IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, Acting Director, Consumer Financial Protection Bureau, in his official capacity, et al., *Defendants*.	Case No. 1:25-cv-02374

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), Plaintiffs Rise Economy, Main Street Alliance, National Community Reinvestment Coalition, and ReShonda Young move the Court for summary judgment on Counts I-VII. Plaintiffs request that the Court grant judgment in their favor on those counts; declare unlawful the Final Rule "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates," 90 Fed. Reg. 47,514 (Oct. 2, 2025); the Interim Final Rule "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates," 90 Fed. Reg. 25,874 (June 18, 2025); and the Nonenforcement Policy announced in the April 30, 2025 Press Release; and vacate and set aside those agency actions.

As described in the accompanying Memorandum, Defendants' actions violate the Administrative Procedure Act in four ways: (a) Defendants have "unreasonably delayed" agency action, in violation of 5 U.S.C. § 706(1); (b) Defendants have unlawfully purported to relieve financial institutions of their obligation to compile, maintain, and submit data and Defendants'

own obligations to make the data publicly available, thereby acting contrary to law and in excess of statutory authority in violation of 5 U.S.C. § 706(2)(A) and (C); (c) Defendants' actions are arbitrary and capricious, violating 5 U.S.C. § 706(2)(A); and (d) the Defendants lacked good cause to forgo notice and comment before issuing the Press Release announcing the decision not to enforce the Lending Transparency Rule, thereby violating 5 U.S.C. §§ 553(b) and 706(2)(D).

Dated: October 29, 2025

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MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In 2010, Congress unambiguously ordered the Consumer Financial Protection Bureau ("CFPB" or "Bureau") to collect data from financial institutions on loans to women-owned, minority-owned, and small businesses, and make it available to any member of the public. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act"), Pub. L. No. 111-203, § 1071, 124 Stat. 1376, 2056 (2010) (codified at 15 U.S.C. § 1691c–2) ("Section 1071"). Fifteen years later, CFPB has never executed this mandate. Instead, at the direction of Defendant Russell Vought, the Bureau's current Acting Director, CFPB has unlawfully nullified Section 1071 by unreasonably delaying compliance and purporting to exempt lenders from their statutory requirements, all without a reasoned explanation.

As a result of CFPB's settlement of prior litigation challenging CFPB's failure to implement Section 1071, it finally issued a rule implementing the provision's requirements in 2023. Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35,150, 35,165 (May 31, 2023) ("Lending Transparency Rule" or "Rule"). At the time Defendant Vought took control of the CFPB in February 2025, multiple judges had rejected challenges to this Rule, and the first data collection was set to begin on July 18, 2025.

Notwithstanding the decisions of multiple judges upholding the Rule's validity, CFPB has unilaterally decided to stop enforcing the Rule. At the behest of President Trump, who views the CFPB as "a very important thing to get rid of," Defendant Vought has taken steps to "disable [CFPB] entirely." *See Nat'l Treasury Emps. Union v. Vought* ("*NTEU I*"), 774 F. Supp. 3d 1, 11 (D.D.C. 2025), *vacated*, *Nat'l Treasury Emps. Union v. Vought* ("*NTEU II*"), 149 F.4th 762 (D.C. Cir. 2025). As part of that endeavor, Vought undertook a series of procedural maneuvers to block the Lending Transparency Rule from taking effect. First, Defendants encouraged the courts

hearing lenders' challenges to the Rule—none of which had suggested that the lawsuits were likely to succeed—to temporarily stay the Rule as to the plaintiffs. Then, Defendants used those stays to justify (1) a blanket policy of non-enforcement of the Rule ("Nonenforcement Policy") that it announced in a Press Release; and (2) the issuance of an interim final rule extending compliance deadlines by a year without notice and comment. *See* Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates, 90 Fed. Reg. 25,874 (June 18, 2025) ("2025 IFR"); CFPB, Press Release, *CFPB Keeps Its Enforcement and Supervision Resources Focused on Pressing Threats to Consumers* (Apr. 30, 2025), https://perma.cc/PER8-T4HE ("Press Release"). Finally, after an abnormally short comment period of 30 days, Defendants issued a Final Rule "finalizing" the 2025 IFR. Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates, 90 Fed. Reg. 47,514 (Oct. 2, 2025) ("2025 Final Rule").

These maneuvers violate the APA in four ways. First, Congress required CFPB to collect and publish data under Section 1071. CFPB has disregarded that command for fifteen years, and is now refusing to comply with it on the flimsiest of pretexts. The APA instructs courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). Second, Defendants' actions are unlawful because they are not in accordance with law and are in excess of statutory authority. An agency cannot "abdicat[e] … its statutory responsibilities" by "consciously and expressly adopt[ing] a general policy" of nonenforcement. *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985) (internal quotation marks omitted). Yet that is exactly what Defendants have done, purporting to relieve financial institutions of their statutory obligation to compile, maintain, and submit Section 1071 data. Third, Defendants' actions are arbitrary and capricious. Their conclusory justifications ignore substantial reliance interests and obvious alternatives, and reverse

conclusions reached in the Lending Transparency Rule without a reasoned explanation. Fourth, Defendants issued the Press Release announcing the Nonenforcement Policy without notice-and-comment rulemaking. Because Defendants have treated the Nonenforcement Policy as a binding, substantive rule, the APA required them to provide notice and an opportunity to comment.

Because the 2025 Final Rule, the 2025 IFR,[1] and the Press Release announcing the Nonenforcement Policy are unlawful, the Court should set them aside, requiring Defendants to begin collecting Section 1071 data and making it available to the public. Plaintiffs include Rise Economy and the National Community Reinvestment Coalition ("NCRC"), two nonprofits that make extensive use of lending data; Main Street Alliance ("MSA"), an organization of small businesses that expected to utilize Section 1071 to evaluate potential sources of credit; and ReShonda Young, a small business owner who has repeatedly faced discrimination in lending and is in the process of launching a bank that would benefit from access to Section 1071 data. Plaintiffs are statutorily entitled to the data and are harmed by its continuing unavailability. Because that harm is prolonged each day Section 1071 data is not collected and reported as statutorily required, Plaintiffs respectfully request that the Court move swiftly to resolve this case and provide the requested relief.

[1] Ordinarily, a final rule supersedes an interim final rule, rendering challenges to it moot. *See generally Las Americas Immig. Advoc. Ctr. v. DHS*, 783 F. Supp. 3d 200, 219–21 (D.D.C. 2025). Plaintiffs asked Defendants to stipulate that the 2025 IFR was no longer in effect and would not spring into effect if the Court vacated the 2025 Final Rule. Defendants agreed that the 2025 IFR is not in effect but declined to stipulate regarding the effect of vacatur of the 2025 Final Rule. Accordingly, Plaintiffs are continuing to request vacatur of the 2025 IFR so that complete relief can be obtained if the Court vacates the 2025 Final Rule for any or all of the reasons discussed herein.

BACKGROUND[2]

I. Statutory Framework

In the wake of the 2008 financial crisis, Congress enacted the Dodd-Frank Act to "protect consumers from abusive financial services practices" and "promote the financial stability of the United States by improving accountability and transparency in the financial system." 124 Stat. at 1376. In furtherance of that statutory purpose, the Act established the CFPB and charged it with "ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. § 5511(a). The Act gave CFPB broad authority to "regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws." 12 U.S.C. § 5491(a).

As part of that mission, Congress recognized that certain populations had historically been denied fair and equal access to credit. It sought to rectify this by "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." 15 U.S.C. § 1691c–2(a). Accordingly, it enacted Section 1071, which requires financial institutions to collect data on "any application … for credit for women-owned, minority-owned, or small business." *Id.* § 1691c–2(b). They must "compile and maintain, in accordance with regulations of the Bureau," this data, including several specifically itemized pieces of

[2] Defendants have not yet produced an administrative record for the actions challenged in this case. With one exception discussed *infra* n.9, the records upon which Plaintiffs rely in this Motion for Summary Judgment (i.e., the Federal Register notices, public postings by CFPB, and public comments) will necessarily be part of the administrative record that Defendants must submit together with their motion to dismiss under Local Rule 7(n). If it would aid the Court's resolution of this motion, Plaintiffs will be happy to resubmit a version of this brief adding citations to the administrative record once it is produced.

information regarding applicants and their applications, such as the census tract of the business, the demographics of the applicant, the size and type of the requested loan, and any action the financial institution took. *Id.* § 1691c–2(e)(1)–(2). Financial institutions must submit this data to the Bureau annually. *Id.* § 1691c–2(f)(1). The data must then be "made available to any member of the public, upon request," and "annually made available to the public generally by the Bureau." *Id.* § 1691c–2(f)(2)(B)–(C).

To facilitate these obligations, Congress directed the Bureau to "prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section." *Id.* § 1691c–2(g)(1). It further directed the Bureau to "issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women-owned, minority-owned, or small businesses for purposes of this section." *Id.* § 1691c–2(g)(3).

II. CFPB Issues the Lending Transparency Rule to Implement Section 1071 After Thirteen Years of Preparation, Comment, Delay, and Litigation

CFPB spent more than a decade developing a rule to implement Section 1071, including several rounds of public comment. By 2017, it had held numerous stakeholder meetings, received some 2,709 comments on a Request for Information, and published a report describing its findings. *See* Request for Information Regarding the Small Business Lending Market, 82 Fed. Reg. 22,318, 22,319 (May 15, 2017) ("RFI"); CFPB, *Request for Information Regarding the Small Business Lending Market,* Docket ID CFPB-2017-0011, https://perma.cc/2UXM-BGMS (archived Oct. 27, 2025); CFPB, *Key Dimensions of the Small Business Lending Landscape* (2017), https://perma.cc/ANB7-VQZ3 ("Key Dimensions"). As of November 2017, it expected "prerule activities" to conclude by May 2018. *See* Reginfo.gov, *Business Lending Data (Regulation B), RIN 3170-AA09* (Fall 2017), https://perma.cc/2PN3-5KS4.

In 2018, after President Trump installed Office of Management and Budget ("OMB") Director Mick Mulvaney as Acting Director of CFPB and named Defendant Vought as Mulvaney's Deputy at OMB, this progress came to a halt. CFPB first pushed back its timetable for completing pre-rule activities, then took Section 1071 off the table altogether, moving it to the "Long-term Agenda" for items on which no activity would happen for at least a year. *See* Reginfo.gov, *Business Lending Data (Regulation B), RIN 3170-AA09* (Fall 2017), https://perma.cc/2PN3-5KS4; Reginfo.gov, *Business Lending Data (Regulation B), RIN 3170-AA09* (Fall 2018), https://perma.cc/CTM8-DZDF.

This and other signs that CFPB was abandoning its statutory obligation to implement Section 1071 led Plaintiffs Rise Economy (then known as the California Reinvestment Coalition) and ReShonda Young to sue CFPB in 2019, arguing that it was unlawfully withholding agency action and acting arbitrarily and capriciously, not in accordance with law, and in excess of statutory authority. *See* Compl., *Cal. Reinvestment Coal. v. Kraninger*, No. 3:19-cv-02572 (N.D. Cal. May 14, 2019), ECF No. 1. After the parties briefed summary judgment, but before the district court resolved their motions, the parties settled the case. As part of the settlement, CFPB conceded that "the Bureau is required to issue regulations … to implement Section 1071," but "ha[d] not issued the Section 1071 Implementing Regulations." Stipulated Settlement Agreement at 1, *Cal. Reinv. Coal.*, No. 3:19-cv-02572 (N.D. Cal. Feb. 26, 2020), ECF No. 52 (the "2020 Settlement"). To resolve the litigation, CFPB agreed to undertake the statutorily required rulemaking process, observing court-ordered deadlines. *Id.* at 2, ¶¶ 1-11.

Over the next three years, CFPB resumed its work preparing to implement Section 1071. It released an outline of proposals and alternatives it was considering, consistent with the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 609, after which it conducted a series

of video conferences and panel outreach meetings with stakeholders and held a three-month comment period that received approximately 60 comments. *See* Notice of Proposed Rulemaking, Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B), 86 Fed Reg. 56,356, 56,376 (Oct. 8, 2021). It surveyed financial institutions regarding compliance costs. *Id.* at 56,377. And it issued a proposed rule with a three-month comment period, *id.* at 56,356, which attracted approximately 2,100 comments. Lending Transparency Rule, 88 Fed. Reg. at 35,173. Finally, on May 31, 2023, after this thorough and public process, it issued the final Lending Transparency Rule.

III. The Lending Transparency Rule

The 422-page Lending Transparency Rule explained that "[a]s envisioned by Congress, the [Rule] will create our nation's first consistent and comprehensive database regarding lending to small businesses." *Id.* at 35,150. This would "fulfill section 1071's statutory purposes by," inter alia, "enabling a range of stakeholders to better identify business and community development needs and opportunities for small businesses, including women-owned and minority-owned small businesses." *Id.*

CFPB observed that "[i]n line with congressional purpose, information collected about these businesses may provide opportunities for community development lending, and the information collected may be particularly important to support fair lending analysis." *Id.* at 35,165. It concluded that "small business lending data are essential to better understand the small business financing landscape to maintain and expand support for this key part of the U.S. economy." *Id.* at 35,166. It summarized its expectations of the Lending Transparency Rule's benefits:

> The Bureau believes, based on its consideration of … Federal statutes and regulations, that its rule implementing section 1071 will provide more data to the public—including communities, governmental entities, and creditors—for analyzing whether financial institutions are serving the credit needs of their small business customers. In addition, with data provided under this rule, the public will

> be better able to understand access to and sources of credit in particular communities or industries, such as a higher concentration of risky loan products in a given community, and to identify the emergence of new loan products, participants, or underwriting practices. The data will not only assist in identifying potentially discriminatory practices, but will contribute to a better understanding of the experiences that members within certain communities may share in the small business financing market.
>
> Increased transparency about application and lending practices across different communities will improve credit outcomes, and thus community and business development. Lenders will be able to better understand small business lending market conditions and determine how best to provide credit to borrowers, where currently they cannot conduct very granular or comprehensive analyses because the data on small business lending are limited. As reduced uncertainty helps lenders to identify potentially profitable opportunities to extend responsible and affordable credit, small businesses stand to benefit from increased credit availability. Transparency will also allow small business owners to more easily compare credit terms and evaluate credit alternatives; without these data, small business owners are limited in their ability to shop for the credit product that best suits their needs at the best price.

Id. at 35,168.

Accordingly, CFPB promulgated the Lending Transparency Rule, codified at 12 C.F.R. §§ 1002.101–1002.114. Among other things, the Lending Transparency Rule explained what financial institutions and transactions were covered under Section 1071, *id.* §§ 1002.103–1002.106; what data must be compiled and reported, *id.* §§ 1002.107, 1002.109; how that data should be walled off from lending determinations, *id.* § 1002.108; and how CFPB and financial institutions would make that data available to the public, *id.* § 1002.110.

