

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON

SMALL BUSINESS
SUBCOMMITTEE ON INVESTIGATIONS,
OVERSIGHT AND REGULATIONS

OPEN FOR BUSINESS: THE IMPACT OF THE CFPB ON SMALL BUSINESS

TESTIMONY OF

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PRESIDENT

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AND MEMBER OF THE
TRUCK RENTING AND LEASING ASSOCIATION

JULY 28, 2011

My name is Dan Fleming. I am president of Fleming National Lease based in Springfield, Virginia and our company is a member of the Truck Renting and Leasing Association – or TRALA. I am testifying today on behalf of Fleming National Lease as well as TRALA and its Industry Council for Vehicle Renting and Leasing.

Fleming National Lease is a family owned and operated company offering our customers a complete transportation solution. Our services include full service leasing, truck rental, vehicle maintenance and emergency service. Fleming is a small business with 18 permanent employees with locations in Springfield, VA and Landover, MD. We have annual total revenue of approximately \$6 million. We are a member of National Lease, which is one of the largest full service truck leasing organizations in North America, with more than 600 full service locations throughout the U.S. and Canada.

We are also a proud member of TRALA, an association comprised of about 550 companies, employing 100,000 people and operating out of approximately 24,000 locations throughout the United States. One out of every five trucks on the road today is a leased or rented vehicle and our industry purchases over 35% of all new truck equipment in North America.

The nation's truck renting, leasing and sharing industry is an important part of the American economy, supporting jobs and business activity in communities throughout this country. Our industry is on the cutting edge of purchasing the newest technologies and advancements in truck manufacturing. Our industry is also vital to our struggling economy. Because of the limited access to capital and the uncertainties that remain from purchasing new trucks or equipment, companies are more likely to turn to the commercial renting and leasing industry to accomplish their objectives. From this perspective, not only are nearly all of TRALA's 550 members small businesses themselves, but the vast majority of the customers they deal with are also small businesses in search of vehicles and equipment offered for rent or lease at a reasonable price.

Part of the process in acquiring rented or leased vehicles is to fill out an application for credit. This is often done with minimal administrative costs as the applications are straight-forward and if the lessee or renter has the credit scores and financial wherefore all, then we are eager to do business with them.

As written, Section 1071 of Title 10 of the Dodd-Frank Wall Street Reform and Consumer Protection Act adds extensive new business credit applicant data collection requirements to the Equal Credit Opportunity Act (ECOA). These requirements would be offered by and monitored through a new entity called the Consumer Financial Protection Bureau, or CFPB. While I certainly do not operate a bank, under the definitions listed within this new law, I am considered a "financial institution" because I have an application for credit for my customers.

In my opinion and that of TRALA, the Small Business Data Loan Collection provision is:

- Counterproductive
- Contradictory
- Costly
- Confusing

The provision is counterproductive in that the CFPB was created with the intention of giving consumers protection from predatory lenders and allowing them to find more options for information in obtaining a loan, but instead it is now intended to regulate commercial loans and lenders. By forcing more regulations on small businesses that give credit for things as simple as a truck lease or an application at a hardware store, you likely will force some companies out of the business of giving credit altogether.

Section 1071 is contradictory in that the statutory language conflicts with existing language already on the books. My understanding is that Section 202.5 of Regulation B promulgated under the ECOA explicitly says, “A creditor shall not inquire about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction...” As a small business owner, I do not want to know this information. The bottom line for Fleming National Lease is that if the renter or lessee has good credit and meets our company’s basic criteria, they can rent or lease a truck from us. I am concerned that if I was to be forced to ask these questions, what happens to me if I do not give a loan to a small business or minority-owned business or woman-owned business? Will I set myself up for litigation? Will I be called into question for discrimination? The personal information that we would be tasked with collecting should have no basis in determining whether or not someone receives a truck from Fleming National Lease and therefore I have no desire to collect that data.

In terms of cost – and this is always a primary issue with a company such as mine – this could cause a real strain on my bottom line. According to the language in Section 1071, after a lender inquires whether an applicant for a loan is a small business, minority or woman-owned business, no one involved in the credit decision can have access to this information. This would require me – the so-called “lender” under this definition – to completely alter my application process which would be expensive. The information collected could be lengthy as any additional information that the CFPB decides to request, must be fulfilled. This information would have to be maintained and submitted annually to the CFPB and made available to the public upon request.

As I mentioned, Fleming National Lease is a small truck leasing company. Currently we have one full-time administrative person working for our company and another that works part-time. If

we were to comply with this new regulation, given the complexity and time-consuming extent of the provision, I estimate that we would have to – at a minimum – hire our part-time employee full-time or hire another part-time employee. That could cost our company somewhere between \$15,000-20,000 annually. While that may not seem like a lot in the grand scheme of things, I can assure you that my company and our industry as a whole works on razor-thin margins and this constitutes a large investment on my part. For larger companies with computer-generated complex application processes, the cost to comply would be in the hundreds of thousands of dollars. For me, this is money that could be spent hiring another mechanic or purchasing a new vehicle – both of which in turn makes my company more profitable – but instead would be spent on more administrative burdens brought on by CFPB.

Lastly, while I am not an accountant or financial expert, it seems that Section 1071 is extremely confusing and leaves many questions unanswered. I do not yet know what information exactly I am to collect, what definitions would be used to ensure compliance, what actions are required to obtain this information, and what transactions are subject to the new law. In addition, there remains a concern over whether or not the CFPB and the Federal Reserve will work jointly to rectify issues that could remain from an exemption that exists for the auto dealers.

Just to touch on this final point – since Section 1071 of the Dodd-Frank Act amended the ECOA, both the CFPB and the Federal Reserve now have jurisdiction over certain entities such as auto dealers. As with many of the rulemakings required by the Dodd-Frank Act, I believe it is imperative that if these new laws were to be enacted and enforced, regulators must coordinate their implementation of these new requirements. Given the fact that some of the institutions subject to the CFPB's jurisdiction are indirect lenders, such as equipment and vehicle finance companies, the information that they would need to collect and report on under Section 1071 comes from the dealers who are subject to the Federal Reserve's jurisdiction – not CFPB's. Therefore, it would be crucial that the CFPB and the Federal Reserve work to implement these reporting requirements in a harmonious manner in terms of their effective dates and in terms of what data is required to be collected and reported by both entities. If not, financial companies might receive different data than would be required to file with the CFPB and open an entirely new and confusing dilemma.

While I recognize the fact that the CFPB has now decided that it will issue a formal rule that hopefully will address and answer some of the confusing qualities within the law, ultimately I remain unconvinced that there is even a reason to have such a rule implemented in the first place for businesses like my own.

I remain concerned that this commercial provision has no business being in a consumer bureau at all and that the information the CFPB seeks to gain is not consistent with businesses that deal in credit outside of the world of banking. I am not a banker. I lease trucks. To be placed in the

same category with multi-billion dollar financial giants makes absolutely no sense to me. By forcing these regulations down the throat of the small business community, all you will do is force some companies out of the business of issuing credit or make it so much more complicated and expensive that it will be more difficult to grow our companies and industry in the future.

At a time of historic economic uncertainties, making a truck leasing company – or any small business not directly working in the banking industry – comply with Section 1071 is a mistake and I hope this committee and this Congress can put partisan politics aside and realize the unintended consequences that this provision would have on small businesses and stop it before it takes effect in the near future.

I wanted to express my sincere appreciation to this committee for allowing me to come here today and speak to you on this issue. I am happy to answer to the best of my ability any questions you may have.

Thank you.

Sincerely,

Daniel Fleming
President
Fleming National Lease