

[Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—S.D. Tex.: Court halts implementation of CFPB rule imposing data-collection requirements, \(Aug. 1, 2023\)](#)

Banking and Finance Law Daily Wrap Up

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By E. Darius Sturmer, J.D.

The federal district court cited the Fifth Circuit's ruling (that the CFPB's funding structure is unconstitutional) as the basis for granting the banking trade groups' injunction request, but the court declined to apply its order nationwide.

The federal district court in McAllen, Texas, has granted in part a motion to preliminarily enjoin implementation of the Consumer Financial Protection Bureau's "Small Business Lending Rule Under the Equal Opportunity Act (Regulation B)." The Final Rule implements data-collection requirements of Dodd-Frank Act section 1071 by requiring lenders to collect and report details of small business credit applications, including demographic data, lending decisions, and the price of credit. The Texas Bankers Association (TBA), joined by the American Bankers Association and a McAllen-based community bank, had sought a nationwide injunction against implementation of the rule in light of the Fifth Circuit's ruling that the CFPB's funding structure violates the U.S. Constitution and is void in Texas and other states (see [Banking and Finance Law Daily](#), June 26, 2023). The court, agreeing with this argument, ordered that the CFPB shall be preliminarily enjoined from implementing and enforcing the final rule against the complaining trade groups and their members pending any Supreme Court's reversal of that Fifth Circuit ruling, but it denied their request for nationwide injunctive relief ([Texas Bankers Assn. v. CFPB](#), July 31, 2023, Crane, R.).

Background. The underlying lawsuit, originally filed by the TBA in April 2023, cites the CFPB's funding structure—found unconstitutional by the Fifth Circuit in *Cmt'y. Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, 51 F.4th 616 (2022)—as a justification for blocking enforcement of the Final Rule. The rule mandates additional data collection for small business borrowers, which the banking groups have argued will be expensive and require additional hiring and training of new workers. The trade associations and private bank challenge the rule's validity and asked the court to enjoin it nationwide until the Supreme Court resolves the constitutionality of the Bureau's funding structure in that suit, which is on its docket for the coming term.

Standing. The court began its analysis of whether a preliminary injunction should be granted by first disposing of the Bureau's argument that the plaintiff banking trade groups and the bank lacked standing to request such relief. The Bureau contended that the private bank, Rio Bank, could show no injury resulting from the rule because its divulged loans were not covered transactions subject to the Final Rule, but the court disagreed, finding those stated transactions sufficient to establish that the bank is likely subject to the rule. Although the bank's compliance is not yet required, the court noted, "the Bureau has already specified in the Final Rule on what dates the compliance—for which preparation costs will produce the alleged injury—is required." Furthermore, the plaintiffs had submitted an estimate of the bank's compliance costs in total (\$250,000) and for 2023 (\$20,000). Thus, the compliance dates and costs were not speculative, but rather imminent.

Likelihood of success. The court forcefully held that "a substantial likelihood exists that Plaintiffs will prevail on the merits of their case." The court stated that here, the parties did not dispute this likelihood of success on the merits, given that the plaintiffs asserted the Final Rule to be invalid since it was promulgated through the Bureau's unconstitutional funding scheme, and the Bureau lacked any other means beyond that unconstitutional funding to promulgate the rule. Therefore, this factor favored granting the plaintiffs' motion.

Threat of harm. The substantial threat of irreparable harm to the plaintiffs also factored in favor of granting the motion for injunctive relief, in the court's view. The parties did not dispute that compliance with the Final Rule involved some costs. Those costs were "likely unrecoverable," said the court, remarking that the Bureau suggested no way for the plaintiffs to recover them. The plaintiffs' lack of a guarantee of eventual recovery is the reason that their alleged harm is irreparable, it added.

The court disagreed with the CFPB's position that the plaintiffs' submissions did not sufficiently detail compliant costs that are immediate, remarking that "the Fifth Circuit has accepted projected compliance costs as constituting irreparable harm." The plaintiffs, concluded the court, showed that "the likely costs of compliance under the Final Rule are more than *de minimis* and thus constitute irreparable harm."

Balance of equities. The court found that the balance of harms and public interest also favored a stay. The complaining trade groups and bank maintain that "the public interest is clearly served by maintaining our constitutional structure." Although the Bureau countered by contending that "the public interest plainly would be harmed" if the plaintiffs were able to secure preliminary relief delaying the Final Rule because it "produces a benefit for small businesses," the court ruled that it had failed to show any evidence that a stay would cause harm. Without that, it could not find that a stay would harm more than benefit the public interest.

Scope of injunction. As a final matter, the court considered the Bureau's contention that any injunction to issue should be limited to the parties in the case because universal relief would be "inconsistent with ... Article III and traditional equitable limits." The court decided that a limited injunction was appropriate. The scope of an injunction must be justified based on the circumstances, the court stated. Examples of circumstances warranting nationwide relief included constitutional uniformity and concern that patchwork rulings would undermine an injunction limited to certain jurisdictions. Generic reasons like "nationwide scope" or "need for uniformity" or the plaintiffs' assertion of "possible confusion" were, without more, insufficient, in the court's view.

The case is [Civil Action No. 7:23-CV-00144](#).

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Companies: American Bankers Association; Rio Bank; Texas Bankers Association

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