The Lending Transparency Rule stated that it would "become effective 90 days after publication in the Federal Register," *i.e.*, August 29, 2023. It provided staggered compliance deadlines based on institution size, with the largest institutions required to comply by October 1, 2024, and the smallest by January 1, 2026.

IV. Challenges to the Lending Transparency Rule

Representatives of the banking industry challenged the Lending Transparency Rule in three separate cases, but none of the courts in those cases has found the Rule to be deficient.

In the first case, *Texas Bankers Association v. CFPB*, the Southern District of Texas preliminarily enjoined the Rule in July 2023, not due to the substance of the Rule but solely on the basis of a Fifth Circuit opinion holding CFPB's funding structure unconstitutional under the Appropriations Clause. *See Tex. Bankers Ass'n v. CFPB*, 685 F. Supp. 3d 445, 458 (S.D. Tex. 2023) (citing *Cmty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, 51 F.4th 616, 623 (5th Cir. 2022)); *see also Tex. Bankers Ass'n v. CFPB*, No. 7:23-cv-00144, 2023 WL 8480105, at *2 (S.D. Tex. Oct. 26, 2023) (extending the injunction nationwide). The Supreme Court reversed the Fifth Circuit's Appropriations Clause decision on May 16, 2024, *see CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416 (2024), leading the *Texas Bankers* court to vacate its injunction. Proceeding to the merits, it granted summary judgment to CFPB on all claims, rejecting the plaintiffs' arguments that the Lending Transparency Rule was arbitrary and capricious or otherwise in violation of the APA or the Equal Credit Opportunity Act. *Tex. Bankers Ass'n v. CFPB*, No. 7:23-cv-00144, 2024 WL 3939598 (S.D. Tex. Aug. 26, 2024). The court found that the Lending Transparency Rule's "voluminous" administrative record showed that "the agency has reasonably assessed the effects of the Final [Lending Transparency] Rule, including its anticipated costs versus benefits," and that there was "no textual basis" for the argument that the Lending Transparency Rule exceeded or contradicted Section 1071. *Id.* at *8, 14. The district court then denied the plaintiffs' motion to stay the Lending Transparency Rule's deadlines pending appeal. *Tex. Bankers Ass'n v. CFPB*, No. 7:23-cv-00144, 2024 WL 5256501 (S.D. Tex. Nov. 14, 2024). The Fifth Circuit similarly denied the plaintiffs' request for an administrative stay and declined to rule on their motion for a stay

pending appeal. *See* Order Den. Temporary Administrative Stay, *Tex. Bankers Ass'n v. CFPB*, No. 24-40705 (5th Cir. Oct. 31, 2024), ECF No. 38.

The other two cases challenging the Lending Transparency Rule have thus far fared no better. In *Revenue Based Financial Coalition v. CFPB*, a magistrate judge recommended that the district court grant summary judgment to CFPB, finding that the Rule was within CFPB's statutory authority and not arbitrary or capricious. R. & R. on Cross Mots. for Summ. J., *Revenue Based Fin. Coal. v. CFPB*, No. 1:23-cv-24882 (S.D. Fla. Feb. 17, 2025), ECF No. 68. In *Monticello Banking Co. v. CFPB*, the plaintiffs voluntarily dismissed most of their claims in light of the *Texas Bankers* summary judgment ruling, then filed an amended complaint on January 28, 2025. Mot. for Voluntary Dismissal, *Monticello Banking*, No. 6:23-cv-00148 (E.D. Ky. Aug. 30, 2024), ECF No. 34; Am. Compl., *Monticello Banking*, No. 6:23-cv-00148 (E.D. Ky. Jan. 28, 2025), ECF No. 42.

Thus, to date, no court has held or even suggested that any plaintiff has a likelihood of success on any of their claims against the Lending Transparency Rule (other than on the Appropriations Clause theory subsequently reversed by the Supreme Court). To the contrary, two judges have considered the claims and found them meritless.

Although the challenges have not succeeded on their merits, the nationwide injunction entered under the Fifth Circuit's erroneous Appropriations Clause precedent led CFPB to issue an interim final rule extending the Lending Transparency Rule's compliance dates by 290 days to compensate for the period during which the rule was stayed. Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates, 89 Fed. Reg. 55,024 (July 3, 2024) ("2024 IFR"). The first compliance date, for the highest-volume lenders, was rescheduled for July 18, 2025.

V. Defendants Prevent the Lending Transparency Rule from Taking Effect

In February 2025, President Trump fired CFPB's then-Director, Rohit Chopra, and installed a series of acting directors. As another judge in this district has explained, their first priority was "a hurried effort to dismantle and disable the agency entirely." *NTEU I*, 774 F. Supp. 3d at 11.[3] In President Trump's view, the congressionally established Bureau was "a very important thing to get rid of."[4] *Id.* Thus, just as in his first administration, the Acting Directors began working to ensure that Congress's mandate in Section 1071 never took effect.

First, on February 3, 2025, President Trump named Secretary of the Treasury Scott Bessent as Acting Director. Within hours of his temporary appointment, Bessent ordered CFPB staff to halt virtually all the Bureau's work, including all enforcement, litigation, rulemaking, and communications. *Id.* at 16.

That same day, at a scheduled Fifth Circuit argument in *Texas Bankers*, which had proceeded to the merits after the court denied the plaintiffs' motion for an administrative stay, *supra* pp. 9–10, a CFPB attorney informed the Court that, at Bessent's direction, CFPB would not "appear[] in [the case] except to seek a pause in proceedings." *Tex. Bankers Ass'n v. CFPB*, No. 24-40705, 2025 WL 429913, at *1 (5th Cir. Feb. 7, 2025). Then, CFPB reversed course on the plaintiffs' four-month-old stay motion, informing the court that it no longer opposed the motion to

[3] The D.C. Circuit vacated the district court's injunction in *NTEU I*, but expressly noted that it was not questioning "the district court's factual assessments." *NTEU II*, 149 F.4th at 783. Therefore, Plaintiffs cite the factual findings from the district court opinion when relevant as background, but otherwise are not relying on the *NTEU I* district court opinion.

[4] Defendant Vought recently reiterated this intention, stating on October 15, 2025, that Defendants are "clos[ing] down the agency" and expect to "be successful probably within the next two or three months." The Charlie Kirk Show Clips, *The Charlie Kirk Show October 15, 2025,* YouTube (Oct. 15, 2025), at 36:55, 38:15, https://www.youtube.com/watch?v=aHM8KGpeJM0.

"stay obligations to comply with the rule, and toll compliance deadlines, for 90 days to give the Acting Director time to consider the issues." Suppl. Resp. to Mot. to Stay at 2, *Tex. Bankers*, No. 24-40705 (5th Cir. Feb. 5, 2025), ECF No. 129. In light of CFPB's change in position, the Fifth Circuit granted the stay, tolling deadlines for compliance with the Lending Transparency Rule "but only for plaintiffs and intervenors in" *Tex. Bankers*, 2025 WL 429913, at *1.[5]

On February 6, 2025, Defendant Vought was confirmed as Director of OMB. The following day, he became Acting Director of CFPB. *NTEU I*, 774 F. Supp. 3d at 73. Immediately upon appointment, Defendant Vought began implementing plans to shut down CFPB. Over the course of Saturday, February 8, and Sunday, February 9, he suspended all CFPB activities, ordered all staff to "stand down from performing any work task," and closed CFPB's headquarters. *Id.* at 44, 58. He fired all probationary and term-limited employees without cause and implemented a reduction-in-force that would have terminated the rest of the staff by February 14. *Id.* at 11.

On February 11, CFPB encouraged the *Monticello Banking* court to issue a stay even broader than the one in *Tex. Bankers*, advising the *Monticello Banking* court that it did not object to "an extension of the rule's compliance date *for all covered entities*, including the Plaintiffs in this case." Defs.' Reply to Mot. for an Extension of Time to File a Resp. to the Am. Compl. at 1, *Monticello Banking*, No. 6:23-cv-00148 (E.D. Ky. Feb. 11, 2025), ECF No. 46 (emphasis added). Then, on April 3, it encouraged the *Revenue Based Financial Coalition* court to stay the Rule as to the plaintiffs in that case. Defs.' Resp. to Pl.'s Mot. to Stay Section 1071 Rule & Hold Proceedings in Abeyance, *Revenue Based Fin. Coal.*, No. 1:23-cv-24882 (S.D. Fla. Apr. 3, 2025), ECF No. 75. It also announced that "CFPB's new leadership has directed staff to initiate a new

[5] Plaintiffs are not challenging any decisions made by the courts in the cases discussed above. They are summarized here only as relevant to the actions challenged in this case: the 2025 Final Rule, the 2025 IFR, and the Press Release announcing the Nonenforcement Policy.

Section 1071 rulemaking." *Id.* at 2. The courts in the Kentucky and Florida cases granted the stays, but they applied only to the plaintiffs in those cases. Op. & Order, *Monticello Banking*, No. 6:23-cv-00148 (E.D. Ky. May 29, 2025), ECF No. 50; *Revenue Based Fin. Coal. v. CFPB*, No. 1:23-cv-24882, 2025 WL 1311264, at *1 (S.D. Fla. May 6, 2025).

Over the following months, CFPB focused on preventing all lenders from having to comply with Section 1071 and the Lending Transparency Rule, not just the plaintiffs in Texas, Kentucky, and Florida.

First, on April 30, 2025, nearly three months after they successfully solicited the *Texas Bankers* stay, Defendants issued the Press Release announcing that CFPB "will not prioritize enforcement or supervision actions with regard to entities that are currently outside the stay imposed under [*Texas Bankers*]." Press Release, https://perma.cc/PER8-T4HE. They attributed this Nonenforcement Policy to "resource constraints" and "the unfairness of enforcing [the Lending Transparency Rule] against entities not protected by the court's stay but similarly situated to parties that are protected by the stay." *Id.* The lending industry immediately recognized this new policy as a complete abandonment of Section 1071 and the Lending Transparency Rule. The Financial Services Observer reported that "CFPB will not enforce small business lending rule," Declaration of Pooja Boisture ("Boisture Decl.") Ex. A, while America's Credit Unions referred to it as a "sweet escape" from Section 1071, Boisture Decl. Ex. B.

Second, on June 17, 2025, Defendants issued the 2025 IFR, confirming that the Press Release's announced Nonenforcement Policy was a complete abdication of enforcing Section 1071. Without notice or comment, and without the benefit of input from small businesses affected by delayed implementation of Section 1071, CFPB extended all compliance deadlines by a full year. 2025 IFR, 90 Fed. Reg. at 25,874. Under the 2025 IFR, the earliest that banks would begin

collecting Section 1071 data would be July 1, 2026, and they need not report it to CFPB until June 1, 2027, or later. *Id.* at 25,875.

As explanation for why Defendants were amending the Rule's compliance deadlines, the 2025 IFR stated that "[c]hallenges to the [Rule] filed by some lenders remain ongoing in three jurisdictions" and that each court had "stayed the rule's compliance deadlines for some market participants." *Id.* at 25,874. It did not note its participation in seeking those stays, nor the multiple rulings finding the challenges meritless. It also stated that CFPB "intends to initiate a new Section 1071 rulemaking and anticipates issuing a notice of proposed rulemaking as expeditiously as reasonably possible." *Id.* at 25,875. CFPB further made clear in the 2025 IFR that it plans "to issue a new proposal to reconsider certain aspects of the 2023 final rule," leaving open the possibility that CFPB may seek to prevent financial institutions from ever having to comply with Section 1071. *Id.*

The 2025 IFR included a three-sentence explanation for why it was forgoing the notice and comment required by 5 U.S.C. § 553(b):

> The CFPB finds that prior notice and public comment are unnecessary because this interim final rule addresses compliance date stays issued by three courts for many but not all covered financial institutions and makes other date-related conforming adjustments. Covered financial institutions need to know the new compliance dates promptly so they can appropriately plan their implementation efforts; further delay in finalizing these dates would be contrary to the public interest. The CFPB already solicited and received comment on the substance of the provisions that it is now amending, during its 2020 consultation with representatives of small businesses pursuant to the Small Business Regulatory Enforcement Fairness Act, in its 2021 proposed rule, and in its 2024 interim final rule.

Id. at 25,875 (footnotes omitted).

As a result, the compliance date for the country's largest lenders to begin collecting data—July 18, 2025—was erased just a month before Congress's 15-year-old mandate was finally about to go into effect for the first time. Without any notice and comment, the 2025 IFR amended a rule

that attracted thousands of comments over multiple notice-and-comment periods, delaying CFPB's and lenders' statutory obligations.

In the 2025 IFR, Defendants included a request for "comment on this interim final rule." *Id.* They gave interested parties just 30 days to comment, until July 18, 2025. *Id.* at 25,874. Two executive orders, including one that President Trump had made applicable to CFPB just months earlier, *see* Exec. Order 14,215, Ensuring Accountability for All Agencies, 90 Fed. Reg. 10,447, 10,448 (Feb. 24, 2025), instructed that comment periods should typically be no less than 60 days. *See* Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3,821, 3,821–22 (Jan. 19, 2011); Exec. Order No. 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51,735, 51,740 (Oct. 4, 1993). Defendants provided no explanation for their abnormally brief comment period. During that brief window, just 20 commenters were able to file comments, most of which were just a couple pages long and none longer than 10 pages—a stark contrast to the comment periods on the 2017 Request for Information or 2021 NPRM, which received thousands of comments, many of them lengthy and containing detailed data analyses.[6]

Commenters supporting the delay largely offered two reasons. First, some echoed the 2025 IFR's justification of "uncertainty," although none identified any source of uncertainty other than Defendants' actions calling the rule into question. *See, e.g.*, Am. Bankers Ass'n, *Re: Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)* at 2, Comment ID No. CFPB-2025-0017-0016 (July 18, 2025), *available at* https://perma.cc/56HB-MBFG [hereinafter

[6] *See, e.g.*, Nat'l Cmty. Reinvestment Coal., *Re: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection* (Jan. 4, 2022), *available at* https://perma.cc/B649-FCZV (Jan. 4, 2022 comment from NCRC); Am. Bankers Ass'n; *Re: Docket No. CFPB-2021-0015 or RIN 3170-AA09, Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)* (Jan. 6, 2022), *available at* https://perma.cc/6YVA-9TF2 (Jan. 6, 2022 comment from ABA).

