ELFA
EQUIPMENT LEASING AND FINANCE ASSOCIATION

EQUIPMENT LEASING AND FINANCE ASSOCIATION
1625 Eye Street NW
Suite 850
Washington, DC 20006
P 202.238.3400
F 202.238.3401
www.elfaonline.org

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Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2020-0008

To whom it may concern:

This letter provides comments from the Equipment Leasing and Finance Association (ELFA) to the Consumer Financial Protection Bureau's (CFPB) notice seeking comment on a Generic Information Collection regarding a survey designed to identify the one-time implementation costs of implementing Section 1071 of the Dodd-Frank Act.

BACKGROUND ON ELFA

ELFA is the trade association representing financial services companies and manufacturers in the nearly $1 trillion U.S. equipment finance sector. Equipment finance not only contributes to businesses' success, but to U.S. economic growth, manufacturing and jobs. Seventy-nine percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). In 2019, a projected $1.8 trillion will be invested by U.S. businesses, nonprofits, and government agencies in plant, equipment, and software. Approximately 50%, or $900 billion of that investment, will be financed through loans, leases and lines of credit. America's equipment finance companies are the source of such financing, providing access to capital.

ELFA represents more than 575 member companies, including many of the nation's largest financial services companies and manufacturers and their associated service providers, as well as regional and community banks and independent, medium, and small finance companies throughout the country. ELFA member companies finance the acquisition of all types of capital equipment and software, including agricultural equipment; IT equipment and software; aircraft; manufacturing and mining machinery; rail cars and rolling stock; vessels and containers; trucks and transportation equipment; construction and off-road equipment; business, retail, and office equipment; and medical technology and equipment. The customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and nonprofits.

ELFA represents virtually all sectors of the equipment finance market and its members see virtually every type of equipment financing transaction conducted in the United States and every type of funding available to providers of equipment finance. ELFA members who are service providers to the equipment finance industry (such as lawyers, accountants, trustees and vendors) have a unique vantage point of seeing scores of financial transactions from initial concept to final payout and from the perspective of both the borrower/issuer and lender/investor/funding source. ELFA truly is at the heart of equipment finance in the United States and our member companies provide lease, debt, and equity funding to companies of all sizes.

<u>COMMENTS</u>

In its recent notice and request for comment the CFPB is seeking to gather information regarding the one-time costs of implementing Section 1071 of the Dodd-Frank Act utilizing a survey vehicle. ELFA believes that while this is a noble effort, collecting cost information today with the information provided in the notice and accompanying survey is unlikely to yield accurate information that could inform this rulemaking process. ELFA believes that in order to estimate costs, several factors need to be clarified beyond those that are discussed in the notice. ELFA believes that the CFPB needs to provide guidance in the following areas:

The Reporting Structure

How information collected under Section 1071 is provided to the CFPB is a critical element in order to estimate the one-time costs for implementation. For example, ELFA has proposed a reporting structure that would have the financial institutions covered by this rule collecting, reporting, and maintaining only information that they would generally already collect in the normal course of business.[1] The structure recommended by ELFA would have the credit applicant provide the demographic information directly to the CFPB on a one-time basis, and then the applicant would update as necessary. The CFPB would then provide the applicant a unique identifier that could be provided to financial institutions when it applies for credit. After a credit decision has been made, the financial institution would then provide the loan or lease level information along with the associated unique identifier to the CFPB. The CFPB would be responsible for merging the demographic information and the loan or lease level information within its own systems. ELFA believes that this structure would create significant efficiencies for both the private sector credit applicants and the financial institutions at minimal additional cost to the government.

ELFA would again commend this structure to the CFPB because it eliminates many of the difficult issues that exist in Section 1071. The benefits of this structure include:

- The elimination of difficulties created when the person applying for credit is not knowledgeable about the corporate structure of the applying business, e.g., a loading dock manager applying for a fork truck lease.

