entrepreneurship.

I think what is concerning about the CFPB action and the rulemaking is that this has not gotten bipartisan political support, and it has not gotten support from a lot of the folks in the industry and the lenders. BPC had a Main Street Finance Task Force effort a few years ago, and that task force was unanimous on every single issue except for this one.

There were concerns raised by lenders, by former agency folks, and by others in that effort about some of the suppressive effects this might create, that you referred to, some of the compliance costs, some of the burdens. There is no question that we need better data on small businesses, on small business financing. Some of the challenges that Dr. Robb alluded to are significant and real and need to be addressed.

I think what concerns us is that there are other bureaucratic barriers that can and should be addressed first. With a lot of the data that is collected already by the Census Bureau, by the IRS, and by others, there are barriers to using and sharing that data that we might get insights from without creating additional burdens or additional layers.

And I do worry, and we worry, and the folks we talk to in the industry among small businesses worry about some of the incentives or the disincentives created by some of this rulemaking.

But, again, I think the broader issue is, how can we get better data, and how can we do it in the least-burdensome way possible?

Mr. LUETKEMEYER. As the ranking member on the House Small Business Committee, I can tell you there are a lot of different entities that are collecting data right now, not the least of which is the National Federation of Independent Businesses, which is comprised of small business groups. But there are other entities. In fact, tomorrow, I have a Zoom call with the Job Fairs Network, which is kind of like the U.S. Chamber of Commerce, although it is not a radar group that does a lot of surveying, and they survey small businesses, and I get a report from them every month or every other month.

And so, there is a lot of data out there that I think, if you need some more—in fact, whenever you want a survey, let me know. I can ask the Job Fairs to put it on their next survey.

I think the opportunity for more data is there. The kind of data that you are trying to get or they are trying to get, is what is concerning to me. Dodd-Frank specifically provides the borrowers the right to not give race and gender and ethnicity information to financial institutions, but the bank loan officer has to be very careful because they can't ask that question; if they do, they get in trouble, and if they don't, then they have to guess. And if they guess, they leave themselves open, in my mind—I have seen the way the CFPB operates. And during the incorporate years, holy cow, they went out and intentionally intimidated individuals and extorted money from the different businesses based on their guidance that they put out there, which is not something they can even enforce.

And so, when you are now going out here and basically trolling these businesses to see once—if you can get them hooked on some kind of a problem here by putting things out there that they have to guess at what the answers may be, holy cow, this is opening up Pandora's box for these folks. To me, this gets them in some really murky waters, and I would just like your opinion on that situation.

Mr. STANGLER. Thank you, Congressman.

You are right that there is a lot of data out there on small businesses, on entrepreneurs. This is where I think there are other ways to go about filling some of these data gaps before launching new processes.

We worked a lot with some of these Federal agencies, and some of the folks I have talked to point to significant barriers in just sharing some of that information between agencies. So, I think there are other ways to use some of the information we have and get new information before we start a whole rash of new concerns, as you raised, with this effort.

Mr. LUETKEMEYER. If the Chair would allow me one more question here—I don't know what my time is, but the privacy of information that the CFPB wants is a very, very real concern to me, also from the standpoint that we have seen the different cyber attacks, cyber hacks that have gone on within our own government. I know that the CFPB is not immune to those attacks either.

And, here, we are going to accumulate more information. Some of it is guesswork. So, if you guess wrong, what happens to those people if they are hacked?

The privacy of all this additional information, for whatever intentions they may have, doesn't seem to outweigh the risk that is there for the consumer.

What do you think about that, sir?

Mr. STANGLER. Thank you, Congressman.

Yes, privacy is always a significant concern, especially with the rising number of cyber attacks we have seen. I know, if we are going to improve the state of small business data, if we are going to use those other sources that you refer to and that you see constantly, and if we are going to have public agencies hold some of this data, I know there are other agencies that have significant and strong confidentiality and privacy protocols in place.

There are also private sector partners who work with government and hold government data who excel at this as well, so—who have found a way to protect the privacy, but this is obviously an overriding concern here.

Mr. LUETKEMEYER. Thank you, Mr. Stangler.

Mr. Chairman, I want to thank you for going along with a little extra time here. I want to work with you. To me, this privacy situation is extremely important. This is something we have to work on together to make sure that the CFPB does not allow that additional information they are collecting to be able to have access to other folks.

So, with that, I thank you, and I yield back.

Chairman PERLMUTTER. I thank you, Mr. Luetkemeyer. Thanks for going the extra mile and getting on by phone, even while you're in a snowstorm. In Colorado, we got about 8 to 10 inches. We handle it a lot better than you folks in the Midwest. That is all I can tell you.

Mr. LUETKEMEYER. We handle it. Right now, anyway.

Chairman PERLMUTTER. Okay. I now recognize the gentleman from Georgia, Mr. Scott, who is also the Chair of the House Agriculture Committee, for 5 minutes.

Mr. SCOTT. Thank you, Chairman Perlmutter.

And I would like to begin my questioning with Ms. Littlejohn. As the chairman mentioned, I am the new chairman of the House Agriculture Committee. Cannabis has become our fastest-growing product, but there are some mixed problems here.

I worked very closely with the chairman. He spent a lot of time working on this issue because of the criminality, and he has done a magnificent job in attempting to legitimatize the financial arrangements so that it is not cash only, a situation which created so much criminal activity.

But here we are, the fastest-growing agriculture product, and between hemp and cannabis, we have such a variation of State laws. It is reminiscent of the Prohibition, which gave birth to our friends in the Mafia.

Now, we are also going into our Farm Bill. We have to address this issue. We can no longer hide it.

You raised several good points, but I want you to tell us what the state of their art is, where the problems are, and what we need to do to make sure our farmers are doing what they need to do. There are different applications between hemp and marijuana. Where does all of this fit?

And in this confusion, with a lack of proper information, that is what the criminal element preys on. Your statement was, if I have it correct—you reference a social equity partner, and I think you meant that in that regard, African Americans are having difficulty in even getting the license or access to capital.

I just want you to share with us and share with me where we are so that as we get into this issue next month in the Farm Bill, I want to be certain that we can help our farmers. Already, they are growing it.

Can you get with us and, first of all, tell me what you meant by that statement relative to—you said it impacts a social equity partner relative to licensing, I think?

Ms. LITTLEJOHN. Yes, Congressman.

What that means is certain States set up programs intended to ensure that the individuals who have been most harmed by cannabis prohibition, including primarily African Americans, have a chance to actually participate in this burgeoning industry. But unfortunately, only 15 of the now 37 States have these programs, and unfortunately only—

Mr. SCOTT. I want to get that right. You said 15 of the—

Ms. LITTLEJOHN. Only 15 of the 37 States have programs.

Mr. SCOTT. Why didn't you say 15 of the 50 States? Is there—

Ms. LITTLEJOHN. Yes. 15 of the 37 States that have legal cannabis programs.

Mr. SCOTT. Oh, I see.

Ms. LITTLEJOHN. I assume we will get to 50 soon, but 15 of the 37 that are legal now. Unfortunately, in your home State, Congressman, we saw this in real time, where there was an extraordinarily high cost for the application, and that alone led to only four Black applicants.

Mr. SCOTT. And what was that cost?

Ms. LITTLEJOHN. I believe it was well over $150,000.

Mr. SCOTT. Wow.

Ms. LITTLEJOHN. It was actually $250,000. So, at that point, only—for the larger applications. So, only four African Americans applied for licenses, and all of the licenses ended up going to larger, nonminority firms. This is something—

Mr. SCOTT. Do you think this was done intentionally to discriminate against those at the lower end of the economic ladder?

Ms. LITTLEJOHN. It was $200,000. It has been clarified.

This is about discriminating against all small businesses, because companies are going in and trying to capture markets. For instance, in Virginia, there are currently only three large companies that control the entire medical cannabis market in Virginia, and I actually just got permission to run ahead of everybody else.

Mr. SCOTT. My, my, my.

Now, what is—

Chairman PERLMUTTER. Mr. Scott, I'm sorry, but your time has expired.

Mr. SCOTT. Okay. Let me just say this.

Ms. Littlejohn, I would like for you, if you don't mind, to get in touch with my office, because we are putting together witnesses in which—and you have a wealth of valuable information that will be very helpful to our farmers who are engaged in this and our agriculture industry.

Thank you, Mr. Chairman.

Ms. LITTLEJOHN. It would be my pleasure.

Mr. SCOTT. Thank you.

Chairman PERLMUTTER. Thank you, Mr. Scott.

I now recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Chairman Perlmutter. I appreciate it.

Mr. Stangler, based on the title of this hearing that we are in today, to help ensure that small and minority-owned businesses share in the economic recovery, the usual stock and trade of this committee is subsidizing small and minority businesses in credit markets and providing what some of us believe is needed additional regulation.

The economy right now is characterized by fairly strong recovery numbers, but crippling inflation and tight job market conditions. We also have the uncertainty of public health regulations, and those impacts on small businesses are profound, especially for the hospitality and travel sectors.

Would you help us put the priorities in context? In terms of helping small businesses participate in the recovery, how does access to credit and more credit regulations for small businesses through the CFPB stack up against crippling inflation, finding workers, predicting that your business will be able to stay open, and easing some of the heavy-handed burdens of existing regulations? Where should Congress put its priorities?

Mr. STANGLER. Thank you, Congressman.

I think the best place to look for guidance in prioritization is from the small businesses themselves, and right now one of the best sources of direct input from small businesses is the Census

Bureau's Small Business Pulse Survey. This reaches about a million small businesses, and it has been through seven or eight phases. The latest phase just concluded at the end of January. It is very good.

A year ago—and I can double check these statistics after the hearing, but I think a year ago, when the Census Bureau asked small businesses what their top future need was, what was their biggest need as they tried to recover, it was financial assistance. We were in the midst of a surge, and consumer demand had shifted. Lockdowns and restrictions were still in place, and a lot of small businesses said they just needed financial assistance.

Fast forward to this year, to January. Financial assistance is now fourth, fifth, or sixth, I think, on the list. The number-one need that small businesses say they have is to identify and recruit employees, and that has been in the top spot for, I think, 2 or 3 months.

The number-two need is marketing and sales. They want to grow. They are ready to grow.

And so, I think those are the priorities.

We know from other surveys, including a survey that was released last month by the Goldman Sachs 10,000 Small Businesses Program, that inflation is a major, major burden for small businesses in that survey. We know from these latest surveys, these large-scale surveys, that finding workers, keeping workers, and dealing with rising costs are major challenges right now for small businesses.

Mr. POSEY. I was going to ask you next regarding the inflation being a big threat, what small businesses are telling you about the impact, and I guess you have pretty much told us it is the top priority.

Am I correct in that assumption?

Mr. STANGLER. Inflation was definitely a concern in some of these latest surveys, for sure, among small businesses, yes.

Mr. POSEY. Now, innovation is the hallmark in the history of our U.S. financial system. Could you identify the most-promising financial innovations on the horizon for small businesses today and what the biggest threats are to those promising ideas?

Mr. STANGLER. Thank you, Congressman.

As I mentioned in my oral remarks, and as you can find in my written testimony, the last several years pre-pandemic were characterized by lots of private-sector innovation in the space of small business financing. Fintechs obviously have gathered a lot of attention, online lenders. But traditional banks also have invested quite heavily in technology. Many of them have become almost fintech lenders themselves, and many of them have formed partnerships with fintechs, and those partnerships have really helped small and community banks as well.

There have been a number of other innovations in the space. There are folks trying to pioneer new types of hybrid capital structures, especially directed toward helping those small businesses owned by women, and owned by people of color, who maybe can't access capital through traditional channels. And for some of those new business models, those partnerships, I think there are two regulatory concerns.

One is, in the bank and fintech partnership, to help level that regulatory playing field and to help reduce some of the burdens on those partnerships. For some of the new business models, I think there can be greater regulatory clarity on what is and isn't permitted so that innovation can proceed for small business financing.

Mr. POSEY. I appreciate it very much.

Mr. Chairman, I see my time has expired, and I am happy to yield back. Thank you.

Chairman PERLMUTTER. Thank you, Mr. Posey.

The Chair now recognizes the gentleman from Illinois, Mr. Foster, who is also the Chair of our Artificial Intelligence Task Force, for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chairman.

Many lenders, including fintechs, use business credit scores to address creditworthiness. And, similar to consumer credit scores, business credit scores are a metric for risk that are based on payment history, credit utilization, length of credit history, and outstanding debt. But according to a recent report, 45 percent of small business owners did not even know that they had a business credit score, 72 percent did not know where to find it, and 82 percent did not know how to interpret it.

Now, there are various opinions among consumer interest groups and credit bureaus about the accuracy of personal credit reports and whether report inaccuracies negatively affect the consumers' overall credit score, and these phenomena have been the subject of considerable discussion within our committee.

But in regards to business scores, Ms. Bilonick and Ms. DeVane, are these business scores prone to the same inaccuracies or mistakes that personal credit reports sometimes experience?

Ms. BILONICK. Thank you, Congressman Foster. I will just start, and hopefully Ms. DeVane will chime in after I am done.

I do believe they are subject to the same potential inaccuracies. I think this is actually a growing and emerging area in supporting small businesses, which is basically providing financial capability services that are targeted to small business financial management.

We have seen in our membership that there has been a shift in the focus of financial capability support from working with consumers, potentially with the aim of building an asset like the purchase of a home, to shifting to more financial capability support for small business owners.

There has been sort of a lack of support to small business owners in this area, and I do think just anecdotally, from my own experience as a practitioner, that most small business owners do not know that they have a business credit score.

Most small business owners are using, and are impacted by their personal credit scores, therefore, I think there is a real lack of opportunity to support small business owners in terms of educating them about how to start small business credit, how to build and repair small business credit, and how to monitor their small business credit.

Ms. DEVANE. I would add to that—and I want to thank you for the question—that business credit scores are clearly an important indicator for many, many lenders as to how a borrower is going to manage their debt. And it is based on historical performance or behavior and whether you are more or less likely to be delinquent on your payments.

So, low scores would deem you to be a higher credit risk. And that may even necessitate a small business having to put up collateral or to provide a personal guarantee, which the business may not be in a position to do.

And I also think, anecdotally again, that these calculations can certainly vary by institution and may not necessarily be disclosed to the borrower, which means the score is somewhat subjective, and as a result, not necessarily an equitable measurement of risk.

And also, the loan pricing, the term, and the amount depends on that business credit score. So, it has the ability to lead to less favorable pricing and terms for a minority-owned business or women-owned business that just doesn't meet those requirements.

So, I think it may not always be an accurate reflection of the risk, and we need to be very careful in terms of how we use those business credit scores. And those borrowers—those small businesses need to be aware of how those scores are being used, how to determine how those are calculated, and to make sure that they look at that as potential revenue.

Mr. FOSTER. Are there organizations or businesses that are set up to counsel businesses on how to improve their business credit score, or are the same entities that are generating the business credit scores also making money by offering advice on how to improve it, which I always thought would be an outrageous conflict of interest?

Ms. DEVANE. I will jump in here really quickly and just say that our Urban League entrepreneurship mentors provide that kind of technical assistance and counselling, and we do spend a lot of time working with our business owners to educate them on these types of credit scores. So, I think that is one of the things that we want to be able to do, is to make sure that we have those technical assistance providers available.

Mr. FOSTER. Yes. I remember, when we started—I started my company when I was 19, with my little brother, and it is doing fine now, but in the early days, we used to have regularly scheduled meetings where we decided which one of our vendors we were going to stiff that week. And we didn't have business credit scores to worry about in that discussion.

But it is a new world, and I think it is important that businesses understand who is looking at them and how they are being judged.

I guess my time is up, so I yield back.

Chairman PERLMUTTER. The gentleman's time has expired. We don't want to know who those vendors were.

We will now turn to the gentleman from Texas, Mr. Williams, for 5 minutes.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman. I hope you will not use that hammer on me anytime soon.

For the panelists, I want disclosure, as I am a small business owner myself in Texas and have been for over 50 years. Now, the Biden Administration is hammering Main Street America with so many regulations that it is hindering the economic recovery and preventing capital from flowing to rural and underserved communities.

I mentioned this statistic in a hearing yesterday, but it was so astounding, it deserves repeating: A study by the American Action Forum showed that President Biden has already implemented over $200 billion in new regulatory compliance costs on American businesses during his first year in office. These costs are amassed by an estimated 131 million manhours in new paperwork that must be conducted in order to be in compliance with all of the new regulations coming from Washington, D.C.

One of these regulations that we have heard about today is the CFPB's 1071 rulemaking on small business data collection. There are many problematic aspects of this rule, and I, along with Ranking Member Luetkemeyer and Congressman Hill, have introduced a package of bills to help mitigate some of the worst parts of this proposed rule.

The bill I am introducing in this package would prevent loan officers from guessing the ethnicity of a loan applicant based on their appearance and last name if they do not voluntarily disclose this information. This racial profiling requirement is currently in a proposed rule, and we have spoken with numerous bankers and trade associations about how this will put loan officers in an extremely awkward situation and give inclusive, unusable data to the CFPB. There should not be any Federal requirement where someone must guess the ethnicity of another American based on their appearance.

Mr. Stangler, how would you recommend training loan officers to fulfill this racial profiling requirement on how to properly guess a loan applicant's ethnicity using only their last name and appearance?

Mr. STANGLER. Thank you, Congressman.

Forgive me for not being as familiar with the details of your legislation as I should be, but after this, I will certainly review the bill, and I would be happy to talk to you and your staff.

I am not sure I have a good answer for that. I am not sure I would know how to train or what to tell the loan officers subject to these requirements.

Mr. WILLIAMS OF TEXAS. Well, that is actually a good answer, because you can't. And I want to tell you—let me go back in history a little bit. I am one of the oldest on this committee. I was actually working jobs in 1968, 1969, and 1970, and a lot of those were in financial institutions, banks and lenders: GMAC; Ford Motor Credit; interstate securities. And back then, there were boxes of ethnicity that had to be checked when somebody was applying for a loan. And it was very uncomfortable, very insensitive, very racial.

And now, I think about those days. We have gotten out of that, and here we are back in those days again, and it really is something that totally takes me back and surprises me that we are talking about this very thing that was not satisfactory back when I was working in the early 1970s. That is just a statement I want to say. I would love to hear the argument for that.

Second, if we want to help small businesses, we need to allow them to keep more of their hard-earned money. We saw the benefits that cutting taxes had on the economy before the pandemic, when we saw wage growth that outpaced inflation, the lowest unemployment numbers in decades, and there were more investment in durable goods that businesses could cash flow.

Unfortunately, under this current Administration, the constant fear of new taxes on the horizon has forced our businesses to go on the defense. They are not as willing to invest their money in fears that they will need the money later to pay future tax liabilities.

Mr. Stangler, at a time when small businesses are already feeling the harmful effects of inflation, how do you think small businesses will deal with additional tax increases if this Administration gets their way?

Mr. STANGLER. Thank you, Congressman.

You are exactly correct that inflation, as I mentioned to Congressman Posey, is a top, if not the top concern for small businesses right now. At the same time, many of them haven't seen their revenues rebound. And as you know, as a small business owner, many of our small businesses are in a tight squeeze with revenues still not back to pre-pandemic levels, with inflation and rising costs in their supply chain, and having to pass some of those along to their consumers.

So, I would hope that any changes on the horizon would take those into account, that our small businesses are in a really tight spot right now as they look to recover and grow and are really struggling with inflation and trying to get their revenues back up.

Mr. WILLIAMS OF TEXAS. Thank you. And finally, I would just like to say that this 1071 rulemaking actually takes us back; it does not take us forward. And I am saddened by that.

Thank you very much, Mr. Chairman, and I yield back.

Chairman PERLMUTTER. Thank you, Mr. Williams. The gentleman yields back.

The Chair now recognizes Mr. Casten of Illinois for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman.

Ms. DeVane, I have a couple of just open-ended questions for you, and it is a little hard because we are writing history at the same time that we are sitting here, but you are so close to what is happening on the street with the entrepreneurs out there, and we all get caught up in our stories, but you are hearing the stories firsthand.

We are almost 2 years to the day from the first COVID case in the United States. If you remember, it was February of 2020 when there were those first stories about people in nursing homes in Seattle. We saw this huge collapse in GDP, this huge growth and boost in unemployment.

And we had all sorts of folks saying, well, we have no playbook for dealing with this deep aid downturn that doesn't leave a lot of people behind, because we know, in 2008, the people who were banked came back well. A lot of people lost a lot of housing value. People who were outside the banking system didn't come back.

And so, we did a lot of unconventional things. Yes, we expanded monetary policy, but we had a lot of fiscal policy touching people's pocket—the PPP, money to States—and we are now sitting here looking at, at least on a macro level, a fairly remarkable moment. We have this V-shaped recovery that was not on anybody's bingo card for what we thought was possible.

From your perspective in the communities you serve, what did we get wrong? Who is still left out in this recovery?

Ms. DEVANE. Thank you for the question.

Our minority businesses have been left out. I recognize that there have been relief programs. But, speaking specifically about the pandemic, we look at PPP, and we see that that was expected to provide relief to business owners who were struggling at the time. Many of those businesses were front-facing businesses. They were impacted by social distance guidelines, and so they were struggling to keep their employees, to pay their utility bills, to meet their payroll, and they couldn't do it.

