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Kentucky Court Blocks Enforcement of CFPB's Small Business Data Collection Rule for All Lenders*

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require financial institutions to compile, report, and maintain specified information regarding small business loan applications received from certain women-owned businesses, minority-owned businesses, and other small businesses, in accordance with regulations issued by the CFPB. On March 30, 2023, the CFPB issued a final rule to implement Section 1071 (the "SBLR").

As previously reported by BCG, on July 31, 2023, a court in Texas granted a preliminary injunction which prevents the CFPB from implementing or enforcing the SBLR against a Texas state chartered bank (Rio Bank) and any lenders who are members of the American Bankers Association (ABA) or the Texas Bankers Association (TBA) (the "Texas Injunction"). *Tex. Bankers Ass'n, et al. v. CFPB, et al.*, No. 7:23-cv-00144 (S.D. Tex. filed Apr. 26, 2023). Notably, the Texas Injunction only applies to Rio Bank and other lenders that are members of the TBA or ABA, and the court did not apply the Texas Injunction to all lenders who may be subject to the SBLR.

However, on September 14, 2023, a federal district court in Kentucky issued a preliminary injunction that prohibits the CFPB from enforcing the SBLR until the U.S. Supreme Court issues a decision in *Cnty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 51 F.4th 616 (5th Cir. 2022) *cert granted*, 143 S. Ct. 978 (2023). *The Monticello Banking Company et al. v. Consumer Financial Protection Bureau et al.*, No. 6:23-cv-00148-KKC (E.D. Ky. filed Sept. 14, 2023).

In *Monticello*, seven Kentucky state-chartered banks, one national bank, and the Kentucky Bankers Association (KBA) sued to block the implementation of the SBLR. Similar to the *Tex. Bankers Ass'n* case, the plaintiffs in *Monticello* argued that since the CFPB's funding structure is unconstitutional, the SBLR itself violates the U.S. Constitution since it was created using funds derived from unconstitutional sources. The court in *Monticello* granted the plaintiffs request for a preliminary injunction and ordered the CFPB to halt any enforcement of the SBLR until the U.S. Supreme Court issues its decision in *Cnty. Fin. Servs. Ass'n of Am.* (the "Kentucky Injunction").

Notably, the Kentucky Injunction does not limit its application to financial institutions that are members of the KBA. Thus, the Kentucky Injunction broadly prohibits the CFPB from enforcing the SBLR against any financial institution, not just those that are members of the KBA, until the U.S.

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Supreme Court issues a decision in *Cnty. Fin. Servs. Ass'n of Am.* addressing the constitutionality of the CFPB's funding structure.

BCG will continue to monitor, track and report on developments in this area as they arise. If you have any questions on the SBLR or the developments discussed above, you may contact Joel Cook (JCook@ABLAWYERS.COM) or John Davis (JDavis@ABLAWYERS.COM) at the law firm.