

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

February 14, 2022

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: February 17, 2021, Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery”

The Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled, “Small Business, Big Impact: Ensuring Small and Minority-owned Businesses Share in the Economic Recovery” on Thursday, February 17 at 3:00 p.m. on the virtual meeting platform Cisco Webex. This single-panel hearing will have the following witnesses:

- **Marla Bilonick**, President and CEO, National Association for Latino Community Asset Builders (NALCAB)
- **Stephanie DeVane**, Vice President for Entrepreneurship & Business Development, National Urban League
- **Amber Littlejohn**, Executive Director, Minority Cannabis Business Association (MCBA)
- **Dr. Alicia Robb**, Founder and CEO, Next Wave Impact
- **Dane Stangler**, Director of Strategic Initiatives, Bipartisan Policy Center

Overview

Nearly two years into the COVID-19 pandemic, the economy is recovering in many ways: the unemployment rate fell from a high of 14.7 percent in April 2020 to 4 percent in January 2022;¹ Gross Domestic Product (GDP) grew at 6.9 percent in the fourth quarter of 2021, outpacing most expectations; and new business formation hit a new record of 5.4 million in 2021, with some analysts predicting another record year in 2022.² However, many businesses continue to face challenges due to supply chain disruptions, changes in consumer behavior, workforce shortages, inflation, and other factors, particularly in the wake of the Omicron variant.³ Studies have shown that the pandemic and related economic disruptions have disproportionately affected the smallest businesses and women- and minority-owned firms.⁴ Additionally, many federal small business relief programs were difficult for such firms to access.⁵

Access to affordable credit on fair and transparent terms, basic financial products like bank accounts, and other financial services, are critical not only for small businesses’ survival through the current economic volatility, but to enable them to share in the economic recovery.⁶ Small businesses also

¹ Bureau of Labor Statistics (BLS), [The Employment Situation - January 2022](#).

² BLS, [Labor Force Statistics from the Current Population Survey](#), (Accessed Feb. 1, 2022); CNBC, [GDP grew at a 6.9% pace to close out 2021, stronger than expected despite omicron spread](#), Jan. 27, 2022; U.S. Census, Business Formation Statistics, (Jan. 12, 2022); Nasdaq, [The Small Business Economy is Set to Soar in 2022](#), (Dec. 20, 2021).

³ See Goldman Sachs, [Survey: Small Businesses on the Brink - New Survey Data Shows Omicron Hurting Main Street, Leading Small Business Owners to Overwhelmingly Support Congress Passing Additional Aid](#), (Jan. 24, 2022).

⁴ See McKinsey & Company, [COVID-19’s effect on minority-owned small businesses in the United States](#), (May 27, 2020).

⁵ Select Subcommittee on the Coronavirus Crisis, [New PPP Report Shows Trump Administration And Big Banks Left Behind Struggling Small Businesses](#), Press Release, (Oct 16, 2020).

⁶ See Federal Reserve, [Access to Financial Services Matters to Small Businesses](#), Nov. 2019.

often need technical assistance and support to fully utilize the financial resources they have access to.⁷ However, some small businesses, especially minority-owned businesses, have difficulty accessing financial products and services. Moreover, small business borrowers do not have many of the protections consumers have with respect to financial products and services they receive, such as disclosures required under the Truth in Lending Act (TILA).⁸ This hearing will examine the availability of credit, potential gaps in legal protections for small business borrowers, discrimination, credit reporting, and debt collection. Additionally, the hearing will review market transparency, including demographic data collection and reporting, and financial challenges small businesses face as the pandemic persists, including assessing the impact of various short and long-term federal relief and support programs.