And that PPP program was intended to be a lifeline for those businesses, but it just, frankly, didn't work. And, anecdotally, I can tell you that, speaking with our business owners on the ground, they faced challenges. They didn't have the lending relationships with the SBA lenders. They didn't have the back office and the technical and financial know-how to fill out a lot of paperwork, and they were really struggling.

And so, a lot of times they missed the boat and the opportunity. We were very pleased in the following iteration where our business owners actually were able to get some of that financing from CDFIs and from MDIs in the community that knew them and understood the challenges they were facing. But I will tell you that they feel very much left out of the recovery and the equation.

There have definitely been some improvements. I will absolutely say that. But on the whole, our businesses continue to struggle. They need capital, and they need capital desperately. Loans are difficult. Grants are welcome, and some of the programs that we have put in place, like the Black Restaurant Accelerator Program that I mentioned in my oral remarks, would really go a long way toward helping those businesses.

They need the coaching and the training to undergird the capital that they are getting. And capital needs to be affordable, and it needs to be appropriate for those business owners.

Mr. CASTEN. I think I am hearing you echo Mr. Stangler, and I don't want to put too many words in your mouth, Mr. Stangler, but I think you said that in those surveys you saw that labor and marketing needs were sort of the top needs of small businesses, and some concerns about rising prices.

We are having a real-time debate in Washington right now. On the one hand, should we invest in those communities, figure out how to get people to work, do the job training, make the investment, get the kind of grants that you are talking about, Ms. DeVane? On the other hand, we are hearing people say, no, we should not invest, because that might create inflation in the economy.

And, Ms. DeVane, you are talking with people who are feeling all of the same pains that Mr. Stangler described. Do you agree that those are the top issues that Mr. Stangler described?

And, put yourself in our shoes. What would you like to see us do in this moment? Do you think we should prioritize getting resources to those businesses who need them, or should we say, let's take the brakes off, let's not do any investment in the economy right now because we are concerned about inflationary pressure?

Ms. DEVANE. I do agree with Mr. Stangler that inflation certainly is a concern. I think he also mentioned hiring and keeping staff. Those are absolutely concerns of our business owners. But the top concern is capital, which allows you to market your business, which allows you to hire employees and pay those employees. And so, I would say that is the priority.

And, yes, I absolutely think, as the pot boils down, that we would need you to assist those businesses more. And I know we are over time, but the Community Navigator Pilot Program (CNPP) that the SBA has is one way that we are going to be helping our business owners recover from the pandemic, after the pandemic.

Mr. CASTEN. Thank you. Five minutes is never enough time, but I appreciate your time. And, if you have more thoughts, please follow up with our staff. Thank you. I yield back.

Ms. DEVANE. Thank you.

Chairman PERLMUTTER. The gentleman yields back.

The gentleman from Georgia, Mr. Loudermilk—we have a lot of Illinoisans and a lot of Georgians today—is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman, and that is what makes this subcommittee great, is the number of Georgians that we have on here. I appreciate this hearing, and I appreciate that the Majority is talking about helping small and minority-owned businesses. I have been talking about this since I have been in Congress, and especially during the pandemic.

But recent history indicates that unfortunately, the Majority has been opposed to one of the most important tools that can help those businesses, which is is fintech. The list of lenders eligible to participate in the State Small Business Credit Initiative (SSBCI) was established 12 years ago, and it does not include fintech companies, which are now a critically important part of small business lending.

In fact, fintechs were the number-one type of PPP lender for Black- and Hispanic-owned businesses. GAO reported that when Congress added fintechs as eligible PPP lenders, lending to minority-owned businesses increased. Last year, when this committee marked up the American Rescue Plan Act, I offered an amendment to update the list of eligible lenders for the SSBCI Program to include fintechs. Unfortunately, the Majority rejected it.

This inexplicable opposition to fintech is depriving minority-owned businesses of the source of credit that they rely on most. Even the SBA administrators have said that we should embrace the role of fintech in small business lending, putting House Democrats at odds with the Biden Administration.

Mr. Stangler, would including fintechs in the SSBCI help get funds distributed to minority-owned businesses?

Mr. STANGLER. Thank you, Congressman.

I think you correctly characterized the research findings on PPP that fintechs, online lenders, when their participation was included in the subsequent modifications, we saw those disparities close.

And research has found—I believe there was some new research out this week or last week confirming those findings that fintechs helped distribute PPP, the government relief, to business owners of color who didn't get the benefit, especially in the first and second rounds.

Applying those lessons forward, as you suggest, would, I think, help continue to enhance those channels. Full disclosure, we do work with fintechs. We also work with banks. We work with advocates and philanthropies. Our advocacy arm has endorsed some bipartisan bills that would expand fintech participation in government programs, such as the 7a program, and we do believe that continued expansion of those channels would help the borrowers that you are trying to help.

Mr. LOUDERMILK. Thank you. In my opinion—and to many, there is no question that bank/fintech partnerships have enhanced the ability of small businesses to access credit, but unfortunately my colleagues on the other side of the aisle eliminated the OCC's True Lender rule, which needlessly added legal uncertainty to these partnerships.

Another question, Mr. Stangler. In your testimony, you said that small businesses benefit from a variety of private sector financing options. When the government takes away sources of small business lending, does that help or harm those businesses?

Mr. STANGLER. Thank you, Congressman.

As I mentioned in my comments, I believe with Congressman Posey a few minutes ago, we have seen an explosion of financing innovations in the private sector within the last decade, pre-pandemic, and during the pandemic. Many of those are in response to these financing disparities that the country has struggled with for many years.

I think our position is that the government, in partnership with the private sector, needs to continue to do all we can to expand those channels and provide clarity on what is permissible, obviously punish bad actors when misbehavior does occur, but broader channels, wider channels are going to help our small businesses versus narrower channels.

Mr. LOUDERMILK. Okay. And final question, Mr. Stangler, what should we as policymakers be doing to expand options for private-sector small business lending?

Mr. STANGLER. Thank you, Congressman.

I would highlight two things. One, in the bank and fintech partnerships that you allude to, there are regulatory burdens in those partnerships, and we know a lot of small and community banks benefit from greater technology from those fintech partnerships, because the costs of adopting those technologies in-house for the smaller banks can be prohibitive. But there are regulatory burdens and regulatory reviews. There is regulatory unevenness there that I think the government can and should resolve.

Two, with a lot of these new models coming on board—for example, I mentioned hybrid capital structures. From what I hear from folks who are working on these, trying to get capital to those underserved groups, there is a lack of regulatory clarity from the government, from the IRS, as to how those capital structures are going to be treated. So, I think regulatory clarity on those would be helpful.

Mr. LOUDERMILK. Okay. Thank you.

Unfortunately, Mr. Chairman, my time has expired, so I will yield back.

Chairman PERLMUTTER. I thank the gentleman from Georgia for his questions and for yielding back.

We now turn to the gentleman from Florida, Mr. Lawson, who has—one of his bills has been noticed as part of today's hearing, the Small Business Fair Debt Collection Protection Act.

Mr. Lawson, you are recognized for 5 minutes.

Mr. LAWSON. Thank you, Chairman Perlmutter.

And, to the ranking member, I am sorry he is out there in all this snow. And I was wondering how you were going to make it when I looked on TV to see what was going on in Denver, but I know you know how to do that. The last time I was out there, they knew how to handle it.

Currently, small business loans—and I, like Mr. Williams, have been a small business owner for about 34 years. I think I still am, but I am not able to make any money from it anymore.

Currently, small business loan borrowers do not have the same protection that individual consumers have under Federal law. Small business owners oftentimes place their personal finances and capital to starting and expanding their business. Small business owners often apply for credit using their personal credit cards, yet they do not receive the same protection as individual consumers, which is why, as the Chair said earlier, I reintroduced the Small Business Fair Debt Collection Protection Act, which protects small businesses from harassment from third-party debt collecting.

Would you agree that, by expanding the protection that currently exists for consumers to small business owners, that these businesses will be more likely to succeed? How do you suggest we better protect entrepreneurs and provide more access to capital without potentially hurting their personal credit?

And I can remember when I first went into business. They hardly had any credit cards when I first went into the insurance and financial business. You had to get something from the bank in order to get started. So, this will be for everybody on the panel, and maybe we can start with Ms. DeVane.

Ms. DEVANE. Thank you for the question.

Yes. I think that we know that many Black-owned businesses do use their personal credit. We know that a lot of these business owners looking for PPP money did go to fintech companies. That was an alternative source of capital.

They are not all bad. They tend to be race-blind in terms of the ability for some of those businesses to get capital. But we do need to be mindful that the practices are fair, because these business owners are often desperate for funding, and they really don't know what they don't know. And, in many cases, they are just ill-informed about the pricing, the credit, and the terms.

So, what we really want to make sure of is that our business owners at all of our Urban League centers are not being subjected to any predatory or abusive products and that they really understand and have transparency around all of the terms that they need in order to get this desperately-needed capital.

As a former banker, I understand the need to make sure that these businesses have access. But, like consumers, small businesses need to be protected from the bad actors.

And I will stop there, because some of my colleagues may want to add to that.

Mr. LAWSON. Okay. Thank you.

Ms. BILONICK. I would just like to hop in and say that I would be remiss if I didn't elevate what I believe to be one of the greater focuses of this conversation, which is elevating the rights of business borrowers to be equal to the rights of consumer borrowers.

This is something that I think, if it were more widely known in the public, would be an outrage. Small business owners are targeted by predatory lenders and now, more than ever, are extremely vulnerable to predatory lenders.

And I really am hopeful that, through this conversation, we can also discuss the importance, regardless of regulatory burdens on the banking industry, of really elevating the rights of small business borrowers and making them equal and on par to consumer borrowers.

Mr. LAWSON. Would anyone else care to comment?

Many people don't realize that some credit card issuers report business credit card accounts to the consumer credit bureaus, which means that the way you use your business credit card could raise or lower your personal credit score.

To what extent do business credit scores impair small business owners, especially minority owned- and women-owned businesses, from getting loans? And are these scores always accurate and reflective of risk?

Ms. BILONICK. I will start with the second question.

Much like personal credit scores, these business credit scores are also equally susceptible to error or misreporting, and so it really requires monitoring just like we do for our personal credit scores.

The other piece that I think is really important is that, for small business owners, personal and business credit is always inextricably linked, because of the business structure that they select, which does not necessarily count their business as a separate entity, and they typically are starting off as sole proprietors, not necessarily incorporating their businesses, and therefore, there is an intermingling of their personal and business credit.

So, I think the fact that the business credit can be reported to personal bureaus is absolutely something that could undermine the personal credit and the personal ability to rise out of poverty for small business owners.

Chairman PERLMUTTER. Thank you, Ms. Bilonick.

And thank you, Mr. Lawson. Your time has expired.

Mr. LAWSON. Chairman Perlmutter, before you leave, it was 80 degrees here in Tallahassee today, and I would like to see if I can send something over there to you.

Chairman PERLMUTTER. It was 7 degrees here this morning. So, thank you. I appreciate you sharing that information.

Mr. LAWSON. With that, I yield back.

Chairman PERLMUTTER. The gentleman yields back.

The gentleman from North Carolina, Mr. Budd—I am sure the weather is nice in North Carolina, too—is recognized for 5 minutes..

Mr. BUDD. Mr. Chairman, thanks for recognizing me. And I thank the panel. And it is not 7 degrees here, but add a zero; it is 70 degrees today in North Carolina.

We talked about access to capital and how important that was, particularly over the last few years, when businesses had been grappling with the effects of the pandemic. And, Mr. Stangler, again, thank you for being here.

What role did financial technology companies, or fintechs—what role did they play during the pandemic in helping to provide access to capital and to small businesses?

Mr. STANGLER. Thank you, Congressman.

As I think more and more research has found over the last couple of years, fintechs, online lenders, were crucial in two ways. One, through the disbursement of government relief, especially through PPP. As we have heard from fellow panelists, as we have seen in research, and as we have heard from some of your fellow committee members, the fintechs, online lenders, helped close some of those disparities that existed pre-pandemic, existed in the first round of PPP, and continue to exist, but fintechs helped to close those gaps.

Then, second, for a lot of small business owners who either were unsuccessful in receiving PPP, or maybe have received PPP and EIDL, but still needed additional capital, or maybe didn't want to apply or couldn't apply at traditional financial institutions, I think fintechs, online lenders have helped fill those gaps as well outside of the public efforts.

Mr. BUDD. Very good. We have always known that small businesses are critical to the growth of the American economy—it is about 43, almost 45 percent of GDP—and the creation of about 62 percent of new jobs since 1995. So, this growth is reliant on access to affordable credit.

The CFPB's 1071 rulemaking could unnecessarily reduce the availability and increase the cost of credit for small businesses.

So, again, Mr. Stangler, do you think that imposing new regulatory requirements on lenders will be counterproductive to increasing access to credit?

Mr. STANGLER. Thank you, Congressman.

I think additional regulatory burdens on lenders, no matter their form, can always have pass-through consequences to their borrowers, consumer or small business. As we touched on a few minutes ago, especially when it comes to the partnerships that banks and fintechs have been forming, including with smaller banks, we know there are regulatory challenges there.

When we review regulatory burdens, and the uneven regulatory playing field between the banks and fintechs and some of those partnerships, adding burdens in whatever way, shape, or form can really hinder some of those innovations and some of those kind of basic functions that, as you put it, those small businesses rely on.

Mr. BUDD. Very good. Continuing on, a recent National Federation of Independent Business (NFIB) survey reported that 47 percent of business owners reported job openings that could not be filled. Could you describe some actions Congress could pursue to support small business owners in their currently very challenging effort to hire people? And again, back to you, Mr. Stangler.

Mr. STANGLER. Thank you, Congressman.

This is a really important question, because this is a really pressing issue for many small businesses. And I have heard a couple of other panelists mention this as well. We know this from anecdotal conversations, as I am sure you hear in your district—we know those from small-scale surveys. We know this from large-scale surveys—but hiring and retaining workers is a major, major challenge.

In a few weeks actually, BPC has a small business policy report coming out, and one of the major focuses there is how we can help small businesses hire and retain workers, especially as they seek to compete with their larger competitors.

I think some of the things that we will highlight in that report, which I am happy to share with you and your staff when it is available are, how do we help small businesses, especially the smallest of the small, to help their employees with retirement, to help their employees with emergency savings? Government has already taken important steps there with bipartisan support, but there are still some gaps—some lack of regulatory clarity, some regulatory burdens facing those small businesses when it comes to retirement plans, when it comes to helping with training or education, or when it comes to helping with emergency savings.

So, I think there are a number of steps there that would really help small businesses with their workforces.

Mr. BUDD. Mr. Stangler, as a small business owner, and as a Member of Congress, I look forward to reading that report, if you would share that with us when it is available. I thank you for your time, and I thank the rest of the panel as well.

Stay warm, Mr. Chairman, and I yield back.

Chairman PERLMUTTER. The gentleman from North Carolina yields back.

The Chair now recognizes the Vice Chair of this subcommittee, Ms. Pressley from Massachusetts, for 5 minutes.

Ms. PRESSLEY. Thank you, Chairman Perlmutter, for convening this important discussion. And thank you for your long-standing advocacy and leadership on this issue.

This is such an important discussion on ensuring that minority- and women-owned small businesses share in the benefits of any long-term economic recovery. Those who have been hurt by the pandemic, related economic hurt, should be those who receive the most help while our economy recovers.

Yet, far too many Black and Brown folks have effectively been locked out of relief, whether by regulations or exclusionary credit and lending practices, a lack of start-up capital, or by laws that favor businesses that have already obtained success. This is even more true for cannabis businesses, which were explicitly excluded from pandemic PPP and EIDL programs within the SBA.

For many Black and Brown folks working tirelessly to gain a foothold into this industry, this exclusion has added insult to injury. Ensuring Black and Brown folks can start and sustain cannabis businesses is a matter of economic and racial justice, and restoring communities that have been ravaged by the failed war on drugs.

There are many attempts to keep those who were disproportionately locked up because of this failed war on drugs, and to keep them locked out from this multibillion dollar industry. This need has become even more evident when compounded by the disparate impact COVID has had on communities of color and minority-owned businesses. Although Black Americans were most heavily-impacted by the war on drugs, only 2 percent of marijuana businesses nationwide are Black-owned.

My home State, the Commonwealth of Massachusetts, is no stranger to this inequity. However, we were the first State in the country to mandate equity and inclusion within its legal cannabis industry. And we were the first to launch programs designed to assist folks disproportionately harmed by the war on drugs. And yet, the industry remains predominantly White and male still.

Ms. Littlejohn, how has the pandemic exacerbated current racial inequities within the cannabis industry?

Ms. LITTLEJOHN. Like all minority-owned businesses, cannabis businesses are feeling a crunch, because the resources needed to sustain during the economic downturn, the resources needed to secure businesses and make the infrastructure and technological upgrades, are just not there. There is no access to loans. When folks are going out to try and get more resources to upgrade their businesses, their companies are being grossly undervalued.

And this is also leading to safety concerns, because as their resources decline, there is also, again, the inability to make safety upgrades.

So, while during the pandemic, we have seen an exponential growth in some of the large companies, there was a point during the pandemic at which some of these companies were almost actually over 300 percent of their pre-pandemic value. And, meanwhile, the rest of the industry, and small businesses and minority businesses are folding at a pretty regular rate, especially in States like Massachusetts and California.

In Massachusetts, what we have seen is they are rolling out these equity programs, but the funding is not there, and there is a clock ticking on the amount of time that people have to get their businesses up and running in Massachusetts. I regularly get calls from businesses in Massachusetts. They are struggling.

The pandemic has hit all minority businesses hard, but it has been especially hard on minority cannabis businesses that really don't have anywhere to turn for resources.

Ms. PRESSLEY. And is that exactly why we need to be intentional in ensuring that minority- and women-owned cannabis businesses are not left behind in our recovery efforts, that there will be a more intentional and deliberate amount?

Ms. LITTLEJOHN. Absolutely. And I think that many people agree that ensuring that the people who have been most harmed by cannabis prohibition are participating is an important part of legalization, but the way the State laws are created right now, they are dealing with almost insurmountable barriers to entry and the challenge of competing when markets are captured by a handful of individuals.

So, it is really a dire situation. And if we don't get the resources now, many minority businesses are just not going to make it to legalization. They won't make it to the end of the year. And, as I mentioned earlier, there are some unfortunately that did not make it to the end of this week.

Ms. PRESSLEY. It is really clear that cannabis business owners need more support. And, again, I do want to commend our Chair, Mr. Perlmutter there, for his courageous leadership and his work to ensure that cannabis businesses are able to safely access financial and banking services in the face of what remains still great stigmatization of the industry.

But we also need comprehensive and systemic reforms to ensure that our communities are not left behind, like the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, to finally reverse these failed Federal policies criminalizing cannabis, provide expungement and resentencing for those with prior marijuana-related offenses, and invest in the very communities ravaged by the racist war on drugs. It's long overdue.

So, while we have the House, the Senate, and the White House, we must act.

Chairman PERLMUTTER. The gentlelady's time has expired. I thank the Vice Chair for her comments and her questions.

It looks like we will now finish with two Tennesseeans. I am not sure how that happened, but we will turn to Mr. Kustoff for 5 minutes for his questions.

Mr. KUSTOFF. Thank you, Mr. Chairman. Thank you for calling today's hearing. And there's nothing wrong with two Tennesseeans.

Mr. Stangler, I thank you, and I also thank the other witnesses for testifying today.

We have talked a lot about fintechs. Can you talk about the partnerships, if you will, between fintechs and community banks, how they interact with each other, the benefits that fintechs can provide to community banks, especially as it relates to the competitive and the source of the particular nature of banking? What benefits can fintechs offer community banks, and maybe vice versa?

Mr. STANGLER. Thank you, Congressman.

My 9-year-old has become a Memphis Grizzlies fan, so I am obliged on his behalf to say, "Go Grizzlies."

Congressman, I think you are right that these partnerships—not only have they increased in frequency and scale. And in the decade prior to the pandemic, partnerships between banks and fintechs really proliferated.

The banks get technology. The fintechs get access to more traditional forms of financing. In some cases, fintechs work with banks to participate in programs like the SBA's 7(a) loan program.

This is especially important for the small and community banks. The cost of investing in some of these technologies is just too high. It is prohibitive for them to do it on their own. The Federal Reserve put out a paper, I believe in September—I will have to double check—highlighting the importance of technology, of fintech partnerships for community banks specifically, and offering guidance on how community banks can do this most effectively.

So, even the Federal Reserve has kind of put its stamp of approval on this and pointed to the benefits. The fintechs obviously benefit, too. Not all fintechs are created equal. But for many of them, working with the banks brings them credibility, brings them growth, brings them new customers, and also access to those in the communities that community banks serve who might not have access to traditional forms of financing.

We believe these are highly important, and we see that evidence in their growth.

Mr. KUSTOFF. Thank you, Mr. Stangler.

I think we can all agree that innovation and emerging technologies really do offer great potential to access financial services, especially in underserved communities and in rural communities. I say that because a large part of my district is rural.

