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September 11, 2017

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

RE: Docket No. CFPB-2017-0011, Request for Information Regarding the Small Business Lending Market

Dear Ms. Jackson:

This letter provides comments from the Equipment Leasing and Finance Association (ELFA) to the Consumer Financial Protection Bureau's (CFPB) Request for Information Regarding the Small Business Lending Market, Docket No. CFPB-2017-0011.

BACKGROUND ON ELFA

ELFA is the trade association representing financial services companies and manufacturers in the $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-eight percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). Each year American businesses, nonprofits, and government agencies invest over $1.508 trillion in capital goods and software (excluding real estate). Some 68%, or $1.034 trillion, is financed through loans, leases, and other financial instruments. 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.

TYPES OF INSTITUTIONS ENGAGED IN EQUIPMENT LEASING AND FINANCE

Independents

Independently owned and operated equipment finance companies ("Independents"), institutions that are not affiliated with a bank or an equipment manufacturer or distributor, make a substantial contribution to the equipment finance market. Independents bring a substantial source of capital and funding to the equipment finance arena. They also bring independent ideas and initiatives on how to better help small and medium sized businesses accomplish their financing objectives. Independents have varied business models, originating transactions across a few or broad range of channels and equipment types, through relationships with equipment manufacturers, distributors and dealers, as well as directly with lessees or borrowers. Independents add to the number of providers in the equipment financing space and give borrowers more options.

Captives

A captive finance company (captive) provides financing to customers and dealers purchasing or leasing the equipment manufactured or sold by a related company (usually the parent or another affiliate of the parent company (the original equipment manufacturer (OEM)). A captive usually provides financing options for the customers of the OEM or independent dealers or sellers because the captive knows the OEM's product intimately and is able to provide financing options for the customer that match the expected lifecycle of the equipment. A captive may also offer additional services and products in addition to financing the purchase or lease of equipment. Examples are maintenance contracts and insurance. Additionally, because a captive's OEM often has a robust and active used product business, a captive may be able to take advantage of economies of scale and recognize higher residual values at the end of term or structure a loan with lower payments to reflect the real anticipated value of the equipment. Sometimes a captive is willing to go deeper into the credit risk sector because of its knowledge. This allows a captive to sometimes fund customers that regulated entities might not.

Many captives rely on a network of dealers, usually independently owned and separate from the OEM, to generate business. A captive may also provide inventory financing to the dealers selling the equipment to the end user. Because captive finance companies rely on the sale of equipment by dealers, often the captive finance company does not originate the customer's credit application. The selling dealer may send the credit application to multiple finance sources in addition to the captive. Because dealers use multiple and varying technology

in operating their business, capturing the information and reporting under 1071 under these multiple systems would impose tremendous technology costs upon a captive and/or the dealers. These costs would in turn increase the financing costs to customers.

Federally Insured Depository Institutions

Banks play an important role in equipment finance. Banks of all sizes, ranging from the nation's largest banks to community banks, have long been attracted to equipment finance because of its generally steady returns with typically lower risks due to the underlying value of the asset being financed. The factors driving bank initiatives in equipment finance vary from a reaction to competitors and constrained revenues, to active commitment to embrace equipment finance as a core offering. Banks originate equipment finance assets through various channels, including direct originations by internal sales forces; referrals from equipment vendors, manufacturers, dealers and the like; and the purchase of single transactions or portfolios from other financial institutions. Some banks use all of these channels while others may focus on just one or a few. Most banks utilize deposits to fund a significant portion of their equipment leases and finance offerings.

Background on Vendor-Based Equipment Leasing/Financing

In a direct lending model, the borrower typically calls directly on a lender or lenders to negotiate or arrange financing for a specific need. That is very different from the vendor-based financing model. In the vendor-based model, the customer is often not focused on the financing of the equipment separate and apart from its acquisition. In fact, in the vendor-based model, the customer is often unaware that a third party may be providing the financing of their equipment. The customer often negotiates with the equipment vendor to obtain equipment, with financing alternatives being presented to the customer by the vendor. This often involves the equipment being sold on installments (or placed with the customer under a lease) under an agreement in which the vendor is the named seller (or lessor). In such scenarios, assuming the vendor chooses not to hold the lease or sale contract for its own account, the vendor typically sells or assigns its rights in the equipment and the contract to a third party financing company.

