



November 7, 2024

FIFTH CIRCUIT GRANTS MOTION TO EXPEDITE APPEAL CHALLENGING SMALL BUSINESS DATA LENDING RULE

The U.S. Court of Appeals for the Fifth Circuit granted the appellants' motion to expedite the appeal in the suit brought by trade associations challenging the Consumer Financial Protection Bureau's (CFPB) Final Rule under Section 1071 of the Dodd-Frank Act, the Small Business Lending Data Collection Rule. *Texas Bankers Association v. CFPB*, No. 24-40705 (5th Cir. Oct. 31, 2024). The court scheduled oral argument for February 3, 2025 and denied the motion for a temporary stay of the rule's compliance dates. Thus, the compliance dates set forth in the CFPB's interim final rule remain for now, see compliance dates below.

The appeal to the Fifth Circuit follows the Texas District Court's decision granting the CFPB's motion for summary judgment on all Administrative Procedure Act challenges to the Small Business Lending Data Collection Rule. In August of 2024 the district court found that: (i) the CFPB did not exceed the authority granted to it under Section 1071 in issuing the Small Business Lending Data Collection Rule; and (ii) the CFPB did not act in an arbitrary and capricious manner in considering the Small Business Lending Data Collection Rule's expected costs and benefits.

After the CFPB issued the Small Business Lending Data Collection Rule on March 30, 2023, the federal court in Texas stayed the rule pending the Supreme Court's decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America* (CFPB v. CFSA). See our [Alert of Oct. 27, 2023](#). The Supreme Court released its opinion in *CFPB v. CFSA* in May of 2024 finding the CFPB funding to be constitutional. See our [Alert of May 21, 2024](#). The CFPB then issued the interim rule establishing compliance dates for the Small Business Data Collection Rule.

Under the interim final rule, lenders with the highest volume of small business loans must begin collecting data by July 18, 2025; moderate volume lenders by January 16, 2026; and the smallest volume lenders by October 18, 2026. The deadline for reporting small business lending data to the CFPB remains June 1 following the calendar year for which data is collected. Thus, high volume lenders will first submit data by June 1, 2026, moderate and low volume lenders will first submit data by June 1, 2027. Lenders may

continue using their small business originations from 2022 and 2023 to determine their initial compliance date, or instead use their originations from 2023 and 2024.

The Small Business Lending Data Collection Rule implements Section 1071 of the Dodd-Frank Act, which requires creditors to determine whether a business "is a women-owned, minority-owned, or small business." Specifically, Section 1071(e) requires financial institutions to request 13 particular data points from businesses, such as the race, sex and ethnicity of the principal owners of the business. The CFPB's final rule implementing Section 1071 goes further, requiring financial institutions to request dozens of additional data points.

In the Texas case, the plaintiffs argue that the CFPB has failed to account for the effect the small business data lending 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.

As the first compliance date is July 18, 2025, the interim final rule is currently not stayed and the oral argument are set for February 3, 2025, entities providing "covered credit transactions" (defined as extensions of business credit, including loans, lines of credit, credit cards and merchant cash advances) to small businesses may want to review the small business data lending rule provisions and determine their applicability and requirements. Please let us know if you need assistance in reviewing the rule. ☐

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