

Congress of the United States
Washington, DC 20515

April 18, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Director Chopra,

We write to urge you to provide greater clarity around the implementation timeline of the CFPB’s small business data collection rule (pursuant to Section 1071 of the Dodd-Frank Act), particularly in light of the nationwide injunction that has been in effect since last October.¹ This injunction is a result of litigation, originally filed in April 2023, that is still pending in the U.S. District Court for the Southern District of Texas. As you know, the injunction was granted pursuant to the U.S. Court of Appeals for the Fifth Circuit’s ruling in *CFPB v. Community Financial Services Association of America*.² The underlying litigation challenged the final rule on other grounds, including claims that the CFPB was arbitrary and capricious in its rulemaking and that the agency did not adhere to procedures outlined by the Administrative Procedure Act.

Covered entities under this rule need clear guidance from the CFPB that it will comply with the court order from Judge Randy Crane, who directed the CFPB to halt implementation and enforcement of Section 1071 against financial institutions until the Supreme Court resolves a separate case involving the constitutionality of the agency’s funding. The same court order ordered the CFPB to provide for a delay in the implementation dates for all covered institutions to accommodate the full length of the injunction.

Specifically, page 7 of the October 26 order states that, “Defendants shall immediately cease all implementation or enforcement of the final rule against Plaintiffs and their members, Intervenor and their members, and all covered financial institutions.” The order goes on to state that, “in the event of a reversal in that case, Defendants are ORDERED to extend Plaintiffs and their members, Intervenor and their members, and all covered financial institutions’ deadlines for compliance with the requirements of the final rule to compensate for the period stayed.”

¹ *Texas Bankers Ass’n v. CFPB*, No. 7:23-CV-00144, 2023 WL 8480105 (S.D. Tex. Oct. 26, 2023), Dkt. No. 69 (https://www.consumerfinance.gov/wp-content/uploads/sites/14/2023/10/US_DIS_TXSD_7_23cv144_d536929028e5324_ORDER_GRANTING_68_INTROVENORS_MOTIONS_FOR_PRELIMIN-1.pdf)

² *Community Fin. Servs. Ass’n of Am., Ltd. v. CFPB*, 41 F.4th 616 (5th Cir. 2022), *cert. granted*, 215 L. Ed. 2d 104, 143 S.Ct. 978 (2023) (<https://www.ca5.uscourts.gov/opinions/pub/21/21-50826-CV0.pdf>).

However, we have heard from some covered entities that prudential regulators are encouraging financial institutions under their oversight to disregard the injunction and prepare for Section 1071 compliance by October 1, 2024, irrespective of the court's instructions. This has led to confusion for regulated entities regarding the CFPB's stance on deadline extensions after the resolution of the Supreme Court's separate case involving the constitutionality of the agency's funding. A situation where some entities are preparing for compliance with an October date based on statements by individual examiners, while others are appropriately waiting for legal clarity, is not acceptable.

To our dismay, the CFPB has been reluctant to definitively state that it will comply with this court order. As of April 8, 2024, the original injunction has been in place now for more than 250 days and the nationwide injunction has been in place for more than 165 days. Furthermore, deadlines for information collection will now be extended well into 2025. Deadlines for information submission will also presumably be delayed a full calendar year into 2026. Due to this uncertainty, covered entities under Section 1071 deserve clarity on both of these matters. The CFPB must promptly address this uncertainty and provide the necessary guidance to covered entities, thereby fostering a transparent and compliant regulatory environment.

It is notable that while the CFPB adhered strictly to a Northern District of California Court settlement agreement regarding the issuance timeframe of the final rule, similar importance should be accorded to the Southern District of Texas court order. Agencies must uphold the rule of law impartially, irrespective of personal agreements or disagreements with court orders.


Therefore, we request the CFPB to issue clear guidance affirming its commitment to comply with a day-for-day extension of Section 1071 compliance deadlines to compensate for the period stayed, in accordance with the court order. Additionally, we urge you to clarify that the 12-month transition period for data collection to determine covered status will commence at least 12 months before the new deadline. Furthermore, we are asking that you clarify that reporting deadlines will still be set for June of the calendar year following data collection.

Thank you for your attention to this matter.

Sincerely,



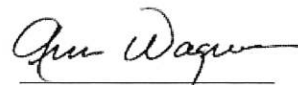
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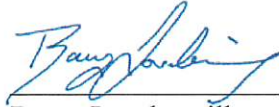
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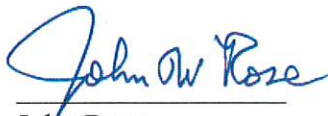
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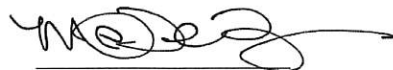
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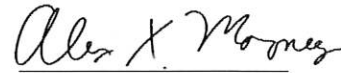
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