Equipment vendors often have established relationships with multiple third party financing sources. Different financing sources are often interested in financing different types of equipment and/or often have different credit appetites. The vendor in the vendor-based model is often regularly offering transaction opportunities to different financing sources based on a number of different factors. And a hallmark of the vendor-based model is that the customer/borrower often has relatively little direct interaction with the financing source, as the vendor handles much of the communication. Federally insured depository institutions and independent equipment finance companies both operate in this arena.

DEFINITION OF SMALL BUSINESS

Given the complexities that exist within the Small Business Administration's definition of small business, ELFA believes that the CFPB should adopt a simpler, bright line test for this definition. For example, there are businesses with only a few employees but with significant revenues and/or a significant amount of subcontractors that most would agree are not small

businesses. The CFPB's study on the small business lending landscape indicates that 99.99% of businesses in the United States would fit a definition that is based upon, for example, having 500 employees or less.

ELFA believes that revenue is a much easier and more accurate measure to define a small business, and that the definition of small business should be one with gross annual revenues of under $100,000. According to the aforementioned CFPB study, that definition would capture 75.99% of all businesses. Regardless of whether this specific threshold is chosen, ELFA believes that a simple test based upon revenues should be utilized to determine whether a credit applicant is a small business. Additionally, as discussed below under "Exemptions – Large Company Financing," ELFA believes that Section 1071 reporting requirements should not apply to businesses that do not fit that definition.

REPORTING PROCESS

Section 1071 at its core aims to create a structure pursuant to which the CFPB and other regulators have the ability to look at a commercial financing to determine the nature of the small business finance marketplace and to analyze whether that financing is accomplished in compliance with applicable fair lending laws. While Section 1071 appears to require financial institutions to collect certain demographic information directly from credit applicants, ELFA submits that an alternative structure (described below) is better suited and significantly more efficient for the commercial credit markets. ELFA also believes that the CFPB has the authority to implement such a structure.

Under the scenario where each credit provider, whether it be a bank, an independent lessor, or a hardware store, is required to collect the 1071 information, there would be a significant administrative burden at the application stage for each individual credit application. Many businesses apply for credit many times during the year. For example, a business may operate 10 forklifts, three of which require financing in any given year; the same would hold true for copiers, office furniture, and many other asset classes. Collecting the information required under Section 1071 for each of those transactions would be overly burdensome and inefficient.

Additionally, it is not clear in the statutory language which party, the creditor or the borrower, is responsible for the accuracy of the information filed. Often times in a small business setting the borrower employee who is responsible for acquiring the equipment is not familiar with the total revenues of the company, let alone the ownership structure, and it is not hard to imagine situations where the owner(s) of the company would not want to share all of that information with, for example, their office manager or loading dock manager.

A more efficient methodology would entail a two-step reporting process. The first step would entail a borrower (likely the owner or the CFO of the company) to file its demographic and financial information with the CFPB (subject to any exemptions regarding borrower type that the CFPB puts into place.) Once in receipt of a completed filing, the CFPB would provide the company with a commercial borrower identification number. This number would be similar to an employer identification number (EIN) utilized for tax filing purposes, but specifically this should be a unique identifier used only for these purposes (i.e., not an EIN, to avoid privacy and tax information access matters). It is important to emphasize that this registration would be

voluntary, just as the statute envisions if the information was provided directly to the financial institution.

The second step in the process would be for the financial institution to modify its application process to request the commercial borrower identification number when the borrower is applying for credit (if the borrower has one). The financial institution would then provide the CFPB with information such as the amount of credit applied for and the credit decision. The CFPB would be responsible for marrying up the two sets of information to complete the process.

