



INJUNCTION ON CFPB SMALL BUSINESS DATA LENDING RULE EXPANDED

On Wednesday, the U.S. District Court for the Southern District of Texas expanded the injunction it previously placed on the CFPB's Section 1071 rule ("Rule") so that it covers all banks, credit unions, fintechs and other lenders subject to the CFPB's authority nationwide pending a decision in the Supreme Court case challenging the constitutionality of the CFPB's funding mechanism. The original injunction, which was granted in July, applied only to members of the American Bankers Association, the Texas Bankers Association and Rio Bank of McAllen, Texas. See our ALERT of [Aug. 1, 2023](#). A Kentucky court has likewise recently imposed its own nationwide injunction on the rule, similarly pending the Supreme Court's ruling on funding.

Expansion of the Texas injunction's coverage comes in response to several industry groups filing motions to intervene, arguing that other industry groups were put at a competitive disadvantage by not being included in the injunction. The Rule, which requires banks and nonbanks to collect and report certain information about small business credit applications (and covers 81 data points), took effect in August; however, given two nationwide injunctions on the rule, entities which may be subject to the rule can rely on the injunctions to delay compliance.

Relatedly, the Senate voted earlier this month to overturn Section 1071 using the Congressional Review Act. Three Democrats (and two Independents who caucus with Democrats) joined in the vote with Republicans, to pass the resolution 55-43. Such a resolution would revoke the Rule and prohibit the CFPB from promulgating a similar rule in the future. However, the resolution would need President Biden's signature to actually nullify the Rule, and the White House has already indicated that the President would veto the resolution. Currently, Republicans do not have enough votes to override the President's veto.

We will continue to monitor the status of the Rule, this injunction, the Kentucky injunction and the U.S. Supreme Court's decision. The Supreme Court is expected to issue a final decision on the funding case in spring 2024. □

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