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CFPB Extends Compliance Dates for Small Business Data Collection Rule in Response to U.S. Supreme Court Ruling*

Dodd-Frank Act Section 1071 (Section 1071) added small business loan data collection requirements to the Equal Credit Opportunity Act (ECOA) found in ECOA Section 704B (15 USC 1691c-2). On March 30, 2023, the CFPB issued a final rule to implement Section 1071 (SBLR). 88 FR 35150.

As previously reported by BCG, on September 14, 2023, a federal district court in Kentucky issued a preliminary injunction that prohibited the CFPB from enforcing the SBLR against anyone (not just the defendants or their members) until the U.S. Supreme Court issued a decision in *CFPB v. Cmty. Fin. Servs. Ass'n of Am. LTD, et al. 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). This meant that the CFPB was prevented from enforcing or implementing the SBLR until the U.S. Supreme Court issued its decision in the *Cmty Fin. Servs. Ass'n* case.

On May 16, 2024, the U.S. Supreme Court finally issued its ruling on the *Cmty. Fin. Servs. Ass'n* case and held that the CFPB's funding structure is constitutional. *CFPB v. Cmty. Fin. Servs. Ass'n of Am. LTD, et al.*, No. 22-448 (U.S. May 16, 2024). The U.S. Supreme Court reasoned that the statute authorizing the CFPB to take its operating budget from the Federal Reserve funds up to a statutory cap was consistent with the Appropriations Clause of the U.S. Constitution. Shortly after the U.S. Supreme Court published its decision, the CFPB announced that it would be issuing an interim final rule to extend the SBLR compliance dates to compensate for the 290-day period that elapsed from the issuance of the preliminary injunction and the U.S. Supreme Court's decision in *Cmty Fin. Servs. Ass'n of Am.* (see <https://www.consumerfinance.gov/1071-rule/>) (Extension Announcement).

The CFPB has yet to issue the interim final rule extending the compliance dates. However, the compliance dates as extended by the CFPB are set forth in the Extension Announcement and discussed below.

Tier 1. A covered financial institution that originated at least 2,500 covered credit transactions for small businesses in each of the calendar years 2022 and 2023.

Original compliance date. An institution in Tier 1 would have needed to comply with the SBLR by October 1, 2024.

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Extended compliance date. Pursuant to the Extension Announcement, covered financial institutions in Tier 1 (based on their 2022 and 2023 volume) will now have until July 18, 2025 to comply with the SBLR.

First filing deadline. Tier 1 covered financial institutions will be required to begin collecting data for covered applications during the period from July 18, 2025 to December 31, 2025. The information collected during this period must be reported to the CFPB by June 1, 2026.

Tier 2. A covered financial institution that originated at least 500 covered credit transactions (but less than 2,500) for small businesses in each of 2022 and 2023.

Original compliance date. An institution in Tier 2 would have needed to comply with the SBLR by April 1, 2025.

Extended compliance date. Pursuant to the Extension Announcement, covered financial institutions in Tier 2 (based on their 2022 and 2023 volume) will now have until January 16, 2026 to comply with the SBLR.

First filing deadline. Tier 2 covered financial institutions will be required to begin collecting data for covered applications during the period from January 16, 2026 to December 31, 2026. The information collected during this period must be reported to the CFPB by June 1, 2027.

Tier 3. A covered financial institution that originated at least 100 covered credit transactions (but less than 500) for small businesses in each of the calendar years 2022 and 2023.

Original compliance date. An institution in Tier 3 would have needed to comply with the SBLR by January 1, 2026.

Extended compliance date. Pursuant to the Extension Announcement, covered financial institutions in Tier 3 (based on their 2022 and 2023 volume) will have until October 18, 2026 to comply with the SBLR.

First filing deadline. Tier 3 covered financial institutions will be required to begin collecting data for covered applications during the period from October 18, 2026 to December 31, 2026. The information collected during this period must be reported to the CFPB by June 1, 2027.

Note that when the CFPB issues the interim final rule to formally extend the compliance dates for the SBLR, it is possible that the CFPB may make additional changes. This could include adjustments to the years considered in determining if an institution is subject to the SBLR (which is currently 2022 and 2023, but could be changed to, for example, 2023 and 2024). BCG will report on the interim final rule once it is issued. For more information, contact Joel Cook at JCook@ABLAWYERS.COM or John Davis at JDavis@ABLAWYERS.COM.