ELFA recognizes that, if this reporting structure were implemented, institutions regulated under Section 1071 would have limited ability to test their compliance systems in order to determine whether they are in compliance with fair lending laws. This is an issue that could be remedied through some form of the CFPB providing consolidated information back to the regulated institution or other means. Should the CFPB choose this two stage reporting structure, ELFA would look forward to working with the CFPB on how best to implement an efficient and effective compliance testing regime.

Should the CFPB decide to not pursue this alternative reporting structure, it is imperative that the CFPB develop a form that institutions may use in order to collect the required information from the customer. It is also imperative that the customer be responsible for the accuracy and completeness of the information being collected. To require institutions to verify ownership structures, minority status and gender, and other information that the customer is responsible for providing, would create an incredibly costly compliance burden (even assuming creditors would have the necessary means to do so) and will significantly raise the borrowing costs for small businesses. It is also inevitable that many financial institutions will exit the small business lending market simply because that portion of their loan portfolios will become uneconomical to maintain.

EXEMPTIONS

The history of Section 1071 has its genesis in two documents issued in mid-2009. The original Administration's proposal for regulatory reform issued in June of 2009 indicated that the CFPB should have authority to collect information on small business lending, and gave no mention to the collection of information regarding minority-owned or women-owned businesses. A GAO report the following month found challenges to fair lending enforcement efforts due to lenders not being "required to report data on the race, ethnicity, and sex of nonmortgage loan borrowers—such as small businesses, which limits oversight of such lending." Importantly, the GAO report went on to say that "[w]hile requiring lenders to report additional data would impose costs on them, particularly smaller institutions, options exist to mitigate such costs to some degree, such as limiting the reporting requirements to larger institutions."

Section 1071 follows through on the GAO report's recommendations and gives the Bureau wide discretion to "adopt exceptions to any requirement," including "conditionally or unconditionally exempting any financial institution or class of financial institutions" from Section 1071's data collection requirements. In light of this authority, ELFA advocates that it would be appropriate for the Bureau to exempt the following categories of commercial finance in

order to limit the marketplace disruption, including the unintended harm to small businesses that this regulation will create:

- Asset Specific Financing
- Large Company Financing
- Vendor-Based and Dealer-Based Financing
- Small Lenders

These exemptions could, and likely should, work in concert with each other; however each exemption standing on its own could also effectively limit the burden of 1071. The rationale for each of these exemptions is explained in further detail below.

Asset Specific Financing

ELFA submits that cash loans and lines of credit sought by small businesses in order to open or expand is the type of lending that Section 1071 was, at its core, designed to capture. Equipment leasing and financing is very different than cash lending and operating lines of credit. In equipment leasing and financing, the lease or the financing arrangement is secured by the asset being acquired. Since in most cases the asset is critical to the function of the business, approval rates tend to be much higher and default rates are significantly lower than with respect to other forms of commercial lending. Moreover, the typically lower rates at which such financings are provided are derivative of the fact that, in the case of a lease, the lessor may get the equipment back at the end of the term if the lessee chooses not to exercise any applicable purchase option, and in the event that the borrower defaults, the lessor or lender has the right to reclaim the equipment and the value associated with it. These factors make for a relatively low-margin competitive environment in which equipment lessors and lenders are competing for customers. ELFA believes that the purposes of the proposed data collection would unlikely be served to any meaningful extent in the equipment leasing context, or in a loan context if the loan is fully secured by equipment and/or software being acquired by the borrower with the proceeds of such loan.

Additionally, in the equipment leasing and financing sector, it is quite common that a borrower seeking financing for an expensive piece of capital equipment will apply for credit with multiple institutions. This creates a scenario where, for a variety of reasons, absent this exemption, Section 1071 would result in the collection of (using an example) five credit applications for the same piece of equipment. Regardless of the outcome of each individual deal, any database containing this information would include five approvals, five denials, five forms of some other outcome, or some combination thereof, and therefore the data would not produce any meaningful analysis. It is important to note that, unlike consumer credit markets where in theory one could apply for five credit lines in one day and receive credit totaling significantly more than one's creditworthiness would warrant, the same is not true in the aforementioned hypothetical. In equipment leasing and finance, only one financier or lessor has the ability to perfect the security interest in, or lease, the desired equipment, and as a result, despite multiple applications, only one (if any) loan or lease for that equipment will be consummated. It is also

important to note that, should the CFPB still pursue information regarding these types of transactions, the regulations will need to allow for a broad range of application outcomes, including, but not limited to, withdrawn, incomplete, and approved but not entered into.

