ELFA

July 18, 2025

Submitted via regulations.gov

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Interim Final Rule on Small Business Lending Data Collection -- Docket No. CFPB-2025-0017

Dear Ms. Jackson:

On behalf of the Equipment Leasing and Finance Association ("ELFA"), I respectfully submit this comment in response to the Interim Final Rule ("IFR") issued by the Consumer Financial Protection Bureau ("CFPB") on June 18, 2025, regarding implementation of Section 1071 of the Dodd-Frank Act.

The Equipment Leasing and Finance Association proudly represents the companies that power a dynamic $1 trillion equipment finance sector. Our members drive innovation, enable businesses to access essential capital equipment, and foster economic growth across the United States and beyond. With over 600 member companies, our diverse community includes independent and captive leasing and finance companies, banks, financial services corporations, brokers, investment banks, manufacturers, and service providers. Together, they finance the acquisition of equipment and software critical to industries ranging from agriculture and technology to healthcare, transportation, and construction.

Whether it's agricultural machinery, state-of-the-art medical technology, or the trucks and rail cars that keep goods moving across America, ELFA members are the backbone of the economy. By providing tailored financing solutions, our industry doesn't just fuel capital formation—it fuels jobs, innovation, and global competitiveness.

We appreciate the Bureau's efforts to adjust compliance timelines considering judicial developments and especially in light of the CFPB's intent to repropose this expansive rule. The issues we raise today are not new—they've been raised repeatedly during the Small Business Regulatory Enforcement Fairness Act ("SBREFA") process and in ELFA's prior comment letters[1]—and we believe that they still warrant consideration to avoid unintended harm to small business credit access.

[1] Docket Numbers: CFPB-2017-0011-0434, https://downloads.regulations.gov/CFPB-2017-0011-0434/attachment_1.pdf and CFPB-2021-0015https://downloads.regulations.gov/CFPB-2021-0015-1228/attachment_1.pdf

The Bureau should also consider the regulatory inconsistency that has emerged as other federal agencies, including the Office of the Comptroller of the Currency ("OCC"), Department of Justice ("DOJ"), and Federal Housing Finance Agency ("FHFA"), have deprioritized or outright abandoned the use of disparate impact theory in fair lending examinations and enforcement.[2] This policy shift, spurred by the April 2025 Executive Order and reflected in internal OCC guidance, signals a move away from policing fair lending laws based on perceived statistical disparities that were interpreted to imply violations were occurring. In contrast, the CFPB's continued push to collect extensive Section 1071 data, which is largely designed to reveal those same statistical disparities, raises serious questions about the rule's coherence and utility. If federal agencies no longer view disparate impact as a legitimate basis for enforcement, then collecting application-level demographic and financial data to identify unintentional bias appears misaligned with the current regulatory approach. The Bureau should clarify how it intends to use 1071 data in an enforcement environment that no longer supports disparate impact theory, or else risk imposing substantial compliance costs on lenders without a clear policy rationale.

Executive Summary

The Equipment Leasing & Finance Association urges the Consumer Financial Protection Bureau to address several critical structural issues in any reproposed rule and address several issues specific to the Interim Final Rule:

(1) In the future rule:
  - ensure a meaningful opt-out for customers so that the provision is actually voluntary
  - only require statutory data points
  - exempt financial institutions with fewer than 500 employees
  - exclude purchase money obligations under UCC Article 9
  - define "small business" as entities with less than $1 million in annual revenue
  - provide a vendor finance exemption and/or allow post-credit decision data collection

(2) With regards to the Interim Final Rule:
  - disallow voluntary compliance with the rule written under previous CFPB leadership
  - provide clarity that new compliance dates will be necessary

These changes are essential to preserve small business credit access while achieving the law's anti-discrimination objectives.

