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REPORT
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DISAPPROVING THE RULE SUBMITTED BY THE CONSUMER FINANCIAL PROTECTION BUREAU RELATING TO "SMALL BUSINESS LENDING UNDER THE EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)"

NOVEMBER 28, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.J. Res. 66]

The Committee on Financial Services, to whom was referred the joint resolution (H.J. Res. 66) disapproving the rule submitted by the Consumer Financial Protection Bureau relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)", having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE AND SUMMARY

Introduced on July 14, 2023, by Representative Roger Williams, H.J. Res 66, *a joint resolution disapproving the rule submitted by the Consumer Financial Protection Bureau relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*," would rescind the CFPB's final rule, implementing Section 1071 of the Dodd-Frank Act, to mandate the collection and reporting of demographic data on small business loan applicants.

BACKGROUND AND NEED FOR LEGISLATION

On March 30, 2023, the CFPB issued a final rule to implement Section 1071 of the Dodd-Frank Act, "Small Business Data Collection." [1] The final rule will expand data collection requirements for financial institutions in the small business lending market. Under

[1] CFPB, "Final Rule: Small Business Lending under the Equal Credit Opportunity Act (Regulation B)," (Mar. 30, 2023). https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

the rule, any lender who originates at least 100 loans in each of the two preceding calendar years to small businesses with a gross revenue of up to $5 million from the previous fiscal year will be required to collect certain data related to borrowers' demographic information.[2] Lenders will be required to report on as many as 81 data fields,[3] including application and credit information as well as an applicant's minority-owned business status, women-owned business status, LGBTQI+-owned business status, and information on ethnicity, race, and sex of the principal owners.[4] The CFPB will implement the rule in phases: (1) Lenders who originate at least 2,500 small business loans annually must collect data beginning on October 1, 2024; (2) Lenders who originate at least 500 loans annually must collect data beginning April 1, 2025; and (3) Lenders who originate at least 100 loans annually must collect data beginning January 1, 2026.[5]

The CFPB incorporated some industry feedback into the final rule. The changes include removing the requirement for lenders to make their own determinations of an applicant's race or ethnicity, or any other demographic information; and not requiring loans reportable under the Home Mortgage Disclosure Act (HMDA) to be reported under the new rule. However, covered entities subject to the final rule remain concerned with the short timeframe to create sufficient compliance systems; the ability of the CFPB to protect small businesses' data; and the consequences of increased compliance burden on the availability of and access to affordable small business credit.

On October 26, 2023, the U.S. District Court for the Southern District of Texas issued a nationwide injunction prohibiting the CFPB from implementing or enforcing its final rule on Small Business Lending under the Equal Credit Opportunity Act (Regulation B).[6] The District Court explained that, given the Fifth Circuit's opinion on the unconstitutionality of the CFPB's funding structure, implementation of the Small Business Lending Rule should be enjoined pending the Supreme Court's decision.[7] The District Court further directed the CFPB to extend the time for compliance should the Supreme Court reverse the Fifth Circuit's decision.

HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.J. Res. 66: The Subcommittee on Financial Institutions and Monetary Policy of the Committee on Financial Services held a hearing on March 9, 2023, titled "Consumer Financial Protection Bureau: Ripe for Reform."

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[2] CFPB, "Executive Summary of the Small Business Lending Rule," (Mar. 30, 2023). https://files.consumerfinance.gov/f/documents/cfpb_sbl_executive-summary.pdf.

[3] Texas Bankers Association, "TBA files suit to block CFPB's Sec. 1071 Final Rule," (Apr. 26, 2023). https://www.texasbankers.com/TBA/News_Releases/2023-04-26-TBA-files-suit-to-block-CFPBs-Sec.-1071-Final-Rule.aspx; CFPB, "Small Business Lending Rule: Data Points Chart (Version 1)," (Mar. 30, 2023). https://files.consumerfinance.gov/f/documents/cfpb_small-business-lending-data-points-chart.pdf.

[4] *Id.*

[5] *Id.*

[6] https://texasbankers.informz.net/texasbankers/data/images/Nationwide%20Injuction%20Granted.pdf.

[7] The U.S. District Court for the Southern District of Texas is part of the U.S. Court of Appeals for the Fifth Circuit and is therefore bound by the Fifth Circuit's prior decision. The District Court did not independently consider the funding argument previously held unconstitutional by the Fifth Circuit.

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.J. Res. 66: The Committee on Financial Services held a hearing on June 14, 2023, titled "The Semi-Annual Report of the Bureau of Consumer Financial Protection."