For the foregoing reasons, ELFA is recommending that the CFPB provide an exemption for credit being requested to allow the borrower to acquire or lease one or more item(s) of equipment and/or software (including in a sale-leaseback transaction) to be used in its business and, in the case of a loan, the loan would be fully or partially secured by such item(s) of equipment and software

In addition to limiting the universe of loans and installment credit sales to which Section 1071 would apply based on whether such extension of credit is fully or partially secured, ELFA also respectfully requests that the CFPB exclude from Section 1071's requirements "true leases," pursuant to which the lessor retains the ownership interest and residual value risk of the leased property.[i] In this regard, ELFA is aware that the CFPB has taken an expansive view of automobile leases in the issuance of the final rule defining larger participants of the automobile financing market.[ii] In particular, the CFPB went to great lengths to explain that although prudential regulators have reasoned that residual value percentages and actual transfer of ownership are key factors in determining whether a lease is the "functional equivalent" of a loan, the CFPB does not share this view.[iii] Instead, the CFPB interprets the phrase "functional equivalent of purchase finance arrangements" set forth in the Dodd-Frank Act to include all leases in which the lessee has the option to purchase the leased property at the end of the lease term for a pre-determined amount, regardless of whether the option is ever exercised.[iv]

The possibility that the CFPB could extend this "functionally equivalent" rationale to require data collection requirements for equipment leases, which typically provide an option for lessees to purchase the equipment at fair market values or pre-set prices at the end of the lease term, is extremely problematic. In particular, a data collection requirement for true leases could have the unintended consequence of hindering the use of rules applicable to equipment leases that foster creative financing solutions and generate tremendous value for lessees and lessors alike. Instead, commercial lessors may opt for a one-size-fits-all approach to avoid the possibility of data collected under Section 1071 – which is specifically designed to detect bias – which will deceptively suggest a high incidence of "false positives" because deal-specific variables cannot effectively be taken into account.

Here, again, the industry fears regulators and class action litigants will inevitably seek to exploit partial data sets to create the false impression of disparities among business credit applicants. In truth, commercial lessors are not wedded to standardized lease matrices typical of consumer leasing, and may instead structure seemingly similar transactions differently based on risks and complexities attributable to business realities. For instance, in addition to tax and accounting rules, equipment lessors also recognize that equipment financed for one business may not necessarily generate the same revenue when financed for another, a factor that must be taken into account when making underwriting decisions.

Simply put, commercial leasing, particularly as it relates to equipment, presents differences in process and underwriting, and is vastly different than the relatively homogeneous processes and underwriting typical of consumer credit programs.

As a result, ELFA urges the CFPB to create exemptions for equipment leasing from the Section 1071 requirements, including credit applications where:

i. A loan would be fully or partially secured by such item(s) of equipment and software; or

ii. A lessor retains its ownership interest and residual value risk of such leased property

Large Company Financing

ELFA believes that financing for large companies should be exempted from the collection requirements under Section 1071. The rationale for such an exemption in the context of business lending is straight-forward. On its face, Section 1071 is intended to determine how well the market is meeting the capital needs of small businesses, which by definition have lower annual revenues, and women and minority-owned businesses. It follows then that data collection should also be based on the size of the lending transaction and the size of the company to avoid the very real possibility of misleading data on “denials” to reflect disparities without appropriately taking into account transaction or borrower size.

For these reasons and for reasons having to do with the complexities of determining ownership, ELFA believes that financing provided to publicly traded companies should be exempted from the 1071 data collection requirements. For example, one only has to think about the complexities of determining whether a large publicly owned corporation is a women or minority-owned business to see that the costs of this process would vastly outweigh any benefits of this data reporting. Would the financier be required to request the borrower to inquire about the gender and race of each of its thousands of shareholders in order to determine the ownership status?