"ABA Comment"]. Second, several supporters of the delay urged changes to the Lending Transparency Rule, based on complaints that were concededly "not new" and had been fully considered by CFPB in the earlier rulemaking. Equip. Leasing & Fin. Ass'n, *Re: Interim Final Rule on Small Business Lending Data Collection* at 1, Comment ID No. CFPB-2025-0017-0012 (July 18, 2025), *available at* https://perma.cc/6FXZ-QNAX [hereinafter "ELFA Comment"]; *see also, e.g.*, Am. Fin. Servs. Ass'n, *Re: Interim Final Rule on Small Business Lending under the Equal Credit Opportunity Act (Docket No. CFPB -2025-0017)* (July 18, 2025), *available at* https://perma.cc/TU6Y-YMJW [hereinafter "AFSA comment"] (attaching its 2022 comment letter in lieu of identifying any new concerns). Supporters also noted that Defendants would need to further extend the compliance deadlines in the future given Defendants' stated intent to amend the Lending Transparency Rule. *See, e.g.*, ELFA comment at 7, https://perma.cc/6FXZ-QNAX; Wis. Bankers Ass'n, *Re: Interim Final Rule on Small Business Lending Data Collection RIN 3170–AB40* at 1 (July 18, 2025), *available at* https://perma.cc/PRG2-YZWW [hereinafter "WBA comment"]. None of the commenters identified any reason to believe that the large financial institutions subject to the original July 18, 2025, deadline would not have been ready to meet that deadline.

Commenters opposing the delay identified several harmful consequences. Two associations of lenders required to collect data under Section 1071 explained that their members "have already invested in Section 1071 compliance—upgrading systems, hiring staff, and aligning internal reporting—[and] now face regulatory limbo." Responsible Bus. Lending Coal., *Re: Docket No. CFPB-2025-0017 / RIN 3170–AB40 Interim Final Rule- Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Deadlines* at 4, Comment ID No. CFPB-2025-0017-0018, *available at* https://perma.cc/SU5D-VRBU [hereinafter

"RBLC comment"]; *see also* Opportunity Fin. Network, *Re: Docket No. CFPB-2025-0017/RIN 3170-AB40, Interim Final Rule- Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Deadlines* at 3 (July 18, 2025), *available at* https://perma.cc/8RU7-F2LL [hereinafter "OFN comment"]. These associations, one with more than 1,000 members and one with nearly 500, explained that the 2025 IFR and Defendants' planned reconsideration of the Lending Transparency Rule placed "[l]enders and vendors … in a costly state of flux, postponing implementation plans, delaying vendor contracts, and reducing clarity around long-term compliance expectations." RBLC comment at 4, https://perma.cc/SU5D-VRBU; *see also* Nat'l Cmty. Reinvestment Coal., *Re: Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates, Docket No. CFPB–2025–0017, RIN 3170–AB40* at 6—7, Comment ID No. CFPB-2025-0017-0009, *available at* https://perma.cc/8HHZ-7WMD [hereinafter "NCRC Comment"] (explaining that Defendants' indication that it will modify the Lending Transparency Rule "confuses matters" and will likely prevent financial institutions from preparing to comply by making it unclear what they will need to comply with).

Opponents of the delay also pointed out that courts hearing the lawsuits against the Lending Transparency Rule had already "ruled in the CFPB's favor," finding that that rule appropriately weighed the costs and benefits. NCRC comment at 5–6, https://perma.cc/8HHZ-7WMD. They detailed the exhaustive process spanning multiple administrations that produced the Lending Transparency Rule. *Id.* at 2–5. They emphasized the expected value of and continued, ongoing need for the data required by Section 1071, including benefits not only to small businesses but to lenders themselves, who will have better data to help them identify untapped markets. *See, e.g.*, *id.*; Ams. for Fin. Reform Educ. Fund, *Re: Small Business Lending Under the Equal Credit*

Opportunity Act (Regulation B); Extension of Compliance Dates, Docket No. CFPB–2025–0017 or RIN 3170–AB40 (July 18, 2025), *available at* https://perma.cc/FPH3-8K3P [hereinafter "AFREF comment"].

On October 2, 2025, Defendants issued the 2025 Final Rule "finalizing" the 2025 IFR with "no further changes … other than the correction of two typographical errors." 90 Fed. Reg. at 47,414–15. They again relied on the pending challenges to the Lending Transparency Rule and the partial stays issued therein, without acknowledging either the rulings rejecting those challenges or their own role in soliciting the stays. *Id.* at 47,516. They again stated that the delay was justified by a need to "eliminate confusion," *id.* at 47,517, but did not identify any source of confusion other than their own actions. They cited their own intent "to issue a new proposal to reconsider certain aspects of the [Lending Transparency Rule]" and "address[] the underlying concerns raised by stakeholders about the [Lending Transparency Rule]," *id.*, but neither acknowledged that those concerns were "not new," ELFA comment at 7, https://perma.cc/6FXZ-QNAX, nor explained why it was responding to them differently now than it did when first evaluating and issuing the Lending Transparency Rule. Defendants also included a cost-benefit analysis concluding that the savings from delay outweigh the costs of losing the benefits of the Lending Transparency Rule. 2025 Final Rule, 90 Fed. Reg. at 47,519. They did not explain how this was consistent with the cost-benefit analysis in the Lending Transparency Rule in setting the original compliance deadlines, despite conceding that that analysis was "well considered and responsive to comments." *Id.*

Defendants offered no response to the multiple comments from regulated entities explaining how the delay would harm them, aside from a single conclusory statement it "does not agree that the compliance date changes impose costs on borrowers [and] lenders." *Id.* at 47,517. And they did not acknowledge commenters' point that further delay would be necessary if the

Bureau went through with its reconsideration, despite basing its cost-benefit analysis on the assumption of a one-year delay. *Id.* at 47,518–19.

VI. Plaintiffs' Lawsuit

On July 23, 2025, a month after the Defendants issued the 2025 IFR, Plaintiffs Rise Economy, National Community Reinvestment Coalition ("NCRC"), Main Street Alliance ("MSA"), and ReShonda Young filed this lawsuit.

Rise Economy and NCRC are nonprofit membership organizations that represent hundreds of community-based organizations and public entities, including community reinvestment organizations, community development corporations, local and state government agencies, minority- and women-owned business associations, faith-based institutions, technical assistance providers, and other entities that work with small businesses to ensure equal access to capital. Declaration of Paulina Gonzalez-Brito ("Gonzalez-Brito Decl.") ¶¶ 2–3; Declaration of Jesse Van Tol ("Van Tol Decl.") ¶ 2. They and their members would use Section 1071 data for many purposes if it were available, such as negotiating agreements with lenders, publishing evidence-based reports, and commenting on banks' community reinvestment performance. Gonzalez-Brito Decl. ¶¶ 13, 15, 18; Van Tol Decl. ¶¶ 10, 12, 14.

MSA is a membership organization comprising approximately 30,000 small businesses and farms across the United States. Declaration of Shawn Phetteplace ("Phetteplace Decl.") ¶ 1. Without access to Section 1071 data, it is more difficult for MSA to identify and make policy recommendations to political leaders, which is one of MSA's core functions. Phetteplace Decl. ¶¶ 5, 7. Nor can MSA offer informed educational services or tailored assistance to its members without the data. Phetteplace Decl. ¶ 7.

Many of MSA's members, a significant percentage of which are women businessowners, have struggled to access capital in the absence of transparent data about lending practices.

Phetteplace Decl. ¶¶ 4, 8. For example, Ms. Young is an MSA member, a successful small business owner, and the founder of a bank launching in 2026. Declaration of ReShonda Young ("Young Decl.") ¶¶ 1, 10. As a woman of color, the lack of public information about banks' track records has contributed to repeated difficulties obtaining credit, with white applicants repeatedly getting loans on more favorable terms for the exact same businesses. Young Decl. ¶¶ 7–9. Section 1071 data would help her compare lenders and loan products, improving her access to credit on reasonable, non-discriminatory terms. Young Decl. ¶ 12. And as a bank founder intending to provide access to capital in credit deserts, she would benefit tremendously from Section 1071 data, which she would use to identify promising markets, communities, and loan products. Young Decl. ¶ 13.

Defendants' delay of the Lending Transparency Rule will deprive Plaintiffs of access to Section 1071 data for at least a year, nullifying their statutory rights under 15 U.S.C. § 1691c–2(f)(2)(B)–(C). Accordingly, they filed this lawsuit, bringing four claims for relief: (1) that Defendants have "unlawfully withheld or unreasonably delayed" agency action, in violation of 5 U.S.C. § 706(1); (2) that Defendants have unlawfully purported to relieve financial institutions of their obligation to compile, maintain, and submit data under Section 1071 and Defendants' own obligations to make the data publicly available, thereby acting contrary to law and in excess of statutory authority in violation of 5 U.S.C. § 706(2)(A) and (C); (3) that Defendants lacked good cause to forgo notice and comment before issuing the Press Release announcing the Nonenforcement Policy, as well as the 2025 IFR, thereby violating 5 U.S.C. §§ 553(b) and 706(2)(D); and (4) that the 2025 IFR and the Press Release announcing the Nonenforcement Policy are arbitrary and capricious.

After Defendants issued the 2025 Final Rule, Plaintiffs moved to supplement their complaint to challenge that rule as well. ECF No. 30. Claims 5, 6, and 7 apply substantially identical legal theories as Claims 1, 2, and 4, respectively, to the 2025 Final Rule.

ARGUMENT

Defendants have an unambiguous statutory obligation to collect and make available lending data under Section 1071—one that they have not fulfilled for fifteen years. Through the agency actions that Plaintiffs challenge here, Defendants are refusing to fulfill that obligation, delaying statutorily mandatory action and purporting to relieve lenders of their statutory duties for at least another year. Their decision to do so is arbitrary and capricious, departing from previous rulemaking without a reasoned explanation, ignoring significant comments and reliance interests, and seeking to benefit from confusion that is purely of the agency's making. And, because Defendants unlawfully forewent notice and comment before issuing the Press Release announcing the Nonenforcement Policy, they also have not complied with their procedural obligations.

All of this is unlawful. The APA requires courts to "compel agency action unlawfully withheld or unreasonably delayed," and to "hold unlawful and set aside agency action" found to be "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," or "without observance of procedure required by law." 5 U.S.C. § 706(1)–(2). The Court should therefore set aside the 2025 Final Rule, the 2025 IFR and the Press Release announcing the Nonenforcement Policy pursuant to § 706(2), and compel Defendants to begin collecting and making available the data mandated by the Lending Transparency Rule and Section 1071.

I. Plaintiffs Have Standing

To demonstrate Article III standing, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "The

law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them." *Campaign Legal Ctr. v. FEC*, 31 F.4th 781, 783 (D.C. Cir. 2022) (quoting *Campaign Legal Ctr. & Democracy 21 v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020)). To demonstrate an actionable informational injury, a plaintiff must show: "(1) it has been deprived of information that, on its interpretation, a statute requires the government or a third party to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016).

Here, all Plaintiffs readily satisfy this standard: Section 1071 requires the government and third parties to publicly disclose information, the challenged actions will make that information unavailable, and Plaintiffs and their members will suffer from the exact data deficit that Congress was trying to remedy. Indeed, when Rise Economy and Ms. Young previously sued to compel CFPB to implement Section 1071, CFPB did not even dispute their standing. *See* Defs.' Notice of Mot., Mot., and Mem. in Opp'n to Pls.' Mot. for Summ. J., *Cal. Reinvestment Coal. v. Kraninger*, No. 3:19-cv-02572 (N.D. Cal. Nov. 8, 2019), ECF No. 44. In any event, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006).

A. Plaintiffs Have Been Deprived of Information That a Statute Requires the Government to Disclose to Them

Section 1071 mandates public disclosure of data on lending to women-owned, minority-owned, and small businesses and is therefore a statute that "requires the government or a third party to disclose" information. *Jewell*, 828 F.3d at 992. Its requirements are unambiguous: financial institutions "shall … compile and maintain" certain information on "any application to a

financial institution for credit for women-owned, minority-owned, or small business," 15 U.S.C. § 1691c–2(b); they "shall" submit that information to the Bureau, *id.* § 1691c–2(f)(1); and that information "shall be … made available to any member of the public, upon request, in the form required under regulations prescribed by the Bureau" and "annually made available to the public generally by the Bureau, in such form and in such manner as is determined by the Bureau, by regulation," *id.* § 1691c–2(f)(2)(B)–(C). These requirements are not discretionary. *See Bennett v. Spear*, 520 U.S. 154, 172 (1997) (statutory terms providing that Secretary "shall" take action "are plainly those of obligation rather than discretion"); *cf. NTEU II*, 149 F.4th at 782 ("[M]any CFPB functions are mandatory … .").

Defendants' actions have deprived Plaintiffs of this information. Without the 2025 IFR, the largest lenders would have begun compiling Section 1071 data on July 18, 2025, for filing the following year. *See* 90 Fed. Reg. at 25,875. Under Section 1071 and the Lending Transparency Rule, the Bureau was required to make this data available to the public. 15 U.S.C. § 1691c–2(f)(2)(C); 12 C.F.R. § 1002.110(a)–(b). Instead, because of the 2025 IFR, Section 1071 data from July 18, 2025, through June 30, 2026, will never be available and Plaintiffs will not get any data at all for yet another year, unless the Court grants relief. *Cf.* Gonzalez-Brito Decl. ¶ 18 ("With each year of delay, Rise Economy is further injured, as multiple CRA examinations, bank merger applications and bank meetings or opportunities to meet pass by without our ability to engage with robust analysis of lending performance and gaps for consideration."). Plaintiffs have thus "been deprived of information that … a statute requires the government or a third party to disclose to [them]," satisfying the first prong of the informational standing inquiry. *Jewell*, 828 F.3d at 992.

B. Plaintiffs Will Suffer the Type of Harm Congress Sought to Prevent by Requiring Disclosure

Congress explained in Section 1071 why it required disclosure of this information: "to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." 15 U.S.C. § 1691c–2(a). Those are exactly the reasons that Plaintiffs want access to the data, and Defendants' unlawful actions will contribute to the exact harms Congress sought to combat.[7]

Plaintiffs' declarations explain at length how they would use the withheld Section 1071 data. For example, Rise Economy and NCRC regularly conduct analyses and publish reports about access to credit for women-owned, minority-owned, and small businesses. Gonzalez-Brito Decl. ¶¶ 3, 11; Van Tol Decl. ¶¶ 3, 9, 10, 12. These reports seek to "identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses," just as Congress desired. 15 U.S.C. § 1691c–2(a). But as CFPB has recognized, the data on which groups like Rise Economy and NCRC must currently rely "are limited in their ability to appropriately convey the full extent of lending to small businesses," making it "not possible to confidently answer basic questions regarding the state of small business lending." Key Dimensions at 28, 40, https://perma.cc/ANB7-VQZ3.

[7] Under some disclosure statutes, such as the Freedom of Information Act and Federal Advisory Committee Act, "a plaintiff suffers the type of harm Congress sought to remedy when it simply 's[eeks] and [is] denied specific agency records.'" *Jewell*, 828 F.3d at 992 (quoting *Pub. Citizen v. DOJ*, 491 U.S. 440, 449–50 (1989)) (alteration in original). Under others, like the Federal Election Campaign Act, "a plaintiff may need to allege that nondisclosure has caused it to suffer the kind of harm from which Congress, in mandating disclosure, sought to protect individuals or organizations like it." *Id.* No court has had occasion to decide which category Section 1071 falls into. Because Plaintiffs would have standing under either category, the Court need not resolve this question.

