

July 21, 2023

The Honorable Patrick T. McHenry  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman,

When Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, it included Section 1071, which had the laudable goal: “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.” Congress gave the Consumer Financial Protection Bureau (CFPB) the authority to implement this section with wide latitude in how the section was to be put into effect. The CFPB went well beyond the statute in many cases, utilized its flexibility in only the most limited sense, and took what was designed to be a voluntary reporting regime (for the customer) and made it mandatory. It is for these reasons that the rule should be overturned, and that ELFA supports utilizing the Congressional Review Act to do so.

The Equipment Leasing and Finance Association (ELFA) proactively engaged throughout the CFPB’s process, suggesting an alternative reporting structure that would have alleviated so many of the issues the final rule presents. Our suggestions were related in detail in our comment letters during the rulemaking process. Regrettably, the CFPB did not take our suggestion. Additionally, ELFA was an active participant in the SBREFA process conducted by the CFPB.

We are disappointed the CFPB took a limited statutory charge and transformed it into a wide-reaching regulatory regime for commercial finance that bears little resemblance to the underlying statute. The CFPB had many options to collect sufficient data in a minimalist or incremental manner; instead, the CFPB and its staff chose a regime that will collect information on nearly every commercial loan made to a non-publicly traded company in America. This is all made worse by the fact that the CFPB repeatedly attributes the speed at which they took their actions in recent years to a Court Order, without ever disclosing the Bureau volunteered to be subjected to the Order by settling that case.<sup>1</sup>

Section 1071 was intended to be voluntary for the customers. The statute clearly states that, “[a]ny applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.” Throughout the regulatory process,

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<sup>1</sup> It is exceedingly rare, if not unprecedented, for an executive branch agency to agree, as part of a settlement, to a court ordered timeline for the issuing of regulations.

commentors indicated there were many reasons customers would not want their loan application to be collected and included in a government database. These include competitive factors, not wanting members of one's community to know that they had applied for credit, efficiency of transaction speed (especially for smaller transactions), and simply not wanting their personal financial information published in a government database. While the CFPB clearly allows the customer to decline to provide demographic information, its regulations require reporting of the transactional information associated with the application, e.g., revenue of business, NAICS codes, and census tract for all covered small business credit applications. The argument that most, if not all, of the transactional information is already known in the normal course of business to the lender is simply not true. Most small commercial credit applications include just enough information to positively identify the business, i.e., name and address of the business, and perhaps an Employer ID number. The collection of this additional information will require significant effort by the customer to complete the credit application. Making matters worse, in many parts of the country the transactional information is sufficient information to determine with great specificity which business applied for the credit. Congress intended to allow customers to opt out of Section 1071, the CFPB's final rule provides no such option.

Additionally, by requiring all covered transactions to have their transactional data reported, the CFPB's regulations will create a database with two distinct types of data, data from credit applicants that provided their demographic information and data from those who chose not to. This structure is highly problematic, especially in light of the fact that when the data is publicly released as part of the CFPB's database, many will be tempted to consider those two categories of data as if they are from the same pool, a statistically invalid approach.

Lastly, there are many changes between the initial proposals as presented to the SBREFA panel, the proposed rule, and the final rule implementing Section 1071. There are significant portions of the final rule that never went through the SBREFA process and were only subject to limited exposure for comment in the proposed rule.

For all these reasons, ELFA encourages Congress to overturn the CFPB's final rule implementing Section 1071.

Sincerely,

A handwritten signature in cursive script that reads "Ralph Petta".

Ralph Petta  
President and CEO