



December 30, 2021  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

RE: Small Business Lending Data Collection under the Equal Credit Opportunity Act  
(Regulation B) Proposed Rule  
Docket No. CFPB-2021-0015  
RIN 3170-AA09

Accion Opportunity Fund Community Development (“Accion Opportunity Fund” or “AOF”) is thankful for the opportunity to comment on the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) proposed rule implementing section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 1071 would amend Regulation B of the Equal Credit Opportunity Act (ECOA) and facilitate the enforcement of fair lending laws and enable stakeholders to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.<sup>1</sup>

Accion Opportunity Fund supports section 1071 because it will help lenders, like us, understand how we can better serve the capital needs of woman-owned and minority-owned small businesses. Accion Opportunity Fund is a community development financial institution (CDFI) and the country’s leading nonprofit small business lender. We work to create an inclusive, healthy financial system that supports the nation’s small business owners by connecting entrepreneurs to affordable capital, educational resources, coaching, and networks.

Through innovative partnerships and outreach strategies, we reach entrepreneurs of color, low-income, and women entrepreneurs, who often lack access to the financial services they need to build and grow their businesses. In 2020, 74% of our borrowers identified as Hispanic/Latinx, Asian, Middle Eastern, Pacific Islander, Black, Native American, Alaska Native, or Other.<sup>2</sup> Our experience working closely with women-owned and minority-owned small businesses has shown us how much more needs to be done to extend capital to these entrepreneurs.

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<sup>1</sup> Consumer Financial Protection Bureau (CFPB), “Small business lending data collection rulemaking.” <https://www.consumerfinance.gov/1071-rule/>

<sup>2</sup> Accion Opportunity Fund (AOF), “2020 Annual Report,” 2021. <https://s3.us-east-2.amazonaws.com/aofund.org/wp-content/uploads/2021/08/27014839/Annual-Report-FY2021.pdf>

Small business ownership drives economic mobility, creates jobs, and sustains families and communities. Yet, entrepreneurs of color, many of which are more likely to be owned by women, are disproportionately denied essential capital and support.<sup>3,4</sup> Most recently, this disparity was exemplified by the federal government’s disbursement of Paycheck Protection Program (PPP) loans. Studies show that, in most large metro areas, the rate of PPP lending to majority-White neighborhoods was higher than those for any majority Asian, Black, or Latino neighborhoods.<sup>5</sup> Despite the fact that the loan program was meant to prioritize “small business concerns and entities in underserved and rural markets,”<sup>6</sup> funds not only went to majority-White areas, but to large businesses and business owners with strong banking relationships.<sup>7</sup>

These disparities in lending cannot be addressed without having an accurate picture of who is applying for small business loans. While there is much literature regarding the disparities in small business lending and the racial wealth gap, there is currently no *single comprehensive data set* available to analyze trends within the industry. This is especially concerning when an estimated \$87 billion of unmet capital needs exists among small business owners.<sup>8</sup> Section 1071 will finally provide the country with the data it needs to address the capital needs of woman-owned and minority-owned small businesses.

We appreciate the Bureau’s extensive research, analysis, thought, and time spent in the proposed rule. There are many aspects of the rule that we were very pleased to read, such as the inclusion of merchant cash advances (MCAs) as covered credit products and the detailed demographic information to be collected. To further strengthen section 1071, we offer several recommendations—some reiterated from our remarks, and those from similar mission-oriented lenders, during the section 1071 Small Business Review Panel.

- I. **Broad coverage of small businesses, applications, lenders, and products.** We are pleased by many of the Bureau’s proposed definitions—in particular, its definitions of covered applications and lenders. However, we urge the Bureau to increase its proposed gross annual revenue threshold for a covered small business to \$8 million and include factoring and leases as covered products.

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<sup>3</sup> Federal Reserve Bank of Atlanta, “Mind the Gap: How Do Credit Market Experiences and Borrowing Patterns Differ for Minority-Owned Firms?” 2018.

<https://www.atlantafed.org/-/media/documents/community-development/publications/discussion-papers/2018/03-mind-the-gap-how-do-credit-market-experiences-and-borrowing-patterns-differ-for-minority-owned-firms-2018-09-14.pdf>

<sup>4</sup> JP Morgan Chase, “Small Business Owner Race, Liquidity, and Survival,” 2020.

<https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-small-business-owner-race-report.pdf>

<sup>5</sup> LA Times, “Businesses in majority-white communities received PPP loans at higher rates, analysis shows,” 2021.

<https://www.latimes.com/california/story/2021-05-01/ppp-loans-coronavirus-pandemic-businesses-trump>

<sup>6</sup> H.R.748 - CARES Act. <https://www.congress.gov/bill/116th-congress/house-bill/748/text>

<sup>7</sup> New York Times, “Minority Entrepreneurs Struggled to Get Small-Business Relief Loans,” 2021.

<https://www.nytimes.com/2021/04/04/business/ppp-loans-minority-businesses.html>

<sup>8</sup> Next Street, “Next Street Launches New Capital Practice for Small Business Capital Enablement,” 2019.

<https://nextstreet.com/new-capital-practice-for-small-business-capital-enablement/>

- II. **Complete application and product pricing data.** The Bureau proposes collecting pricing information like interest rate, total origination fees, and prepayment fees. While this is critical data, reporting of annual percentage rate (APR)—the only means of comparing financing products across varying terms—should be required as well. In addition to APR, we urge the Bureau to require the reporting and publishing of credit scores.
- III. **Robust data regarding the applicant and their business.** We are in agreement with much of the Bureau’s approach to collecting information on ethnicity, race, sex, and minority-owned and women-owned business status. However, we ask that the Bureau also require the collection of disability status and LGBTQ+ status.
- IV. **Clear guidelines on data collection, management, reporting, and publication.** We are supportive of many of the Bureau’s proposals regarding the collection, handling, and reporting of section 1071 data and ask that the Bureau outline its guidelines clearly and concisely. We encourage the Bureau to publish much of the data unmodified.
- V. **Implementation costs and enforcement.** In response to the Bureau’s request for information on lender implementation costs, we believe, based on our own experience and those of similar lenders, that costs will be minimal. Accion Opportunity Fund supports the safe harbors, penalties, and other enforcement actions suggested by the Bureau, and we urge the Bureau to move quickly in publishing the final rules.

As a lender that works directly with the very populations that section 1071 seeks to serve, we believe our recommendations will ensure that data collection will be thorough and best position the Bureau to execute its statutory mandate. It is our hope that the Bureau incorporates these recommendations into its final section 1071 rules.