For example, both Rise Economy and NCRC regularly use mortgage data made available under the Home Mortgage Disclosure Act ("HMDA"), on which the Lending Transparency Act was modeled—but they have no comparable data about small business loans. Gonzalez-Brito Decl. ¶¶ 4, 17; Van Tol Decl. ¶ 11, 15. Defendants' withholding of Section 1071 data also harms Rise Economy, NCRC, and MSA in other ways, such as impairing their ability to negotiate with lenders, advocate to policymakers, or exercise their statutory rights to participate in Community Reinvestment Act supervision by commenting on banks' fair lending performance, further thwarting Congress's purpose in enacting Section 1071. Gonzalez-Brito Decl. ¶ 14, 18; Van Tol Decl. ¶¶ 3, 9; Phetteplace Decl. ¶¶ 5, 7.

Rise Economy's and NCRC's members[8] are harmed in similar ways. *See, e.g.*, Gonzalez-Brito Decl. ¶¶ 15–16 (discussing impairment to Rise Economy's members' state and local advocacy efforts); Van Tol Decl. ¶¶ 9–10 (describing community organizations that planned to use Section 1071 data to identify and address small businesses' capital needs in their communities). For example, one Rise Economy member is an investor seeking to invest capital in small businesses. Gonzalez-Brito Decl. ¶ 21. That member has a critical need for Section 1071 data to identify lending patterns to determine where lending is and is not happening. Gonzalez-Brito Decl. ¶ 21. Other members of Rise Economy and NCRC assist small businesses by advocating for them and assisting them in securing loans. Gonzalez-Brito Decl. ¶ 22; Van Tol Decl. ¶ 9. Without the

[8] Rise Economy, NCRC, and MSA plead standing both on their own behalf and on behalf of their members. "An association has standing to bring suit on behalf of its members when: (1) 'its members would otherwise have standing to sue in their own right;' (2) 'the interests it seeks to protect are germane to the organization's purpose;' and (3) 'neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Ctr. for Sustainable Econ. v. Jewell*, 779 F. 3d 588, 596 (D.C. Cir. 2015) (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). All three requirements are satisfied here. *See, e.g.*, *id.* at 597 (holding that participation of members is unnecessary where claim "turns entirely on whether [agency] complied with its statutory obligations, and the relief [plaintiff] seeks is invalidation of agency action").

Section 1071 data, these members' ability to inform lenders about gaps in access to capital and identify lenders open to lending to small businesses is severely impaired. Gonzalez-Brito Decl. ¶ 18; Van Tol Decl. ¶ 12.

MSA's tens of thousands of small-business members, including Ms. Young, are likewise harmed by the unavailability of Section 1071 data. These small businesses and farms are the very organizations that Congress intended Section 1071 data to benefit: businesses that face a greater likelihood of being denied credit on equal terms because they are small, women-owned, or minority-owned. MSA's declaration recounts several members who have struggled to access capital in the absence of transparent data about lending practices, often forcing them to accept less favorable loan terms. *See* Phetteplace Decl. ¶¶ 8–10. As Defendants admitted in the 2025 Final Rule and 2025 IFR, the "small businesses' and financial institutions' realizations of the benefits arising from the 2023 final rule will … be delayed by at least one year, reducing the real net present value of these expected future benefits." 2025 Final Rule, 90 Fed. Reg. at 47,519; 2025 IFR, 90 Fed. Reg. at 25,879.

Ms. Young is a prime example: notwithstanding the success of her businesses, she has repeatedly sought credit unsuccessfully, with one effort ending with a white applicant obtaining a loan on more favorable terms for the same business and another ending with a more expensive, non-traditional loan financed by a white seller. Young Decl. ¶¶ 8–9. With Section 1071 data in hand, she would be able to review lenders' track records, helping her find financial service institutions that are more likely to lend to her on reasonable terms and avoid wasting her time working with banks that have a history of providing less favorable terms to Black and female business owners. Young Decl. ¶12.

Ms. Young faces additional harms from the delay of Section 1071 data. She is in the process of launching a bank to serve local communities. Young Decl. ¶ 10. She seeks to use Section 1071 data for the exact purpose Congress intended: "to identify business and community development

needs and opportunities of women-owned, minority-owned, and small businesses," and then meet those needs. 15 U.S.C. § 1691c–2(a); Young Decl. ¶¶ 12–13. Section 1071 data would help Ms. Young and her bank identify markets and communities that may particularly benefit from her services, design suitable credit offerings, satisfy financial supervision requirements, and collaborate with other banks. Young Decl. ¶ 13.

C. Plaintiffs' Injury Is Traceable and Redressable

Having shown an injury-in-fact, Plaintiffs easily satisfy the other elements of the standing test. *See Campaign Legal Ctr.*, 31 F.4th at 793 (having "established an informational injury in fact," plaintiffs "easily satisfy the remaining two constitutional standing requirements of causation and redressability"). There can be no doubt that the harm Plaintiffs will suffer from the lack of access to Section 1071 data is fairly traceable to Defendants' non-enforcement actions. The injury is attributable to those actions, which have relieved lenders from their obligations, prevented the collection of data that would otherwise become available to Plaintiffs, and delayed the date when any data will become available. And Plaintiffs' harms are redressable, because vacatur of the challenged actions would restore Defendants' obligations under Section 1071 and the duly promulgated Lending Transparency Rule to collect that data and make it publicly available.

II. Defendants' Actions Are Final Agency Action Reviewable Under the APA

Defendants might argue that the Court lacks jurisdiction on the claim against the Press Release and the Nonenforcement Policy it announced because they are not final agency action or are "committed to agency discretion by law" and therefore exempt from APA review. 5 U.S.C. § 701(a)(2). These arguments would fail. All three challenged actions are final agency actions: first, they "mark the consummation of the agency's decisionmaking process," rather than being "of a merely tentative or interlocutory nature"; and second, the actions are ones by which "rights or

obligations have been determined, or from which legal consequences will flow." *Bennett*, 520 U.S. at 177–78 (citations omitted).

First, the D.C. Circuit has squarely held that rules suspending the compliance deadline of an earlier final rule are final agency action. *See, e.g.*, *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (an order "suspend[ing] [a] rule's compliance deadlines" is "tantamount to amending or revoking a rule"). And courts routinely review "interim" agency actions that delay, stay, or render unenforceable an earlier rule pending the agency's reconsideration of that rule. *See Nat. Res. Def. Council v. Winter*, 955 F.3d 68, 78–79 (D.C. Cir. 2020) (collecting cases). The 2025 Final Rule and 2025 IFR are thus unquestionably reviewable.

The Press Release is similarly reviewable. First, it is not "informal, or only the ruling of a subordinate official, or tentative." *Abbott Labs. v. Gardner*, 387 U.S. 136, 151 (1967). The Press Release gives no indication that the Nonenforcement Policy it announces is under further consideration, but rather announces it as the "consummation of the agency's decisionmaking." *Bennett*, 520 U.S. at 178 (quoting *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948)); Press Release, https://perma.cc/PER8-T4HE (emphasis added) (the Bureau "*will not* prioritize enforcement or supervision actions").

Second, the Press Release determines legal rights and obligations by precluding the agency's personnel from enforcing the Lending Transparency Rule. An agency policy "as a practical matter, [has] a binding effect … [i]f an agency acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule, if it bases enforcement actions on the policies or interpretations formulated in the document, [or] if it leads private parties … to believe" that it will be treated as controlling. *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021 (D.C. Cir. 2000); *see also NTEU II*, 149 F.4th at 778 ("[W]e may

consider 'post-guidance events to determine whether the agency has applied the guidance as if it were binding on regulated parties.'" (quoting *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 253 (D.C. Cir. 2014) (Kavanaugh, J.))); *S.W. Airlines Co. v. Dep't of Transp.*, 832 F.3d 270, 275 (D.C. Cir. 2016) (court looks to "the way in which the agency subsequently treat[ed] the challenged action" to evaluable finality). Defendants immediately followed up the Press Release with the 2025 IFR, confirming that the Nonenforcement Policy was exactly what the Press Release led private parties to believe it was: a "sweet escape" from Section 1071. Boisture Decl. Ex. B; *see also* Boisture Decl. Ex. A.[9] The Nonenforcement Policy is plainly "controlling in the field," *Appalachian Power*, 208 F.3d at 1021, given that CFPB personnel will not enforce violations against *anyone*.

Nor is the Press Release immune from review under *Heckler*. Although a "*single-shot* nonenforcement decision" is typically unreviewable, "an agency's adoption of a general enforcement policy is subject to review." *OSG Bulk Ships, Inc. v. United States*, 132 F.3d 808, 812 (D.C. Cir. 1998) (quoting *Crowley Carib. Transp., Inc. v. Pena*, 37 F.3d 671, 676 (D.C. Cir. 1994)). "[A]n agency's pronouncement of a broad policy against enforcement poses special risks that it 'has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities.'" *Crowley*, 37 F.3d at 677 (quoting *Heckler*, 470 U.S. at 833 n.4); *see, e.g.*, *Pub. Citizen Health Rsch. Grp. v. Acosta*, 363 F. Supp. 3d 1, 18 (D.D.C.

[9] Although not part of the administrative record, the Court can take judicial notice of these documents for their contents and what they suggest about how the Press Release was understood by regulated entities. *See, e.g.*, *O'Hailpin v. Haw. Airlines, Inc.*, No. 22-00532, 2025 WL 1549442, at *4 (D. Haw. May 30, 2025) ("News articles are admissible to show the effect on the listener and are subject to judicial notice." (capitalization altered)); *D.A.M. v. Barr*, 474 F. Supp. 3d 45, 55 n.12 (D.D.C. 2020).

2018) (finding nonenforcement policy reviewable where it amounted to "a wholesale *suspension*" of a prior rule).

The Press Release does not deal with single-shot nonenforcement decisions, but rather announces a blanket policy that the Bureau "*will not* prioritize enforcement or supervision actions" against *anyone* for violating Section 1071. Press Release, https://perma.cc/PER8-T4HE (emphasis added). The fact that the Press Release couched this Nonenforcement Policy as a matter of "prioritization" does not allow the Defendants to evade the law. *See, e.g.*, *Edison Elec. Inst. v. EPA*, 996 F.2d 326, 331, 333 (D.C. Cir. 1993) (agency statement that says that certain offenses will be "reduced priorities" is reviewable).

III. The Challenged Actions Violate the APA

A. Defendants Are Unreasonably Delaying Agency Action

The APA requires courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The D.C. Circuit has set out six non-exclusive factors, known as the "*TRAC* factors," to evaluate claims under Section 706(1):

> (1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

Telecom. Rsch. & Action Ctr. ("TRAC") v. FCC, 750 F.2d 70, 80 (D.C. Cir. 1984) (cleaned up); *see generally, e.g.*, *Afghan & Iraqi Allies v. Blinken*, 103 F.4th 807, 814–20 (D.C. Cir. 2024) (discussing and applying *TRAC* factors); *In re Pub. Emps. for Env't Responsibility* ("*PEER*"), 957

F.3d 267, 273–76 (D.C. Cir. 2020) (same).[10] "Time is '[t]he first and most important factor.'" *PEER*, 957 F.3d at 273–74 (quoting *In re Core Comm'cns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008)).

Fifteen years after Congress's command, Defendants have yet to collect and make available Section 1071 data, and just announced that they will not do so for at least another year—and likely far longer, as discussed *infra* p. 41. The *TRAC* factors support compelling them to comply with their obligations by vacating the 2025 Final Rule and 2025 IFR delaying the Lending Transparency Rule and the Press Release memorializing the Nonenforcement Policy. There can be no dispute that the most important factor, time, weighs heavily against Defendants, who have already delayed compliance by a decade and a half. The D.C. Circuit has "found far shorter delays … to be 'nothing less than egregious.'" *PEER*, 957 F.3d at 274 (collecting cases with delays of less than a decade). "Although '[t]here is no *per se* rule as to how long is too long,' a 'reasonable time for agency action is typically counted in weeks or months, not years.'" *Id.* (quoting *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004)). And while Congress did not impose a deadline for CFPB to implement its mandate, "the lack of a hard deadline 'does not give government officials carte blanche to ignore their legal obligations.'" *Id.* (quoting *Cobell v. Norton*, 240 F.3d 1081, 1096 (D.C. Cir. 2001)).

Defendants might argue that the Lending Transparency Rule satisfied their obligations under Congress's direction, so this Court should ignore the fact that CFPB has gone fifteen years

[10] In many *TRAC* cases, plaintiffs seek mandamus, which also requires a showing "that the agency has violated 'a crystal-clear legal duty.'" *In re Ctr. for Bio. Diversity*, 53 F.4th 665, 670 (D.C. Cir. 2022) (quoting *In re Nat'l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022)). Plaintiffs have not requested a writ of mandamus, because vacating the 2025 Final Rule, Press Release, and 2025 IFR should cure their injuries by reactivating Defendants' and lenders' obligations under Section 1071 and the Lending Transparency Rule. Nonetheless, Plaintiffs have shown a violation of a crystal-clear legal duty: Defendants' mandatory obligation to collect and make available lending data under Section 1071 and the Lending Transparency Rule. *See supra* pp. 22–23.

without executing Congress's mandate and is refusing to do so now. But where an agency issues a mandatory rule that it later ceases to give effect to, the agency "still has a duty enforceable in this Court to act." *Sierra Club v. Johnson*, 374 F. Supp. 2d 30, 32 (D.D.C. 2005); *accord, e.g.*, *Env't Def. v. Leavitt*, 329 F. Supp. 2d 55, 64 (D.D.C. 2004). Courts routinely apply this principle in cases where a mandatory rule is vacated by a court, *e.g.*, *id.*; it applies with even more force where it is the agency's own actions that prevent the mandatory rule's enforcement. "[O]therwise, an agency could take inadequate action to promulgate a rule and forever relieve itself of the obligations mandated by Congress." *Oxfam Am., Inc. v. SEC*, 126 F. Supp. 3d 168, 172 (D. Mass. 2015). An agency cannot drag its feet on a mandatory rulemaking and then voluntarily prevent it from taking effect, while claiming that it has satisfied Congress's mandate.

The remaining *TRAC* factors are neutral or weigh in Plaintiffs' favor.

