

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RISE ECONOMY, NATIONAL
COMMUNITY REINVESTMENT
COALITION, MAIN STREET
ALLIANCE, and RESHONDA
YOUNG,

Plaintiffs,

v.

RUSSELL VOUGHT, Acting Director,
Consumer Financial Protection Bureau,
In His Official Capacity, and
CONSUMER FINANCIAL
PROTECTION
BUREAU,

Defendants.

Case No: 1:25-cv-02374-DLF

**PROPOSED BRIEF OF THE RESPONSIBLE BUSINESS LENDING
COALITION, CAMEO NETWORK, ALLIES FOR COMMUNITY
BUSINESS, AND SCALE LINK AS AMICI CURIAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Stephen F. Hayes*
Timothy Lambert*
Soohyun Choi
RELMAN COLFAX PLLC
1225 19th St. NW, Suite 600
Washington, D.C. 20036
(202) 728-1888
shayes@relmanlaw.com

tlambert@relmanlaw.com
schoi@relmanlaw.com

Counsel for Amici Curiae
**admitted pro hac vice*

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IDENTITY AND INTERESTS OF AMICI CURIAE

Amicus curiae the Responsible Business Lending Coalition (RBLC) is a network of nonprofit and for-profit lenders, Community Development Financial Institutions (CDFIs), investors, and small business advocates who share a commitment to innovation in small business lending as well as concerns about the rise of irresponsible small business lending practices. RBLC’s members include several “covered financial institutions” required to collect and submit small business data under the Final Rule. RBLC is an unincorporated entity that does not issue stock. The mission of RBLC is to drive responsible practices in the small business lending sector.

Amicus curiae the California Association for Microenterprise Opportunity (CAMEO Network) is a California nonprofit and a network of nonprofit lenders and small business coaching organizations, CDFIs, and small business advocates. Annually, its members serve about 200,000 very small businesses with training, business and credit assistance, and loans. These firms—largely start-ups with less than five employees—support or create more than 300,000 new jobs and generate a total of \$15 billion in economic activity. CAMEO Network does not have a parent corporation and does not issue stock. CAMEO Network’s members include “covered financial institutions” required to collect and report small business lending data under the Final Rule.

Amicus curiae Allies for Community Business (A4CB) is an Illinois nonprofit corporation and a certified CDFI. It does not have a parent corporation and does not issue stock. A4CB provides loans from between \$500 to \$100,000 to businesses and entrepreneurs in Illinois and Indiana, as well as grants, coaching, and other services. A4CB is a “covered financial institution” required to collect and report small business lending data under the Final Rule.

Amicus curiae Great Rivers Community Trust, d/b/a Scale Link (Scale Link) is a Missouri nonprofit corporation and a certified CDFI. It does not have a parent corporation and does not issue stock. Scale Link sources and bundles loans from CDFIs and pools them for banks to purchase, helping to bridge the funding gap for small businesses. The availability of this secondary market helps CDFIs grow their impact through reduced capital expenses and unrestricted funding, and it helps large banks by creating a vehicle through which they can serve and empower economically distressed communities. Scale Link pays the majority of the proceeds to CDFIs, allowing CDFIs to revolve capital more quickly and originate additional small business loans.

Amici have an interest in the creation and maintenance of responsible credit markets for small businesses. They seek to enhance healthy competition in those markets, identify and serve small businesses’ credit needs, and ensure that small business lenders compete on fair terms. Amici that are “covered financial

institutions” who will be subject to the 1071 reporting requirements have an interest in the manner in which Dodd-Frank Section 1071 will be implemented and enforced, and in achieving a measure of certainty in the timing and terms of compliance requirements.¹

SUMMARY OF ARGUMENT

In 2010, Congress addressed the stark lack of transparency in small business credit markets by enacting Section 1071 of the Dodd-Frank Act, which requires lenders to collect and report certain information about their small business lending with the goal of “facilitat[ing] enforcement of fair lending laws and enabl[ing] communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”² On March 30, 2023, the Consumer Financial Protection Bureau (CFPB or Bureau) promulgated a Final Rule implementing that requirement (Final Rule or Rule).³

¹ On September 3, 2025, Counsel for amici provided notice of intent to file this Amicus Brief to all counsel of record. Pursuant to Federal Rules of Appellate Procedure 29(a)(2) and 29(a)(4)(D), amici state that Plaintiffs consent to and Defendants take no position on the filing of this brief.

² 15 U.S.C. § 1691c-2(a).