#### I. **Broad coverage of small businesses, applications, lenders, and products**

##### **Small business coverage**

Accion Opportunity Fund is in agreement with the Bureau that a financial institution should be “able to quickly determine at the beginning of the application process whether an applicant is a ‘small business’ for purposes of the 1071 rule.”<sup>9</sup> We are in favor of a simple \$8 million gross annual revenue threshold to determine what constitutes a covered small business under the rule, rather than the Bureau’s proposed \$5 million mark (§1002.106(b)).

In our section 1071 Small Business Review Panel remarks, we supported the Bureau’s “second alternative” definition of small business—\$8 million in gross annual revenue for all industries other than manufacturing and wholesale (which, considering their large sizes, would be held to a

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<sup>9</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021 (pg. 256).  
[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

threshold of 500 employees). Considering the need for simplicity, however, we are in favor of removing the exceptions for manufacturing and wholesale businesses.

As discussed by the Bureau, \$8 million is the most common size standard threshold for average annual receipts.<sup>10</sup> By increasing the proposed gross annual revenue threshold to \$8 million, more manufacturing and wholesale businesses will be covered under the rule without having to carve out industry niches. It is also a figure supported by a variety of section 1071 Small Business Review panelists, ranging from fintechs to CDFIs like Accion Opportunity Fund.

Lastly, we are in favor of the Bureau revisiting the threshold every five to ten years to account for future inflation and keep pace with changes to the Small Business Administration's (SBA) own size standards.

### **Application coverage**

We agree with the Bureau and its definition of "covered application" as an oral or written request for a covered credit transaction that is made in accordance with procedures used by a financial institution for the type of credit requested (§1002.103(a)), underscoring the latitude given to financial institutions to establish their own application process or procedure to decide the type and amount of information they require from applicants.

We believe it is advantageous to collect information on incomplete and withdrawn applications, and we are pleased to see the Bureau in agreement. The CFPB proposes the following categories: originated; approved but not accepted; denied; withdrawn by applicant; and incomplete.<sup>11</sup> In a series of mystery shopping experiments, the National Community Reinvestment Coalition (NCRC) found that women and entrepreneurs of color reported worse experiences in applying for small business loans than the rest of the mystery shoppers.<sup>12</sup> Because discouraging an applicant to apply based on a myriad of factors (like race, ethnicity, and sex) is prohibited under ECOA, it would be crucial for the Bureau to collect information on the applications that did not undergo the full process and assess any disparate lending practices.

The CFPB also proposes deviating from the Home Mortgage Disclosure Act (HMDA) to include denials based on incompleteness to be reported as incomplete instead of denied. We agree with the Bureau that the denial category should only be reserved for denials based on creditworthiness.<sup>13</sup>

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<sup>10</sup> CFPB, "Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking," 2021, (pg. 157).

[https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbrefa-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf)

<sup>11</sup> CFPB, "Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)" Proposed Rule, 2021, (pg. 348).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>12</sup> National Community Reinvestment Coalition, "Racial and Gender Mystery Shopping for Entrepreneurial Loans: Preliminary Overview," 2020. [https://ncrc.org/mystery\\_shopping/](https://ncrc.org/mystery_shopping/)

<sup>13</sup> CFPB, "Small Business Lending Data Collection under the Equal Credit Opportunity Act

We agree with the CFPB that when an applicant rejects a counteroffer, the transaction should be reported as denied. Otherwise, this would give dishonest lenders the opportunity to extend credit offers well below an applicant's request (knowing very well that they would not accept) just to avoid reporting the transaction as a denial. If an applicant accepts a counteroffer, then it should be reported as originated.<sup>14</sup>

We agree with the Bureau's proposal to exclude reevaluation, extension, or renewal requests on an existing business credit account (*unless* the request seeks additional credit amounts) and inquiries and prequalifications—the latter defined as when a “creditor may provide a prospective applicant with information about credit terms” (§1002.103(B)). We understand that an inquiry or prequalification may become an application when the creditor evaluates information about the consumer or business, decides to decline the request, and communicates this to the consumer or business.

### **Lender coverage**

The Bureau's proposed definition of “financial institution” (§1002.105(a)) would encompass a broad variety of small business lenders, including, but not limited to, depository institutions, online lenders, CDFIs, governmental lending entities, and nonprofit, non-depository lenders. Together with the proposal to define a “covered financial institution” (§1002.105(b)) as one that originates 25 covered credit transactions or more in each of the two preceding calendar years, we believe these definitions will provide comprehensive coverage of lenders, applicants, and transactions, thereby yielding a meaningful set of data.

Gathering data from small business lenders of all types and sizes is critical, given that entrepreneurs of color are less likely to be approved for capital by banks, often turning to alternative lenders as a result. According to the Federal Reserve, “a higher percentage of Black- and Hispanic-owned businesses went to online lenders for financing than White-owned firms. Black-owned firms also sought out credit unions and community development financial institutions relatively frequently.”<sup>15</sup>

Furthermore, in the Bureau's own analysis, the 25-per-year loan threshold will likely cover 38% of depository institutions, 70% of banks and savings associations, and 7% of credit unions. The dollar and number of small business loans captured by depository institutions would also increase under the 25 loan threshold.<sup>16</sup> We strongly recommend that the Bureau maintain the 25

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(Regulation B)” Proposed Rule, 2021 (pg. 348).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>14</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021, (pg. 350).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>15</sup> Federal Reserve Bank of Atlanta, “Minority Firms Have Harder Time Obtaining Bank Financing, Fed Analysis Finds,” 2020.

<https://www.atlantafed.org/economy-matters/community-and-economic-development/2020/01/28/minority-firms-have-harder-time-obtaining-bank-financing-fed-analysis-finds>

<sup>16</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act

loan threshold in its final rule. Under a 100 loan threshold scenario, these percentages would be more than halved to just 17%, 33%, and 2%, respectively.