Factors 3 and 5. "The third and fifth factors overlap—the impact on human health and welfare and economic harm, and the nature and extent of the interests prejudiced by the delay." *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 118 (D.D.C. 2005). Both support Plaintiffs. Although this case falls within "the sphere of economic regulation," it is one where "human … welfare [is] at stake." *TRAC*, 750 F.2d at 80. One of Section 1071's purposes is to mitigate discriminatory barriers to capital. *See* 15 U.S.C. § 1691c–2(a). As CFPB explained in the Lending Transparency Rule, "the Bureau must collect and make available sufficient data to help the public and regulators identify potentially discriminatory lending patterns that could constitute violations of fair lending laws." 88 Fed. Reg. at 35,168. Discrimination goes to the heart of human welfare. *See, e.g.*, *Yavari v. Pompeo*, No. 2:19-cv-02524, 2019 WL 6720995, at *8 (C.D. Cal. Oct. 10, 2019) ("religious discrimination" and "harm to [plaintiff's] business" are "concerns given more weight under the third TRAC factor"); *SAI v. DHS*, 149 F. Supp. 3d 99, 121 (D.D.C. 2015) (finding a 2.75-year delay unreasonable where it had the effect of perpetuating discrimination). Likewise, "economic harm is clearly an important consideration and will, in some cases, justify court

intervention." *Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987). The ability of communities and individuals to thrive and achieve financial sustainability is another critical determinant of human welfare. As CFPB explained, "[i]ncreased transparency about application and lending practices across different communities will improve credit outcomes, and thus community and business development." Lending Transparency Rule, 88 Fed. Reg. at 35,168.

For the same reason, the fifth factor, "the nature and extent of the interests prejudiced by delay," *TRAC*, 750 F.2d at 80, weighs in Plaintiffs' favor: as Congress and CFPB have long recognized, this data is critical to improving the conditions of small business owners and communities with limited access to capital. *See, e.g.*, Lending Transparency Rule, 88 Fed. Reg. at 35,168; Key Dimensions at 18, https://perma.cc/ANB7-VQZ3; *cf. PEER*, 957 F.3d at 274 (finding third factor "at least neutral" where, "[t]hough this is not a case where inaction risks life and limb, the agencies' failure to regulate air tours harms visitor welfare to some extent by exposing visitors to unmitigated noise pollution" (citation omitted)). Indeed, the 2025 Final Rule and 2025 IFR themselves acknowledged that "small businesses' and financial institutions' realizations of the benefits arising from the 2023 final rule will … be delayed by at least one year, reducing the real net present value of these expected future benefits." 2025 Final Rule, 90 Fed. Reg. at 47,519; 2025 IFR, 90 Fed. Reg. at 25,879.

Factor 4. The fourth factor, "the effect of expediting delayed action on agency activities of a higher or competing priority," *TRAC*, 750 F.2d at 80, also weighs in Plaintiffs' favor. The 2025 Final Rule and 2025 IFR made no attempt to suggest that competing priorities justified delaying Section 1071. *See* 90 Fed. Reg. at 25,874–25,883. And while the Press Release paid lip service to "focusing resources on supporting hard-working American taxpayers, servicemen, veterans, and small businesses," Press Release, https://perma.cc/PER8-T4HE, this purported interest is belied by the fact that Defendants are in the middle of a campaign to massively reduce CFPB's resources by terminating most or all of its staff—indeed, to "get rid of" CFPB altogether. *NTEU I*, 774 F.

Supp. 3d at 1, 60; *see supra* p. 11 & n.4. If current CFPB resources pose any barrier to enforcing the lawfully promulgated Lending Transparency Rule, Defendants are entirely able to remedy that concern.

Moreover, CFPB itself has already determined that the Lending Transparency Rule "support[s] … small businesses." Press Release, https://perma.cc/PER8-T4HE; *see, e.g.*, Lending Transparency Rule, 88 Fed. Reg. at 35,166 ("[S]mall business lending data are essential to better understand the small business financing landscape to maintain and expand support for this key part of the U.S. economy."); Lending Transparency Rule, 88 Fed. Reg. at 35,171 ("The advancement of both statutory purposes of section 1071—facilitating fair lending enforcement and identifying business and community development needs—in turn will support small businesses across all sectors of the economy …"). Defendants' justification thus not only contradicts Congress's design, it contradicts itself.

Indeed, CFPB has previously acknowledged that "[d]ata collected under Section 1071 may allow the Bureau and others to focus resources in an effort to identify potential areas of concern." Key Dimensions at 40, https://perma.cc/ANB7-VQZ3; *accord* Lending Transparency Rule, 88 Fed. Reg. at 35,234, 35,306, 35,310 (describing ways in which Section 1071 data will help allocate and target resources). Where an agency has already concluded after extensive research and public comment that an action will conserve resources, a vague and conclusory statement to the contrary deserves no credence. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (an "agency must at least 'display awareness that it is changing position' and 'show that there are good reasons for the new policy'" (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009))).

Factor 6. Finally, while "the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed,'" *TRAC*, 750 F.2d at 80 (cleaned up), the facts here do suggest impropriety. Defendants are in the midst of an avowed

campaign to "get rid of" CFPB, defying the constitutional separation of powers and the statutory mandates Congress imposed on the Bureau fifteen years ago. *See generally NTEU I*, 774 F. Supp. 3d at 11; *supra* p. 11 & n.4. When an agency and its leadership seek to obliterate a congressionally created agency, their subsidiary efforts to thwart individual statutory mandates should be viewed with considerable skepticism. But even if Defendants were acting in good faith, the D.C. Circuit has made clear that that does not save otherwise unreasonable delay. *See, e.g.*, *TRAC*, 750 F.2d at 80.

Accordingly, the *TRAC* factors weigh heavily in Plaintiffs' favor, and the Court should compel compliance with Defendants' statutory mandate by vacating the actions through which they seek to evade it.

B. Defendants' Actions Are in Excess of Statutory Authority and Not in Accordance with Law

Under Section 1071, all covered financial institutions "shall compile and maintain, in accordance with regulations of the Bureau," Section 1071 data, and "shall … submit[] [the data] annually to the Bureau." 15 U.S.C. § 1691c–2(e)(1), (f)(1). The Lending Transparency Rule is Defendants' duly promulgated regulation prescribing how financial institutions should effectuate that obligation. Thus, federal law requires covered financial institutions to compile, maintain, and submit Section 1071 data in accordance with the Lending Transparency Rule.

The 2025 Final Rule, 2025 IFR, and Press Release purport to relieve lenders of that legal obligation. But an agency cannot "purport[] to *alter* [statutory] requirements and to establish with the force of law that otherwise-prohibited conduct will not violate the Act." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 326 (2014) (emphasis in original); *see also, e.g.*, *Nicopure Labs, LLC v. FDA*, 944 F.3d 267, 281 (D.C. Cir. 2019) (agency cannot make "blanket rule excusing" products from statutory requirement); *Pub. Citizen Health Rsch. Grp.*, 363 F. Supp. 3d at 18 (agency may not "suspend[] its reporting requirement entirely such that covered employers are not legally

obligated to submit the forms").

This is especially so where Congress explicitly provides an agency with only limited authority to make exceptions. An agency has "no authority to create exceptions not explicitly listed in the statute." *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1128 (D.C. Cir. 2013); *see also, e.g.*, *Detweiler v. Pena*, 38 F.3d 591, 594 (D.C. Cir. 1994) ("Where a statute contains explicit exceptions, the courts are reluctant to find other implicit exceptions."). Congress authorized the Bureau to "conditionally or unconditionally [] exempt any *financial institution or class of financial institutions*" from Section 1071's requirements. 15 U.S.C. § 1691c–2(g)(2) (emphasis added). By explicitly authorizing the Bureau to exempt financial institutions on an individual or class-by-class basis, it implicitly disallowed it from exempting *all* financial institutions, as it did here. *See* 2025 IFR, 90 Fed. Reg. at 25,875 (relieving "all covered financial institutions" of their obligations under Section 1071).

Because Defendants lack statutory authority to adopt a blanket nonenforcement policy or exempt all financial institutions from compliance with Section 1071, the challenged actions are not in accordance with law and are in excess of statutory authority, and therefore must be set aside. 5 U.S.C. § 706(2)(A), (C).

C. The Challenged Actions Are Arbitrary and Capricious

Courts must set aside agency action that is "found to be arbitrary, capricious, or an abuse of discretion." 5 U.S.C. § 706(2)(A). An agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (cleaned up). Although this standard is deferential, the Court may still review whether "given the facts, the agency exercised its discretion unreasonably." *Multicultural Media, Telecom & Internet Council v. FCC*, 873 F.3d 932, 936 (D.C. Cir. 2017). If an agency "fail[s] to

consider important aspects of the problem" before it, "[t]hat omission alone renders [the agency's] decision arbitrary and capricious." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020). When an agency changes policy, it must "display awareness that it *is* changing position" and "show that there are good reasons for the new policy." *Fox Television Stations,* 556 U.S. at 515. And it must consider whether "its prior policy has engendered serious reliance interests that must be taken into account" and, if so, "provide a more detailed justification." *Id.*; *accord, e.g.*, *Regents of Univ. of Cal.*, 591 U.S. at 30. An agency likewise has an "obligation to acknowledge and account for a changed regulatory posture the agency creates." *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011).

Defendants have reversed course from the Lending Transparency Rule—a prior rule issued after a decade of work, thousands of comments, and extensive analysis—on the basis of an analysis that ignores significant reliance interests, obvious alternatives, and reversals of its prior conclusions. Neither their affirmative justification nor their response to comments is facially reasonable nor supportive of their predetermined delay.

Defendants' affirmative justification for the 2025 Final Rule's reversal of course boils down to two reasons: (1) that the delay was needed to "ensure uniformity of compliance" and "eliminate confusion" created by the stays issued in the three challenges to the Lending Transparency Rule, and (2) that Defendants want to "issue a new proposal to reconsider certain aspects of the [Lending Transparency Rule]" that "address[es] the underlying concerns raised by stakeholders about the 2023 final rule." 90 Fed. Reg. at 47,516–17. Both omit key facts that render the decision arbitrary and capricious.

The "eliminate confusion" and "uniformity of compliance" rationale is not substantiated by evidence and ignores that any confusion and nonuniformity is of Defendants' own making. Defendants have tellingly never explained what they mean by "confusion" or identified its supposed source. That on its own undermines their justification, because "conclusory statements

'cannot substitute for a reasoned explanation.'" *Env't Health Trust v. FCC*, 9 F.4th 893, 905 (D.C. Cir. 2021) (quoting *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008)). Furthermore, any "confusion" is of their own making. The only confusion arises not from the content of the Lending Transparency Rule—which Defendants previously believed was clear and two courts concluded was reasonable—but from Defendants' recent actions to eviscerate its requirements and indications that they plan to change it further in some as-yet-undisclosed way. *See, e.g.*, RBLC comment at 4, https://perma.cc/SU5D-VRBU; NCRC comment at 6–7, https://perma.cc/8HHZ-7WMD.[11] "[A] problem of [an agency's] own making" does not constitute reasoned decisionmaking. *Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 573 (2d Cir. 2015); *accord, e.g.*, *S.W. Elec. Power Co. v. EPA*, 920 F.3d 999, 1020 (5th Cir. 2019); *see also Portland Cement*, 665 F.3d at 187.

The "uniformity of compliance" rationale similarly ignores Defendants' role in soliciting stays from the three courts hearing challenges to the Lending Transparency Rule. *See supra* pp. 11–13. As mentioned, Defendants did so even though up until that point the Rule had been successful in litigation. This was not a circumstance in which a rule had already been called into serious question or looked unlikely to survive a challenge. If Defendants valued uniform compliance, they had an obvious alternative not discussed in the 2025 Final Rule or 2025 IFR: not encouraging the courts to issue the stays. *See Am. Radio*, 524 F.3d at 242 ("An agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives."). Indeed, Defendants *reversed* their position in the lead case, *Texas Bankers Association*, and asked the Court to issue the stay that it had previously denied. *See supra*

[11] Indeed, even regulated entities that support the 2025 Final Rule had previously commended CFPB for its "prompt issuance of clear time periods"—the very time periods that the Press Release and 2025 IFR unsettled. *See* Wis. Bankers Ass'n, *Re: Small Business Lending Under the Equal Credit Opportunity Act Extension of Compliance Dates; Docket No. CFPB–2024–0018* at 1 (Aug. 2, 2024), *available at* https://perma.cc/P7Z7-SSTG.

pp. 11–12. Yet they demonstrated no awareness of the way in which their entirely voluntary actions created the supposed uncertainty of which they now complain. They just shirked their "obligation to acknowledge and account for a changed regulatory posture the agency creates," rendering their actions arbitrary and capricious. *Portland Cement*, 665 F.3d at 187.

Defendants' other rationale, their desire to issue a new proposal addressing concerns with the Lending Transparency Rule, directly violates the rule that an agency changing policy must "show that there are good reasons for the new policy." *Fox Television Stations*, 556 U.S. at 515. As commenters supporting the 2025 Final Rule acknowledged, their concerns were "not new." ELFA comment at 1, https://perma.cc/6FXZ-QNAX. Indeed, some simply reattached their 2022 comments opposing the Lending Transparency Rule in the first place. AFSA comment, https://perma.cc/TU6Y-YMJW. Defendants previously considered all of those concerns and concluded that the Lending Transparency Rule—including the length of time it was providing for lenders to comply—adequately dealt with them. *See, e.g.*, 88 Fed. Reg. at 35,430–38; NCRC comment, https://perma.cc/8HHZ-7WMD. While Defendants may be free to change the Lending Transparency Rule's deadlines through *reasoned* decisionmaking, they cannot simply amend them by saying that concerns exist without analysis satisfying the change-in-position doctrine.

Defendants' failure to respond meaningfully to significant comments opposing the 2025 Final Rule also dooms the rule. Most significantly, two associations of regulated entities—one with more than 1,000 members, the other with nearly 500—explained that their members had "already invested in Section 1071 compliance—upgrading systems, hiring staff, and aligning internal reporting—[and] now face regulatory limbo." RBLC comment at 4, https://perma.cc/SU5D-VRBU; *see also* OFN comment at 3, https://perma.cc/8RU7-F2LL. The 2025 Final Rule placed them "in a costly state of flux, postponing implementation plans, delaying vendor contracts, and reducing clarity." OFN comment at 3, https://perma.cc/8RU7-F2LL. And it placed them at a competitive disadvantage, because "institutions that chose not to prepare are

rewarded by the delay." *Id.* These are the exact kinds of reliance interests that agencies are required to take into account. *See, e.g.*, *Council of Parent Att'ys & Advocs. v. DeVos*, 365 F. Supp. 3d 28, 54 (D.D.C. 2019) (holding delay of rule arbitrary and capricious where agency did not consider fact that parties had "incurred costs by coming into compliance" with the rule). Indeed, Defendants cited these exact compliance costs for companies that had not yet prepared to comply—despite the first deadline being the same day as the 2025 Final Rule—as a benefit of the delay, showing that Defendants consider them to be significant. *See* 2025 Final Rule, 90 Fed. Reg. at 47,518–19. Defendants' failure to provide a "more detailed justification" for disregarding these "serious reliance interests" is a textbook violation of its obligations under the APA. *Fox Television Stations*, 556 U.S. at 516; *see also, e.g.*, *Regents of Univ. of Cal.*, 591 U.S. at 30.