³ Small Business Lending Under the Equal Credit Opportunity Act Final Rule (“Final Rule”), 88 Fed. Reg. 35150 (May 31, 2023); 12 C.F.R. §§ 1002.101–1002.114 (2024).

Amici support the immediate implementation of the Final Rule to help creditors identify and serve unmet needs, launch a pro-competition and pro-innovation transparency framework, and discourage predatory lending practices. As lenders subject to the Final Rule and others who will rely on the market transparency the Rule will provide, amici believe that the time has long passed—15 years after Congress mandated this reporting regime—for the CFPB to implement this statutory requirement. Instead, the CFPB inflicts more unjustified and self-imposed delay. The 2025 Interim Final Rule (2025 IFR) adds an additional year to the compliance deadlines. But that year would only be the first of several additional delays. Among other steps, the CFPB would likely be required to comply with various time-consuming actions imposed by the Small Business Regulatory Enforcement Fairness Act (SBREFA), develop and propose a new rule, provide time for public comment, finalize a rule that appropriately accounts for those comments, establish new compliance dates for industry to rehaul their systems before collecting data, and allow at least a year of data collection before any data is made public. The CFPB's actions threaten years more delay before data will be available.

In the meantime, there continues to be no comprehensive information available that shows the types and terms of credit that small businesses seek or receive—the very problem Congress tried to solve by enacting Section 1071 years

ago. This lack of information makes it difficult to understand how well the small business financing market is working, and whether small businesses' credit needs are being adequately and appropriately met. In light of that gap, Congress mandated that the CFPB collect and publish this information. The CFPB's Final Rule would finally provide data necessary for lenders and other stakeholders "to identify business and community development needs and opportunities" and bring products responsive to those opportunities and needs to market.

As lenders and other stakeholders that share a commitment to ensuring that responsible credit products are available to small businesses, the information made available by the Final Rule would enhance amici's ability to identify unmet needs in the small business credit market and increase the supply of responsible capital accordingly. It would also encourage the development of higher-quality small business financing offerings by providing transparency for how the market is working. The data provided under the Final Rule would allow for the identification of loan product types and terms that effectively and responsibly serve the needs of small businesses. These insights would spur innovation by encouraging the adoption of, and investment into, products and practices that the data reveal are effective in serving a variety of market segments. The data would benefit creditors, secondary markets, and investors alike.

Market transparency would also expose and discourage anticompetitive lending practices. Actors in some corners of small business financing markets are not transparent with respect to pricing and terms, do not practice responsible underwriting, and offer products with excessive pricing and fees that can trap small businesses in cycles of debt. In recent years, there has been an increase in high-cost, short-term, and often less-transparent products for small businesses, driven in part by overall constriction in the credit market.⁴ Transparency is critical for bringing such practices to light and ensuring that they do not crowd out responsible, effective small business lending products and practices.

Amici lenders are ready to collect and report data as required by the Final Rule so that they and the market generally can benefit from the data, rather than wait years more for new Bureau leadership to consider, propose, finalize, and implement any changes it may wish to make to the Final Rule. Systems were in place to commence data collection in July 2025 as required by the Final Rule.

⁴ See Cmty. Advisory Council & Bd. of Governors, *Record of Meeting*, Federal Reserve Board of Governors, at 7 (Oct. 5, 2018), <https://www.federalreserve.gov/aboutthefed/files/cac-20181005.pdf> (“The Council notes a growing trend among small business owners getting into trouble with expensive online small business loans, such as merchant cash advances (MCA). Oftentimes, the pricing and structure of these loans is deliberately obscured, and small business owners take on debt burdens and fees that they are not able to sustain.”); see also generally, e.g., Tim St. Louis et al., Opportunity Fund, *Unaffordable and Unsustainable: The New Business Lending on Main Street*, at 3–4, 5–7 (May 2016), *Unaffordable-and-Unsustainable-The-New-Business-Lending-on-Main-Street_Opportunity-Fund-Research-Report_May-2016.pdf*.

Commencing data collection and reporting under the Final Rule would not hinder efforts by the CFPB to commence a future rulemaking to consider adjustments to the Rule, if it deemed changes to be appropriate. Indeed, the history of the parallel federal mortgage data rule demonstrates a commitment to ongoing collection and reporting of data during periods when new agency leadership proposed and finalized changes to existing data requirements. To do otherwise, by withholding data collection and reporting until current CFPB leadership enacts a new rule, would not slow Final Rule implementation by approximately a year, as the 2025 IFR suggests, but push data collection and reporting out an unknown span of years for a reporting regime mandated by Congress 15 years ago and for which a lawful Final Rule is currently in place.