Part of that is the peer-to-peer payment systems, like PayPal, Venmo, and Cash App, and we understand the benefits of that.

In President Biden's American Rescue Plan, which was passed last year, last March, there was a provision in the plan that required businesses to report to the IRS transactions over $600 when using these third-party payment platforms.

I think that we can all agree that there are some strong potential privacy implications as it relates to individuals with this provision, that may also at some point be used or be seen as a disincentive to use these platforms.

Do you have concerns about how they, in fact, could be disincentivized to use these platforms based on that provision in the American Rescue Plan?

Mr. STANGLER. Thank you, Congressman.

I am familiar with this provision, although, to be candid, it is not something I have spent a great deal of time studying.

I will say that, as you mentioned in your remarks, these new companies, these new innovations—fintechs, online lenders—have been very, very important for our smallest of small businesses. They come with costs. Their interest rates can be higher. Their loan terms can be shorter. But we know that millions of small businesses and Americans are using them, including those small businesses who have and who are deemed to be higher credit risk.

I will say that, again, while I haven't studied this provision in depth, in detail, I think we need to be wary of steps that might overly burden some of the benefits that these fintech innovations bring.

Mr. KUSTOFF. Thank you, Mr. Stangler.

Mr. Chairman, I yield back my remaining 11 seconds.

Chairman PERLMUTTER. Thank you, Mr. Kustoff.

I now will go to Mr. Rose, the second Tennesseean, to close out the questions. Mr. Rose, you are recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Perlmutter. And there is absolutely nothing wrong with having two Tennesseeans to end this hearing. But thank you for calling this hearing, and the topic, I think, is timely. Small businesses have a big impact on our communities, and of course many are struggling with the current rising inflation and the cost of regulation that we have heard about today.

In my district, the Sixth District of Tennessee, 93.8 percent of employers are small businesses. The men and women who operate and work for these enterprises are some of the hardest-working people that I meet. These businesses are the heart of our economy and the engine that keeps this country moving. And I might add that I am an operator of just such a small business.

Now, as time is limited, I will dive right into my questions.

The pandemic was incredibly challenging for the American private bus and motor coach industry, as almost all major sources of business for this industry and revenue were restricted by the mandatory lockdowns. Congress created the Coronavirus Economic Relief for Transportation Services (CERTS), which provided $2 billion in grants to support this industry. According to data from the Treasury, 93 percent of CERTS grants went to small businesses, of which 33.4 percent were minority-owned.

The motor coach industry is still struggling, however, and will be one of the last industries, I fear, to recover, especially given their reliance on live events and touring around the country.

Mr. Stangler, could you discuss how Congress could help at this point to ensure that segments of our economy that were hit the hardest by COVID-19, like the motor coach industry, are able to fully recover?

Mr. STANGLER. Thank you, Congressman.

This sector of the economy is not one that I have studied in depth, but I fully accept and agree with your comments that it has been hit hard and will likely be one of the last to recover, especially, as you mentioned, because of its dependence on live entertainment and concert venues.

I know there are some proposals being floated around in Congress to provide more assistance to small businesses, sector-specific assistance, whether that is restaurants or gyms or motor coaches. I think for those proposals to be effective and to pass, we would like to see them have bipartisan support and to be targeted, because we know that many sectors of the economy are further along in the recovery than others.

I would also propose that, for sectors like this—and, again, it is not a sector I have studied well—we can look to other existing streams of Federal spending that go into the small business economy. I will just quickly mention that we have done a lot of work, for example, on Federal procurement. I am unaware of what the state of Federal procurement spending is with the motor coach industry, but some of these existing streams of billions of dollars, I think, are really important for small businesses, especially minority-owned businesses, as they recover.

Mr. ROSE. You speak of the report, and that actually was going to be my next question for you, about the Bipartisan Policy Center's report. Could you please describe some of the barriers to entry that the report referenced and possible solutions for those?

Mr. STANGLER. Congressman, you are referring to our report on small business procurement?

Mr. ROSE. Yes. And particularly, focused on Federal procurement.

Mr. STANGLER. Yes. Thank you.

This was a report we put out last June, that will also be the subject of the Small Business Policy Report—one of the subjects of the report that we put out in a few weeks. Congressman, I will give you just a couple of statistics, some of which I am sure you are familiar with.

The Federal Government spends $560 billion, I think we are up to, each year, that is, "small business eligible." Small businesses are supposed to get 23 percent of those contract awards. For 8 years in a row, the government has met that goal.

However, the number of small businesses actually participating as contractors has fallen by 40 percent in the last decade, and the number of new entrants into small business procurement—so small businesses not being a contractor last year, being a contractor this year, that number has fallen by 80 percent in a decade. There are significant barriers to entry, and this particularly harms minority- and women-owned businesses. The women-owned business goal, which is 5 percent, has only been met twice in 25 years.

There are significant ways that the Federal Government can and should reduce those barriers to entry, because this is a lot of money that flows into the small business economy every year.

Mr. ROSE. Thank you for that.

Mr. Chairman, I see my time is about to expire.

As one small business operator, I will tell you—and it turns out to be helpful when you end up being in Congress—in my business, we just ignored government procurement because it seemed like such a labyrinth to try to navigate. And I consider myself to be a reasonably intelligent person, but every time we dug into that, we concluded that it was just too difficult.

And so, one of the solutions has to be that we have to figure out how to make it easier for small businesses with limited resources to go after that government procurement business.

Thank you, Mr. Chairman, and I yield back.

Chairman PERLMUTTER. The gentleman yields back. Thank you, Mr. Rose.

Without objection, statements from the following organizations will be entered into the record: the National Association of Federally-Insured Credit Unions; the American Financial Services Association; Gusto; and the joint statement of the Center for Responsible Lending, the National Coalition for Asian Pacific American Community Development (National CAPACD), and the National Association for Latino Community Asset Builders (NALCAB).

And I would like to thank our witnesses for your testimony today. We really appreciated your remarks.

I would also especially like to thank Dr. Robb for having a Golden Buff on this from the University of Colorado. Go Buffs.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Ms. Littlejohn, you had that specific request from Mr. Scott, so I hope you will follow up on that.

Mr. Rose, thank you for your questions.

Mr. Lawson, I think we got through your draft bill.

I appreciate the witnesses, and I thank you for testifying in front of our subcommittee.

Ms. BILONICK. Thanks very much.

Mr. STANGLER. Thank you.

Chairman PERLMUTTER. And with that, this hearing is adjourned. Thank you all very much. That was excellent.

[Whereupon, at 5:04 p.m., the hearing was adjourned.]

A P P E N D I X

February 17, 2022

National Association for Latino Community Asset Builders

Testimony of Marla Bilonick
President & CEO
National Association for Latino Community Asset Builders-NALCAB
Provided to the House Committee on Financial Services

February 17, 2022

Good afternoon, Chair Perlmutter, Ranking Member Luetkemeyer and members of the Subcommittee.

It is my honor to be addressing you today for this discussion on ensuring small and minority-owned businesses have an equal share in our nation's economic recovery. I am speaking from over 20 years of experience working in the small business development and lending field as well as in my role as President and CEO of the National Association for Latino Community Asset Builders-NALCAB. In this capacity, I represent our member network of over 150 nonprofits nationwide that support small, Latino-owned, and other underserved businesses. Lastly, and most importantly, I am representing the experiences of their small business clients that continue to weather the adverse economic effects of the COVID-19 pandemic.

NALCAB Background

NALCAB is the hub of a national network of 150+ mission-driven organizations that are anchor institutions in geographically and ethnically diverse Latino communities in 40 states, Puerto Rico, and the District of Columbia. Members of the NALCAB network invest in their communities by building affordable housing, addressing gentrification, supporting small business growth, and providing financial counseling on issues such as credit building and homeownership. Most of the people served by the NALCAB network are low- to moderate-income individuals.

NALCAB's vision is to dramatically scale the flow of public and private sector capital that responsibly meets the asset building needs and opportunities in the communities and families we serve. As a grant maker and US Treasury certified CDFI lender, NALCAB strengthens and coordinates the capacity of our network to deploy capital. NALCAB also supports our membership through direct capacity building and training services. This year, we will launch our National Alliance of Hispanic CDFI Executives-NAHCE, convening the largest group of Latino-led and Latino-serving CDFIs in the United States.

Since 2008, NALCAB has provided our network members with over $25 million in grants. NALCAB has also trained over 2500 practitioners and graduated 153 next generation Latino leaders from our Community Development Fellowship. With NALCAB's support, member organizations have secured more than $450 million for affordable housing, small business, and financial capability programs. NALCAB has also influenced how local and federal government agencies are deploying hundreds of millions of dollars for community development and recovery. We know that the strength of the US economy relies on the fast-growing Latino community's hard work, entrepreneurial spirit, spending power, and leadership.

Economic Impact of the COVID-19 Pandemic on Latino-owned Small Businesses

While the Latino community is heralded for starting small businesses at rates higher than other ethnic groups; the adverse economic effects of the pandemic have disproportionately impacted Latino business owners. Stanford's Latino Entrepreneurship Institute surveyed 7,000 small businesses and cites that 86% of Latino-owned businesses suffered immediate negative financial impacts from the pandemic. At the same time, Latino business owners were successful at securing Paycheck Protection Program-PPP loans at only half the rate of their white counterparts, and only 3% of Latino-owned businesses received their full funding request. Overall, less than 30% of the PPP loans made were to low- to moderate-income business owners. So, clearly, the recovery assistance that has been offered is limited in that it favors entrepreneurs with more resources and more access to information.

Latino-owned businesses have a strong presence in industries that have been hard-hit by the pandemic such as the restaurant industry. Industries that were mostly shielded from the effects of the pandemic, such as finance and information services are led by and/or employ some of the lowest numbers of Latinos. At the outset of the pandemic, Latinos (and specifically Latinas) showed the highest unemployment rates in the nation.

In 2019, before the pandemic landed, Latino-owned businesses had hit a record-breaking stride, with their average annual revenue increasing 10% to over $525,000 per year. We are hopeful that this upward trajectory can be harnessed again. This will partly be achieved through the success of government interventions that support and include small and minority-owned businesses through this next phase of recovery.

NALCAB's Small Business-Focused Pandemic Response & PPP-related Lending

As part of NALCAB's pandemic responsive grant making, we provided 120 nonprofits with over $15 million in grants to help keep the small- and minority-owned businesses in their communities afloat.

In addition, NALCAB was called upon to provide capital to several of our CDFI members to facilitate their Paycheck Protection Program-PPP lending during the pandemic. Our CDFI members faced liquidity challenges when the demand for PPP loans outpaced the size of their loan funds. Much like the clients we serve, Latino-led and Latino-serving CDFIs had trouble accessing immediate and inexpensive capital. Therefore, NALCAB stepped in and ultimately loaned our members $12 million for PPP lending which resulted in them making over 600 PPP loans to small and minority-owned businesses in their communities.

NALCAB member CDFIs including heavy hitters like Accion Opportunity Fund, Self-Help, LiftFund, and CDC Small Business Finance were able to provide business clients with PPP loans when banks could not or would not. In fact, NALCAB member Chicanos Por La Causa's Prestamos CDFI was the third highest PPP lender in the nation behind JP Morgan Chase and Bank of America. CDFIs overall outperformed their $15 billion set-aside from congress by making over $30 billion in PPP loans.

NATIONAL ASSOCIATION FOR LATINO COMMUNITY ASSET BUILDERS

Constructive Feedback on Select Recovery Programs

We commend the federal government for its swift and responsive funding and programming to offset the economic impact of the COVID-19 Pandemic. As we begin another year of living with the pandemic, we wanted to provide some constructive feedback on select recovery programs.

PPP has been one of the most important sources of recovery support for businesses as they've struggled to stay afloat during the pandemic. It has also been one of the most critical resources in terms of retaining jobs in America's small businesses---that are the top job suppliers and creators in the nation.

There have been some issues with the program that we wanted to include in these remarks on behalf of our network and the small businesses they serve. First, the exclusion of CDFIs in the first round of PPP lending delayed relief to countless small and minority-owned businesses that look to CDFIs as their lenders of first resort and that were turned away by commercial banks. Once CDFIs were brought in, there were still systemic challenges to navigating the overloaded application portal as well as capacity challenges within CDFIs to manage the incredible demand for the product. We commend the SBA for working to provide dedicated time windows for CDFI-driven PPP applications as well as we commend Congress for setting aside such significant funds for CDFIs to do PPP loans.

In the current phase of PPP forgiveness, there are challenges around errors and excess loan amounts impeding the provision of loan forgiveness to a group of small business owners. We wanted to be sure to note that loans that were made in the initial stages of the PPP program in 2020-when there was some confusion regarding calculation of loan requests-have resulted in good faith errors that generated some PPP loans that exceeded borrowers' correct maximum amounts. In January of 2021 the SBA's Procedural Notice informed PPP lenders of said excess loan amount errors.

Unfortunately, the responsibility has fallen on borrowers to repay and/or not be granted forgiveness on excess loan amounts. While we do not support the forgiveness of fraudulent loans, we do not think it is correct to penalize borrowers for good faith errors that they, or especially their lenders, made in misinterpreting the original PPP lending guidance. Especially in cases of small loan amounts, this seems like undue effort to squeeze dollars out of the very borrowers that the PPP program was designed for-borrowers that most certainly used every cent of their PPP loan to ensure that their businesses stayed open and that their employees stayed on payroll.

The experience of our network has resoundingly been one where the majority of our CDFI member PPP loans made have been forgiven. We surveyed 20 NALCAB members that provided PPP loans and they reported that only between 1-10% of their clients' forgiveness applications have been denied. Of those denials, they cited lack of proper documentation, language barriers, a misunderstanding of compliance with program rules, and technology barriers as some of the reasons for PPP loans not being forgiven. These observations provide useful guidance as we move into this next stage of small business recovery and are the basis of our recommendations.

The SBA's Restaurant Revitalization Fund, which was cut from $60 billion to less than half of that ($28 billion) provided much-needed pandemic recovery support to the restaurant industry. The restaurant industry has arguably been the hardest-hit sector during the pandemic. So, not surprisingly, the funds were completely expended within one month of the program's launch. Advocates have actively supported additional funding for this program, with a flurry of activity just this past Tuesday to push for more Restaurant Revitalization Funds. The Build Back Better bill included funding for restaurants but was not passed. Still, additional funding for restaurant relief has wide support from most members of congress. We are hopeful that this funding will be replenished soon---as it is very relevant to the Latino community in terms of high Latino restaurant business ownership and employment.

The Department of Treasury's State Small Business Credit Initiative, part of The American Rescue Plan Act, allocated $10 billion to fund state, territory, and Tribal government small business credit support and investment programs. SSBCI funds can be used to develop capital access programs, other capital support programs, and venture capital investments. What is attractive about this program is the flexibility it provides states to design their own small business support programs in a way that is reflective of the unique economic circumstances and conditions in their regions. This is a revamping of the original SSBCI program that was launched after the great recession and that has great potential to reach diverse small businesses, especially through state partnership with CDFIs working on the ground to get capital into the communities and businesses that need it most. The program's success will hinge on its ability to involve mission-based investors working with and for communities.

RECOMMENDATIONS FOR PROVIDING INCLUSIVE RECOVERY FOR SMALL- AND MINORITY-OWNED BUSINESSES

Low Barrier-to-entry Programs for both Small and Minority-Owned Businesses and the Organizations that Serve Them

Of small businesses surveyed by the Small Business Administration-SBA, 37% of respondents stated that they didn't apply for PPP because they did not feel they qualified for the loan or for forgiveness. Another 23% said they didn't apply because the program/process was too confusing. 13% responded that they could not find a PPP lender.

In developing future recovery programs and legislation, the barriers to access from the point of view of ease (or lack of ease) of applying should be considered seriously. In addition, efforts must be made to provide equal access to information on programs as well as clear direction on what entities are offering the program within communities.

Moreover, some of the challenges faced by small- and minority-owned businesses are mirrored by challenges that community-based organizations and CDFIs experienced in getting on-boarded to deliver federal recovery programs. We must take better care in making sure that the very systems we have erected to bridge racial and ethnic wealth divides to not exclude those organizations that are deeply rooted in communities and best equipped to serve low- to moderate-income entrepreneurs.

The new SBA Community Navigator model provides promise insofar as it aims to better connect small businesses to SBA programming through a hub-and-spoke model that is firmly rooted in communities. We gladly report that several NALCAB members are partners in Community Navigator programs that are currently being launched nationwide. We also commend the SBA in proactively pursuing community-based organizations' input. We are currently in bi-weekly discussions with the SBA along with NALCAB member organizations to provide feedback on and input into current and upcoming SBA products.

The CDFI Fund's Community Development Advisory Board, which I Chair, is also a proactive channel for gaining input on program development from a diverse set of community-grounded stakeholders. We commend the Department of Treasury for its significant financial commitment to small business recovery as well as its ongoing work to include underrepresented voices in the design, launch, and review of new and existing CDFI Fund programs. The current Community Development Advisory Board is made up of a racially- and ethnically-diverse group of practitioners and stakeholders that will bring to bear a broad set of perspectives to inform CDFI programming moving forward.

Improved Collection of Data and Transparency in Lending

Small Business Lending activity and practices have gone without meaningful monitoring for far too long. The parallel mortgage lending activity has been held to much more rigorous reporting and data collection standards and it is due time for commercial small business lenders to be held to comparable standards.

Section 1071 of The Dodd-Frank Act mandates the collection of dissemination of small business lending data 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.

NALCAB has been a leader in advocacy for Section 1071 of the Dodd Frank Act to be implemented. Once implemented, Section 1071 will prove what community-based small business lenders have only been able to rely on anecdotal and self-reported evidence to justify---which is the fact that ethnic, racial, and gender biases negatively impact the ability for minority-owned small businesses to access capital. Without application-level data about the characteristics of the applicant, the credit sought, and the action taken on the application (including both decisions to approve or deny and pricing decisions) it is not possible to begin to identify fair lending violations or, at least, fair lending concerns that warrant further investigation. Without this data, both public and private sector lenders are very limited in their ability to develop products that address inequities in access to credit and to assure that small, minority-owned businesses obtain the support they need to realize their full potential. The comments we submitted to the Consumer Financial Protection Bureau (CFPB) last month in response to its public comment period further highlight in detail the importance of implementation on communities and small businesses of color.

Due to the adverse economic effects of the pandemic, small- and minority-owned businesses are more susceptible to predatory lending practices than ever before. NALCAB supports the Small Business Lending Disclosure Act that aims to protect small business borrowers from predatory lenders and loans carrying unfair terms and conditions and would ensure safeguards already required in consumer lending through the Truth in Lending Act. The bill bolsters the role of the Consumer Financial Protection Bureau in policing small business lending and will bring enhanced transparency to small commercial loans.

We applaud this legislation that will help guard against unsafe lending products and ensure that small- and minority-owned businesses have the responsible capital needed to help them spur economic growth and create quality jobs.

Narrowing the Technology Gap

A final recommendation is to support the commitment of resources toward efforts to narrow the technology gap for small- and minority-owned businesses. This is a longer-term strategy that stands to have significant impact on connecting underrepresented businesses to recovery programs as well as to bolster the overall sustainability of small- and minority-owned businesses, regardless of the economic environment.

Community-based small business service providers and lenders have shared that they have either implicitly or explicitly woven computer literacy and technology integration into their service provision models. Many underserved small businesses lack basic computer skills and/or do not have acceptable access to hardware, software, or internet connection. This impedes their ability to access information on government recovery programs. It also reduces their capacity to apply for programs when they do not have a computer to use to apply online, the technology to convert hard-copy documents into electronic attachments, or a reliable internet connection to sustain the time required to complete an electronic application. These are gaps that can be taken for granted in the design and implementation phase of recovery programs and the exclusion of a subset of entrepreneurs is difficult to measure (as it requires measuring inactivity vs. activity).

My own experience as a practitioner, as well as the feedback we've received from our members, validates the significant challenges that the technology gap presents to minority and lower-income small business owners. We are actively participating in listening sessions being held by the National Telecommunications and Information Administration-NTIA on upcoming programming funded by $48.2 billion that has been allocated to NTIA to deploy broadband to unserved and underserved communities, create more low-cost broadband service options, and address the digital equity and inclusion needs in our communities.

Many thanks for this opportunity to testify and I look forward to answering your questions.

National Urban League | Empowering Communities. Changing Lives.

Testimony of Stephanie DeVane

Vice President of Entrepreneurship & Business Development,

National Urban League

Hearing of the House Financial Services Committee, Subcommittee on Consumer Protection and Financial Institutions:

"Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery."

February 17, 2022

Chair Perlmutter, Ranking Member Luetkemeyer and members of the House Financial Services Committee Subcommittee on Consumer Protection and Financial Insitutions, thank you for the opportunity to testify at today's hearing titled: "Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery." My name is Stephanie DeVane and I am the Vice President of Entrepreneurship & Business Development at the National Urban League. I bring you greetings on behalf of Marc Morial, our President and CEO.

The National Urban League is an historic civil rights, community-based organization dedicated to economic empowerment and the guarantee of civil rights for African Americans and other underserved communities in America. As a national nonprofit intermediary, we provide direct comprehensive services that improve the lives of nearly two million people each year, through our network of 91 Urban League affiliates in 36 states and the District of Columbia.