I. Make 1071 Truly Voluntary

Section 1071 explicitly allows applicants to decline to provide 1071 information. However, the 2023 rule issued by the CFPB requires financial institutions to report application-level data even when customers opt out of participation. While the statute gives borrowers the right to withhold

[2] *See* "Bank Regulator Stops Hunting for Unintentional Bias Under Trump," Bloomberg Banking Law, July 1, 2025, available here.

this information, the rule still mandates that lenders submit a full application record, including data fields beyond what the customer has provided. This approach stretches the statutory language and risks undermining the intent of a truly voluntary framework.

The CFPB's prior interpretation equated "voluntary" with the ability to skip demographic fields, but the rule provided no option for borrowers to opt-out of having their transaction reported to the government. This is especially concerning in rural communities, where borrowers may be more hesitant to share sensitive financial activity that could be linked back to them. For example, a small business owner may not want neighbors to know they applied for credit or may fear that disclosing details—such as loan amount or annual revenue—could give competitors insight into their business operations. These concerns about borrower reluctance and data integrity were repeatedly raised during the SBREFA process, particularly by lenders serving small businesses. Borrowers should not feel coerced into having their sensitive information disclosed to the government and subsequently disclosed on a public website.

Requiring lenders to report applications even when demographic data is missing risks distorting the dataset the CFPB intends to make public. As ELFA has communicated in previous submissions, certain types of credit applications — such as small-ticket equipment purchases — are often completed by staff who lack access to demographic information and may choose not to delay the transaction to obtain it. For example, small-ticket construction equipment, office equipment, or fork trucks may be financed multiple times per year in relatively smaller dollar amounts, often without direct involvement from the business owner. These transactions are likely to be overrepresented in the "opt-out" group, introducing statistical bias that may render conclusions drawn from the public database inaccurate or misleading.

For this reason and those that follow, ELFA believes that the CFPB should not collect information regarding applications where the customer has declined to provide any information.

In addition, ELFA has commented to the CFPB at several stages during the 1071 rulemaking process that many lenders in the equipment finance space do not routinely collect several of the data points – such as annual revenue – in the normal course of business. This was also borne out during the SBREFA process.

If a financial institution typically makes a credit decision based upon, for example, business name and address, and the customer declines to provide Section 1071 information, the CFPB is creating a significant regulatory challenge. The financial institution would be required to submit application-level data without knowing for certain whether the business qualifies a small business, nor have any reliable way of obtaining annual revenue information absent a third-party provider, which does not exist for many industries.

Requiring financial institutions to report on applications where no demographic information is provided results in fragmented data that is difficult to interpret. The CFPB would be left analyzing three inconsistent data pools: 1) complete applications with demographic and transactional data; 2) applications with transactional data only; and 3) incomplete or unverifiable data. Under this new opt-out structure the CFPB would only receive information about applications where the customer has opted in, greatly increasing the chances that the information provided will produce a consistent and reliable dataset.

For these reasons, ELFA urges the Bureau to revise the rule to require reporting only when an applicant has voluntarily chosen to provide information.

II. Only Require Statutory Data Points

The 2023 rule issued by the CFPB under the previous leadership expanded the statutorily required 13 data points to require the collection of a total of 81 different data points. ELFA believes that any new rule should revert to only requiring the 13 data points.

Notably, the CFPB did not conduct a cost analysis of this more-than-six-fold increase in data collection. The Bureau's failure to adhere to the longstanding procedural rules contributed to the litigation that the CFPB is still involved in today.

III. Exempt Small Financial Institutions -- Define as Fewer Than 500 Employees

The Bureau must do more to shield truly small financial institutions from the burdens imposed by Section 1071. While asset-based thresholds have been proposed, a more consistent and widely accepted measure—used throughout federal law—is employee count.

We urge the Bureau to exempt any financial institution with fewer than 500 employees from the rule's reporting requirements. This threshold aligns with Small Business Administration ("SBA") definitions and better reflects the operational reality that compliance capabilities correlate more closely with staffing levels than to asset size.

