December 9, 2025

Submitted via regulations.gov

1071 Reconsideration NPRM
Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: ELFA Comments on Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) NPRM (Docket No. CFPB-2025-0040)

Dear Acting Director Russell Vought:

The Equipment Leasing & Finance Association (ELFA) appreciates the opportunity to submit comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Consumer Financial Protection Bureau (CFPB) on November 13, 2025, regarding Small Business Lending Under the Equal Credit Opportunity Act (Regulation B).

ELFA represents the $1.3 trillion equipment finance sector that plays a vital role in driving economic growth and innovation across the United States. Our diverse membership includes independent leasing and finance companies, captive leasing and finance companies, banks, financial services firms, brokers, investment banks, manufacturers, and service providers. Together, these companies support businesses of all sizes by financing the acquisition of essential equipment and software across virtually every industry.

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.

Summary

ELFA would like to express our appreciation to the CFPB and applaud the Bureau for prioritizing the issuance of a new proposed rulemaking under Section 1071. We believe this NPRM to be a step in the right direction in that it addresses a number of concerns that small businesses and small finance companies and financial institutions have expressed since it was part of the Dodd-Frank Act, enacted in 2010.

We also express our support for the Bureau's incremental approach which focuses on "core lending products, core providers and core data points" in a manner that reduces the initial regulatory burden. This approach will promote the purposes of 1071 by improving data quality as financial institutions are better able to implement the rule effectively while significantly reducing the costs of compliance, thereby promoting affordability of capital and access to credit for small businesses that ultimately incur the costs of the regulation that are passed on by financial institutions.

To further strengthen the final rule, we are recommending changes that are consistent with the NPRM's approach and allow the Bureau to commence the collection of data with an even narrower scope, ensuring quality and limiting disruption of credit flow, that will preserve small business credit access particularly in the equipment space while not losing sight of one of the most important objectives – serving the customers.

(1) Key NPRM Positive Changes:
   a. ensuring a **meaningful opt-out** for customers, and eliminating the concept that customer opt-outs are an indication of "discouragement";
   b. only requiring **data points** that were in expressed in the statute or are necessary to help meet statutory requirements;
   c. **defining "small business"** as entities with less than $1 million in annual revenue; and,
   d. providing clarity on the **new compliance implementation date**.

(2) Changes ELFA believes the Bureau should prioritize:
   a. provide a **vendor finance exemption** and/or allow post-intermediary data collection for equipment finance transactions;
   b. **exclude purchase money obligations (PMOs**), as defined under UCC Article 9; and,
   c. **increase the annual origination threshold** for coverage of the rule from 1,000 to 2,500 credit transactions.

NPRM Positive Changes:

Meaningful Opt-out for Customers

ELFA strongly supports the Bureau's adoption of language restoring a *true* customer opt-out, consistent with Section 1071's clear statement that applicants may refuse to provide requested information. The 2023 rule effectively nullified this right by requiring reporting even when customers declined to participate and further undermined the right to opt-out by expressing the presumption that customer opt-outs would be viewed as an indication of "discouragement" by the creditor. Returning to a system where borrowers can opt-out of both the questions and the reporting itself respects statutory intent, strengthens borrower trust, and improves data integrity.

ELFA also strongly supports the Bureau's corresponding updates to the anti-discouragement provisions. In particular, removing the express provision that low response rates may be an indicium of discouragement is necessary to ensure that customers have a meaningful right to opt-out. This approach also recognizes the reality that customers make individual choices about whether to opt-out and that response rates may vary significantly between transaction types and subpopulations due to factors completely independent from encouragement or discouragement of responses by the financial institution.

During SBREFA, ELFA and other stakeholders emphasized that mandatory reporting of opt-out applications would distort the dataset and create unnecessary burdens, especially for equipment finance providers and lenders in rural communities. Borrowers often hesitate to disclose sensitive information, and public reporting could make them easily identifiable in smaller markets. We also noted that many lenders do not collect several required data points in the normal course of business, increasing compliance challenges, and the risk of inaccurate submissions. A true opt-out addresses these concerns by limiting reporting to applications where customers willingly opt-in, producing a more reliable and consistent dataset.

Data Points

ELFA appreciates the CFPB's decision in the NPRM to re-orient the rule on the core data points explicitly identified in Section 1071. This represents a meaningful course correction from the 2023 rule, which expanded the statutorily-required 13 data points into an unwieldy list of 81 separate fields, without ever conducting the cost analysis needed to justify such a significant expansion. By returning to the statutory framework, the Bureau is taking an important step toward reducing unnecessary burden, improving clarity, and realigning the rule with Congress's original intent.

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We also support the Bureau's proposal to include only a limited number of additional data points needed to accurately facilitate the collection of the statutory items. This measured approach acknowledges both the operational realities of lenders and the need to ensure data quality without imposing disproportionate regulatory costs. Moreover, we agree that the development of Regulation C provides a precedent for this approach. That precedent shows that appropriately limited data collection remains useful and fit for its purpose, as it has served to protect consumers and achieved meaningful compliance with fair lending standards.