As the Vice President of Entrepreneurship & Business Development, I manage, oversee, and advocate on behalf of 12 Urban League Entrepreneurship Centers located in in Atlanta, GA; Baltimore, MD; Chicago, IL; Cincinnati, OH; Cleveland, OH; Houston, TX; Jacksonville, FL; Las Vegas, NV; Los Angeles, CA; New Orleans, LA; Philadelphia, PA; and Washington, DC.

Through our experience working with entrepreneurs all over the country, we have seen the disparate impact the effects of the Covid-19 pandemic on minority-owned small businesses and the need to improve fair access to credit and transparency in lending in federal lending programs. Additionally, I want to stress the importance of supplier diversity and community-based Small Business Development Centers to ensuring Black entrepreneurs and other smalls business owners of color share in the nation's economic recovery.

National Urban League Entrepreneurship Center Program

The National Urban League's Entrepreneurship Center (EC) Program provides management counseling, mentoring, and training services for entrepreneurs looking to start, grow, or scale their business. Services include comprehensive business planning and support, financial/credit education, access to capital, business to business networking, contracting/procurement opportunities, and certification. The skills learned enable minority entrepreneurs to improve operations, increase capacity, obtain financing and contracts, and better serve their customers, with the goal of creating jobs that will lead to sustainable businesses, and ultimately generate wealth for themselves, their families, and communities.

Our centers serve entrepreneurs of all racial, gender and socio-economic demographics, but the most frequent Urban League Entrepreneurship Center Program client is an African American woman, who is earning a low to moderate income and has an existing business.

The National Urban League's Entrepreneurship Centers have served as the first line of defense in keeping the doors of our entrepreneur-clients open during the ongoing pandemic. They've hosted webinars to guide entrepreneurs through federal loan and grant applications, provided direct assistance to many small businesses experiencing cash flow issues, disseminated timely updates from the Small Business Administration and other agencies, and shared resources from partner organizations. They've also offered general information and resources to help entrepreneurs manage business processes and develop disaster recovery plans.

In June 2020, the National Urban League received a one-year CARES Act Award from the Minority Business Development Agency (MBDA) which enabled our Entrepreneurship Centers to provide small business and minority business enterprises with technical assistance, training, education, and advisory services to fill the gaps revealed by the COVID-19 pandemic. Between June 1, 2020 and May 31, 2021, our 12 Entrepreneurship Centers served approximately 11,253 clients through counseling (5,100 counseled in 13,300 sessions over 15,800 hours) and training activities (7,100 trained with attendance of 14,600 over 33,200 hours). We helped clients secure $137.6 million in financing and contract opportunities, as well as save or create 1,174 full and part-time jobs.

Services provided with support from the CARES Act award include:

- Increasing access to capital and business resiliency;
- Identifying and mitigating economic effects arising from lack of systems in place to maintain operations and prevent business disruption;
- Identifying and mitigating inadequate financial management practices that increased risk and reduced profitability; and
- Identifying and changing less flexible operating models that could not easily be shifted during stay-in-place mandates and contributed to loss of the business, staff, or revenue.

In addition, the National Urban League was just awarded a $5 million Small Business Administration Community Navigator Pilot Program (CNPP) award which will allow us to work with 25 Urban League Affiliates to reduce barriers for minority-owned businesses through critical support and resources.

The CNPP will reach and support underserved small businesses, including micro and rural businesses, with emphasis on those owned by women, veterans, and socially and economically disadvantaged individuals to help them recover from the effects of COVID-19. The National Urban League will operate as the hub overseeing and supporting 25 Urban League spokes, in cities across the country delivering individualized counseling, mentoring, training, and technical assistance to small businesses through workshops and printed materials, delivered online as well as in-person.

Specifically, our affiliates will:

- Assist entrepreneurs to recover from the pandemic's effects within their operations and provide information and tools to stabilize and grow their businesses;
- Utilize their extensive networks of partnerships and community relationships to conduct targeted outreach to businesses most affected by the pandemic as well as partner with other local organizations who offer services to low- and moderate-income minority and women-owned businesses; and
- Provide comprehensive business planning and support, financial and credit education, advisory services, opportunities for business-to-business networking, access to financing and contracting/procurement opportunities, and assistance with obtaining various business certifications.

In 2021, in partnership with PepsiCo Foundation, NUL launched the Black Restaurant Accelerator Program (BRAP) to help address systemic barriers faced by Black-owned food service companies, particularly in the time of COVID-19. The $10 million, 5-year program comprises cash grants to 500 businesses and technical assistance, including entrepreneurial coaching and training on various operational and financial topics. The grants have been a lifeline for many struggling Black foodservice businesses unable to obtain or qualify for PPP loans or meet the stringent conditions of certain grants.

I would like to share the story of De'Lish Cafe, a Cajun-Creole comfort food restaurant based in Dayton, Ohio. In 2018, De'Lish closed its doors after eight years. In January 2020, owner Jasmine Brown began selling food again, and shortly after, opened the De'Lish food truck. But because Jasmine had no business in 2019, she could not prove a loss, and though numerous local and state grants were available, the business did not qualify for those funds. Jasmine said, "So, when [the BRAP grant] came along, it was just a good feeling like, 'Okay, well there's something out there'. It's hard when you have a business. (In terms of) most food trucks, we have less than five employees, and for some of us, it may be only us." She was thankful the BRAP didn't have the type of eliminating criteria that other grants had and expressed her hope that more such grants would be available for businesses that are "extra small."

Impact of the Pandemic on Black-Owned Business

Jasmine represents one of many Black entrepreneurs who were disproportiationately impacted by COVID. However, unlike Jasmine who was able to secure private sector funding to shore up her small business, most were not as lucky. According to data on small businesses from the Federal Reserve Bank of New York, nearly half (41%) of Black-owned businesses closed between February and April 2020, compared to just 17% of white-owned firms. [1] The COVID-19 pandemic added to the impact of systemic racism and the racial wealth gap in communities of color. Black and other minority-owned business were already financially disadvantaged before the pandemic. Most had weak capitalizations, limited bank relationships and little in cash reserves to cushion the financial impact of forced closings, modified re-openings, and weakened demand due to the pandemic.[2] In fact, a September 2021 Federal Reserve study found that that 51% of Black-owned businesses have less than three months of cash reserves in case of an emergency or another COVID shutdown – a figure nearly 7 percentage points greater than their peers.[3]

[1]https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses
[2]Ibid.
[3] https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographics/the-covid-surge-is-slowing-the-road-to-recovery/index.html

Having access to capital can help bridge the gap for Black small business owners. However, research shows that Black business owners are more likely to be denied capital compared to white conterparts even with similar creditworthiness. In June 2021, McKinsey & Company reported that Black-owned businesses are 20% less likely to get a loan than businesses with white owners, and these businesses often lack access to a supportive network due to implicit bias and the legacy of racism.[4]

Lessons Learned from the PPP Program

Some of these challenges could have been prevented or at least addressed through federal intervention. Unfortunately, the Paycheck Protection Program (PPP), which was designed to be a lifeline for struggling small businesses, left most of our minority-owned business behind, reaching just 20% of eligible firms in states with the highest density of Black owned firms.[5]

The National Urban League called on Congress to enact stringent protections on PPP funds to ensure the funds would be directed to businesses with the greatest need for this important lifeline. Our recommendations included: establishing set-asides for the smallest U.S. businesses and sole-proprietorships; mandating the collection and releasing of the lending, demographic, and revenue data of all the small business owners to whom banks had extended credit; instituting affiliation rules; requiring institutions to adhere to existing federal fair lending laws; and urging banks to take affirmative outreach steps to minority-owned small business, many of whom were unable to access the previous iteration of PPP due in part to the lack of access to important and longstanding banking relationships that made accessing such credit opportunities for their white counterparts possible.

Moreover, we urged Congress and the Trump Administration to dedicate PPP funding resources and rapid authorities to Minority Development Institutions and Community Development Financial Institutions as well as other small lenders with a strong track record of providing access to capital fund to underserved small businesses and nonprofits in hopes of better mitigating the pandemic's detrimental economic impact that threatened the millions of entrepreneurs in the communities served by these institutions. These requests were never met and the federal response was inadequate at best, failing to reach many if not most of the hardest hit areas. [6]

Researchers from New York University also found that Black borrowers who were able to obtain PPP loans disproportionately received them from fintech companies and not banks.[7] While fintech automated systems and algorithm methods tend to reduce racial disparities in lending, their popularity is not without issues. These unregulated products often lack transparency and come with unfair terms which can harm ill-informed, vulnerable minority borrowers. Full disclosure of pricing and terms, responsible underwriting, fair treatment from brokers, and fair collection practices are critical to protecting the rights of these businesses.

The National Urban League has worked closely with the Responsible Business Lending Coalition (RBLC), a network of non-profit and for-profit lenders, investors, and small business advocates committed to innovation in small business lending, to address the rise of irresponsible small business lending. RBLC's recent policy success includes passage of a New York state fair collections practices law, which bans the use of Confessions of Judgment for business loans originating out of state, and New York and California

[4] https://www.mckinsey.com/about-us/covid-response-center/inclusive-economy/black-owned-businesses-face-an-unequal-path-to-recovery
[5] https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses
[6] IBID
[7] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939384

small business lending disclosure laws. Final regulations have not yet been released for these bills. NUL is also a signatory to the *Small Business Borrowers' Bill of Rights*, which identifies six fundamental financing rights that RBLC believes all small businesses deserve, though in most cases, are not yet protected by law. These rights include transparency and fair and equitable treatment. Additionally, NUL was involved in the passage of New York's small business Truth-in-Lending Act (TILA) bill.

The Need for Access to Fairness and Transparency in Lending

This next phase of our nation's economy recovery is an opportunity for our leaders to get it right. For communities of color, generational wealth remains elusive, which means that access to fair, stable, transparent, and flexible long-term capital is virtually the only way entrepreneurs in these communities can sustainably grow their businesses. To that end, the legislation to be discussed before the Committee today, coupled with stringent enforcement of longstanding federal fair lending laws, provide a strong framework for providing our nation's main street businesses with the access to capital and resources they need to grow their businesses and boost the U.S. economy. Following are the National Urban League's recommendations to increase access to fairness and transparency in lending.

1. *Support passage of the Small Business Lending Disclosure Act of 2021* (H.R. 5064)

As stated above, the National Urban League was an early endorser of the *Small Business Lending Disclosure Act of 2021,* which requires all products and providers to disclose their financing terms.We are current endorsers of companion lending disclosure bills in both chambers, including the legislation before the Committee today. Our view is simple: as technological advancements in the financial marketplace bring about new innovations to the way businesses borrow money, it is important to have fair ground rules that allow small businesses in every community, including historically underserved areas, to access the safe, stable, and sustainable financing opportunities they need to grow. These tools are simple: transparent disclosure of terms; banning of predatory and abusive loan products; fair and reasonable repayment and loan underwriting terms; sensible oversight protections; and fair and decent treatment by lenders. We would like to thank House Small Business Committee Chairwoman Velazquez for her leadership on the bill and Subcommittee Chair Perlmutter for cosponsoring the bill.

2. *Implement Section 1071 Truth-in-Lending Act (TILA) for Small Business Disclosures*

As you may know, Section 1071 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection law (Dodd-Frank) requires the Federal government to collect and publish data on small business lending. The purpose of this rule was to create a more comprehensive view of nationwide lending practices and a way to identify barriers that prevent small business owners in traditionally underserved communities from accessing the capital and credit needed to grow their businesses. The law also tasked enforcement of this provision to a new federal agency created under it: the Consumer Financial Protection Bureau (CFPB). Unfortunately, implementation of this important rule has been delayed for more than 12 years.

The National Urban League was pleased that the Biden Administration moved ahead with rulemaking on small business lending data, making this an early prioritiy in this Administration. Once finalized, the transparency brought about by the implementation of this important rule will help us identify solutions to ensure that creditworthy small business owners in underserved communities can meet credit and capital needs to grow their businesses. In addition, the *Small Business Lending Disclosure Act of 2021* requires all products and providers to disclose their financing terms, and we urge CFPB to do the same in the scope of Section 1071 rulemaking. This transparency would help protect Black and Hispanic-owned businesses against predatory lending products given Federal Reserve research, which shows these communities are twice as likely to use "higher cost and less transparent financing."

3. *Ensure Strong Supervisory Enforcement of the Equal Credit Opportunity Act of 1974*

Our nation's federal financial regulatory agencies must take their statutory mandate to supervise U.S. lending institutions for enforcement of the *Equal Credit Opportunity Act* (ECOA) compliance seriously. Regulators must vigorously work to ensure that banks chartered to provide lending services in the U.S. aren't discriminating against U.S. taxpayers. Banks with egregious track records must face the appropriate recourse for failing to hold their end of the bargain, including losing their privilege to have funds held at their banks insured by U.S. taxpayers, if necessary.

4. *Promote and Invest in Supplier Diversity Programs*

The federal government should be more intentional about promoting supplier diversity programs that help minority-owned business enterprises gain access to new business opportunities and audiences that can lead to capital and additional contract opportunities. During the pandemic, various previously underutilized minority-owned suppliers had capacity and resources when other firms did not and were sometimes able to resolve supply chain issues. Supplier diversity programs can help address these supply chain issues while ultimately creating jobs and wealth in underserved communities.

5. *Invest in Community-based Small Business Incubators*

The federal government should also invest more resources in community-based Small Business Development Centers and national nonprofit intermediaries that provide targeted, culturally relevant training and technical support to develop and grow minority-owned businesses. These organizations are trusted messengers that can help Black entrepreneurs overcome many of the challenges associated with starting and operating a business, which are less prevalent among white-owned business owners.

The federal government has the opportunity and the responsibility to ensure Black entrepreneurs and other business owners of color have access to fair and transparent capital, credit, and other financial tools and resources they need to share in the nation's economic recovery. This is a vital part of creating economic stability and wealth creation in underserved communities. On behalf of the National Urban League, we appreciate the Committee's consideration of these views and commit to working with you on solutions that ensure all small businesses can build back better in the new economy.

This concludes my testimony. I look forward to your questions.

Testimony of

Amber Littlejohn, Esq.

Executive Director

Minority Cannabis Business Association

Before the

United States House of Representatives

Committee on Financial Services

Subcommittee on Consumer Protection and Financial Institutions

Hearing on

"Small Businesses, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery"

February 17, 2022

Executive Summary

Chair Perlmutter, Ranking Member Luetkemeyer, and other Members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing. My name is Amber Littlejohn; I am the Executive Director of the Minority Cannabis Business Association (MCBA). The MCBA is the largest national trade association dedicated to serving the needs of minority cannabis businesses and our communities. We represent minority and allied cannabis businesses, aspiring entrepreneurs, and advocates who share our vision of an equitable, just, and responsible cannabis industry.

I am pleased to appear before you on behalf of MCBA to discuss the challenges shared by small businesses as we continue to grapple with the global COVID-19 pandemic and the uncertain economic outlook. For many minority businesses, including minority-owned cannabis businesses, the outlook is dire. As the nascent cannabis industry takes shape, we see a common tale of small businesses struggling to enter and sustain themselves because of extraordinary barriers to entry and limited access to capital. We see a common cycle of minority entrepreneurs seeking to shake the economic consequences of systemic inequities, only to suffer at the hands predatory investors and partners who seek to profit from injustice.

In my testimony, I will touch on four issues about this cycle, how the COVID-19 pandemic has exacerbated it, and some of the potential solutions. Despite the limited scope of this testimony, there are many issues the Subcommittee should continue to explore to ensure small and minority-owned businesses can share in the economic recovery. I offer myself and the MCBA as an ongoing resource on these issues.

First, the COVID-19 pandemic and resulting economic uncertainty have been particularly difficult for small businesses, but especially for minority-owned and operated cannabis businesses, because minority-owned and operated cannabis businesses were shut out from the federal government's pandemic relief programs. Despite many states deeming legal cannabis businesses "essential" during the early stages of the pandemic, all plant-touching and ancillary cannabis businesses were deprived access to federal relief to help small businesses survive the closures and economic downturn, including the Paycheck Protection Program. Even small businesses who could access federal relief were unable to access adequate support. As a result, Black businesses closed at more than twice the rate of white-owned firms and experienced declines in cash balances nine times as high as nonminority firms since the pandemic began.[1]

Second, the financial challenges small and minority-owned cannabis businesses face have been exacerbated by the pandemic, but they were not created by it. Despite accounting for 12.4% of the U.S. population,[2] African-Americans constitute just 2% of the owners of our nation's 30,000 legal plant-touching cannabis businesses.[3] This low representation is due to staggering costs small and minority-owned and operated cannabis businesses incur in order to operate lawfully. In competitive markets, the pre-application and application costs for small cannabis businesses commonly exceed millions of dollars, especially in states that require hopeful licensees to secure a "green zone"[4] premise or show proof of capital in order to apply. As I will discuss, obtaining adequate capital is quite difficult and often forces entrepreneurs to accept exploitive contracts from private investors.

Third, state social equity programs designed to promote ownership of legal cannabis business among the individuals most impacted by cannabis prohibition are critical to the long-term success of minority-owned cannabis business. However, the programs are failing to adequately support small and minority-owned cannabis businesses. Currently only 15 of 37 states with legal adult use and/or medical cannabis programs have implemented a social equity program.[5] Of the 15, only six provide direct funding to social equity applicants and operators. None provide timely and adequate funding to offset the extraordinary cost of submitting a competitive application.

To understand the range of expenses, consider Connecticut. Applicants for a cultivation or processor license for Connecticut's adult-use market must pay $3,000,000[6] or try their luck securing one of the 56 licenses available in the lottery (only half of which are social equity

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[1] Misera, Lucas, *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*. Federal Reserve Bank of Cleveland, October 8, 2020, https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.

[2] Jones, Nicholas, Rachel Marks, Roberto Ramirez and Merarys Rios-Vargas, "Improved Race Ethnicity Measures Reveal United States Population Much More Multiracial, Census.gov § (2021), https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html.

[3] BaileyLe, Janessa, "Seeds of Change: Strategies to Create an Equitable Cannabis Industry," Leafly.com, 2021, https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf.

[4] A "green zone" is real estate that can be used for commercial cannabis activities as permitted by local zoning and land use laws. Many cities and counties prohibit the use of real estate in most or all of their jurisdiction to be used for cannabis commerce, which increases the cost of available real estate for cannabis entrepreneurs.

[5] Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group, February 2022, https://minoritycannabis.org/equitymap/.

[6] See Connecticut Public Act 21-1.

licenses).[7] Applicants seeking a cultivation or processor license in Pennsylvania's medical cannabis program must prove they have $2,000,000 in capital and pay a $210,000 application fee.[8] These are just two examples. By and large, these programs provide too little funding and their implementation has been too rocky to provide social equity licensees the opportunity to participate and compete.

Fourth, small and minority-owned cannabis businesses cannot access the traditional financial services they need to survive, let alone thrive. Many of MCBA's members and similar business cannot access core banking services, such as deposit accounts, loans, treasury management, and electronic payments simply because they are in the cannabis industry. As of June 30, 2021, only 706 of the approximately 10,000 federally-insured banks and credit unions in the United States actively provide some type of banking service to all cannabis business, including the largest operators.[9] Until small and minority-owned and operated cannabis businesses can access financial services on a fair, competitive basis, they will continue to be left behind as other sectors of our economy recover. Thus, they will continue to fall behind much larger competitors who do not face these challenges to a similar extent.

To address these issues, I encourage Congress and the Administration to consider a wide-range of options, including enacting the "Secure and Fair Enforcement (SAFE) Banking Act" this Congress; collecting demographic data about the availability of financial services (particularly loans) to small and minority-owned and operated business; conducting a disparity study to ensure any comprehensive legalization efforts address the disparate impact of the enforcement of cannabis laws; supporting CDFIs and other institutions more likely to lend to small cannabis businesses; and calling for updated guidance for financial institutions doing business with cannabis firms.

Minority Cannabis Business Association

Founded in 2015, the Minority Cannabis Business Association is the largest national trade association dedicated to serving the needs of minority cannabis businesses and our communities. MCBA represents minority and allied cannabis businesses, aspiring entrepreneurs, and supporters who share a vision of an equitable, just, and responsible cannabis industry. Our mission is to create equal access for cannabis businesses and economically empower communities of color through

[7] "Consumer Protection Announces Date for First Application Period for Adult-Use Cannabis Licenses." *Portalct.gov*. Connecticut Department of Consumer Protection, January 4, 2022. Connecticut Department of Consumer Protection, https://portal.ct.gov/DCP/News-Releases-from-the-Department-of-Consumer-Protection/2022-News-Releases/Adult-use-cannabis-applications.
[8] "Growers Processors FAQs." Healthpa.gov. Pennsylvania Department of Health (2022), https://www.health.pa.gov/topics/programs/Medical%20Marijuana/Pages/Growers-Processors.aspx.
[9] "Marijuana Banking Update, Depository Institutions (by type) Providing Banking Services to Marijuana-related Business," Financial Crimes Enforcement Network (as of June 30, 2021), https://www.fincen.gov/sites/default/files/shared/303751_MJ%20Banking%20Update%203rd%20QTR%20FY2021_Public.pdf.

policy, programming, and outreach initiatives to achieve equity for the communities most impacted by the War on Drugs. This mission is carried out by a 15-member Board of Directors comprised of diverse industry veterans, medical and legal professionals, advocates, and community leaders.