### **Product coverage**

While we applaud the Bureau's inclusion of merchant cash advances (MCAs) as covered credit transactions (§1002.104(a)) under the section 1071 rule, we are concerned about the Bureau's exemption of factoring and equipment leasing products (§1002.104(b)). Because MCAs are more often sought out by Black and Hispanic entrepreneurs—Hispanic business owners seek MCAs at almost *double* the rate of White business owners—it is central to the legislative intent of section 1071 that pricing and borrower demographic data be collected from these products.<sup>17</sup>

In our 25+ years of lending, we have witnessed far too often the debt cycles MCAs can perpetuate. Small business owners have come to us looking to refinance these short-term, high-cost products, and while we are able to help some of these borrowers refinance, we are unable to help others due to the exorbitant amount of debt already accrued. We analyzed several MCA and balance sheet lender agreements provided by our clients, and we discovered that the average product carried an annual percentage rate of 94%, with one product reaching a shocking 358%. Even more shocking, among the Hispanic borrowers in our sample, the average monthly payment was *more than 400% of their take-home pay*.<sup>18</sup>

Including MCAs in the list of covered credit transactions is certainly a move in the right direction; however, we believe the Bureau is taking a misstep by exempting factoring and equipment leasing products (§1002.104(b)) under section 1071.

There are an estimated 8 million factoring accounts and 9 million equipment leasing accounts in the United States according to a 2017 CFPB report. Combined, these two products account for more than double the estimated 7 million term loan accounts in existence.<sup>19</sup> Considering their sizable presence in the market, omitting factoring and equipment leasing from the rule will create an enormous gap in critical data impacting America's most vulnerable small businesses. This is particularly problematic because Federal Reserve research has found that Black-owned businesses apply for factoring at double the rate of White-owned firms. Hispanic-owned firms also apply for leases more frequently than White-owned firms, 11% compared to 8%.<sup>20</sup>

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(Regulation B)" Proposed Rule, 2021, (pg. 239).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>17</sup> Federal Reserve Bank of Atlanta, "Small Business Credit Survey," 2019.

<https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>

<sup>18</sup> Accion Opportunity Fund (AOF), "Unaffordable and Unsustainable: The New Business Lending on Main Street," 2016. <https://aofund.org/news/unaffordable-and-unsustainable-new-business-lending/>

<sup>19</sup> CFPB, "Key dimensions of the small business lending landscape," 2017.

[https://files.consumerfinance.gov/f/documents/201705\\_cfpb\\_Key-Dimensions-Small-Business-Lending-Landscape.pdf](https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf)

<sup>20</sup> Federal Reserve Bank of Atlanta, "Small Business Credit Survey," 2019.

<https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf>

As for equipment leasing, lessor stakeholders and their customers agree that “loans and leases are indistinguishable.”<sup>21</sup> In a similar vein, the Bureau also notes that reporting loans but not leases may, in fact, require *added* cost and effort for some financial institutions and that some depository institutions may prefer reporting both so as to remain consistent with their reports to other regulators.<sup>22</sup>

The Bureau proposes excluding factoring from its list of covered products, because the transaction entails a purchase of receivables from a small business, not an extension of credit. It should be noted that the SBA lists factoring companies as ineligible businesses for SBA loans, considering them “financial businesses primarily engaged in the business of lending, such as banks, finance companies, etc.”<sup>23</sup>

Furthermore, New York and California both include factoring and leasing in their respective commercial financing disclosure laws<sup>24</sup>, with final rulemaking expected in the near future. At the federal level, bicameral commercial financing disclosure legislation has also been introduced to include these products in its purview.<sup>25</sup> Across the board, disclosure of APR is required of MCAs, factoring, and leasing products (see below).

By excluding factoring and leasing under section 1071, there is a significant likelihood that unscrupulous merchant cash advance providers will “adjust” their product set to provide factoring and leasing, so they can be excluded from reporting. This would completely negate the Bureau’s intentions to require products, mostly used by the most vulnerable small businesses, to be reported—fostering greater disparate impact to minority and women-owned businesses.

Lastly, with regards to agricultural-purpose credit, Accion Opportunity Fund is supportive of including such transactions under the purview of section 1071, especially given the context provided by the Bureau in its proposed guidance—namely, the lack of existing data and the number of past and present lawsuits alleging discrimination against minority farmers.<sup>26</sup>

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<sup>21</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021, (pg. 195).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>22</sup> *ibid*

<sup>23</sup> 13 CFR 120.110.

<https://www.ecfr.gov/current/title-13/chapter-I/part-120/subpart-A/subject-group-ECFR6d9c2c4fd6e44c1/section-120.110>

<sup>24</sup> New York Senate Bill S5470B, 2019-2020 Legislative Session.

<https://www.nysenate.gov/legislation/bills/2019/s5470>; California Senate Bill SB1235, 2017-2018 Legislative Session.

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1235](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1235)

<sup>25</sup> H.R.6054 - Small Business Lending Disclosure Act of 2021.

<https://www.congress.gov/bill/117th-congress/house-bill/6054/>; S.3235 - Small Business Lending Disclosure Act of 2021. <https://www.congress.gov/bill/117th-congress/senate-bill/3235>

<sup>26</sup> Small Business Administration (SBA) Inspector General, “Flash Report: Small Business Administration’s Implementation of the Paycheck Protection Program Requirements,” 2020 (pg. 185).

[https://www.sba.gov/sites/default/files/2020-05/SBA\\_OIG\\_Report\\_20-14\\_508.pdf](https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf)



## II. Complete application and pricing information

In our comment letter, we have categorized the data points listed under Section §1002.107(a) into four sections: application information (including credit score); pricing information; applicant; and business.

### **Application information**

Accion Opportunity Fund supports the Bureau's proposal to define, collect, and report the following application data points as described in the text:

- §1002.107(a)(1) Unique identifier
- §1002.107(a)(2) Application date
- §1002.107(a)(3) Application method
- §1002.107(a)(4) Application recipient
- §1002.107(a)(5) Loan term
  - We agree with the Bureau that the loan term should be reported by number of months.
- §1002.107(a)(6) Credit purpose
- §1002.107(a)(7) Amount applied for
- §1002.107(a)(8) Amount approved or originated
  - We agree with the Bureau that reporting the amount approved or originated should be required for closed-end and open-end transactions that are approved but not accepted, not just those that are originated.
- §1002.107(a)(9) Action taken
- §1002.107(a)(10) Action taken date
  - We believe defining "action taken date" as the one in which the financial institution takes action is correct. We do not believe the Bureau should collect the date of closing or account opening, because in many cases, the gap between an approval and disbursement of funds relies on several factors outside a lender's control. For example, disbursement of funds can be dependent on an applicant's availability to sign closing loan documents.
- §1002.107(a)(11) Denial reasons
- §1002.107(a)(13) Census tract
  - We believe the Bureau's "waterfall" approach to collecting census tract is reasonable. Under the proposed rule, the financial institution will collect and report the census tract in the following order if the address where the funds will be used is unknown: the address of the applicant's main office or headquarters; another address associated with the applicant.