This Court should grant Plaintiffs' motion for partial summary judgment.

ARGUMENT

I. The Final Rule Implements a Pro-Competition Transparency Regime That Will Help Creditors Identify Unmet Needs, Increase Innovation, and Discourage Predatory Practices.

Although small businesses are a critical part of the U.S. economy, it is still true—as it was when Congress passed the Dodd-Frank Act 15 years ago—that it is not possible with current data to confidently answer even basic questions regarding

the state of small business lending.⁵ Currently, there is no comprehensive source of data that shows what types and amounts of credit small businesses apply for; the pricing or other terms of that credit; whether prepayment penalties or other conditions are imposed; and the outcomes of credit applications.⁶ This lack of reliable data has undercut competition in the market and hindered lenders' ability to identify business and community development needs and opportunities.

The CFPB concluded that the “final rule will help to sharpen competition in credit supply by creating greater transparency around small business lending,” because, in part, “data collected under the final rule can help creditors identify potentially profitable opportunities to extend credit.”⁷ In particular, the Final Rule will: (1) help lenders identify and design programs to meet unmet credit needs; (2) increase competition and encourage innovation and the replication of lending models that are successful in reaching borrowers across segments of the small

⁵ Final Rule, 88 Fed. Reg. at 35156–57; Anthony A. Cillufo et al., *Section 1071: Small Business Lending Data Collection and Reporting*, Congressional Research Service, at 1 (Oct. 18, 2023), <https://crsreports.congress.gov/product/pdf/R/R47788/2> (“CRS Small Business Lending Report”).

⁶ As discussed in the Preamble to the Final Rule, the existing primary sources of information on lending suffer from serious deficiencies. *See* Final Rule, 88 Fed. Reg. at 35156–58. For example, the FFIEC and NCUA Call Reports and reporting under the Community Reinvestment Act do not include lending by non-depository financial institutions, which the CFPB estimates represent 37 percent (and growing) of the small business financing market. *Id.* at 35157.

⁷ Final Rule, 88 Fed. Reg. at 35150, 35153.

business market; and (3) discourage non-competitive and unscrupulous lending practices.

A. The Final Rule Will Help Lenders Identify Unmet Credit Needs.

For amici, as CDFIs, community lenders, and others that share a commitment to ensuring that responsible credit products are available to small businesses, information about unmet credit needs and the variety of credit products available in the market is critical. Small businesses are a cornerstone of the United States economy. They account for more than 99.9% of all U.S. businesses, employing approximately 46% of the American workforce.⁸ Financing is vital for enabling small businesses to form and grow.⁹ Many small businesses rely on loans to purchase inventory, cover cash flow shortages, and expand operations, among other things.¹⁰ Unfortunately, responsible credit is not always easy for small businesses to obtain.¹¹

⁸ *2022 Small Business Profile* Office of Advocacy, U.S. Small Business Administration (2022), <https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-US.pdf>.

⁹ Final Rule, 88 Fed. Reg. at 35158.

¹⁰ CRS Small Business Lending Report at 1.

¹¹ See *2016 Small Business Credit Survey, Report on Startup Firms*, Federal Reserve Bank of New York, at iv, 6, 10 (Aug. 2017), <https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-StartupFirms-2016.pdf>; *2024 Report on Employer Firms: Findings from the 2023 Small Business Credit Survey*, Federal Reserve Banks of Atlanta et al., at 4 (Mar. 7, 2024), <https://www.fedsmallbusiness.org/reports/survey/2024/2024-report-on-employer-firms> (29% of firms reported credit availability as a challenge in the prior 12 months); *2023 Report on Nonemployer Firms: Findings from the*

CDFIs, in particular, play a key role in meeting small businesses' credit needs, and the information to be made available by the Final Rule would magnify their ability to do so. CDFIs are mission-driven financial institutions with market-based approaches to supporting economically disadvantaged communities. CDFIs are certified by the Community Development Financial Institutions Fund (CDFI Fund) and, once certified, these lenders are eligible to participate in CDFI Fund programs that allow them to inject capital into areas that lack access to financing and help generate economic growth and opportunity in some of our Nation's most distressed communities.¹² A Certified CDFI must identify a "Target Market" by serving one or more "Investment Areas" and/or "Targeted Populations." To demonstrate that a geographic area is an appropriate Target Market, a CDFI must determine that there are significant unmet financial needs in the area or that individuals in the area lack adequate access to financial products or services.¹³

The collection and reporting of 1071 data as provided for in the Final Rule would significantly enhance financial institutions' ability to determine where there

2022 Small Business Credit Survey, Federal Reserve Banks of Atlanta et al., at 7 (detailing gaps between applications for financing and full approvals), 16 (reporting credit availability as a challenge) (May 31, 2023), <https://www.fedsmallbusiness.org/reports/survey/2023/2023-report-on-nonemployer-firms>.