Using employee count also creates a level playing field across different corporate structures. Consider two equipment finance companies with identical small business lending volumes: one structured as a subsidiary of a mid-sized bank with significant consumer lending operations, and another operating as an independent equipment finance company. A threshold based solely on annual transaction volume could subject one to reporting requirements while exempting the other. Moreover, transaction volume alone ignores the critical factor of transaction size. An independent finance company focusing on copiers or telephones may originate thousands of transactions per year but have less annual volume than a similar company who finances hundreds of trucks.

Smaller non-bank finance providers play a critical role in serving the smallest businesses—those most likely to face barriers to credit. ELFA data shows that businesses with less than $250,000 in annual revenue turn to non-bank financing 54% of the time, compared to 40% across all revenue levels. These institutions often operate with limited compliance infrastructure and lean staffing.

For smaller non-bank finance providers, the operational burden of Section 1071 would be especially disruptive. A regional equipment finance company with 200 employees may manage substantial transaction volume, but it cannot divert personnel or build new data collection systems without impacting its core business functions. Without an exemption for institutions under 500 employees, the rule risks driving these institutions out of the small business market – ultimately limiting access to credit for the very borrowers the rule is intended to protect.

IV. Exclude Purchase Money Obligations Under UCC Article 9

The CFPB appropriately exempted true leases, as defined by Uniform Commercial Code (“UCC”) Article 2A from Section 1071 reporting requirements, recognizing leases are not loans. The same rationale that prompted exemptions for leases, factoring, and trade credit should also apply to purchase money obligations (“PMOs”) governed by UCC Article 9.

PMOs are fundamentally different from general-purpose credit in several critical ways:

- **Single-Asset Focus**: PMOs finance specific equipment, rather than supporting broader business operations
- **Non-Recourse Nature**: Lenders typically rely on the equipment value, rather than the borrower’s creditworthiness
- **Point-of-Sale Transactions**: PMOs are often arranged at the time of equipment purchases, not through traditional relationship lending channels
- **Minimal Underwriting**: Credit decisions focus on equipment value and resale potential, rather than borrower’s demographics or financial history

These structural differences make PMOs inherently low risk for discriminatory lending practices. For example, when a construction company purchases a $50,000 excavator through application only vendor financing, the lender often never interacts with the borrower directly. The decision is driven almost entirely by the equipment's value and resale potential.

Including PMOs in Section 1071 reporting would dramatically inflate data collection volume while offering minimal analytical insight into credit discrimination. Sweeping these transactions into the rule would burden lenders and obscure the CFPB’s focus by introducing data unrelated to the policy’s core objective.

There is growing bipartisan support in Congress for equipment finance exemptions, with recognition that these transactions warrant different treatment than traditional small business loans.

V. Define "Small Business" as Less Than $1 Million in Annual Revenue

The Bureau's current approach to defining "small business" is overly expansive and misaligned with Congressional intent. ELFA urges the adoption of a clear, bright-line test: a small business is one with less than $1 million in gross annual revenue.

A revenue-based definition offers several key advantages:

- **Comprehensive Coverage**: The CFPB's own data indicates that this threshold would capture 95% of all businesses in the United States, including 98% of all minority-owned businesses and 98% of all women-owned businesses
- **Objective Standard**: Gross revenue is a clear and verifiable metric that eliminates subjective determination
- **Policy Alignment**: This definition more accurately targets the market segment Section 1071 was designed to serve—truly small businesses that may face barriers to credit access or discriminatory lending practices

Absent a narrower definition, the rule risks capturing mid-sized enterprises with sophisticated financial operations and well-established credit access. While these businesses may generate significant data volume, they offer limited insight into the discrimination risks Section 1071 was designed to address. For example, a manufacturing company with $4 million in annual revenue and established banking relationships faces fundamentally different credit challenges than a startup generating $200,000 annually.

A revenue-based approach would also simplify compliance by eliminating the complexity of industry-specific size standards that vary dramatically across sectors and create confusion for lenders operating across multiple industries.