Accion Opportunity Fund recommends the following in the Bureau's proposal to define, collect, and report the following application data points:

- §1002.107(a)(5) Credit type
  - Require additional detail on the type of guarantees made on the transaction.
- §1002.107(a)(12) Pricing information



- Include annual percentage rate (APR) in its pricing information.
- Credit score

### **Credit type**

With regards to the proposed guarantee options, we believe the categories should be broken down further in detail. For example, it would be helpful to know if a personal guarantee consists of real estate, equipment/other property (personal or commercial vehicle, for example), and/or a simple uniform commercial code (UCC) filing.

Collateral coverage is often the deciding factor as to whether a loan is approved or denied. Unfortunately, given that people of color own homes (and amass wealth) at much lower rates than White individuals,<sup>27</sup> real estate or other property collateral requirements effectively exclude many entrepreneurs of color from qualifying for financing.

In asking for these details, the Bureau can shed light on the credit needs of minority small business owners and whether financial institutions are applying collateral requirements equitably.

### **Pricing information**

The Bureau proposes that institutions report: interest rate; total origination charges; broker fees; all non-interest charges scheduled to be imposed over the first annual period; difference between amount advanced and amount to be repaid (for MCAs); and any prepayment penalties (§1002.107(a)(12)).

Accion Opportunity Fund strongly believes that annual percentage rates (APR) should also be reported. In the proposal, the Bureau states that, “The diversity of products in the commercial lending space may also undermine the utility of APR or other single pricing metrics. Many MCAs, for example, lack either a defined term or a periodic payment amount. Thus, financial institutions would have to estimate these terms to calculate an APR.”<sup>28</sup>

APR is the best pricing metric for comparing financing options spanning various terms, amounts, or product types. It also accounts for any interest and fees in its calculations. Accion Opportunity Fund is a founding member of the Responsible Business Lending Coalition (RBLC), a consortium of responsible non-profit and private lenders, investors, and advocates, and we strongly urge the Bureau to consider incorporating the coalition’s recommendations regarding

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<sup>27</sup> Urban Institute, “Households of Color Represent a Third of the Nation’s Households, but They Own Only a Quarter of Its Housing Wealth,” 2021.  
<https://www.urban.org/urban-wire/households-color-represent-third-nations-households-they-own-only-quarter-its-housing-wealth>

<sup>28</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021, (pg. 369).  
[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

APR and its calculation.<sup>29</sup> As mentioned earlier, we have found that minority small business owners have been targeted with financing options with hidden APRs as high as 358%. It is important to require the disclosure of APR as it would ensure that the Bureau is aware of the full cost of credit for women-owned and minority-owned small businesses.

It is important to note that MCA financing companies do, in fact, establish an estimated term when they underwrite an advance. The RBLC analyzed multiple MCA contracts where providers set forth a periodic payment amount—signifying that they had to determine term lengths as well.<sup>30</sup> MCA providers, and all other sales-based financiers, should utilize the figures (based on actual repayment data or projections) *used in their underwriting* to calculate APRs. While these figures are, indeed, estimations, they are critical data points creditors take into consideration when deciding who to offer financing. These projections can then be plugged into the APR formula provided by the decades-old Truth in Lending Act,<sup>31</sup> a practice in line with the New York Small Business Truth in Lending Act.

In referencing state commercial financing disclosures and their coverage of MCAs, factors, and leases, the Bureau points out that New York and California have not yet fully implemented their disclosures and may change their standards in the future. Other states may even adopt new commercial financing disclosures with different definitions and methodologies.<sup>32</sup>

However, following the publication of the Bureau’s proposed regulations on September 1, 2021, the Acting Superintendent of the New York Department of Financial Services (DFS) announced the department’s proposed rulemaking regarding commercial disclosures on September 21, 2021. In it, the regulation includes the aforementioned financial products, and according to Article 8 of the New York Financial Services Law, these protections will be effective January 2022<sup>33</sup>—providing adequate time for consideration in section 1071’s final rulemaking.

Since the Bureau’s publication of proposed section 1071 guidance in September, California’s Department of Financial Protection and Innovation (DFPI) has issued two notices of modifications to its proposed commercial financing disclosure regulations. Because both iterations continue regulatory coverage of MCAs, factors, and leases *and* still require providers to disclose APR, it is highly likely that these provisions will be enacted in the final rulemaking.

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<sup>29</sup> Responsible Business Lending Coalition (RBLC), “Coalition Letter to the CFPB: Dodd-Frank Act Section 1071 Proposals Under Consideration,” 2020.

[http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/rblc\\_section1071\\_outline\\_comment\\_letter.pdf](http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/rblc_section1071_outline_comment_letter.pdf)

<sup>30</sup> RBLC, “Coalition Letter and SB 1235 Implementation Recommendations to CA DBO,” 2019 (pg. 27).

[http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/sb\\_1235\\_support\\_coalition\\_and\\_rblc\\_comment\\_-\\_small\\_business\\_disclosures\\_file\\_no\\_pro\\_01-18.pdf](http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/sb_1235_support_coalition_and_rblc_comment_-_small_business_disclosures_file_no_pro_01-18.pdf)

<sup>31</sup> CFPB, §1026.22 Determination of annual percentage rate.

<https://www.consumerfinance.gov/rules-policy/regulations/1026/22/>

<sup>32</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021 (pg. 370).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>33</sup> New York State Department of Financial Services (DFS), “Acting Superintendent of Financial Services Adrienne A. Harris Announces New Proposed Regulation Promoting Transparency in Lending to Small Businesses,” 2021.

[https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202109211](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202109211)

Lastly, DFPI replaced “California Law” with “Applicable law” in its latest modification (§901 General Requirements), enabling DFPI-compliant disclosures to be used in other states. We anticipate firms may seek to use a single disclosure that complies with DFPI regulations across all 50 states as nearly all sales-based financing providers operate in California and New York. The original reference to “California Law” in the text of the required disclosure would have prevented this same disclosure from being used outside of California—commercial lenders will not show small businesses in Texas or New York a disclosure that states it is required by “California Law.”<sup>34</sup>

### **Credit score**

Accion Opportunity Fund disagrees with the Bureau’s decision to exclude credit score from section 1071 data collection. The Bureau cited complexity and cost as part of its explanation not to require credit score reporting; however, in 2018, the Bureau began requiring lenders to report credit scores (namely the numerical score and the system, such as Equifax or Transunion) under HMDA.<sup>35</sup>

Lenders rely heavily on credit scores to assess borrower risk and creditworthiness. In many cases, they are used to screen for pre-qualified and/or pre-approved applicants before moving further in the application process. Given that credit score is one of the top reasons for denial<sup>36</sup> and the Bureau itself described it as “the field that would reveal the most about an applicant’s or borrower’s creditworthiness”<sup>37</sup> during HMDA rulemaking, it is critical that the Bureau collect this information on small business owners—to provide more context surrounding denials, better compare applicants with similar profiles, and assess lending practices across the industry and enforce fair lending.