Commenters also emphasized the value of the data lost due to Section 1071's delay, and the ways in which the availability of the data would offset compliance costs. *See, e.g.*, NCRC comment at 2–5, https://perma.cc/8HHZ-7WMD; AFREF comment at 4, https://perma.cc/FPH3-8K3P. While Defendants paid lip service to the harm done by postponing the benefits of the Lending Transparency Rule, *see* 2025 Final Rule, 90 Fed. Reg. at 47,519; 2025 IFR, 90 Fed. Reg. at 25,878–89, they did not explain why they were reaching a different conclusion about how those benefits stack up against financial institutions' compliance costs. *See Fox Television Stations*, 556 U.S. at 516 ("[A] reasoned explanation is needed for disregarding facts and circumstances that underlay … the prior policy."). Here again, Defendants simply reversed the Lending Transparency Rule's conclusions, without acknowledging the departure from their prior conclusions about the value of data to be collected, much less a reasoned explanation for the change in position.

Commenters also noted that HMDA, on which Congress modeled Section 1071, led to data collection on home mortgage lending practices and availability of that data within just a few years of the law's enactment, even though HMDA data covers a larger market than small business and farm loans. AFREF comment at 5, https://perma.cc/FPH3-8K3P. HMDA requires similar data

collection efforts by financial institutions, specific to the home lending context. *Id.* As one commenter emphasized, the availability of that data not only benefited the public by promoting increased home lending to underserved areas and allowing for better enforcement of civil rights laws, but it also benefited the financial institutions that collected the data by identifying "untapped geographic and demographic customer bases that could become a new source of business and revenue." *Id.* at 4–5. Notably, Defendants failed to respond to this comment.

Finally, Defendants evaluated the impact of the 2025 Final Rule as if it involved only a delay of "approximately one year." 90 Fed. Reg. at 47,518–19. But as commenters noted, Defendants cannot follow through on their intent to amend the Lending Transparency Rule—the main reason for the 2025 Final Rule—without yet further delay. ELFA comment at 7, https://perma.cc/6FXZ-QNAX; WBA comment at 1, https://perma.cc/PRG2-YZWW. Defendants will need to issue a new notice of proposed rulemaking, followed by a comment period and the time needed to craft a final rule. And a new compliance deadline will be needed after that final rule. So, the delay will necessarily be more than one year, rendering Defendants' analysis fatally inaccurate.

Because the 2025 IFR and Press Release contain even less explanation, there is no basis on which to conclude that they meet the APA's requirement of reasoned decisionmaking if the 2025 Final Rule does not. Accordingly, this section's points apply with even greater force to the earlier actions.

D. The Press Release Was Issued Without Observance of the Notice-and-Comment Procedure Required by Law[12]

In the Press Release announcing the Nonenforcement Policy, Defendants did not even

[12] As explained in Plaintiffs prior Motion for Summary Judgment, the 2025 IFR was also issued without good cause for forgoing notice and comment. *See* ECF No. 14-1 at 30–36. That issue is currently moot because the 2025 Final Rule superseded the 2025 IFR. *See Las Americas Immigrant Advoc. Ctr.*, 783 F. Supp. 3d at 219–21 (collecting cases). If Defendants argue that

purport to provide a reason for forgoing notice and comment. Presumably, they will argue that notice and comment was unnecessary because the Press Release is a mere interpretative rule or general statement of policy. *See* 5 U.S.C. § 553(b)(3)(A). This argument will fail for much the same reason that the Press Release reflects binding agency action: an agency's decision that is "'tantamount to amending or revoking a rule' … amounts to substantive rulemaking subject to the APA's constraints." *Pub. Citizen Health Rsch. Grp.*, 363 F. Supp. 3d at 18 (quoting *Clean Air Council*, 862 F.3d at 6); *accord, e.g.*, *Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 48 (D.D.C. 2011) ("If an agency adopts a new position inconsistent with an existing regulation, or effects a substantive change in the regulation, notice and comment are required.").

Here, as previously discussed, the Press Release announcing the Nonenforcement Policy informed regulated entities that CFPB would not enforce the Lending Transparency Rule, constructively revoking it and suspending its compliance deadlines. *See supra* Part II. The same evidence that shows that CFPB has treated the Press Release and its underlying policy as binding, and that lenders viewed it as such, confirms that Defendants intended the Press Release to "grant rights … or produce other significant effects on private interests" and "narrowly constrict the discretion of agency officials by largely determining the issue addressed." *Batterton v. Marshall*, 648 F.2d 694, 701–02 (D.C. Cir. 1980); *see also Nat'l Mining Ass'n*, 768 F. Supp. 2d at 48 ("[T]he standard for determining whether an agency pronouncement is a legislative rule is very similar to the second element of the *Bennett* finality analysis.").

Defendants' subsequent actions confirming the binding, blanket nature of the Press Release announcing the Nonenforcement Policy set it apart from explanations of an agency's enforcement

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vacatur of the 2025 Final Rule would somehow revive the 2025 IFR, Plaintiffs reserve the right to re-argue that portion of Count III.

priorities that constitute mere "statements of policy" exempt from notice-and-comment rulemaking. Because "it appears that the [CFPB] is treating the [Press Release] as binding," it represents a "legislative rule[] that [was] adopted in violation of the APA's notice and comment requirements." *Nat'l Mining Ass'n,* 768 F. Supp. 2d at 45, 49; *see also, e.g.*, *Am. Acad. of Pediatrics v. FDA*, 379 F. Supp. 3d 461, 496–98 (D. Md. 2019) (finding that a guidance document purporting to be a nonbinding enforcement policy was a legislative rule).

CONCLUSION

For the foregoing reasons, the Court should declare the 2025 Final Rule, 2025 IFR, and Press Release unlawful and vacate them.

Dated: October 29, 2025

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, et al., *Defendants*.	Case No. 1:25-cv-2374

DECLARATION OF POOJA BOISTURE IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Pooja Boisture, declare under penalty of perjury that the following is true and correct:

1. I am an attorney with Democracy Forward Foundation, which represents the Plaintiffs in the above-styled action. I make this declaration based on my personal knowledge as well as my review of certain business records and correspondence.

2. Attached hereto as Exhibit A is a true and correct copy of a webpage from the Financial Services Observer publication titled "CFPB Will Not Enforce Small Business Lending Rule," published on May 6, 2025.

3. Attached hereto as Exhibit B is a true and correct copy of an article from the America's Credit Union's publication titled "The Sweet Escape: CFPB Won't Prioritize Enforcement of Section 1071," published on May 20, 2025.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2025.

[signature block on page 2]

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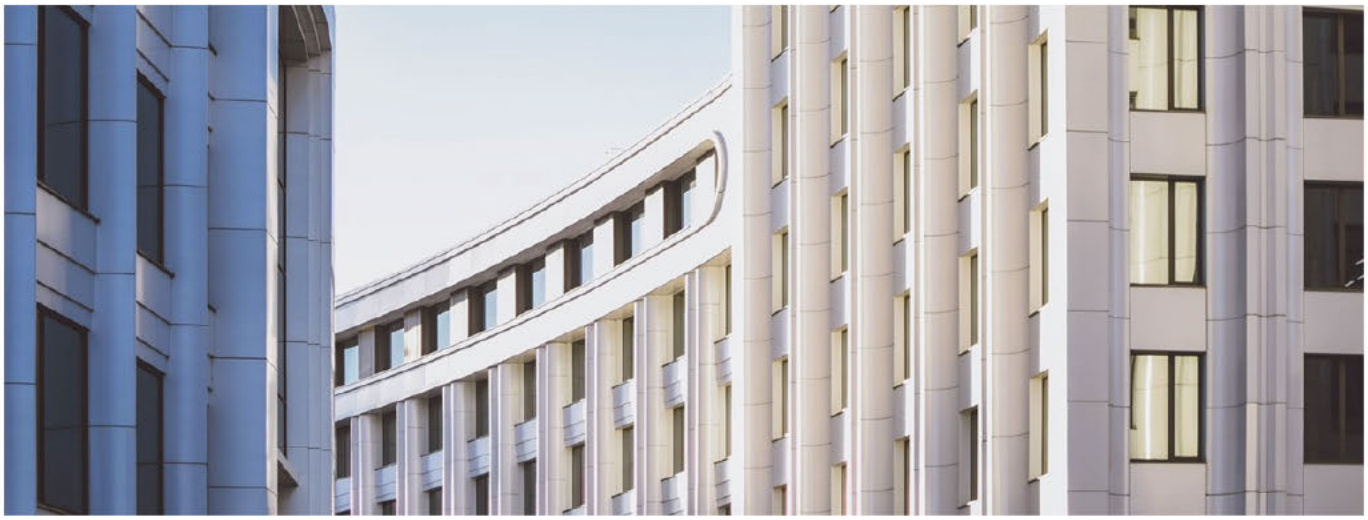
Exhibit A

GT GreenbergTraurig

Financial Services Observer

News & Commentary on Financial Regulatory and Compliance Matters

CFPB Will Not Enforce Small Business Lending Rule



By Timothy A. Butler, Matthew White & Tessa Cierny on May 6, 2025

On April 30, 2025, the Consumer Financial Protection Bureau (CFPB) **announced** that it "will not prioritize enforcement or supervision actions" related to obligations imposed by its Small Business Lending Rule (under Regulation B) against entities not covered by the Fifth Circuit Court of Appeals' stay in *Texas Bankers Association v. CFPB*, No. 24-40705.

Click here to read the full GT Alert.

Financial Services Observer

GT

Exhibit B

America's Credit Unions

BLOGS

The Sweet Escape: CFPB Won't Prioritize Enforcement of Section 1071

By JaMonika Williams | May 20, 2025

From here, I can hear the collective sigh of relief from credit unions now that the CFPB has announced its intention to deprioritize enforcement of its small business lending data collection rule for all entities outside of the stay imposed as part of the ongoing lawsuit challenging the rule. I imagine this announcement is almost as satisfying as learning the identity of the scoundrel who won't clear his used coffee pods from the break room's Keurig.

This blog discusses the legal developments of this controversial rule and how it applies to credit unions.

BRIEF HISTORY Section 1071 of Dodd Frank mandates financial institutions, including credit unions, to collect and report certain data on applications for credit extensions to minority-owned, women-owned, and small businesses. With credit unions believing the rule creates unduly compliance burdens, America's Credit Unions, the Cornerstone League, and Rally Credit Union joined a lawsuit (Texas Bankers Association v. CFPB) against the rule in the U.S. District Court of the Southern District of Texas. After a denial of a motion for summary judgment, the case was appealed to the Fifth Circuit.

The Fifth Circuit granted plaintiff's motion for a stay (temporary suspension of legal proceedings) pending the appeal. The granted stay only applies to **plaintiffs and intervenors (parties of this lawsuit)**. As America's Credit Unions is an intervenor, the stay applies to all members of America's Credit Unions.

LEGISLATURE In February 2025, Sen. John Kennedy, R-La. Introduced a bill which would repeal the CFPB's small business data collection rule under Section 1071 of Dodd-Frank. House Small Business Committee Chairman Roger Williams, R-Texas, introduced the House version of the bill.

CFPB On April 30, 2025, The Consumer Financial Protection Bureau (CFPB) announced with respect to the Small Business Lending Rule aka Section 1071, it will not prioritize enforcement or supervision actions with regard to entities that are presently **outside the stay (not plaintiffs or intervenors),** imposed under Texas Bankers Association v. CFPB.

In a recent news release, the CFPB stated:

"The Bureau will instead keep its enforcement and supervision resources focused on pressing threats to consumers, particularly servicemen and veterans. The Bureau takes this step in the interest of focusing resources on supporting hard-working American taxpayers, servicemen, veterans, and small businesses. Even absent resource constraints, the Bureau would deprioritize enforcement of this rule because of the unfairness of enforcing it against entities not protected by the court's stay but similarly situated to parties that are protected by the stay. The Bureau looks forward to resolving the status of this regulation and ensuring fair, consistent treatment for all entities impacted by the regulation."

The Bureau notes "resource constraints" on their enforcement ability and is possibly a reference to recent attempts at staff reductions at the Bureau.

Impact on America's Credit Union's members?

While America's Credit Unions' members **are already covered** by the stay and not directly affected by the CFPB's announcement, the announcement further reinforces the likelihood that credit unions will not need to implement the requirements of the 1071 rule as it is written today.

If you have any questions concerning this blog, please contact the Compliance Team using compliance@americascreditunions.org.

PREVIOUS POST NEXT POST

JaMonika Williams
FEDERAL REGULATORY COMPLIANCE COUNSEL
AMERICA'S CREDIT UNIONS

Advocacy
Compliance
Events & Training

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, Acting Director, Consumer Financial Protection Bureau, in his official capacity, et al., *Defendants*.	Case No. 1:25-cv-2374

DECLARATION OF PAULINA GONZALEZ-BRITO

Paulina Gonzalez-Brito hereby declares, pursuant to the provisions of 28 U.S.C. § 1746, as follows:

1. I am Paulina Gonzalez-Brito, the chief executive officer of Rise Economy, a nonprofit organization operating under Section 501(c)(3) of the Internal Revenue Code and based in San Francisco, California.

2. Rise Economy was founded in 1986 as the California Reinvestment Committee, later renamed the California Reinvestment Coalition, to aid low-income communities and communities of color in accessing credit, financial services, and investments. Rise Economy's membership comprises more than 300 nonprofit community-based organizations and public agencies, including small business lenders, community development financial institutions, legal assistance and other small business technical assistance providers that work directly with small businesses to ensure equal access to capital and economic development.

3. Rise Economy seeks to accomplish its mission, in part, by negotiating agreements and advocating with lenders to increase lending to and investments in women-owned,

minority-owned, and small businesses, and by publishing evidence-based reports and analyses to educate its members, policymakers, and the public about areas of need and ways to promote credit access.

4. Rise Economy has spent decades calling for changes to federal law to require collection and publication of data documenting lending to small businesses, including farms and businesses owned by women or minorities, and lending in neighborhoods of color, in order to identify needs and opportunities for increasing access to capital among those communities. Rise Economy has been analyzing analogous home mortgage data, collected under the Home Mortgage Disclosure Act ("HMDA"), for decades.

5. Although the lack of data makes it difficult to conduct meaningful comparisons between small businesses' access to credit relative to other businesses, the limited data available suggests that small businesses, especially those that are women-owned or minority-owned, face obstacles that their counterparts do not. This conclusion is supported by anecdotal evidence, by the experiences of Rise Economy member organizations and their clients, and by paired testing studies.

