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

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

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Cases** Page(s)

**Docketed Cases**



**Statutes, Rules, and Regulations**

**Other Authorities**

## 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

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[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

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[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.

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[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

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[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))).

<u>*Factor 6.*</u> 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. <u>The Press Release Was Issued Without Observance of the Notice-and-Comment Procedure Required by Law</u>[12]

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

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[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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