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[1] *Comments Submitted by Andy Fishburn for Ralph Petta, ELFA*, https://www.regulations.gov/document?D=CFPB-2017-0011-0418

- The elimination of repeatedly needing to determine ownership structures by each finance company that an applicant may apply to. As the CFPB knows, ownership structures for small businesses can be complex. Additionally, in the small business equipment finance marketplace, one application may be made to multiple financial institutions, be approved by all of them, but only be consummated by one financial institution due to the unique characteristics of secured financing.
- The need to create firewalls between loan officers and underwriters would be eliminated because the finance company would not have access to the demographic information. Recent studies show that automated processes lead to reduced discrimination because the credit decision is based solely on what is provided on the application.[2] If demographic information is not collected during the application process, it follows that the chance for direct discrimination based on that information is eliminated or, at a minimum, reduced.
- The anticipated increase in potential for perceived discrimination would be eliminated because the application process would not solicit information about gender and race of the business owners.
- The elimination of the need for any data collection regarding applicant types that are exempted from collection because the CFPB would not provide such companies a unique identifier.

While ELFA believes that the structure recommended in our response to the CFPB's 2017 RFI is the advisable one for the CFPB to utilize, regardless of the outcome of that decision, the CFPB must provide more information about the systems that it intends to use to collect this information to enable finance companies to provide meaningful estimates of the costs of compliance. The government utilizes a variety of systems to collect information from the public ranging from fax machines to sophisticated application programming interfaces. Some of these solutions require the use of third-party providers which can add significant costs to the process. For example, the processing of 4506-T forms in the mortgage space is heavily reliant upon third-party processors who batch file forms. The cost of setting up a compliance structure will vary widely depending on the technological decisions that the CFPB makes. ELFA believes that if the CFPB wishes to collect valid information in this area, significant additional information is required for institutions to provide accurate cost estimates.

Even under the assumptions in the draft survey, the costs could vary significantly. For example, if the reporting is similar to HMDA reporting, where reporting is accomplished through a free platform, technological costs in that case could be lower for a low-volume financial institution but might be higher for a high-volume institution due to data entry requirements. If, however, a lower-volume financial institution needed to invest in additional systems in order to format the data in a certain prescribed manner and upload it to the CFPB, this would increase the costs significantly, potentially by several orders of magnitude.

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[2] *Consumer-Lending Discrimination in the FinTech Era,* November 2019, Bartlett, Morse, Stanton, & Wallace, https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

Firewalls

As mentioned above, the statute requires that firewalls between loan officers and underwriters be created if feasible. The one-time costs of compliance are significantly different, especially for small and mid-size equipment finance companies, if they need to create firewalls between two employees who may sit next to each other and share the same computer systems. Additional information in this area is required to produce accurate cost estimates.

The Reporting Universe

Many market participants have long assumed that the CFPB would require the collection of information only from small businesses under Section 1071. The statute clearly provides the authority to collect at least some information regarding all commercial lending. Put differently, there is a compliance obligation to ask the applicant whether they are a small business, a woman-owned business, or a minority-owned business. One assumes that compliance-focused institutions will feel the need to have some form of data collection and record retention requirements even if the answer to that question is in the negative. Additionally, determining ownership of large publicly traded companies is difficult. For example, how would one determine whether a large publicly traded company had more than 50 percent female ownership.

The difference in one-time costs between building systems to collect some information about all commercial lending versus solely collecting information about an institution's small business lending is significant. This clarification is critical for any compliance cost estimates to be valid. It should be noted that in our response to the CFPB's 2017 request for information (RFI), ELFA indicated that it believes that collecting only from small businesses is prudent. Lastly, as alluded to above, it should also be noted that if the CFPB adopted ELFA's recommended collection structure, only applicants about which the CFPB required information to be collected would be eligible to receive the unique identifiers, so this issue would also be eliminated.

Conclusion

ELFA believes that additional clarity in the areas above is necessary to allow survey respondents to help the CFPB obtain an accurate estimate for compliance with Section 1071. ELFA stands ready to assist the CFPB in any way it can in the collection of estimates for the costs of compliance.

Respectfully Submitted,

Ralph Petta

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