6. On May 10, 2017, Rise Economy participated in a field hearing and roundtable concerning CFPB's plans to implement Section 1071. Around the same time, Rise Economy – along with some of our members and partners – convened a panel of small business owners to discuss with CFPB and other banking regulators the challenges small business owners face in accessing bank credit and being relegated to high-cost merchant cash advances and other online lending, and the need for small business lending data to address these problems.

7. When CFPB solicited comments "to enhance [its] understanding of the small business lending market" in May 2017, Rise Economy filed a comment urging swift implementation of Section 1071 and offering suggestions for the implementing regulations.

8. But when CFPB backtracked on its plans to implement Section 1071, Rise Economy filed suit in 2019. Our case alleged that CFPB was unlawfully withholding agency action and acting arbitrarily and capriciously, not in accordance with law, and in excess of statutory authority.

9. Rise Economy and our co-plaintiffs moved for summary judgment, but before the district court ruled on that motion, we and the rest of the parties settled the case. Through that settlement, CFPB conceded that it "is required to issue regulations . . . to implement Section 1071," but that it had not issued implementing regulations. To resolve the litigation, CFPB agreed to undertake the statutorily required rulemaking process.

10. Following the settlement, Rise Economy continued to work toward the development of the Section 1071 rule, educating and organizing member organizations to inform and support the rule, conducting webinars and presentations for allied organizations, advocating for the advancement of the rule in virtual and in-person meetings with federal legislators and regulators, signing on to letters of support for the rule, sending letters opposing administration and Congressional efforts to weaken or gut the rule, and commenting at every opportunity to shape the contours of the rule, including a January 2022 comment to the CFPB which itself included numerous comments from our members as to why the rule was needed, and how it would help Rise Economy member organizations fulfill their missions.

11. CFPB's 15-year failure to implement Section 1071 continues to inhibit Rise Economy's ability to carry out its mission-critical activities, including developing and issuing reports about access to credit; advising economic development organizations working with women-owned,

minority-owned, and small businesses on getting loans; and working with lenders to encourage greater investment in low-income communities and communities of color.

12. For example, Rise Economy regularly conducts analyses of access to credit for women-owned, minority-owned, and small businesses. Our previous reports have been based on data collected from the Federal Financial Institutions Examination Council ("FFIEC"), the Small Business Administration, and similar sources. But as CFPB has recognized, the FFIEC's datasets are limited in their ability to appropriately convey the full extent of lending to small businesses. Without current data, is it not possible to confidently answer basic questions regarding the state of small business lending. In the absence of transparent market data, Rise Economy researches and reviews outside studies of small business lending, as well as informal surveys of our own member organizations.

13. With the data mandated by Section 1071, Rise Economy would produce targeted, data-driven analyses and reports about the credit needs of communities and, in particular, women-owned, minority-owned, and small businesses. But without the data, we are limited in our ability to produce informed analyses.

14. Rise Economy also devotes substantial resources to negotiating agreements with lenders and encouraging them to support the credit needs of women-owned, minority-owned, and small businesses, and their communities. Through these Community Benefits Agreements, Rise Economy obtains commitments to provide loans, investments, and financial services in communities that have historically faced barriers to accessing credit. The absence of the data mandated by Section 1071 impairs these efforts by making it much harder for Rise Economy to identify the communities most in need and the services that could be most beneficial, and making it impossible to compare lenders' performance to that of their peers. This increases the difficulty

and resource-intensiveness of each effort Rise Economy undertakes, reducing the number of agreements Rise Economy can pursue; restricting Rise Economy's ability to address unequal credit access issues in such agreements; and preventing Rise Economy from being able to address these issues adequately in meetings with financial institutions with whom they do not have formal agreements. The absence of such data designed to identify lending discrimination also allows discrimination to continue, which not only injures small business owners and their communities, but also increases the challenges Rise Economy faces in fulfilling its mission.

15. CFPB's failure to implement Section 1071 also has impaired the ability of Rise Economy and our members to work with state and local governments to enact policies to improve lending practices. The failure has deprived Rise Economy and our members of data they would use in developing and advocating for effective state and local legislative and regulatory measures on multiple fronts, such as regulation of merchant cash advance lenders and other high-cost online lenders. For the past few years, Rise Economy has prioritized efforts to create a state Community Reinvestment Act through the California legislature. The state's ability to effectively determine whether various types of financial institutions are meeting the credit needs of all small businesses in all California communities hinges in large part on the finalization and implementation of the Lending Transparency Rule.

16. CFPB's failure to implement Section 1071 has similarly adversely affected the ability of Rise Economy and its members to work with CFPB and other bank regulators to ensure appropriate enforcement of federal fair lending laws and implementation of the Community Reinvestment Act. Without Section 1071 data, Rise Economy and its members are unable to effectively raise discrimination concerns and claims related to business lending practices with lenders and regulators.

17. In the mortgage context, Rise Economy is able to raise mortgage lending discrimination concerns and violations with lenders and regulators because lenders are already required to collect and report substantially similar data concerning home mortgage applications pursuant to the HMDA. Rise Economy would use Section 1071 data similarly, but it cannot do so without the data. The failure to enforce Section 1071 has left Rise Economy without the information that we need to protect small business owners and communities from lending gaps and discrimination.

18. The failure to implement Section 1071 also has frustrated Rise Economy's ability to effectively monitor Special Purpose Credit Programs, which are authorized by the Equal Credit Opportunity Act, and which Rise Economy has prioritized in Community Benefits Agreements negotiations and conversations with California banks. With each year of delay, Rise Economy is further injured, as multiple CRA examinations, bank merger applications, and bank meetings or opportunities to meet pass by without our ability to engage with robust analysis of lending performance and gaps for consideration. In the absence of reports and detailed comments by organizations like ours, financial institutions will be less accountable, and more easily able to pass their CRA and fair lending examinations even where discrimination may be present. Further, there will be less business opportunity for lenders and for Rise Economy members alike who will for another year be unable to effectively evaluate where lending gaps exist and how to best fill them through targeted outreach, product development, technical assistance support for small business owners, and increased access to credit.

19. The absence of data transparency also disincentivizes lenders from improving their lending practices. This, in turn, harms not only the affected businesses, but also the communities

in which they operate or would operate, as without capital access businesses are unable to hire local workers and serve their communities.

20. For these reasons, Rise Economy and its members have for decades called for implementation of a data collection requirement for lending to the affected communities, a call that Congress heeded in enacting Section 1071. Since its enactment, Rise Economy and our members have called on CFPB repeatedly to fulfill its statutory duty to implement Section 1071. A 2017 survey of our members who work with small businesses on lending found that 95 percent believed that implementing Section 1071 was critical to ensuring equal access to capital. These calls have been consistently ignored.

21. Additionally, Rise Economy's members – which include small business lenders, community development financial institutions, technical assistance providers, and other organizations that work directly to ensure equal access to capital – are directly harmed by the failure to implement Section 1071. For example, one Rise Economy member investing in commercial development projects for small businesses in Los Angeles has a critical need for Section 1071 data to identify lending patterns and document where lending is actually occurring. The identification of geographic areas subject to little credit access, or to especially high priced credit, can demonstrate market gaps which present business opportunities for lenders, community organizations, local government entities and small businesses to work together to target particular neighborhoods for economic development. So, too, the lending data can incentivize poor-performing lenders to ensure their systems and their lending are in compliance with fair lending laws. That member anticipated that the data would (1) protect small businesses by uncovering potential discrimination against minority-owned and women-owned businesses; (2) encourage lenders to broaden their lending practices, potentially increasing deployment of

capital for underserved small businesses; (3) allow small business borrowers to make more informed decisions when seeking financing so as to avoid predatory lenders that ultimately might require community development financial institutions and other community lenders to devote limited resources to bail out victimized small businesses; and (4) contribute to overall economic growth, wealth creation, job creation, and an environment in which clients can thrive. Stifling Section 1071's implementation negatively impacts the financial health of small businesses and, as a result, this Rise Economy member's commercial development projects for small businesses will also suffer.

22. Another Rise Economy member assisting small, women-owned, and minority-owned businesses in distressed neighborhoods in the San Francisco Bay Area and in Fresno also has been harmed by the failure to implement the Lending Transparency Rule. This member assists small business owners through lending, technical assistance, and other connections to capital. In connection with this work, this member would benefit from full implementation of the Lending Transparency Rule because Section 1071 data would allow it to advocate to lenders about responding to gaps in access to capital. Currently, this member lacks the meaningful data to do so. This member also would have utilized Section 1071 data to identify, and advocate on behalf of, groups that have been particularly underserved and should stand to benefit from Special Purpose Credit Programs, programs authorized by the Equal Credit Opportunity Act to help for-profit creditors serve the unmet needs of economically disadvantaged groups. But the CFPB's actions have kept this member from the data that would confirm which groups are underserved.

23. Other Rise Economy members are similarly hindered in their abilities to pursue their missions to provide and secure loans for members of the impacted communities, because without the data mandated by Section 1071, they must expend additional organizational resources – and

in some respects are entirely unable – to identify particular needs and opportunities. Technical assistance providers could, for example, review the data to understand why certain borrowers are being denied loans, and then develop products and services to help those businesses strengthen their capacity to secure loans, increasing the capacity of the business to thrive, hire workers and serve the community, while enabling the nonprofit to fulfill its mission. Other Rise Economy members will analyze the data to determine where there are gaps in lending by geography, market, or product that provide opportunities for lenders to fill to increase the flow of credit in the community. And where the data show particular lender performance as poor, Rise Economy members may engage those lenders to show them how to more effectively reach underserved borrowers and communities and ensure fair lending compliance. Thus, without implementation of Section 1071, Rise Economy's members are prevented from effectuating their missions and from focusing their efforts on the individuals and communities with the greatest need for their services.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 21, 2025.

/s/ Paulina Gonzalez-Brito
Paulina Gonzalez-Brito

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, Acting Director, Consumer Financial Protection Bureau, in his official capacity, et al., *Defendants*.	Case No. 1:25-cv-2374

DECLARATION OF SHAWN PHETTEPLACE

Shawn Phetteplace hereby declares, pursuant to the provisions of 28 U.S.C. § 1746, as follows:

1. I am the Campaigns Director of Main Street Alliance ("MSA"), a national network of small businesses. MSA's members include approximately 30,000 small businesses across the United States. Its members also include farms, and MSA works closely with many members who source from local family farmers. MSA helps small business owners realize their full potential as leaders for a just future that prioritizes good jobs, equity, and community through organizing, research, and policy advocacy. MSA also seeks to amplify the voices of its small business membership by sharing their experiences with the aim of creating an economy where all small business owners have an equal opportunity to succeed. MSA's women- and minority-owned businesses have historically been left out of credit markets, in part because the current data on financial institution lending practices is inadequate to fully understand or remedy the extent to which discriminatory lending creates credit deserts for small businesses and businesses owned by women and people of color.

2. For decades, MSA and our member organizations have been calling for changes to federal law to require collection and publication of data documenting lending to small businesses, including farms and businesses owned by women or minorities, and lending in neighborhoods of color, in order to identify needs and opportunities for increasing access to capital among those communities.

3. Although the lack of data makes it difficult to conduct meaningful comparisons between small businesses' access to credit relative to other businesses, the limited data available suggests that small businesses, especially those that are women-owned or minority-owned, face obstacles that their counterparts do not.

4. MSA is harmed by Defendants' lack of enforcement of Section 1071 in a number of ways. First, MSA's membership is largely women-owned businesses, with a larger percentage being minority businesses than the national average. As a result, continued discriminatory practices as a result of missing Section 1071 data diminish the political and economic power of the MSA, and also reduce potential membership revenue from those businesses.

5. Second, without access to the MSA data, it is more difficult for MSA to identify trends across commercial lending to inform policy recommendations to political leaders, one of MSA's core functions.

6. For example, from 2021 to 2022, MSA staff interviewed small business owners in Newark, New Jersey and Norfolk, Virginia, where MSA represents 614 small business owners, on the topic of accessing capital. Historically, MSA's members in these locations have experienced discrimination in lending. Through MSA's research, it became clear that financial reforms are needed to address systemic racial and gender discrimination within traditional business lending and to improve capital access. As that research concluded, "[c]apital is not

equally distributed among entrepreneurs . . . Black and Latinx entrepreneurs, in particular, have less business equity on average than their white counterparts and experience discrimination in lending."

7. Transparent data about lenders' practices would allow MSA to advocate on behalf of its members with both banking regulators and political leaders in the state legislature to design regulations that will reduce this discrimination, both in New Jersey and Virginia and around the country. Instead, they are forced to conduct surveys like this at their own expense, and even then cannot obtain the kind of granular, comprehensive financial data that Section 1071 would make available. MSA's costs are thus higher than they would be without Section 1071 data, and even so, we cannot make up for the information we have been denied. With the Section 1071 data, we also would offer our members webinar programming and assistance connecting with pertinent resources, if we knew they were being denied commercial lending due to discriminatory practices. Without the data, though, we are unable to offer that support.

8. Many of MSA's members also have been harmed by CFPB's non-enforcement of Section 1071. For example, one of MSA's members, who owns a cleaning business in Minnesota, has struggled to access "capital access programs" designed for minority business owners through traditional commercial lending avenues. This member would have benefited from transparency data about lending practices, so that she could identify potential lending partners using that data.

9. Another member of MSA is the founder and owner of a plant nursery in Saint Paul, Minnesota. This member's inability to obtain commercial lending for her business resulted in her accruing revolving loan debt via credit cards – the only type of credit she was able to obtain. This member, too, would have benefited from transparent Section 1071 data to identify lending partners, and the information could have kept her from accruing credit card debt.

10. As another example, MSA represents hundreds of small business owners in Madison, Wisconsin, who continue to struggle to access capital for their growing businesses; the majority of these small business owners are women. And while there are 10,000 small businesses with more than one staff member in Madison, only 40 of those are Black-owned. Madison is a prime example of credit deserts, where there continues to be challenges in obtaining capital for women-owned, minority-owned, and small business owners. The Section 1071 data would have helped address these challenges, giving MSA the necessary data to advocate on behalf of its members there. Instead, because CFPB will not enforce the Lending Transparency Rule, MSA is unable to make data-backed policy recommendations and MSA's members will be harmed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 21, 2025.

/s/ Shawn Phetteplace
Shawn Phetteplace

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, Acting Director, Consumer Financial Protection Bureau, in his official capacity, et al., *Defendants*.	Case No. 1:25-cv-2374

DECLARATION OF JESSE VAN TOL

Jesse Van Tol hereby declares, pursuant to the provisions of 28 U.S.C. § 1746, as follows:

1. I am the President and Chief Executive Officer of the National Community Reinvestment Coalition ("NCRC"), a nonprofit organization operating under Section 501(c)(3) of the Internal Revenue Code and based in Washington, D.C.