To promote this mission, MCBA focuses on promoting equity in four key areas:

- Equitable INDUSTRY: Ensure the inclusion and success of minorities in the cannabis industry through equitable policy and equitable access to opportunities and resources.

- Equitable COMMUNITIES: Empower and support the communities most impacted by cannabis prohibition by promoting meaningful community reinvestment and corporate responsibility initiatives.

- Equitable JUSTICE: Promote policies that reduce arrests and imprisonment for non-violent cannabis offenses and restore basic rights of citizenship to individuals with non-violent cannabis offenses.

- Equitable ACCESS: Drive policy and education initiatives to increase access to safe and effective medicine and ensure the health and wellbeing of minority communities.

Effects of the COVID-19 Pandemic on Small and Minority-owned Cannabis Businesses

Prior to the COVID-19 pandemic, minority-owned and operated businesses and small businesses were making important strides, albeit more work was needed. According to the U.S. Census Bureau, minorities make up approximately 40 percent of the U.S. population or nearly 130 million Americans. Between 2010 and 2019, the Latino, Asian, and African-American populations grew by 19.4 million people. During this decade, the number of minority businesses in the United States also grew at a rapid rate. While the strides h these businesses as a whole were making were important welcome, minority-owned businesses remain underrepresented as a share of the total U.S. business ownership. Moreover, these businesses typically have fewer employees and lower revenues than their non-minority counterparts.

The COVID-19 pandemic has been a major setback for small and minority-owned and operated businesses. Before the pandemic, minority businesses were some of the fastest growing businesses in the nation. Now, there are fewer minority owned companies and many have fewer employees and operate under a more precarious financial condition. According to a study by all 12 Federal Reserve Banks, "firms owned by people of color, both small employer firms and non-employer firms, were among the firms most likely to experience financial and operational challenges stemming from the pandemic."[10] Per the study, "declines in revenue and employment between 2019 and 2020 were most severe for firms owned by people of color" and "[f]irms owned by people of color were more likely to report that they reduced business operations in response to the COVID-19 pandemic."[11]

Many minority businesses' inability to access or receive adequate support from federal COVID-19 relief programs compounded these financial setbacks. Despite bearing disproportionately large challenges and harms, minority-owned businesses, especially small businesses, did not receive adequate assistance. For instance, "[w]hile 79% of white-owned firms received all of the PPP funding they sought, that share dropped to 43% for Black-owned firms. Black-owned applicant firms were five times as likely as white-owned firms to receive none of the PPP funding for which they applied (20% compared to 4%)."[12] As a result, Black businesses closed at more than twice the rate of white-owned firms and experienced declines in cash balances nine times as high as nonminority firms since the pandemic began.[13]

These struggles were amplified among minority-owned and operated cannabis businesses. Despite many states deeming legal cannabis businesses "essential" during the early stages of the pandemic, all plant-touching and ancillary cannabis businesses were deprived access to federal relief to help small businesses survive the closures and economic downturn and adapt to new ways of doing through improvements to operations, technology, and infrastructure. Under a 2018 Policy notice, the Small Business Administration (SBA) held that marijuana related businesses, plant touching and some non-plant touching business, are ineligible for SBA loans.[14] When the federal government provided relief during the COVID-19 Pandemic, SBA reiterated this policy and held that even state legal cannabis companies were ineligible for relief under the Paycheck Protection and Economic Injury Disaster Loan Programs.[15] This policy stance was followed by the Federal Reserve in its administration of the Main Street Lending Program.[16] Although the SBA would later

[10] "Small Business Credit Survey, 2021 Report on Firms Owned by People of Color, Federal Reserve Banks, https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color.
[11] Id.
[12] Id.
[13] Misera, Lucas. Rep. *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*. Federal Reserve Bank of Cleveland (Oct. 8, 2020), https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.
[14] "Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J)." SBA Policy Notice: 5000-17057, April 3, 2018. https://www.sba.gov/document/policy-notice-5000-17057-revised-guidance-credit-elsewhere-other-provisions-sop-50-10-5j. See also "Guidance on Grantees Providing Assistance to Marijuana-Related Businesses." SBA Information Notice: 6000-19005, August 2, 2019. https://sbdctampabay.com/wp-content/uploads/2019/09/SBA-Marijuana-Policy.pdf
[15] SBA Pacific NW. Twitter Post. March 23,2020, 7:09pm.
[16] Main Street Lending Program For-Profit FAQs, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm

make an exception for businesses that produce or sell hemp or hemp-derived products, cannabis companies remained ineligible for federal relief.

According to one survey, the most common concern cited by small, minority owned and social equity designated cannabis businesses was the ability "to survive financially given the broad economic impact of COVID-19."[17] Small businesses already struggling with profit margins of zero[18] to 4.5%[19] had to secure personal protective equipment (PPE), COVID-19 tests, cover increased cleaning and sanitation costs, and making efforts to secure access to technology to increase customer safety in an industry without ready access to touchless payments.

COVID-19 also delayed the implementation of much needed social equity programs. In March 2020, there were 30 state cannabis reform proposals, including six with social equity provisions.[20] Three of the states with equity provision stalled as legislative priorities shifted to states' immediate COVID-19 response.[21] Shifting priorities and limited resources contributed to delays in the rollout of equity programs in Illinois and Los Angeles of 21 months[22] and over two years[23] respectively. Meanwhile existing Illinois cannabis businesses comprised primarily of large multistate operators (MSOs), who gained early access to the market,[24] saw record sales of $1.38 billion dollars, more than doubling since 2020.[25]

Irrespective of COVID-19, Small and Minority-owned and Operated Cannabis Businesses Struggle to Thrive Given the Significant Costs of Operating as a Lawful Cannabis Business

The financial challenges small and minority-owned and operated cannabis businesses have faced were exacerbated by the pandemic, but they were not created by them as small and minority-

[17] Berman, Douglas, Jana Hrdinová, Mark Pauley, and Dexter Ridgway. Rep. *Struggling Through the Pandemic: Cannabis Social Equity During COVID-19*. Moritz College of Law Drug Enforcement and Policy Center (June 2020).
[18] According to interviews with MCBA members, m3any social equity operators state they regularly break even or run at a loss.
[19] https://nstarfinance.com/cannabis-dispensary-profit-margin-insight/
[20] Berman, Douglas, Jana Hrdinová, Mark Pauley, and Dexter Ridgway, *Struggling Through the Pandemic: Cannabis Social Equity During COVID-19*. Moritz College of Law Drug Enforcement and Policy Center, June 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628533.
[21] Id.
[22] Robert McCoppin, *Craft Cannabis Applicants Fighting Court Injunctions Against New Licenses in Illinois*, (Dec. 9, 2021), https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-craft-license-injunction-20211210-j37i4y3mhja2be5pxczu5ko2vm-story.html.
[23] Chris Casacchia, *Handful of Cannabis Retailers Finally Open Under L.A. Social Equity Program*, MJ Biz Daily (Dec. 17, 2021), https://mjbizdaily.com/some-cannabis-retailers-finally-open-under-los-angeles-social-equity-program/.
[24] Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group (Feb. 2022), https://minoritycannabis.org/equitymap/.
[25] https://www.chicagotribune.com/business/ct-biz-illinois-cannabis-sales-record-20220104-5y2qd2wnlvfrpnm25ibgohje3m-story.html.

owned cannabis businesses face extraordinary barriers to entry and incur staggering costs in order to operate lawfully. To date, only 15 of the 37 states with legal cannabis programs have measurable social equity programs to support minority ownership in the face of staggering barriers to entry.

As of today, 18 states have legalized adult use and medical cannabis; another 19 states regulate comprehensive medical cannabis markets; and 10 states have implemented a limited medicinal market.[26] However, due to continuing federal cannabis prohibition, most cannabis businesses are initially self-funded or funded by contributions from friends and family.[27] Prevailing wealth disparities[28] that commonly hinder minority entrepreneurs are exasperated in states where social equity licensees must meet income and residential criteria intended to identify the individuals suffering the greatest economic impacts of cannabis prohibition and the broader War on Drugs.[29]

Administrative and compliance costs associated with starting and operating a cannabis business are among the first of many barriers to minority ownership. Application fees for a cannabis license range from $250 to $125,000 per application.[30] Moreover, many states impose pre-application premise requirements that force applicants to shoulder the cost of high rent commercial real estate, rent that increases before applicants can sell any products because the property appreciates in value by virtue of being located in a cannabis friendly "green zone".[31] Currently, twenty-three states require applicants or licensees to acquire a premise prior to obtaining a license.[32] When social equity programs are delayed due to legal or administrative challenges, then the timeline for holding real estate prior to obtaining a license (or commencing operations) increases significantly. To be eligible simply to apply for a license, one Los Angeles business owner and community leader began paying $12,000 per month for property to open a dispensary that she continued to pay until she became one of the fortunate few to be awarded a license and

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[26] State Medical Cannabis Laws, National Conference of State Legislatures (as of Feb. 2, 2022).
[27] See Robison, Frank. "Going Green: Legal Considerations For Marijuana Investors And Entrepreneurs." *American University Business Law Review* Vol. 6, no. No. 1 (n.d.).
https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1054&context=aublr; See also Hauser, Marc. "Differences among the Types of Equity Investors in Cannabis (via Passle)." Passle, Reed Smith (Jan, 13, 2020).
https://viewpoints.reedsmith.com/post/102fwt5/differences-among-the-types-of-equity-investors-in-cannabis.
[28] Aladangady, A. (2021, October 22). *Wealth Inequality and the Racial Wealth Gap*. federalreserve.gov. Retrieved January 27, 2022, from
https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm
[29] Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*, Minority Cannabis Business Association & The Arcview Group (February 2022), https://minoritycannabis.org/equitymap/.
[30] Montana is the only state that does not require an application fee. Id.
[31] Id.
[32] Id.

commence operations more than two years later.[33] Despite these challenges, no state has provided support for social equity applicants to participate at the inception of a legal market.[34]

Moreover, even if minority cannabis businesses can complete the application(s) process and start operating, they are often at a disadvantage because of their late start and the expense of operating. Many operators lose ground to non-minority counterparts, including multistate operators, who in some states enjoy a head start on access to the market as well as exemptions from local land use restrictions, license caps, and bans on vertical integration.[35] Entering the fight with one hand tied behind their back, navigating the labyrinth of compliance burdens, effective tax rates that can exceed 70%,[36] and volatile industry conditions have many small cannabis operators in constant financial distress. This is especially true of minority operators that are regularly in economic distress due to the high costs of good and services, including inadequate banking services and security expenses related to keeping cash and product on site.

Despite incredible costs associated with entering and sustaining in the cannabis industry, only six states with social equity programs provide funding to social equity participants beyond fee waivers or applications.[37] This of course places additional burdens on minority entrepreneurs lack access loans or deep sources of liquidity including generational wealth or private equity funds. As a result, minority operators suffer from several disadvantages in the cannabis industry. These include lack of startup capital, exhaustive applications process, and high operational costs. Too many operators when faced with these costs are often faced with the decision to either sell interests in their business to outside investors on extremely unequal terms (i.e. high loan fees, forced sale provisions, or rights to seize intellectual property) or sell their licenses completely and exit the industry.

Small and Minority-owned and Operated Cannabis Businesses Need Access to Financial Services on a Fair and Competitive Basis

[33] Kika Keith is a Los Angeles social equity operator and owner of Gorilla Rx, founder of the Social Equity Owners and Workers Association, and a member of MCBA's board of directors.
[34] While six states provide funding and assistance to social equity applicants and operators, none have provided the funding to enable social equity operators to participate in the first round of licensing for any legal market. See Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group (February 2022), https://minoritycannabis.org/equitymap/.
[35] Littlejohn, Amber, and Eliana Green. *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group. February 2022. https://minoritycannabis.org/equitymap/.
[36] Boesen, Ulrik, *Tax Foundation Comments to the Cannabis Administration and Opportunity Act*, The Tax Foundation (Sept. 1, 2021), https://taxfoundation.org/federal-cannabis-administration-opportunity-act/.
[37] Id.

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In general, minority-owned companies face more significant financial challenges than white-owned businesses as well as face "structural barriers in acquiring capital."[38] Moreover, they "tend to have weaker banking relationships, experience worse outcomes on credit applications, and are more reliant on personal funds."[39] The trend is the same for minority-owned and operated cannabis companies. Various studies of small and minority-owned cannabis operators show that access to capital, retaining majority ownership, and having fair partnership and shareholder agreements continue to be these operators' top concerns.[40] According to one study, access to non-predatory forms of capital is the most commonly cited concern by cannabis operators who were interviewed.[41]

These concerns are unsurprising given how few depository institutions service the cannabis sector at all. According to the Financial Crimes Enforcement Network, only 706 of the approximately 10,000 federally-insured banks and credit unions actively provide banking services to cannabis-related legitimate businesses of any size, let alone small businesses.[42] Moreover, the major credit card networks that most merchants and consumers rely on prohibit their use for electronic payments for cannabis businesses.[43] In this challenging regulatory environment, financial institutions that do service the industry tend to service larger companies. Banks are more willing service large, better capitalized companies in light of the significant compliance costs and risks of banking legal cannabis businesses.

As a result, many small and minority-owned cannabis companies are often left with no options but to operate on an all cash basis, including to pay taxes and employees in cash. During the pandemic, cannabis businesses around the country have experienced repeated robberies from which some could not recover. In fact, without resources to transform their businesses into fortresses with around the clock security, many small cannabis businesses, especially those in communities disproportionately suffering the impacts of the pandemic, have endured repeated robberies.

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[38] "Small Business Credit Survey, 2021 Report on Firms Owned by People of Color, Federal Reserve Banks, https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color.
[39] Id.
[40] "Social Equity Legislation in Cannabis: A National Study of State and Local Programming," The Initiative, https://drive.google.com/file/d/1FnfDxeW91D35iA6CFcx08gHLAfjfdyjx/view.
[41] Id.
[42] "Marijuana Banking Update, Depository Institutions (by type) Providing Banking Services to Marijuana-related Business," Financial Crimes Enforcement Network (as of June 30, 2021), https://www.fincen.gov/sites/default/files/shared/303751_MJ%20Banking%20Update%203rd%20QTR%20FY2021_Public.pdf.
[43] "'Cashless ATM' and Misuse of ATM Transactions Prohibited, Visa Business News (Dec. 2, 2021), http://click.broadcasts.visa.com/xfm/?58240/0/a974c54c9c6fd5be9dfff6b54b2913d0/lonew.

Oakland's minority operators were hit repeatedly in 2020 and 2021 by violent, organized, and coordinated criminal operations that left employees and owners in fear and businesses destroyed, some of them repeatedly.[44] One operator watched as thieves armed with semiautomatic rifles hit their business five times in one day during a rash of robberies that decimated Oakland's minority cannabis businesses that occurred just before Thanksgiving last year. The robbers held them at gunpoint, took their product, and the last time walked out with a safe containing their tax money, payroll, and operational funds. As I prepared this testimony, I received word they would not reopen their doors but instead are seeking a buyer for their license. They are a veteran and engineer, they are businessmen, they did everything right only to be again victimized by unjust cannabis laws.

Oakland is not alone. In the past month there has been more than 30 robberies in Washington dispensaries.[45] Thieves shot guns, pistol whipped employees, and walked out with registers and safes.[46] A spokesperson for the Washington State Liquor and Cannabis Board said, "the root of the problem is that retailers are a cash-only business because Congress has not acted to allow credit and debit card transactions."[47]

Small and minority-owned businesses in general face similar challenges in obtaining investments. While Black founders receive just 1.2 percent of private equity funds,[48] private equity funding for minority cannabis businesses remains virtually nonexistent. In the cannabis space, this disparity is exacerbated by federal prohibition as many financial institutions will not provide credit or make equity or debt investments because of the regulatory risk.

While some minority-owned and operated cannabis businesses are able to find private investors, the terms offered are often extraordinarily expensive. Such agreements often include interest rates of 20 percent, and as high as 40 percent.

To survive, many applicants and licensees give up equity to predatory partners that subject them to forced sales for pennies on the dollar of the license value for "failure to perform a lawful

[44] David DeBolt, *Oakland's Cannabis Industry Reeling from Car Caravan Burglaries - Again*, The Oaklandside (Jan. 10, 2022), see also, Zak Sos, *Oakland Cannabis Business Hit Twice in back-to-back Burglaries,* Fox KTVU (Dec. 8, 2021) and *Oakland Cannabis Dispensaries Say They've Lost $5M in Recent Thefts*, ABC 7 (Nov. 29, 2021).
[45] Bart Schaneman, *Rash of Robberies has Washington State's Cash-only Cannabis Industry on Edge* Feb. 15, 2022), https://mjbizdaily.com/rash-of-robberies-has-washington-states-cash-only-cannabis-industry-on-edge/#:~:text=A%20total%20of%20154%20robberies,worth%20of%20marijuana%20and%20product.
[46] Id.
[47] Bart Schaneman, Editor, and John Schroyer, "Rash of Robberies Has Washington State's Cash-Only Cannabis Industry on Edge." MJBizDaily, February 15, 2022. https://mjbizdaily.com/rash-of-robberies-has-washington-states-cash-only-cannabis-industry-on-edge/.
[48] Marlize van Romburgh and Gene Teare, *Funding to Black Startup Founders Quadrupled in Past Year, but Remains Elusive* (July 13, 2021), https://news.crunchbase.com/news/something-ventured-funding-to-black-startup-founders-quadrupled-in-past-year-but-remains-elusive/.

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instruction" or "underperformance".[49] Other equity investors deprive social equity operators of meaningful rights of ownership, including management rights and equitable distribution of profits. Until small and minority-owned and operated cannabis businesses can access financial services on a fair, competitive basis, they will continue to be to be excluded from an industry built on their backs while watching others prosper. Those who endure will be subject to the repeated trauma of violent attacks from organized criminals who target these cash-only businesses without means to fortify their businesses into compounds and employ 24-hour a day security.

Congress and the Administration Should Consider A Wide-range of Measures to Support Small and Minority-owned and Operated Businesses

To address these issues, I encourage Congress and the Administration to consider a wide-range of options, including enacting the "Secure and Fair Enforcement (SAFE) Banking Act" as soon as possible. Fundamentally, so few banks and credit unions provide services to cannabis businesses, particularly small cannabis operators, because federal law would penalize them for doing so. Despite wide-spread legalization at the state level, cannabis remains a Schedule I drug under the Controlled Substances Act. Therefore, financial institutions that provide essential services, such as lending and payments, to state-lawful cannabis businesses are at risk of criminal and civil penalties. I believe many (but not all or necessarily most) more banks, credit unions, payment processors, and similar financial services providers would offer their services to small and minority-owned and operated cannabis companies if Congress provided them the legal protections necessary to do so.

Passing the SAFE Banking Act would help address this core issue by extending a safe harbor to banks, credit unions, certain payment processors and money transmitters, and select other financial entities to offer essential services, including loans, deposit accounts, check cashing, and electronic payments to state lawful cannabis companies. This safe harbor would neutralize the predominate issue limiting access to core financial services: the continued and unjust criminalization of cannabis. Moreover, the SAFE Banking Act would direct FinCEN to update its guidance in order to help reduce the regulatory barriers to serving cannabis businesses. Lowering these barriers will make it easier for small companies to access banking services by reducing the cost of serving them. Enacting the SAFE Banking Act would also reduce the risk of crime against small operators by minimizing their cash on hand. In short, if enacted, small and minority-owned cannabis businesses would be much better protected from crime and would be better able to compete.[50]

[49] Social Equity Owners and Worker Association, Predatory Practices- City of Los Angeles, 2021.
[50] To hear from minority cannabis operators on the benefits of SAFE Banking, please see the testimonials available on Safe4equity.org: https://safe4equity.org/.

MINORITY CANNABIS BUSINESS ASSOCIATION

There are additional measures that Congress can take to complement the benefits of the SAFE Banking Act. For instance, MCBA believes that nonbank community development financial institutions (CDFIs) can play an important role in extending capital to small and minority-owned and operated businesses, including cannabis companies. Extending the proposed safe harbor under the SAFE Banking Act to nonbank CDFIs could help small and minority-owned cannabis businesses obtain loans and investments that they are unable to access now.