Small Business Definition

ELFA strongly supports defining "small business" as any entity with less than $1 million in gross annual revenue. This clear, revenue-based threshold aligns with congressional intent, captures the vast majority of U.S., minority-owned and women-owned businesses, and provides an objective, verifiable standard. It also focuses Section 1071 reporting on the businesses most likely to face discrimination in credit markets, avoiding the inclusion of mid-sized enterprises with sophisticated operations and ample credit access.

A revenue-based definition further simplifies compliance by eliminating the complexity of industry-specific size standards, which vary widely across sectors and can create confusion for lenders operating across multiple industries. Adopting this approach ensures a practical, targeted, and reliable framework for collecting meaningful Section 1071 data.

A further refinement of the small business definition could provide that the $1 million gross annual revenue threshold should include revenue of affiliates by default, while retaining the ability to rely on self-reported data from applicants. Under the 2023 rule, creditors had the option of asking applicants to include the gross annual revenue of affiliates but were not required to do so. The Bureau did this in recognition of the fact that, frequently, business loan applications may be made by a newly formed subsidiary of a much larger corporate enterprise. Instances like these do not implicate the rationale of the 1071 rule, and the Bureau recognized that they could be excluded from reporting. However, this was presented as optional for creditors. Including affiliates' revenue by default would significantly improve the uniform application of this definition, as all applicants would be asked to base their self-reported business size on the same definition—gross annual revenue, including that of affiliates. By retaining self-reporting, this is achieved without increasing the regulatory burden.

New Compliance Implementation Date

We appreciate the Bureau's decision in the NPRM to establish a January 1, 2028 compliance implementation date, which provides financial institutions with the necessary time to adjust systems, develop new processes, and ensure accurate and reliable data collection. This extended timeline reflects the Bureau's recognition of the significant operational changes required under Section 1071 and supports more orderly and effective implementation across the industry.

NPRM Changes Suggested by ELFA:

Include a Vendor Finance Exemption -- Or Allow Post-Intermediary Data Collection

Vendor finance arrangements represent a significant portion of equipment finance transactions and create unique compliance challenges that the NPRM currently does not address adequately.

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The Vendor Finance Process: Modern equipment finance has evolved far beyond traditional bank lending. Today, a typical transaction follows this pattern:

- Business customer visits vendor/dealer.
- Dealer collects credit application and submits to finance company/companies.
  - Dealers typically work with multiple financing companies, each with different credit appetites or equipment specialties.
- Each finance company makes credit decision, and when it comes to equipment lending, the credit decision is primarily focused on equipment value rather than the borrower's characteristics.
- Dealer communicates decision to customer, but in many cases deals with the customer's procurement staff and may not have detailed information about the business owner, including awareness of demographic information.
- If approved, customer completes transaction, often without ever leaving the dealership.

In this process and given the way this NPRM is currently written, the finance companies/entities subject to the rule have limited control over data collected and no practical opportunity to collect demographic data directly, as the dealer serves as intermediary and may work with dozens of different finance companies. Within this process, compliance with data reporting requirements will involve significant—and negative—process changes resulting in worse customer experiences, increased costs, decreased competition in credit markets and, ultimately, less affordable capital for customers.

To ensure that the finance company can collect data during the application process, the customer could be *required* to apply through the finance company directly and not through the dealer for the sole purpose of providing 1071 data. Because dozens of finance companies may seek applications for a single transaction, this dramatically increases the customer's burden in each transaction and, inevitably, will result in customers completing fewer applications, reducing competition for the customer's business and likely increasing customer costs.

Alternatively, the dealer could be permitted to collect the data on behalf of multiple creditors. However, this would require training dealer personnel on data collection requirements that may vary significantly amongst the finance companies. Dealer personnel generally will not have experience collecting this type of data, and training those dealers is especially difficult when the rule is initially rolled out, as each financial institution that is responsible for training those dealers is also seeking to initially comply with the rule. This significantly increases regulatory burdens on both dealers and financial institutions and is also likely to result in decreased data quality. Additionally, this creates a situation where customer application data is reported by multiple sources, making the data duplicative and without a streamlined model on how to track and identify the true outcome of the application.

In 2023 the Bureau previously acknowledged that situations involving simultaneous applications to multiple financial institutions could "generate duplicative compliance costs for financial institutions and potentially detract from the quality of reported data, increasing the risk that certain applications are reported multiple times with potential inconsistencies." But the prior proposal failed to adequately address these issues, which the Bureau can now correct.

Proposed Solutions: ELFA advocates for a complete vendor finance exemption as the most practical solution. Vendor financed transactions typically involve minimal discrimination risk because credit decisions focus heavily on equipment value, rather than borrower characteristics. This solution follows the Bureau's stated intent to focus on "core lending products" and "core lenders" before expanding the scope to "niche or specialty lending products." This approach is particularly suitable for vendor finance transactions, as motor vehicle dealers operate under a similar financing model and are already excluded from the rule. The Bureau has acknowledged this may result in transactions not being reported even in some circumstances when multiple creditors are involved in the transactions, particularly in indirect financing models.