2. NCRC's mission is to help increase the flow of capital into underserved communities. Its membership comprises more than 700 community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority- and women-owned business associations, and local and social service providers from across the nation.

3. NCRC seeks to accomplish its mission by publishing evidence-based reports to educate its members, inform NCRC's own negotiations with lenders, and educate the public and lenders about local needs; negotiating agreements with lenders to increase lending to and investments in

low-to-moderate income communities; and participating in public processes to comment on banks' performances.

4. For decades, NCRC has been calling for changes to federal law to require collection and publication of data documenting lending to small businesses, including farms and businesses owned by women or minorities, and lending in neighborhoods of color, in order to identify needs and opportunities for increasing access to capital among those communities.

5. Although the lack of data makes it difficult to conduct meaningful comparisons between small businesses' access to credit relative to other businesses, the limited data available suggests that small businesses, especially those that are women-owned or minority-owned, face obstacles that their counterparts do not.

6. On May 10, 2017, NCRC participated in a field hearing and roundtable concerning CFPB's plans to implement Section 1071.

7. When CFPB solicited comments "to enhance [its] understanding of the small business lending market" in May 2017, NCRC filed a comment urging swift implementation of Section 1071 and offering suggestions for the implementing regulations.

8. For roughly three years prior to issuing a final rule in March 2023, as CFPB developed the Lending Transparency Rule, NCRC participated at every opportunity, including submitting a December 2020 Comment on data implementation, a January 2022 Comment on the proposed rule, and participating in numerous stakeholder meetings organized by the CFPB.

9. CFPB's failure to enforce Section 1071 has caused harm to NCRC for several years, and its delay will prolong that harm. NCRC provides comprehensive research reports that analyze lending patterns of financial institutions across the country. These reports are critical in advancing NCRC's various programs including policy advocacy, small business lending testing,

and negotiating Community Benefits Agreements with financial institutions to create wealth opportunities in underserved communities. CFPB's rollback and failure to fully implement Section 1071 of the Dodd-Frank Act has directly harmed NCRC's ability to advance its programs through these research reports and diminishes NCRC's ability to inform its members' local strategies that address barriers to capital access. It materially impairs NCRC's ability to conduct rigorous research, advocate for civil rights laws, and provide data-driven support to member organizations working on the front lines of economic equity. CFPB's failure to enforce Section 1071 data collection and reporting thus directly hinders NCRC's ability to evaluate and report on access to small business credit in localities across the country – work that is critical to NCRC's mission. CFPB's failure to enforce Section 1071 has caused NCRC to divert resources to fill the information gap.

10. NCRC's members are also harmed by CFPB's failure to enforce Section 1071 and by NCRC's inability to use Section 1071 data, because NCRC is unable to provide them with evidence-based lending reports to support them in achieving their missions supporting community-based economic development. NCRC's community organization members cannot effectively partner with financial institutions without a shared understanding of local needs – information these members would have had through NCRC had Defendants enforced Section 1071. NCRC's members have missed opportunities to align community lending strategies with financial institutions.

11. NCRC analyzes data regarding access to various types of loans, including mortgages and small business loans. Thanks to the HMDA data that lenders are required to collect and report on home mortgage applications, NCRC evaluates, analyzes, and reports on this data, identifying trends and disparities in access to home mortgages based on race and ethnicity. NCRC's

members use and rely on its reports for their own work. The comprehensiveness of HMDA data is quite powerful. For example, it permits NCRC to compare access to home mortgages within a neighborhood with that of the surrounding city. With the data, NCRC can produce an overview of mortgage lenders within a certain city or county. When NCRC or any of its members undertakes to design and implement a program for low-income buyers within a certain city or county, they rely heavily on HMDA data to do so.

12. NCRC also analyzes and reports on data regarding access to small business loans in order to pursue its mission to inform its members' local strategies that address barriers to capital access. However, NCRC is unable to produce reports and support its members who require information regarding access to small business loans to the extent NCRC does for home mortgages. This is because NCRC lacks the ability to comprehensively analyze and report on this data due to its unavailability. NCRC currently uses data published pursuant to the Community Reinvestment Act ("CRA"), but this data set has significant limitations. Without the implementation of Section 1071, the data is collected only from certain banks, which NCRC estimates accounts for approximately twenty percent of overall lending to small businesses. Nor does the CRA data specify which banks are lending to which businesses. CRA data is also produced in a difficult-to-use format. Thus, NCRC is unable to access data to establish a baseline that measures bank performance. As a result, NCRC lacks the data to demonstrate the need for a financial institution to enter into a Community Benefits Agreement and is unable to articulate where precisely financial institutions should commit their financial resources for maximum impact and return. With Section 1071 data, NCRC would be able to suggest lending products, marketing strategies, and overall lending strategies that would strengthen a bank's lending to underserved borrowers. For example, NCRC would be able to determine that a financial

institution is not lending to women-owned businesses at the same rate as their counterparts and would suggest community commitments that would address that gap in the market. These are things that are often a part of NCRC's comprehensive analysis of a lending institution's ability to meet the needs of their communities.

13. Without the Section 1071 data, NCRC also is unable to identify discriminatory lending patterns affecting women-owned and minority-owned small businesses and provide evidence-based support to challenge discriminatory small business lending practices, because the missing data is needed for longitudinal studies. This work is a long-standing program for NCRC, as evidenced by its small business lending reports. Moreover, NCRC cannot provide data-driven recommendations to policymakers on small business lending reform, which directly frustrates its mission and the legislative intent of Section 1071.

14. Because Section 1071 data is so crucial to NCRC's work, it has consistently and over the course of several years, called for CFPB to enforce the statute and begin collecting the data, including by submitting comments to the proposed rule. CFPB's continued refusal to do so has harmed and continues to harm NCRC and its members. For example, NCRC's subsidiary, NCRC Community Development Fund Inc. ("CDFI") would have used Section 1071 data to identify and develop financial products tailored to underserved markets where there are unmet small business credit needs by examining the types of credit available in a specific geographic area; the stated purpose for application for credit; the types of businesses applying for credit; the amount requested and approved; pricing and interest information; and reasons for denial. In addition, having Section 1071 data would have allowed NCRC's CDFI to use its limited resources to target areas with greatest credit access disparities. Lastly, having such data would have allowed NCRC's CDFI to innovate and collaborate with other NCRC members and institutional lenders

to create novel regional or local financial services products meant to solve the credit needs of small business owners in that community.

15. Given NCRC programmatic work of analyzing HMDA data from financial institutions and given its advocacy work around Section 1071, NCRC is aware that Section 1071 was modeled after HMDA, and the small business lending data that Section 1071 requires would be analogous to HMDA data. And, as NCRC also is aware, the automated compliance software that financial institutions use makes data collection straightforward, and technology exists to seamlessly integrate data collection into existing loan origination processes. For example, of 81 total data points used in Section 1071 data collection, approximately 42 (52%) would already be collected during standard loan underwriting practices. The remaining 39 data points (48%) are new requirements, with the majority being demographic information about business ownership and principal owners. As a result, the lack of Section 1071 data is due to Defendants' regulatory delays, not any technological limitations of financial institutions to collect the data.

16. NCRC's lack of access to Section 1071 data has forced it to divert countless staff hours and resources attempting to make do without it. For example, NCRC staff have devoted countless hours attempting to interpret and extrapolate CRA data to the broader small business lending market. When members ask NCRC for information regarding small business lending in specific cities or counties, NCRC must expend additional resources attempting to identify and extrapolate the data necessary to respond, and NCRC often is able to give only a partial response to the members' questions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 28, 2025.

/s/ Jesse Van Tol

Jesse Van Tol

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, Acting Director, Consumer Financial Protection Bureau, in his official capacity, et al., *Defendants*.	Case No. 1:25-cv-02374

DECLARATION OF RESHONDA YOUNG

ReShonda Young hereby declares, pursuant to the provisions of 28 U.S.C. § 1746, as follows:

1. I am a resident of Iowa, a Black woman, a small business owner, and the founder of the Bank of Jabez. I am also a member of Main Street Alliance.

2. Bank of Jabez's mission is to partner within the communities we serve by providing innovative financial products and services that will educate, prepare, and empower all people to create generational wealth.

3. I have lived all my life in Waterloo, Iowa, where Black residents historically have suffered substantial levels of discrimination, the effects of which are still felt today through significant social and economic disparities.

4. A study published by USA Today in 2018 concluded that Waterloo is the single worst city for Black Americans in the country among cities with Black populations of 5 percent or more, based largely on findings of vastly unequal economic opportunities. The study cited a large disparity in Black versus white unemployment rates (23.9 percent versus 4.4 percent) and

in Black residents' income as a percentage of white residents' (46.8 percent).[1] Recent studies confirm that Waterloo is still as harmfully disparate for Black Americans as it was in 2018.[2]

5. I have had to overcome significant obstacles to become a successful small business owner. I have been significantly harmed by business lending discrimination, which Section 1071 was enacted to address.

6. I come from an entrepreneurial family, and I have seen firsthand the effects of business lending discrimination for decades. My father, who is also Black, ran a successful transportation and maintenance contracting company. Despite his financial success, I observed that my father always struggled to obtain capital. The first van that he secured for his company had to be purchased by an employee of his, a white woman, because he could not locate a bank willing to offer a small business loan to a Black person. Even later, once the business was earning revenue in the millions of dollars and its success was undeniable, he still had to secure loans with his personal residence and other non-business property.

7. I have experienced similar problems in my own time as an entrepreneur. From 2013 until 2019, I was the sole owner of Popcorn Heaven, a gourmet popcorn retail franchise. I also owned Popcorn Heaven's flagship located in Waterloo until 2017.

8. At multiple points during my time launching and operating Popcorn Heaven, I experienced difficulties obtaining a loan as a Black, female, small business owner. Multiple local and regional banks denied my loan applications at Popcorn Heaven's founding, and I ultimately had to accept a loan that provided only two-thirds of the funds that I needed to have adequate working capital to operate the business. As a result, although the first Popcorn Heaven store had

[1] Samuel Stebbins & Evan Comen, These Are the 15 Worst Cities for Black Americans, 24/7 Wall Street, USA Today, https://perma.cc/P9BT-RNCR (last updated Feb. 27, 2019).
[2] Grant Suneson, The Worst Cities for Black Americans, 24/7 Wall St. (June 14, 2023), https://perma.cc/M8T3-NA35.

sizeable and stable sales, it was difficult for me to stay far enough ahead to be able to grow the business. This led to me selling the Waterloo store in 2017. Despite having less business expertise, the buyer – who was white – was quickly able to obtain a loan twice as large as anything I had ever been offered using the same business plan.

9. Similarly, in June 2025, I closed on a deal to acquire a health store. My partners in the venture include a Black doctor; together, we have a combined net worth in the millions. Nevertheless, we were unable to obtain a $100,000 bank loan, even after offering to put 50 percent down or provide our homes as collateral. In the end, we were able to close only through a nontraditional and more expensive seller-financed deal, where the sellers, who were white, hold the loan and the business owners pay the sellers.

10. Based on my experiences as a business owner, I was motivated to launch a bank serving the people of Iowa, the Bank of Jabez. I have hired key executives and brought on a Board of Directors. I expect the bank to be chartered later this year and to launch in 2026. My partners and I plan to focus on serving clients in underbanked communities, and to provide educational services to help people who do not currently qualify for a loan develop the knowledge and resources that they need to qualify.

11. The Section 1071 data that Congress mandated that CFPB collect and provide would be of tremendous use to me, both as a business owner and a banker.

12. As a business owner, I would be able to review banks' lending track records, identify banks that are more or less likely to discriminate against small, Black-owned, and woman-owned businesses. This would help me find financial services institutions that are more likely to lend to me on reasonable terms, and would help me avoid wasting my time working with banks that

have histories of excluding Black and woman business owners or providing them less favorable terms.

13. As a banker, I have even more use for the data. Section 1071 data would allow my bank to identify markets and communities that may particularly benefit from the Bank of Jabez's services. For example, I am familiar with local communities and neighborhoods that are underserved, and I have been meeting with local churches and other community organizations to learn about local needs and to discuss the Bank of Jabez's plans. Similarly, I have worked with groups of small business owners in Texas, Nebraska, and other states to identify areas that would benefit from increased small business lending. Section 1071 data would allow me to find similarly underserved communities in other parts of Iowa and across the country, helping me expand the Bank of Jabez into areas with which my partners and I have less familiarity.

14. Section 1071 data also would help me design the Bank of Jabez's offerings. As a new, client-focused bank, the Bank of Jabez will have more flexibility than some established banks to tailor its financial products to marketplace needs. Analyzing Section 1071 data would allow me and my team to more precisely pinpoint the gaps in available lending and understand what products would fill those gaps.

15. Having Section 1071 data also would help me and the Bank of Jabez satisfy financial supervision requirements. As part of our initial filings and continuing supervision, I will need to provide regular reports on the markets in which the Bank operates. Section 1071 data would make those reports more complete and easier to compile, saving me and the Bank time and resources.

16. This data also would help me collaborate with other banks. In addition to direct loans, the Bank of Jabez will undertake participation loans, where we take on a significant portion of the

risk of a loan that another bank is making. Section 1071 data would help us determine which banks outside my local community would make good partners based on their track records for nondiscriminatory small business lending.

17. My experience with Home Mortgage Disclosure Act data confirms the benefit that Section 1071 data will provide. HMDA data has allowed me to see the percentages of various demographics and zip codes where home loans are disproportionately denied. It also allows me to see zip codes where banks don't grant home loans to local residents at all, instead providing loans only to non-local investors. This allows the Bank of Jabez to thoughtfully market to homeowners that may be interested in its services, and to design products that will be both appealing and financially sensible. But until CFPB begins collecting Section 1071 data and making it available, my ability to do the same for small business owners will be severely limited.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 28, 2025.

/s/ ReShonda Young
ReShonda Young

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RISE ECONOMY, et al., *Plaintiffs*, vs. RUSSELL VOUGHT, et al., *Defendants*.	Case No. 1:25-cv-02374

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Upon consideration of Plaintiffs' motion for summary judgment, accompanying memorandum, and the entire record in this case, it is hereby:

ORDERED that the motion is **GRANTED** and judgment is entered for Plaintiffs on Counts I-VII; it is further

ORDERED that the Final Rule "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates," 90 Fed. Reg. 47,514 (Oct. 2, 2025), the Interim Final Rule "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B); Extension of Compliance Dates," 90 Fed. Reg. 25,874 (June 18, 2025) ("2025 IFR"), and the policy announced in Defendants' April 30, 2025 Press Release, are declared unlawful and hereby vacated and set aside pursuant to 5 U.S.C. § 706(2).

SO ORDERED this _____ day of _____ 2025.

_____
Hon. Dabney L. Friedrich
United States District Court
for the District of Columbia