¹² See Cmty. Dev. Fin. Insts. Fund, *What Does the CDFI Fund Do?* <https://www.cdfifund.gov/> (last visited Sept. 10, 2025).

¹³ 12 C.F.R. §§ 1805.104, 1805.201(b)(3) (2025).

are unmet needs in the small business credit market, thereby informing Target Market decisions and increasing the effectiveness of their programs, including by informing marketing decisions and product design. Without knowledge of the demand for small business credit, it is difficult to determine whether the supply of credit to small business market segments is adequate and where competitive market opportunities exist. As a recent Congressional Research Service report put it, “[w]ithout reliable data, the ability to evaluate the performance of various small business lending markets—specifically whether (1) a small business credit shortage exists, (2) pricing for loans to small businesses is significantly above the lending risks and funding costs, or (3) fair lending risks are present—is extremely challenging.”¹⁴

The types of information to be collected and reported under the Final Rule—including data points revealing the credit type, loan pricing and terms, credit purpose, and amounts applied for and originated¹⁵—would allow lenders to identify where there are gaps and unmet needs in lending markets. Equipped with this knowledge, financing providers and community development organizations can increase the supply of capital and liquidity where needed, including through

¹⁴ CRS Small Business Lending Report at 23.

¹⁵ See 12 C.F.R. § 1002.107(a)(5)–(8) (2025).

secondary market vehicles like the one provided by amicus Scale Link, which bundles CDFI loans for purchase by mainstream banks on the resale market.

The types of pricing information included in the Final Rule, in particular, would provide important context for other data called for by the statute and the Final Rule. For example, as described below, predatory practices and high costs have flourished in the small business market. Including pricing information ensures that the data reveals whether lenders are responsibly serving small businesses, rather than taking advantage of them. Similarly, while information reported under the Final Rule that indicates when a loan is approved by the lender but not accepted by the applicant provides some value on its own, pricing information would help show whether the loan was particularly costly, providing insight into why the applicant might have turned down the loan and helping determine whether the applicant's credit needs could have been met with a less costly product.

Like pricing data, each data point provides key information for identifying unmet credit needs. Census tract information, for example, can be used to determine geographies where small business credit applicants are located or where credit will be used, allowing a market-level analysis of which segments of the market might be underserved or unable to access credit in the amounts needed.¹⁶ Lenders would be able to identify geographic markets with high levels of

¹⁶ See 12 C.F.R. § 1002.107(a)(13) (2025).

applications, allowing them to direct resources to those areas. Lenders could also use the data to identify areas with low levels of approvals or a significant volume of applications that are approved for less than the amount sought by small business applicants for credit. This information would help lenders identify markets where there is a gap in credit availability, enabling them to offer products designed to meet those unmet needs and close the financing gap for small businesses.

The importance of data disclosure in the financial services context, and the benefits that Section 1071 data will provide, are illustrated by the role that Home Mortgage Disclosure Act (HMDA) data have played in the mortgage market.

HMDA data are used for purposes similar to those of Section 1071, including to help determine whether lenders are meeting the needs of their communities.

HMDA data have enabled lenders, including CDFIs, to understand their own market gaps and opportunities and adjust their lending practices accordingly.

HMDA data also have helped stakeholders understand the effects that various housing and mortgage programs and policies have had on mortgage lending.¹⁷

HMDA data, for example, have been used “to identify at-risk neighborhoods and

¹⁷ *Report on the Home Mortgage Disclosure Act Rule Voluntary Review*, CFPB, at 110–11 (Mar. 2023), https://files.consumerfinance.gov/f/documents/cfpb_hmda-voluntary-review_2023-03.pdf; National Community Reinvestment Coalition, *Fair Lending Advocates Applaud CFPB’s Plan To Shine A Light On Small Business Lending Through Section 1071 Loan Data Collection* (Sept. 1, 2021), [Error! Hyperlink reference not valid.https://ncrc.org/fair-lending-advocates-applaud-cfpbs-plan-to-shine-a-light-on-small-business-lending-through-section-1071-loan-data-collection/](https://ncrc.org/fair-lending-advocates-applaud-cfpbs-plan-to-shine-a-light-on-small-business-lending-through-section-1071-loan-data-collection/).

to develop foreclosure relief and homeownership stabilization programs.”¹⁸ The Final Rule would deliver similar results in the small business lending market.