Additionally, borrowers seeking larger loans are, in the vast majority of cases, and by necessity, not small businesses, but rather larger well-capitalized organizations with many available options for accessing the credit markets. As such, credit denial data for small businesses seeking financing for large capital expenditures would almost certainly exaggerate a perceived unavailability of credit to small businesses. As a result, the litigation risk and cost of compliance for lenders underwriting small businesses in such circumstances would be unduly burdensome and misaligned with the ostensible intent of the statute to expand credit availability for women and minority-owned and small businesses rather than curtail it.

In light of the foregoing, and to ensure the availability of credit for women and minority-owned and small businesses dependent on equipment lenders and lessors in particular, ELFA

would recommend excluding from the data collection requirements any creditors evaluating extensions of credit to such businesses where, at the time of application:

i. The business seeking credit has gross annual revenues exceeding $100,000,

ii. the credit sought for a single transaction exceeds $100,000, or

iii. in the event such extension of credit was approved and funded, the total exposure of the lender to such borrower would be in excess of $250,000.

Vendor-Based and Dealer-Based Financing

Equipment finance has long evolved from the days when a business owner visited a storefront and requested a loan on behalf of her/his business while a credit officer sat in the next office and made a credit decision. Today, a significant portion of equipment finance occurs through a vendor acting as an intermediary between the end-user customer and the equipment finance company. In the ordinary course of business, it is the vendor which is the face to the customer and which collects the credit application and then submits it to the finance company. In that scenario, the finance company has no direct interaction with the customer and thus has no knowledge of whether the customer is a women-owned or minority-owned business, or a small business.

Further, the individual relationship between the vendor and the customer is often between a sales person at the vendor and a procurement officer or office manager of the customer. In many instances the vendor's salesperson will have no knowledge of who owns the customer's business. To task the finance company, which has no direct interaction with the customer prior to the credit decision, with ascertaining whether a business is a small business, or a women-owned or minority-owned business, is not only impractical, but also often impossible.

In areas of the economy where equipment dealers are the primary point of interaction with customers it is often a similar situation. A customer will enter an equipment dealer seeking to purchase a tractor and wish to seek financing, or alternatively, a customer may seek to lease the tractor for a period of time. This financing is provided by the captive finance arm of the manufacturer of the tractor. Again, it creates a situation where the entity providing the financing has no direct interaction with the customer outside of the actual credit decision. Tasking the finance company in that instance with ascertaining whether a business is a small business, or a woman or minority-owned business, is impractical.

Accordingly, ELFA recommends that the CFPB include the following exemptions to which Section 1071 would not apply:

i. The credit was applied for in order to finance the purchase or leasing of equipment and the purchase price for such equipment will be remitted directly by the financial institution to the vendor or lessor of the equipment[v], or

ii. The credit was initially applied for at a business entity other than the financial institution which will be making the credit decision, and such business entity and financial institution are not affiliates.

Small Lender Exemption

ELFA also submits that exemptions for smaller providers of commercial credit should be provided. Small providers of commercial credit are often the very providers who are able to provide financing that larger lenders may shy away from due to their size or possibly the risk profile of the asset class. These entities are also the ones that are the least able to absorb additional regulatory costs. Accordingly ELFA recommends an exemption for companies with either:

i. Less than $500 million in annual new business volume, or

ii. Fewer than 500 transactions per year

If this exemption were put into place, ELFA estimates that the 50 largest equipment finance companies would still be required to report under Section 1071. For comparison sake, ELFA has approximately 350 members actively engaged in equipment finance, many of them small lenders. ELFA historical data also indicates that these thresholds would capture more than 80% of new business volume in the equipment finance sector.

STAGED REPORTING

Given the sea change that Section 1071 represents in the way that fair lending laws are enforced, ELFA believes that in any final rule a staged implementation should take place. ELFA believes that it is prudent to implement this rule in stages such that the CFPB can learn from incremental implementation and fine-tune future iterations based upon the experience garnered from earlier steps. Ideally, this staged implementation would be accomplished through a multi-stage rulemaking process; however lesser but still significant benefits could be accomplished with differing effective dates for the various stages.