VI. Include a Vendor Finance Exemption -- Or Allow Post-Credit Decision Collection

Vendor finance arrangements represent a significant portion of equipment finance transactions and create unique compliance challenges that the current rule fails to address adequately.

Modern equipment finance has evolved beyond traditional bank lending. Today, a typical vendor finance transaction follows this pattern:

1. A business customer visits an equipment deal
2. The dealer collects a credit application and submits the application to a finance company
3. The finance company evaluates the application and equipment value, then makes a credit decision
4. The dealer communicates the decision to the customer
5. If approved, the customer completes the transaction—often without direct interaction with the finance company

In this process, the finance company—the entity subject to Section 1071—has no direct contact with the customer and lacks a practical means to collect demographic data. The dealer, who serves as an intermediary, may handle dozens of different finance companies, each with different compliance requirements. As a result, it is neither efficient nor feasible to train dealer personnel to conduct data collection in a consistent, compliant manner.

ELFA advocates for a full exemption for vendor finance as the most practical solution. These transactions typically present minimal fair lending risk, as credit decisions primarily focus on equipment value rather than borrower characteristics.

If a full exemption is not granted, the CFPB should permit demographic data collection to occur after a credit decision has been made. This approach would:

- Preserve the efficiency and speed of the vendor finance process
- Avoid disrupting established dealer-customer relationships
- Eliminate the operational burden associated with point-of-sale data collection
- Maintain data integrity by removing time pressure from the collection process

Both solutions have been discussed in ELFA's previous submissions, with the vendor finance exemption detailed extensively in our 2017 RFI response[3].

VII. Disallow Voluntary Compliance Under Existing Rule

In the Interim Final Rule, the CFPB explicitly states that voluntary compliance for testing purposes would be allowed 12 months before the compliance deadlines. This means that as of July 1, financial institutions are, in theory, permitted to collect information under Section 1071. ELFA is concerned about the collection of information under a rule that now appears to be potentially headed towards dramatic changes prior to any future implementation. ELFA encourages a revision to this portion of the Interim Final Rule. We believe that allowing voluntary compliance prior to final rule implementation opens the door to significant privacy and data security risks for institutions to be collecting information that the CFPB is not prepared to accept, and under a final implemented rule, may never be prepared to accept.

Accordingly, ELFA believes that the CFPB should not allow voluntary compliance with the 2023 rule.

VIII. Compliance Dates

Any modified proposed rule that the Bureau may issue within the next 12 months will necessitate the establishment of new compliance deadlines. Moreover, a 12-month implementation period is unlikely to provide sufficient time for institutions to achieve compliance, particularly if the revised rule, as anticipated, diverges substantially from the expansive rule issued under previous leadership.

Conclusion

While the CFPB's IFR critically addresses compliance timing, it does not resolve the fundamental structural flaws in the underlying rule. As we have consistently argued since 2017,

[3] CFPB-2017-0011-0434, https://downloads.regulations.gov/CFPB-2017-0011-0434/attachment_1.pdf

any Section 1071 rule must be calibrated to reflect the diversity of small business credit products, lenders, and transactions.

The equipment finance industry strongly supports expanding credit access and eliminating discrimination. However, a poorly designed rule that increases compliance costs, creates operational disruptions, and generates low-quality data serves neither goal. The recommendations outlined above would:

- Improve data quality through true voluntary disclosure
- Preserve credit capacity at smaller institutions
- Focus reporting on transactions most relevant to discrimination analysis
- Ensure definitions align with Congressional intent
- Accommodate industry operational realities

We urge the CFPB to incorporate these changes in any reproposed rule. The Bureau has an opportunity to create a framework that advances fair lending goals while preserving the equipment finance industry's ability to serve small businesses effectively.

We look forward to continued engagement as the Bureau moves forward with its rulemaking process and stand ready to provide additional technical assistance as needed.

Sincerely,

Leigh Lytle
President & CEO
Equipment Leasing & Finance Association