B. The Final Rule Encourages Competition and Innovation.

The information made available under the Final Rule would empower lenders and the broader small business ecosystem, including participants in secondary markets, to better meet business owners’ needs. Pricing transparency would increase competition in the overall market, driving down the cost of credit for small businesses and incentivizing providers to offer attractive terms and remove unnecessary conditions that can harm small businesses. For example, the data would reveal disproportionately high interest rates or other costs, which would allow lenders to identify uncompetitive markets and shape alternative offerings accordingly, increasing credit availability and bringing down costs to small businesses.

The transparency created by the Final Rule would also spur innovation by encouraging the adoption of, and investment in, the products and practices that the data reveal are effective in reaching underserved market segments. Data indicating that financial institutions are doing a poor job serving small businesses would spur lenders to improve their business models so that they reach borrowers effectively

¹⁸ Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128, 66130 (Oct. 28, 2015).

and profitably. In this way, the Final Rule would harness market forces to drive the development of better, more inclusive small business financing.

Responsible small business lending requires innovation and competition. Indeed, amicus lenders offer a range of small loans to meet the needs of businesses of different sizes and maturity, for example, low-interest credit specifically for food and beverage businesses, housing providers, and nonprofits. These products are tailored to meet the needs of the entities they serve. Reporting under the Final Rule about these and similar products would help demonstrate their effectiveness, drive innovative changes, and encourage other financial institutions and investors to replicate and expand on these opportunities. At the same time, data made available by the Final Rule would allow amici and others to refine and expand their own product offerings.

Other stakeholders in the small business lending market, like amicus Scale Link, likewise would benefit from the data reported under the Final Rule. Scale Link's business model depends on being able to identify, purchase, and sell small loans to larger financial institutions, injecting capital into CDFIs and helping larger institutions achieve their community development goals. Standardized data about small business lending would help Scale Link identify loans it can purchase and possible customers for resale. Currently, the data that are available (for example, relating to Small Business Administration 7(a) loans) help to inform secondary

market decisions for those loans, but 7(a) loans are only a small portion of the small business lending market and, as noted, data availability is limited. Scale Link’s products and services introduce liquidity and flexibility into the small business lending landscape, especially for smaller CDFIs. A robust secondary market, in turn, helps CDFIs who originate loans to increase their available capital and, thereby, their lending activity.¹⁹ Ultimately, transparency about small business lending would allow other institutions—not only institutions covered by the Final Rule—to improve the efficiency of small business lending markets, increasing competition and the supply of capital.

C. Market Transparency Discourages Predatory Practices.

In the preamble to the Final Rule, the CFPB rightly emphasized the potential of the Rule to shed light on and discourage potential predatory practices, high costs, and lack of transparency in certain small business lending markets.²⁰

¹⁹ Surekha Carpenter et al., *2023 CDFI Survey Key Findings*, FedCommunities (Aug. 30, 2023), <https://fedcommunities.org/data/2023-cdfi-survey-key-findings/> (“The most frequently reported challenges [among CDFIs] around lending capital overall were cost of capital, insufficient equity capital, and insufficient debt capital. . . . [I]nsufficient capital was a critical barrier across [CDFI types]. One emerging strategy some CDFIs are taking to increase access to capital is selling loans on secondary markets . . . allow[ing] the CDFI to free up its balance sheet for additional lending.”).

²⁰ Final Rule, 88 Fed. Reg. at 35222, 35239, 35464.

Unfortunately, the dearth of reliable data on small business lending has allowed these types of products and practices to flourish.

The rise of irresponsible small business lending practices has led observers to draw comparisons to the subprime mortgage sector in the leadup to the 2008 financial crisis.²¹ These practices include, for example: (1) obfuscation of very high financing costs; (2) misaligned incentives between lenders and borrowers; (3) double-charging borrowers when loans are renewed by “double dipping”; (4) mismatches between financial products’ purported use and actual use behavior encouraged by the provider; (5) hidden prepayment charges; (6) misaligned broker incentives steering small businesses into expensive products; (7) “stacking” of excessive debt; and (8) a lack of legal protections in collections.²²

Recognizing these risks, amicus RBLC created the Small Business Borrowers’ Bill of Rights, the first cross-sector consensus on rights that small business owners deserve and standards of practice that financing providers should abide by to uphold those rights. Over 90 small business lenders, brokers, lead

²¹ Laura Shin, *Why Online Small Business Loans Are Being Compared to Subprime Mortgages*, Forbes (Apr. 9, 2016), <https://www.forbes.com/sites/laurashin/2015/12/10/why-online-small-business-loans-are-being-compared-to-subprime-mortgages/>.