Pandemic Small Business Relief Programs

In response to the pandemic, Congress provided sweeping support for struggling small businesses through several laws, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act in 2020, the Coronavirus Response and Relief Supplemental Appropriations Act of 2020, the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) in 2021. These laws established, expanded, or enhanced programs such as the Paycheck Protection Program (PPP), Economic Injury Disaster Loans (EIDL), the Shuttered Venue Operators Grant, the Restaurant Revitalization Fund, and the State Small Business Credit Initiative (SSBCI). Most of these relief programs have since ended, with the exception of SSBCI. The PPP closed for applications on May 31, 2021; EIDL closed on December 31, 2021; the Restaurant Revitalization Fund closed on July 2, 2021; and the Shuttered Venue Operators Grant closed on August 20, 2021.⁹

While many small businesses benefited from these efforts, sole proprietors, microbusinesses, and minority-owned and women-owned businesses were reported to have had the most difficulty in accessing them, often because these firms did not have strong relationships with financial institutions that many of these programs relied on in deploying relief.¹⁰ One investigation found that the Trump Administration actively encouraged banks to limit PPP loans to only existing customers and did not prioritize lending to underserved markets.¹¹ Additionally, the National Community Reinvestment Coalition conducted a study that found evidence of discrimination in PPP lending by Washington, D.C. lenders.¹² In the PPP's second round of funding provided in the Response and Relief package, the Small Business Administration (SBA) was required to set aside \$60 billion for community financial institutions, including community development financial institutions (CDFIs) and minority depository institutions (MDIs), to deploy to help ensure support reached underserved communities.¹³

The SSBCI, a program that was first utilized following the Great Recession and is in the beginning stages since being reauthorized,¹⁴ is targeted toward economic recovery, which is different from the intent of the PPP or EIDL programs that helped prevent businesses from collapsing or laying off employees at the height of the pandemic.¹⁵ This program provides \$10 billion for states, territories, D.C., and tribal

⁷ See FSC hearing, [Supporting Small and Minority-Owned Businesses Through the Pandemic](#) (Feb. 4, 2021).

⁸ For example, see Responsible Business Lending Coalition, [Small Business Borrower Bill of Rights](#) (Accessed Feb. 8, 2022); and FSC hearing, [Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices](#) (Sep. 26, 2019).

⁹ SBA, [Paycheck Protection Program](#), (Accessed Jan. 30, 2022); SBA, [COVID-19 EDIL](#), (Accessed Jan. 30, 2022); SBA, [Shuttered Venue Operators Grant](#), (Accessed Jan. 30, 2022); SBA, [Restaurant Revitalization Fund](#), (Accessed Jan. 30, 2022).

¹⁰ The Wall Street Journal, [PPP Small-Business Loans Left Behind Many of America's Neediest Firms](#), (June 17, 2020).

¹¹ Select Subcommittee on the Coronavirus Crisis, [New PPP Report Shows Trump Administration And Big Banks Left Behind Struggling Small Businesses](#), Press Release, (Oct 16, 2020).

¹² NCRC, [Lending Discrimination within the Paycheck Protection Program](#), (July, 2020).

¹³ SBA, [SBA Re-Opens PPP to Community Financial Institutions First](#), Jan. 11, 2021.

¹⁴ CRS, [State Small Business Credit Initiative: Implementation and Funding Issues](#) (Apr. 20, 2021).

¹⁵ Brookings Institution, [How cities, states, and tribes can boost entrepreneurship via the American Rescue Plan](#), (May 19, 2021).

governments to support lending and investments to small businesses.¹⁶ Under this program, \$2.5 billion is reserved to support businesses owned by people of color and economically disadvantaged groups, and \$500 million is reserved to provide technical assistance to small businesses who need legal, accounting, and financial advice in accessing and utilizing these loans and investments.¹⁷ Capital program applications from states, territories, and D.C. were due to be submitted to the Department of Treasury by February 11, 2022, while tribal governments have until May 11, 2022 to submit their capital program applications.¹⁸

Barriers to Accessing Capital

The small business credit market consists of banks, credit unions, and nonbank fintech lenders.¹⁹ According to the Federal Reserve, smaller firms are more likely to apply for loans through fintech lenders.²⁰ Minority-owned and women-owned businesses have long faced more barriers in accessing capital than their white male counterparts. A 2017 report from the Federal Reserve found that for nearly every financing source, women and entrepreneurs of color were denied credit at higher rates than a white male business owners.²¹ Another study found that in the first year of a startup, “only one percent of black owners obtain business loans, compared with 7% for white-owned firms.”²²