Accion Opportunity Fund utilizes personal credit scores (Experian or TransUnion) for most of our products, and for a small number, we pull Experian Commercial credit scores. We believe it would be straightforward for lenders to disclose borrower credit scores, type (personal or business), and scoring model and version in accordance with HMDA procedures, including the options to select not applicable and write-in the name and credit scoring model if not listed.

If the CFPB does move to include credit score reporting, we urge the agency to publish the data alongside other section 1071 data points (in contrast to HMDA). With regards to privacy

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<sup>34</sup> RBLC, “Coalition Letter and SB 1235 Implementation Recommendations to CA DFPI,” 2021. [http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/rblc\\_notice\\_of\\_fourth\\_modifications\\_to\\_proposed\\_regulations\\_under\\_division\\_9.5\\_of\\_the\\_california\\_financial\\_code\\_pro\\_01\\_18.pdf](http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/rblc_notice_of_fourth_modifications_to_proposed_regulations_under_division_9.5_of_the_california_financial_code_pro_01_18.pdf)

<sup>35</sup> CFPB, “Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2021,” 2021.

[https://files.consumerfinance.gov/f/documents/cfpb\\_2021-reportable-hmda-data.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2021-reportable-hmda-data.pdf)

<sup>36</sup> Federal Reserve Banks, “Small Business Credit Survey”, 2020.

<https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report>

<sup>37</sup> CFPB, “Disclosure of Loan-Level HMDA Data” Final Policy Guidance, 2019.

<https://www.federalregister.gov/d/2018-28404/p-80>

concerns, we believe publishing the credit scores in ranges or percentiles will protect any borrower from the already very low risk of identification.

### **III. Robust data regarding the applicant and their business**

As a community development financial institution (CDFI), we are required to report the ethnicity, race, gender, and women-owned and minority-owned statuses of our clients to the US Department of Treasury, which oversees the CDFI Fund.<sup>38</sup> We are required to report this information, along with low income status, to many other philanthropic supporters—including banks—as well.

Collecting this information has been vital to ensuring that CDFIs are able to measure impact and uphold the CDFI Fund’s statutory mission to “promote economic revitalization and community development” as enacted by the Riegle Community Development and Regulatory Improvement Act of 1994.<sup>39, 40</sup> By collecting this information at a robust, industry-wide level, the Bureau will have the means to meet its section 1071 statutory requirements of facilitating enforcement of fair lending laws and enabling stakeholders to identify the needs and opportunities for women-owned, minority-owned, and small businesses. Simply put, you cannot measure what you cannot see.

To be discussed later, we believe that implementation of section 1071 data collection should be of minimal cost and effort to lenders (especially those with much more resources available).

#### **Ethnicity and race**

Accion Opportunity Fund agrees with many of the Bureau’s plans regarding the definition, collection, and reporting of ethnicity and race (§1002.107(a)(20)) for the principal owner(s), defined as an individual with 25% or more of equity interest (§1002.102(o)), of a covered small business. Collecting detailed demographic data on small business applicants, particularly entrepreneurs of color, would provide transparency on the small business lending industry and who it is serving.

In accordance with the Bureau, we do believe that aligning many of the categories related to ethnicity and race with those of HMDA will promote consistency and reduce potential confusion among applicants, financial institutions, and other stakeholders.

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<sup>38</sup> US Department of Treasury, Community Development Financial Institutions (CDFI) Fund, “CDFI Transactional Level Report Data Point Guidance,” 2021.

[https://www.cdfifund.gov/sites/cdfi/files/2021-08/CDFITLRGuidance\\_Final\\_Sept2021.pdf](https://www.cdfifund.gov/sites/cdfi/files/2021-08/CDFITLRGuidance_Final_Sept2021.pdf)

<sup>39</sup> Riegle Community Development and Regulatory Improvement Act of 1994.

<https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg2160.pdf>

<sup>40</sup> Swack, Michael E.; Hangen, Eric; and Northrup, Jack, “CDFIs Stepping into the Breach: An Impact Evaluation—Summary Report” (2015). The Carsey School of Public Policy at the Scholars' Repository. 236.

<https://scholars.unh.edu/carsey/236>

In particular, we are in support of the Bureau's move to add disaggregated subcategories for the Asian and Native Hawaiian or Other Pacific Islander categories, like those of HMDA. We also believe it is important to inquire about an individual's tribal affiliation under the American Indian or Alaska Native race category.

We also support the Bureau's efforts to go beyond HMDA, and include disaggregated subcategories, like Ethiopian, Haitian, or Jamaican, for the Black or African American race category. There are distinct differences in the experiences and treatment shared by ethnic and racial subgroups, and given that many of these groups have formed tight-knit communities throughout the US, it is critical that the data collection fully acknowledges and surveys these nuances.

We are also supportive of the Bureau's proposal to provide a Middle Eastern or North African option in its inquiries regarding ethnicity and race and its definition of "minority individual" (§1002.102(l)). Individuals of Middle Eastern or North African descent are often left with little choice but to select White as their race, despite facing a long history of discrimination in the United States.<sup>41</sup> It would be well in the spirit of the section 1071 law to capture their commercial lending experiences.

The Bureau would require financial institutions to report the aggregate ethnicity and race (not sex or women-owned or minority-owned business status) of at least one principal owner on the basis of visual observation or surname if the applicant does not provide or declines to provide information on their ethnicity and race *and* the applicant is met in-person or via video. Because a majority of Accion Opportunity Fund applications are submitted online, we would rarely report via visual or surname observation and interpretation. For many of the larger lending institutions who already report via visual observation or surname due to HMDA, they should have little issue in training staff.

This issue is complicated, and we offer our assessment with a considerable amount of caution and reservation, knowing that ethnicity and race (even at the aggregate level) can be difficult to discern—particularly for individuals of more than one ethnicity or race—and some errors will be made in the course of doing so. Our ideal proposal would be to *require* a principal owner to answer the aggregate ethnicity and race inquiries since doing so would help shed more accurate demographic data; however, we understand mandating this would be outside the Bureau's jurisdiction.