MCBA also believes that increasing capital to MDIs and CDFIs would increase the flow of capital to communities and credit to minority businesses. MDIs and CDFIs have traditionally been sources of capital for minority companies and during times of crisis as well, lending more than $8 billion in Paycheck Protection Program loans during the pandemic. MDIs and CDFIs need increased lending capabilities in order to meet the growing demand and need for credit of minority-owned and operated companies. MCBA commends Congress for allocating $12 billion for MDIs and CDFIs, including $9 billion for the Emergency Capital Investment Program and $1.75 billion for the Emergency Support and Minority Lending Program, in 2020 as part of its historic efforts to combat the financial crisis caused by the COVID-19 pandemic. Congress should consider allocating additional long term, low-cost capital funding for MDIs and CDFIs through those programs so that those institutions can service the many minority owned businesses operating in and will operate in the cannabis space. These institutions may serve as a natural conduit for minority businesses that need support in the emerging cannabis industry.[51]

Additionally, Congress should consider legislation directing federal financial regulators to develop a plan to increase financial services to small and minority-owned and operated cannabis businesses. Various regulators have worked on plans to promote financial inclusion for a wide range of businesses, such as Project REACh, and to promote MDIs, and to support MDIs, which play a critical role in this process, such as the OCC's Minority Depository Institution Advisory and the FDIC's Mission-Drive Bank Fund. MCBA asks that these regulators extend this work to include initiatives to incentivize financial institutions to offer services to minority cannabis companies. The regulators could also release requests for information to engage with industry and community stakeholders on the best ways of encouraging access to capital for small and minority cannabis businesses. Leveraging these regulators' expertise would help close the gap in financial services for small and historically disadvantaged cannabis businesses.

Congress should also consider legislative proposals to collect demographic data about the availability of financial services (particularly loans) to small and minority-owned and operated business; and conduct a disparity study to ensure any comprehensive legalization efforts addresses

[51] Shanita Penny and Yaw Thompson, *Opportunity, Ownership, and Empowerment*, Coalition for Cannabis Policy, Education, and Regulation, https://www.cpear.org/wp-content/uploads/2021/06/210617-CPEAR-Small-Minority-Owned-Business-digital.pdf.

the disparate impact of the enforcement of cannabis laws. Various states and localities have attempted to remedy the historic harms that cannabis prohibition has caused to communities of color by creating social equity programs with remedial racial classifications (or proxies for race). Many of these programs have faced legal challenges due to the lack of adequate reporting and data collection to support a compelling governmental interest in this remedial action. Other states and localities have avoided using remedial racial class cations in their social equity programs and instead have opted for broadly tailored criteria that has not been effective in remedy past harms. Too often, the programs have served to benefit larger non-minority companies or investors rather than minority businesses or investors. As a result, these programs have been inadequate in addressing the specific harms to minority communities.

Minority cannabis entrepreneurs would benefit from the collection of data not only to understand past and ongoing discrimination within the industry, but it would also serve as a tremendous foundation for crafting programs that can better address the harms inflicted on communities of color because of prohibition. Moreover, although minority cannabis companies are currently unable to access traditional banking services, an existing framework for the collection of demographic data regarding loans to minority companies would be helpful to cannabis companies in this space when they are finally able to access traditional banking services.

Conclusion

Supporting small minority cannabis businesses is not just moral imperative, it makes good economic sense. Despite their struggles, cannabis social equity businesses contribute $1.2 in social good for every $1 invested into social equity programs.[52] Without some relief from Congress, minority cannabis businesses will not make it to the day we see federal legalization. Some did not make it to the end of this week. If we believe the cannabis industry should have a place for small businesses, especially those who bore the brunt of enforcement while building the culture, the market, and the political force behind an industry from which others profit, we have to help minority cannabis businesses now.

I and MCBA commend the Subcommittee for holding this hearing. We look forward to discussing these and related topics with the Subcommittee and working together to implement potential solutions so that our small and minority-owned and operated businesses, in all sectors, can thrive. Thank you Chair Perlmutter and Ranking Member Luetkemeyer for inviting me to participate in this hearing. I look forward to your questions.

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[52] Rep. *Supernova Women Social Equity Impact Report,* Supernova Women, 2022, https://www.supernovawomen.com/news/social-equity-impact-report-2022.

Subcommittee on Consumer Protection and Financial Institutions Hearing,
"Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery"
Thursday, February 17 at 3:00 p.m. EST

Good afternoon. I appreciate the opportunity to provide testimony in this hearing. My comments focus on small business financing data gaps and the implementation of Section 1071 of the Dodd-Frank Act.

I would first like to highlight our government's own conclusions about the state of small business financing with a few quotes:

A white paper by the Consumer Finance Protection Bureau[1] states:

> "With current data it is not possible to confidently answer basic questions regarding the state of small business lending."

A Report to the Congress by the Federal Reserve Board of Governors[2] notes the following:

1) "Fully comprehensive data that directly measure the financing activities of small businesses do not exist." (Page 8);

2) "Up-to-date and comprehensive information about the universe of small businesses is sparse, and most evidence about financing needs and sources is derived from surveys, many of which have limited coverage or rely on nonrepresentative samples." (P. 17-18).

This last quote is particularly frustrating for me because the Federal Reserve Board of Governors had been a source for small business financing data with their Survey of Small Business Finances conducted every five years. I was employed with the Federal Reserve and worked directly on the 1998 Survey of Small Business Finances. However, they decided that after two decades of surveys, they had learned enough and cancelled the program after the fourth and final 2003 survey. Then, in 2008, when the economic crisis hit, there was no survey in place to collect data during the economic downturn.

In their most current Report to the Congress on the Availability of Credit to Small Businesses from 2017, which I just quoted and is due to Congress every five years, the Federal Reserve relied heavily on the Annual Survey of Entrepreneurs from 2015, which was a new survey conducted by the U.S. Census Bureau with funding support from the Kauffman Foundation. At the time, I was a senior fellow with the Kauffman Foundation, and I jointly proposed and advocated for this survey because of the need for more comprehensive and timely data on small business financing, especially data that included business owner demographics.

[1] Bureau of Consumer Fin. Prot., Key dimensions of the small business lending landscape (May 2017), https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-LendingLandscape.pdf.

[2] Federal Reserve, Report to the Congress on the Availability of Credit to Small Businesses, (Sep. 2017).

I have continually pushed for more timely and comprehensive data on small business financing because we know there continue to be gender, racial, and ethnic gaps in small business financing and credit market experiences, and we do not have sufficiently robust data to perform the kinds of rigorous analyses that would provide us a better understanding of the barriers and challenges faced by small businesses in general and these underserved groups in particular. A better understanding would allow policy makers to design more efficient and impactful programs to address existing gaps and level the playing field.

Congress mandated data collection by Section 1071 of the Dodd-Frank Act in 2010[3] for similar reasons.

As noted in a 2017 report from the Consumer Finance Protection Bureau (CFPB):[4]

> "These data can provide a broad range of stakeholders across the United States with an understanding of the small business credit flowing into their local communities, and allow them to identify "credit deserts" or sectors where credit flows may be restricted. This in turn may support localized efforts to increase access to credit in various communities around the United States to address unmet credit needs, thereby spurring economic development."

In September 2021, more than 10 years after Congress first mandated the data collection, the CFPB released a Notice of Proposed Rulemaking to finally implement Section 1071 of the Dodd-Frank Act. And here we are in 2022, still with no implementation of the data collection effort that was mandated by Congress.

We have spent hundreds of billions of dollars through various programs such as the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL), and yet we don't have a process in place for the collection of data that would allow us to evaluate the small business credit market landscape, let alone the effectiveness of such programs.

We need to implement Section 1071 of the Dodd-Frank Act now, not in another 10 years. We should also ensure the Federal Reserve System collects annual data in its Small Business Credit Survey from a representative sample of small businesses and not a convenience sample. These sources would provide a much richer picture of the small business credit market from both the supply and demand sides of the market. This would allow us to better identify credit market gaps and inform better policy making.

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[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

[4] Key dimensions of the small business lending landscape, Consumer Finance Protection Bureau, May 2017.

Bipartisan Policy Center

Testimony of Dane Stangler
Director of Strategic Initiatives
Bipartisan Policy Center

Before the
United States House Committee on Financial Services
Subcommittee on Consumer Protection and Financial Institutions

Hearing on
"Small Businesses, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery"

February 17, 2022

Chairman Perlmutter, Ranking Member Luetkemeyer, and distinguished Members of the Committee: I am delighted to participate in today's discussion about small businesses and economic recovery. My name is Dane Stangler, and I am director of strategic initiatives at the Bipartisan Policy Center, a non-profit organization that combines the best ideas from both parties to promote health, security, and opportunity Americans. BPC drives principled and politically viable policy solutions through the power of rigorous analysis and painstaking negotiation. As part of our work, we're collaborating with a wide variety of partners to help ensure that more businesses are started by more Americans in more parts of the country. Support for small business and entrepreneurship has historically been bipartisan and we hope that additional actions taken by this Committee and the full Congress are similarly bipartisan.

I hope this discussion leaves you with the following takeaways:

1) The pandemic's negative effects on many small businesses have persisted.
2) Government relief and assistance helped many remain afloat and get ready for recovery.
3) Full recovery and growth for small and young companies will require private financing and investment. Policymakers can best help by encouraging and supporting private sector innovations that expand access to capital for small and young companies.
4) Women entrepreneurs and business owners of color, in particular, benefit from a variety of private sector financing options. Many innovations in the space are directed at helping expand access to capital for these traditionally underserved populations.
5) As this Committee and the entire Congress look to ensure that all types of small businesses share in economic recovery, we encourage policymakers to promote innovation, leverage existing streams of federal spending, improve coordination, and reduce regulatory burdens.

It's no secret that small businesses of all types were hit hard during COVID-19. In the early months of the pandemic, tens of thousands closed permanently. Millions more were hurt by economic uncertainty, government shutdowns, and shifts in consumer demand. The federal government responded with speed and scale. Through the Paycheck Protection Program (PPP) and COVID Economic Injury Disaster Loan

(EIDL) program, around $1 trillion in assistance was disbursed to small businesses. Additional emergency funds came from state and local governments and private sources.

The negative effects of the pandemic have persisted for many small businesses. In mid-January, amidst the Omicron surge, nearly 40 percent of small businesses still didn't expect resumption of "normal" business for at least six months.[1]

Yet small business owners and entrepreneurs are inherently forward-looking. In the latest national survey by the Goldman Sachs *10,000 Small Businesses Voices* program, released in January, nearly three-quarters of respondents said they were optimistic about the financial trajectory of their business in 2022.[2] In the most recent installment of the Census Bureau's Small Business Pulse Survey, in mid-January, hiring and increasing sales were identified by small businesses as their top needs. A year earlier, small businesses had said their top need was obtaining financial assistance.[3]

Optimism is also evident in record levels of new business formation, which has surged since the summer of 2020. Overall, new business applications filed with the government were 53 percent higher in 2021 than in 2019. Among what the Census Bureau deems to be likely employer businesses, 2021 levels were 37 percent higher than 2019.[4] There is some evidence, too, that a greater share of these new businesses are being started by women and Black Americans compared to before the pandemic.[5]

Small businesses are looking to recover; new businesses are ready to grow. Policymakers can help by supporting the provision of private financing and investment for these businesses and encouraging private sector innovations that expand access to capital for small and young companies. Pandemic-era relief efforts such as PPP and COVID EIDL have lapsed. Many of the small business owners and entrepreneurs we talk to praise those programs for helping their company survive the pandemic. Now, public policy needs to continue transitioning away from emergency assistance toward support for private capital and credit markets.

Small Business Capital and Credit

It's important to keep in mind that external sources of capital and credit are not always the first option for small businesses and entrepreneurs when they seek to start, sustain, or expand their company. In any given year, less than half of small businesses seek external financing.[6] Even in response to the financial challenges posed by the pandemic, small businesses and entrepreneurs were more likely to use personal funds, cut staff or hours, and seek out grants before they turned to external credit sources.[7] Nevertheless, external financing is often necessary, especially for business growth.

The overall small business lending market is large. In 2019, for example, depository institutions extended over $600 billion to small businesses—this includes loans, lines of credit, and credit cards.[8] Small businesses and entrepreneurs also use home equity loans and personal credit cards for financing. They seek funds from alternative sources such as online lenders and finance companies.

Prior to the pandemic, the world of small business lending had been transformed by the rapid expansion of online lenders and other fintech companies. The share of small businesses applying for a loan, line of credit, or cash advance at an online lender rose from 24 percent in 2017 to 33 percent in 2019.[9] Other sources of nonbank private credit for small businesses have also grown considerably.[10] Access to credit through online lenders comes at a cost, however, in the form of higher interest rates and shorter loan terms.

Banks, both large and small, remain the primary external source of capital for small businesses and entrepreneurs when they seek it. And banks have sought to innovate to better compete with new and faster forms of credit. Many traditional banks invested heavily in technology to accelerate loan processing and others forged partnerships with fintechs, using the latter's technology to streamline loan applications and decisions.[11] Banks and nonbank lenders have not only incorporated technology to a greater extent in small business lending but also tested different sources of underwriting data.[12]

The expanding market for small business credit helps widen access for small business owners and entrepreneurs who have historically had difficulty obtaining funds through traditional sources. Online lenders, for example, are more likely to serve Black-owned businesses as well as small business borrowers that are medium and high credit risks.[13] In PPP, online lenders were effective at reaching Black business owners as compared with other financial institutions.[14] Meanwhile, financial entrepreneurs across the country have been testing and exploring new ways of deploying capital to small and young companies. This includes hybrid capital structures, different forms of revenue-based financing, and new investment models seeking to expand and diversify the pipeline of entrepreneurial finance.[15]

As this Committee and the entire Congress look to ensure that all types of small businesses share in economic recovery, we offer a few guidelines for policy action.

Encourage Innovation

Typically, when small businesses and entrepreneurs tap external sources of financing, they do so for the purposes of expansion, acquiring assets, or pursuing opportunities. (This changed, unsurprisingly, during the pandemic, when meeting operating expenses was the biggest reason for applying for financing.)[16] Capital support for these growth-oriented activities is best supplied by the private sector.

Across the spectrum, the private sector is continually seeking new and different ways to get capital into the hands of small business owners and entrepreneurs. Innovation is occurring at all stages of capital provision, from origination and underwriting to capital structures and product design. Not all of that innovation will, or should, endure. But, the government should continue to follow the private sector's lead and encourage such innovation.

Leverage Existing Streams of Federal Spending

Through PPP, the federal government supported nearly $800 billion in loans: 87 percent of the total loan value has been forgiven, in full or in part.[17] For many small businesses, a PPP loan was the difference between closing or continuing, between retaining or firing employees. Yet now small businesses and entrepreneurs need sources of capital oriented toward growth. One way for the government to support that, rather than creating new spending, is to leverage existing federal funds. And the single biggest source of federal spending on small businesses is procurement.

In fiscal year 2020, the latest year for which data is available, there was $560 billion in federal procurement spending that was "small business eligible." About $145 billion of that was awarded to small business contractors. As we have highlighted in our work, the number of small businesses participating as contractors has declined dramatically in the last decade.[18] Especially for women entrepreneurs and business owners of color, a key opportunity for growth is thus diminishing. In a forthcoming report, BPC will outline policy options for reversing these trends.

Improve Coordination of Existing Federal Resources

The federal government has scores of programs and offices devoted to helping small businesses and entrepreneurs. These exist in nearly every federal agency. Some offer support with capital formation, others provide technical assistance. Many of them are designed to help businesses from historically disadvantaged communities.

A common theme in our conversations with small businesses and agency officials is the lack of coordination among these programs. A lending support program, for example, might be more effective in helping underserved entrepreneurs if those entrepreneurs had technical assistance that helped get them "credit ready." Policymakers should focus on maximizing the effectiveness of existing programs.

Reduce Regulatory Burdens
Regulatory safeguards exist for a reason. Banks, for example, must comply with a variety of requirements intended to prevent fraud, protect borrowers, and maintain trust. Those requirements come with costs, however. For banks, the transaction costs to make a $50,000 loan to a small business are about the same as for a $500,000 loan. Compliance costs scale up, not down. This helps explain why online and alternative lenders have expanded their share of small business lending so rapidly. They generally don't face the same regulatory burdens as banks.

Lenders that participate in loan guarantee programs, get scored and graded by the government in ways similar to how they score small business borrowers. Making riskier loans—or loans that are at least perceived to be riskier—can damage that scoring. It may not be possible for the government to lower the costs for banks of making small dollar loans to small businesses. But policymakers should bear in mind that regulatory costs on lenders can get passed onto borrowers.

Help the Entrepreneurs
The current small business landscape in the United States is characterized by a juxtaposition. On one hand, millions of small businesses have yet to fully recover and don't expect resumption of normal operations for months. They remain optimistic, but recovery has been slow. On the other, millions of Americans are pursuing opportunity through new businesses, most of which are and will remain small. They won't all survive let alone succeed: about half of new businesses don't exist after five years. Yet they represent attempts at entrepreneurial renewal.

Not all of these small businesses can fit into a single public policy framework. A business with 10 employees that is 20 years old is different from a business with 10 employees that is two years old. Their capital needs differ as do their operational challenges. Ensuring that small and minority-owned businesses share in the economic recovery will require policymakers to recognize these differences and tailor policy accordingly.

Chairman Perlmutter, Ranking Member Luetkemeyer, I want to thank you for convening this important hearing. America's small businesses and entrepreneurs are the backbone of our economy and with your continued leadership and bipartisan collaboration, our nation's small businesses can continue to thrive as we emerge from the pandemic. I look forward to your questions.

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[1] U.S. Census Bureau, Small Business Pulse Survey, accessed February 11, 2022, available at: https://portal.census.gov/pulse/data/.
[2] Goldman Sachs *10,000 Small Businesses Voices,* "Survey: Small Businesses on the Brink," January 24, 2022, available at: https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographics/small-

businesses-on-the-brink/index.html. Disclosure: Goldman Sachs *10,000 Small Businesses Voices* supports BPC's work on small business policy.
[3] U.S. Census Bureau, Small Business Pulse Survey, accessed February 11, 2022, available at: https://portal.census.gov/pulse/data/.
[4] U.S. Census Bureau, Business Formation Statistics, available at: https://www.census.gov/econ/bfs/index.html.
[5] GoDaddy, "Venture Forward Report," Winter 2021, available at: https://www.godaddy.com/ventureforward/wp-content/uploads/2021/12/VF-Winter-2021-Report_20211207-1.pdf.
[6] Federal Reserve Banks, "Small Business Credit Survey: 2021 Report on Employer Firms," February 2021, available at: https://www.fedsmallbusiness.org/survey.
[7] Federal Reserve Banks, "Small Business Credit Survey: 2021 Report on Employer Firms," February 2021, available at: https://www.fedsmallbusiness.org/survey.
[8] Office of Advocacy, Small Business Administration, "Small Business Lending in the United States, 2019," September 2020, available at: https://cdn.advocacy.sba.gov/wp-content/uploads/2020/09/10092858/Report-2019-Small-Business-Lending-Report.pdf.
[9] Federal Reserve Banks, *Small Business Credit Survey*, multiple years, available at: https://www.fedsmallbusiness.org/survey.
[10] American Investment Council, "Private Credit: Investing in Main Streeet," March 2021, available at: https://www.investmentcouncil.org/wp-content/uploads/private-credit-investing-in-main-street.pdf. Disclosure: The American Investment Council is a financial supporter of BPC.
[11] Karen Mills, *Fintech, Small Business & the American Dream* (Palgrave Macmillan, 2018).
[12] FinRegLab, "The Use of Cash-Flow Data in Underwriting Credit: Small Business Spotlight," September 2019, available at: https://finreglab.org/wp-content/uploads/2019/09/FinRegLab-Small-Business-Spotlight-Report.pdf.
[13] Federal Reserve Banks, "Small Business Credit Survey: 2021 Report on Firms Owned by People of Color," April 15, 2021, available at: https://www.fedsmallbusiness.org/survey.
[14] Sabrina Howell, Theresa Kuchler, David Snitkof, Johannes Stroebel, and Jun Wong, "Racial Disparities in Access to Small Business Credit: Evidence from the Paycheck Protection Program," National Bureau of Economic Research, Working Paper 29364, October 2021, available at: https://www.nber.org/papers/w29364. *See also* Government Accountability Office, "Paycheck Protection Program: Program Changes Increased Lending to the Smallest Businesses and in Underserved Locations," September 2021, available at: https://www.gao.gov/assets/gao-21-601.pdf.
[15] *See, e.g.*, Philip Gaskin and Ross Baird, "Access to Capital for Entrepreneurs: Removing Barriers | 2021 Update," Kauffman Foundation, available at: https://www.kauffman.org/wp-content/uploads/2021/10/kauffman_capital_report_2021_update.pdf.
[16] Federal Reserve Banks, "Small Business Credit Survey: 2021 Report on Employer Firms," February 2021, available at: https://www.fedsmallbusiness.org/survey.
[17] Small Business Administration, "Forgiveness Platform Lender Submission Metrics," February 6, 2022, available at: https://www.sba.gov/document/report-2022-ppp-forgiveness-platform-lender-submission-metrics-reports.
[18] Dane Stangler, "Supporting Small Business and Strengthening the Economy Through Procurement Reform," Bipartisan Policy Center, June 22, 2021, available at: https://bipartisanpolicy.org/report/supporting-small-business-and-strengthening-the-economy-through-procurement-reform/.

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

On behalf of the American Financial Services Association (AFSA),[1] I am writing to commend you for conducting the hearing, "Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery," and respectfully request that this statement be inserted into the committee record.

AFSA appreciates the Subcommittee's recognition of the importance of access to affordable credit to small businesses.

