

Banking and Finance Law Daily Wrap Up, DODD-FRANK ACT—Texas Bankers Association sues to block implementation CFPB final rule, (Apr. 27, 2023)

Banking and Finance Law Daily Wrap Up

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By Patricia K. Ruiz, J.D.

The TBA argued the rule would be burdensome to small businesses and community banks.

The Texas Bankers Association (TBA), the nation's largest state-based banking trade group, filed suit in the Southern District of Texas against the Consumer Financial Protection Bureau (CFPB) seeking to block the implementation of the agency's Dodd-Frank Act section 1071 final rule. The TBA [urged](#) the court to enjoin the implementation of the rule in light of the Fifth Circuit's ruling that the agency's funding structure violates the U.S. Constitution and is void in Texas and in other states (*Texas Bankers Association v. CFPB*, S.D. Tex., Case No. 7:23-cv-00144).

The final rule implements data collection requirements of section 1071 by requiring lenders to report details of small business credit applications, including demographic data, lending decisions, and the price of credit ([Banking and Finance Law Daily](#), March 31, 2023). The rule is designed to work in concert with the Community Reinvestment Act, which requires certain financial institutions to meet the needs of the communities they serve. The collection of data is designed to help investors and lenders identify new opportunities to support economic growth, assist policymakers seeking to measure the effectiveness of government programs, and provide a data-driven approach to the detection of discrimination, the [CFPB](#) said.

"CFPB has taken [three] pages of legislation requiring 14 data points and turned it into nearly 900 pages of regulation requiring 81 data points," said TBA President and CEO Chris Furlow. "CFPB repeatedly exceeds its authorities and ignores required rulemaking law because its unconstitutional funding and leadership structure make it accountable to no one."

The TBA argued that the rule will require nearly all small business borrowers to be questioned on personal information, which will be reported back to the CFPB, which recently exposed data on nearly a quarter million consumers. CFPB has failed to accurately account for the real impact section 1071 will have on small business borrowers and community banks, "instead proffering a methodological explanation so bureaucratic and unintelligible that it would be laughable if it were not so serious," the TBA said. It cited the Small Business Administration (SBA), which stated "CFPB's approach may be unnecessarily burdensome to small entities, may impact the cost of credit for small businesses, and may lead to a decrease in lending to small, minority- and women-owned businesses." The rule would also burden community banks, forcing them to purchase costly systems to support flawed data schemes and put more personnel and resources toward reporting, rather than to lending in the community.

The TBA asked the court to enjoin the implementation of the final rule in light of the Fifth Circuit's ruling that the agency's funding structure violates the constitution and is void in Texas and in other states. Numerous other actions by the CFPB have been stayed pending the Supreme Court's decision.

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Companies: Texas Bankers Association

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