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 27, 2023, and ordered H.J. Res. 66 to be reported favorably to the House as amended by a recorded vote of 29 ayes to 21 nays (Record vote no. FC–95), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Williams by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.J. Res. 66 was ordered reported favorably to the House as amended by a recorded vote of 29 ayes to 21 nays (Record vote no. FC–95), a quorum being present.

Record vote no. FC- 95

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	___	___	Ms. Waters	___	X	___
Mr. Hill	X	___	___	Mrs. Velázquez	___	X	___
Mr. Lucas	X	___	___	Mr. Sherman	___	X	___
Mr. Sessions	X	___	___	Mr. Meeks	___	X	___
Mr. Posey	X	___	___	Mr. Scott	___	___	___
Mr. Luetkemeyer	X	___	___	Mr. Lynch	___	X	___
Mr. Huizenga	X	___	___	Mr. Green	___	X	___
Mrs. Wagner	X	___	___	Mr. Cleaver	___	___	___
Mr. Barr	X	___	___	Mr. Himes	___	X	___
Mr. Williams (TX)	X	___	___	Mr. Foster	___	X	___
Mr. Emmer	X	___	___	Mrs. Beatty	___	X	___
Mr. Loudermilk	X	___	___	Mr. Vargas	___	X	___
Mr. Mooney	X	___	___	Mr. Gottheimer	___	X	___
Mr. Davidson	X	___	___	Mr. Gonzalez	___	X	___
Mr. Rose	X	___	___	Mr. Casten	___	X	___
Mr. Steil	X	___	___	Ms. Pressley	___	X	___
Mr. Timmons	X	___	___	Mr. Horsford	___	X	___
Mr. Norman	X	___	___	Ms. Thaib	___	X	___
Mr. Meuser	X	___	___	Mr. Torres	___	X	___
Mr. Fitzgerald	X	___	___	Ms. Garcia	___	X	___
Mr. Garbarino	X	___	___	Ms. Williams (GA)	___	X	___
Mrs. Kim	X	___	___	Mr. Nickel	___	X	___
Mr. Donalds	X	___	___	Ms. Pettersen	___	X	___
Mr. Flood	X	___	___				
Mr. Lawler	X	___	___				
Mr. Nunn	X	___	___				
Ms. De La Cruz	X	___	___				
Mrs. Houchin	X	___	___				
Mr. Ogles	X	___	___				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.J. Res. 66 is to rescind the CFPB's final rule, implementing Section 1071 of the Dodd-Frank Act, to mandate the collection and reporting of demographic data on small business loan applicants.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate. However, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, once an estimate has been prepared by the Director of the Congressional Budget Office, as required by section 402 of the Congressional Budget Act of 1973, the Committee will adopt as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate.

FEDERAL MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not

contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

This joint resolution states that Congress disapproves the rule submitted by the Consumer Financial Protection Bureau relating to "Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)" (88 Fed. Reg. 35150), and such rule shall have no force or effect.

MINORITY VIEWS

This resolution would nullify the Consumer Financial Protection Bureau's (CFPB) recently finalized small business lending rule, implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Section 1071 was led by Ranking Member Waters and Rep. Velázquez. The CFPB rule implementing this section seeks to: provide transparency in an opaque lending marketplace; promote competition among lenders that would drive down costs; and provide new lending opportunities for small businesses, especially women-owned, LGBTQ-owned businesses and businesses owned by people of color. The passage of this Congressional Review Act resolution would not only reverse this rule, it would further restrict the CFPB's ability to issue any future rules to promote small business lending market transparency.

The CFPB finalized its rule implementing Section 1071 in March 2023.[1] The rule requires lenders to collect and report information about the small business credit applications they receive, including geographic and demographic data (that's self-reported by business owners on a voluntary basis), lending decisions, and the price of credit. The rule will work in tandem with the Community Reinvestment Act, which requires certain financial institutions to meet the needs of the communities they serve. The increased transparency will benefit small businesses, family farms, financial institutions, and the broader economy. Since its finalization, Section 1071 has come under attack in both district courts and Congress. In May 2023, plaintiffs filed a lawsuit in a Texas federal district court challenging the validity of the rule and a motion seeking a preliminary injunction.[2] Community lenders and small business advocates alike have underlined the importance of CFPB's small lending rules to creating a more transparent and fair marketplace for lenders and small businesses.[3]

The CFPB's 1071 rule is expected to result in increased lending to underserved businesses, including farms, as was observed in the implementation of similar sunshine statutes like the Home Mortgage Disclosure Act (HMDA). HMDA data has helped regulators to identify discriminatory practices, like modern-day redlining. Congress drafted Section 1071 of Dodd-Frank following the 2008 financial crisis to provide similar transparency to the small business lending market. In the early days of the pandemic, we saw how the biggest banks prioritized their concierge clients in the first round of the Paycheck Protection Program (PPP), leaving millions of

[1] CFPB, Small business lending rulemaking (Accessed June 8, 2023).