Credit scores often represent another barrier for many small businesses. Many lenders use business credit scores to assess creditworthiness.²³ Similar to a consumer credit score, business credit scores are a metric for risk based on payment history, credit utilization, length of credit history, and outstanding debt.²⁴ These scores also incorporate business financial ratios and industry risk in calculating scores.²⁵ The SBA uses business credit scores when evaluating loan applicants for the 7(a) program which is the flagship SBA product and the largest government-backed small business lending program.²⁶ However, according to one report, 45 percent of small business owners did not know they have a business credit score; 72 percent did not know where to find it; and 82 percent did not know how to interpret it.²⁷ Additionally, for sole proprietors, personal and business credit is often closely related, in particular if the business owner uses their personal bank account for their business, which is common.²⁸

Small businesses in the cannabis industry also face additional challenges when seeking credit or other financial services. For example, people of color operating in the cannabis industry must overcome barriers like trying to break into an industry that lacks diversity, especially among larger cannabis companies.²⁹ Additionally, most cannabis businesses are also unbanked or underbanked because most financial institutions are unwilling to open even basic bank accounts for cannabis businesses due to cannabis being federally illegal.³⁰ This forces cannabis business owners to operate their state-regulated businesses primarily using cash, which has increasingly made them targets for burglaries, robberies, and

¹⁶ *Id.*

¹⁷ House Financial Services Committee, [Fact Sheet – State Small Business Credit Initiative \(SSBCI\)](#), (Mar. 2021).

¹⁸ Treasury Department, [State Small Business Credit Initiative \(SSBCI\)](#), (Accessed Feb. 2, 2022).

¹⁹ CRS, [Small Business Credit Markets and Selected Policy Issues](#), R45878, (Aug. 20, 2019).

²⁰ Federal Reserve, [Report to the Congress on the Availability of Credit to Small Businesses](#), (Sep. 2017).

²¹ *Id.*

²² National Bureau of Economic Research, [Black and White: Access to Capital Among Minority-Owned Startups](#), (Nov. 2020).

²³ SBA, [10 Stats That Explain Why Business Credit is Important for Small Business](#), (Mar. 9, 2017).

²⁴ CRS, [Small Business Credit Markets and Selected Policy Issues](#), R45878, (Aug. 20, 2019).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Nav, [Press Release: New Research from Nav Reveals Nearly Half of Small Businesses Don’t Know Business Credit Scores Exist](#), (Nov. 2, 2016).

²⁸ Fundera, [Business Credit vs. Personal Credit: Does Business Credit Affect Personal Credit?](#) (Feb. 1, 2021).

²⁹ See [Insider, The legal cannabis industry is exploding, but overwhelmingly run by white owners](#), (Apr. 17, 2020).

³⁰ See ICBA, [ICBA Supports Bill to Establish Cannabis Banking Safe Harbor](#), (Mar. 18, 2021); See also Reuters, [U.S. pot sellers stash cash as banks leave them high and dry](#), (May 24, 2021).

other crimes.³¹ For most of these small businesses, access to affordable credit is out of reach.³² Additionally, cannabis businesses were ineligible for all of the federal government’s small business coronavirus relief programs.³³ The House of Representatives has passed the bipartisan SAFE Banking Act six times, but the Senate has not taken up the bill.³⁴ This legislation would provide a safe harbor for financial institutions that choose to serve state-legal cannabis businesses and would require a GAO study and annual regulator reports to Congress to monitor that there is equal access to credit and to reduce barriers to marketplace entry for minority-owned and women-owned cannabis-related businesses.³⁵

Small Business Lending Data Collection

One challenge in analyzing or collecting small business data is that there is no universal definition of what makes a business “small.”³⁶ The SBA uses both industry specific standards and alternative size standards determined by net worth and net income.³⁷ Many academic researchers and various other federal agencies have defined small business as having 500 or fewer employees, while also defining microbusinesses as a subset of small businesses.³⁸ Additionally, the FDIC found financial institutions often also have their own definitions of small business.³⁹