Specifically, draft legislation before the Subcommittee that establishes a small business lender registry administered by the Consumer Financial Protection Bureau (CFPB), in consultation with other agencies such as the Small Business Administration (SBA), could help facilitate compliance with the CFPB's Dodd-Frank Act Section 1071 rulemaking.

Rather than enlisting financial institutions to collect and manage new sensitive and personal demographic information regarding borrowers, the CFPB could establish a Section 1071 registry to facilitate the tasks associated with the rule. Such a registry, similar to SBA's Dynamic Small Business Search, would significantly alleviate the burdens on financial institutions with no reduction in the effectiveness of the rule.

A Section 1071 registry would allow for the following simplified process:

- Applicants for credit would file their demographic and financial information with the CFPB. Once the CFPB has received a completed submission, the CFPB would assign each applicant a unique identifying number.
- When applicants apply for credit, they would provide their unique identifying number to the financial institution. Once submitted to the CFPB, the CFPB could then correlate the details of the transaction with the attributes of the borrower stored in the Section 1071 registry.

[1] Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice.

This approach would provide many benefits to market participants.

- Applicants for credit would only need to maintain their financial and demographic information in one place, rather than responding to inquiries each time they seek credit.
- Applicants would not be asked to provide information to financial institutions that clearly is not needed for legitimate business purposes and which, in the applicant's mind, could be used for inappropriate purposes relating to the credit application.
- Financial institutions would be spared the significant costs and burdens of programming, training, collecting, monitoring, and reporting the information required under the rule that is not needed for business purposes.
- Financial institutions would be relieved from demands to produce the Section 1071 data in connection with investigations and discovery as financial institutions would not be in possession of the data.
- Financial institutions will neither possess nor have access to sensitive Section 1071 data held in the database, and therefore inappropriate use of the data by financial institutions will not be possible.
- Financial institutions would not have the further risks (including regulatory and litigation) associated with data breaches of this information and concurrent costs of protecting the same.

AFSA appreciates the subcommittee's willingness to discuss these important issues. Thank you for the opportunity to comment on these issues.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery

Subcommittee on Consumer Protection and Financial Institutions

US House Committee on Financial Services

February 17th, 2022

Submitted by:

The Center for Responsible Lending (CRL), the National Coalition for Asian Pacific American Community Development ("National CAPACD") and National Association for Latino Community Asset Builders ("NALCAB").

Dear Members of the Committee:

Working across multiple states and localities and serving different populations, we all have seen and heard first-hand the challenges that minority-owned businesses – and especially those in Latino and Asian American and Pacific Island communities – face in securing the capital needed to start or scale a business. Many of those stories reek of blatant disparate treatment or of policies that have a profound disparate effect on communities of color. It has been well documented that Black and Hispanic loan applicants are required to produce more documentation to support their loan application and received less information about fees, and less friendly service when visiting a small business lender.[1] Others bespeak of gaps in small business financing which lead to unmet business and community development needs within the communities we serve and consequently restrict economic mobility and limit the availability of goods and services to our communities.

The consequences of these inequities played out during the pandemic. For example, researchers found that during the first four months of the pandemic, the number of active Black business owners dropped by 19% and the number of Latino and Asian business owners dropped by 10% compared to only a 5% drop for white business owners. Even among those businesses that survived, entrepreneurs of color report experiencing more severe revenue loss as a result of the pandemic than white entrepreneurs; indeed, 79% of Asian-owned firms, 75% of Black-owned firms and 67% of Latino-owned firms report that their businesses are in fair or poor financial condition compared to just over half of white-owned firms.

To better understand the challenges faced by business owners of color seeking access to capital, NALCAB and National CAPACD conducted a survey, asking their members questions about how the businesses they serve acquire small business credit in November 2021. Across the 43 organizations surveyed, respondents reported that 70 percent of the small businesses they serve are underbanked, meaning that although they have access to mainstream banking institutions, they may be unable to utilize many of the financial products offered by banks.[2] Entrepreneurs of color shut out from mainstream small business credit products are more likely to rely on family and

[1] Disinvestment, Discouragement and Inequity in Small Business Lending (ncrc.org)
[2] UCLA Center for Neighborhood Knowledge. (November 2021). Survey on Credit Access Among Entrepreneurs of Color.

friends or personal lines of credit to fund their businesses. With limited access to small business loans from traditional lenders, one survey respondent noted how in her experience "most lending for marginalized communities is predatory," Equally troubling, the same respondent noted that many of the businesses owners she serves do not speak English as their primary language and loan documents are seldom translated, making many immigrant borrowers especially vulnerable to predatory practices.[3]

In addition, among those surveyed, they reported that their clients are most likely to rely on either family and friends/equity partners (60%) or personal credit cards (58%) as sources of credit for their businesses. When asked to identify what financial products their clients are using, survey respondents indicated that among their clients 28% use leasing arrangements, 21% take out traditional business loans from an FI, and 20% use Merchant Cash Advances (MCAs). These survey findings indicate a reliance on personal and non-traditional sources of spending, which is becoming an increasingly common inequity for entrepreneurs and communities of color.

Still, even within the collected survey responses there were noticeable differences between the financial lending experiences of NALCAB and National CAPACD clients. For example, a higher proportion of clients served by NALCAB member organizations, which are disproportionately Latino-owned businesses, take out loans under $50,000. Another key difference between the two survey groups is that clients served by National CAPACD member organizations are more likely to utilize mainstream banks whereas clients of Latino serving organizations are more likely to utilize nonprofit lenders.

Evident within the survey responses is how the impact of COVID-19 on small businesses was exacerbated for small businesses owned by people of color. Relaying their personal experiences, serving small businesses in Latino and AAPI communities, survey respondents noted how pandemic-induced temporary closures, limited access to affordable, non-predatory credit, and a lack of in-language support from lenders offering PPP loans, were the biggest challenges facing their clients. One survey respondent described how "requests for technical assistance for both accessing relief resources and starting new businesses" tripled. Multiple survey respondents discussed the challenges limited English speakers face when seeking in-language support from their lender. In relaying these challenges, a respondent shared how one of her clients, a Vietnamese business owner, sought assistance applying for PPP loan forgiveness. This client was unsure how to find their PPP loan number, required information for a loan forgiveness application, and their lender did not offer any in-language support. One of the many reasons that small businesses are likely to feel "intimidated by banks and prefer smaller, more relationship-based lenders" is because traditional lenders do not provide inclusive customer service, e.g. translated loan documents, to English-limited borrowers.

As previously noted, many survey respondents are increasingly turning to personal and non-traditional sources of funding and assistance, such as friends and financial services outside of mainstream banking institutions. This represents a growing unreached population whose data cannot be officially collected, exacerbating existing inequities. For example, one grocer from Akron, OH, shared in her survey response that as newly-arrived refugees in the U.S. from

[3] UCLA Center for Neighborhood Knowledge. (November 2021). Survey on Credit Access Among Entrepreneurs of Color.

Malaysia, "The freedom of being an entrepreneur is what makes me happy. I like being able to work for myself and set my own schedule." She added that she "...always wanted to open a restaurant and own my business but it was scary when we first came over." Undeterred, she took English as a Second Language (ESOL), U.S. citizenship, and sewing classes for a year and was eventually introduced by a friend to ASIA Inc., a linguistically and culturally-competent social service programming organization. ASIA Inc. provided the grocer with technical assistance, translation, and interpretation services necessary to successfully navigate application, loan, licensing, and transactional processes.

This story is echoed by many immigrants; according to the U.S. Current Population Survey, 5.1% of immigrants had their own businesses in comparison to 3.7% of U.S.-born individuals between 2010-2011. As a respondent noted, "A trait of entrepreneurs and immigrants alike is persistence. From navigating taxes to visas, permits and deposits, immigrants develop the resilience necessary to navigate the obstacles of entrepreneurship, where courage and perseverance are often prerequisites for success. Similarly, setbacks when starting a business or selling a product are par for the course for entrepreneurs who must have grit to try again."

It is in light of these experiences that we are submitting this comment which also reflects the information we sent to the Consumer Financial Protection Bureau (CFPB) last month during its public comment period on implementing Section 1071. We have seen the value that the sunlight of disclosure through the Home Mortgage Disclosure Act has provided within the context of residential mortgage lending, and we are confident that Section 1071, if faithfully implemented, can produce similar benefits for the communities we serve. Indeed, those of us that are CDFIs expect to be able to use Section 1071 data to enhance our own ability to provide capital effectively within our communities, while those of us that are community-based organizations expect to be able to use these data to identify those financial institutions which are failing to serve our communities and to take appropriate actions.

In order for Section 1071 to accomplish these vital objectives, the rule the Bureau promulgates must do all of the following:

Require data collection and reporting across the full range of the small business lending marketplace – It goes without saying that the rule can act to identify discriminatory practices and unmet business and community development needs only if it covers the small business lender marketplace writ large. In this regard, we support the Bureau's decision to require lenders with 25 or more originations to report data. Although that may require some of the CDFIs joining in this comment to report data, we are prepared to assume that responsibility and are confident that we can do so without burdening our business operations. We likewise support the Bureau's decision to require financial institutions offering Merchant Cash Advances (MCAs) to collect and report data under Section 1071 as those products are the most predatory products being offered to those we serve.

Require reporting of the key data elements that are generally relied upon in underwriting applications for small business credit – For the rule to achieved its intended purposes, the data collected and reported under Section 1071 must be sufficient to allow data users to understand the characteristics of applicants that are denied credit so as to identify areas of unmet need and also to be able to compare declined applicants with those who are approved for credit to look for evidence of discrimination. We therefore support the Bureau's decision to use its discretionary authority to require reporting of such data elements as the NAICS code, number of employees, and time in business. We urge the Bureau to add to the proposed data fields a requirement that lenders that rely on an individual or composite credit score of business owners to report that score, and the scoring model used, just as is currently required under HMDA.

Require reporting of the key data elements that define the price of credit that is offered to applicants for small business credit – Pricing information is every bit as important as underwriting information to identify potential discrimination as well as unmet business needs. Accordingly, we support the Bureau's decision to use its discretionary authority to require reporting of the interest rate, origination charges, and prepayment penalties. We urge the Bureau to require reporting not only of annual charges during the first year of a loan but also of annual charges in succeeding years to capture the true cost and avoid potential evasion.

Require reporting of disaggregated national origin data – Neither the Latino nor the Asian American and Pacific Islander community that we serve is a monolith and at least in the residential mortgage context experience has shown that different sub-groups of Latino or Asian American borrowers fare quite differently when seeking credit. Thus, we support the Bureau's decision to require lenders to collect and report data for sub-group among Latinos, Asian Americans and Pacific Islanders (as well as for Black or African Americans).

Provide for robust public disclosure of 1071 data – The value of Section 1071 in shedding sunlight on discriminatory practices and in illuminated unmet business and community needs is, of course, entirely dependent upon those data being made available to the public. We agree with the Bureau that the interest in public disclosure must be balanced against the interest in protecting the privacy of small business owners who apply for credit. However, we urge the Bureau to create a strong presumption in favor of disclosure and to permit modification or deletions only with respect to data fields that are highly sensitive and where the risk of reidentification is clear.

In addition to the above recommendations around data collection, we have attached a summary of survey findings to better inform policies aimed at improving access to credit among microentrepreneurs of color.

We thank the committee for the opportunity to submit our comment.

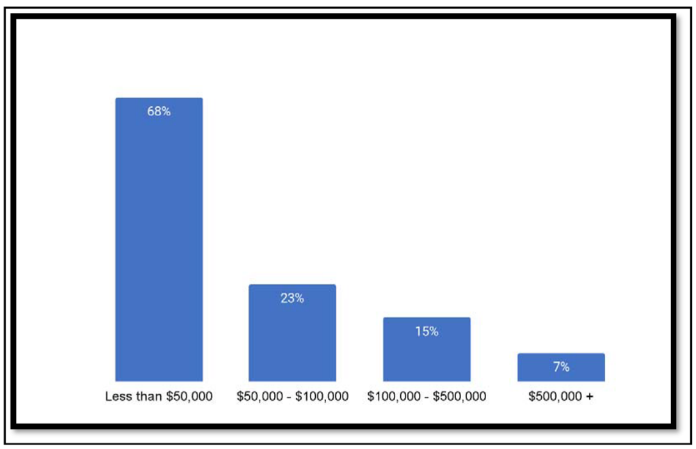
Attachment:

Summary of Survey on Credit Access Among Entrepreneurs of Color conducted by National CAPACD, National Association for Latino Community Asset Builders, and the Center for Responsible Lending – November 2021.
Analysis conducted by a research team at UCLA Center for Neighborhood Knowledge.

In 2021, the partners surveyed their networks of community based organization, CDFIs and other SBA lenders about how the businesses they serve acquire small business credit. Across the 43 organizations surveyed, respondents reported that ***70 percent of the small businesses they serve are underbanked***, meaning that although they have access to mainstream banking institutions, they may be unable to utilize many of the financial products offered by banks

Figure 1 shows the distribution of Average Size of Loan/Financing - Showing a disproportionate number of businesses owned by people of color answer use microloans. The responses show that 68% of clients served by CAPACD and NALCAB member organizations have loans under $50,000. Utilizing 2018 Federal Reserve data on employer firms, ValuePenguin puts the average small business loan amount in the U.S. at $663,000.

Figure 1. Average Size of Loan/Financing



The financial sources of assistance for clients of surveyed organizations differ from the average American business, relying on personal and non-traditional sources of funding more often. These funding sources could have severe repercussions for individuals and households of color in the event the business fails. It is important that the CFPB collects information on data on a broad set of products and financial institutions that captures the reality and experiences of these businesses.

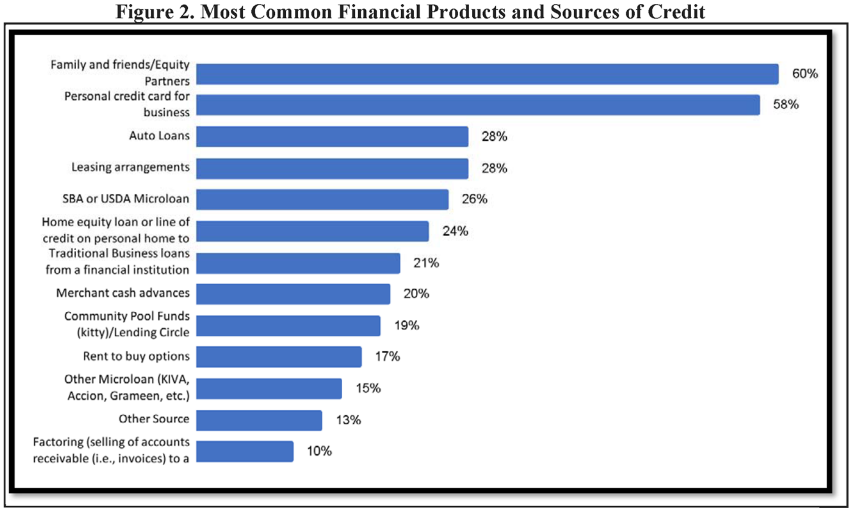
<u>Figure 2 shows Products and sources of credit</u> in response to the question "What type of products are entrepreneurs in your community most commonly using to meet their business financing needs?"

The survey results show that the most common funding sources are "Family and friends/equity partners" (60%) and "Personal credit card for business" (58%). These percentages are slightly higher than findings from the 2019 Federal Reserve Banks' small business credit survey on employer firms. According to the Federal Reserve Banks, 56% of small businesses used "personal savings or funds from friends or family" and 53% "credit cards" on a regular basis.

This comparison shows the business clients of surveyed organizations disproportionately use less traditional sources of finance. For example, according to surveyed organizations, 22% of their clients rely on "traditional business loans from a financial institution to fund their business". In comparison, information on all small businesses from the Federal Reserve Banks show that 44% used a "bank" for funding.

However, clients of surveyed organizations are more likely to use alternative sources of funding such as "Nonprofit Lenders" (24%) and "Community Pool Funds (kitty)/Lending Circle" (19%) and. This compares to 5% for all small businesses using "Nonprofit/community based funding source" as reported by the Federal Reserves.

Figure 2. Most Common Financial Products and Sources of Credit

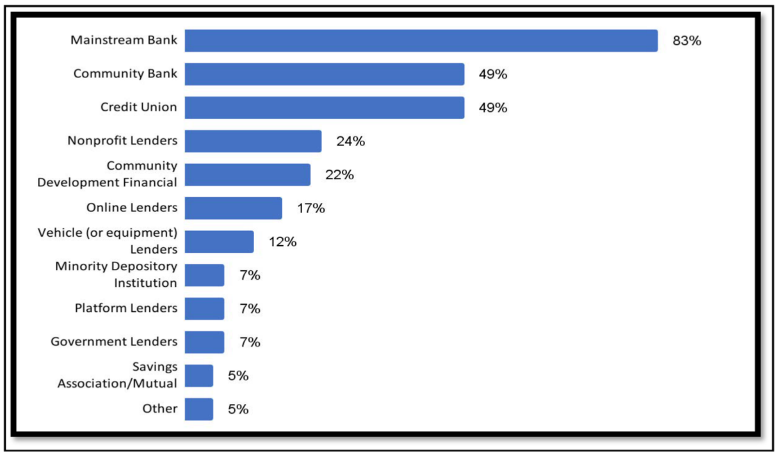


Note: Respondents could select multiple options

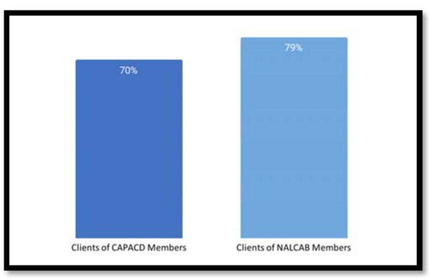
<u>Figure 3 shows the type of institutions clients of surveyed organizations utilize for their business needs.</u>

The surveyed organizations estimate that about 83% of their clients primarily utilize a mainstream bank. The second most commonly used institutions are "community banks" and "credit unions". The clients of surveyed organizations are more likely to use "credit unions" when compared to the small businesses reported by the Federal Reserve Banks in 2019 (49% compared to 6% respectively).

Figure 3. Types of Financial Institutions for "Banked" Entrepreneurs



<u>Figure 4. Distribution of Entrepreneurs with Loan Size of Less than $50,000</u>
by National CAPACD and NALCAB Member Organizations



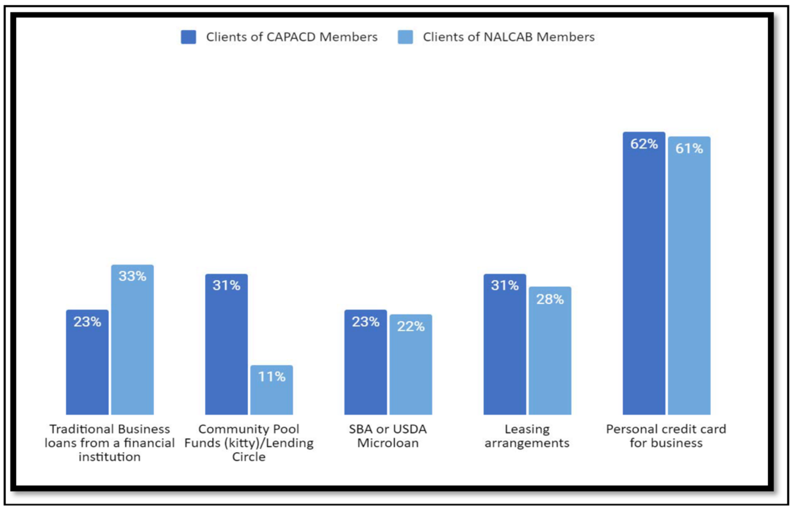
For this part of the analysis, we grouped organizations by their membership in CAPACD or NALCAB. This serves as a rough proxy for racial and ethnic differences in their clients. We recognize that each organization serves a racially and ethnically diverse set of clients, but overall each organization serves a disproportionate number of clients who are AAPI (CAPACD) or Latinx (NALCAB).

There are noticeable differences between the financial practices of clients of surveyed organizations National CAPACD and NALCAB. To ensure equitable lending practices, CFPB must ensure data and information on small business lending that make it possible to disaggregate by race and ethnicity.

The results of the survey conducted by National CAPACD and NALCAB shows that there are noticeable differences in the financial practices of the clients served by their member organizations. For example, a higher proportion of clients served by NALCAB member organizations, which are disproportionately Latinx, take out loans under $50,000 (79% compared to 70% for CAPACD, See Figure 4).

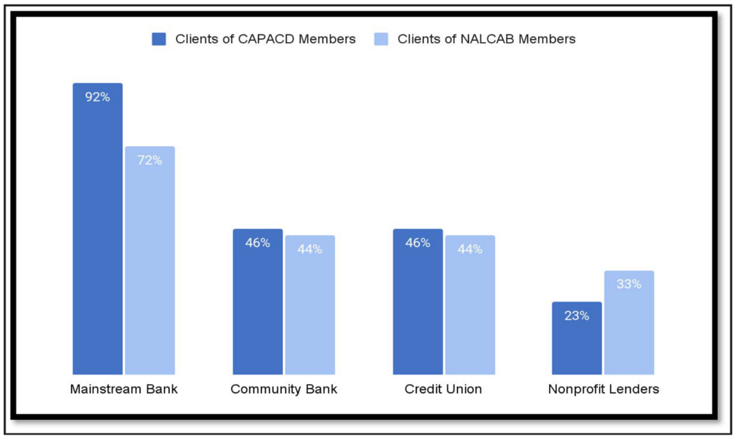
Furthermore, as presented in **Figure 5, the survey results also find differences in financial products and sources of credit**. Clients of National CAPACD member organizations, which are disproportionately, are much more likely than clients of NALCAB to utilize "Community Pool Funds (kitty)/Lending Circle" to fund their businesses.

