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Court's Nationwide Delay of the CFPB's Small Business Lending Data Collection Rule and Senate's Joint Resolution *

On October 26, 2023, the U.S. District Court for the Southern District of Texas in *Tex. Bankers Ass'n, et al. v. CFPB*, Case No. 23-144 (S.D. Cal. Oct. 24, 2023) issued a nationwide preliminary injunction prohibiting the Consumer Financial Protection Bureau (CFPB) from enforcing its final rule implementing Section 1071 of Dodd-Frank Act, which requires financial institutions to collect and report data on business credit applications received from small businesses.

The CFPB's small business lending data collection rule (the "SBL Data Collection Rule"), which was published in the Federal Register in May 2023 (88 FR 35150), has been a trending topic since it was first released by the CFPB in March 2023. Many affected parties have voiced concerns about the new rule, arguing that the rule is too burdensome on the industry.

The Texas court's preliminary injunction issued in October 2023 (the "October 2023 Texas Injunction") prohibits the CFPB from enforcing the SBL Data Collection Rule against any financial institutions covered by the final rule until the U.S. Supreme Court issues a final decision in *Cnty. Fin. Servs. Ass'n of Am. v. CFPB*, 51 F.4th 616 (5th Cir. 2022), cert granted, 143 S. Ct. 978 (2023), which addresses the constitutionality of the CFPB's funding mechanism. The October 2023 Texas Injunction also requires the CFPB to delay the compliance dates for the SBL Data Collection Rule for a duration commensurate with the delayed enforcement, contingent upon a potential Supreme Court reversal of the lower court's decision in the *Cnty. Fin. Servs.* case.

Notably, the same Texas district court previously issued a narrower preliminary injunction, restraining the CFPB from implementing or enforcing the SBL Data Collection Rule solely against named plaintiffs and their members, including (among others) the American Bankers Association and Texas Bankers Association. Again, this restriction remains until the U.S. Supreme Court issues a decision in the *Cnty. Fin. Servs.* case (*Tex. Bankers Ass'n, et al. v. CFPB, et al.*, 2023 U.S. Dist. LEXIS 134913 (S.D. Tex. July 31, 2023)). Additionally, on September 14, 2023, a federal district court in *Kentucky in Monticello Banking Company et al. v. CFPB et al.*, No. 6:23-cv-00148-KKC (E.D. Ky. filed Sept. 14, 2023), issued another preliminary injunction that prohibits the CFPB from enforcing the SBL Data Collection Rule (which wasn't limited to the plaintiffs in the case) also until the U.S. Supreme Court issues a decision in the *Cnty. Fin. Servs.* case.

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Another development with regard to the SBL Data Collection Rule is that on October 18, 2023, the U.S. Senate approved a joint resolution (S.J. Resolution 132) to overturn the SBL Data Collection Rule. The joint resolution is now with the U.S. House of Representatives for consideration. However, even if the joint resolution passes both houses of Congress, President Biden would have to sign the joint resolution into law. It is expected that President Biden will veto the resolution.

A detailed discussion of the SBL Data Collection Rule is provided in SPM #3, *Commercial Lending*, Part Two, Section XVII. For questions about the SBL Data Collection Rule or the court cases and joint resolution discussed above, contact Joel Cook at **JCook@ABLawyers.com** or John Davis at **JDavis@ABLawyers.com**.