

# Locke Lord QuickStudy: Legal Challenges to Small-Business ?Data Collection Rule Dwindle as Texas Court Sides With CFPB ?

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On August 26, 2024, a federal district court for the Southern District of Texas granted summary judgment in the Consumer Financial Protection Bureau's favor and rejected a challenge to the CFPB's Final Rule regarding section 1071's data-collection requirements. With this decision, there are few active challenges to the Final Rule, and compliance deadlines beginning as early as July 18, 2025 loom.

The lawsuit, *Texas Bankers Association v. Consumer Financial Protection Bureau*,<sup>[1]</sup> began when Texas bank entities challenged the CFPB's Final Rule requiring lenders to collect and report loan-application data for small, minority-owned, and women-owned businesses.<sup>[2]</sup> The Final Rule expands the statutory data-collection amendments of the Equal Credit Opportunity Act authorized by section 1071 of the Dodd-Frank Act.<sup>[3]</sup> The Final Rule covers lenders that originated 100 small-business loans in each of the prior two calendar years.<sup>[4]</sup>

The Texas district court had previously stayed the Final Rule pending the outcome of a U.S. Supreme Court case challenging the constitutionality of the CFPB's funding structure.<sup>[5]</sup> The Court affirmed the constitutionality of the CFPB's funding earlier this year,<sup>[6]</sup> allowing the court in *Texas Bankers* to decide the merits of the challenge.

The plaintiffs' arguments at summary judgment attacked the Final Rule based on violations of the Administrative Procedure Act: (1) that the CFPB promulgated the Final Rule in excess of its statutory authority; (2) that the Final Rule was arbitrary for failing to consider comments raised by interested parties; and (3) that the rule was arbitrary for failing to undertake a proper cost-benefit analysis.<sup>[7]</sup>

## The Final Rule did not exceed the CFPB's statutory rulemaking authority

The Texas court identified two distinct arguments about the CFPB's statutory authority in issuing the Final Rule. First, the plaintiffs argued that the Final Rule was counterproductive to the ECOA's purpose and thus exceeded the CFPB's authority in violation of section 706(2)(C) of the APA.<sup>[8]</sup> The court quickly dispatched this argument, stating that section 706(2)(C) "does not consider the wisdom of a regulation's substance", and that the plaintiffs did not dispute that the CFPB was delegated with authority to promulgate regulations involving data-reporting requirements.<sup>[9]</sup>

Second, the plaintiffs claimed that the CFPB only had authority to impose additional data points for collection if they constituted information already collected by lenders as part of the application process.<sup>[10]</sup> The court rejected

this argument, reasoning that the federal statute required lenders to collect data that it might not otherwise receive in a loan application.<sup>[11]</sup> In other words, the ECOA did not restrict the CFPB to only requiring the collection of data already present in a loan application, so the CFPB had statutory authority to issue the Final Rule.<sup>[12]</sup>

### **The Final Rule was not arbitrary and capricious**

Next, the court considered the claims that the Final Rule was improperly arbitrary because it failed to: (1) consider comments and (2) undertake a proper cost-benefit analysis. The court began by upbraiding the bank entities for their characterization of the Final Rule's breadth.<sup>[13]</sup> Although the bank entities tarred the Final Rule as demanding "81 separate pieces of information", the rule only required 20 data points, only 9 of which were beyond what the ECOA itself required.<sup>[14]</sup>

The court characterized these claims as essentially arguing that "the agency's cost evaluation was flawed and that the agency's cost-benefit analysis was inadequate."<sup>[15]</sup> The court disagreed, concluding that the CFPB had adequately considered the Final Rule's costs and benefits, and "an agency does not fail to 'consider' a concern or suggestion simply because it reached a different conclusion."<sup>[16]</sup> As a result, summary judgment was entered in the CFPB's favor on the bank entities' existing counts.<sup>[17]</sup>

### **Remaining legal challenges to the Final Rule and Final Rule deadlines**

Despite the adverse summary judgment order resolving all existing claims, the plaintiffs have a pending motion to amend the complaint that the court previously acknowledged "may introduce an additional claim to this case."<sup>[18]</sup> Another related case in the Eastern District of Kentucky remains stayed pending a final judgment in the Texas case.<sup>[19]</sup>

Under the CFPB's revised deadlines that were issued after the *Community Financial* case was decided, the earliest compliance date for data collection is July 18, 2025. The earliest filing deadline for lenders has been reset to June 1, 2026. As the legal challenges to the Final Rule are dwindling, lenders should be prepared for the Final Rule to become effective as scheduled.

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[1] *Texas Bankers Ass'n v. CFPB*, 7:23 cv 00144 (S.D. Tex. Apr. 26, 2023).

[2] 124 STAT. 2056 PUBLIC LAW 111–203—JULY 21, 2010.

[3] *Id.*

[4] CFPB Executive Summary of the Small Business Lending Rule, at 2 (last accessed August 28, 2024).

[5] *Texas Bankers Ass’n*, 7:23 cv 00144, Dkt. No. 69.

[6] *CFPB v. Cmty. Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416 (2024).

[7] *Texas Bankers Ass’n*, 7:23 cv 00144, Dkt. No. 115 at 9.

[8] *Id.* at 11.

[9] *Id.* at 10-11.

[10] *Id.* at 11.

[11] *Id.* at 12-15.

[12] *Id.* at 15-16.

[13] *Id.* at 16.

[14] *Id.* at 16.

[15] *Id.* at 18.

[16] *Id.* at 23.

[17] *Id.* at 27.

[18] *Id.* at 28.

[19] *The Monticello Banking Co. v. CFPB*, 6:23 cv 148-KKC (E.D. Ky. Aug. 11, 2023), Dkt. No. 33.

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