There is a strong rationale in implementing this staged approach by institution size and/or transaction type, given the processes and procedures that financiers will need to build and adopt in order to comply with 1071's reporting requirements. If the CFPB does not adopt a broad based exemption for equipment finance as described above, ELFA would advocate that the rule be implemented such that cash lending be captured first, with a future rulemaking process being used to capture the broad and diverse area of equipment finance. While there is arguably some logic in the stages being based purely on lender institution type, ELFA has concerns that a pure institution type staged implementation will lead to the same transaction being regulated differently solely based upon the institution issuing the credit (e.g., a tractor-trailer acquisition financed by a bank versus financed directly by the manufacturer).

LOAN OFFICER/UNDERWRITING FIREWALLS

Section 1071 requires that, "where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b)[.]" While for larger financial institutions this may not create a high compliance hurdle, for smaller financial institutions this could be a difficult threshold to meet and may likely require hiring additional staff. ELFA believes that it is important that the CFPB clearly define "feasible" in this context and consider providing an exemption for smaller lenders.

CREATION OF COMMERCIAL FINANCE DATABASE

ELFA believes that the CFPB should be the sole provider of information required to be made available to the public pursuant to Section 1071. Specifically, one read of the statute is that creditors must make this information available directly to the public upon request. This is simply unworkable, and would create chaos in the commercial lending markets.

Furthermore, ELFA has concerns at several levels with much of this information being available to the public. First, ELFA submits that the creation of a nation-wide database of commercial credit issued, or not issued, will have dramatic anti-competitive effects. If financial institutions are able to determine at what levels their competitors are approving loans or not approving loans they are easily able to undercut their competitors, and the results may not be in the best interest of the customer (e.g., if one company undercuts on rates, but is not able to match the servicing quality). Additionally, whether it be for privacy or competitive reasons, the experience of our industry has been that in some geographic regions and asset classes it is nearly impossible to remove sufficient data from a database to mask the company that is receiving the financing. This makes it exceedingly easy for competitors of the financier or of the customer to determine what company is financing what equipment and the terms of that financing.

Thank you for the opportunity to comment on this important manner. ELFA has enjoyed a collegial working relationship with the CFPB during this regulatory process and compliments the team working on these regulations for their proactive outreach to the affected industries. We look forward to working with the CFPB as this regulatory process moves forward.

Respectfully submitted,

Ralph Petta
President and CEO

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[i] Although the ECOA does not expressly exclude leases, the Federal Reserve Board has previously indicated that true leases are not considered "credit," and are mutually exclusive finance transactions. 50 Fed. Reg. 48018, 48020 (1985). The term "purchase lease" refers to lease contracts with no or a nominal purchase option and the end of the lease term, as provided in the Truth in Lending Act. See 15 U.S.C. § 1602(h). See, however, Brothers v. First Leasing, 724 F.2d

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789 (9th Cir. 1984), cert. denied, 469 U.S. 832 (1984) (holding that ECOA applies to consumer leases); cf. Liberty Leasing Co. v. Machamer, 6 F.Supp.2d 714 (S.D. Ohio 1998) (explicitly rejecting the Brothers ruling that a lease obligation, as a matter of law, is "credit" as defined in the ECOA and, instead, relying on the 1985 FRB official staff interpretation, which expressly rejected the Brothers ruling).

[ii] Consumer Fin. Protec. Bureau, Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service, at http://files.consumerfinance.gov/f/201506_cfpb_defining-larger-participants-of-the-automobile-financing-market-and-defining-certain-automobile-leasing-activity-as-a-financial-product-or-service.pdf (to be codified at 12 C.F.R. Parts 1001 and 1090).

[iii] Commentary to 12 C.F.R. Parts 1001 and 1090; Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service (80 Fed. Reg. 37501, June 30, 2015).

[iv] Id. at 37502.

[v] This language was adopted from language appearing in the Financial Crimes Enforcement Network's (FinCEN) beneficial ownership rule, where commenters argued that treating this type of business differently amongst classes of financial institutions would lead to an anti-competitive environment and that the risk of money laundering in this type of transaction was low.