[2] John L. Culhane, Jr., Richard J. Andreano, Jr. & Michael Gordon, Plaintiffs challenging Section 1071 final rule seek preliminary injunction; Ballard Spahr to hold June 15 webinar, Ballard Spahr (accessed Jun, 8, 2023).

[3] Acción Opportunity Fund, CEO Luz Urrutia's Congressional Testimony on Lending Transparency (Mar. 2023); and NCRC, NCRC and Over 150 Organizations Unite in Support of Section 1071 of Dodd-Frank, Rejecting Congressional Repeal Efforts (Jul. 25, 2023).

small businesses, especially those owned by women and people of color, out of the program. Recent research from the Fed found that Black-owned small businesses were 9% less likely to receive a PPP loan compared to White-owned firms. Make no mistake, if we had this CFPB small business data rule in place before the pandemic, we would have had much more data on who was receiving support and who wasn't, and who was lending to diverse small businesses and who wasn't. Going forward, Congress would be better positioned and equipped with data to craft legislation to more fairly support small business lending.

CFPB's 1071 rule is an important step towards transparency and fairness in small business lending. We appreciate that the CFPB is phasing this rule in, giving community banks and credit unions adequate time to prepare to comply with the rule. The arguments that this rule will stop small business lending are a red herring. Again, financial institutions have complied with HMDA for decades, and yet they continue to make mortgage loans. Greater transparency will promote competition and ensure that all businesses have a fair chance to thrive. We must protect the financial needs of small businesses and hold financial institutions accountable for their lending practices.

During the markup, Rep. Casten opened a parliamentary inquiry about the resolution and noted that this resolution does not comply with typical Congressional Review Act procedures for fast-track consideration in the Senate because H.J. Res. 66 was introduced on May 31st, but the papers for the rule that it seeks to overturn was not referred to the Senate Banking Committee until June 12th. According to information staff received from the Senate Parliamentarian's office and Congressional Research Service, even if the House were to pass H.J. Res. 66, the Senate would be unable to take up the measure under fast-track consideration. While we strongly oppose this measure, it would add insult to injury for the House to take valuable floor time to pass H.J. Res. 66, only to have to take additional floor time to pass a different measure approved by the Senate for the measure to advance to the President's desk.

Finally, more than 150 organizations oppose H.J. Res. 66, including: National Community Reinvestment Coalition (NCRC), 20/20 Vision, Access Plus Capital, Accountable.US, African American Alliance of CDFI CEOs, Alliance 85, Inc., American Economic Liberties Project, Americans for Financial Reform, Anacostia Economic Development Corporation, ANHD—The, Association for Neighborhood & Housing Development, Avenue CDC, BBIF, Inc., Birmingham Business Resource Center, Bridgeport Neighborhood Trust, Brotherhood and Sisterhood International, Building Alabama Reinvestment, CAARMA, California Capital, Financial Development Corporation, California Community Economic Development Association, CAMEO—California Association for Micro Enterprise Opportunity, Camino Financial, Inc., CASA of Oregon, Cash Community Development Organization, Catapult Pittsburgh, Catholic charities usa, CDC Small Business Finance, Ceiba, Center for Responsible Lending, Centre for Homeownership & Economic Development Corporation, Centro Cultural, Chicago Community Loan Fund, CHWC Inc., City of Gary, IN, City of Tampa, CLARIFI, Coalition for Non Profit Housing and Economic Development, Coastal