²² RBLC, Comment Letter on Section 1071 and the Small Business Lending Market (Docket No. CFPB-2017-0011) (Sept. 14, 2017), <https://www.regulations.gov/comment/CFPB-2017-0011-0553>.

generators, and advocacy organizations have endorsed those standards.²³ Without market transparency to facilitate competition and informed decision-making, unscrupulous lending practices will proliferate.

Pricing information like interest rates, origination charges, and other fees and charges—all included in the Final Rule—is critical to help detect and discourage potential predatory practices for multiple reasons. First, without pricing data, Section 1071 might create a perverse incentive for lenders to increase their provision of credit to underserved communities using products that charge high rates or include other potentially extractive practices. Without detailed pricing information, the nature of these products would be masked in the data.

Second, the collection of pricing data is a necessary response to the evolution of the small business financing market since Section 1071 was enacted 15 years ago. In the 2000s, before the crisis that led to the Dodd-Frank Act, small business credit pricing was fairly homogenous.²⁴ Community banks were the largest provider of small business credit, and most small business capital took the form of reasonably priced loans and lines of credit with APRs generally in the

²³ For more information, including the responsible lending standards found in the Small Business Borrowers' Bill of Rights and the full list of Signatories and Endorsers, visit www.borrowersbillofrights.org.

²⁴ RBLC, Comment Letter on Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection, at 4 (Jan. 6, 2022), <https://www.regulations.gov/comment/CFPB-2021-0015-1810>.

teens or lower. Now, prices in the small business financing market vary widely, in part resulting from a proliferation of newer high-cost, short-term, often less-transparent products. Research by Accion Opportunity Fund and the Woodstock Institute identified widespread use of financing with APRs reaching over 350%.²⁵ While variation in pricing data may have been less significant in the 2000s, it is significant today, and information about pricing is critical—in no small part to encourage the growth of lower-cost financing options in the market. As noted above, pricing transparency will increase competition in the market, driving down the cost of credit for small businesses and incentivizing providers to offer more attractive terms.

Faced with the realities of a complex market, the CFPB reasonably designed a Rule that effectuates the statute by providing transparency into that market while reducing unnecessary burdens. In our view, the regime is not unduly onerous. The data collection called for by the Final Rule appropriately reflects the fact that small business lending is varied and ensures data can be compared across loans, and it would result in the provision of critical information designed to implement Congress's statutory directive.

²⁵ See St. Louis, *supra* note 4, at 3; Woodstock Institute, *Analysis of Small Business Loan Terms* (July 2016), https://woodstockinst.org/wp-content/uploads/2016/07/Woodstock_Analysis_of_Online_SB_Loan_Terms.pdf.

II. Commencing Data Collection and Reporting Under the Final Rule Would Not Disrupt Defendants’ Plan to Propose Changes to the Rule.

In the nearly two and half years since the Final Rule was published, the industry has created systems and prepared staff to collect and report the data the Final Rule requires. The Bureau acknowledged the largest implementation cost associated with the rule for most institutions are one-time, initial costs,²⁶ which amici—like many other financial institutions—have now incurred. Technology providers have built the infrastructure lenders needed in accordance with all of the technical specifications of the Final Rule.²⁷ Compliance staff have been trained on the data to collect and report.²⁸ To speed compliance, in 2023 the CFPB published its Filing Instructions Guide containing all reporting field numbers and names, file specifications, examples, and automated validations for every data point in the Final Rule.²⁹ In 2023, the Bureau followed with a variety of other compliance

²⁶ See Final Rule, 88 Fed. Reg. at 35524.

²⁷ See, e.g., Wolters Kluwer, Small Business Wiz, <https://www.wolterskluwer.com/en/solutions/wiz/small-biz-wiz> (last visited Sept. 10, 2025) (technology solutions to meet the data collection, reporting, and analysis requirements of the Final Rule); N Contracts, 1071 Compliance Software for Small Business Lending, <https://www.ncontracts.com/products/1071-compliance-software> (last visited Sept. 10, 2025) (technology solution offering “direct transmittal” of Final Rule data to the CFPB).