Overall, we understand the merits of ensuring data collection is as robust as possible and support the Bureau's proposal, especially in light of already-existing practices and procedures under HMDA and the Bureau's requirement that lenders must state when they use visual or surname observation in reporting.

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<sup>41</sup> Chaney, Kimberly E., Diana T. Sanchez, and Lina Saud. "White Categorical Ambiguity: Exclusion of Middle Eastern Americans From the White Racial Category." *Social Psychological and Personality Science* 12, no. 5 (July 2021): 593–602. <https://doi.org/10.1177/1948550620930546>.

As the Bureau proposes not to require or permit financial institutions to verify ethnicity, race, or sex, we believe it would be useful to codify this principle.

### **Sex**

The Bureau is proposing adding an option for “I prefer to self-describe” (with the ability of the applicant to write in additional information) for a principal owner’s sex to accompany the existing “male,” “female,” and “I do not wish to provide this information” options currently used for HMDA. Accion Opportunity Fund agrees with this proposal.

In addition to these options, we believe it would be helpful for the Bureau to include a list of examples from which an applicant can refer to when self-describing, like intersex, non-binary, or transgender. We believe this would allow for more streamlined data collection and analysis.

On the topic of streamlining data collection and analysis, we do not believe sex should be collected *solely* via the “I prefer to self-describe” option with the male and female options removed, as suggested by the Bureau as an alternative option. In doing this, it opens the door to spelling errors, confusion, a decrease in responses, and difficult data cleaning and analysis.

As to whether applicants should be restricted from designating more than one category for a principal owner’s sex (i.e. selecting both “Female” and “I prefer to self-describe”), we prefer that applicants select only one option—once again, to ensure we collect streamlined data to the best of our ability. However, if well-informed experts on this topic make a compelling case as to why it would be appropriate to have that option, we believe the Bureau should certainly take that into consideration.

As mentioned earlier, the Bureau proposes not to require or permit financial institutions to verify ethnicity, race, or sex; we believe it would be useful to codify this principle.

### **Minority-owned and/or women-owned business status**

Accion Opportunity Fund supports part of the Bureau’s definition of “minority-owned business” (§1002.102(m))—namely, the clause that states one or more minority individuals must hold more than 50% of the ownership or control.

We urge the Bureau to remove the second clause requiring 50% of the net profit or loss to accrue to one or more minority individuals. The initial definition is sufficient for determining ownership and would reduce complexity for borrowers. In addition, defining ownership on a profit and loss calculation may not fully serve the objectives of section 1071, in the sense that it may exclude business owners with different types of profit and loss or incentive structures. Defining minority-owned business by ownership or control would also put the Bureau’s definition in alignment with the CDFI Fund.<sup>42</sup>

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<sup>42</sup> US Department of Treasury, Community Development Financial Institutions (CDFI) Fund, “CDFI

Similarly, Accion Opportunity Fund supports part of the Bureau’s definition of “women-owned business” (§1002.102(s))—more specifically, the clause that states one or more women must hold more than 50% of the ownership or control.

We urge the Bureau to remove the second clause mandating 50% of the net profit or loss must accrue to one or more women for the reasons listed above. Again, this would align well with the CDFI Fund’s definition of women-owned business.

Lastly, we agree with the Bureau in that financial institutions shall refrain from collecting or reporting minority-owned and/or women-owned business status (§1002.107(a)(18), §1002.107(a)(19)) based on visual observation, surname, or any method other than an applicant-provided response. We also agree that financial institutions should not be permitted or required to verify an applicant’s response.

### **Disability and LGBTQ+-owned business status**

In the CFPB’s final section 1071 rulemaking, we ask that the Bureau adopt data points to collect an applicant’s disability and lesbian, gay, bisexual, transgender, or queer plus (LGBTQ+)-owned business status. In March 2021, the CFPB issued an interpretive rule clarifying that the prohibition against sex discrimination under Regulation B of ECOA *includes* sexual orientation. As mentioned in the Bureau’s press release, this rule falls in line with the decision made in *Bostock v. Clayton County, Georgia* where the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 encompasses sexual orientation discrimination and gender identity discrimination.<sup>43</sup>

In light of the legislative intent of section 1071 to “facilitate the enforcement of fair lending laws,” we believe it is necessary to collect LGBTQ+-owned business status. Without collecting this information, it would be nearly impossible to ensure LGBTQ+ small business owners are being treated fairly by lenders.

As it relates to collecting disability status, we largely defer to the National Disability Institute’s (NDI) section 1071 comments. According to NDI reports, the American Community Survey (ACS) estimates that about 15% of the adult population, about 40 million people, in the United States have a disability. The ACS reports that 1.8 million of them own small businesses. NDI goes on to state that individuals with disabilities and their families are twice as likely to be living in poverty, twice as likely to use costly nonbank lending, and twice as likely to be unbanked when compared to people without disabilities.<sup>44</sup>

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Transactional Level Report Data Point Guidance,” 2021.

[https://www.cdfifund.gov/sites/cdfi/files/2021-08/CDFITLRGuidance\\_Final\\_Sept2021.pdf](https://www.cdfifund.gov/sites/cdfi/files/2021-08/CDFITLRGuidance_Final_Sept2021.pdf)

<sup>43</sup> CFPB, “CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal,” 2021.

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>

<sup>44</sup> National Disability Institute (NDI), “Comments on CFPB NPRM on Small Business Data



Given these facts, we believe it is in the best interest of the Bureau to collect applicants' disability-owned status so as to better align with the section 1071 goal of facilitating "enforcement of fair lending laws" and the equal rights protections enumerated in the Americans with Disabilities Act (ADA).

Just as with minority-owned and women-owned business status, we believe financial institutions should not collect or report disability and LGBTQ+-owned business status based on visual observation, surname, or any method other than an applicant-provided response. We also agree that financial institutions should not be permitted or required to verify an applicant's response.

