

August 8, 2023

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**RE: Section 1071 of the Dodd-Frank Act
Texas Bankers Association, et al. vs. Consumer Financial Protection Bureau**

Dear Director Chopra,

The Equipment Leasing and Finance Association (ELFA) is the trade association that represents companies in the \$1 trillion equipment finance sector, which includes financial services companies and manufacturers engaged in financing capital goods. ELFA members are a driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. ELFA's nearly 600 members include independent and captive leasing and finance companies, banks, financial services corporations, brokers, investment banks, manufacturers, and service providers.

Throughout the CFPB's rule-making process regarding Section 1071 of the Dodd-Frank Act, the ELFA proactively engaged in both the legislative and regulatory arenas to advocate for its members' interests. We appreciate the collegiality of bureau staff through this process even if we didn't end up in agreement on every matter.

We write to you concerning the Texas Court's Order published on July 31 in the above-referenced case. Currently, the injunction imposed in the Order applies only as to the members of the Texas Bankers Association (TBA) and the American Bankers Association (ABA). It is our understanding that plaintiffs have subsequently requested that the CFPB extend the stay to all banks. While some of those banks are members of the ELFA, we respectfully request that the CFPB extend the compliance deadlines under the final rule nationwide to cover all financial institutions covered by the CFPB's final rule to match the revised deadlines resulting from the stay issued by Judge Crane.

In particular, the July 31st Order extends all deadlines for compliance with the requirements of the CFPB's final rule to compensate for the period stayed. In its pleadings, the CFPB acknowledges that the Supreme Court's final decision in *Cnty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB* is not expected until June 2024. This means that the members of the TBA and ABA are expected to have an approximate 10-month delay in their compliance dates.

Accordingly, not only will non-bank independent and captive leasing and finance companies continue to incur the direct economic costs incurred by preparing for timely compliance with the CFPB's final rule, but they will now also face additional costs incurred in the form of loss of business given the unfair competitive advantage this Order will give to most banks. The

equipment leasing and financing market is highly competitive, and a substantial portion of the financing activity results from referrals by equipment manufacturers, distributors, and dealers (vendors) of their customers to one or more financing providers for financing. If a vendor is choosing between referring its customers to a financing provider who will be asking the applicant to answer the list of questions called for by the rule and a bank who will not be asking those questions, we would anticipate that the referral decision is likely to be impacted by whether the application process will be lengthened by the processing required to be compliant with the rule. This could have a drastic impact on the competitive positions of financing providers.

Additionally, we are very concerned that software providers, arguably the linchpin of compliance with this rule, will have dramatically different economics for software development if the compliance timeframes are bifurcated. Logic and economics dictate that a significant portion of the development costs would be covered by the biggest, earliest contracts that software developers are going to enter into for Section 1071 compliance software and software upgrades. If the largest banks who process the most small business loans enter the marketplace a year after non-bank financial institutions, the economics of software development for those non-bank financial institutions changes dramatically. There are other aspects of the compliance ecosystem that also fall into this category such as compliance training and even mundane items like compliance user groups.

Lastly, federally insured depository institutions have a long regulatory history over many years adopting new regulations and have built compliance workflows that are relatively agile in responding to new requirements compared to non-bank financial institutions. While non-bank financial institutions are subject to certain of these rules, such as OFAC compliance, they do not have anything close to the compliance history that a federally insured depository institution has. To have the cohort of the covered financial institutions who have the least familiarity with compliance programs go first simply doesn't make sense.

In order to maintain the current competitive landscape of the equipment finance, ELFA, on behalf of its members, asks the CFPB to please issue a fair and reasonable nationwide stay for all commercial financing providers consistent with the Texas Court's Order.

Should you have questions regarding this request, please contact Andy Fishburn, ELFA's Vice President of Federal Government Relations, at afishburn@elfaonline.org. We certainly appreciate your consideration of our request.

Sincerely,



Ralph Petta
President and CEO