

## What did the preliminary injunction do?

On July 31, 2023, the Federal District Court granted a motion for preliminary injunction filed by the Texas Bankers Association (TBA), the American Bankers Association (ABA), and Rio Bank of McAllen, Texas (altogether, the Plaintiffs) against CFPB implementation of the Section 1071 Small Business Data Collection Final Rule (1071 Rule). However, the Court narrowed the scope of that injunction to only apply to the Plaintiffs and their member banks.

The preliminary injunction prevents the Consumer Financial Protection Bureau (CFPB or Bureau) from implementing or enforcing the 1071 Rule and stays all deadlines for compliance. The injunction will remain in place until the Supreme Court rules on the Bureau's constitutionality in the *Community Financial Services Association of America Ltd. v. CFPB* case, the District Court rules on the Plaintiffs, or the District Court decides to remove the preliminary injunction.

## Why is the Motion to Intervene being filed?

CUNA, the Cornerstone League, and Rally Credit Union of Corpus Christi, Texas finds the narrow relief provided by the Court to be unacceptable and unfair— as the limited injunction gives banks a competitive advantage and renders many parts of the 1071 Rule unworkable if it is only applied to certain segments of the financial services marketplace.

Credit unions will be harmed similarly to the Plaintiffs if the 1071 Rule becomes effective. In order for credit unions' interests to be considered, representatives of their interests must intervene in and participate in the case.

Rally Credit Union, together with CUNA and the Cornerstone League, are fighting for parity on behalf of all credit unions so that both the courts and the CFPB consider credit unions' unique member owned cooperative structure and give them equal relief to what's already given to members of the ABA and TBA. The compliance burdens associated with the 1071 Rule will ultimately harm the small businesses that depend on credit unions for their financial needs, and this action is to ensure that credit unions are - at the very least - on an equal playing field.

The Independent Community Bankers of America (ICBA) has also asked to intervene in the case arguing similarly to the credit unions that its community bank members would be harmed if they were not included.

## Who is seeking to intervene on behalf of affected credit unions?

It is a joint effort with CUNA, the Cornerstone League, and Rally Credit Union seeking to intervene in the case:

- **Rally Credit Union. Rally** is a credit union chartered by the State of Texas with its headquarters in Corpus Christi, Texas. Rally serves more than 200,000 members across an eight-county area that covers the Southern District of Texas. Rally has 20 branches, six of which are in or around the McAllen area. Because of the cultural diversity in the communities it serves, Rally frequently makes loans to Texas women-owned, minority-owned, and small business.

- **Credit Union National Association. CUNA** is the largest trade association in the United States serving America's credit unions and the only national association representing the entire credit union movement.
- **Cornerstone League. Cornerstone** is among the nation's largest regional credit union trade associations, serving approximately 700 credit unions in Texas, Arkansas, Kansas, Missouri, and Oklahoma.

## Why is CUNA, Cornerstone League, and Rally Credit Union getting involved now?

This case is very much in its infancy. Plaintiffs filed the operative complaint less than three months ago, seeking a nationwide preliminary and permanent injunction enjoining the enforcement of the 1071 Rule. The Bureau filed its answer on July 3, 2023. Less than ten days ago, the Court issued a preliminary injunction, "enjoin[ing] the CFPB from implementing and enforcing the Final Rule," but limited it to only "Plaintiffs and its members."

It was not until the Court's order narrowing the scope of the requested injunction that it became apparent that Credit Union Intervenors' interest were no longer protected. In just nine days, Credit Union Intervenors promptly organized, hired counsel, and now present a single motion in support of credit unions' unique interest in this litigation and the relief awarded. The motion is therefore timely.

## What are the claims in the case?

At the center of this case is the Bureau's 1071 Rule, which was finalized in March 30, 2023. Credit union outreach to the CFPB throughout the comment period and since the rule's finalization have highlighted the immense compliance burdens this rule creates, particularly for the smallest credit unions in the country. [CUNA's comments](#) and many discussions with the Bureau have long indicated its concerns with the potential for unintended consequences and substantial costs of compliance associated with the creation of a broad data collection where one does not currently exist.

Shortly after the 1071 Rule was promulgated, the Plaintiffs (Texas Bankers Association (TBA), the American Bankers Association (ABA), and Rio Bank, McAllen, Texas) sued. They alleged, in part, that the Rule is invalid and unenforceable because of the constitutional defects in the Bureau's funding scheme, which is an issue currently being considered by the Supreme Court in *Community Financial Services Association of America Ltd. v. CFPB*.

Plaintiffs sought, "both a preliminary and permanent injunction setting aside and holding unlawful the CFPB's [1071 Rule], seeking a nationwide preliminary injunction to prevent [the Bureau] from enforcing the rule." The Court granted Plaintiffs' motion for preliminary injunction but narrowed the scope of the injunction to only Plaintiffs and their member banks.

## Do credit unions have a position on the CFPB's Constitutionality?

Yes. CUNA, the National Association of Federally-Insured Credit Unions (NAFCU) and the American Association of Credit Union Leagues (AACUL) recently filed an [amicus brief](#) arguing that the CFPB's funding structure is impermissible.

The [brief](#) highlighted that, "the power to remedy this constitutional deficiency belongs to Congress, not the court, and cannot be severed from the broader grant of CFPB authority. In other words, the credit unions argue that the funding structure is far too intricately tied to the regulatory and enforcement mechanisms of the CFPB to eliminate only the funding structure.

Since credit unions will exert substantial resources and time to comply with the 1071 Rule, the CFPB should wait until questions about its constitutional structure are resolved by the Supreme Court so that these member-owned financial cooperatives are not wasting member resources until there is more clarity about the CFPB's activities.

### **Does CUNA want the CFPB to go away?**

No. CUNA and the state leagues have been clear that there is a place for the CFPB, particularly when it comes to policing bad actors in the financial services market but have urged changes in both leadership and funding structures

As related to this case, the current funding structure—insulated from the political process and any reasonable limitations—is destructively opaque and does not provide sufficient oversight and accountability. One consequence of this structure is a de facto blank check to create unilateral policies that disrupt functioning markets in service of a political agenda as well as frequent and severe changes in policy that increase costs of compliance or hinders the ability to serve the financial needs of America's consumers and small businesses.

While it does appear that the CFPB's funding structure is impermissible, the Bureau should not be terminated. In their [amicus brief](#), CUNA, NAFCU, and AACUL urged the Supreme Court to stay any judgment that the Bureau is unconstitutionally funded for three to six months. This would give Congress time to reform the Bureau's funding structure in line with Constitutional limitations.