### **Business**

Accion Opportunity Fund supports the Bureau's proposal to define, collect, and report the following application data points concerning the business as described in the text:

- §1002.107(a)(14) Gross revenue
  - We are supportive of using estimates or extrapolations of gross revenue when total gross revenue is unavailable. We also agree that gross revenue should be reported in dollar amount, not ranges.
- §1002.107(a)(15) NAICS code
  - We strongly recommend the collection of a complete 6-digit NAICS code with available safe harbor over a 3-digit NAICS code with no safe harbor. The CDFI Fund and the SBA both require the collection of 6-digit NAICS codes. The complete code will offer the most precise insight into the industries lenders serve, whereas collecting a 3-digit NAICS code will leave unnecessary ambiguity in the data. For example, a dry cleaner shares the same 3-digit NAICS code (812) as a mortuary and a parking lot.<sup>45</sup>
- §1002.107(a)(16) Number of workers
- §1002.107(a)(17) Time in business
- §1002.107(a)(21) Number of principal owners

## **IV. Clear guidelines on data collection, management, reporting, and publication**

### **Data collection**

As mentioned earlier, the data collection proposals outlined in the Bureau's section 1071 rulemaking would help facilitate data collection for CDFIs and other non-profit small business lenders with reporting obligations to funders.

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Collection," 2021.

<https://www.nationaldisabilityinstitute.org/wp-content/uploads/2021/11/ndi-comments-on-cfpb-small-business-nprm.pdf>

<sup>45</sup> US Bureau of Labor Statistics, n.d. <https://www.bls.gov/iag/tgs/iag812.htm#about>

Demographic data is key to measuring and evaluating impact. Accion Opportunity Fund, like many other CDFIs and non-profits, is required to provide borrower demographic data to not only the CDFI Fund, but banks, foundations, individual philanthropists, and other funders.

Despite the fact that CDFIs are directed to collect this information under legal statute (the CFPB itself issued a statement confirming such),<sup>46</sup> CDFIs have long grappled with questions as to how and when to collect client demographic information so as to avoid ECOA violations and other compliance risks. As it stands, our organization, and likely many other CDFIs, collect this information after loan closing with varying degrees of responses. This process and its legalities may be murkier for small business lenders that are not CDFIs. Implementing clear and thorough guidelines for section 1071 data collection, management, and reporting would further cement our ability, and that of other lenders, to collect data, allow us to collect information up front, and generate more robust, meaningful data.

As for for-profit lenders, we believe that once procedures are in place, collecting this data from applicants will pose very little burden to them. Non-profit lenders with less staffing and technological resources at hand are capable of collecting this information without slowing application times.

Accion Opportunity Fund is in agreement with the Bureau's proposal that unless otherwise provided, the financial institution would be able to rely on statements of the applicant when compiling data unless it verifies the information provided, in which case it would be required to collect and report the verified information (§1002.107(b)). If the financial institution does verify applicant statements for its own business purposes, such as statements relating to gross annual revenue or time in business, the financial institution would report the verified information.

The Bureau proposes that financial institutions maintain procedures to collect applicant-provided data at a time and in a manner that is reasonably designed to obtain a response (§1002.107(c)). A financial institution would assess on a periodic basis whether its procedures are reasonably designed. We agree with these proposals, and we do not believe it is necessary for the Bureau to specify a time period for the collection of protected 1071 demographic information. Not only do lenders have varying intake processes, but much of the application process and timeline is dependent on the borrowers themselves.

The Bureau should revisit its proposals to permit, but not require, a financial institution to reuse previously collected data if it were collected within the same calendar year *and* the financial institution has no reason to believe the data are inaccurate (§1002.107(c)(2)). We recommend that the Bureau update the time period to "within 12 months" at bare minimum. If there is a borrower that first applied for a loan in December and then returns for another in April, there

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<sup>46</sup> Riegle Community Development and Regulatory Improvement Act of 1994.  
<https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg2160.pdf>

should be no reason that a lender cannot reuse information if there is no reason to believe it is inaccurate.

We believe that the sample data collection form provided by the Bureau (Appendix E to Part §1002) will be instrumental in guiding lenders, particularly smaller institutions, to properly collect minority-owned business status, women-owned business status, and principal owners' ethnicity, race, and sex. We also agree with the Bureau's proposed language explaining that completing the form is not mandatory but would be useful to determine fair lending, and that, while the information (or lack thereof) cannot be used to discriminate, employees, like underwriters, may have access to the information.

The form should be translated into several of the most popular languages used in the United States. We offer the US Census Bureau's "Developing Public-Facing Language Products: Guidance From the 2020 Census Language Program" report as a resource for the CFPB in addressing this task. The US Census Bureau reported that their most popular non-English translation services included Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese.<sup>47</sup>

### **Data management**

We believe the Bureau's proposals regarding a firewall are reasonable and allow for enough flexibility in the event that it is not feasible to limit an employee's access to a borrower's demographic responses (§1002.108). Accion Opportunity Fund currently maintains a firewall between our lending and operations employees and the demographic information collected from our clients. As it stands, we generate and collect this information after loan closing, and the information is hidden from our lending and operations employees in our customer relationship management (CRM) program.

We also believe that the Bureau's recordkeeping proposals (§1002.111) are reasonable and do not foresee an issue with compiling and maintaining 1071 data for three years, maintaining a record of responses separate from the application, and ensuring that personally identifiable information (name, specific address, telephone number, email address, or other) is not connected to the applicant.

We believe these proposals should be easy to implement among larger lenders; the Bureau's added flexibility on the matter should prove useful to smaller lenders as well.

### **Data reporting**

During the section 1071 Small Business Review Panel, the subject of loan purchases and their treatment under section 1071 was discussed. Accion Opportunity Fund shared concerns that institutional investors and depository institutions could be less obliged to purchase loans from

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<sup>47</sup> US Department of Commerce, US Census Bureau, "Developing Public-Facing Language Products Guidance From the 2020 Census Language Program," 2021.  
<https://www2.census.gov/library/publications/decennial/2020/operations/language-product-handbook.pdf>

CDFIs and other mission-based lenders, if in doing so, they would trigger reporting requirements of their own. These institutions purchase loans for Community Reinvestment Act (CRA) purposes or based on returns on investments; they are not involved in any credit decision-making. We are pleased to see that the Bureau has since clarified that “purchasing a loan does not, in itself, generate an obligation for a covered financial institution to report small business lending data.”<sup>48</sup>

Furthermore, the Bureau proposes that only one covered financial institution shall report a covered credit transaction as an origination; if more than one institution was involved, then the institution that made the final credit decision approving the application will report it as an origination (§1002.109(a)(3)).

Accion Opportunity Fund is in favor of collecting data on a calendar-year basis and reporting to the CFPB by June 1st of the following year. We are supportive of the Bureau providing technical instructions for data submission in a *Filing Instructions Guide*—we believe this will greatly aid in compliance with section 1071.