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If the Bureau declines to grant a full exemption for financing obtained through an equipment dealer or vendor, ELFA recommends two alternative solutions. The first would allow demographic data collection to occur at the first contact between the financial institution and the customer, which generally occurs after the credit decision and working with intermediary, but prior to the customer's execution of the contract. This approach would preserve the efficiency of the vendor finance process, avoid disruptions to established dealer–customer relationships, and eliminate the practical challenges of collecting data by the dealer/vendor at the point of sale. It would also enhance data integrity by removing the time pressures that often lead to incomplete or inaccurate information.

The second solution would involve creating unique customer identifiers within loan applications and providing clear guidance on how vendor/dealers and finance companies should collectively handle reporting using these identifiers. This approach would ensure accurate tracking of applications while maintaining consistency and reliability in the reported data, without imposing undue operational burdens on lenders or dealers.

Exclude Purchase Money Obligations Under UCC Article 9

The CFPB wisely exempted true leases under UCC Article 2A from Section 1071 reporting because, as the Bureau recognized, leases are not loans. In this rulemaking, the CFPB also created a new exemption for merchant cash advances (MCA), acknowledging that certain non-traditional financing structures do not function like conventional credit. The same reasoning that supports exemptions for true leases, MCAs, factoring, and trade credit should likewise apply to purchase money obligations (PMOs) governed by UCC Article 9, which similarly operate through secured transactions rather than pure extensions of credit. Extending parity to PMOs would ensure consistent regulatory treatment across comparable forms of financing and align the rule with the underlying economic realities of these products.

PMOs are fundamentally different from traditional lending products and general-purpose credit in several critical ways:

- **Single-Asset Focus**: PMOs finance specific equipment, not general business purposes, and the purchase-money lender has a priority security interest in the equipment being financed under UCC section 9-324(a).
- **Non-Recourse Nature and Streamlined Underwriting**: Lenders typically look primarily to equipment value, not borrower characteristics because of the priority security interest provided to PMOs under the UCC.
- **Point-of-Sale Transactions**: As described in detail above, PMOs are often arranged during equipment purchases through the equipment dealer or vendor, not through traditional relationship lending channels.

These structural differences make PMOs virtually impossible as subjects of data collection and reporting. When a construction company purchases a $50,000 excavator through vendor-facilitated financing, the lender often never meets the borrower, and the equipment's value and resale potential is a significant factor in credit decisioning.

Including PMOs would inflate data collection volumes dramatically while providing minimal insight into credit discrimination. Sweeping these transactions into Section 1071 reporting would overwhelm the system with data that offers little analytical value for the Bureau's mission.

Excluding PMOs under the current rule would serve the Bureau's stated purpose of focusing on "core lending products" and "core lenders" without undermining the quality of data collected.

Additionally, we would like to note increasing congressional support for equipment finance exemptions, with bipartisan recognition that these transactions warrant different treatment than traditional small business loans.

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Increase Annual Origination Threshold

ELFA urges the Bureau to consider increasing the annual origination threshold for Section 1071 reporting from 1,000 to 2,500 transactions. Many small-ticket lenders in equipment finance and related industries originate a high volume of lower-dollar transactions consisting of products that range from computer equipment, copiers, and printers to restaurant franchise assets. These small ticket loans typically fall under $250,000. The current 1,000-transaction threshold does not reflect the operational realities of these lenders, for whom high-volume, low-dollar activity is standard.

Raising the threshold to 2,500 would better reflect the nature of small-ticket lending while maintaining the rule's focus on capturing meaningful data about credit access for truly small businesses. Many of these smaller-dollar transactions are essential to business operations and growth, yet the administrative burden of tracking each loan under the current threshold can be disproportionately high relative to the value of the information collected. By adjusting the threshold, the Bureau can reduce unnecessary regulatory burden while still achieving the statutes' goal of monitoring lending practices to small businesses.

Such an adjustment also supports more accurate and efficient data collection. Lenders that primarily handle smaller transactions would be able to concentrate resources on reporting meaningful applications and ensuring data integrity, rather than devoting disproportionate effort to high-volume, low-value loans that provide limited insight into discrimination risks. Increasing the origination threshold to 2,500 strikes a practical balance between regulatory compliance and operational feasibility for small-ticket lenders, while preserving the intent and usefulness of Section 1071 reporting.

Conclusion

Once again, ELFA commends the Bureau for its efforts to address concerns with the previous Section 1071 rule through the new NPRM and appreciates the opportunity to provide comments. We value the CFPB's consideration of our input and look forward to continuing to work collaboratively on this important initiative. For any questions or further discussion, please contact Allyson Gale, Director of Federal Government Relations, at agale@elfaonline.org.

Sincerely,

Leigh Lytle

Leigh Lytle
President & CEO
Equipment Leasing & Finance Association

1625 Eye St NW, Suite 850, Washington, DC 20006 | 202.238.3400 elfaonline.org