Enterprises, Inc., Community Enterprise Investments, Inc., Community Growth Fund, Community Housing Development Corporation, Community Link, Community Reinvestment Alliance of South Florida, Consumer Action, Consumer Federation of America, Delaware Community Reinvestment Action Council, Inc., Demand Progress, Divine Direction, Economic Action Maryland, Economic Growth Corporation, Empire Justice Center, ExploreUSTV and Travel, Fair Finance Watch, Fair Housing Center of Metropolitan Detroit, Fair Housing Center of Southwest Michigan, Famicos Foundation, Family Resources of New Orleans, FHCNA, First Community Capital, Frayser Community Development Corporation, Gen-Wealth Empowerment, Georgia Advancing Communities Together, Inc., Greater Cincinnati Microenterprise Initiative, Habitat For Humanity of Michigan, Hawai'i Alliance for Community-Based Economic Development, HEAL Food Alliance, Henderson and Company, Home Ownership Center of Greater Cincinnati, Homes on the Hill, CDC, Housing and Education Alliance, Inc. (HEA), Housing, Education and Economic Development, Housing Justice Center, Housing Options & Planning Enterprises, Inc., HousingWorks RI, I Give Back USA, IGNITE! Alabama, Interfaith Center on Corporate Responsibility, Jewish Community Action, JOVIS, Latino Economic Development Center, Latino Leadership Council, Latino Policy Council, Legacy Foundation, Legal Aid Society of San Diego, LINC UP Nonprofit Housing Corporation, Local First Arizona, Local Initiatives Support Corporation (LISC), Logan Heights Community Development Corporation, Main Street Alliance, Massachusetts Action for Justice, Massachusetts Affordable Housing Alliance, Memorial CDC, Metro Milwaukee Fair Housing Council, Metro North Community Development Corporation, Metropolitan Milwaukee Fair Housing Council, Metropolitan St. Louis Equal Housing and Opportunity Council, MS Communities United for Prosperity (MCUP), MY Project USA, National Association for Latino Community Asset Builders, National Association of American Veterans, Inc., National Coalition for Asian Pacific American Community Development (National CAPACD), Native Community Capital, National NeighborWorks Association, National Urban League, NCRC CDF, Neighborhood Improvement Association, NeighborWorks Southern Colorado, New Future Foundation, New Hope Community Development, New Jersey Citizen Action, New Jersey Institute for Social Justice, New Mexico Community Capital, New York StateWide Senior Action Council, Nichols Temple AME Ministries, North Carolina Housing Coalition, Inc., Northwest Indiana Reinvestment Alliance, Olive Hill Community Economic Development Corporation, Inc, Opportunity Finance Network, Over-the-Rhine Community Housing, Philadelphia Association of Community Development Corporations, Pima County Community Land Trust, Pittsburgh Community Reinvestment Group, Prosperity Indiana, Public Citizen, Public Good Law Center, REBOUND, Inc., Reinvestment Partners, Responsible Business Lending Coalition, Revolving Door Project, Rise Economy, River Cities Development Services, River City Housing, Inc., Roosevelt, Southwest Community Development Corporation, San Joaquin Valley Housing Collaborative, SaverLife, Self-Help Enterprises, SLEHCRA, Small Business Majority, South Dallas Fair Park

Innercity Community Development Corporation, South Florida Community Development Coalition, Southern Dallas Progress Community Development Corporation, Southwest CDC, Southwest Economic Solutions, Southwest Georgia United, Southwest Neighborhood Housing Services, The Food Trust, The Greenlining Institute, The National Council of Asian Pacific Americans (NCAPA), The Sacramento Environmental Justice Coalition, Tierra del Sol Housing Corporation, Town of Apex, Ubuntu Institute of Learning, UIC Law School, Universal Housing Solutions CDC, Urban Economic Development Association of Wisconsin (UEDA), Urban Land Conservancy, Utah Housing Coalition, Vermont Slauson LDC, Washington Area Community Investment Fund, Welfare Reform Liaison Project, Inc., Wisconsin Black Chamber of Commerce, Inc, With Action, Woodstock Institute, Working In Neighborhoods, and Working Solutions CDFI.[4]

For these reasons, we oppose H.J. Res. 66.

Sincerely,

MAXINE WATERS,
Ranking Member, Committee on Financial Services.
NYDIA M. VELÁZQUEZ.
BRAD SHERMAN.
GREGORY W. MEEKS.
DAVID SCOTT.
STEPHEN F. LYNCH.
AL GREEN.
EMANUEL CLEAVER, II.
JIM HIMES.
BILL FOSTER.
JOYCE BEATTY.
JUAN VARGAS.
VICENTE GONZALEZ.
SEAN CASTEN.
AYANNA PRESSLEY.
RASHIDA TLAIB.
SYLVIA R. GARCIA.
NIKEMA WILLIAMS.
BRITTANY PETTERSEN.

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[4] NCRC, NCRC and Over 150 Organizations Unite in Support of Section 1071 of Dodd-Frank, Rejecting Congressional Repeal Efforts (Jul. 25, 2023).