### **Data publication**

Accion Opportunity Fund believes that the benefits of publishing thorough data outweigh the very minimal risks of privacy breaches. We are appreciative of the Bureau’s analysis of this issue and its illustrations of the various ways in which a potential data breach could occur; we are in agreement that any breaches would be rare, as indicated by past experience with HMDA data publication.<sup>49</sup>

We support publishing the data on an annual basis and encourage the Bureau to strictly adhere to its proposed December publication deadline, if not earlier. We also support the Bureau’s proposed balancing test that would assess the risks and benefits of public disclosure after the first year of available data collection; however, we have made recommendations to the CFPB’s proposals regarding publication (see below).

We strongly support the Bureau’s proposal that its own publication of data satisfies the statutory obligation of financial institutions to make data available to the public—this will remove compliance burden from lenders and reduce redundancy. We are in agreement that publishing a statement on our website indicating that our data will be put forth by the Bureau is sufficient to meet the statute (§1002.110(c), §1002.110(d)); we greatly appreciate the Bureau’s sample language.

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<sup>48</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021, (pg. 208).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

<sup>49</sup> CFPB, “Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)” Proposed Rule, 2021, (pg. 608).

[https://files.consumerfinance.gov/f/documents/cfpb\\_section-1071\\_nprm\\_2021-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf)

We are in favor of the fields the Bureau proposes publishing unmodified: application date; application method and whether application was submitted directly or indirectly; credit type, type of guarantee, and loan term; credit purpose; amount applied for; action taken date; amount approved or originated; action taken (type) and denial reasons; pricing information; census tract; gross annual revenue; NAICS code; number of workers; time in business; minority-owned and women-owned business status; ethnicity, race, and sex; financial institution identifying information. We believe the Bureau should publish disability and LGBTQ-owned business status as well.

With regards to the Bureau's inquiry regarding publishing a financial institution's unique identifier assigned to a covered application, we believe the Bureau is right in proposing to modify these identifiers prior to publication. We are supportive of the Bureau in either removing the numerical identifier altogether (as under HMDA) or generating its own, separate unique identifier.

We urge the Bureau to re-visit its assessment and proposal to delete any free-form text submissions, like information pertaining to credit type (product and guarantee information); credit purpose; denial reasons; pricing (the interest rate index used); and ethnicity, race, and sex. By not publishing free-form text, the Bureau would be withholding important information from the public.

For example, if the Bureau moves forward with its proposed methodology to collect data on sex (applicants would have the option of selecting "male", "female", "I do not wish to provide this information", and "I prefer to self-describe" with a field for a written response), transgender or non-binary business owners would have their responses removed from the public eye. Considering that these groups are often the target of discrimination<sup>50</sup> and gender identity is protected by ECOA, the Bureau would be remiss in shielding their experiences.

Because the Bureau is concerned that free-form text may include information that is harmful or sensitive, we recommend including language in the data collection form advising applicants that, while their personal identifying information will be protected, their open-ended responses may be published. In recognizing the importance of removing free-form text that may be offensive or irrelevant, we urge the Bureau to utilize modification over deletion in its balancing test.

## **V. Implementation costs and enforcement**

We appreciate the thought and feedback the Bureau has incorporated into its estimated one-time and ongoing costs of implementation. As a CDFI with existing reporting obligations to the US Department of Treasury, banks, donors and other funders, we would like to underscore

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<sup>50</sup> Conron, Kerith. "Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending and Housing, Testimony before the Subcommittee on Oversight and Investigations." <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Testimony-US-House-Financial-Services-Oct-2019.pdf>

the low implementation costs of section 1071 data collection for lenders of our size and nature. To provide context, we deployed more than 2,800 loans totaling \$122 million in calendar year 2021. We anticipate our technological implementation process to take approximately 10-12 weeks, broken down into the following:

- 2 weeks for design updates
- 4-6 weeks of development
- 2 weeks for data reporting changes
- 2 weeks for testing

We estimate that the staffing costs to implement these changes will cost between \$30,000-\$36,000, with adjustments needed when final guidance is issued. Without a doubt, larger institutions have ample resources and staff to implement this data collection—especially those already having to report similar data under HMDA. For smaller institutions, we believe the Bureau provides enough flexibility, for example, in its firewall provisions, to facilitate a smooth adaptation.

Accion Opportunity Fund is supportive of the CFPB's proposed provisions regarding enforcement of violations, bona fide errors, and safe harbors for incorrect determinations of small business status, incorrect entries of census tracts, NAICS codes, and application dates.

We approve of the Bureau's plan to implement section 1071 90 days after the final rule's publication in the Federal Register. While we had hoped compliance would come sooner, we understand the rationale behind the Bureau's proposed compliance date of 18 months after publication and recommend against extending the compliance deadline further.

We support the Bureau's transitional provision permitting financial institutions to begin collecting minority-owned business status, women-owned business status, and principal owners' ethnicity, race, and sex information prior to the compliance date. We ask that the Bureau include disability and LGBTQ+-owned business status as well. We are supportive of the transitional provision that would permit financial institutions to use either the two calendar years immediately preceding the effective date or the second and third years preceding the compliance date to determine coverage.

### **Conclusion**

Accion Opportunity Fund strongly supports the Bureau's section 1071 small business data collection effort. It is evident that the Bureau has put forward tremendous research, effort and consideration into its proposals, and we are greatly appreciative.

As mentioned in this letter and during the section 1071 Small Business Review Panel, we need a rule that is broad and expansive and includes all financial institutions and products that are sought out by small businesses, including factoring and leasing. Additionally, we underscore the need to report APR so as to understand what products are offered to whom and at what cost. To

create a robust rule, we also ask that the Bureau collect credit scores and disability and LGBTQ+-owned business status.

We ask the Bureau to incorporate our recommendations in the final section 1071 guidelines. We also ask the Bureau to publish the section 1071 final rules as soon as possible so that small business lenders, policymakers, and advocates can sooner identify the needs of underserved entrepreneurs and enforce fair lending laws to a greater extent.

Should the Bureau have any questions, please do not hesitate to contact Joshua Miller, Vice President of Research and Policy ([jmiller@opportunityfund.org](mailto:jmiller@opportunityfund.org)) or Erin Vuong, Senior Policy Communications Associate ([evuong@opportunityfund.org](mailto:evuong@opportunityfund.org)).

Thank you. We look forward to the Bureau's final section 1071 rule.

Sincerely,

A handwritten signature in cursive script that reads "Luz Urrutia".

Luz Urrutia

Chief Executive Officer, Accion Opportunity Fund