²⁸ See, e.g., Am. Bankers Ass’n, Reg B 1071, <https://www.aba.com/training-events/online-training/reg-b-1071> (last visited Sept. 10, 2025) (course offering overview of data banks must collect under the Final Rule).

²⁹ CFPB, Filing Instructions Guides for the Small Business Lending Collected in 2024, <https://www.consumerfinance.gov/data-research/small-business->

guides, aids, and a “RegInquiries” function to ensure that industry established the infrastructure and procedures needed to commence collection and reporting of the Final Rule’s data.³⁰

Commencing data collection and reporting under the Final Rule would not prevent Defendants from proposing future changes to the Rule, if it deemed such changes appropriate. Looking to the example of the parallel HMDA mortgage data reporting regime upon which the Final Rule was largely fashioned, after initial collection of data began, subsequent administrations adjusted data requirements several times through notice and comments rules and established future implementation timelines for covered lenders to prepare for the changes while continuing to report the data required under the existing rules.³¹ Defendants have offered no principled reason the same should not be done here to allow entities to

[lending/filing-instructions-guide/2024-guide-archive-v1/](#) (last visited Sept. 10, 2025).

³⁰ CFPB, Small Business Lending Collection and Reporting Requirements, <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/> (last visited Sept. 10, 2025).

³¹ *See, e.g.*, Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128, 66312 (Oct. 28, 2015) (providing more than two years to implement changes while HMDA data continued to be reported under the prior rule); Home Mortgage Disclosure (Regulation C), 54 Fed. Reg. 51356, 51357 (Dec. 15, 1989) (providing one year to implement changes while HMDA data continued to be reported under the prior rule).

collect and report data under the Final Rule while the Bureau considers what, if any, changes it may propose.

III. Defendants’ Actions Would Result in an Indefinite Halt to the Final Rule Rather Than Only the One-Year Delay the 2025 IFR Announces.

Though the 2025 IFR purports to move the Final Rule’s compliance dates by approximately a year, within that period Defendants have committed—at most—to *propose*—changes to the Final Rule.³² Depending on the nature of the changes, before it proposes a new rule, the CFPB may first need to undertake a process required by the SBREFA,³³ which includes convening a panel of small entities, providing an Outline of Proposals Under Consideration and Alternatives Considered, and publishing a SBREFA report—a process for the Final Rule that occupied the better part of a year. After considering the feedback from a SBREFA report, the Bureau would propose a rule, receive comments on the proposal, and then finalize a notice that considers all of the comments that, judging from the interest in the Final Rule, could be numerous.³⁴ For the Final Rule, the period

³² See Defs.’ Status Report at 3, *Texas Bankers Ass’n v. CFPB*, No. 24-40705 (5th Cir. July 2, 2025), ECF No. 139 (2025 IFR extends Final Rule implementation dates by approximately one year “to provide time for the Bureau to consider and *propose* a new Section 1071 rule”) (emphasis added).

³³ See U.S. Small Business Administration Office of Advocacy, SBREFA Reference Library, <https://advocacy.sba.gov/resources/reference-library/sbrefa/> (last visited Sept. 10, 2025).

³⁴ Final Rule, 88 Fed. Reg. at 35173 (650 unique, detailed comment letters received).

between the proposed and final rule spanned an additional year and a half.³⁵

Afterward, any new rule would need to provide for an implementation period of perhaps a year or more so that entities could rehaul their compliance systems.³⁶

And the earliest that data could be made publicly available—a core goal of the 1071 statutory scheme—would, at best, be at least a full year after data collection has begun.³⁷

These estimates are based on work previously done by a fully staffed Bureau. Defendants have stated, however, that they plan to reduce the Bureau’s Office of Regulations staff from 56 to 10 staff.³⁸ That, combined with Defendants’ recently published regulatory agenda listing 23 rulemaking priorities *other* than the potential changes to the Final Rule—nearly twice as many as listed by the prior

³⁵ CFPB, Small business lending rulemaking, <https://www.consumerfinance.gov/1071-rule/> (last visited Sept. 10, 2025) (Final Rule rulemaking timeline).

³⁶ Final Rule, 88 Fed. Reg. at 35533 (implementation period of at least 16 months).

³⁷ Final Rule, 88 Fed. Reg. at 35152 (future data publication requires privacy assessment of the first full year of submitted data).

