ELFA
EQUIPMENT LEASING AND FINANCE ASSOCIATION

5 Takeaways on Section 1071 Compliance from ELFA's Wednesday Webinar

Washington, DC—Preparation for compliance with the rules and reporting requirements of Section 1071 of Dodd-Frank was the topic of the Equipment Leasing and Finance Association's (ELFA) webinar on Jun 21, 2023, "Section 1071: It WILL Affect Your Operation – Here's How, and What You Can Do to Prepare."

The event generated considerable interest with almost 500 people registering to learn about the requirements of the rules implementing Section 1071, which were issued in March and published in the Federal Register at the end of May. The webinar focused on how different organizations will report to the Consumer Financial Protection Bureau (CFPB) and the process and software changes that will be required in order to comply with these rules.

In the most basic sense, Section 1071 will require financial institutions to collect information about credit applicants and report it to the CFPB on an annual basis along with extensive financial information associated with the application's disposition including extensive pricing information.

Speakers at the webinar, which was presented by ELFA's Service Provider Business Council Steering Committee (BCSC), included Jeffrey Bilbrey, CEO of Leasepath and a member of the Service Provider BCSC; Andy Fishburn, CLFP, VP of Federal Government Relations for ELFA; and Stephanie Hall, VP of Sales at Quality Equipment Finance.

The following are among the webinar highlights.

- **Basics of 1071.** Financial institutions, defined broadly to include any entity that conducts commercial finance activity and will include equipment leasing and finance companies, must determine whether the customer is a small business (<$5MM in annual revenue). If so, they must inquire whether the customer is a minority-owned, woman-owned or LGBTQI+-owned business. The demographic and financial information—including but not limited to the amount of credit applied for, whether it was approved or denied, the purpose of the credit, the NAICS code and rate—must be reported annually to the CFPB. True leases, factoring and trade credit are all exempt transaction types. The timeline for compliance depends on an institution's annual covered originations:
    - 2,500 or more: data collection begins 10/1/24; initial filing date is 6/1/25
    - 500-2,499: data collection begins 4/1/25; initial filing date is 6/1/26
    - 100-499: data collection begins 1/1/26; initial filing date is 6/1/27

- **ELFA advocacy success.** Since the passage of Dodd-Frank in 2010, ELFA has worked with the CFPB to achieve less burdensome compliance rules impacting its members:
    - The statute uses a relatively easy definition of small business as one with revenues under $5 million, rather than a size test that would vary industry by industry and might include number employees and revenue.
    - Reporting is restricted to small business customers only, a provision not specified in the initial proposal.
    - Implementation will be staggered so the largest institutions will report first and reporting for smaller ones will be delayed.
    - The number of covered originations requiring an institution to report to the CFPB was increased from 25 in the proposed rule to 100 per year in the final rule.
    - Institutions can rely on information provided by the applicant, rather than having to verify accuracy.
    - There is no longer a requirement to provide 1071 information to the public upon request.
    - There is no requirement to infer the ethnicity of certain applicants, as in the original proposal.

- **Pressure points.** Financial institutions should be aware of some key areas that may create compliance weak points. These include not reporting all covered transactions and having "too many" applicants that decline to provide their demographic data. This could be interpreted that the institution is discouraging applicants from providing demographic information, an issue the CFPB has highlighted as an examination priority. Other potential compliance weaknesses are lack of formal application procedures; failure to clearly document reasons for pricing decisions; high underwriting and pricing exception rates; and lack of fair lending testing and monitoring. Also of note is that the CFPB has created a resource center where institutions may submit questions, but users should be aware of the likelihood that queries will not be anonymous.

- **Data collection.** There are about 81 data fields for each covered transaction, although not all fields will need to be filled in. Companies already collect some of this data, but that data will need to be formatted to the CFPB's specifications. Maintaining procedures is recommended for data collection, as is making sure that these procedures can stand regulator and litigation scrutiny should that situation arise. While verification of applicant information is not required of financial institutions, if the institution does verify information such as annual revenue utilizing tax returns, it must report the verified information to the CFPB. Certain previously collected applicant data, like business size, can be reused within a calendar year, and demographic data can be collected once every 36 months. The CFPB's filing instructions are available at https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/2024-guide/#3.

- **Process changes.** One important aspect of the final rules is that demographic information collected by loan officers needs to be firewalled off from the underwriters unless an institution deems that to be infeasible and provides appropriate notice to customers of that determination. To accommodate these changes, resources will need to be allocated for working with software providers, redefining organizational roles and responsibilities, and making changes in workflow, among others. It should be noted that this determination may not be sustainable for all institutions, especially larger institutions where loan officers may be in different buildings or cities than the underwriters and software solutions can keep demographic information separate from information necessary for underwriting.

ELFA will continue to be active in both the legislative and regulatory arenas on this matter and continue to provide information to help ELFA members get ready for the rule before their applicable compliance deadline arrives.

Learn More
A recording of the June 21 webinar and the webinar slides are available at https://www.elfaonline.org/events/elearning/web-seminars/section-1071-it-will-affect-your-operation

ELFA's Knowledge Hub has an Industry Topics page on Section 1071 of Dodd-Frank at https://www.elfaonline.org/industry-topics/section-1071-of-dodd-frank. Resources include:

- ELFA Legal Forum May 8 session recording, "1071 and What This Means for Your Company/Practice"
- CFPB executive summary link
- CFPB Small Entity Compliance Guide link

About ELFA
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 the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its 580 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks, as well as manufacturers and service providers. ELFA has been equipping business for success for more than 60 years. For more information, please visit www.elfaonline.org.

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