

United States Senate

WASHINGTON, DC 20510

August 31, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Director Chopra,

We are writing to respectfully request that the Consumer Financial Protection Bureau (CFPB) issue a nationwide stay of the effective date of its Section 1071 rule for all community banks. At your agency's request, a recent ruling in the U.S. District Court has created a situation where only some lenders, including large systemically important lenders, will receive a temporary reprieve from working towards implementation of the CFPB's Section 1071 small business data collection rule ("the 1071 rule"), while others, including many community banks and all credit unions, must seek further relief from the judicial system.

By requesting that the U.S. District Court limit injunctive relief only to those institutions that are members of the American Bankers Association (ABA) and the Texas Bankers Association (TBA), the practical effect of the CFPB's request is that an arbitrary criterion – membership in a trade association – rather than the mandates of Dodd-Frank, and the small bank exceptions in the 1071 rule itself, determine whether an institution must comply with the effective dates and implementation timeframes set forth in the 1071 rule.

As a result, the Bureau arbitrarily requested thousands of community banks, credit unions, and other financial institutions who are not members of the ABA or TBA work towards implementation of the burdensome and needlessly complex rule, while also requesting that a select few receive relief. The CFPB's preferred approach is unfair, anticompetitive, and problematic to implement because while some community banks have relief from this rule, many others do not. Absent a nationwide stay of the effective date from your agency, financial institutions and other trade associations must also turn to the judicial system to seek similar relief as the ABA and TBA. This disparity – requested and created by the CFPB - raises concerns about the agency's ability to fairly and equitably regulate community banks and the agency's willingness to apply common sense approaches to the thousands of small businesses and lenders that serve Main Street.

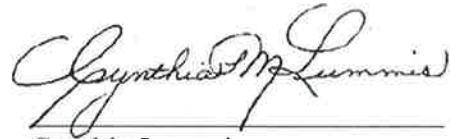
As you are aware, we harbor deep concerns about the potential adverse impacts of the Consumer Financial Protection Bureau's (CFPB) rule to implement Dodd-Frank Section 1071. Furthermore, we believe that the CFPB's funding structure is in violation of the Appropriations Clause of the U.S. Constitution. In October 2022, the U.S. Court of Appeals for the Fifth Circuit concurred with this viewpoint, and the Supreme Court will be reviewing this matter in October.

In light of these recent developments, we respectfully urge the CFPB to exercise its existing legal authority by issuing a nationwide stay of the effective date of its Section 1071 rule for all credit unions and FDIC-insured banks, including community banks. This action would provide a crucial measure of certainty to small businesses and community banks, which are the cornerstone of the American economy, while we await a final determination of the validity of the Section 1071 rule by the Courts.

Sincerely,



John Kennedy
U.S. Senator



Cynthia Lummis
U.S. Senator



Thom Tillis
U.S. Senator



Steve Daines
U.S. Senator



Bill Hagerty
U.S. Senator



J. D. Vance
U.S. Senator



Mike Crapo
U.S. Senator



Kevin Cramer
U.S. Senator