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Locke Lord QuickStudy: Texas Federal Court Enjoins ?the CFPB's ECOA Data-Collection Rule for All ?Covered Institutions

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On October 26, 2023, the Southern District of Texas entered a nationwide injunction staying the Consumer Financial Protection Bureau's recent Final Rule regarding data collection for commercial lenders under the Equal Credit Opportunity Act. This injunction stays the CFPB from implementing and enforcing the Final Rule until the United States Supreme Court resolves the constitutionality of the CFPB's funding structure in the *Community Financial* case. After two prior injunctions that stayed enforcement of the Final Rule only as to certain institutions, this is the first clear injunction that relieves all institutions of the obligation to comply with the Rule until *Community Financial* is decided. And, if the CFPB and Final Rule survive *Community Financial*, the injunction extends the time to comply with the Final Rule, giving all covered entities some breathing room.

The Final Rule imposed sweeping data-collection requirements.

On March 30, 2023, the CFPB issued a Final Rule to implement data collection amendments authorized by section 1071 of the Dodd-Frank Act. Section 1071 amended ECOA, adding a section requiring small-business lenders that received a loan application to compile and report 13 data points about the business and loan.[1] The Final Rule dramatically expanded the statutory requirement to 81 data points that a lender must collect and submit to the CFPB.[2] The earliest date for compliance for covered entities was October 1, 2024.[3]

Courts partially enjoined enforcement of the Final Rule as to the parties only.

On April 26, 2023, various Texas bank entities sued the CFPB seeking declaratory relief that the CFPB's Final Rule was invalid due to the CFPB's funding structure and because of other deficiencies.[4] The United States Supreme Court will decide the constitutionality of the CFPB's funding structure in the pending case of *Community Financial Services Association of America, Ltd. v. CFPB*.[5] Locke Lord previously discussed the Final Rule and the lawsuit's specifics **here**.

On July 31, 2023, the Texas court entered a preliminary injunction staying all compliance deadlines for the Final Rule pending the Supreme Court's decision in *Community Financial*.[6] But the court limited the injunction to the plaintiffs and their members; it denied plaintiffs' request to make the injunction nationwide.[7] The court reasoned that "possible confusion" about the Final Rule's application was too speculative, and generic reasons such as the need for uniformity were insufficient to warrant a nationwide injunction.[8]

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After the Texas court issued this limited injunction, a similar lawsuit was filed in the Eastern District of Kentucky. In *The Monticello Banking Co. v. CFPB*, the plaintiffs likewise sought a preliminary injunction staying the Final Rule.[9] On September 14, 2023, the Kentucky court granted the injunction and stayed the Final Rule's enforcement.[10] That order did not clearly enjoin enforcement as to all covered entities and appeared to be limited to the plaintiffs only.[11]

The Texas court enjoined the rule as to all entities.

Finally, on October 26, 2023, the court in *Texas Bankers Association v. CFPB* issued another preliminary injunction staying the Final Rule pending the Supreme Court's ruling in *Community Financial*, but this time the Court extended the injunction to all covered entities nationwide.[12]

The request was made by additional covered entities who had intervened in the case.[13] After finding that the intervenors had satisfied the requirements for injunctive relief,[14] the court turned to the scope of the injunction. The court reasoned that although it previously denied a blanket injunction, it now believed that a need for uniformity and risk of conflicting rulings "justify extending preliminary injunctive relief to all financial institutions covered by the final rule."[15] The court noted that more limited injunctions undermined the Final Rule's purpose, *i.e.*, "the equal application of lending laws to all credit applicants to avoid disparate outcomes …."[16] It also noted that a limited injunction unacceptably "leaves non-exempted lenders subject to the discretion of an agency whose very ability to act is a matter of constitutional concern pending resolution on a nationwide scale."[17] Finally, the court noted that conflicting rulings remained a danger, as well as inconsistent enforcement by the CFPB.[18]

The timing of the injunction remains unclear.

The court's injunction stayed all deadlines for compliance with the Final Rule pending the Supreme Court's decision in *Community Financial*.[19] It also ordered that, if the Final Rule survived the Supreme Court's decision, the CFPB must extend all covered financial institutions' deadlines for compliance with the requirements of the Final Rule "to compensate for the period stayed."[20] Whether that means a day-for-day extension from the day of the injunction to the day or the ruling, or some other period, is not clear. Thus, if the Final Rule survives *Community Financial*, there will likely be further litigation regarding the deadline for compliance with the Final Rule. There will also be further challenges to the Final Rule beyond the CFPB's constitutionality, as discussed in the **prior article**.

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[1] 124 STAT. 2056 PUBLIC LAW 111–203—JULY 21, 2010.

[2] Consumer Financial Protection Bureau, 12 CFR Part 1002 §1002.107; *see also* the CFPB's Data Points Chart for the Final Rule·

[3] Consumer Financial Protection Bureau 12 CFR Part 1002 § 1002.114.

[4] *Texas Bankers Ass'n v. CFPB*, 7:23 cv 00144 (S.D. Tex. Apr. 26, 2023), Dkt. No. 1.

[5] 143 S. Ct. 978 (2023).

[6] *Texas Bankers Ass'n*, 7:23 cv 00144, Dkt. No. 25 at 17.

[7] *Id.*

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

[9] 6:23 cv 148-KKC (E.D. Ky. Aug. 11, 2023), Dkt. No. 1.

[10] *Id.*, Dkt. No. 20.

[11] *Id.*, Dkt. Nos. 19, 20. The Kentucky order and opinion did not define the scope of the injunction, but granted the plaintiffs' motion, which did not ask for a nationwide injunction as to all entities. Further, the opinion only discussed irreparable harm as to the plaintiffs, suggesting the injunction was limited to those plaintiffs. *Id.*, Dkt. No. 19 at 5.

[12] *Texas Bankers Ass'n*, 7:23 cv 00144 (S.D. Tex. Apr. 26, 2023), Dkt. No. 69.

[13] *Id.* at 1-2.

[14] *Id.* at 2-4.

[15] *Id.* at 6.

[16] *Id.* at 5.

[17] *Id.*

[18] *Id.* at 6.

[19] *Id.* at 7.

[20] *Id.* at 7-8.

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