



PLAINTIFFS WIN INJUNCTION OVER CFPB SMALL BUSINESS LENDING DATA RULE

✧ *Mike Tomkies and Mercedes Ramsey*

The U.S. District Court for the Southern District of Texas has ruled on a motion for preliminary injunction, granting an injunction to members of two trade groups and a private bank that filed suit challenging the Consumer Financial Protection Bureau's (CFPB) final rule implementing the "Small Business Lending Rule Under the Equal Opportunity Act (Regulation B)" pursuant to Section 1071 of the Consumer Financial Protection Act ("Rule"). See *Texas Bankers Association vs. CFPB*, No. 7:23-cv-00144 (S.D. Tex., order filed July 31, 2023); see our Alerts of [Mar. 28](#) and [Apr. 28, 2023](#). The plaintiffs had sought a nationwide preliminary injunction to prevent the CFPB from enforcing the Rule. The Rule requires banks and nonbanks to collect and report information about small business credit applications.

The suit filed by the Texas Bankers Association, Rio Bank, McAllen, Texas, and the American Bankers Association alleges that the CFPB violated the Administrative Procedures Act by abusing its discretion by turning the 13 data points included in the legislation into a regulation covering 81 data points. The plaintiffs argue that the CFPB has failed to account for the effect the rule will have on small business borrowers and community banks, which will be required to overhaul their systems to support the new, arguably over-expansive, data collection requirements. According to a Texas Tech study, small business loans play a larger role in the portfolios of smaller banks than those of larger institutions, meaning that smaller banks (which are less equipped to overhaul their systems) will bear the brunt of the cost of this regulation.

Citing *Community Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, 51 F.4th 616, 623 (5th Cir. 2022), cert. granted, 143 S.Ct. 978 (2023), the court found a substantial likelihood exists that the plaintiffs will prevail on the merits of their case. The court found that plaintiffs were able to show that the likely costs of compliance under the Rule were more than *de minimis* and thus constitute irreparable harm and that the balance of harms and public interest favor a stay. However, the court concluded that an injunction limited to members of two trade groups and the bank was appropriate.

We will continue to monitor the status of the CFPB's Rule, this lawsuit and the U.S. Supreme Court's decision. ☐

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