³⁸ Declaration of Mark Paoletta, CFPB Chief Legal Officer at 137, *Nat’l Treasury Emps. Union v. Vought*, 1:25-cv-00381 (D.D.C. Apr. 18, 2025), ECF No. 109 (declaration detailing Defendants’ planned reduction in force); *see also* Claire Williams, *CFPB Puts Forward Ambitious Agenda Despite Court Decision*, Am. Banker (Aug. 15, 2025), <https://www.americanbanker.com/news/cfpb-puts-forward-ambitious-agenda-despite-court-decision> (quoting an industry attorney remarking “Even if you have a full headcount, this would be an incredibly aggressive agency for a three-and-a-half year period of time, so trying to do it with a drastically reduced staff seems ambitious to say the least.”); *compare* Final Rule, 88 Fed. Reg. at 35150 (listing twelve attorneys who worked on the Final Rule).

administration with a full staff³⁹—could extend even further the actual timeline to finalize a new rule. These additional delays beyond the approximately one-year pause provided by the IFR will require subsequent IFRs or other regulatory actions to keep extending the Final Rule’s compliance dates until the Final Rule is eventually replaced by an amended rule. These best-case timelines do not contemplate potential legal challenges that may follow to changes the new rule might make.

Defendants mistakenly calculate the IFR’s benefits and costs based on the assumption that data collection and reporting will resume in approximately one year.⁴⁰ Realistically, however, it appears the CFPB does not intend to commence data collection and reporting under the Final Rule in a year. Instead, it appears the CFPB hopes to take years to propose, finalize, and implement changes to the Final Rule without lenders ever complying with the statutory regime required by Congress and implemented via a finalized Rule that was upheld by all courts to have reviewed it—a rule that now needs to be implemented.⁴¹

³⁹ See CFPB, Agency Rule List – Spring 2025, <https://tinyurl.com/5n7c9tcm> (last visited Sept. 10, 2025).

⁴⁰ See, e.g., 2025 IFR, 90 Fed. Reg. 25874, 25878 (June 18, 2025) (adjusting realization of implementation costs by “approximately one year into the future”).

⁴¹ *Tex. Bankers Ass’n v. CFPB*, No. 23-cv-144, 2024 WL 3939598, at *14 (S.D. Tex. Aug. 26, 2024) (rejecting APA and other challenges to the Final Rule); *Revenue Based Fin. Coal. v. Consumer Fin. Prot. Bureau*, No. 23-24882-CIV, 2025 WL 1312966, at *12 (S.D. Fla. Feb. 17, 2025) (same) (terminated due to litigation stay following Defendants’ rulemaking announcement).

CONCLUSION

For the foregoing reasons, amici curiae the Responsible Business Lending Coalition, CAMEO Network, Allies for Community Business, and Scale Link urge the Court to grant Plaintiffs' motion for partial summary judgment.

September 10, 2025

Respectfully submitted,

/s/ Stephen F. Hayes

Stephen F. Hayes*

Timothy Lambert*

Soohyun Choi

RELMAN COLFAX PLLC

1225 19th Street NW, Suite 600

Washington, D.C. 20036

Tel: (202) 728-1888

Fax: (202) 728-0848

shayes@relmanlaw.com

tlambert@relmanlaw.com

schoi@relmanlaw.com

Counsel for Amici Curiae

**admitted pro hac vice*

CORPORATE DISCLOSURE STATEMENT

Pursuant to LCvR 7(o)(5) and the Federal Rules of Appellant Procedure Rule 29(a)(4) and Rule 26.1, amici curiae certify that they have no outstanding shares or debt securities in the hands of the public, they have no parent companies, and no publicly held company has a 10% or greater ownership interest in any of the amici curiae.

/s/ Stephen F. Hayes

Stephen F. Hayes

Counsel for Amici Curiae

RULE 29(a)(4)(E) STATEMENT

Pursuant to LCvR 7(o)(5) and Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no party's counsel authored this brief in whole or in part, that no party or party's counsel contributed money intended to fund the preparation or submission of the brief, and that no person other than amici and their counsel contributed money intended to fund the preparation or submission of the brief.

/s/ Stephen F. Hayes
Stephen F. Hayes

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(B)(i) because it contains 5,632 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). This Proposed Brief of Amici Curiae is 25 pages. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365, 2022, version 2308 with 14-point Times New Roman Font.

/s/ Stephen F. Hayes

Stephen F. Hayes

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on September 10, 2025, via the CM/ECF system and served via CM/ECF on all Counsel of record.

/s/ Stephen F. Hayes

Stephen F. Hayes

Counsel for Amici Curiae