Figure 5. Financial Products and Sources of Credit of Entrepreneurs Served by National CAPACD and NALCAB Member Organizations



Finally, we also see differences in the type of institution used by the two racial groups as shown in Figure 6. Clients served by CAPACD member organizations are more likely to utilize mainstream banks; whereas clients of Latinx serving organizations are more likely to utilize nonprofit lenders.

Figure 6. Type of Financial Institutions Utilized by Entrepreneurs Served by CAPACD and NALCAB Member Organizations



February 17, 2022

Submitted Electronically

Chairman Perlmutter and Ranking Member Luetkemeyer,

We want to thank the Chairman and Ranking Member for allowing us to submit comments to the Subcommittee on Consumer Protection and Financial Institutions hearing entitled "Small Businesses, Big Impact: Ensuring Women and Minority-owned Businesses Share in the Economic Recovery."

We are excited about the Subcommittee's interest in ensuring women and minority-owned small businesses have access to capital and resources during the COVID-19 economic recovery, and wanted to take the opportunity to share Gusto's perspective on how these businesses are faring, and the policy solutions that will provide critical assistance.

Our work and client base uniquely positions us to understand the needs and pain points of small businesses, and to provide our — and our customers'— perspective on how best to serve them during this challenging time of surging COVID cases, labor shortages, supply chain constraints, and inflationary pressures.[1]

Background

Gusto is a people platform that helps small businesses onboard, pay, insure and take care of their teams. [2] We serve more than 200,000 Small and Medium Businesses (SMBs) nationwide. In addition to full-service payroll and HR and compliance support we enable benefits for employees such as medical insurance, 401(k)s, and 529 plans. In 2019, we launched Gusto Cashout, a lending product offered in partnership with Sunrise Banks, N.A., that is fully embedded in the payroll platform for the 1 million+ employees that use Gusto across the country. In 2020, we launched a suite of financial tools (Gusto Wallet) to allow small businesses to help support the financial health of their teams with the dual goal of promoting financial inclusion

Our typical customers are SMBs with fewer than 100 employees and the accountants and advisors on which these businesses rely. Gusto was founded in 2012.

Gusto Leads the Way

Throughout the pandemic, Gusto has focused on ensuring that small businesses have access to capital to fund their operations. Gusto facilitated billions in Paycheck Protection Program loans for

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[1] https://gusto.com/company-news/how-protecting-workers-health-and-wealth-can-help-business-owners-combat-the-great-resignation

[2] www.gusto.com

our small businesses, and has developed multiple partnerships with financial technology companies and community development financial institutions (CDFIs), such as Opportunity Fund and Pacific Community Ventures, to ensure that our customers have access to fair and responsible capital and advisory services. Gusto is connected to more than 80 financial institutions that offer loan products to meet small business needs, including start-up funds, Small Business Administration (SBA) loans, credit cards, and lines of credit. Because of these relationships, we are well-positioned to provide insight into small business financing challenges.

Gusto is also the founder and chair of the Small Business Relief Council, a cross-industry coalition of over 80 companies representing millions of small businesses that developed to enable small businesses to survive and thrive during the pandemic.[3] Gusto leads the consortium, bringing lenders, fintech, payroll providers and accountants together to collaborate on regulatory, operational, and risk issues. SBRC spans different components of the small business financial ecosystem, and includes the largest financial services companies, payroll companies, community development financial institutions (CDFIs) accounting firms, fintechs, and software companies. Gusto's experience leading SBRC has given us a holistic perspective of challenges that minority- and women-owned businesses have faced during the pandemic.

State of Play

According to Gusto data, action is needed now to help small businesses across the country. Our data shows small business payroll reserves in hard-hit industries are tighter now than they were during the height of early pandemic lockdowns. Since the start of 2022, 26% of businesses—primarily in the personal services sector—have less than one month of payroll in reserves. That's up from 21% this time last year and 23% in March 2020. That number dropped to around 10% as companies started to receive PPP and other funds. Without the aid that helped those businesses weather the early disruption of the pandemic, small businesses have fewer resources and capacity to absorb future shocks.

Minority-owned businesses have historically experienced unequal access to capital and collateral. For example, white-owned startups begin with more than three times the capital of Black-owned startups[4], and white-owned startups are seven times more likely to obtain loans than Black-owned startups during their founding year.[5] Throughout the pandemic, businesses owned by people of color did not receive equitable access to federal aid, despite being hit harder economically.[6] Women- and minority-owned businesses persistently report having lower levels of access to banks and financial

[3] https://gusto.com/company-news/gusto-announces-small-business-relief-council

[4] https://www.nber.org/system/files/working_papers/w28154/w28154.pdf

[5] https://thehill.com/opinion/finance/571824-minority-owned-businesses-face-an-unequal-recovery-an-underfunded-federal?rl=1

[6] https://thehill.com/opinion/finance/571824-minority-owned-businesses-face-an-unequal-recovery-an-underfunded-federal?rl=1

institutions, and as was demonstrated during the pandemic, lack of relationships with traditional lenders led to lower access to PPP loans for these groups.[7]

Gusto has partnered with the National Association of Women Business Owners (NAWBO) to better understand the experience of women business owners' capital access. When asked about sources of funding, nearly 70% of women business owners said they relied on personal savings while just 15% of women business owners used an SBA-backed loan.[8] Notably, nearly half of the minority business owners in the study responded that they were interested in SBA loans but had not received one due to challenges in the application process – which was more than double the rate of white business owners.[9]

Our research also found that nearly half of all businesses started by women in the past year are minority-owned, who largely started these businesses out of economic need.[10] The COVID pandemic exacerbated the adversity that women entrepreneurs face, and women, in turn, responded by transforming challenge into opportunity. This is further illustrated by the 31% of women business owners that have school-aged children at home, who simultaneously face the demands of keeping their business afloat while providing childcare and education to their children in the midst of unreliable Delta and Omicron spikes.[11] These points illustrate the vital role that women owned businesses play in helping the economy to recover and we should prioritize Federal policies that help them thrive.

Our data shows that the government can and should do a better job of outreach to these communities to ensure they have access to financial products and services that can meet the needs of their businesses. Existing resources – such as the Minority Business Development Agency, Women's Business Centers, and Small Business Development Centers – should be better resourced to facilitate education and connections between banks, CDFIs, and other financial institutions.

Policy Solutions

Gusto supports additional resources for underserved communities, and is encouraged that Congress continues to prioritize small business relief. The following policy solutions are key to ensuring a holistic approach to addressing the challenges faced by women and minority-owned small businesses.

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[7] https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color

[8] https://gusto.com/company-news/re-opening-for-business-the-tools-tech-and-policies-women-need-to-succeed

[9] Id.

[10] https://gusto.com/company-news/providing-for-those-who-provide-a-report-on-breadwinning-women-business-owners-their-critical-role-in-the-economic-recovery

[11] https://gusto.com/company-news/how-the-pandemics-childcare-crisis-impacted-women-owned-businesses-and-altered-their-future

State Small Business Credit Initiative (SSBCI)

Gusto was encouraged that the American Rescue Plan included $10 Billion to reauthorize the State Small Business Credit Initiative (SSBCI), and we urged the Treasury Department to ensure that these funds reach small businesses owned by women and minorities.[12] These businesses were disproportionately left out of the PPP program, which makes the expansion of SSBCI all the more important to aid in recovery.[13] Additionally, Federal data shows that minority business owner credit applications fare worse than white-owned businesses and are more reliant on personal funds to meet business needs; SSBCI can help address these disparities by focusing funds on business owners that are the most left out of the financial system.[14]
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Minority Business Development Agency (MBDA)

The MBDA is essential to the recovery of minority-owned businesses, and Gusto advocated for its codification and expanded budget in the Infrastructure Investment and Jobs Act. Since 1969, the MBDA has been the only agency exclusively focused on expanding opportunities for businesses of color. The agency has long enjoyed bipartisan support and will be crucial to assisting entrepreneurs in underserved communities start and expand their businesses through technical training and assistance, import/export counseling and development services.

Small Business Administration Modernization

Gusto supports reforming the SBA to better target women- and minority-owned businesses to ensure that they have better access to credit by reducing barriers for SBA lenders and changing program requirements to increase eligibility. Gusto recommends incentivizing private lenders to reenter the small business lending market; reducing barriers to SBA lender approval and requirements; and using alternative data and technology to better price a business' credit risk.[15]

Expansion of Fintech Lender Activities

Gusto's experience during the COVID-19 pandemic demonstrated the need for new and diversified providers of small business capital. While traditional banks of all sizes played an important role during the pandemic through PPP and other lending programs, it was our experience that many fintechs were able to provide needed flexibility and additional reach into underserved communities. Ensuring that fintech lenders are robust participants in the small business lending ecosystem is

[12] https://gusto.com/company-news/small-business-relief-council-sbrc-letter-to-the-treasury-department-urging-that-the-small-business-credit-initiative-ssbci-prioritize-underserved-businesses

[13] https://www.brookings.edu/research/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/

[14] https://www.fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms

[15] https://www.discoursemagazine.com/economics/2020/11/09/surviving-the-winter/

crucial to addressing gaps in capital allocation. Policies should ensure these fintech lenders offer transparent, affordable, and borrower friendly loans.

Transparency and Clear Disclosures for Loans

Gusto is committed to transparency in our own products, and we appreciate that the Committee is considering proposals to extend "Truth in Lending Act" disclosures to small business lending. Studies have shown that women- and minority-owned businesses have less access to traditional banking services, and disproportionately use non-bank lenders.[16] Unfortunately, non-bank lenders tend to have worse repayment terms and higher costs, with many applicants reporting confusion and difficulty understanding the terms of loans being offered from online lenders.[17] Many small business owners do not have the benefit of seeking financial advice, and standardized, clear and transparent disclosures about total costs and repayment terms that allows informed decision making will lead to better outcomes for borrowers.

As the Subcommittee undertakes its important exploration of how to ensure an equal economic recovery of women and minority-owned small businesses, Gusto felt it prudent to share our customer insights and policy recommendations. We remain committed to advocating for small businesses across the country and helping inform smart policy decisions. Once again, thank you for the opportunity to submit comments, and for more information about Gusto products please do not hesitate to contact Steve Abbott (steve.abbott@gusto.com).

Sincerely,

Steve Abbott
Public Policy Lead
Gusto

[16] https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color
[17] https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm

NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

February 16, 2022

The Honorable Ed Perlmutter Chairman House Financial Services Committee Subcommittee on Consumer Protection and Financial Institutions United States House of Representatives Washington, DC 20515	The Honorable Blaine Luetkemeyer Ranking Member House Financial Services Committee Subcommittee on Consumer Protection and Financial Institutions United States House of Representatives Washington, DC 20515

Re: Tomorrow's Hearing: "Small Business, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery"

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on issues of importance to credit unions ahead of tomorrow's hearing, "Small Business, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery." NAFCU advocates for all federally-insured not-for profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products.

NAFCU appreciates your work to help ensure small and minority-owned businesses' needs are met. We share the Subcommittee's concern about the lack of credit for women- and minority-owned small businesses. Credit unions have a long history of helping underserved communities due to their cooperative structure, and nothing demonstrates this better than the beginning of the COVID-19 pandemic, when our members extended loans to small businesses through the Paycheck Protection Program (PPP) that had been turned away by for-profit banks. According to a NAFCU survey of our members, 87% of respondents had small business members join the credit union to secure PPP funding.

However, NAFCU has concerns with the legislative proposals under consideration today and the impact they could have on credit unions that are trying to help their small business members. These bills could end up removing flexibility for credit unions and increasing their regulatory compliance burdens, making it harder to help small businesses. We believe a better approach would be to focus on increasing access to funding for small businesses by reducing arbitrary barriers to capital for them. We would encourage consideration of H.R. 1471, the *Access to Credit for Small Businesses Impacted by the COVID–19 Crisis Act*, introduced by Representatives Brad Sherman and Brian Fitzpatrick last year. This critical legislation would help main street small businesses by providing temporary relief for one year after the COVID-19 national emergency has ended from the arbitrary cap on credit union member business lending (MBL) for loans made to small businesses trying to recover from the pandemic. This legislation would have an immediate benefit to small businesses with no cost to the federal government. We also urge your support for H.R. 5189, the bipartisan *Member Business Loan Expansion Act,* from Representatives Vincente Gonzalez and Fitzpatrick, as well as the draft of the *Expanding Financial Access for Underserved Communities Act*, both of which would help small businesses and are pending before the Committee.

Additionally, as the Subcommittee looks at this issue, we would like to take this opportunity to share our concerns with the recent notice of proposed rulemaking (Proposed Rule) under Section 1071 of the Dodd-Frank Act at the Consumer Financial Protection Bureau (CFPB). NAFCU has a series of concerns about the proposal and its impact on access to credit from credit unions for small businesses, the chief of which are outlined below:

Definition of Covered Financial Institutions
We believe it important that the CFPB establish a clear threshold for exempting smaller community lenders from the rule. The proposed 25 loan threshold is far too low and would unjustifiably impact many smaller lenders. If the CFPB is not going to use its authority under Section 1022 to exempt credit unions from this rule, a practical and workable higher threshold of at least 500 loans must be established.

Definition of Small Business
The Proposed Rule would define a small business as any business with prior-year gross annual revenue of $5 million or less. At this level, financial institutions would have to collect data related to businesses that are not truly small. Such an arbitrarily high threshold will unnecessarily raise the cost of small business borrowing and also make it more difficult for stakeholders to draw statistically significant conclusions about the health and financial needs of truly small businesses. We suggest a lower revenue threshold of $1 million for this definition.

Covered Credit Transactions
While we support the CFPB defining covered credit transactions in the Proposed Rule, we believe the CFPB should also exempt loans under the de minimis definition of MBL found in the *Federal Credit Union Act* (FCU Act). Since 1998, the FCU Act and the National Credit Union Administration (NCUA) have defined loans of less than $50,000 not to be MBLs. As such, the NCUA does not require credit unions to report these loans as MBLs, even if they may be business-purpose loans. Subjecting non-MBL loans to Section 1071 coverage could affect the availability of these smaller size loans due to the increased costs associated with Section 1071 compliance. This inconsistency with the NCUA's treatment of these loans will compound the negative impact of the new requirements on credit unions. We recommend the CFPB establish an exemption for loans under the de minimis amount for MBLs established in the FCU Act.

Compliance Deadline
The Proposed Rule's uniform 18-month mandatory compliance deadline is aggressive even for the largest financial institutions and is difficult for credit unions. We hear from our member credit unions that their previous experience with information technology (IT) vendors in adapting their products to comply with major rulemakings has shown that timeframe to be unworkable. Credit unions would find themselves forced to wait for one or more IT vendors to update, redeploy, and

cross-test Section 1071-compliant small business lending programs and tools. NAFCU believes that any compliance deadline should be no earlier than 36 months after the final rule is issued.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you to ensure small and minority-owned businesses are included in the economic recovery from COVID-19. Should you have any questions or require any additional information, please contact me or Lewis Plush, NAFCU's Associate Director of Legislative Affairs, at (703) 258-4981 or lplush@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Consumer Protection and Financial Institutions

Opening Remarks
Ranking Member Blaine Luetkemeyer (MO-03)
Committee on Financial Services
Subcommittee on Consumer Protection and Financial Institutions
"Name of the Hearing"
Month Day, 2021

Thank you Mr. Chairman, and thank you for having a hearing on this important topic.

Small Businesses in this country are hurting.

Don't take my work for it, just ask them.

According to a small business survey by Goldman Sachs, only 29 percent of small business owners think the United States is moving in the right direction, and just 24 percent describe the American economy as "excellent" or "good."

That's not all. According to the Job Creators Network, 37 percent of small businesses said inflation is their biggest concern, and 70 percent said Biden has not done enough to combat inflation.

With inflation, supply chain issues, and the tremendous difficulty finding employees, this Administration has created an untenable climate for small businesses. However, instead of working on solutions to these problems, the CFPB is in the midst of rolling out a rule that poses an egregious threat to small business privacy and access to capital.

The CFPB's current Rulemaking on Section 1071 of Dodd-Frank will impact the vast majority of financial institutions and small businesses loans. Despite the seriousness of this issue, the CFPB seems to have taken a lackluster approach to the rulemaking.

I have numerous issues with the CFPBs proposed Rule, but no provision is as offensive as the requirement that employees of a financial institution guess the race or ethnicity of a loan applicant based on their appearance and last name.

Let me say that again: the CFPB's rule requires bank employees to guess a person's race or ethnicity based on their last name and appearance and report it to the Bureau.

I remember when the Equal Credit Opportunity Act was passed in 1974 to prevent discrimination from creditors. Race and ethnicity were explicitly outlawed from the lending process. Now, the Administration wants loan officers to use skin color to categorize loan applicants as they walk in the door? That is outrageous.

Furthermore, Section 1071 of Dodd-Frank specifically provides borrowers the right to not give race, gender, or ethnicity information to financial institutions. However, the CFPB is attempting to eliminate that right by requiring loan officers to guess and submit this information on their behalf. Not only is this rule based on prejudice and stereotypes, but it eliminates the right of borrowers to keep their information private.

Speaking of privacy, the CFPB's proposed rule poses another threat to the private information of small business loan applicants. While the Bureau is demanding the information right away, they plan to issue a policy statement at a later date announcing what information they will make public. Small businesses and financial institutions deserve to know what information of theirs will be made public before handing it over to the CFPB. This is a blatant attempt to skirt the rulemaking process to keep financial institutions and small businesses in the dark while the

CFPB determines the best way to use citizens' private information to achieve its own agenda.

Make no mistake, the CFPB has a long history of twisting data to frame financial institutions as predatory, and specifically name and shame them. The 2015 study on arbitration is a great example of this, but even more recently is the Bureau's press release on overdraft fees where they stated banks have a QUOTE "deep dependence" ENDQUOTE on overdraft fees for revenue. Not only did they make that argument based on a study from 2014, but more recent data showed overdraft fees represented just 2 percent of bank revenue in 2019. As always they are making salacious statements and assuming the American people are either too stupid or lazy to read the details for themselves.

The CFPB is not in the business of protecting consumers, it is in the business of crafting any narrative they choose, without the support of facts, and then regulating the financial services industry based on their false narrative. That is what their aiming to do with this 1071 rule, and it needs to stop.

Just yesterday, Congressmen Roger Williams, French Hill, and I sent a letter to the CFPB highlighting these concerns. We also introduced a package of bills to amend Section 1071 so the CFPB cannot inject prejudice into the banking system, threaten the privacy of and onerously burden small financial institutions, and limit access to capital for small businesses.

I look forward to hearing what the witnesses have to say today about this rule and I yield back the balance of my time.

Innovative Lending Platform Association

February 17, 2022

The Honorable Ed Perlmutter
Chair
Subcommittee on Consumer Protection
and Financial Institutions
Committee on House Financial Services
U.S. House of Representatives

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
Committee on House Financial Services
U.S. House of Representatives

Dear Chair Perlmutter and Ranking Member Luetkemeyer:

Pursuant to the upcoming hearing by the Consumer Protection and Financial Institutions subcommittee entitled "Small Businesses, Big Impact: Ensuring Small and Minority-Owned Businesses Share in the Economic Recovery," the Innovative Lending Platform Association (ILPA) would like to submit the following letter for the record.

As the committee investigates opportunities for minority owned businesses to share in the economic recovery, ILPA believes that the critical role our members played in providing access to pandemic era programs, particularly the Paycheck Protection Program (PPP), cannot be overlooked or understated.

Recent studies by Professor Sabrina Howell at NYU Stern and others and the Federal Reserve show that fintechs reached minority owned businesses left behind by traditional financial institutions.

In particular we highlight the following from these two studies:

- Overall, fintech lenders were responsible for 53.6% of PPP loans to Black-owned businesses, while only accounting for 17.4% of all PPP loans in the analysis sample.
- Black-owned businesses are 12.1 percentage points more likely to obtain their PPP loans from a fintech firm than from traditional lenders.
- About one in four Black-owned firms applied to fintech lenders, more than twice the rate of white-, Asian-, and Hispanic-owned firms.
- Although fintech lenders had a small share of PPP loan volumes, they likely served borrowers who would not have received loans otherwise. Applicants who approached fintech lenders for PPP loans were more likely to lack banking relationships, be minority owned, and have fewer employees.

In short, without fintech participation in the PPP, many minority owned businesses would not have been able to access the program.

We are attaching these two studies to this letter for information and reference.

Thank you for accepting these comments.

Innovative Lending Platform Association

Sincerely,

Scott Stewart

CEO, Innovative Lending Platform Association