

An Uncertain Future for CFPB's Section 1071 Rule Regarding Small Business Lending Data

Alert

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In a pivotal development, the U.S. Court of Appeals for the Fifth Circuit has [stayed](#) enforcement of the Consumer Financial Protection Bureau's (CFPB) Small Business Lending Rule — also known as Section 1071 of the Dodd-Frank Act. This rule mandates the collection and reporting of loan application data from small businesses owned by women, minorities and LGBTQ+ individuals. However, the court's stay applies solely to the plaintiffs and intervenors involved in the litigation, leaving the rule in effect for other financial institutions.

The CFPB initially requested a 90-day pause for review by the new administration, but the Fifth Circuit went further by issuing a stay of the rule and tolling its compliance deadlines. Therefore, institutions outside the scope of the stay should continue to comply unless and until further judicial or regulatory action is taken.

CFPB UNDER A NEW ADMINISTRATION

This case comes at a time of substantial disruption within the CFPB. Weeks after the inauguration, President Trump removed Director Rohit Chopra and appointed Treasury Secretary Scott Bessent as acting director. Secretary Bessent promptly suspended almost all CFPB operations, including rulemaking, enforcement actions and public communications, and directed CFPB counsel to seek pauses in ongoing litigation. These actions signal a shift in the administration's regulatory priorities, departing from the aggressive enforcement stance of former Director Chopra. Thereafter, on Feb. 8, 2025, CFPB Acting CFPB Director Russell Vought ordered all employees to cease operations unless specifically approved by the agency's chief legal officer. Vought is also one of the architects of Project 2025, which calls for the repeal of Section 1071 of Dodd-Frank.

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CONGRESSIONAL EFFORT

House Small Business Committee Chairman Roger Williams (R-Texas) last week introduced [legislation](#) to overturn the 1071 small-business data collection and reporting rule. The 1071 Repeal to Protect Small Business Lending Act would repeal the statute that underlies the CFPB rule. The House and the Senate approved resolutions in the last Congress under the Congressional Review Act (CRA) that would have nullified the rule, but former President Biden vetoed that resolution. Under rules governing the CRA, there is only one opportunity to use the resolution process for nullification.

FUTURE PROSPECTS FOR THE RULE AND POTENTIAL INDUSTRY ACTION

The limited nature of the stay raises the possibility that other financial institutions or trade associations may seek to intervene in the case, potentially broadening the scope of relief. Intervention could also prompt requests for further modifications to the court's order. Additionally, the CFPB may choose to repeal the rule or extend its compliance deadlines across the industry, though such action has yet to be announced. In the current litigation, the plaintiffs have requested that the court require the CFPB to provide a status update within 30 days on whether it intends to repeal the rule.

PRACTICAL CONSIDERATIONS FOR FINANCIAL INSTITUTIONS

While the Fifth Circuit's stay is a favorable outcome for the plaintiffs and intervenors, it does not absolve the entire financial industry of its obligations under the rule. Financial institutions should remain vigilant and closely monitor any developments in the litigation or potential CFPB actions. We are closely tracking these developments and will continue to provide updates as the situation evolves.

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