In September 2021, the Consumer Financial Protection Bureau (CFPB) released a Notice of Proposed Rulemaking to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). This section requires financial institutions to collect and disclose demographic data on credit applications submitted by women-owned, minority-owned, and small businesses.⁴⁰ The purpose of this rule is to improve transparency in the small business lending market, facilitate fair lending enforcement, and help policymakers and stakeholders better understand credit availability and needs of small business borrowers.⁴¹ The proposal defines a “small business” as one that garnered \$5 million or less in gross annual revenue for its preceding fiscal year.⁴² The proposed rule would apply to lenders that have made at least 25 loans each of the two preceding calendar years and would require covered lenders to disclose “amount and type of small business credit applied for and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered.”⁴³ Covered lenders would include depository and non-depository institutions, as well as “any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.”⁴⁴

In June 2021, the House passed the LGBTQ Business Equal Credit Enforcement and Investment Act, which would amend the Equal Credit Opportunity Act (ECOA) and Section 1071 of the Dodd-Frank Act to require lenders to collect and report loans issued to LGBTQ-owned businesses.⁴⁵ While the CFPB clarified that the prohibition against sex discrimination under ECOA includes discrimination based on

³¹ See The Crime Report, [Cannabis Sellers Struggle to Keep Money Safe as Banks Leave them Behind](#), (May 24, 2021); See Also Los Angeles Times, [Most pot dispensaries are forced to be cash-only. Now they’re prime targets for violent robberies](#), (Jul. 11, 2016).

³² See Minority Cannabis Business Association, [The SAFE Banking Act of 2019](#), (Accessed Feb 3, 2022); See also SAFE Banking for Equity, [Testimonials](#), (Accessed Feb. 3, 2022).

³³ NBC News, [No federal relief: Cannabis businesses cry for help as coronavirus batters industry](#), (Mar. 23, 2020).

³⁴ See MJBizDaily, [US House passes measure that includes cannabis banking](#), (Feb. 4, 2022).

³⁵ H.R. 1996

³⁶ See CRS, [Small Business Size Standards: A Historical Analysis of Contemporary Issues](#), R40860, (Jan. 5, 2022).

³⁷ *Id.*

³⁸ *Id.*

³⁹ See FDIC, [2018 FDIC Small Business Lending Survey](#), (revised Dec. 20, 2018).

⁴⁰ See CFPB, [CFPB Proposes Rule to Shine New Light on Small Businesses’ Access to Credit](#), [Press Release](#), (Sept. 1, 2021).

⁴¹ 15 U.S.C. § 1691c-2(a)

⁴² CFPB, [Summary of Proposed Rulemaking: September 2021 Proposal Regarding Small Business Lending Data Collection](#)

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ [H.R.1443 \(117th Cong.\), LGBTQ Business Equal Credit Enforcement and Investment Act](#)

sexual orientation and gender identity in March 2021, H.R. 1443 would clarify that lenders are required to collect and report sex, sexual orientation and gender identity under Section 1071 of Dodd-Frank.⁴⁶

Small Business Borrower Protections

Federal consumer financial protections, including in lending, often do not extend to small business borrowers even though the smallest businesses, like sole proprietors, could benefit from these protections. For example, the Truth in Lending Act, which protects consumers from opaque loan terms or high-pressure sales tactics, does not cover credit extended to small business borrowers.⁴⁷ Notably, some states, including New York and California, have enacted laws to provide more transparency in small business lending.⁴⁸ Similarly, the Fair Debt Collection Practices Act, which governs debt collection practices in mortgages, credit cards, or medical debt, provides no protections for small business borrowers—even sole proprietors or other microbusiness owners.⁴⁹ Moreover, Treasury issued guidance implementing the SSBCI that includes small business borrower protections, including imposing an interest rate cap at the same level federal credit unions are subject to, and prohibiting confessions of judgment.⁵⁰ There is evidence that confessions of judgment, which are already prohibited in consumer loans and currently allow lenders to easily seize commercial borrowers’ assets without a lawsuit, have harmed small business owners like taxi cab drivers in New York.⁵¹

In 2015, a group of lenders, investors, and small business advocates formed the Responsible Business Lending Coalition (RBLC) to promote responsible and fair lending for small businesses.⁵² They developed the Small Business Borrowers' Bill of Rights which sets out fundamental rights for business borrowers, including the “Right to Transparent Pricing and Terms” and the “Right to Non-Abusive Products,” among others.⁵³ To date, 57 lenders are signatories, and 53 non-lender organizations have endorsed the principles.⁵⁴

Community Reinvestment Act

The Community Reinvestment Act (CRA) is also an important tool in encouraging banks to make loans to small businesses within and from underserved communities. The CRA was implemented to counteract redlining and encourage banks to meet the credit needs of their entire communities.⁵⁵ Under this law, the federal banking regulators examine and score banks on their performance in meeting CRA goals.⁵⁶ Under current CRA rules, banks can receive CRA credit for certain small business loans under the lending test portion of their CRA exams, provided these loans meet certain standards.⁵⁷ CRA ratings are taken into consideration when banks seek permission from regulators to enter into mergers and acquisitions, expand branches, or otherwise engage in other activities requiring regulatory approval.⁵⁸

⁴⁶ CFPB, [CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal](#) (Mar. 9, 2021).

⁴⁷ 15 U.S.C. § 1601; *See also* OCC, [Truth in Lending](#), (Accessed Feb. 3, 2022)

⁴⁸ *See* American Banker, [N.Y. law requires nonbanks to disclose loan terms to small businesses](#), (Dec.24, 2020); The Hill, [California passes historic truth in small-business lending law — Congress should take note](#), (Oct. 5, 2018).

⁴⁹ CFPB, [Are there laws that limit what debt collectors can say or do?](#) (Last reviewed Jan. 30, 2017).

⁵⁰ Treasury, [State Small Business Credit Initiative \(SSBCI\) Capital Program Policy Guidelines](#) at 38-39 (Nov. 2021).

⁵¹ House Committee on Financial Services, [Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices](#), 116th Cong. (Sept. 26, 2019) (H. Rept. 116-54).

⁵² Responsible Business Lending Coalition, [Responsible Business Lending Coalition \(RBLC\)](#), (Accessed Feb 3, 2022).

⁵³ Responsible Business Lending Coalition, [The Small Business Borrowers' Bill of Rights](#), 2021 (Accessed Feb 3, 2022).

⁵⁴ Responsible Business Lending Coalition, [Signatories](#), (Accessed Feb 3, 2022).

⁵⁵ *See* CRS, [Small Business Credit Markets and Selected Policy Issues](#), R45878, (Aug. 20, 2019).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Appendix – Legislation

- **H.R. 2540, the Small Business Lending Fairness Act (Velazquez)**, would prohibit confessions of judgment on commercial loans, which are already prohibited in consumer loans and currently allow lenders to easily seize commercial borrowers' assets without a lawsuit, as a condition to a loan or extension of or similar agreement. This legislation was included as Title I in H.R. 2547, the Comprehensive Debt Collection Improvement Act, which passed the House on May 13, 2021.
- **H.R. 6054, the Small Business Lending Disclosure Act (Velazquez)**, would require small business loans to be covered by the Truth In Lending Act, which currently requires disclosures of loan terms for consumer lending.
- **H.R. ____, the Small Business Fair Debt Collection Protection Act (Lawson)**, would extend the Fair Debt Collection Practices Act, which currently protects consumers from certain predatory debt collection practices, to cover small business borrowers.
- **H.R. ____, the Promoting Fair Lending to Small Businesses Act**, would clarify that the CFPB has supervisory and fair lending enforcement authority of non-depository lenders to small businesses that collect and report data pursuant to Section 1071 of the Dodd-Frank Act.
- **H.R. ____, the Small Business Lender Registry**, would direct the CFPB to consult with the SBA and other federal and state regulators to study the scope of entities that lend to small business borrowers, models for developing the registry, and provide a report to Congress that includes administrative and legislative recommendations. The bill would also require the CFPB to establish a small business lender registry in consultation with other federal and state regulators.